FINAL ENVIRONMENTAL IMPACT REPORT FOR THE

Setton Pistachio Treated Wastewater Land Application Expansion Project

State Clearinghouse No. 2023030410

Prepared for:

Tulare County
Resource Management Agency

September 27, 2024

FINAL ENVIRONMENTAL IMPACT REPORT FOR THE

Setton Pistachio Treated Wastewater Land Application Expansion Project

STATE CLEARINGHOUSE NO. 2023030410

Prepared for:

Tulare County Resource Management Agency
5961 South Mooney Boulevard
Visalia, CA 93277

Contact:

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916.842.3170

September 27, 2024

20220022.01

1 INTRODUCTION

On March 20, 2024, Tulare County (County) released the draft environmental impact report (Draft EIR) for the proposed Setton Pistachio Treated Wastewater Land Application Expansion Project (the project) for public review (State Clearinghouse No. 2023030410). The Draft EIR was prepared under the direction of Tulare County Resource Management Agency (RMA) in accordance with the requirements of the California Environmental Quality Act (CEQA) (Public Resources Code [PRC] Section 21000 et seq.) and the State CEQA Guidelines. The Draft EIR was prepared to meet the requirements of a project EIR as defined by Section 15161 of the State CEQA Guidelines. A project EIR focuses on the changes in the physical environment that would result from the implementation of a project, including its planning, construction, and operation. The County's intention in preparing a project EIR is that no further environmental analysis would be required for additional regulatory approvals following approval of the project.

1.1 PUBLIC REVIEW AND RESPONSES TO COMMENTS

In accordance with Sections 15087 and 15105 of the State CEQA Guidelines, the Draft EIR was circulated for public review and comment to responsible agencies, as well as members of the public, for a period of 45+ days from March 20, 2024 through May 6, 2024. In addition, the County hosted a public hearing on Wednesday April 10, 2024, between 1:00 p.m. and 3:30 p.m. at the Tulare County Resource Management Agency, Main Conference Room, 5961 S. Mooney Boulevard, Visalia, CA 93277 to receive oral public comment from public agencies, interested parties, and the public regarding the Draft EIR. The comment letters and a transcript of the public hearing are provided in their entirety in Chapter 2, Comments and Responses to Comments. Responses to each of the comments received are provided in this document as part of the final environmental impact report (Final EIR).

The Draft EIR, Final EIR, and associated appendices are available for review online at:

> https://tularecounty.ca.gov/rma/planning-building/environmental-planning/environmental-impact-reports/setton-pistachio-land-application/

The Draft EIR, Final EIR, and associated appendices and reference materials are also available at the following location:

> Tulare County Resource Management Agency
> 5961 South Mooney Boulevard
> Visalia, CA 93277
>
> Gary Mills, Chief Environmental Planner
> gmills@tularecounty.ca.gov

As required by State CEQA Guidelines Section 15088(b), at least 10 days before consideration of the Final EIR for certification, Tulare County provided a written response (hard or electronic copy) to each public agency that submitted written comments on the Draft EIR.

1.2 CONSIDERATIONS SINCE ISSUANCE OF THE DRAFT EIR

Since issuance of the Draft EIR, no changes have been made to the Setton Pistachio Treated Wastewater Land Application Expansion Project Description, as presented in the public Draft EIR.

1.3 ORGANIZATION OF THE RESPONSES TO COMMENTS

Chapter 2 of this document consists of the comments received on the Draft EIR and presents responses to environmental issues raised in the comments, as required by State CEQA Guidelines Section 15132. The focus of the responses to comments is on the disposition of significant environmental issues that are raised in the comments, as required by Section 15088(c) of the State CEQA Guidelines.

Each comment letter has been reproduced with individual comments bracketed and numbered according to the type of commenter (i.e., state agency, local/regional agency, organization, individual, and commenter at public hearing). Responses to the comments follow each letter. For example, the response to the first comment of the first local agency letter would be indicated as Response to Comment L1-1.

1.4 COMMENTS THAT REQUIRE RESPONSES

Section 15088(c) of the State CEQA Guidelines specifies that the focus of the responses to comments shall be on the disposition of significant environmental issues. Responses are not required on comments regarding the merits of the project, or on issues not related to potential physical environmental impacts. Comments on the merits of the project or other comments that do not raise environmental issues are nevertheless included within the record. The responses to comments address environmental issues; responses also indicate where issues raised are not environmental or address the merits of the projects. In the latter instance, no further response is provided.

1.5 PROJECT DECISION PROCESS

This document (Volume 2) and the Draft EIR (Volume 1), as amended through responses to comments, together constitute the Final EIR, which will be considered by Tulare County prior to a decision on whether to approve the Setton Pistachio Treated Wastewater Land Application Expansion Project. If the County decides to approve the project, Tulare County, as required by State CEQA Guidelines Section 15090, must first certify that the Final EIR was completed in compliance with CEQA's requirements, was reviewed and considered by the County, and reflects the County's independent judgment and analysis. Tulare County would then be required to adopt findings of fact on the disposition of each significant environmental impact, as required by State CEQA Guidelines Section 15091. The project would not result in any significant or significant and unavoidable impacts; therefore, Tulare County does not need to adopt a statement of overriding considerations. A Mitigation Monitoring and Reporting Program, which is required by State CEQA Guidelines Section 15091(d), has been prepared and will be adopted by Tulare County in conjunction with any project approval.

2 COMMENTS AND RESPONSES TO COMMENTS

This chapter of the final environmental impact report (Final EIR) contains the comment letters received on the Draft EIR. Tulare County published the Draft EIR for public and agency review on March 20, 2024, for a 45-day public review period that ended on May 6, 2024. In addition, Tulare County granted a 30-day extension of the comment period to Terra Bella Voice for Change for the Draft EIR for the Setton Pistachio Treated Wastewater Land Application Extension Project through Friday June 7, 2024. In conformance with Section 15088(a) of the State CEQA Guidelines, written responses were prepared to address comments on significant environmental issues received from reviewers of the Draft EIR.

2.1 COMMENTERS ON THE DRAFT EIR

Table 2-1 lists the comment letters received, and the alpha-numerical designation, author, and date of each letter. Comment letters are numbered in the order in which they were received by Tulare County.

Table 2-1 List of Commenters

Letter Number	Commenter	Date	Agency/Organization
State			
S1	David Deel, Associate Transportation Planner	3/20/24	California Department of Transportation, District 6
S2	Alexander S. Mushegan, Supervising Engineer	5/6/24	Central Valley Regional Water Quality Control Board
S3	Julie A. Vance, Regional Manager	5/6/24	California Department of Fish and Wildlife
Local/Regional			
L1	Tom Jordan, Director of Policy and Government Affairs	5/6/24	San Joaquin Valley Air Pollution Control District
Organization			
O1	Mariah C. Thompson California Rural Legal Assistance, Inc.	5/8/24	Terra Bella Voice for Change
O2	Brenda Martin Moya and Mariah C. Thompson California Rural Legal Assistance, Inc.	6/7/24	Terra Bella Voice for Change
Individuals			
I1	Fred Beltran	4/5/24	Local resident and School Board Member
I2	Kathy Kennel	4/23/24	Local resident
I3	Hans Paulmann	5/5/24	Local resident

2.2 COMMENTS AND RESPONSES ON THE DRAFT EIR

The written comments received on the Draft EIR and the responses to those comments are presented below. Each comment is reproduced in its entirety and is followed by the response. Comment letters in their original form are included in Appendix A; individual comments are bracketed, numbered, and correspond to the comments presented in this section.

2.2.1 State

Letter S1 California Department of Transportation, District 6

David Deel, Associate Transportation Planner
March 20, 2024

COMMENT S1-1

Gary,

Caltrans has a No Comment on the DEIR for the Setton Pistachio Treated Wastewater Land Application Expansion Project.

The project would include installation of a 15-inch subsurface pipeline to connect the additional Land Application Areas (LAAs) to the existing treated wastewater distribution pipelines as well as the installation of high-efficiency drip irrigation lines within the LAAs (Figure 2-3).

As identified on Figure 2-3 of DEIR, two encroachment permits would be required from Tulare County RMA for the new subsurface pipeline, which would need to be installed under two county roads, Road 224 and Avenue 95, to reach two of the new LAAs.

If you have further questions, please contact me.

Respectfully,

DAVID DEEL | Associate Transportation Planner | Desk & Mobile: 559.981.1041
Planning, Local Programs & Environmental Analysis Division
CALTRANS - District 6
1352 W. Olive Avenue (P.O. Box 12616)
Fresno, CA 93778-2616

RESPONSE S1-1

Thank you for your review. Comment noted.

Letter S2 Central Valley Regional Water Quality Control Board

Alexander S. Mushegan, Supervising Engineer
May 5, 2024

COMMENT S2-1

Central Valley Regional Water Quality Control Board

6 May 2024

Gary Mills, Chief Environmental Planner
Tulare County Resource Management Agency
5961 S. Mooney Blvd.
Visalia, CA 93277
(via email: gmills@tularecounty.ca.gov)

COMMENTS ON DRAFT FOCUSED ENVIRONMENTAL IMPACT REPORT; SETTON PISTACHIO OF TERRA BELLA, INC.; SETTON PISTACHIO TREATED WASTEWATER LAND APPLICATION EXPANSION PROJECT; TULARE COUNTY

(SCH 2023030410)

On 20 March 2024, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) received a Notice of Availability for a Draft Focused Environmental Impact Report (DFEIR) for the Setton Pistachio Treated Wastewater Land Application Expansion Project (Project). Tulare County is the lead agency for the Project as it is the local agency with jurisdiction over land use in the subject area.

Setton Pistachio of Terra Bella, Inc. (hereafter Setton) operates the Setton Terra Bella Pistachio Processing Facility (Facility) at 9370 Road 234 in Tulare County. In 2022, the Facility was upgraded to expand its production capacity in order to process up to 122 million pounds of pistachios per year. This will increase the Facility's potential discharge of process wastewater to 85 million gallons per year (about a 30 percent increase over existing flows). The proposed Project will expand the Facility's wastewater treatment and disposal capacity to utilize the Facility's full production capacity. Elements of the proposed Project include:

- Adding 89 acres to the land application area for reuse of wastewater bringing the total to 961 acres;
- Construction and installation of new pipelines and subsurface drip irrigation lines to carry and apply wastewater to the new land application areas, which includes obtaining two encroachment permits from Tulare County;
- Improvements to the wastewater treatment system, including additional filters and aeration systems to ensure compliance with WDRs, and address potential odor issues associated with the expanded use; and
- Modifying the acceptable pH range for discharges to surface impoundments (i.e., ponds) allowed by the existing WDRs from 6.5 – 9.5 to 4.5 – 9.5.

The DFEIR was prepared to evaluate potential environmental impacts from the proposed Project. The DFEIR concludes that the Project's potential impacts can be reduced to less than significant with mitigation and further concludes that the Project will not contribute substantially to any cumulative significant impacts.

The Central Valley Water Board is a state agency with the statutory responsibility to protect water quality in California's Central Valley (Water Code, §13000 et. seq.). In support of this mission, the Central Valley Water Board regulates discharges of waste that has the potential to affect surface waters and/or groundwater. In its role as a responsible agency, the Central Valley Water Board has reviewed the DFEIR prepared by Tulare County Resource Management Agency for the proposed Project. Consistent with the Central Valley Water Board's obligations as a responsible agency, this comment letter reviews the scope and content of the environmental information germane to the Board's statutory responsibilities to protect water quality included in the environmental document for the Project (Cal. Code Regs, tit. 14, § 15096(e).)

A background summary and Central Valley Water Board staff's analysis of the Project are discussed in greater detail below.

I. BACKGROUND

The Facility is subject to regulation under Waste Discharge Requirements (WDRs) Order 92-191 issued by the Central Valley Water Board for the discharge of pistachio process wastewater to land. Prior to 2009, Setton began comingling its discharge with process wastewater from the adjoining Citrus Packing House owned by Porterville Citrus, Inc. before discharging to land (regulated by WDRs Order 94-302). The Facility has had issues with nuisance odors in the past and has received numerous odor complaints associated with its operations. WDRs Order 92-191 contains Discharger Specification B.2 which states:

> *Objectionable odors originating at this facility shall not be perceivable beyond the limits of the property owned or controlled by the Discharger.*

On 13 August 2020, the Central Valley Water Board issued Setton a Cease and Desist Order (CDO) R5-2020-0038 to address ongoing odor issues associated with storage and handling of process wastewater and associated solid waste

from Facility operations. The Facility has implemented several changes to its operation to address ongoing odor issues including preparation of an Odor Control Plan.

On 3 March 2023, Setton submitted a Report of Waste Discharge (RWD) to the Central Valley Water Board, to increase the Facility's discharge. The RWD includes elements in the proposed Project including expansion of the land application area for reuse of process wastewater. Setton revised the March 2023 RWD in May 2023 and Central Valley Water Board staff responded to the revised RWD in a 9 June 2023 letter determining the RWD had sufficient information to revise the Facility's WDRs once CEQA had been satisfied.

RESPONSE S2-1

The comment provides introductory language and a background summary; it does not address specific deficiencies with the Draft EIR. No response is necessary.

COMMENT S2-2

II. CENTRAL VALLEY WATER BOARD COMMENTS

A. Odor Issues

Pistachio process wastewater and solids are a significant source of odors at the Facility. The proposed Project will lead to increased production and disposal of process wastewater and solids, thus increasing potential concerns associated with odors at the Facility. According to the DFEIR, expansion of the land application area and additional treatment measures to be implemented as part of the proposed Project (i.e., subsurface irrigation lines, dissolved air flotation system, secondary filters, pond aerators, etc.), as well as compliance with the Facility's updated 2022 Odor Control Plan, will minimize the potential for odors associated with the increased production and handling of waste.

The DFEIR lists the following monitoring and mitigation measures to be included as conditions of approval to reduce the potential for nuisance odor issues arising as a result of the proposed Project to less than significant:

1. Track odor complaints and document identified sources of nuisance odors;
2. Take daily odor measurements at the Facility, as well as near the wastewater ponds, and sensitive receptors during the harvest season from August through October; and
3. Implement additional odor control measures specified in the Facility's Odor Control Plan, as needed, if nuisance odors are detected or identified.

RESPONSE S2-2

The comment summarizes Draft EIR Impact 3.3-5 and Mitigation Measure 3.3-5 (which includes Odor Control Plan Measures 3.1 through 3.8) that would reduce significant odor impacts to a less-than-significant level by preventing odors, tracking odor complaints, taking measurements with an olfactometer, and implementing odor control measures from the Odor Control Plan as well as installing covers on hauling truck beds containing wet materials should hauling activities be determined as the source of a nuisance odor. This impact would be less-than-significant with mitigation.

COMMENT S2-3

B. Water Quality Issues

The primary water quality concerns related to the Project are degradation of groundwater from increased percolation of process wastewater with elevated salts (primarily potassium), nitrogen, and organic matter. The DFEIR contends that based on monitoring of existing wells between 2016 and 2018 groundwater quality in the area has not been degraded as a result of existing Facility operations or discharges of process wastewater. Per the DFEIR expansion of the land application area and treatment implemented as a result of the Project will minimize related impacts from the increased discharge, thus reducing the potential impact to water quality from the Project to less than significant. Furthermore, continued implementation of existing best management practices (including application at agronomic rates, uptake of nutrient by crops, short holding periods, etc.) would ensure the Project will not violate any water quality standards, WDRs, or otherwise degrade groundwater.

The DFEIR acknowledges that existing data shows an adverse cumulative impact to groundwater with respect to salt and nitrate loading throughout the Central Valley. The Central Valley Water Board adopted the Salt and Nitrate Control Programs in 2018 with the intent to manage and ultimately reduce the impact from salt and nitrate loading. According to the DFEIR, the proposed Project is consistent with the intent of the Salt and Nitrate Control Programs. With expansion of the land application area and application at agronomic rates the Project is expected to maintain salt and nitrogen loading at existing levels and not contribute to the cumulative impact on groundwater. In addition, the Facility is participating in the Priority and Optimization (P&O) Study for the Salt Control Program and has joined the Tule Basin Water Quality Coalition for the Nitrate Control Program. For the Nitrate Control Program, Setton, as a permitted industrial facility, is contributing to the cost and development of the Early Action Plan and Management Zone Implementation Plan to manage groundwater quality impacts from discharges of salt and nitrate.

Central Valley Water Board staff has concerns with the assertion that the groundwater sampling conducted between 2016 and 2018 was sufficient to demonstrate that Setton's best management practices are adequate and that the previous discharge has not degraded groundwater quality or contributed to adverse impacts of salt and nitrate in groundwater. More recent groundwater quality samples from water supply wells in the vicinity of the Facility and land application areas, not included in the earlier analysis, shows one water supply well adjacent to the land application area with nitrate and salinity above water quality objectives and others that are at or near water quality objectives. Therefore, proposed application at agronomic rates and compliance with the Salt and Nitrate Control Programs may not be sufficient to protect water quality.

As part of the development for the Salt and Nitrate Control Programs the Central Valley Water Board adopted a Programmatic Substitute Environmental Document (PSED) evaluating the potential adverse environmental effects associated with implementation. The PSED indicates that discharges of waste in accordance with the Salt and Nitrate Control Programs could still result in potentially significant water quality impacts (PSED, Ch. 5.1.9). Furthermore, because the PSED provides a programmatic evaluation of a complex, multi-decade, regionwide policy regime, it explicitly contemplates the need for future CEQA review of specific projects carried out under that regime (see PSED, pp. 2-3). The lead agency should evaluate the potential for impacts despite compliance with SNMP programs and policies and, as appropriate, should identify Project alternatives or Project-specific mitigation measures beyond the SNMP.

RESPONSE S2-3

The comment recommends that the lead agency evaluate the potential for impacts to water quality despite the fact that the project complies with the Salt and Nitrate Control Programs adopted by the Central Valley Water Board into the Water Quality Control Plan for the Tulare Lake Basin (Basin Plan) in 2018, which was then modified in 2020. Compliance with the Salt and Nitrate Control Programs are intended to protect water quality over time, ultimately ensuring compliance with applicable water quality standards and protection of beneficial uses.

Under the Salt Control Program, permittees seeking a permit modification due to new or substantially modified discharges must indicate how they will comply with the Salt Control Program and provide information to support their decision. During Phase 1 of the Salt Control Program, permittees have the option of electing to participate in the Phase I Alternative Salinity Permitting Approach to work towards full implementation of the Salt Control Program. Setton Pistachio has elected to participate in the Phase I Alternative Salinity Permitting Approach. Accordingly, Setton Pistachio is required to do all of the following: participate in the Prioritization and Optimization Study; implement reasonable, feasible and practicable efforts to control salt, including implementation of management practices; and, maintain current discharge concentrations for salt or mass loading levels (including accounting for conservation and drought, salinity levels in water supply sources, and an appropriate increment for growth).

The project meets all of the requirements by implementing management practices that are designed to control increases of salt in the process wastewater and by expanding land application areas to maintain application of process wastewater at agronomic rates. The Central Valley Water Board may use its discretion to adopt performance-based limits if determined appropriate.

Per the Basin Plan, compliance with the requirements set forth for those electing to comply with the Phase I Alternative Salinity Permitting Approach constitutes compliance with the Basin Plan and "shall be deemed adequately

protective of beneficial uses and the water quality objectives reasonably required for that purpose consistent with this salt control program." (Central Valley Water Board, Resolution R5-2020-0057, Revisions to the Amendments to the Water Quality Control Plans for the Sacramento River and San Joaquin Basins and the Tulare Lake Basin to Incorporate a Central Valley-Wide Salt and Nitrate Control Program, Attachment A, p. 24.)

Under the Nitrate Control Program, existing dischargers seeking a permit modification due to a material change that requires submittal of a Report of Waste Discharge and that includes an increase in nitrate discharges (either in volume or concentration), may join an existing Management Zone to comply with the Nitrate Control Program. Prior to this project, Setton Pistachio joined the Tule Basin Water Quality Coalition to comply with the Nitrate Control Program for existing discharges of nitrate. As part of this project, Setton Pistachio will continue to participate in the Tule Basin Water Quality Coalition for expanded discharges of nitrate in addition to existing discharges.

Management Zones, and its participants by extension, are required to prepare and implement a Management Zone Implementation Plan, which includes enforceable and quantifiable interim deadlines that focus on reducing nitrate in ongoing discharges and a proposed final compliance date for ceasing to cause or contribute to exceedances of applicable water quality objectives in the receiving water. Along with the Management Zone Implementation Plan, the Management Zone may request an Exception for meeting a Nitrate Water Quality Objective. On September 5, 2023, the Tule Basin Water Quality Coalition submitted a Management Zone Implementation Plan, requesting an Exception for meeting the Nitrate Water Quality Objective for its irrigated lands participants as well as its industrial discharger participants. The Central Valley Water Board is in the process of reviewing the Management Zone Implementation Plan, including the requested Exceptions for meeting the Nitrate Water Quality Objective. Requirements consistent with the provisions in the Basin Plan and the Management Zone Implementation Plan will be incorporated into waste discharge requirements for industrial dischargers as well as those subject to General Orders for Irrigated Agriculture, including requirements that ensure industrial discharges of nitrate do not cause or contribute to exceedances of nitrate water quality objectives in a time frame that is as short as practicable.

Under the Tule Basin Water Quality Coalition's Management Zone Implementation Plan and associated Nitrate Control Program for industrial dischargers, Setton Pistachio of Terra Bella has been designated as a Group 1 Facility under the Nitrate Reduction Program for Non-Chapter 15 facilities. As a Group 1 Facility, Setton Pistachio be required to collect data and information regarding water quality in the Upper Zone and facility loading of nitrate to the Upper Zone. With this information, Setton Pistachio will then be required to prepare a Facility Specific Nitrate Reduction Workplan. Moreover, as currently proposed, Setton Pistachio will be required to meet the final goal of not causing or contributing to exceedances of the nitrate objective within 20 years; however, as part of the Facility Specific Nitrate Reduction Workplan, Setton Pistachio will be required to put forward a proposed schedule that is as short as practicable that does not exceed 20 years.

In the meantime, the Nitrate Control Program requires Management Zones (and their participants) to provide access to safe drinking water if a well exceeds the drinking water standard of 10 mg/L of Nitrate (as N). In exchange, Management Zone participants are eligible for receiving an Exception from complying with the nitrate water quality objective for a set period of time. Setton Pistachio is an active participant in its Management Zone, which provides access to safe drinking water. This means that Setton Pistachio is in compliance with the Nitrate Control Program, and its implementation of nitrate water quality objectives. For instance, affected residents may be eligible to receive drinking water at no cost to them through the Management Zone. The Management Zone will continue to monitor groundwater throughout the basin and evaluate impacts to groundwater from all participating entities, including Setton Pistachio.

Accordingly, participation and compliance with the Salt Control Program and the Nitrate Control Program ensures compliance with water quality standards that protect beneficial uses. Therefore, the proposed expansion of land application areas is less than significant.

COMMENT S2-4

III. CONCLUSION

Without evaluation of more recent groundwater monitoring data, the DFEIR lacks sufficient evidence to properly inform decisionmakers or the public of potential water quality impacts that may foreseeably result from the Project. The lead agency should require further analysis including assessment of impacted water supply wells in the vicinity of the Project. Additionally, and consistent with Nitrate Control Program requirements, Management Zones are required to define areas of impact and provide safe drinking water, where necessary, for impacted users. No discussion was provided in the DFEIR that confirms whether the drinking water was provided to users with nitrate-impacted wells; this needs to be addressed.

Thank you for the opportunity to comment on this project. If you have questions about these comments, please contact Katie Carpenter at (559) 445-5551 or by email at Katie.Carpenter@waterboards.ca.gov.

Alexander S. Mushegan
Supervising Engineer

cc's:

- Marina Abitia, Regulatory Compliance Officer, Porterville Citrus, Inc., Terra Bella (via email)
- Nick Galusha, Senior Analyst, Porterville Citrus, Inc., Terra Bella (via email)
- John Kinsey, Esq., Wanger Jones Helsley PC, Fresno (via email)
- Theresa Dunham, Esq., Kahn, Soares & Conway, LLP, Sacramento (via email)
- Dolores Gough, Senior Consultant, Trinity Consultants, Bakersfield (via email)
- Mariah Thompson, Esq., California Rural Legal Assistance, Inc., Fresno (via email)
- Kevin Bundy, Esq., Shute, Mihaly & Weinberger LLP, San Francisco (via email)
- Lupe Cipres, Interested Party, Terra Bella's Voice for Change, Terra Bella (via email)
- Fred Beltran, Interested Party, Terra Bella's Voice for Change, Terra Bella (via email)
- Nayamin Martinez, Interested Party, Central California Environmental Justice Network, Fresno (via email)

RESPONSE S2-4

As indicated above, Setton Pistachio will be required to collect data and information to conduct an assessment of loading from the land application areas in their entirety as part of the Management Zone Implementation Plan. Further, an assessment of water supply wells in the vicinity of the Project would not necessarily yield information that is determinative with respect to water quality impacts from the Project considering other surrounding land uses that may also impact nearby water supply wells.

With respect to the provision of safe drinking water, the Tule Basin Management Zone tests domestic drinking water wells for any resident located within the Management Zone's boundaries regardless of defined areas of impact. If the well exceeds the nitrate drinking water standard, safe drinking water is provided to the resident at no cost. Thus, the Management Zone is providing drinking water to users with nitrate-impacted wells upon request, including those that rely on domestic wells near and around the community of Terra Bella.

Thank you for your review.

Letter S3 California Department of Fish and Wildlife

Julie A. Vance, Regional Manager
May 6, 2024

COMMENT S3-1

State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Avenue
Fresno, California 93710
(559) 243-4005
www.wildlife.ca.gov
Conserving California's Wildlife Since 1870

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

May 06, 2024

Gary Mills
Tulare County Resource Management Agency
5961 S Mooney Blvd
Visalia California, 93277
(559) 624-7199
gmills@tularecounty.ca.gov

Subject: Setton Pistachio Treated Wastewater Land Application Expansion Project (Project)
DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR)
SCH No. 2023030410

Dear Gary Mills:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a DEIR from Tulare County, as Lead Agency, for the Setton Pistachio Treated Wastewater Land Application Expansion Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1]

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (Id., § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

[1] CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered

Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

PROJECT DESCRIPTION SUMMARY

Proponent: Setton Pistachio

Objective: The Project proposes to increase the volume of treated wastewater that would be applied to the land application areas (LAAs) during the pistachio harvest season. To account for the increased volume of treated wastewater to be used for irrigation, Setton is proposing to add 89 acres of LAAs to expand their wastewater treatment disposal capacity. The Project includes installation of a 15-inch subsurface pipeline to connect the additional LAAs to the existing treated wastewater distribution pipelines and installation of irrigation lines within the LAAs. Two encroachment permits would be required from Tulare County for the new pipeline to reach two of the new LAAs. The additional LAAs would allow Setton Pistachio to increase the annual wastewater discharge from 60 million gallons per year (MGY) to 85 MGY (maximum daily discharge rates would remain at 3 million gallons), allowing the facility to fully utilize its current design capacity. Improvements to the existing wastewater treatment facilities are also proposed. This would include adding fiber filters to the existing gunite-lined pond to remove excess solids from treated wastewater prior to its release into the East and West Ponds, where it is stored on a short-term basis for distribution to the LAAs. Further, paddles would be installed in the West Pond for aeration, and a Venturi Model 06 EMOHTM system would be installed in the East Pond to improve aeration to prevent septicity and odor production.

Location: The Setton Terra Bella Pistachio Facility is located on an 80-acre site at 9370 Road 234, Terra Bella, east of State Route (SR) 65, in unincorporated Tulare County. An additional 89 acres of LAAs are proposed on Assessor Parcel Numbers (APNs) 320-040-004, -005, -006, - 007, -008, -009; 320-040-034; and 320-070-023, -024, and -025

(89 acres of pistachio orchards with crop cover). As with the existing LAAs, the proposed LAAs are owned by Setton Pistachio, zoned AE-20 (Exclusive Agricultural Zone - 20 Acre Minimum) by Tulare County and are surrounded by agricultural lands and local roads.

RESPONSE S3-1

The comment provides introductory language and a background summary; it does not address specific deficiencies with the Draft EIR. No response is necessary.

COMMENT S3-2

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Tulare County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the CEQA document.

Aerial imagery of the Project boundary and its surroundings show the area contains agricultural lands, including orchards and recently tilled row crops, water treatment ponds, and disturbed and developed areas. Based on a review of the Project description, California Natural Diversity Database (CNDDB) records, and the surrounding habitat, several special-status species could potentially be impacted by Project activities.

Currently, the DEIR acknowledges that the Project area is within the geographic range of several special status animal species and proposes specific mitigation measures to reduce impacts to less than significant. CDFW has concerns about the ability of some the proposed mitigation measures to reduce impacts to less than significant and avoid unauthorized take for the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*).

San Joaquin Kit Fox

Mitigation Measure 3.5-1c states, "If potential kit fox dens are identified within the 200-foot buffer of the project area, a USFWS-approved biologist will determine if the dens are occupied by kit fox. If occupied dens are found, a no disturbance buffer a minimum of 100 feet around occupied dens will be maintained for the duration of treatment

activities. If a natal den is discovered within 200 feet of a treatment site, all activity shall cease, and the applicant will contact the USFWS and CDFW to consult about potential avoidance measures before activities can occur."

CDFW concurs with this measure but recommends that the buffer area described within the mitigation measure be extended to a minimum of 500 feet for San Joaquin kit fox natal dens, and that all activities cease while the applicant consults with CDFW to discuss how to avoid take.

RESPONSE S3-2

Per CDFW's recommendation, Mitigation Measure 3.5-1c is hereby revised as follows:

Mitigation Measure 3.5-1c: Conduct Focused Surveys for San Joaquin Kit Fox and Implement Avoidance Measures

Tulare County shall require Setton to implement the following measures to reduce impacts on San Joaquin kit fox:

- A qualified biologist shall conduct focused surveys for San Joaquin kit fox within a ~~200~~ 500-foot buffer around the project area no less than 14 days and no more than 30 days prior to implementation ground disturbance activities.
- If potential kit fox dens are identified within the ~~200~~ 500-foot buffer of the project area, a USFWS-approved biologist will determine if the dens are occupied by kit fox. If occupied non-natal dens are found, a no-disturbance buffer a minimum of 100 feet around occupied dens will be maintained for the duration of treatment activities. If a natal den is discovered within ~~200~~ 500 feet of a treatment site, all activity shall cease, and the applicant will contact the USFWS and CDFW to consult about potential avoidance measures before activities can occur (USFWS 2011).
- Avoidance measures shall be implemented in accordance with the USFWS "Standard recommendations for protection of the endangered San Joaquin kit fix prior to or during ground disturbance" (USFWS 2011). Avoidance measures shall include, but are not limited to:
  - Project related vehicles shall adhere to a 20-mph daytime speed limit and 10-mph nighttime speed limit, except on county roads and state and federal highways.
  - All excavated trenches more than 2 feet deep shall be covered at the close of each day by plywood or a similar material. Before they are closed, they shall be thoroughly inspected for trapped animals. If they cannot be covered each night, they shall have sloped walls or will contain one or more escape ramps constructed of earthen-fill or wooden planks. If a trapped or injured kit fox is discovered, USFWS and CDFW shall be notified within three working days.
  - All construction materials, including pipes, culverts, or similar structures with a diameter of 4 inches or greater, that are stored at the construction site for one or more overnight periods shall be thoroughly inspected for fit foxes before use or before the pipe is buried, capped, or otherwise used or moved in any way. If a kit fox is discovered inside a pipe, that section of pipe shall not be moved until consultation with the USFWS and CDFW has occurred. If necessary, under the direct supervision of a biologist, the pipe may be moved one time to remove it from the path of construction activity until the fox has escaped.

COMMENT S3-3

Editorial Comments and/or Suggestions

Federally Listed Species: CDFW recommends consulting with USFWS regarding potential impacts to federally listed species including but not limited to the San Joaquin kit fox. Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any Project activities.

RESPONSE S3-3
Consultation with USFWS is only required pursuant to Section 10 of the Endangered Species Act if take of a federally listed species is likely to occur. With implementation of Mitigation Measure 3.5-1c, take of San Joaquin kit fox would be avoided. Mitigation Measures 3.5-1c and 3.5-1d require preconstruction surveys and implementation of measures to avoid injury or mortality of San Joaquin kit fox and destruction of dens, if detected.

COMMENT S3-4
CDFW appreciates the opportunity to comment to assist Tulare County in identifying and mitigating Project impacts on biological resources. If you have any questions, please contact Jaime Marquez, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 580-3200, or by electronic mail at Jaime.Marquez@wildlife.ca.gov.

Sincerely,
Julie A. Vance
Regional Manager

ec: State Clearinghouse
Governor's Office of Planning and Research
State.Clearinghouse@opr.ca.gov

U.S. Fish and Wildlife Service
Mathew Nelson
Mathew.nelson@fws.gov

RESPONSE S3-4
Thank you for your review. Comment noted.

2.2.2 Local/Regional

Letter L1 San Joaquin Valley Air Pollution Control District

Tom Jordan, Director of Policy and Government Affairs
May 6, 2024

COMMENT L1-1
May 6, 2024

Gary Mills
County of Tulare
Resource Management Agency
5961 South Mooney Boulevard
Visalia, CA 93277

Project: Draft Environmental Impact Report for the Setton Pistachio Treated Wastewater Land Application Expansion Project
District CEQA Reference No: 20240362

Dear Mr. Mills:

The San Joaquin Valley Air Pollution Control District (District) has reviewed the Draft Environmental Impact Report (DEIR) from the County of Tulare (County) for the project mentioned above. Per the DEIR, the project consists of 89 acres of land application areas for the expansion of the wastewater disposal capacity (from 872 acres to 961 acres) to utilize the current design capacity of processing up to 122 million pounds of pistachios per year (Project). The Project is located at 9370 Road 234, in Terra Bella, CA.

The District offers the following comments at this time regarding the Project:

RESPONSE L1-1

The comment provides introductory language and a background summary; it does not address specific deficiencies with the Draft EIR. No response is necessary.

COMMENT L1-2

1) Cleanest Available Heavy-Duty Trucks

The San Joaquin Valley will not be able to attain stringent health-based federal air quality standards without significant reductions in emissions from Heavy Heavy-Duty (HHD) trucks, the single largest source of NOx emissions in the San Joaquin Valley. Accordingly, to meet federal air quality attainment standards, the District's ozone and particulate matter attainment plans rely on a significant and rapid transition of HHD fleets to zero or near-zero emissions technologies.

Since the Project will result in increased HHD truck trips by a maximum of 19 daily truck trips during harvest season, the District recommends that the following measures be considered by the County to reduce Project-related operational emissions:

> *Recommended Measure*: Fleets associated with operational activities utilize the cleanest available HHD trucks, including zero and near-zero technologies.
> *Recommended Measure*: All on-site service equipment (cargo handling, yard hostlers, forklifts, pallet jacks, etc.) utilize zero-emissions technologies.

RESPONSE L1-2

The project would introduce an additional 19 daily truck trips during harvest season. As discussed in Section 3.3, "Air Quality," operation of the project, including these additional truck trips, would result in an increase in less than one ton per year of reactive organic gases (ROG), oxides of nitrogen (NO_X), carbon monoxide (CO), sulfur oxides (SO_X), respirable particulate matter (PM_{10}), and fine particulate matter ($PM_{2.5}$). These levels of emissions are well below San Joaquin Valley Air Pollution Control District's (SJVAPCD's) annual thresholds of significance. These emissions estimates were calculated using the California Emissions Estimator Model (CalEEMod) Computer Program, Version 2022.1 and utilizes emissions factors from the California Air Resources Board's (CARB's) EMFAC 2017 model, which includes location-specific vehicular data per county and accounts for various CARB-developed regulations that target the electrification and improved fuel economy of the mobile-source sector. The emissions estimates presented in Section 3.3, "Air Quality," are inherently conservative as the version of CalEEMod used in the analysis does not account for other regulatory mechanisms that will result in decreased mobile-source emissions such as the Advanced Clean Fleets (ACF) and Advanced Clean Trucks (ACT) regulations, recently adopted by CARB as directed by Executive Order N-79-20. Executive Order N-79-20 includes a mandate for CARB to develop and propose strategies to achieve 100 percent zero-emissions from medium and heavy-duty on-road vehicles in the State by 2045. Specifically, the mandate calls for:

- 100 percent of medium- and heavy-duty vehicles in the State be zero-emission by 2045 for all operations, where feasible, and by 2035 for drayage trucks (drayage is the transport of goods over short distances); and
- 100 percent of off-road vehicles and equipment be zero emission by 2035, where feasible.

In addition, CARB's recently adopted Advanced Clean Cars II Program further increases the stringency of GHG emissions for all light-duty vehicles requiring 100 percent zero emission vehicle sales in California by 2035.

Over time, regulations such as ACF, ACT, and Advanced Clean Cars II will result in the electrification of on-road vehicles and HHD trucks through sales requirements overseen and enforced by CARB. The additional truck trips associated with the project may be replaced by electric or more fuel-efficient vehicles over time; however, considering that these regulations would be deployed through the overturning of the fleet within an assumed regulatory timeframe, the project has not claimed these emissions reductions in its emissions estimates presented in Section 3.3, "Air Quality." Moreover, the project's additional operational activity, as stated previously, would not result in a level of emissions that would exceed SJVAPCD's CEQA thresholds of significance. Therefore, no mitigation is required. No changes to the Draft EIR are needed and no further response is required.

COMMENT L1-3

2) Reduce Idling of Heavy-Duty Trucks

The goal of this strategy is to limit the potential for localized PM2.5 and toxic air contaminant impacts associated with the idling of HHD trucks. The diesel exhaust from idling has the potential to impose significant adverse health and environmental impacts.

Since the Project will result in an increase in HHD truck trips by a maximum of 19 daily truck trips during harvest season, the District recommends the DEIR be revised to include measures to ensure compliance of the state anti-idling regulation (13 CCR § 2485 and 13 CCR § 2480) and discuss the importance of limiting the amount of idling, especially near sensitive receptors.

RESPONSE L1-3

The commenter recommends additional measures to limit idling by trucks. The traffic flow pattern for trucks at Setton Terra Bella minimizes potential for idling time. Trucks with harvest loads enter the scale house (which has three scales) off of Highway 65. The trucks are checked-in and tagged for staging. The trucks drop off their load, grab an empty hopper, and head back out to a pistachio orchard. The trucks then pick up a load and enter the property to drop them off at one of six pits. The trucks have an average wait time of 30 minutes, during which time they are turned off (i.e., not idling) to save on fuel. The requirement to limit idling is regulated by Title 13 of the California Code of Regulations Sections 2485 and 2480, and it is reasonably assumed that idling times would adhere to CARB's 5 minute requirement. As discussed in Section 3.3, "Air Quality," the increase in 19 daily trucks trips would be distributed to 10 different locations including facilities in Tulare, Visalia, Tipton, Pixley, and Porterville, effectively reducing the concentrations of mobile-source TACs on any one road and associated nearby sensitive receptors. Because the number of new daily trips would be considerably low, would not be concentrated in any one location for an extended period of time, and would comply with CARB's 5-minute idling limit as required by law, the project would not result in substantial concentrations of diesel particulate matter that would exceed SJVAPCD's 20 in one million threshold of significance. Therefore, no mitigation is required. No changes to the Draft EIR are needed and no further response is required.

COMMENT L1-4

3) District Rules and Regulations

The District issues permits for many types of air pollution sources, and regulates some activities that do not require permits. A project subject to District rules and regulations would reduce its impacts on air quality through compliance with the District's regulatory framework. In general, a regulation is a collection of individual rules, each of which deals with a specific topic. As an example, Regulation II (Permits) includes District Rule 2010 (Permits Required), Rule 2201 (New and Modified Stationary Source Review), Rule 2520 (Federally Mandated Operating Permits), and several other rules pertaining to District permitting requirements and processes.

The list of rules below is neither exhaustive nor exclusive. Current District rules can be found online at: https://ww2.valleyair.org/rules-and-planning/current-district-rules-and-regulations. To identify other District rules or regulations that apply to future projects, or to obtain information about District permit requirements, the project proponents are strongly encouraged to contact the District's Small Business Assistance (SBA) Office at (661) 392-5665.

3a) District Rules 2010 and 2201 - Air Quality Permitting for Stationary Sources

Stationary Source emissions include any building, structure, facility, or installation which emits or may emit any affected pollutant directly or as a fugitive emission. District Rule 2010 (Permits Required) requires operators of emission sources to obtain an Authority to Construct (ATC) and Permit to Operate (PTO) from the District. District Rule 2201 (New and Modified Stationary Source Review) requires that new and modified stationary sources of emissions mitigate their emissions using Best Available Control Technology (BACT).

This Project may be subject to District Rule 2010 (Permits Required) and Rule 2201 (New and Modified Stationary Source Review) and may require District permits. Prior to construction, the Project proponent should submit to the

District an application for an ATC. For further information or assistance, the project proponent may contact the District's SBA Office at (661) 392-5665.

3b) District Rule 9510 - Indirect Source Review (ISR)

Per District Rule 9510 section 4.4.3, a development project on a facility whose primary functions are subject to District Rule 2201 or District Rule 2010 are exempt from the requirements of the rule. The District has reviewed the information provided and has determined that the primary functions of this Project are subject to District Rule 2201 (New and Modified Stationary Source Review Rule) or District Rule 2010 (Permits Required). As a result, District Rule 9510 requirements and related fees do not apply to the Project referenced above.

3c) District Regulation VIII (Fugitive PM10 Prohibitions)

The project proponent may be required to submit a Construction Notification Form or submit and receive approval of a Dust Control Plan prior to commencing any earthmoving activities as described in Regulation VIII, specifically Rule 8021 – *Construction, Demolition, Excavation, Extraction, and Other Earthmoving Activities*.

Should the project result in at least 1-acre in size, the project proponent shall provide written notification to the District at least 48 hours prior to the project proponents intent to commence any earthmoving activities pursuant to District Rule 8021 (Construction, Demolition, Excavation, Extraction, and Other Earthmoving Activities). Also, should the project result in the disturbance of 5-acres or more, or will include moving, depositing, or relocating more than 2,500 cubic yards per day of bulk materials, the project proponent shall submit to the District a Dust Control Plan pursuant to District Rule 8021 (Construction, Demolition, Excavation, Extraction, and Other Earthmoving Activities). For additional information regarding the written notification or Dust Control Plan requirements, please contact District Compliance staff at (559) 230-5950.

The application for both the Construction Notification and Dust Control Plan can be found online at: https://ww2.valleyair.org/media/fm3jrbsq/dcp-form.docx

Information about District Regulation VIII can be found online at: https://ww2.valleyair.org/dustcontrol

3d) Other District Rules and Regulations

The Project may also be subject to the following District rules: Rule 4102 (Nuisance) and Rule 4641 (Cutback, Slow Cure, and Emulsified Asphalt, Paving and Maintenance Operations)

RESPONSE L1-4

The project does not propose construction or operation of any new stationary sources. The project will not result in a disturbance of 5-acres and will not include movement of more than 2,500 cy per day of materials. Although not anticipated, if the project may result in disturbance of 1-acre or more, the project proponent will notify the District. If necessary, the project proponent will coordinate with the District on any necessary permits.

COMMENT L1-5

4) District Comment Letter

The District recommends that a copy of the District's comments be provided to the Project proponent. If you have any questions or require further information, please contact Harout Sagherian by e-mail at Harout.Sagherian@valleyair.org or by phone at (559) 230-5860.

Sincerely,

Tom Jordan Director of Policy and Government Affairs

For: Mark Montelongo Program Manage

RESPONSE L1-5

Thank you for your review. This comment letter has been provided to the project proponent, Setton Pistachio.

2.2.3 Organizations

Letter O1 Terra Bella Voice for Change

Mariah C. Thompson, Esq., Senior Litigator, California Rural Legal Assistance, Inc.
May 8, 2024

COMMENT O1-1

May 8, 2024

VIA EMAIL TO: gmills@tularecounty.ca.gov

Gary Mills
County of Tulare RMA
5961 S. Mooney Blvd.
Visalia, CA 93277

Re: Request for Extension of Public Comment Period and for Notice pursuant to the California Environmental Quality Act, Setton Wastewater Land Application Expansion State Clearing House Number 2023030410

Mr. Mills,

California Rural Legal Assistance, Inc. ("CRLA") represents Terra Bella Voice for Change ("TBVC"), an unincorporated association comprised of residents of Terra Bella, California. This correspondence requests an extension of the public comment period for the Draft Environmental Impact Report (DEIR) for the Setton Pistachio Treated Wastewater Land Application Extension Project (Project), State Clearinghouse No. 2023030410, released on or around March 20, 2024 for public review. The basis of this request is Tulare County's failure to provide adequate notice to TBVC of the release of the DEIR in violation of Pub. Res. Code §21092. This correspondence also serves as formal reiteration of TBVC's request, pursuant to Pub. Res. Code §21092.2(a), to be notified of all future actions related to the Project.

The County was required by law to provide notice of its release of the DEIR to TBVC at its "last known name and address,"[1] TBVC is an interested party that indicated a desire to be provided notice of actions related to the Project—especially related to the DEIR—through its participation in the Notice of Preparation (NOP) public comment period and its submission of extensive comments on the NOP. TBVC submitted comments on the NOP to Tulare County (the County) on or around April 14, 2023. The County received these comments and had notice of TBVC's status as an interested party, as evidenced by the fact that the County included TBVC's comments in the DEIR.[2] Further, TBVC filed and prosecuted litigation against the County in relation to the Setton Facility's recent facility expansion, which forms the basis of the Project, and the County's failure to follow mandates of the California Environmental Quality Act (CEQA) as the lead agency for that project's environmental review process. The County has known for years that TBVC is an interested party in relation to any expansions to the Setton facility—and has had specific knowledge of its interest in this Project for over a year.

Because the County failed to comply with its legal obligations to provide TBVC with proper notice of the DEIR, TBVC was unaware the DEIR had been published until May 6, 2024, the final day of the public comment period, when TBVC received a copy of the Central Valley Regional Water Quality Control Board's (CWB) comments on the DEIR. TBVC has, because of the County's inappropriate conduct, been denied its right to fully participate in the Project's environmental review process. The County must remedy this error by providing TBVC an extension of the public comment period so that it may review and comment on the DEIR.

As a courtesy, TBVC is not requesting an extension for the full 45 days for review to which it is entitled. Rather, TBVC seeks a 30-day extension of time from the date of this correspondence—till June 19, 2024—to submit comments on

[1] Pub. Res. Code §21092(b)(3)
[2] DEIR App. A. p. 191

the DEIR. Such an extension will be sufficient for TBVC to review and provide comments on the DEIR and will cause no meaningful delay in the County's environmental review process for the Project.

TBVC also intends this correspondence to serve as a formal reiteration of its request to be provided notice of all actions related to the Project, including but not limited to any future notices of preparation or notices of availability of any new, supplemental, or subsequent environmental documentation prepared for or related to the Project. Please send a copy of any such notice to me at the contact information in my signature block, below.

Please respond no later than May 10, 2024 to advise if the County will voluntarily grant the requested extension. Please also provide the date, time, and location for the public hearing the County intends to hold in front of the Board of Supervisors in relation to the Project.

Sincerely,

Mariah C. Thompson, Esq.
Senior Litigator
California Rural Legal Assistance, Inc.
3747 E. Shields Ave
Fresno, CA 93726
mthompson@crla.org
Attorneys for Terra Bella Voice for Change
Cc:

County Clerk, County of Tulare: clerk@tularecounty.ca.gov
Jennifer Flores, Tulare County Counsel; jmflores@tularecounty.ca.gov

RESPONSE O1-1
Thank you for your interest in this project and your review.

Gary Mills, Chief Planner at Tulare County, responded via email to Mariah C. Thompson with California Rural Legal Assistance, Inc. on May 10, 2024 granting a 30-day extension of the comment period to Terra Bella Voice for Change (TBVC) for the Draft Environmental Impact Report (Draft EIR) for the Setton Pistachio Treated Wastewater Land Application Extension Project (Project), State Clearinghouse No. 2023030410 from the date of the comment letter, May 8, 2024. Therefore, TBVC was provided through Friday June 7, 2024, to submit comments to Tulare County on the Draft EIR.

Per TBVC's request, the County will provide notices to CRLA and TBVC related to this Project, including notice regarding the Board of Supervisors meeting in which certification of the EIR and project approval will be considered.

Letter O2 Terra Bella Voice for Change

Brenda Martin Moya, Esq. and Mariah C. Thompson, Esq., Senior Litigator, California Rural Legal Assistance, Inc.
June 7, 2024

COMMENT O2-1
June 7, 2024

VIA EMAIL TO: gmills@tularecounty.ca.gov; clerk@tularecounty.ca.gov; jmflores@tularecounty.ca.gov
Gary Mills
County of Tulare RMA
5961 S. Mooney Blvd.
Visalia, CA 93277

Re: Public Comment on Draft Environmental Impact Report for Setton Pistachio Treated Wastewater Land Application Expansion State Clearing House Number 2023030410

Mr. Mills,

California Rural Legal Assistance, Inc. ("CRLA") represents Terra Bella Voice for Change ("TBVC"), an unincorporated association comprised of residents of Terra Bella, California. TBVC submit these comments for the Draft Environmental Impact Report ("DEIR") for the Setton Pistachio ("Setton") Treated Wastewater Land Application Expansion Project ("Project"), State Clearinghouse No.2023030410, released on or around March 20, 2024, for public review. Pursuant to an extension granted by the County of Tulare ("County"), CRLA's deadline for commenting on the DEIR is June 7, 2024.

Setton proposes to increase the capacity of its Terra Bella facility to process pistachios by 20.6 million pounds per year, resulting in an additional wastewater discharge of 25 million gallons annually accompanied by an increase of 89 acres of the land application area ("LAAs") for wastewater discharge irrigation. The project also seeks to revise the lower limit for wastewater pH from 6.5 to 4.5, and complete improvements to the wastewater treatment and distribution system.

TBVC is concerned that the DEIR does not adequately analyze, disclose, and mitigate the Project's impacts, especially the Project's impacts related to odors, traffic, vibration, and noise. Further environmental analysis and additional mitigation measures are required for the County's Project approval to be compliant with the California Environmental Quality Act ("CEQA"). TBVC provides the following comments on the DEIR.

RESPONSE O2-1

Thank you for your interest in the project and your review of the Draft EIR.

The Setton Pistachio Treated Wastewater Land Application Expansion Project would not increase the capacity of the Terra Bella facility, but it would enable the existing facility to fully utilize its existing capacity. As stated in Chapter 2 of the Draft EIR (see Section 2.3 Project Objectives), the project would

- allow the Setton Terra Bella Pistachio facility to fully utilize its current design capacity *(emphasis added)*;
- expand wastewater treatment disposal capacity,
- protect beneficial uses of water,
- prevent nuisance conditions (odors), and
- comply with the waste discharge requirement issued by the Central Valley Water Board.

The Terra Bella facility design capacity of 122 million pounds of pistachios per year would not change. The additional 89 acres of land application areas (LAAs) provides wastewater disposal capacity for the facility to utilize the design capacity that has already been evaluated under CEQA, approved, and permitted. As explained in Draft EIR Chapter 2, Section 2.1.1, Existing Pistachio Harvest Operations, under "2022 Facility Upgrades," the facility upgrades previously evaluated by Tulare County (2020 addendum to the 2015 Terra Bella Community Plan Initial Study/Mitigated Negative Declaration) and permitted in 2022 by the San Joaquin Valley Air Pollution Control District were constructed, allowing the Terra Bella facility to operate at its design capacity of 122 million pounds of pistachios per year. The proposed Setton Pistachio Treated Wastewater Land Application Expansion Project does not include any facility upgrades nor expansion.

Although the design capacity would not change, the ability to operate at capacity is constrained by treated wastewater disposal capacity. Because the expansion of the land application area would enable processing of more wastewater and therefore more pistachios, the Draft EIR evaluates impacts associated with this additional processing including more truck trips and associated impacts. The Draft EIR adequately discloses, analyzes, and mitigates the impacts of the proposed project, as is addressed in the responses to the following comments.

COMMENT O2-2

I. THE COUNTY IS NOT THE APPROPRIATE LEAD AGENCY FOR THE PROJECT.

TBVC submitted comments on the Notice of Preparation ("NOP") for the Project on April 14, 2023.[1] In those comments, TBVC stated that the County was not the appropriate lead agency for the project due to its extremely

limited implementation role. Specifically, TBVC noted that when the project will be carried out by a private person or entity, "the Lead Agency shall be the public agency with the greatest responsibility for supervising or approving the project as a whole"[2] If more than one agency is involved with a project, the agency with greatest enforcement authority or oversight is the proper Lead Agency.[3]

TBVC's comments further provided legal authority for this assertion, which are quoted herein in their entirety:

> In *Covington v. Great Basin Unified Air Pollution Control District*, the Third District Court of Appeal found that an air district, rather than the local governmental agency, was the appropriate Lead Agency for a project even though the Project did require some permit approvals from the local jurisdiction. (*Covington v. Great Basin Unified Air Pollution Control District*, (2019) 43 Cal.App.5th 867, 884) The Court observed that the County's role in the project was limited to providing a use permit for a section of a pipeline that would run across private property. (*Id.*) The Court emphasized that even though "the guidelines state a preference for an agency with general governmental powers," to be Lead Agency, it was not appropriate in that situation because the County "only approved a conditional use permit for a small portion of the Project" consisting of 1500 feet of pipeline across private land. (*Id.*) The air district was the agency with the most permitting and enforcement powers, and therefore the appropriate lead agency.

The NOP identifies the County as the Lead Agency for the Project EIR and states that other agencies "will need to use the EIR prepared by [RMA] when considering your permit(s) or other approval(s) for the Project." (NOP p. 1) Setton mirrors that language in its Report of Waste Discharge submitted to the Central Valley Regional Water Quality Control Board (hereinafter "Water Board") in March 2023 in which it requests to substantially increase its waste discharge limits by 25 million gallons annually. (Report of Waste Discharge and Technical Report for Setton Pistachio of Terra Bella, dated March 3, 2023, (hereinafter "March 2023 RWD")).

Although the DEIR recognizes that the Water Board is the agency that provides permits for the substantive changes to Setton's operations and possesses the enforcement powers, the DEIR still establishes the County as a Lead Agency[4]. Both Setton and the County argue that because the County is the local government with jurisdiction over "general land uses," (like encroachment permits for pipeline installation) the County is the appropriate lead agency[5].

Even assuming that the County's approval of the encroachment permits would be discretionary, it is improper for the County to be Lead Agency for this Project. The appropriate Lead Agency is the Water Board. The entirety of the Project, when not inappropriately piecemealed as the County attempts, is the approval and implementation of Setton's requests in its March 2023 RWD and the associated modifications in Setton's operations that will result. The issuance of two encroachment permits for pipelines is only one small component of the Project. Like in Covington, supra, the County's only role is issuing permits for road crossings for a single pipeline. Moreover, like the air district in Covington, the Water Board is the agency with the most significant permitting power, impactful decisions, and oversight of project implementation. The Water Board's expertise and authority are exemplified by their role in reviewing Setton's proposals for increases in wastewater volume, determining specific concerns in the engineering analysis conducted by Setton, and prescribing requirements that protect beneficial uses, implement water quality control plans and avoid the creation of a nuisance. (See Water Code §13263) The County does not have the legal authority, necessary experience, or professional qualifications to provide this level of oversight of Setton's wastewater process, especially given that the Water Board has been doing so for decades. The Water Board's oversight and approval of Setton's requested WDR modifications is the most important and impactful discretionary decision for this Project. It is a necessary pre-condition for Setton to operate the pipeline and infrastructure described in the DEIR. The Water Board, not the County, is the appropriate Lead Agency.

The DEIR states that the Water Board believes that the County is the appropriate leading agency because it has limited resources and infrastructure to carry out CEQA evaluations and that "Tulare County is the lead agency for the Project as it is the local agency with jurisdiction over land use in the subject area."[6] These statements are inconsistent with established case law. The lead agency should be the Water Board, not the County.

RESPONSE O2-2

Per State CEQA Guidelines Section 15051(b)(1), for private projects the Lead Agency should normally be the agency "with general governmental powers" such as a city or county, as opposed to a single- or limited-purpose agency such as a school district, water district, or air pollution control district. Limited-purpose state agencies, such as the Central Valley Regional Water Quality Control Board (Central Valley Water Board), typically serve as Responsible Agencies when a local government is the Lead Agency (Cal. Code Regs., tit. 14, sec. 15051(b)(1)). Under CEQA, it is common for more than one governmental agency to be eligible to serve as a lead agency, a concept embodied in the CEQA Guidelines. (Cal. Code Regs., tit. 14, secs. 15051, subds. (a), (d), 15053.)

As stated in Section 1.3.1 of the Draft EIR, Tulare County is the lead agency for this project because it is the local government agency with jurisdiction over land uses at the Setton Terra Bella facility (Cal. Code Regs., tit. 14, sec. 15051(b)(1)). The primary component of the project is installation of subsurface pipelines on farmland in Tulare County to distribute treated effluent to agricultural land, with minor improvements to existing ponds for enhanced odor control. Tulare County is the overarching agency responsible for evaluating and mitigating overall impacts of this project. Tulare County is also the governmental entity that is anticipated to act first on the project, which is another criterion in determining which entity may act as a lead agency. (Cal. Code Regs., tit. 14, sec. 15051(c)).)

The commenter cites a CEQA case, *Covington v. Great Basin Unified Air Pollution Control District* (2019) (43 Cal.App.5th 867 (2019) to support its contention that the wrong lead agency prepared the EIR. This is an inaccurate interpretation of the *Covington* case. In *Covington,* the issue was whether an air district with significant permitting authority over the project could properly serve as the lead agency; or, alternatively, whether Mono County, as the entity with general governmental powers, was required to serve as lead agency. The court of appeal rejected the petitioner's argument that Mono County was *required* to serve as lead agency:

> The Project is located almost exclusively on federal land, and federal agencies have jurisdiction over the surface and subsurface impacts. When the approval process began, the agencies involved believed that the only nonfederal agency with any permit authority over the Project was the District, so the District became the lead agency under CEQA. As the project developed, it became clear that some of the pipeline would run across private property and would therefore require a use permit from Mono County.
>
> Even though the guidelines state a preference for an agency with general governmental powers, that preference does not apply if another agency has greater responsibility for supervising or approving the project as a whole. In this case, Mono County only approved a conditional use permit for a small portion of the Project. A conditional use permit was required from Mono County for 1,500 feet of pipeline to be placed on Ormat's land. Thus, the District was a proper lead agency under the circumstances.

Thus, consistent with Sections 15051 and 15053 of the CEQA Guidelines, Covington merely stands for the proposition that the District was "a" proper lead agency; not whether the District was the only entity eligible to serve as lead agency.

As stated by the Court, *Covington* initiated its analysis (the project was a joint federal [National Environmental Policy Act] and local [CEQA] document) under the belief that the only non-federal permitting agency was an air district, and thus the air district assumed CEQA lead agency authority. It was not until later in the process that it became clear that a permit was needed from a lead agency with general governmental powers. This is not the case here. Tulare County, an agency with general governmental powers, has been the lead agency from the beginning. This project involves installation of new pipelines to land apply additional treated effluent to agricultural land and minor improvements to existing ponds. Construction of the improvements is under the authority of Tulare County. In addition to lead agency approvals and oversight, potential permits may be needed from the Central Valley Water Board, California Department of Fish and Wildlife (CDFW), and the San Joaquin Valley Air Pollution Control District (see discussion below). The County will also be responsible for tracking compliance with the mitigation measures addressing odors, cultural resources, and biological resources.

The Central Valley Water Board will be responsible for permitting the increased wastewater discharge that is applied to land through its authorities. Therefore, the Central Valley Water Board is a responsible agency, has reviewed and commented on the Draft EIR (see Letter S2), and will utilize this EIR in relation to its consideration of waste discharge

requirements for the application of wastewater to the additional 89 acres. Furthermore, the Central Valley Water Board stated that Tulare County is the appropriate lead agency for evaluating the Setton Pistachio Treated Wastewater Land Application Expansion Project because the Central Valley Water Board has limited resources and infrastructure to carry out CEQA evaluations, particularly for projects with potential impacts outside the scope of water quality (pers. comm., Central Valley Water Board C. Moskal 2023). The CDFW and air district may also require permits.

Equally important, the comment raises no environmental issues regarding the adequacy of the Draft EIR regarding lead agency and there are none. The Draft EIR addresses the full range of impacts from construction of the wastewater treatment improvements and land application areas as well as increased pistachio harvest operations. It provides sufficient environmental information to support responsible agency actions, including approval of waste discharge requirements by the Central Valley Water Board, decisions regarding the need for air emissions control permitting and odor management by the San Joaquin Valley Air Pollution Control District, and the need for biological resource permits by the CDFW. These agencies reviewed the Draft EIR, provided comments, and nothing in their comments suggest the Draft EIR is insufficient to support any discretionary approval including those of responsible agencies.

Thus, the argument that a different lead agency should have prepared this EIR is not supported by either *Covington* or the CEQA Guidelines, which clarify that several parties may be eligible to serve as lead agency, and in any event the comment does not raise any environmental deficiencies associated with the Draft EIR.

COMMENT O2-3

I. THE DEIR FAILS TO APPROPRIATELY IDENTIFY SIGNIFICANT ENVIRONMENTAL IMPACTS

a. Applicable Legal Standards for EIR Analysis

The purpose of CEQA is to ensure that a lead agency identifies, evaluates, discloses, and indicates how to mitigate those project's significant environmental effects.[7] An EIR serves as an "informational document" that notifies the decision-makers and the public of a project's significant environmental effects and ways to minimize them.[8] Accordingly, an EIR must clearly set forth all significant effects of a project on the environment.[9] An EIR must discuss and analyze the significant environmental effects of the entire project.[10] Both short-term and long-term effects should be included in the analysis.[11]

In assessing impact, the agency should examine changes in the existing conditions and study the project's direct and indirect significant impacts on the environment as well as foreseeable future impacts resulting from the project.[12] Indirect impacts include secondary effects.[13] If a change in the environment resulting from the project will result in a reasonably foreseeable secondary environmental effect, the secondary effect is considered an indirect effect and must also be evaluated.[14]

RESPONSE O2-3

The Draft EIR evaluates the proposed project's short-term and long-term impacts as well as the direct and indirect effects of the proposed LAA expansion project.

The proposed project involves limited direct and short-term construction impacts due to the installation of aeration in the East and West Ponds and installation of the pipelines and sub-surface irrigation lines. Construction would take less than a month. These direct construction impacts are disclosed, evaluated, and mitigated as necessary in the Draft EIR (see Mitigation Measures 3.4-1 and 3.5-1a through d).

The long-term operational impacts of the project are limited, because (as stated in response O2-1) the proposed Setton Pistachio Treated Wastewater Land Application Expansion Project does not include any facility upgrades or facility capacity expansion. It allows discharge of additional treated effluent (through a wastewater treatment facility that will otherwise remain at the same treatment capacity), which enables operation of the existing pistachio harvesting operations at design capacity. The secondary effects of the ability to operate at design capacity (above the current operations) are evaluated throughout the Draft EIR and relate primarily to production of additional bio-solids associated with pistachio processing. The generation of additional bio-solids and the associated off-haul is addressed

in Section 3.1.9, Transportation. As explained therein, the majority of trips generated by the project would be attributed to heavy vehicles used to transport agricultural goods and off-haul the hull bio-solids. The CEQA Guidelines Section 15064.3(a) states that vehicle miles traveled (VMT) refers to the amount and distance of **automobile** travel attributable to a project (**emphasis** added). The Governor's Office and Planning and Research (OPR) Technical Advisory describes that the term "automobile" as used in Section 15064.3(a), refers to on-road passenger vehicles, specifically cars and light trucks; heavy vehicles are not included in the definition. Furthermore, the Tulare County SB 743 Guidelines notes that goods movement is not subject to SB 743 (Tulare County 2020, pg. iv). Furthermore, roadway congestion is not a CEQA issue.

As evaluated in Air Quality on pages 3.2-26 through 3.2-27, odors from the bio-solids were found to be potentially significant and Mitigation Measure 3.3-5 was recommended to reduce this impact to a less-than-significant level.

As evaluated in Noise and Vibration on page 3-5 and 3-6 of the Draft EIR, although the truck trips would be spread across the year, the peak timeframe for trips would be the harvest processing season in approximately August to October and the haul routes would remain the same because the compost and cattle feed locations are not proposed to change. Trucks exit the Terra Bella facility via Road 234 north to Terra Bella Avenue, where they go west to State Route 65 or further west to disposal sites. Conservatively, assuming all the increase in trips would occur during the peak harvest and processing period, which would extend for three months from August through October (seven days a week), this would result in approximately 18 to 19 additional truck trips per day (around 2 per working hour). The noise levels due to the additional truck trips would be similar to current conditions, although they may occur for two weeks longer during the fall. The mobile-source noise due to the increased truck trips would therefore be less than significant.

COMMENT O2-4

b. The DEIR Fails to Analyze the Whole of the Project

TBVC submitted comments on the NOP for the Project stating that the County was required to evaluate the whole Project.[15] The DEIR fails to do so. Although the DEIR evaluates the potential environmental impacts from some aspects of the increased pistachio processing operations that will result from the increase in production facilitated by the Project, it does not fully evaluate all reasonably foreseeable future impacts.[16]

For example, although the DEIR identifies that the operational increase will result in processing over 20 million additional pounds of nuts annually, as well as 'additional truck trips to deliver pistachios and off-haul the bio-matter to composting and cattle feed sites,"[17] no environmental analysis is conducted regarding the environmental impact that will result from the substantial increase in bio-matter being hauled from the site. It is unclear from the DEIR how much additional bio-matter will result from 20.6 million additional pounds of nuts, but it is reasonably foreseeable that the increase in quantity will not be minimal. The resulting effect of such an increase on the amount of composting happening onsite and offsite will have a foreseeable environmental impact as a result of the increased emissions resulting from the additional compost.

The composting process emits greenhouse gases ("GHGs") and air pollutants, including methane, ammonia, and volatile organic compounds ("VOCs).[18] According to a 2023 report in *Environmental Science and Technology*; published by the American Chemical Society, in addition to GHG emissions caused by composting, these emissions are of concern because they are "the precursors of secondary fine particulate matter (PM 2.5), which is the primary driver of air pollution-related health impacts."[19] Further, VOCs are 'precursors to tropospheric ozone formation which impacts human health and sensitive vegetation and ecosystems," and VOCs and NH3 "have low odor detection thresholds and can cause a public nuisance for surrounding communities."[20] A detailed overview of the environmental and human impacts of composting is provided in Exhibit A to these comments. The DEIR should also disclose how much of the additional bio-solids will be used to support livestock operations, which have a significant impact on the environment.[21]

The DEIR must evaluate the potential environmental impact from additional bio-solids being produced by the facility. These are foreseeable indirect impacts resulting from changes in the environment caused by the Project.

RESPONSE O2-4

The Draft EIR evaluates the whole of the proposed project, including construction and operation, as described in Chapter 2, Project Description, of the Draft EIR. Section 2.5.4, Increased Pistachio Harvest Operations, under Solid Waste, discloses that the project would result in a 20 percent increase in hull bio-matter, from 100 million pounds to approximately 120 million pounds of solid waste. The off-haul of bio-solids is evaluated throughout the Draft EIR, as addressed in Response O2-3. Off-hauled bio-hull matter is only delivered to permitted compost sites with established VOC limitations, such as Turning Leaf Organics (Permit No. S-10120-1-0) and Safter-Wasco Composting Facility (Permit No. S-9813-4-0), and the increase in hull bio-matter would only be sent to off-site permitted facilities.

COMMENT O2-5

c. The DEIR Relies on Unsupported Conclusory Statements

"An EIR must set forth the bases for its findings on a project's environmental impacts; a bare conclusion without an explanation of its factual and analytical basis is not a sufficient analysis of an environmental impact".[22] An EIR must include an explanation of the reasoning and evidence in support of a conclusion related to an environmental impact or mitigation measure.[23] The DEIR fails to meet this requirement, because it includes multiple conclusory statements that are not supported by facts or other evidence in the record, and relies on these conclusory statements to avoid further environmental impact analysis or mitigation measures.

Odor Impacts

In discussing potential odor impacts from the Project, the DEIR summarily concludes that District Rule 4102 does not apply to the Project.[24] The rule prohibits the discharge of any source of an air contaminant or materials that cause nuisance or annoyance to a considerable number of persons or the public or endanger any person's comfort, repose, and health.[25] The main purpose of Rule 4102 is to protect the health and safety of the public. The rule applies to any source operation that emits or may emit air contaminants or other materials.[26] The DEIR alleges that the Setton facility is not obligated to comply with this rule because it is classified as an agricultural land use. Yet the DEIR includes no facts or analysis in support of this summary conclusion. The DEIR must provide sufficient analysis and facts to support this conclusion.

RESPONSE O2-5

The Draft EIR provides multiple impact determinations for each resource area in Chapter 3, including Section 3.3, "Air Quality." Page 3.3-7 summarizes the various rules and regulations overseen by SJVAPCD that could be applied to the project. As noted on page 3.3-7, Rule 4102, "Nuisance," which regulates odorous emissions within the San Joaquin Valley Air Basin, would not be applicable to agricultural projects. Section 3.0 of Rule 4102 states that, "[t]he provisions of this rule do not apply to odors emanating from agricultural operations in the growing of crops or raising of fowl or animals as defined in Rule 4103 (Open Burning)" (SJVAPCD 1992). The proposed project entails the construction of additional irrigation lines to facilitate the production of pistachios. This action is classified as an agricultural use of land; therefore, the Draft EIR is correct in its assertion that Rule 4102 does not apply to odorous emissions from application of treated wastewater to pistachio trees. Furthermore, as disclosed in Impact 3.3-5 of the Draft EIR, the project would result in a potential for nuisance odors to occur due to increased process wastewater as well as the number of confirmed odor complaints exceeding the Air District threshold of one confirmed complaint per year averaged over a three-year period. However, implementation of Mitigation Measure 3.3-5 (which includes Odor Control Plan Measures 3.1 through 3.8) would reduce significant odor impacts to a less-than-significant level by preventing odors, tracking odor complaints, taking measurements with an olfactometer, and implementing odor control measures from the Odor Control Plan as well as installing covers on hauling truck beds containing wet materials should hauling activities be determined as the source of a nuisance odor. No revisions are required in response to this comment.

COMMENT O2-6

Noise and Vibration Impacts

The DEIR makes similar unsupported conclusions in relation to the noise and vibration impacts of additional truck traffic that will result from the increased operations. For example, the DEIR summarily concludes that the addition of

18-19 truck trips per day during peak harvest season would "be less than significant" because the noise and vibration levels would be "similar to current conditions, although they may occur for two weeks longer during the fall."[27] Yet the DEIR fails to 'show its work' in support of this conclusory assertion. The DEIR does not include evidence to explain why the noise impacts from an increase annual truck trips by 20% will be "similar to current conditions." Clearly the noise impact will not be the same as current conditions—it will logically be 20% more than current conditions. If this assumption—based on common sense—is inaccurate, then the DEIR must include sufficient evidence to support a different conclusion.

An EIR must contain an accurate, stable description of the "baseline" environmental conditions against which a project's effects are analyzed; absent an adequate baseline, analysis of impacts, mitigation measures, and alternatives is impossible.[28] The DEIR lacks necessary information about the current baseline for noise and vibration both during the day and at night during harvest operations. Without that information, it is impossible to determine whether the 20% increase in truck trips to the baseline will have a significant impact. In addition, it is unclear what time period is being used to evaluate the impact of the additional 19 trips a day.[29] The DEIR states that the traffic peak would be during the harvest and processing period from August through October (seven days a week). However, there is no information or analysis relating to whether this traffic would concentrate over a period of 8 hours during more common work hours or if the 19 additional trips occur over 24 hours, including night traffic. This distinction is important, because an addition of nearly 20 semi-trucks entering the residential neighborhood where Setton is located during the nighttime—when baseline noise levels are lower than during the day—may have a significant impact compared to if the extra trips are anticipated during the day.[30] The evaluation of the impacts also must consider that the community area is a total of only 2.721 square miles. The DEIR must include further evidence and analysis in support of its claim that the Project will have no significant noise impact; the current conclusory statements are insufficient.

RESPONSE O2-6

Please see Section 3.1.9, Transportation, of the Draft EIR. As stated therein, the project would result in additional truck trips related to pistachio delivery, yard activities, finished product deliveries, and off-hauling hull bio-solids and trash. As described in Chapter 2, "Project Description," the project would result in an increase in daily haul truck trips (1,662 annual trips, with a maximum of 19 daily trips during harvest season). Although the trips would be spread across the year, the peak timeframe for trips would be the harvest processing season, which is anticipated to extend for approximately two more weeks, from August to October, and the haul routes would remain the same because the compost and cattle feed locations would not change. Trucks do not enter residential neighborhoods. Trucks exit the Terra Bella facility via Road 234 north to Terra Bella Avenue, where they go west to State Route 65 (north/south) or further west to disposal sites. Conservatively, assuming all the increase in trips would occur during the peak harvest and processing period from August through October (seven days a week), this would result in approximately 18 to 19 additional truck trips per day.

As described in Section 3.2, minor trenching would be necessary for installation of the pipelines. Construction may generate noise and groundborne vibration; however, these activities would be short-term (less than a month), occur during the less-sensitive daytime hours (between 7:00 a.m. and 7:00 p.m.), which is consistent with the Tulare County Noise Ordinance. Additionally, the nearest airstrip is the Porterville Municipal Airport, which is located approximately 5 miles north of the project site, and the project would not involve any occupied structures. Section 3.2 also noted that the project would result in an increase in daily haul truck trips (1,662 annual trips, with a maximum of 19 daily trips during harvest season). Although the trips would be spread across the year, the peak timeframe for trips would be the harvest processing season in approximately August to October and the haul routes would remain the same because the compost and cattle feed locations are not proposed to change. Trucks exit the Terra Bella facility via Road 234 north to Terra Bella Avenue, where they go west to State Route 65 or further west to disposal sites. Conservatively, assuming all the increase in trips would occur during the peak harvest and processing period, which would extend for three months from August through October (7 days a week), this would result in approximately 18 to 19 additional truck trips per day. The noise levels due to the additional truck trips would be similar to current conditions, although they may occur for two weeks longer during the fall. The mobile-source noise due to the

increased truck trips would therefore be less than significant. Noise impacts would be less than significant; therefore, this issue is not discussed further in this EIR.

Additionally, regarding noise levels from on-road vehicles, a doubling of volume is needed to result in a noticeable difference to the human ear. Implementation of the proposed project would not result in the doubling of truck traffic as discussed above and; thus, would not result in a noticeable difference in resultant noise levels. Also, the trucks would be located the same distance from nearby receptors as currently exists and as noted above, the routes would not change. Furthermore, vibration levels are based on the type of equipment or vehicle. The type of truck would not change with project implementation and thus, the vibration levels generated by the project regarding human annoyance and structural damage would not change in comparison to the current condition. And, as previously mentioned, the trucks would be located the same distance from nearby receptors as currently exists.

COMMENT O2-7

Transportation Impacts

Similarly, the DEIR fails to include sufficient evidence supporting its conclusion that there will be no transportation impacts from the Project. The Project will result in about 1662 additional annual truck trips related to pistachio delivery, yard activities, finished product deliveries, and off-hauling hull bio-solids and trash.[31] The DEIR states that the Project will not "affect existing nor require new intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transits," concluding that transportation impacts are less than significant because the increase in daily hauling trips is "low volume."[32] The DEIR also states that the Project will "not inhibit the ability of the local roadways to continue to accommodate emergency response and evacuation activities."[33]

The DEIR includes no evidence to support its summary conclusion that the increase of 1662 truck trips annually is considered "low volume." The DEIR shows that truck trips will increase by approximately 20% annually because of the project,[34] which logically would result in a 20% increase in the impacts associated with truck traffic. There is no evidence or explanation in the record of how a 20% increase in the number of trips and the associated effects is 'low volume,' and especially 'low-volume' enough that it will have no impact on existing streets, intersections, highways, freeways, paths or transit. If evidence exists that would show the 20% increase in truck traffic will not result in a 20% increase in environmental impacts, such evidence is not included anywhere in the record and, therefore, does not support the DEIR's summary conclusions.

Related to the DEIR's failure to provide evidence supporting its summary conclusion, the DEIR fails to include evidence of traffic and transportation baseline conditions other than stating the current number of truck trips. The DEIR fails to describe the baseline conditions for traffic and transportation around the facility, including the amount of traffic congestion experienced during harvest season at the ingress/egress to the facility. While the DEIR describes the exit route for truck traffic leaving the facility,[35] the DEIR does not include information about how trucks enter the facility—which is the primary cause of concern for residents in the community. Importantly, the DEIR fails to identify that because the facility is in the middle of a residential area, the truck route into the facility includes multiple four-way stops. No explanation is provided explaining how these busy four-way intersections will be unaffected by an annual increase of 1662 heavy-duty truck trips.

Per resident accounts, the current truck traffic resulting from the facility during harvest season already has a significant impact on existing streets and intersections. This is especially true in the commercial/residential area along Ave 95 and Ave 236, where semi-trucks regularly back traffic up considerably as they enter town and enter the facility. Residents report that truck traffic has a detrimental impact on access to school bus stops and residences and causes air quality issues resulting from the idling of vehicles and trucks caused by the semi-truck congestion.[36] The DEIR must describe the baseline conditions of traffic in the vicinity related to the existing truck traffic and an analysis of how the increase in truck trips will or will not cause additional significant impacts.

The County is not permitted to rely on unsupported summary conclusions to avoid conducting environmental analysis. Further, resident reports of the detrimental environmental impacts of existing truck traffic suggest that an increase of 20% is likely to have significant impacts. This must be evaluated, and any related conclusions must be supported by evidence.

RESPONSE O2-7

Please see Section 3.1.9, Transportation, of the Draft EIR. As stated therein, the project would result in additional truck trips related to pistachio delivery, yard activities, finished product deliveries, and off-hauling hull bio-solids and trash. As described in Chapter 2, "Project Description," the project would result in an increase in daily haul truck trips (1,662 annual trips, with a maximum of 19 daily trips during harvest season). Although the trips would be spread across the year, the peak timeframe for trips would be the harvest processing season, which is anticipated to extend for approximately two more weeks, from August to October, and the haul routes would remain the same because the compost and cattle feed locations would not change. Trucks do not enter residential neighborhoods (see map below). Trucks exit the Terra Bella facility via Road 234 north to Terra Bella Avenue, where they go west to State Route 65 (north/south) or further west to disposal sites. Conservatively, assuming all the increase in trips would occur during the peak harvest and processing period from August through October (7 days a week), this would result in approximately 18 to 19 additional truck trips per day.

Due to the low volume of increased daily trips during the peak harvest season and the fact that the trips are for goods movement, the project would not conflict with a program, plan, ordinance or policy addressing the circulation system. Further, as it relates to congestion, Section 21099(b)(2) was added to CEQA in 2013 by Senate Bill (SB) 743 and states: "Upon certification of the guidelines….automobile delay, as described solely by level of service or similar measures of…traffic congestion shall not be considered a significant impact on the environment." Section 15064.3 of the CEQA Guidelines was added in 2018 to implement this change. Therefore, congestion is no longer an environmental issue.

Section 15064.3 of the CEQA Guidelines address transportation impacts, with the focus on VMT, and the application of VMT is somewhat limited. The majority of trips generated by the project would be attributed to heavy vehicles used to transport agricultural goods and off-haul the hull bio-solids. CEQA Guidelines Section 15064.3(a) states that VMT refers to the amount and distance of automobile travel attributable to a project (emphasis added). OPR produced a Technical Advisory to guide analysis of VMT; the Advisory describes that the term "automobile" as used in Section 15064.3(a), refers to on-road passenger vehicles, specifically cars and light trucks; heavy vehicles are not included in the definition. Furthermore, the Tulare County SB 743 Guidelines notes that goods movement is not subject to SB 743 (Tulare County 2020, pg. iv).

The stated intent of the SB 743 (Steinberg 2013) is to promote the reduction of greenhouse gas emissions, the development of multimodal transportation networks, and a diversity of land uses. The greenhouse gas emissions of trips associated with heavy vehicles serving the project site are addressed in Section 3.7, "Greenhouse Gas Emissions," and through the implementation of statewide regulations such as CARB's Sustainable Freight Strategy, which will transition heavy-duty trucks operating within California to be 100 percent electric by 2045. Additionally, heavy vehicle trips associated with the project would occur regardless of the available modes of transportation (e.g., walking,

bicycling, public transit) or the mix of land uses in the project vicinity. Therefore, limiting the VMT analysis to automobile travel would be consistent with the intent of the SB 743 and the ability to reduce GHG emissions from land use decisions and the availability of alternatives to automobile travel. As such, under CEQA, heavy vehicle VMT associated with hauling of agricultural goods and hull bio-solids is not considered a significant impact. Furthermore, the project would not result in any new employees and would therefore not increase automobile travel and would therefore not contribute to additional VMT.

The project is consistent with Terra Bella Community Plan policies and criteria for emergency access and procedures. The project would not inhibit the ability of local roadways to continue to accommodate emergency response and evacuation activities or impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan.

Project-related transportation impacts are less than significant.

COMMENT O2-8

III. THE DEIR FAILS TO ADEQUATELY MITIGATE SIGNIFICANT ADVERSE IMPACTS FROM THE PROJECT

a. Legal requirements for mitigation measures

If an EIR identifies significant environmental impacts, the EIR must propose mitigation measures to reduce or avoid them.[37] "Mitigation" options include: (a) avoiding the impact altogether by not taking action or parts of certain actions; (b) minimizing impacts by limiting the magnitude or degree of the action and its implementation; (c) rectifying the adverse impacts by repairing, rehabilitating, or restoring the impacted environment; (d) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; (e) compensating for the impact by replacing or providing substitute resources or environments, including through permanent protection of such resources.[38]

Requirements for mitigation measures are found in Guidelines section 15126.4, and include, but are not limited to, requirements that:

a. Mitigation measures must be identified for each significant effect identified in the EIR

b. If several measures are available to mitigate a significant adverse impact, the EIR should discuss each measure and identify the reason for selecting a particular measure

c. Compliance with a regulatory permit or similar process may be identified as mitigation if implementation of the required measures can reasonably be expected to reduce the impact to a specified performance standard.

d. The description must distinguish between mitigation measures that are included in the project as proposed and other measures that the lead agency determines could reasonably be expected to reduce significant effects if required as conditions of project approval

e. If a mitigation measure would itself create significant environmental impacts, those effects must be discussed in the EIR but in less detail than the significant effects of the proposed project.

f. Mitigation measures must either be incorporated into the design of the project or be fully enforceable through conditions, agreements, or other means.

"The discussion of mitigation measures shall distinguish between the measures which are proposed by project proponents to be included in the project and other measures proposed by the lead, responsible or trustee agency or other persons which are not included but the lead agency determines could reasonably be expected to reduce adverse impacts if required as conditions of approving the project."[39] Features incorporated in the project design to avoid or minimize environmental impacts must be distinguished from mitigation measures proposed for adoption when the project is approved.[40]

The record must provide sufficient evidence to demonstrate that the proposed mitigation measures will work, and a reviewing court will not defer to the lead agency's conclusions that mitigation measures are sufficient if there is no

evidence in the record demonstrating they will be effective in remedying the identified significant impact.[41] The EIR must include sufficient facts and analysis to support the use of the measure and the characterization of its expected result.[42]

RESPONSE O2-8

The comment provides the commenters review and interpretation of the CEQA Guidelines as they pertain to mitigation measures but is not a comment on the contents of the Draft EIR. As presented throughout Chapter 3 of the Draft EIR, mitigation measures are recommended for those impacts determined to be significant (Impact 3.3-5, Impact 3.4-1, Impact 3.5-1). The mitigation measures (3.3-5, 3.4-1, and 3.5-1a through 1d) are feasible and, if adopted by the County during project deliberations, would be tracked by Tulare County through the required Mitigation, Monitoring and Reporting Program, which identifies the measures, their timing, and the responsible party for verification. The measures reduce the project-related impacts to less than significant levels.

COMMENT O2-9

b. The DEIR fails to clearly indicate when mitigation measures will take effect

The DEIR indicates that a significant number of the proposed mitigation measures will be used during harvesting season and not year-round. For example, the "Odor Control Plan Implementation Schedule" on pg. ES-8 demonstrates that nearly all odor mitigation measures will be utilized during "Pistachio Harvesting Season" with some exceptions 'as needed.' This includes "Aeration at East/West Ponds," "Chemical Treatment," "Solid Waste Management," "DAF System," and "Filtration." Only "Wastewater Stream Segregation," "Land Application System," and "Monitoring" are to occur year-round.

Yet the DEIR fails to define specifically when such mitigation measures will be implemented. Although the DEIR states that many will be used 'during processing season,' this language is overly vague as processing season is defined as "the approximately eight weeklong pistachio harvest season from mid-August to October."[43] The mitigation measures must be measurable and enforceable, and therefore must be specific. Mitigation measures should take effect either on a specific date, such as August 1st if harvest always begins on August 1st, or upon the occurrence of a specific act, such as the first load of harvested pistachios arriving at the facility. Without a clear indication of the date or event that will trigger the use of mitigation measures that are not in effect all year, the mitigation measure is not sufficiently enforceable and fails to comply with CEQA mandates.

RESPONSE O2-9

The comment provides an opinion that mitigation measures must be "measurable and enforceable". While the latter is accurate (they must be enforceable; see Response 02-8), measurability is not a requirement. For instance, a mitigation measure aimed at avoiding impacts to certain wildlife by avoiding habitat, or a measure aimed at preserving an historically significant feature, or not "measurable" but the mitigation measure can be followed and effective at reducing or avoiding an impact.

Regarding specifics, the comment removes the entire context of the odor control mitigation. Mitigation Measure 3.3-5 was designed to track odors, address them when they occur, and includes a qualified technician is on site between August and October to monitor odors and address them when they cross a detected threshold; this includes measures to address the source, process, and actions to control odors. The measure is described, including various actions, over 3 pages (pages 3.3-27 through 3.3-30) of the Draft EIR. Please see sub-measure 3.9, Odor Control Implementation Schedule, which defines the schedule for odor control measure implementation, consistent with the Odor Control Plan Table 3.3-11 and the August to October timeframe also described. The various measures are tied specifically to project actions ("after each harvest", "during non-harvest", "hulling operation", etc.) that are far more specific than the specific dates requested by the comment. These dates could shift, depending on seasonal weather and other factors, but the actions associated with odor control measures are specific.

COMMENT O2-10

c. The mitigation measures proposed to address odor impacts are insufficient

The DEIR recognizes that the Project may cause significant adverse odor impacts because of the increase in wastewater discharge from the facility, especially if wastewater is held for too long in holding ponds.[44] To address these potentially significant adverse effects, the DEIR proposes a variety of mitigation measures. The proposed mitigation measures are below.

Mitigation Measure 3.3-5 Odor Complaint Tracking

1. Track odor complaints related to the facility and LAAs received directly by Setton or by the San Joaquin Valley Air Pollution Control District (Air District).
2. Document any identified sources of nuisance odors.
3. During the harvest season, generally from August through October, Setton Pistachio shall have a qualified technician take measurements once per day, in the heat of the day (typically between 12 pm and 4 pm), with a field olfactometer at the property line of the Terra Bella facility between the East and West ponds and the nearest to sensitive receptors.
4. The technician shall document if the dilution to threshold (D/T) reading on the olfactometer exceeds seven, which is regarded as the level at which an odor may be considered objectionable, is exceeded (McGinley 2000). If the D/T is determined to be seven or higher, this would indicate constituents in the air are generating adverse odors. If the D/T reading does not register as seven or higher, no further action is required.
    b. If the source of objectionable odor is determined to not be from Setton facilities, Setton will report its findings regarding the source and the olfactometer readings to the Air District.
    c. If the D/T reading registers as seven or higher, Setton shall determine the source of the nuisance odors. If it is determined that the source of the nuisance odor is from wastewater holding ponds, the following odor control measures from the Odor Control Plan shall be implemented as close to the time of the detection of a nuisance odor as possible.

Mitigation Measure 3.1 Solids Removal

3.1.1 Dissolved Air Flotation System (DAF): The DAF system shall remove total suspended solids (TSS), biochemical oxygen demand (BOD), and oil and grease (O&G) from a wastewater stream.

3.1.2 Filtration: A series of screens and a sand filter shall be used to remove solids from the wastewater stream that could contain odor-causing compounds.

Mitigation Measure 3.2. Aeration:

2.2.1 Dissolved Oxygen and Odor Production: Setton Pistachio shall keep detention time of the wastewater in the pond to two hours or less. If the detention time exceeds two hours, Setton shall utilize additional portable aeration equipment, most likely two additional paddle wheel aerators in the East Pond, and one in the West Pond (if used to hold wastewater) and shall add oxidizer, such as hydrogen peroxide, if needed.

Mitigation Measure 3.3 Chemical Treatment A 50 percent hydrogen peroxide solution shall be added to the pond if the dissolved oxygen of the water falls below 1.0 milligram per liter (mg/L) even with aeration, and if it was determined from analysis that sulfide is present.

Mitigation Measure 3.4 Wastewater Stream Segregation: Wastewater shall be redirected as necessary using existing modifications to the water transfer pipeline connections to optimize the flow of wastewater.

Mitigation Measure 3.5 Land Application System: Wastewater shall be discharged to the Land Application Areas for irrigation through subsurface piping to reduce odors that could develop from the wastewater when in storage.

Mitigation Measure 3.6 Monitoring Program: Dissolved oxygen and oxidation reduction potential monitoring shall be performed continuously to monitor wastewater conditions and performance of the various treatment processes and odor control measures.

Mitigation Measure 3.7 Pond Cleaning: After each harvest, the gunite-lined pond will be cleaned using a "ditch witch vacuum excavator" or similar equipment. The cleaning wastewater will be collected and disposed off-site to a nearby composting facility. The "last rinse" water will be tested for pH and EC prior to using the pond for stormwater runoff. The line that is used to transfer pistachio wastewater from the gunite-lined pond to the East Pond and West Pond during harvest will be flushed with Terra Bella Irrigation District water before using the line for non-harvest stormwater discharge. The "flush water" will be drained into the East Pond and be commingled with any existing water in the pond. The "flush water" will be tested for pH and EC to verify that the line has been "cleaned". The East Pond and West Pond (if used) will be dredged annually after the pistachio harvest season or as needed to remove excess mud or sludge to maintain pond volume capacity. Cleaning these ponds should eliminate the solids as potential sources of future odorous compounds associated with the pistachio wastewater.

Mitigation Measure 3.8 Pistachio Solid Waste Management: The hulls and other wet solids from the various filtration stages shall be collected in trucks and shipped offsite. Most of these wet materials are shipped to dairies as cattle feed, and some are shipped to be mixed with some of the dry ground materials. Odors, if any, would most likely emanate from the wet materials or their residue. To prevent or minimize the potential for odors, Setton shall implement the following wet material odor control measures:

- Limit the number of sludge material trucks at the Setton plant site. Setton has 2 sludge loaders and can load up to 2 trucks simultaneously during the peak of the season. During this time, the number of standby sludge trucks will be limited to 2 such that only 4 trucks will be at the site at the same time. This will minimize cumulative truck related odors, if any.
- Setton has 4 augers and can load up to 4 hull trucks simultaneously. After a hauling truck is filled to capacity, the truck shall leave the plant as soon as possible, no more than a half hour, under normal operating conditions. If there are any issues, other arrangements shall be made such as transferring the load to another truck or bins for immediate removal from the site.
- All third-party wet hauling and sludge trucks shall be cleaned after final use and be removed from the site no later than two weeks after harvest. Any Setton hauling trucks used during the harvest shall be cleaned of all pistachio waste residue before long term parking at the site.

Mitigation Measure 3.9 Odor Control Measures Implementation Schedule: The odor control measures shall be implemented according to the schedule provided in the Odor Control Plan (provided in Table 3.3-11). Table 3.3-11 Odor Control Plan Implementation Schedule

The mitigation measures outlined for what the DEIR admits is a possibility of significant adverse impacts from odor are not sufficient and are inconsistent with CEQA mandates. Specific concerns with mitigation measures are as follows:

1. *Mitigation Measure 3.3-5:*

The odor-tracking mitigation measure fails to comply with CEQA mandates. Rather than mitigating an increase in environmental impacts, it represents a reduction in environmental protection because it limits implementation of odor control measures to circumstances where a) Setton investigates itself, b) Setton determines that the facility has created an odor, and c) Setton determines that the odor is coming from the mixing ponds or other source of nuisance from its facility. By limiting the mitigation measures to situations where Setton has investigated itself and determined that it is at fault, rather than a circumstance where odor control plan measures are in place consistently, environmental protections are reduced.

Further, most of the proposed mitigation measures under Measure 3.3-5 have no impact on the environment. The record must provide sufficient evidence to demonstrate that the proposed mitigation measures will work.[45] The EIR must include sufficient facts and analysis to support the use of the measure, the characterization of its expected

result, and the County's findings and conclusions.[46] The mitigation measures propose to track and document complaints received by Setton or the Air District, but no explanation is provided for the purpose of this tracking and documentation or how it will be used, if at all. There is no evidence in the record to demonstrate that simply tracking and documenting complaints will work as a mitigation measure, as the mitigation measures do not require Setton to take any actual action to mitigate odors in response to complaints. Under the current proposed mitigation measures, Setton could receive ten (10) odor complaints in a single day and not be required to take any action. Either the EIR must be modified to demonstrate how this mitigation measure will work to address significant odor impacts or the mitigation measure must be replaced with something effective.

In terms of actual mitigation measures, the DEIR proposes measures that rely entirely on Setton policing itself and doing so in ways that the record does not demonstrate will adequately mitigate adverse odor impacts. The mitigation measures do not include any method of responding to complaints other than tracking them. The sole way that odors are identified and confirmed, which will potentially result in the implementation of mitigation measures, is if Setton's staff identifies an odor during its single daily inspection using a field olfactometer "at the property line of the Terra Bella facility between the East and West ponds and the nearest sensitive receptors."[47] Only if the olfactorometer reads a dilution threshold above 7 will any action to address odors be taken, irrespective of any complaints received, when they were received, and if they were received at any time near the sole single daily inspection taken at a discretionary time that could be hours from the time of a complaint. This process is inadequate for multiple reasons.

First, the proposed process requires Setton to inspect itself and police itself based entirely on discretionary actions with no neutral oversight. It is Setton's own staff that are responsible for confirming the existence of an odor and identifying where the odor is coming from, yet no information is provided as to how that determination will be made, what staff will make that determination, and what training or qualifications that staff will have. Further, these mitigation measures lack neutrality and has no incentive to comply with them. Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments.[48] The proposed mitigation measures lack potential enforcement.

Setton's proposal to police itself rather than include mitigation measures that rely on the Air District or other agencies for enforcement is especially problematic in light of the facility's history. Although the DEIR acknowledges the importance of the Air District's Guidance for Assessing and Mitigating Air Quality Impacts (GAMAQI) in analyzing and developing mitigation measures for air quality impacts,[49] Setton has a history of flouting agency enforcement efforts related to odor impacts. Setton has previously denied enforcement agents access to the facility to investigate odor nuisances in response to resident complaints.[50] Meanwhile, Setton is currently suing the Air District over its efforts to require Setton to abate an ongoing odor nuisance from the wastewater facilities by declining to issue Setton permits to construct the massive facility expansion that is the basis for this proposed wastewater increase until the odor nuisance was addressed.[51] Even though the Air District had not issued any permits to construct or operate the facility expansion, Setton built the expansion illegally anyway, and began operating it, thus necessitating the proposed wastewater expansion.[52]

There is no reason to believe that Setton's mitigation measures that require it to police itself will be effective in addressing odor nuisances when they not only have failed to abate the issues on their own in the past, but also have vigorously fought and flouted prior attempts by regulatory agencies to address nuisance odors. Further, despite alleging that the DEIR is consistent with applicable planning documents,[53] the DEIR's lack of mitigation measures relying on governmental enforcement for air quality issues is inconsistent with the Tulare County General Plan. The Tulare County General Plan 2030 update aims for a regional approach and interagency cooperation. Specifically, the County looks to partner with the SJVAPCD and the California Air Resource Board to achieve better air quality conditions locally and regionally.[54] Approving the present DEIR analysis and mitigation measures, in conjunction with the history of enforcement obstacles between the Air District and Setton, is inconsistent with the General Plan and, therefore, inconsistent with the County's CEQA mandates.

RESPONSE O2-10

The Draft EIR does not state that there "is a possibility of significant adverse impacts from odor," as asserted by the commenter. The Draft EIR provides mitigation to reduce odor impacts in Mitigation Measure 3.3-5, "Implement Odor

Control Measures" which serves as a continuation and improvement of Setton Pistachio's existing Odor Control Plan. Mitigation Measure 3.3-5 entails the tracking and documentation of odor complaints and requirements to obtain real-time odor measurements by a qualified technician using an olfactometer during the harvest season. If the olfactometer reads a dilution to threshold (D/T) exceeding seven, additional measures would be required to minimize odors.

Setton Pistachio would work in conjunction with the County concerning potential future odor impacts through the Mitigation Monitoring and Reporting Plan (MMRP) that accompanies the Draft EIR. The past record of odor complaints occurring within the last three years were disclosed on page 3.3-16 of Section 3.3, "Air Quality," demonstrating that the Terra Bella facility received its highest number of confirmed complaints in 2019 with 97 confirmed complaints. This corresponds with the installation and use of an experimental wastewater detention pond for the 2018 hulling season. The use of this pond for wastewater holding and treatment was discontinued in 2020 following the end of the pistachio harvesting season. Since that time, confirmed odor complaints have dropped off substantially, numbering four confirmed complaints in 2021, one confirmed complaint in 2022, and three confirmed complaints in 2023, which is the most recent year available for odor data and the second year the Odor Control Plan Update was in effect.

Consistent with SJVAPCD's guidance, to determine the project's potential to result in a significant odor impact, a threshold of one confirmed odor complaint per year averaged over a 3-year period was applied in this analysis. Based on this threshold, odor impacts were found to be potentially significant, and Mitigation Measure 3.3-5 was recommended to reduce impacts. The data presented on page 3.3-16 of the Draft EIR demonstrate that when Setton Pistachio implemented its Odor Control Plan, confirmed complaints significantly decreased. This is considered substantial evidence that indicates the effectiveness of the Odor Control Plan, as compared to the 97 confirmed complaints in 2019 before the adoption and implementation of the Odor Control Plan. The mitigation measure both continues and substantially strengthens what has been demonstrated to be a highly effective odor control plan.

The plan includes actions if odors are detected. As stated on page 3.3-28, a qualified technician would measure odors using a device known as an olfactometer. While sensitivity to odors is different from person to person, the Draft EIR discusses the origin of the threshold used in the mitigation measure, "7 D/T", on page 3.3-17 of the Draft EIR and this threshold level is not disputed by the commenter or any other comment. Specific implementation actions are listed if the threshold is reached, including some combination (depending on effectiveness of each) of solids removal, increased aeration, chemical treatment, etc. This demonstrates that Mitigation Measure 3.3-5 would be sufficient to minimize odor impacts to a less-than-significant level with mitigation. No edits to the Draft EIR are needed and no further response is required.

COMMENT O2-11

Second, the DEIR's conclusion that the proposed mitigation measures will reduce odors to a less than significant level is not supported by the record. The mitigation measures are based on the "continued implementation" of the 2022 Odor Control Plan, which is attached in Appendix B[55]. Yet the 2022 Odor Control Plan has been insufficient to reduce odors to a less than significant levels. The Setton Terra Bella Pistachio facility has received several complaints from the Air District about odors in the past three years. The Air District threshold for odors is more than one confirmed complaint per year averaged over a three-year period or three unconfirmed complaints per year averaged over a three-year period. Setton has approximately 3 confirmed complaints, averaging over the three-year period of 2020 through 2023.[56] This means that, even with ongoing implementation of the 2022 Odor Control Plan, Setton has been unable to comply with the minimum standard, and the Terra Bella community has continued to suffer the nuisance without an actual remedy. The DEIR lacks sufficient analysis and data to demonstrate how the proposed mitigation measures would attain the Air District's standards, especially if the mitigation measures are only triggered by Setton's own staff—who continue to deny any odors occur at the property—rather than implement preventive measures.

RESPONSE O2-11

See Response to Comment O2-10.

COMMENT O2-12

Third, the actual process for identifying odors is inconsistent with Air District guidance, formal regulatory oversight, and common sense. The Air District's Guidance for Assessing and Mitigating Air Quality Impacts (GAMAQI) states that odor impact assessments should be made on a "case-by-case" basis.[57] Yet the mitigation measures do not allow for that because they do not include mitigation measures that respond to complaints. The mitigation measures as written are seemingly arbitrary and do not include the flexibility required to address transient odor nuisances of the sort caused by this type of operation. Rather than have any process available to confirm odor complaints, Setton's staff makes a discretionary decision as to when, during a 4-hour period, it wants to take a single daily reading on a field olfactometer, only during the harvest season.[58] The location where the sole reading is to be taken from is also overly specific. It requires that the reading be taken at a certain place on the property line, even if the facility has been receiving complaints from a different location near the facility.

RESPONSE O2-12

See Response to Comment O2-10. As stated, the actions are not arbitrary but instead are based on objective measurement and solution-based actions. Additionally, as discussed on page 3.3-21 of the Draft EIR, the analysis presented in Section 3.3, "Air Quality," relies upon SJVAPCD's guidance for determining a significant odor impact, which includes the following criteria:

- Odor impacts associated with the proposed project would be considered significant if the project has the potential to frequently expose members of the public to objectionable odors. The Air District provides the following threshold for determining project-level odor impacts: Odor impacts associated with the proposed project would be considered significant if the Air District or Setton:
  - receives more than one confirmed complaint per year averaged over a 3-year period, or
  - three unconfirmed complaints per year averaged over a 3-year period.

Based on this guidance, the Draft EIR concludes that odor impacts would be potentially significant because the existing project operations has generated odors to the degree that SJVAPCD's criterion of one confirmed complaint per year averaged over a 3-year period was exceeded, and Mitigation Measure 3.3-5 was recommended. Mitigation Measure 3.3-5 expands Setton Pistachio's existing Odor Control Plan to extend the aeration of the expanded ponds and bio solids associated with the proposed project. The effectiveness of the Odor Control Plan would be tracked and measured through the MMRP through coordination and oversight by the County. See Response to Comment O2-10. No edits to the Draft EIR are needed and no further response is required.

COMMENT O2-13

Further, the record does not include sufficient evidence to support the conclusion that an olfactometer reading of 7 is a valid threshold for establishing the existence of a significant odor impact. Although the record makes a citation to what presumably is some sort of study, the study itself or any other supporting evidence is not present in the record. The record is devoid of evidence supporting this potentially arbitrary threshold number; further evidence, if such evidence exists, must be included in the record.

Although the mitigation plan states that the measurements shall be taken "nearest to sensitive receptors," it is not clear if this means that two readings will be taken—one near the ponds and one near sensitive receptors—or the readings will be taken at the location on the property line where the ponds are closest to sensitive receptors. GAMAQI guidance points out that the lead agency should warrant the closest scrutiny when odor impacts residential areas (sensitive receptors) or other land areas where people may congregate.[59] Multiple single-family residences, multiple single-family homes, and a playground are the nearest sensitive receptors to Setton's facility, with the latter two located approximately 50 feet from the project's eastern boundary.[60] Therefore, if Setton does move forward with a mitigation plan that includes taking daily readings, readings should be taken near sensitive receptors in addition to the ponds. However, by taking the measurements only from the same location every day, the mitigation measures do not account for the possibility that odors may occur from other sources. The mitigation plan must also include mitigation measures that are responsive to actual complaints.

RESPONSE O2-13

Mitigation Measure 3.3-5 includes language directing the qualified technician to take measurements of potential adverse odors at the property line of the Terra Bella facility between the East and West ponds and nearest to receptors. The location is specifically designed to characterize odors that may have an off-site impact on receptors. The need to take measurements within the Terra Bella facility would likely overestimate potential adverse odor impacts as odors dissipate the farther they travel from their points of origin. The receptors identified are the closest receptors that could be adversely affected, and Mitigation Measure 3.3-5 includes provisions that require Setton Pistachio to implement additional odor-reducing measures if the olfactometer registers a D/T reading exceeding seven. This threshold is derived from a 2000 study prepared by Charles McGinley, who developed a methodology for assessing the D/L wherein an odor may be detected (McGinley 2000). The method of producing D/T with a Scentometer consists of mixing two "volumes" of carbon-filtered air (two 1/2 inch holes, each leading to a carbon bed) with specific "volumes" of odorous ambient air (1/2, 1/4, 3/16, 1/8, 1/16, and 1/32 inch holes). Based on the findings presented, categories for detecting objectionable odors were developed. A reading of 2 D/T was considered noticeable, 7 D/T was considered objectionable, 15 was considered a nuisance, and 31 was considered nauseating. The study cited in the Draft EIR is supported by substantial evidence, as provided for the public upon request. No edits to the Draft EIR are needed and no further response is required.

COMMENT O2-14

When Setton does determine that its operations have resulted in a significant environmental odor impact—and only then—the DEIR only commits Setton to implement some odor control measures "as close to the detection of the nuisance odor as possible."[61] This mitigation is not sufficient, as it is not enforceable or measurable. Nor does it include any further actions to confirm whether the odor control measures were effective in reducing the significant odor impact to a less than significant level.

RESPONSE O2-14

See Response to Comment O2-10. The actions enumerated in Mitigation Measure 3.3-5 would be implemented through the MMRP in consultation and oversight by the County. Any future odor complaints would be directed to SJVAPCD, who would confirm the complaint, track, and make it publicly available upon request. No edits to the Draft EIR are needed, and no further response is required.

COMMENT O2-15

Finally, and most importantly, the odor mitigation measures should always be in effect, not only take effect when Setton's olfactometer has registered a level above 7. As written, the mitigation measures do not require Setton to implement additional solids removal, chemical treatment, aeration, chemical treatment, wastewater stream segregation, land application areas, pond cleaning, monitoring, or solid waste management. To the extent that any of these measures are identical to the existing baseline operations, they are insufficient to address any significant odor impacts resulting from the Project, as evidenced by the ongoing complaints against the facility at its current capacity. The mitigation measures must go beyond what is currently being used to respond to odor nuisances and failures.

RESPONSE O2-15

As discussed in Responses to Comment O2-10 and O2-13 as well as Impact 3.3-5 of the Draft EIR, an odor control plan with associated actions is already in place and involves numerous control measures that are implemented continuously during the harvest season. The mitigation for this impact is additive and implemented in response to performance measures.

COMMENT O2-16

The mitigation measures related to significant odor impacts caused by the Project are wholly inadequate and fail to comply with the County and Setton's CEQA obligations. The DEIR must be revised and recirculated, and evidence must be provided to demonstrate that mitigation measures are sufficient to address odors, especially in the context of past, current, and ongoing odor problems at the facility. Further measures must be created that are measurable, effective, and enforceable.

RESPONSE O2-16

See Response to Comment O2-10. Mitigation Measure 3.3-5 was recommended to reduce odor impacts associated with the project. As noted in Response to Comment O2-10, the effectiveness of the existing Odor Control Plan has been documented through complaints received by SJVAPCD since it went into effect. Confirmed complaints dropped significantly in recent years which demonstrates that the Odor Control Plan has been sufficient to minimize odors from project operations. Mitigation Measure 3.3-5 expands the requirements of the Odor Control Plan to account for potential increases in odorous emissions. Mitigation Measure 3.3-5 includes vetted, adequate, feasible, and enforceable measures to minimize odors through oversight by the County in the MMRP. No edits to the Draft EIR are needed and no further response is required.

LETTER O2 FOOTNOTES:

[1] Draft Environmental Impact Report (DEIR), Appendix A at page 191 (PDF format)

[2] *CEQA Guidelines §15051(b)*

[3] *Id. §15051(c)-(d)*

[4] DEIR at ES-2

[5] *Id*. at ES-2; 1-2; 2-7

[6] *Id*. at ES-2

[7] *Pub. Resources Code ("PRC")§§ 21000-21002.1*

[8] *CEQA Guidelines (« Guidelines ») § 15121, subd. (a).*

[9] *PRC § 21100 (b)(1)*

[10] *Guidelines §§15126, 15165*

[11] *Guidelines §15126(a)*

[12] *Guidelines, § 15126.2 (a)*

[13] *Guidelines §15358(a)(2)*

[14] *Guidelines §15064(d)(3)*

[15] DEIR*, Appendix A at page 191(PDF format)*

[16] *See, e.g., City of Antioch v. City Council (1986) 187 Cal.App.3d 1325, 1333-38 [invalidating EIR for failure to evaluate impacts of foreseeable development facilitated by new road and sewer capacity]; see also San Joaquin Raptor Rescue Center v. County of Merced (2007) 149 Cal.App.4th 645, 660 [EIR must include analysis of actual effects of increased production].*

[17] *DEIR ES-2*

[18] *Greenhouse Gas and Air Pollutant Emissions from Composting,* (2023), Nordahl, Preble, Kirchstetter and Scown, *Environ. Sci. Technol. 2023, 2235-2247.* Exhibit A

[19] *Id*.

[20] *Id.* at 2235-2236

[21] Casey, A. J., Cushing, L.,Depsky, N., Morello-Frosch,R. *Climate Justice and California's Methane Superemitters: Environmental Equity Assessment of Community Proximity and Exposure Intensity, Environmental Science & Technology* ***2021*** *55 (21), 14746-14757*. ..Exhibit B

[22] Practice Under the California Environmental Quality Act, §13.27 V., citing *Laurel Heights Improvement Ass'n v Regents of Univ. of Cal*. (1988) 47 C3d 376, 404*; Sierra Watch v County of Placer* (2021) 69 CA5th 86, 101; *City of Maywood v Los Angeles Unified Sch. Dist.* (2012) 208 CA4th 362, 393.

[23] *Association of Irritated Residents v County of Madera* (2003) 107 CA4th 1383; *Napa Citizens for Honest Gov't v Napa County Bd. of* Supervisors (2001) 91 CA4th 342, 359.

[24] DEIR at 3.3-7

[25] San Joaquin Valley Air Pollution Control District Rules and Regulations; Rule 4102, at chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://ww2.valleyair.org/media/1nndk2en/rule-4102.pdf (as June 5, 2024)

[26] *Id*.

[27] DEIR at 3-6

[28] *See San Joaquin Raptor, supra, 149 Cal.App.4th at 657-658; County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 952*; CEQA Guidelines § 15125(a).*

[29] DEIR at 3-5

[30] *See generally Berkeley Keep Jets Over the Bay Committee v. Bd. of Port Commissioners* (2001) 91 Cal.App.4th 1344.

[31] *DEIR at 3-6*

[32] *DEIR at 3-7*

[33] *DEIR at 3-6*

[34] *DEIR Appendix C at page 326-328 (PDF format)*

[35] *DEIR 3-7, stating "[t]rucks exist the Terra Bella facility via Road 234 north to Terra Bella Ave.."*

[36] *Tulare Board of Supervisors Meeting Transcript, August 18, 2020 at page 11 Exhibit C*

[37] *Guidelines §15126.4(a)(1) PRC §§21002.1(a), 21061, 21100(b)(3); see King & Gardiner Farms, LLC v County of Kern (2020) 45 CA5th 814, 852*

[38] *Guidelines §15370*

[39] *Guidelines §15126.4(A)(1)*

[40] *Lotus v Department of Transp.* (2014) 223 CA4th 645, 656–658 and n8.

[41] See *League to Save Lake Tahoe Mtn. Area Preservation Found. V County of Placer* (2022) 75 CA5th 63, *121; King & Gardiner Farms, LLC v County of Kern* (2020) 45 CA5th 814, *866; Sierra Club v County of San Diego* (2014) 231 CA4th 1152, *1168; Communities for a Better Env't v City of Richmond* (2010) 184 CA4th 70, 95

[42] *Sierra Club v County of Fresno* (2018) 6 C5th 502, 522.

[43] DEIR 2-1

[44] DEIR 3.3-27

[45] *See League to Save Lake Tahoe Mtn. Area Preservation Found. v. County of Placer* (2022) 75 CA5th 63, 121*; King & Gardiner Farms, LLC v County of Kern* (2020) 45 CA5th 814, 866; *Sierra Club v County of San Diego* (2014) 231 CA4th 1152, *1168; Communities for a Better Env't v City of Richmond* (2010) 184 CA4th 70, 95

[46] *Sierra Club v County of Fresno* (2018) 6 C5th 502, 522.

[47] DEIR ES-5

[48] CEQA Guidelines, § 15126.4, subd. (a)(2).

[49] DEIR 3.3-8

[50] *San Joaquin Unified Air Pollution Control District* , Complaint Investigation S 2210-069 October 23, 2022 page 1 Exhibit D (other complaints filed in Exhibit E)

[51] Tulare County Superior Court Case No. PCU298746, *The People of the State of California by and through the San Joaquin Unified Air Pollution Control District vs. Setton Pistachio of Terra Bella*. Exhibit F

[52] Id.

[53] DEIR at 3-5

[54] DEIR at 3.3-5

[55] DEIR at 3.3-27; Appendix B page 214

[56] DEIR at 3.3 -27; 3.3-17

[57] San Joaquin Valley Air Pollution Control District, Guidance for Assessing and Mitigating Air Quality Impacts (GAMAQI) adopted March 19, 2015, page 102,at https://valleyair.org/transportation/ceqa_guidance_documents.htm (as June 5, 2024)

[58] As noted supra, 'harvest season' and the mitigation measure implementation timeline are overly vague

[59] Supra.GAMAQUI at page 102 at https://valleyair.org/transportation/ceqa_guidance_documents.htm (as June 5, 2024)

[60] DEIR 3.3-15

[61] DEIR ES-6

2.2.4 Individuals

Letter I1 Alfredo Beltran

April 5, 2024

COMMENT I1-1

Setton Pistachio Treated Wastewater Land Application Expansion Project.

Comments and concerns to be filed as part of the Public Meeting to be held April 10, 2024 regarding permit.

The permit to discharge addition wastewater in itself is not necessarily the problem. All the necessary items regarding wastewater discharge appear to be adequate with the oversight of that permit under the jurisdiction of the Central Valley Regional Water Quality Control Board.

What is the issue is the additional traffic, noise, hrs of operation, pollution from processing in and around the existing silos.

Most of these issues should be addressed by the SJVAPCD.

Although no additional permits for mechanical or storage will occur. The lack of or non-existence of any environmental work done when plant expansion was made several years ago is at question.

The staggering of permits appear to be purposely made to circumvent the issue of addressing environmental issues.

The permit to allow additional wastewater discharge will in essence allow the enlargement of the entire plant.

Fred Beltran

Local resident and concerned School Board Member for students health and safety.

RESPONSE I1-1

Thank you for your review and your attendance at the Draft EIR public meeting.

2022 Facility Upgrades

The project does not propose the construction or operation of any new mechanical or storage facilities at the Terra Bella facility. As explained in Chapter 2, "Project Description," of the Draft EIR, in 2020 Tulare County adopted an addendum to the 2015 Terra Bella Community Plan Initial Study/Mitigated Negative Declaration (2015 IS/MND) and in 2022, SJVAPCD issued Authority to Construct permits for an expansion of Setton's hulling operation. The environmental impacts associated with the construction and operation of the facilities were evaluated and disclosed in the addendum to the County's 2015 IS/MND and Setton received approval and permits for a new Pistachio Receiving, Hulling, Storage, and Fumigation Operation (SJVAPCD Project S-1193630). Setton has constructed these facilities.

The expanded hulling operation provides a closer, more convenient location to many of Setton's farms and growers, particularly during years with high yields. The expansion reduced VMT by capturing trips that would otherwise be sent to Setton's existing peaker facility (Brooklyn, S-6704) located approximately 7 miles southwest of the main Terra Bella Facility at 19103 Ave 80, Terra Bella. The expanded hulling operation has reduced vehicle trips associated with hauling loads between the two facilities (a 15-mile round trip); it has resulted in a reduction of 3,076 round trips to/from the peaker facility. Assuming haul trucks average 8 miles per gallon, this would result in a reduction of 5,768 gallons of diesel fuel (15*3,076/8).

Project Need

For the Setton Terra Bella Pistachio Facility to utilize its current design capacity (to process up to 122 million pounds of pistachios per year) during the harvest season, additional wastewater discharge capacity is necessary. Therefore, Setton is proposing to add 89 acres of LAAs to expand their wastewater disposal capacity (from 872 acres to 961 acres of LAAs). Improvements to the existing wastewater treatment facilities are also proposed to protect the beneficial uses of water, prevent nuisance conditions, and comply with waste discharge requirements issued by the Central Valley Water Board. The project does not propose nor require enlargement of the Setton Pistachio Facility.

Permits

The project applicant is coordinating with both the Central Valley Water Board (see responses to Letter S2) and the San Joaquin Valley Air Pollution Control District (see responses to Letter L1).

The comment raises concerns about the staggering of permits being purposefully made to avoid addressing environmental issues. The County is unaware of any such intent, which would be inconsistent with the fact that the County has elected to prepare a full environmental impact report for the project.

Although no specific permits are mentioned, it appears the comment may be referencing certain approvals received by Setton that were the subject of the August 18, 2020, Addendum (the "Addendum") to the Mitigated Negative Declaration prepared for the Terra Bella Community Plan (the "TBVC MND"). The reason for the Addendum was two-fold. First, although all of the County's approvals for Setton's prior project were either ministerial or otherwise exempt from CEQA, the San Joaquin Valley Air Pollution Control District preferred that the County perform an environmental analysis that would allow the District as a responsible agency to review its authority to construct permits for that project. Setton also sought approvals from the Central Valley Water Board—which likewise desired to tier off an environmental document approved by the County—to allow Setton to convey its process water to 872 acres of LAAs. Neither approval sought to increase the amount of discharge capacity from the facility; rather, the amount of the discharge contemplated in the Addendum and considered by the Central Valley Water Board in its acceptance of the Report of Waste Discharge for conveying process wastewater to the 872 acres of the LAAs was consistent with Setton's existing authorizations per Reports of Waste Discharge that were submitted and determined complete.

Setton has been actively using the 872 acres of LAAs since the 2020 harvest. The District issued the relevant permits to Setton in 2022. Because Setton is currently operating under those approvals, and will continue to do so irrespective of whether the project is approved, the two projects are being implemented separately. Moreover,

because this project seeks to increase the amount of wastewater discharge from the facility, it also has independent utility from any prior approvals.

Transportation

The comment raises concerns regarding additional traffic. As disclosed in Section 3.1.9, "Transportation," of the Draft EIR, due to the expansion of capacity, the project would result in additional truck trips related to pistachio delivery, yard activities, finished product deliveries, and off-hauling hull bio-solids and trash. As described in Chapter 2, "Project Description," the project would result in an increase in daily haul truck trips (1,662 annual trips, with a maximum of 19 daily trips during harvest season). Although the trips would be spread across the year, the peak timeframe for trips would be the harvest processing season, which is anticipated to extend for approximately two more weeks, from August to October, and the haul routes would remain the same because the compost and cattle feed locations are not proposed to change. Trucks exit the Terra Bella facility via Road 234 north to Terra Bella Avenue, where they go west to State Route 65 (north/south) or further west to disposal sites. Conservatively, assuming all the increase in trips would occur during the peak harvest and processing period from August through October (seven days a week), this would result in approximately 18 to 19 additional truck trips per day.

The majority of trips generated by the project would be attributed to heavy vehicles used to transport agricultural goods and off-haul the hull bio-solids. CEQA Guidelines Section 15064.3(a) states that VMT refers to the amount and distance of **automobile** travel attributable to a project (**emphasis** added). The OPR Technical Advisory describes that the term "automobile" as used in Section 15064.3(a), refers to on-road passenger vehicles, specifically cars and light trucks; heavy vehicles are not included in the definition. Furthermore, the Tulare County SB 743 Guidelines notes that goods movement is not subject to SB 743 (Tulare County 2020, pg. iv).

The stated intent of the SB 743 (Steinberg 2013) is to promote the reduction of greenhouse gas emissions, the development of multimodal transportation networks, and a diversity of land uses. The greenhouse gas emissions of trips associated with heavy vehicles serving the project site are addressed in Section 3.7, "Greenhouse Gas Emissions," of the Draft EIR and through the implementation of statewide regulations such as CARB's Sustainable Freight Strategy, which will transition heavy-duty trucks operating within California to be 100 percent electric by 2045. Additionally, heavy vehicle trips associated with the project would occur regardless of the available modes of transportation (e.g., walking, bicycling, public transit) or the mix of land uses in the project vicinity. Therefore, limiting the VMT analysis to automobile travel would be consistent with the intent of the SB 743 and the ability to reduce GHG emissions from land use decisions and the availability of alternatives to automobile travel. As such, under CEQA, heavy vehicle VMT associated with hauling of agricultural goods and hull bio-solids is not considered a significant impact. Furthermore, the project would not result in any new employees and would therefore not increase automobile travel and would therefore not contribute to additional VMT.

Noise

The potential for noise increases is also addressed in Section 3, under "Noise and Vibration," of the Draft EIR. Consistent with the discussion of Transportation, the project would result in an increase in daily haul truck trips (1,662 annual trips, with a maximum of 19 daily trips during harvest season). Although the trips would be spread across the year, the peak timeframe for trips would be the harvest processing season in approximately August to October and the haul routes would remain the same because the compost and cattle feed locations are not proposed to change. Trucks exit the Terra Bella facility via Road 234 north to Terra Bella Avenue, where they go west to State Route 65 or further west to disposal sites. Conservatively, assuming all the increase in trips would occur during the peak harvest and processing period, which would extend for three months from August through October (seven days a week), this would result in approximately 18 to 19 additional truck trips per day. The noise levels due to the additional truck trips would be similar to current conditions, although they may occur for two weeks longer during the fall. The mobile-source noise due to the increased truck trips would therefore be less than significant.

Air Emissions

Please see Section 3.3, "Air Quality," of the Draft EIR for evaluation of air pollutants. According to the Air District's guidance, annual and daily construction-generated emissions were quantified for the project. The project would not generate construction emissions of criteria air pollutants and ozone precursors exceeding the Air District's annual

emissions thresholds of significance or daily screening criteria. Because construction-generated emissions would not exceed the Air District's annual emissions thresholds of significance or daily screening criteria, construction-generated emissions of criteria air pollutants and ozone precursors would be less than significant (Impact 3.3-1). Considering the Air District's guidance, annual and daily operations-generated emissions were quantified. The project would not generate operational emissions of criteria air pollutants and ozone precursors exceeding the Air District's annual emissions thresholds of significance or daily screening criteria. Because operation-related emissions would not exceed the Air District's annual emissions thresholds of significance or daily screening criteria, operational emissions of criteria air pollutants and ozone precursors would be less than significant (Impact 3.3-2). Construction of the project would require relatively few pieces of heavy equipment, would last for a short period of time (approximately one month, (22 working days)), and occur along a linear route (approximately 2,229 feet) ensuring that emissions of TACs are not generated in a single location for an extended period of time. Operation of the project would result in an increase in daily haul truck trips (1,662 annual trips, with a maximum of 19 daily trips during harvest season). Daily diesel PM (DPM) emissions would be less than 1 lb/day. Due to the relatively small increase in daily trips even during the peak harvest season, the small amount of DPM emitted per day, and the highly dispersive properties of DPM, this increase in trips would not result in the prolonged exposure of receptors to substantial concentrations of TAC emissions that would exceed the Air District's carcinogenic risk exposure threshold of 20 in 1 million and the project's impact related to TACs would be less than significant (Impact 3.3-4). Finally, the project would not result in population growth, a major factor in the development of air quality emissions reduction goals and strategies. Additionally, the project would not exceed Air District thresholds of significance for criteria air pollutants and would therefore not conflict with or obstruct implementation of any applicable Air District air quality plan. For these reasons, project impacts related to conflict with an applicable air quality plan would be less than significant (Impact 3.3-5).

Letter I2 Kathy Kennel

April 23, 2024

COMMENT I2-1

Hello Gary

I want to take a few moments to express how happy we are with all the Setton Pistachio has done for the community of Terra Bella. Just to mention a few highlights, they have built a park and maintained the cleanliness. They do events for the members of that community such as Christmas gifts and Halloween treats bags. They also donate to the local schools such as pizza parties, movies , book give aways and Christmas gifts. They have been increasing the waste water discharge and have been adding land to discharge the waste water. They are continually upgrading their facility and we notice all of these improvements to the town that I often visit. They are a wonderful business and we are so happy they have made their home in Terra Bella.

Thank you

Kathy Kennel

RESPONSE I2-1

Thank you for your input. Comment noted.

Letter I3 Hans Paulmann

May 5, 2024

COMMENT I3-1

Good Afternoon Mr. Mills,

As a long time resident of Terra Bella, I would like to submit my input to the proposed Setton Pistachio Wastewater Expansion Project.

Setton Pistachio has come to be a very important part of our small community. Not only do they provide hundreds of jobs but they also provide a great source of income for small businesses such as Signal Autoparts as well as local restaurants and convenience stores.

As more and more farmers are planting pistachios, the need for processing capacity is also increasing. In order to meet these demands, it is important that companies like Setton Pistachio have the opportunity to grow responsibly to continue to offer local and other farmers quality processing of their crop.

After reading through the lengthy document looking for pertinent information, I can safely say that I would like to offer my families support for Setton Pistachios expansion project.

I feel that Setton Pistachio is a responsible company that cares for the community they operate in as well the people of Terra Bella.

Solar panels, infrastructure improvements, playground, and water filling station adjacent to the plant prove this point.

Allowing Setton Pistachio to grow and improve will in turn secure their very important presence in Terra Bella while continuing to provide economic prosperity to many residents and businesses.

Thank You for your time.

Hans Paulmann
10800B Road 256
Terra Bella, CA 93270

RESPONSE I3-1

Thank you for your review. Comment noted.

3 REVISIONS TO THE DRAFT EIR

This chapter of presents revisions to the Draft EIR text made in responses to comments, or to amplify, clarify or make minor modifications or corrections to information in the Draft EIR. Changes in the text are signified by strikeouts where text is removed and by underline where text is added. The information contained within this chapter clarifies or expands on information in the Draft EIR and does not constitute "significant new information" requiring recirculation. (See Public Resources Code Section 21092.1; CEQA Guidelines Section 15088.5).

3.1 PROJECT MODIFICATIONS

There have been no modifications to the Setton Pistachio Treated Wastewater Land Application Expansion Project, as described in the Draft EIR Chapter 3, "Project Description," since publication of the Draft EIR on March 20, 2024.

3.2 REVISIONS TO THE DRAFT EIR

3.2.1 Revisions to the Table of Contents and Appendices

Appendix F, Revised Report of Waste Discharge, is hereby added to the Table of Contents and to the Appendices of the EIR.

3.2.2 Revisions to Section 3.5, Biological Resources

Based on comment from the California Department of Fish and Wildlife, Mitigation Measure 3.5-1c is hereby revised as follows:

> **Mitigation Measure 3.5-1c: Conduct Focused Surveys for San Joaquin Kit Fox and Implement Avoidance Measures**
>
> Tulare County shall require Setton to implement the following measures to reduce impacts on San Joaquin kit fox:
>
> - A qualified biologist shall conduct focused surveys for San Joaquin kit fox within a ~~200~~ 500-foot buffer around the project area no less than 14 days and no more than 30 days prior to implementation ground disturbance activities.
> - If potential kit fox dens are identified within the ~~200~~ 500-foot buffer of the project area, a USFWS-approved biologist will determine if the dens are occupied by kit fox. If occupied non-natal dens are found, a no-disturbance buffer a minimum of 100 feet around occupied dens will be maintained for the duration of treatment activities. If a natal den is discovered within ~~200~~ 500 feet of a treatment site, all activity shall cease, and the applicant will contact the USFWS and CDFW to consult about potential avoidance measures before activities can occur (USFWS 2011).
> - Avoidance measures shall be implemented in accordance with the USFWS "Standard recommendations for protection of the endangered San Joaquin kit fix prior to or during ground disturbance" (USFWS 2011). Avoidance measures shall include, but are not limited to:
>   - Project related vehicles shall adhere to a 20-mph daytime speed limit and 10-mph nighttime speed limit, except on county roads and state and federal highways.
>   - All excavated trenches more than 2 feet deep shall be covered at the close of each day by plywood or a similar material. Before they are closed, they shall be thoroughly inspected for trapped animals.

If they cannot be covered each night, they shall have sloped walls or will contain one or more escape ramps constructed of earthen-fill or wooden planks. If a trapped or injured kit fox is discovered, USFWS and CDFW shall be notified within three working days.

- All construction materials, including pipes, culverts, or similar structures with a diameter of 4 inches or greater, that are stored at the construction site for one or more overnight periods shall be thoroughly inspected for fit foxes before use or before the pipe is buried, capped, or otherwise used or moved in any way. If a kit fox is discovered inside a pipe, that section of pipe shall not be moved until consultation with the USFWS and CDFW has occurred. If necessary, under the direct supervision of a biologist, the pipe may be moved one time to remove it from the path of construction activity until the fox has escaped.

4 REFERENCES

Chapter 1 Introduction

No references are used in this chapter.

Chapter 2 Responses to Comments Description

McGinley, Charles M. 2000. Enforceable Permit Odor Limits. Available: https://www.fivesenses.com/Documents/Library/34%20%20Enforceable%20Permit%20Odor%20Limits.pdf.

San Joaquin Valley Air Pollution Control District. 1992. Rule 4102 Nuisance. Available: https://ww2.valleyair.org/media/1nndk2en/rule-4102.pdf. Accessed July 2, 2024.

SJVAPCD. *See* San Joaquin Valley Air Pollution Control District.

Tulare County. 2020 (June). *County of Tulare SB 743 Guidelines*. Page iv. Prepared by VRPA Technologies, Inc. Available: https://tularecounty.ca.gov/rma/rma-documents/planning-documents/tulare-county-sb-743-guidelines-final/. Accessed on October 2, 2023.

Chapter 3 Revisions to the Draft EIR

No references are used in this chapter.

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5 REPORT PREPARERS

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Attachment F

Revised Report of Waste Discharge

Central Valley Regional Water Quality Control Board

9 June 2023

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CERTIFIED MAIL
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P.O. Box 10180
Terra Bella, CA 93270

REVISED REPORT OF WASTE DISCHARGE; SETTON PISTACHIO OF TERRA BELLA, INC AND PORTERVILLE CITRUS, INC.; TERRA BELLA PISTACHIO FACILITY AND CITRUS PACKING HOUSE; TULARE COUNTY

On 3 March 2023, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) received a Report of Waste Discharge (RWD) on behalf of Setton Pistachio of Terra Bella, Inc. (Setton) and Porterville Citrus, Inc. (Porterville Citrus). The RWD proposed to increase flows and expand the land application area for reuse of process wastewater from Setton's Pistachio Processing Facility and Porterville Citrus' Citrus Packing House. The RWD also documented changes in treatment and disposal of process wastewater from the Facilities to address ongoing odor issues and Cease and Desist Order (CDO) R5-2020-0038. The Central Valley Water Board issued a letter dated 30 March 2023 determining the RWD incomplete and requested additional information to support the RWD.

On 15 March 2023, Tulare County circulated a Notice of Preparation as lead agency in preparing an Environmental Impact Report (EIR) for expansion of Setton's Terra Bella Pistachio Processing Facility. The proposed expansion will allow Setton to take in and process additional pistachios from valley farmers. The EIR will also address the proposed changes in wastewater treatment and disposal documented in the RWD to satisfy the California Environmental Quality Act (CEQA). With regards to the proposed project to expand the pistachio facility and land application area, Central Valley Water Board is a responsible agency for purposes of CEQA and will review and comment (as needed) on the EIR prepared by Tulare County.

On 1 May 2023, Setton and Porterville Citrus submitted a Revised RWD with the additional information requested. Based on staff's review, the revised RWD provides sufficient information to draft revised Waste Discharge Requirements once Tulare County, as lead agency, adopts the final EIR for the project. Once CEQA has been satisfied, staff will draft revised WDRs for the Facilities as time and resources allow.

For questions related to the Report of Waste Discharge or updating the Waste Discharge Requirements please contact Katie Carpenter at (559) 445-5551 or by email at Katie.Carpenter@waterboards.ca.gov. For questions related to the existing Cease and Desist Order or any ongoing odor complaints please contact Omar Mostafa at (559) 445-5197 or by email at Omar.Mostafa@waterboards.ca.gov.

Alexander S. Mushegan
Digitally signed by Alexander S. Mushegan
Date: 2023.06.09 13:04:36 -07'00'
Water Boards

Alexander S. Mushegan
Senior Engineer

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