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VIA EMAIL: HOOVERC@KERNCOUNTY.COM

Cindi Hoover, Lead Planner

Kern County Planning and Natural Resources Department

2700 M Street, Suite 100

Bakersfield, CA 93301

Governor's Office of Planning & Research

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STATE CLEARINGHOUSE

Dear Ms. Hoover:

SUPPLEMENTAL RECIRCULATED ENVIRONMENTAL IMPACT REPORT FOR REVISIONS TO TITLE 19 KERN COUNTY ZONING ORDINANCE 2020 (A), FOCUSED ON OIL AND GAS LOCAL PERMITTING, SCH# 2013081079

The Department of Conservation (DOC) has reviewed the Draft Supplemental Recirculated Environmental Impact Report (DSREIR) for the proposed revisions to Kern County Zoning Ordinance 2020-A (Project). DOC's Division of Land Resource Protection monitors farmland conversion statewide, provides technical assistance regarding the Williamson Act, and administers agricultural conservation programs. DOC's Geologic Energy Management Division (CalGEM) works to ensure compliance with the California Environmental Quality Act (CEQA) and to document CEQA compliance for all CalGEM permits as part of CalGEM's mission to safeguard the environment, protect public health and natural resources, and advance California's climate and energy goals.

DOC offers the following comments and recommendations with respect to the Project's potential impacts on agricultural land and resources and the proposed changes to mitigation measures following the decision in *King & Gardiner Farms v. County of Kern* (5th Dist. 2020) 45 Cal.App.5th 814.

The County should consider partial mitigation of agricultural conversation. On page 4.2-28 through 4.2-30, the DSREIR discusses the removal of mitigation measure 4.2-1, which mitigates impacts on Prime, Farmland of Statewide Importance, and/or Unique Farmland based on the amount of disturbance of the well construction and related site development. The DSREIR states, "[T]here is no feasible mitigation that can reduce Project impacts to prime farmland, unique farmland, and farmland of statewide importation (Impact 4.2-1), or reduce Project impacts that could convert agricultural land to non-agricultural use (Impact 4.2-5) to a less than significant level."

However, CEQA requires feasible mitigation that lessens a project's impacts, even if reduction to a level below significance is not feasible. Mitigation may also include "compensating for the impact by replacing or providing substitute resources or environments, including through permanent protection of such resources in the form of

conservation easements."¹ The measures contemplated as part of MM 4.2-1, applied where feasible, can lessen or compensate for agricultural conversion. Therefore, DOC recommends that the County consider retaining or amending MM 4.2-1 rather than entirely abandoning it.

MM 4.2-1(c) would partially mitigate conversion of agricultural lands by requiring operators to remove legacy oil and gas production equipment and abandon legacy wells. As the DSREIR states, it may not be feasible to mandate this measure for all operations because not all surface owners' property includes legacy oil and gas equipment, and where legacy equipment exists the applicant operator may not have the right to remove it. In those cases where legacy equipment exists and can be removed, however, the County could consider requiring it.

In addition to legacy equipment removal, the County should consider requiring soil restoration through removing compaction and contaminants, reintroducing soil fertility by planting cover crops, and protecting water rights for lands that have soils that meet the requirements of Prime Farmland and Farmland of Statewide importance as established by the California Department of Conservation, Farmland Mapping and Monitoring Program. In the least, restoring the land to even a fallow agricultural condition will help the health of the soil and local wildlife.

MM 4.2-1(a) and (b) also address the conversion of agricultural land, which represents a permanent reduction in the State's agricultural land resources. DOC advises the use of permanent agricultural conservation easements on land of at least equal quality and size as partial compensation for the loss of agricultural land. Conservation easements are an available mitigation tool and considered a standard practice in many areas of the State. DOC highlights conservation easements because of their acceptance and use by lead agencies as an appropriate mitigation measure under CEQA and because it follows an established rationale similar to that of wildlife habitat mitigation.

Mitigation via agricultural conservation easements can be implemented by at least two alternative approaches: the outright purchase of easements or the donation of mitigation fees to a local, regional, or statewide organization or agency whose purpose includes the acquisition and stewardship of agricultural conservation easements. The conversion of agricultural land should be deemed an impact of at least regional significance. Hence, the search for replacement lands should not be limited strictly to lands within the project's surrounding area.

A source that has proven helpful for regional and statewide agricultural mitigation banks is the California Council of Land Trusts. They provide helpful insight into farmland mitigation policies and implementation strategies, including a guidebook with model

¹ Public Resources Code Section 15370, Association of Environmental Professionals, 2020 CEQA, California Environmental Quality Act, Statute & Guidelines, page 284, https://www.califaep.org/docs/2020_ceqa_book.pdf

policies and a model local ordinance. The guidebook can be found at <http://www.calandtrusts.org/resources/conserving-californias-harvest/>

Other feasible mitigation measures should also be considered.

Conclusion

DOC recommends that the County reinstate and modify MM4.2-1, so that it feasibly lessens potentially significant impacts to agriculture land recognized as Prime Farmland, Farmland or Statewide Importance, and Unique Farmland as established by the Department's Farmland Mapping and Monitoring Program. Modification and partial mitigation could adequately address the Project's potential impacts to agricultural land.

Please provide DOC with notices of any future hearing dates as well as any staff reports pertaining to this project. If you have any questions regarding our comments, please contact Farl Grundy, Associate Environmental Planner at (916) 324-7347 or via email at Farl.Grundy@conservation.ca.gov (related to agricultural lands) or Meri Meraz, Associate Environmental Planner via email at Meri.Meraz@conservation.ca.gov (related to oil and gas).

Sincerely,

David Shabazian

David Shabazian, Director