

## COMMENTS

## RESPONSES

**From:** [Preston Brown](#)  
**To:** [Hingtgen, Robert J](#)  
**Cc:** [Anderson, Joel](#); [Brown, Bronwyn](#); [Oday, Yousif](#)  
**Subject:** [External] Jamul Dulzura CPG Comment Letter on DEIR Cottonwood Sand Mine  
**Date:** Saturday, February 26, 2022 3:07:42 PM  
**Attachments:** [Jamul Dulzura CPG Comment Letter on DEIR, Cottonwood Sand Mine, 2-22-22.docx](#)

Dear Mr. Hingtgen,

D-02-1 The Jamul Dulzura CPG met this last Tuesday and voted unanimously to approve this comment letter that was drafted by our sub-committee on the DEIR Cottonwood Sand Mine project.

Respectfully,

Preston Brown

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[Preston Brown](#)  
[Chair, Jamul Dulzura Community Planning Group](#)

### D-02 – Jamul Dulzura Community Planning Group

**D-02-1** This transmittal email does not raise an issue concerning the environmental analysis or adequacy of the DEIR. Please see the responses below to specific comments raised by the commenter.

## Jamul Dulzura Community Planning Group

P.O. Box 613, Jamul, CA 91935

February 22, 2022

**Robert Hingtgen**, Robert.Hingtgen@sdcounty.ca.gov  
County of San Diego  
Planning & Development Services  
5510 Overland Avenue, Suite 310  
San Diego, CA 92123

**RE: Cottonwood Sand Mining Project Draft Environmental Impact Report** Issued 12/16/2,  
Major Use Permit (PDS2018-MUP-18-023) and Reclamation Plan (PDS2018-RP-18-001); LOG  
NO. PDS2018-ER-18-19-007; SCH# 2019100513

Dear Mr. Hingtgen,

- D-02-2 The Jamul Dulzura CPG has serious concerns about the adequacy of the DEIR of the Cottonwood Sand Mine Project, and the potentially immitigable impacts of the following issues:
- Traffic
  - Emergency Evacuation Routes
  - Noise
  - Air Quality

- D-02-3 TRAFFIC  
The impacts on our community were not considered in this DEIR. Residents in the backcountry of Jamul depend on the life line of SR-94, an inadequate two-lane highway serving both local and international traffic, and Jamul Drive to the Willow Glen choke point as a primary and alternative route for daily travel and commutes. Frequently one of these will get clogged by one traffic incident or emergency including brush fires and the traffic immediately rushes to the other route. We have seen both routes come to a complete stand still for hours and we are “trapped”.

- D-02-4 EMERGENCY EVACUATION ROUTES  
Nearly all of our 168 square miles are rated as a Very High Fire Hazard Severity Zone, (VHFHSZ). The Santa Ana windblown fires from the east, south east will push us north into Rancho San Diego. This DEIR did not acknowledge Jamul as a “Surrounding Area” nor understand the need for a “Wildland Fire Evacuation Plan” (WFEP). An extractive mining operation with 176 planned trips per day of hauling trucks must disclose in great detail the management of these hauling trucks. There should be extensive preparation for plans to

**D-02-2** The County acknowledges these introductory comments; however, they do not raise specific issues concerning the environmental analysis or adequacy of the DEIR. Please see the responses below to specific comments raised in this letter.

**D-02-3** Please see Topical Response 8, *Traffic Impacts*, regarding traffic. Additionally, please see Responses to Comments D-A5-2, D-A5-6, and D-A5-11 regarding emergency access during fire conditions.

**D-02-4** The EIR does not assume uniformly “ideal” conditions but does discuss realistic conditions during operation. For instance, and specific to roadway capacity, please see Response to Comment D-A5-6 regarding projected congestion. To the contrary, the comment seems to assume that not only would Project operations continue unabated during a potential wildfire episode, but also that all potential truck traffic per day would be on the road, in proximity to the Project all at once. This is not the case. A Fire Protection Plan has been prepared for the Project; please refer to discussion in FEIR Section 3.2.5, *Public Services*, under the heading Fire and Emergency Services. Please also see Responses to Comments D-A5-2 and D-A5-11 regarding emergency access during fire conditions, including immediate cessation of mining and haul truck activity upon receipt of a wildfire emergency alert affecting the project area.

D-02-4  
cont.

coordinate with the Sheriff Department and protocols for communicating with the public in an emergency evacuation. The DEIR assumes once a day ideal conditions for 10 years, every day.

NOISE

The noise impacts of machinery, erratic blasting and diesel trucks from an open pit strip mining operation have the potential to be very injurious in the long term. Studies have shown consistently over the years the detrimental effects of loud noises on the learning abilities of students in schools near airports or industry. It can be immensely disruptive if sustained over many years and have lasting effects on the young children of the Jamacha Elementary School. These are “significant” and immitigable negative impacts that the DEIR does not adequately address.

D-02-5

Many assumptions are made without scientific evidence or field studies to gauge the possible impacts. Assuming “rule of thumb” solutions like using the distance of 400 feet or the use of plywood walls to deaden sound for neighbors and schools will be less impactful, or tolerable at best is guess work. Acoustics are a science and the applicant in this DEIR did not present any field studies on acoustics by experts. Sound can be amplified at higher levels in a valley and this will be felt by residents up the hill in Jamul. We would recommend that additional studies be completed.

AIR QUALITY

The extent of the effects on human and animal health from the silica dust (silicosis) and the spores of fungus coccidioides, (coccidiomycosis/Valley Fever) from this mining are indeterminable. What makes this project so dangerous are the potential long-term health impacts. Medical data has shown that the long-term exposure to silica dust causes irreparable lung damage, resulting in debilitation, suffering, and eventually death. There is no recovery. The residents in Jamul that live nearby and visit and pass through the Cottonwood basin on a daily basis are vulnerable as are our neighbors in Valle de Oro.

D-02-6

D-02-7

The DEIR does not adequately address the “cumulative” effects of various adverse and disruptive elements. This mining operation is all about cumulative effects. The DEIR presented to us today treats everything in isolation as if they all could be endured easily for one sunny day.

D-02-8

In addition to the concerns listed above, the Jamul Dulzura Community Planning Group supports, in general, the concerns of the Valle de Oro Community Planning Group.

We recommend the NO PROJECT ALTERNATIVE.

Respectfully,

Preston Brown, *Chair*  
Jamul Dulzura Community Planning Group

cc: Supervisor Joel Anderson, District 2 [joel.anderson@sdcounty.ca.gov](mailto:joel.anderson@sdcounty.ca.gov)  
Bronwyn Brown, [Bronwyn.Brown@sdcounty.ca.gov](mailto:Bronwyn.Brown@sdcounty.ca.gov)

**D-02-5** Please see Topical Response 7, *Noise Impacts*, for discussion on noise impacts to Jamacha Elementary School, the efficacy of the proposed mitigation to reduce noise impacts to less-than-significant levels, and the potential for noise effects within a valley, including to residences located at elevated locations relative to the Project site.

**D-02-6** Please see Topical Response 6, *Public Health Effects*, regarding the potential public health effects associated with the Proposed Project, including effects related to silica dust and the spores of fungus coccidioides.

**D-02-7** The statement that the EIR does not evaluate “various adverse and disruptive elements” contributing to cumulative effects is incorrect. The list of projects considered in the cumulative analysis is presented in EIR Section 1.8, *List of Past, Present, and Reasonably Anticipated Future Projects in the Project Area*, and the locations of those projects are depicted on Figure 1-16. Each technical issue in the EIR addresses potential project contributions to cumulative impacts for various focused issues in Chapters 2.0 and 3.0. In addition, some updates have been made to the cumulative impacts analysis since circulation of the DEIR. Please see Topical Response 10, *Cumulative Impacts*, regarding cumulative impact analysis. Identified impacts remain less than significant.

**D-02-8** Please see Response to Comment D-A6-24, which describes the rationale for how the alternatives presented in Chapter 4.0 were selected. The commenter’s preference for the No Project Alternative is noted.

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COMMENTS

RESPONSES

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Oday Yousif Jr., *Chair*, VDOCPG, [odayyousif@gmail.com](mailto:odayyousif@gmail.com)

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February 18, 2022

Robert Hingtgen  
County of San Diego Planning & Development Services  
5510 Overland Avenue, Suite 310  
San Diego, CA 92123

emailed to: [Robert.Hingtgen@sdcounty.ca.gov](mailto:Robert.Hingtgen@sdcounty.ca.gov)

Dear Mr. Hingtgen,

D-03-1

The League of Women Voters believes that in order to assure the future availability of essential resources, government policies should promote stewardship of natural resources. Policies that promote resource conservation are a fundamental part of such stewardship. Resources such as water and soil should be protected. Consumption of nonrenewable resources should be minimized. Reclamation and reuse of natural resources should be encouraged.

We further believe that soil and water conservation are essential elements in land management practices. Development should require best management practices for soil and water conservation.

As sand is a nonrenewable resource and extractive mining is not a best management practice for conservation, we urge the County of San Diego Planning and Development Services Department to deny the permits for the Cottonwood Golf Course to be converted to an open pit sand mining operation.

Sincerely,

A handwritten signature in black ink that reads "Kim Knox". The signature is written in a cursive, flowing style.

Kim Knox  
President, League of Women Voters of San Diego

### D-03 – League of Women Voters of San Diego

**D-03-1** The County acknowledges the opposition to the Project and general recommendations for soil and water conservation expressed in this comment; however, this comment does not raise an issue concerning the environmental analysis or adequacy of the DEIR, nor does it request that the Project incorporate any specific new mitigation measures. Therefore, no further response is required.



February 28, 2022

Robert Hingtgen (Robert.Hingtgen@sdcountry.ca.gov)  
Planning & Development Services  
5510 Overland Avenue, Suite 310  
San Diego, California 92123

**Subject:** Cottonwood Sand Mining Project Draft Environmental Impact Report Issued  
12/16/21 (PDS2018-MUP-18-023), (PDS2018-RP-18-001); LOG NO.  
PDS2018-ER-18-19-007; SCH# 2019100513

Dear Mr. Hingtgen:

Thank you for considering the following comments pertaining to the Cottonwood Sand Mining Project draft Environmental Impact Report issued on December 16, 2021 for public review.

Outdoor Outreach is a nonprofit 501c3 that connects youth to the transformative power of the outdoors. Since 1999, Outdoor Outreach has provided outdoor experiences from surfing, kayaking to backpacking and hiking for more than 16,000 young people to explore their world, cultivate belonging, and discover what they're capable of. In the past we have taken our youth on mountain biking trips at Sweetwater Reservoir and engaged in environmental restoration and stewardship activities at the San Diego Wildlife Refuge.

We believe that the Cottonwood Sand Mining Project draft Environmental Impact Report as presented is a flawed and incomplete document that does not adequately analyze the significant environmental impacts of the Cottonwood Sand Mining Project to the people, wildlife, water, air, traffic, and quality of life. We are particularly concerned that the location of this proposed sand mine is adjacent to a vital wildlife corridor (San Diego National Wildlife Refuge), which includes several threatened species. Prioritizing this location for a mine near a residential area will impact traffic, aesthetics, noise and adversely limit the enjoyment of recreational opportunities in the adjacent open space areas for local residents and visitors.

Upon review, the draft EIR is incomplete and overlooks irreversible impacts that would need further study. Therefore, the EIR must be revised and reissued to the public for review. The most significant issues noted in the Cottonwood Sand Mining Project draft EIR include:

D-04-1

#### D-04 – Outdoor Outreach

**D-04-1** The County acknowledges these introductory comments; however, they do not raise a specific issue concerning the environmental analysis or adequacy of the DEIR. Please see Topical Response 2, *CEQA Requirements for Responding to Comments*, as well as the responses below to specific comments raised in this letter.

outdooroutreach.org

5275 Market Street, Suite 21 · San Diego, CA 92114 · Tel 619.238.5790 · Fax 619.237.76



D-04-2

**Biological Resources:** Biological Resources are significant environmental impacts with incomplete analysis. The draft EIR states that “the Project would result in significant impacts” to Federally and State Endangered or Threatened Species. Proposed mitigation plans are not sufficient to protect endangered and threatened species in the area. Even under Alternative 2, there would still be significant noise impacts negatively impacting birds during breeding season and also unavoidable disturbance of sensitive native vegetation and riparian habitat.

D-04-3

**Land Use:** The proposed Project is inconsistent with the Land Use Element of the County of San Diego General Plan and the Valle de Oro Community Plan. The designation for the entire project site is Open Space-Recreation which applies to large, existing recreational areas and allows for active and passive recreational uses. The Major Use Permit Findings cannot be made. The draft EIR does not specify how the impacts and location of the sand mine will be consistent with the San Diego County General Plan.

D-04-4

**Air Quality & Greenhouse Gas Emissions:** The draft EIR appears to gloss over the impact on air quality as not being significant. However, even a moderate impact could be catastrophic and should be considered and studied. The EIR must be revised to describe mitigation related to vehicle miles traveled and greenhouse gas emissions that will occur onsite.

D-04-5

**Water Quality:** The EIR identified 114 permitted groundwater wells within one mile of the project site. The draft EIR does not properly address that the Project may have a significant impact to property water wells near the property site. Impacts of the project will extend to the entire aquifer, therefore the one mile cut off is insufficient to understand the nature of the impact of the project to the aquifer.

D-04-6

**Transportation/Traffic:** Transportation/Traffic is a significant environmental impact with incomplete analysis. The draft EIR did not address Emergency Access adequately. The report indicates that a “Traffic Control Plan would establish procedures” however these procedures are not described.

D-04-7

**Fire Impacts:** A Fire Protection Plan has been prepared for the project per the draft EIR. However, it does not state that the plan has been reviewed and approved by the San Miguel Fire District and the County of San Diego.

D-04-8

**Public Health Impacts:** The health risk associated with Valley Fever is drastically minimized in the draft EIR.

D-04-2

This comment addresses the biological analyses presented in the DEIR. As explained in Topical Response 1, *Reason for the Recirculation of the DEIR and the Recirculated DEIR Process*, the biological resources analysis contained in the DEIR was significantly revised and recirculated as part of the RDEIR based on updates and DEIR comments received. The revised biological resources analysis circulated in the RDEIR wholly supersedes the original biological resources analysis contained in the DEIR. Please see the updated Project impact analyses that were included in the RDEIR (Subchapter 2.2 of the RDEIR) and Biological Resources Technical Report recirculated with the RDEIR (FEIR and RDEIR Appendix C), in response to comment letters received during the public review and comment period. Please see RDEIR Section 2.2.2.1, *Special Status Species*, for species specific analysis of noise impacts occurring during construction and operation phases. Mitigation is identified that would lower each potentially significant impact to a less-than-significant level.

D-04-3

Please see Topical Response 11, *Consistency with Plans and Policies*, regarding consistency with the County’s land use plans, policies, ordinances, and codes.

D-04-4

The EIR’s conclusion that the Project would result in less than significant air quality impacts is based upon a detailed review of projected Project-related emissions and comparison of emission volumes against approved state and federal thresholds. Please see Topical Response 3, *EIR Errata and Updated Technical Reports*, for a discussion of the revisions to the air quality analysis since public circulation of the DEIR based on changes to the Project Description. Please see FEIR Tables 3.1.1.7 and 3.1.1.8 for numerical data on projected air quality emissions from the various specified sources during construction and operational periods, respectively, and where those emissions fall relative to regulatory thresholds. FEIR Tables 3.1.2.4 and 3.1.3.5 contain projections of Project-related GHG emissions associated with Project elements. In addition, an addendum to the Air Quality Technical Report is included as part of Appendix I to the FEIR. The Addendum includes the full analysis conducted to address the comments raised during public review of the DEIR and the additional truck trips and associated mining activity. The Addendum shows that none of the minor technical revisions to the analysis would result in new significant impacts, or substantially more severe significant impacts, than were disclosed in the original DEIR.

**D-04-5** The statement that the EIR did not consider impacts to permitted groundwater wells is incorrect. Section 3.1.5 of the DEIR and FEIR includes assessment of potential water quality, groundwater storage, and off-site well interference impacts associated with the Proposed Project. As concluded therein, impacts related to these three issues would be less than significant. The off-site well interference analysis considered impacts at the nearest off-site well under a conservative Project pumping scenario. Since impacts at the nearest off-site well under this conservative scenario were determined to be less than significant, it can be concluded that impacts at wells located at greater distances from the Project would also be less than significant, since the magnitude of impact would decrease with distance.

**D-04-6** Please see Topical Response 8, *Traffic Impacts*, regarding traffic and emergency access.

**D-04-7** The Fire Protection Plan prepared for the Proposed Project was reviewed and accepted by the County prior to release of the DEIR. The San Miguel Fire District reviewed the Fire Protection Plan during public review of the DEIR and provided comments. Responses to these comments have been provided as Responses to Comments D-A5-1 through D-A5-13.

**D-04-8** Please see Topical Response 6, *Public Health Effects*, regarding the potential public health effects associated with the Proposed Project.



D-04-9

We stand with hundreds of community members and other stakeholders who are seriously concerned about the significant impacts the Cottonwood Sand Mining Project's 12-year sand mining operation will have on the residential community in Rancho San Diego, surrounding communities, and to the San Diego National Wildlife Refuge. As much as the sand, for concrete, is a needed commodity, the location proposed by the Applicant seems highly inappropriate. Industrial sand mines do not exist in developed, residential areas – nor should this one at the expense of the community and the environment.

D-04-10

Governor Newsom has proposed that California conserve 30% of its land and water by 2030 to fight climate change. We propose that the owner of the property convert the golf course into a park instead of a mine. In doing so, it would decrease our carbon footprint and provide increased access to recreation activities for local youth and their families.

Sincerely,

Ben McCue  
Executive Director  
Outdoor Outreach

CC: [Bronwyn Brown \(Bronwyn.Brown@sdcounty.ca.gov\)](mailto:Bronwyn.Brown@sdcounty.ca.gov)

**D-04-9** The County acknowledges the opposition to the Project expressed in this comment; however, this comment does not raise an issue concerning the environmental analysis or adequacy of the DEIR. No further response is required.

**D-04-10** The conservation goals in this comment are noted; however, this comment does not raise an issue concerning the environmental analysis or adequacy of the DEIR. Please see Response to Comment D-A6-24, which describes the rationale for how the alternatives presented in Chapter 4.0 were selected. The CEQA Guidelines provide several factors that should be considered with regard to the feasibility of an alternative. Those factors include: (1) site suitability; (2) economic viability; (3) availability of infrastructure; (4) general plan consistency; (5) other plans or regulatory limitations; (6) jurisdictional boundaries; and (7) whether the project applicant can reasonably acquire, control, or otherwise have access to the alternative site (if an off-site alternative is evaluated). In accordance with CEQA Guidelines Section 15126.6(a), the Project alternatives are assessed relative to their ability to (1) meet the basic objectives of the Project and (2) avoid or substantially lessen the significant effects of the Project. FEIR Section 4.1.1 describes preliminary alternatives that were considered but rejected because they did not accomplish most of the Project objectives or would result in greater impacts than the Proposed Project, and therefore, were not fully analyzed in this EIR. These included a Visual Screening Alternative, Reduced Footprint/Deeper Excavation Alternative, and Reduced Annual Mining Production/Increased Mining Duration Alternative.

This comment suggests that, as an alternative to the Proposed Project, the property owner convert the site to a park. However, conversion of the site to a park would not meet the project objectives described in the EIR. Therefore, a park-only alternative is rejected from further analysis. The end result of reclamation would be improved natural open space, better drainage flow, and an end use of open space on the rest of the property, which can be considered overall consistent with the comment.



## San Diego County Archaeological Society, Inc.

Environmental Review Committee

14 February 2022

To: Mr. Robert Hingtgen  
Department of Planning and Development Services  
County of San Diego  
5510 Overland Avenue, Suite 310  
San Diego, California 92123

Subject: Draft Environmental Impact Report  
Cottonwood Sand Mining Project

Dear Mr. Hingtgen:

I have reviewed the cultural resources aspects of the subject DEIR on behalf of this committee of the San Diego County Archaeological Society.

D-05-1

Based on the information contained in the DEIR and its two cultural resources appendices, Appendices D and E, we agree with the impact analyses and mitigation measures defined therein.

One comment Appendix D is that, in paragraph 3.3.1.1, regarding collections from the site CA-SDI-4765, it states that "It is not known...the curation status of the artifacts recovered from the data recovery program." A check of the online collections list from the San Diego Archaeological Center shows material from SDI-4765 is included in collection SDAC 50. The collection includes material excavated by Archaeological Consulting and Technology at site SDI-4765 in 1981.

Thank you for the opportunity to review and comment on this project.

Sincerely,

  
James W. Royle, Jr., Chairperson  
Environmental Review Committee

cc: Helix  
SDCAS President  
File

P.O. Box 81106 San Diego, CA 92138-1106 (858) 538-0935

### D-05 – San Diego Archaeological Society

**D-05-1** The County acknowledges the commenter's concurrence with the impact analyses and mitigation measures presented in the DEIR and cultural resources appendices (Appendix D, *Archaeological Inventory and Assessment*, and Appendix E, *Historic Resources Evaluation Report*, to the DEIR and FEIR). The noted statement regarding collections from the site CA-SD-4765 has been updated in Appendix D to the FEIR to state:

The 1992 data recovery report for site CA-SDI-4765 was a preliminary report, prepared for the issuance of grading permits (Schaefer et al. 1992). It is not known if a final report was prepared (one is not on file at the SCIC), or the curation status of the artifacts recovered from the data recovery program. A check of the online list of curated collection at the San Diego Archaeological Center indicates that collection SDAC 50 contains artifacts from CA-SDI-4765. In a response letter to the DEIR received from James W. Royle, Jr., on behalf of the San Diego County Archaeological Society, Inc., it is indicated that the collection includes material excavated by Archaeological Consulting and Technology during the 1981 testing effort.

The 1992 data recovery program was undertaken for the development of Rancho San Diego – Jamacha Village West; however, the area remained undeveloped and ultimately came under the management of the SDNWR.



# California Native Plant Society

San Diego Chapter of the California Native Plant Society  
P O Box 121390  
San Diego CA 92112-1390  
conservation@cnpsd.org | www.cnpsd.org

February 28, 2022

Robert Hingtgen  
Planning & Development Services  
5510 Overland Avenue, Suite 310  
San Diego, CA 92123  
By email to Robert.Hingtgen@sdcounty.ca.gov

## RE: Cottonwood Sand Mining Project EIR

Dear Mr. Hingtgen,

Thank you for the opportunity to comment on the draft of the Cottonwood Sand Mining Project ("Project") and the the associated draft Environmental Impact Report ("DEIR"). CNPS promotes sound plant science as the backbone of effective natural areas protection. We work closely with decision-makers, scientists, and local planners to advocate for well informed and environmentally friendly policies, regulations, and land management practices. Our focus is on California's native plants, the vegetation they form, and climate change as it affects both.

Overall, the DEIR appears to make an interesting assumption that the DEIR properly summarizes information provided in all the other reports (e.g. p. 2.2-1). The issue here is that court rulings specify that the EIR is to contain the facts and analyses required under CEQA, and that nothing important should be buried in an appendix. By stating that the DEIR is a summary, this either implies that the DEIR is incomplete as written, or that the appendices are the actual DEIR and the material presented as the DEIR is a sort of extended executive summary. It may be worth considering whether either of these is implied, and determining whether the DEIR that is presented is the entire, complete DEIR for CEQA purposes.

With regards to the DEIR and the Project, we have comments related to the project design, timeline, climate change calculations, native plants, and the alternatives presented. These are discussed below.

### Project Design

It would be useful to clarify how much soil is being removed from the site. We are told that the intended yield is 3.8 million cubic yards of sand and aggregate with a 10% waste factor (p. 1-3). Presumably this means that 4.22 million cubic yards of material are to be excavated, and 380,000 cy of mud, silt, and organic material will either remain on site or be also sold? This needs to be clarified, as explained below in climate change. This leads to a second question, which is how much material needs to be imported to the site to bring it up to the final contour dimensions, and what that material will be. These details need to be provided for the analysis in other sections, as discussed below.



*Dedicated to the preservation of California native flora*

D-06-1

D-06-2

## D-06 – San Diego Chapter of the California Native Plant Society

**D-06-1** The County acknowledges these introductory comments; however, they do not raise an issue concerning the environmental analysis or adequacy of the DEIR. The comment claims that the EIR provides only a "summary" of the appended technical reports and is therefore inadequate. However, the EIR utilizes the analyses of the technical reports as evidence supporting the EIR's significance determinations, as CEQA requires, and attaches the full technical reports as appendices should a reader desire more detail. The comment does not identify any specific technical reports or EIR analyses that it finds deficient. No further response is required.

**D-06-2** The comment cites information on page 1-3 of the DEIR relative to the total proposed extraction volume and assumed quantity of saleable material, which is based on a 10 percent waste factor of wash fines and materials undesirable for processing that would be used for backfill. As further described on page 1-9 of the DEIR: "The quantity of backfill materials would depend on the quality and composition of the excavated material; a 10 percent 'waste factor' is typically estimated in aggregate mining for wash fines and materials undesirable for processing (e.g., low in sand). Materials not selected for processing would be utilized as backfill." Please see also Topical Response 5, *Backfill*, for additional detail regarding the type of backfill material that may be accepted as imported material to achieve final landforms. Regardless, the analyses in the EIR assume, conservatively, that 3.8 million cy (5.7 million tons) of material would be leaving the Project site over the course of the Project.



- D-06-3** The second issue with the design is that it is excavating soil that is apparently 90% sand to a depth of 50 feet below ground surface. Obviously, this is a sand mine; the problem is that the site is within the floodplain of the Sweetwater River. According to Google Earth, the channel for the Sweetwater River is no more than 8 feet below the current ground surface, and groundwater was found between 5 and 18 feet below ground surface. Therefore, one would expect the extraction pits to flood to 40' deep or so during a flood event. Where is such flooding covered in the project description?
- Please explain either why this will not happen (impermeable soil in the sand mine?) or explain in the DEIR measures taken to deal with water in the extraction site, so that the impacts can be assessed and mitigated as necessary. Would it be pumped back into the Sweetwater River channel? Does this affect water quality? In the event of a flood, would the river breach the wall into the extraction pits and thereby change course? Since this kind of flooding impacts existing riparian vegetation, reclamation and replanting efforts, and wildlife habitat, it needs to be described and analyzed. If it causes impacts, those impacts need to be mitigated.
- We would argue that if flooding associated with the river channel is a serious issue that wasn't addressed, then the biological superior alternative of separating mining operations from the channel with a 50-foot buffer might be the simplest solution to ameliorating the risks from flooding.
- D-06-4** **Timeline**
- The issue here is not the four phases of the project, but the inherent conflict between the notion that reclamation will start immediately, and Bio Mitigation M-BIO-7, which states that final grading will happen only after all extraction has been completed, and that seeding will only commence at that point.
- D-06-5** We would argue that these actually constitute two separate alternative projects (reclaim in stages versus reclaim at end), and need to be analyzed as such. The difference between them is the difference between dealing with 10 years of weeds seeding on reclaimed soil, then trying to restore the site, and minimizing weed seeds and maximizing actual reclamation by restoring each phase as operations cease.
- D-06-6** More to the point, if the reclamation starts only when extraction operations cease, what measures will be taken to make sure the project proponent doesn't simply declare bankruptcy and walk away from the reclamation? While we have no desire to impugn the project proponent's reputation, accidents happen, and reclamation efforts failing due to financial shortfalls show up in many environmental texts. To avoid this outcome, what measures will be taken to insure this operation is fully funded, with the replacement soil already on site by the time operations end? We could not find this information in the reclamation plans. It needs to be there, even if it is standard industry practice. Moreover, any money set aside needs to be earmarked for reclamation and restoration.
- D-06-7** We support fully reclaiming each phase as soon as extraction efforts cease. Trucks carrying out mined sand can bring in reclamation soil on their return trips, and thereby save on fuel. Having solid soil with riparian trees and other woody plants rooting into it will also help to protect the downstream excavation pits from flooding, and will reduce the amount of groundwater that has to be pumped from the excavation site to make the sand accessible.

**D-06-3** This comment incorrectly states that excavation would be to a depth of 50 feet below ground surface; the maximum proposed depth of excavation is 40 feet. Please see Section 2.4, *Extraction and Phasing*, of the Project Reclamation Plan. In areas where excavation extends below the water table, an excavator would be utilized for pit excavation; pumping/dewatering would not be required. Additionally, mining activities occurring during the rainy season (generally November through March) are proposed to be located away from the river channel to reduce the potential for overflow into active mining areas during a large storm event. Please see Responses to Comments D-A2-8, D-A6-5 through D-A6-7, which further address concerns related to hydrologic/hydraulic effects and flooding, as well as Response to Comment D-A6-11 regarding the regulatory requirements to be implemented to address potential impacts to hydrology and water quality.

**D-06-4** The comment questions the timing of reclamation activities, including the implementation of revegetation and restoration activities, in relation to Project phasing and mining activities. The comment references mitigation measure M-BIO-7 of the DEIR, which has been renumbered to M-BIO-8 in the FEIR and Biological Resources Technical Report because of the addition of new mitigation measures identified within the RDEIR. As described in FEIR Section 1.2.1.2, areas disturbed by resource extraction would be progressively reclaimed in an ongoing process that commences when mining operations have ceased within a given area and continues until all mining-related disturbance is reclaimed and all equipment involved in these operations has been removed. As such, restoration of native habitat within the Project site would occur while mining is active following the completion of the first phase of mining operations and would be on-going as later phases are completed. The total amount of native habitat to be restored within each mining phase is summarized in Table 2, *Compensatory Mitigation and Reclamation Revegetation Phasing*, of the Biological Resources Technical Report recirculated with the RDEIR (Appendix C of the FEIR and RDEIR). Table 5 of the Project's Conceptual Revegetation Plan (Appendix N of the Biological Resources Technical Report recirculated with the RDEIR) provides an approximate timing of mining, reclamation, and revegetation activities by Project phase and subphases. Figure 2.213 of the RDEIR, and Figure 6 of the Biological Resources Technical Report recirculated with the RDEIR, depict the progress of extraction and mining operations disturbance area by Project phase along with the corresponding reclamation and native habitat revegetation and restoration areas, showing the progression of site reclamation to the final end-use of the site. As demonstrated above and within the FEIR, Biological Resources Technical Report, and Conceptual Revegetation Plan, reclamation and native habitat

**D-O6-4 (cont.)** revegetation and restoration would occur during the mining and operations phase of the Project.

**D-O6-5** Please see Response to Comment D-O6-4. Additionally, please see Section 1.2.1.1 *Sand Mining and Processing Component*, of the DEIR for a detailed description of the phasing.

**D-O6-6** As described in FEIR Section 1.2.1.2, the Project would be mined in incremental phases, and areas disturbed by resource extraction would be progressively reclaimed in an ongoing process that commences when mining operations have ceased within a given area. Reclamation for the Project would not occur at the end of the overall mining process, but rather in segments as the Project completes each subphase. The design to complete one approximately 30-acre area and then reclaim it as excavation moves to the next location is a key element of the Project and would address the concerns raised in the comment. Further, before mining can begin, the operator must provide a Financial Assurance Mechanism, usually in the form of a surety bond, to demonstrate that the costs of reclamation can be covered. The financial assurance amount is calculated in a Financial Assurance Cost Estimate, which is updated annually to consider current prices and the conditions of the site. The Financial Assurance Cost Estimate is reviewed and approved by both the local lead agency (San Diego County) and the California Department of Conservation's Division of Mine and Reclamation prior to start of operations.

**D-O6-7** The current proposal includes reclamation as recommended; please see Response to Comment D-O6-4. Although not factored into the analysis, it is anticipated that some import trips would be "dead head" trips, where the same truck transporting import soil to the site would also export produced material away from the site. Please see Response to Comment D-O6-3, which describes the excavation process when groundwater is encountered; no pumping is proposed.

**Climate Change Calculations**

As pointed out in the previous paragraph, the climate change calculations are obviously incomplete. Here is the problem:

The site will be excavated up to 50 feet below grade, and 90% of that material will be removed. To reclaim it, the surface has to be raised to 8 feet below grade, and that surface will be sloped. That means that well over 2.6 million cubic yards of soil needs to be imported to the site to fill the excavation hole. That's an increase of perhaps 80% of the truck traffic, with trucks coming in from somewhere. Since on-road emissions currently comprise 65% of all project related greenhouse gas emissions, this is a serious miscalculation.

This omission needs to be fixed. The DEIR as it stands suggests wrongly that reclamation will be a trivial part of the Project's GHG budget. Unfortunately, if fill is being trucked in from offsite, the reclamation effort is on the same scale as the extraction budget. The reclamation emissions budget could even be bigger than the extraction budget, if someone thinks to import desert sand (useless for construction) to make up for the construction grade sand being removed. In that case, the fill would travel further than the mined material!

To be blunt, the reclamation plan needs to be integrated with the extraction plan, and the GHG emissions of both need to be properly accounted for. It would be great if trucks carrying out aggregate can return carrying appropriate fill soil, as this would drop the emissions cost of reclamation dramatically. To do this, the people drafting the reclamation plan need to work with the people drafting the GHG analysis, to ensure that emissions are properly accounted for and minimized.

**Native Plants, Reclamation, and Revegetation**

As noted above, there seems to be a fundamental contradiction between whether the project phases will be reclaimed immediately after completion, or whether they will sit collecting weeds until the end, when we may hope that there is still money left for the reclamation plan. Again, we strongly advocate for reclaiming the phases immediately, not just for improved restoration outcome, but for flood protection for the subsequent excavation.

However, there are other issues with the reclamation plan.

The first issue are the soils. Is the reclaimed soil supposed to be similar to the 90% sand soil that will be mined? If so, where is the sand coming from? If not, and the soil will have higher clay content, is the idea to restore the site to vegetation more suited to higher clays, or will the restoration blindly try to copy a sand-loving vegetation on clayey soils?

This is why it is so important to determine the source of the reclaimed soils that are coming into the site. Not only should the distance they travel be minimized to minimize GHG emissions from the trucks carrying them, their physical and chemical properties will strongly influence what plants are grown on them. Please include these details in the DEIR and the reclamation plans.

Second, hydroseeding as proposed is going to be problematic. Putting a ton per acre of cellulose on the site sounds like a massive fire hazard, not counting the flammability of the binder. What is the fire hazard caused by covering the site with fuel?

More importantly, **the hydroseed mix proposed in the Reclamation plan is wasteful and unworkable**. Problems include:

- Seeding with *Ambrosia pumila*. *A. pumila* is a heavy clay specialist, so unless the clay part of the spoils are deliberately set aside for this species, there is little point in planting it. Moreover, it is propagated from cuttings, **not from seed!** Furthermore, cuttings are usually

**D-06-8** Please see Topical Response 3, *EIR Errata and Updated Technical Reports*, for details related to additional haul truck traffic and the associated updates to the GHG analysis that address mining and reclamation activities.

**D-06-9** Please see Response to Comment D-06-6.

**D-06-10** Please see Responses to Comments D-A1-7 and D-A2-27, which describe the requirements for imported materials and additional and corrective measures that may be implemented if certain performance standards are not progressing toward the stated restoration/revegetation goals as identified in the Conceptual Wetland Mitigation Plan and Conceptual Revegetation Plan.

**D-06-11** The comment expresses fire hazard concerns in relation to hydroseeding of the Project site and the use of cellulose fiber and binder/tackifier in the hydroseeding mixture. However, the materials used in the hydroseeding mixture would be non-flammable and non-toxic (e.g., Profile Products FlexTerra hydromulch, which is widely used throughout San Diego County as a non-toxic, biodegradable, U.S. Department of Agriculture approved hydromulch). In general, hydroseeding material is non-flammable given that it is applied directly to soil in a thin layer, regularly watered to establish plants from seed, and breaks down into the soil within one wet season. As such, application of the hydroseeding mixture would not result in an increased fire hazard.

**D-06-12** The planting palettes and seed mixes contained within the Project's Conceptual Revegetation Plan and Conceptual Wetland Mitigation Plan, which are included as Appendices N and O, respectively, to FEIR Appendix C, Biological Resources Technical Report, have been revised in response to comment letters received during the public review and comment period from the USFWS and the CDFW. As noted in the comment, San Diego ambrosia (*Ambrosia pumila*) does occur on soils with clay components within uplands, but the species can also occur on coarser soils near drainages. For reference, the population of San Diego ambrosia located south of the southwestern portion of the Project site within the SDNWR occurs on soils mapped as sandy loam (refer to Figure 9 of the Biological Resources Technical Report for a soils map). As such, San Diego ambrosia has been included as a container planting for portions of the native revegetation area that would be revegetated as riparian scrub pending nursery availability, as detailed in Table 8 of the Project's Conceptual Revegetation Plan. The plan further specifies that San Diego ambrosia would be installed in the higher elevation portions of this habitat (i.e., closer to upland slopes).

- D-06-12 cont. not available in the nursery trade. Some were available as of mid February 2022, at a site where a wild population was to be bulldozed, but there is no guarantee any will be available in 2032 or whenever they are needed. Either a special plan should be used to create heavy clay habitat on the site specifically for this species, or it should be struck from the list.
- D-06-13 • Yerba mansa (*Anemopsis californica*) does best on alkaline or salty wetlands, and it was not found in the site survey. Unless the goal is to turn the site saline (which will poison the riparian trees, so we strongly advise against it), this plant should not be planted sparingly or not at all.
- D-06-14 • The seed mix incorporates both obligate wetland species such as bulrush and obligate upland species such as goldenbush. If this mix is broadcast over the site, we can confidently predict that most of the seeds of these and other species will fall on the wrong soil and fail to survive. ***Doesn't it make more sense to plant seeds where they will grow?*** Since these are minor components of the mix, they should be separately sown: plants that require water should be hand-sown in the stream channel, upland plants like goldenbush should be hand sown on the dry parts of the project, and the seed mix to be broadcast over the entire site should only contain plant species (like western ragweed) that will survive a variety of conditions. Since there are already provisions to hand-seed on open water, it should be trivial to hand-seed on small areas of upland or near shore.
- D-06-15 • Weed control efforts need to be better defined. Will they include pesticides? Mechanical methods? Hand pulling? These are not described, and they need to be. CNPS uses the Bradley method, which consists entirely of weed control, as a major restoration tool. We weed areas and let natural regeneration restore the area without replanting. It is cheap but slow. On this project, prolonged, careful weeding of riparian areas and coastal sage scrub will accomplish more than sloppy, short-term weeding and a single round of planting.
- D-06-16 • The timing of weeding needs to be considered. Quarterly weeding will be ineffective. Most of the weeds come up in the winter or after rains. Stinkwort (*Dittrichia graveolens*) comes up in August. Having weeders go at particular times to deliberately target particular species when they are most vulnerable will achieve more success with less effort. Sending a crew out every three months will waste money and be ineffective, because the conditions are different every year.
- D-06-17 • For invasive control during extraction and other soil-moving operations, there needs to be a wash station at the entrance near the scale where wheels are power washed, using water from water trucks. Any vehicle besides private vehicles that leave the site should be under a wash order on every return.
- D-06-18 **Alternatives**  
As noted above, we support the biologically superior alternative. While we completely understand the need for construction grade sand and aggregate, the Project as described seems to be seriously vulnerable to flooding during a wet winter. Rather than have the extraction pits damaged, they should be set back from the river, or other methods to protect them need to be part of the project.
- D-06-19 The bigger point is that the Project as described has too many ambiguities. Where will the fill soil come from? This material will affect both GHG emissions and the reclamation process. Will the Project site be reclaimed in stages or all at once at the end? We advocate the first option, but both options are interwoven ambiguously in the text. We suggest settling on one and making sure the DEIR properly analyzes that project.

**D-06-13** As disclosed in Appendix I, *Plant Species Observed*, of the Biological Resources Technical Report recirculated with the RDEIR (Appendix C of the of the FEIR and RDEIR), yerba mansa (*Anemopsis californica*) was observed within the Project site in association with southern cottonwood willow riparian forest habitat. This habitat type occurs in the northeastern and southwestern portions of the Project site along the Sweetwater River and to the east of Steele Canyon Road along the southern site boundary in a lower-lying area that was previously excavated (refer to Figure 2.2-3 of the RDEIR and Figure 10 of the Biological Resources Technical Report). The planting palettes/seed mixes for the native habitat revegetation areas and wetland mitigation areas are included in Section 5.5.1 of the Conceptual Revegetation Plan (Appendix N of the Biological Resources Technical Report recirculated with the RDEIR) and Section 5.5.1 of the Conceptual Wetland Mitigation Plan (Appendix O of the Biological Resources Technical Report). Please also see Response to Comment D-06-14, below, regarding the species selected for planting and seeding.

**D-06-14** As detailed in Section 5.5.1 of the Project's Conceptual Revegetation Plan (Appendix N of the Biological Resources Technical Report recirculated with the RDEIR), "The species selected for planting and seeding within native revegetation areas have been observed within the on-site habitat or are known to occur within the surrounding area. These species grow in a variety of moisture regimes and the plant palettes are intended to provide the flexibility for vegetation to establish based on microenvironmental variations in moisture within the riparian forest and scrub areas within the expanded floodplain." A similar statement is included in Section 5.5.1 of the Project's Conceptual Wetland Mitigation Plan (Appendix O of the Biological Resources Technical Report). Methods for planting and seeding are further detailed in Section 5.5 of the Conceptual Revegetation Plan and Section 5.5 of the Conceptual Wetland Mitigation Plan.

**D-06-15** Non-native plant control methods are described in Section 6.1.2 of the Project's Conceptual Revegetation Plan (Appendix N of the Biological Resources Technical Report) and Section 6.1.2 of the Conceptual Wetland Mitigation Plan (Appendix O of the Biological Resources Technical Report) that were revised and recirculated with the RDEIR. As stated, "As non-native plants become evident, they should be removed by hand or controlled with the proper herbicides (if approved by the Restoration Specialist)." Herbicides would be used as part of weed control efforts. Pesticides would be used to control pests, which are addressed in Section 6.1.5 of the Conceptual Revegetation Plan and Section 6.1.5 of the Conceptual Wetland Mitigation Plan.

**D-06-16** As described in Section 6.2.1 of the Project's Conceptual Revegetation Plan (Appendix N of the Biological Resources Technical Report) and Section 6.2.1 of the Conceptual Wetland Mitigation Plan (Appendix O of the Biological Resources Technical Report) that were revised and recirculated with the RDEIR, "Maintenance will be performed as necessary to prevent re-seeding by non-native plants and will likely change with varying site conditions and seasons" and that the scheduled outlined within the plans "serves only as a guideline, and more frequent maintenance may be required to prevent re-seeding by non-native vegetation and/or to meet interim cover limits for non-native vegetation." Furthermore, the recommended maintenance schedule emphasizes that maintenance takes place from late winter through early summer and does not call for quarterly weeding as indicated in the comment.

**D-06-17** The commenter's suggestions are noted. As stated in Section 2.4 of the Project Reclamation Plan, which can be found on the County's website for the Cottonwood Sand Mine Project, "A maintenance program to control weeds on un-reclaimed disturbed ground would be established and implemented at the start of the mining process." The maintenance program would be established in coordination with the County based on reasonable approaches to reduce invasive plant species. Section 2.8, Storm Water and Erosion Control, of the Reclamation Plan describes the BMP's that would be included in the SWPPP, stating that BMPs will be specified for soil stabilization, sediment control, vehicle track out, and transport of soil by wind (e.g., dust control and wind erosion BMPs). Typical soil stabilization BMPs include preservation of existing vegetation, mulch, hydroseeding, soil binders, geotextiles, lining of drainage ditches and/or velocity control structures if needed. Vehicular track out and dust related BMPs may include paved or stabilized roadway surfaces, tire washes, use of grates at vehicle entrances or exits, soil stabilizers, and water spray. The final plan may incorporate these or additional BMPs as appropriate on the site.

**D-06-18** Please see Response to Comment D-A6-24, which describes the rationale for how the alternatives presented in Chapter 4.0 were selected. The commenter's preference for the Biological Resources Avoidance Alternative is noted. Additionally, mining activities occurring during the rainy season (generally November through March) would be located away from the river channel to reduce the potential for overflow into active mining areas during a large storm event.

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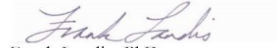
D-06-19  
cont.

Regardless, the Reclamation Plan could be massively and easily improved, if more thought is given to weed control, planting palettes, what to seed where, and the use (or not) of hydroseeding and hydromulching. These issues need to be fixed in the FEIR.

D-06-20

Thank you for taking these comments. Please keep CNPSSD informed of all developments with this project and associated documents and meetings, through email to [conservation@cnpsd.org](mailto:conservation@cnpsd.org) and [franklandis03@yahoo.com](mailto:franklandis03@yahoo.com).

Sincerely,



Frank Landis, PhD  
Conservation Chair  
California Native Plant Society, San Diego Chapter

**D-06-19** Please see Response to Comment D-A1-7 regarding backfill, as well as Responses to Comments D-06-4 through D-06-6, addressing the reclamation process. The County acknowledges these summary comments; however, they do not raise a specific issue concerning the environmental analysis or adequacy of the DEIR. Please see Topical Response 2, *CEQA Requirements for Responding to Comments*, as well as the responses above to specific comments raised in this letter.

**D-06-20** This comment does not raise an issue concerning the environmental analysis or adequacy of the DEIR.



2/28/22

Mr. Robert Hingtgen, Land Use & Environmental Planner  
County of San Diego - Planning & Development Services (PDS)  
5510 Overland Avenue, Suite 310  
San Diego, CA 92123  
Via email: [Robert.Hingtgen@sdcounty.ca.gov](mailto:Robert.Hingtgen@sdcounty.ca.gov)

SUBJECT: Cottonwood Sand Mining Project (PDS2018-MUP-18-023), (PDS2018-RP-18-001)  
Log No. PDS2018-ER-18-19-007; SCH# 2019100513

RE: Response to the County of San Diego's Notice of Availability of a Draft Environmental Impact Report (DEIR) for the Cottonwood Sand Mining Project

Dear Mr. Hingtgen:

D-07-1

San Diego Gas and Electric Company (SDG&E) respectfully submits this letter in response to the County of San Diego's *Notice of Availability of a Draft Environmental Impact Report (DEIR) for the Cottonwood Sand Mining Project*. SDG&E provides gas and electric utility services to customers throughout the greater San Diego County and South Orange County areas, and is regulated by the California Public Utilities Commission (CPUC). The CPUC mandates that SDG&E maintain its utility infrastructure and retain its exclusive easement rights, and a number of SDG&E facilities and easements are located within the DEIR project area.

The proposed Cottonwood Sand Mining Project (Project) will allow for the conversion of the existing Cottonwood Golf Course into a 10-year sand mining operation plus a 2-year reclamation period. SDG&E wants to ensure that the Draft EIR adequately addresses the public utility implications of the proposed Project.

D-07-2

Based on a review of the Project's Plot Plan and Reclamation Plan, the following SDG&E facilities have the potential to be impacted by the proposed project:

- Electric Transmission facilities
  - TL 23021, TL 23022, TL 23023, TL 23041
  - TL 13824
  - TL 632
- Electric Distribution facilities (various)
- Natural Gas transmission pipeline facilities
  - :SL 49-16 natural gas pipeline
- Numerous underground utility handholes

## D-07 – San Diego Gas and Electric Company (SDG&E)

**D-07-1** The County acknowledges these introductory comments; however, they do not raise an issue concerning the environmental analysis or adequacy of the DEIR. Please see the responses below to specific comments raised in this letter.

**D-07-2** The Project Applicant has been in communication with SDG&E to address these comments. As part of those communications, it is agreed that the Applicant would not propose relocation of gas or electric facilities. The grading plan and Willow Glen Drive Striping Plan have been amended to leave all SDG&E facilities in place. These changes have been reflected in the FEIR.





A Semptra Energy utility®

D-07-2  
cont. In DEIR Subchapter 3.2 “Effects Found Not to Be Significant During Initial Study, Section 3.2.7 “Utilities and Service Systems” – there is no mention whatsoever about any potential impacts to existing SDG&E electric and/or gas facilities.

SDG&E’s primary concern is that the Draft EIR does not specifically address or discuss the need to relocate or alter any SDG&E gas or electric utility facilities, many of which are in existing SDG&E easement and the Project footprint will encroach in our Right-of-Way. There is no specific language regarding utility relocations or CPUC oversight requirements are provided. If these relocations or alterations are required, they should be discussed in the Final EIR. SDG&E has specific processes for analyzing any potential changes or impacts to our electric and/or gas facilities that are initiated by private and/or public agency development projects.

D-07-3 SDG&E also has concerns regarding potentially dangerous mining activities as a whole within existing easements or encroaching upon SDG&E facilities.

D-07-4 In compliance with CEQA, the EIR must fully analyze all impacts related to the Project including any Project design changes that result in the relocation of SDG&E utilities and access roads necessary for operation and maintenance of these facilities. If it is determined by SDG&E to be a viable option, the relocation of SDG&E facilities should be addressed in the Final EIR and are subject to the following:

- Relocation of any access roads, work areas and easements, including encroachments in our Right-of-Way must be fully analyzed in the EIR, and are subject to compliance with CPUC Section 851 standards, including CPUC Advice Letter utility relocation filing requirements.
- Addressing all utility infrastructure including distribution facilities will help protect against any potential “piecemealing” arguments under CEQA.

D-07-5 SDG&E thanks the County of San Diego for the opportunity to comment on the Draft EIR document. We are available and would appreciate the opportunity to meet with County staff to discuss the proposed Project as it relates to existing SDG&E utility infrastructure. Please coordinate land related items with Colleen Fino, SDG&E Land Management Supervisor at (619) 676-0119 or via e-mail at [cfino@sdge.com](mailto:cfino@sdge.com). For further information regarding the CPUC regulatory process and environmental requirements, please contact me at (619) 857-8922 or [wye@sdge.com](mailto:wye@sdge.com).

Sincerely,

*William R. Yee*

William “Bill” Yee, Project Manager - II  
Environmental Project Permitting & Construction | Environmental Services  
SDG&E

cc: Colleen Fino, Land Management Supervisor, SDG&E  
Lisa Murphy, Senior Land Management Rep., SDG&E

**D-07-3** Per communication between SDG&E and the Project Applicant following receipt of this comment letter, grading near existing SDG&E easements or facilities would be conditioned to abide by SDG&E’s encroachment guidelines.

**D-07-4** Please see Response to Comment D-07-2. Access to the existing SDG&E facilities would remain in place.

**D-07-5** This comment does not raise an issue concerning the environmental analysis or adequacy of the DEIR. No further response is required.



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February 28, 2022

**Via E-Mail**

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5510 Overland Avenue, Suite 310  
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Re: Cottonwood Sand Mining Project (PDS2018-MUP-18-023),  
(PDS2018-RP-18-001); Log No. PDS2018-ER-18-19-007; SCH#  
2019100513

Dear Mr. Hingtgen:

This firm represents the Sierra Club San Diego Chapter ("Sierra Club") in connection with the proposed Cottonwood Sand Mining Project ("Project"). We submit these comments to inform the County that this draft Environmental Impact Report ("DEIR"), is inadequate under the California Environmental Quality Act ("CEQA"), Public Resources Code § 21000 et seq., and the CEQA Guidelines, California Code of Regulations, title 14, § 15000 et seq. ("CEQA Guidelines"). In addition, the Project as currently described conflicts with several provisions of the San Diego County General Plan and the Valle de Oro Community Plan, as well as the County's Zoning Ordinance.

The Project as proposed will have significant, adverse impacts on both the natural and the human environment in San Diego County. These impacts include, but are not limited to, potentially devastating effects on: local hydrology and water quality, habitat for both terrestrial and aquatic wildlife, local traffic, air quality, and noise. In addition, the Project is inconsistent with the San Diego County Multiple Species Conservation Program ("MSCP"). But none of these impacts or inconsistencies of the Project can be discerned from reading the DEIR. With regard to each of CEQA's substantive requirements—a complete and stable project description, a thorough analysis of significant impacts, identification of feasible and enforceable mitigation measures, an analysis of a reasonable range of alternatives—the DEIR falls woefully short. As a

D-08-1

**D-08 – Shute Mihaly and Weinberger Attorneys for the Sierra Club San Diego Chapter**

**D-08-1** This comment does not raise an issue concerning the environmental analysis or adequacy of the DEIR. No further response is required.

Robert Hingtgen  
February 28, 2022  
Page 2

D-08-1  
cont.

result, the DEIR fails to meet CEQA's fundamental purpose of providing disclosure to the public of the Project's environmental effects. The County and the applicant need to start over—beginning with revised Project objectives that allow for consideration of a reasonable range of alternatives that would be consistent with the General Plan—and prepare and recirculate a new, legally adequate DEIR.

This letter is submitted along with the reports prepared by Greg Kamman, Hydrogeologist with CBEC Eco Engineering, attached as Appendix A ("CBEC Report"); Robert Hamilton, Biologist, attached as Appendix B ("Hamilton Report"); Patrick Sutton, Senior Environmental Engineer, Baseline Environmental attached as Appendix C (Baseline Report) and Jeremy Decker, Acoustical Engineer with Salter and Associates attached as Appendix D ("Salter Report"). We respectfully refer the County to the aforementioned attached reports, both here and throughout these comments, for further detail and discussion of the DEIR's inadequacies. We request that the County reply to each of the comments in this letter and to each of the comments in the attached reports.

#### I. Introduction and Background

The Project site is located within San Diego County's jurisdiction on land designated as Semi-Rural Regional and Specific Plan Area Land Use and zoned Open Space (S80), Specific Plan (S88), and Holding Area (S90). The proposed Project includes: a Major Use Permit to allow sand mining over a period of 10-12 years; approval of: Reclamation Plan, Landscape Plan (for revegetation), a Public Improvement Plan, right-of-way permits; and a host of discretionary permits from resource agencies. DEIR at S-2 and S-3. The Project would extract 6.4 million tons of material over a period of 10 years. DEIR at 1-3. The Reclamation Plan and revegetation would be implemented as each Project phase is completed over the 12 year period.

D-08-2

The majority of the proposed Project site is located in the flood plain for the Sweetwater River and within both the northeastern portion of the South County Segment and southwestern portion of the Metro-Lakeside-Jamul Segment of the adopted the MSCP subarea plans. DEIR at 2.2-2. These plan areas have already suffered extensive depletion by past development. Remaining intact habitat blocks—identified as Pre-Approved Mitigation Areas ("PAMAs") with linkages to large open space areas—are rare. The project site is also within an area identified by the MSCP as a Biological Resource Core Area ("BRCA"), which is defined as "land that qualifies as an integral component of a viable regional ecosystem" under the County's Biological Mitigation Ordinance ("BMO"). BMO section 86.508(a). The BRCA's are areas supporting a high concentration of sensitive biological resources, which, if lost or fragmented, could not be replaced or mitigated elsewhere. The fragmentation and loss of ecological value of a

SHUTE, MIHALY  
& WEINBERGER LLP

**D-08-2** This is primarily a statement of some Project elements, as well as statements regarding biological planning areas. Most of this comment is not in disagreement with Project analyses, and no response is necessary. One element of the comment concerns the site being designated as a Biological Resource Core Area (BRCA), and that any Project-related fragmentation or loss of ecological value "would jeopardize the assembly of a preserve system." It is noted that the most valuable portion of the Project property (the 35 southern acres with the highest quality habitat) would be untouched by the Project. It is also noted that the existing river is degraded, with substantial encroachment by invasive species. Both of these issues would be improved by the Project, leaving this stretch of the Sweetwater River and associated habitat in better condition than currently exists, which would also be expected to better serve wildlife using the area. It is also noted, however, that (as stated in Response to Comment D-08-1), the biological resources analysis contained in the DEIR was significantly revised and recirculated as part of the RDEIR. The revised biological resources analysis circulated in the RDEIR wholly supersedes the original biological resources analysis contained in the DEIR. No additional response is required here.



Robert Hingtgen  
February 28, 2022  
Page 3

D-08-2  
cont. ↑  
BRCA or PAMA—as exemplified by this project site—would jeopardize the assembly of a preserve system. There are no intact core areas to spare. Importantly, the whole of the Project site is designated BRCA and an important habitat corridor linkage between the McGinty Mountain/Sycuan Peak-Dehesa and Sweetwater Reservoir/San Miguel Mountain BRCA's. Hamilton Report at 1.

D-08-3  
This Project will have serious long-term consequences, not only for the area residents, but for the San Diego County region. Those consequences include potentially devastating effects related to changes in drainage patterns, impacts to groundwater recharge, jeopardizing habitat planning efforts and loss of designated conservation lands, impacts to multiple sensitive species and their habitats, loss of open space, visual impacts, impacts to sensitive cultural sites, increased traffic congestion, an increased risk air and water pollution, and impacts to quality of life for thousands of area residents.

D-08-4  
In a study of San Diego County regional aggregate supply in 2011, the site was not identified as a viable location for sand mining. The study surveyed lands in the San Diego region with Mineral Resource Zone classifications. San Diego Region Aggregate Supply Study 2011 at 7-16, excerpt attached as Appendix E. After accounting for the recommended 1,300-foot setback from planned residential uses to mitigate for noise, the report concluded that there would not be any potential aggregate sites with 60 or more effective acres. Id. at Figure 7-9 (indicating that once the recommended setback is applied, there are no available lands with Mineral Resource Zone classification along the Sweetwater River on the proposed Project site.) Thus, because of its proximity to developed and planned residential areas and environmentally protected areas, the Project site was effectively deemed unavailable for sand mining. Id. Moreover, as explained in detail below, the Project is inconsistent with applicable plans and ordinances, and the DEIR's analysis of these inconsistencies is deeply inadequate.

D-08-6  
The DEIR for the proposed Project suffers from several major problems. First, the DEIR generally downplays the importance of the Project site as a wildlife linkage corridor. Second, the DEIR downplays significant impacts resulting during the 10-12 year mining operation, stating that because the project site has been developed as a golf course and because of the reclamation plan for the site, impacts from mining are temporary. DEIR at 2.2-3-32 2.2-30-2.2-41, 3.1.1-15, 3.1.1-22 and Hamilton Report at 30. to DEIR. This conclusion defies common sense; twelve years is not “short-term.” (Twelve years constitutes an entire childhood, and for many people, most of their retirement years.) A project that calls for sand and gravel mining operations over a dozen years in an area long recognized for its natural beauty, high-value biological resources, and serene environs would clearly harm biological values and degrade quality of life for residents of the area.

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**D-08-3** The County acknowledges these general, introductory comments. Please see the responses below to specific comments raised in this letter, which address the issues summarized in this comment. Please see Response to Comment D-08-1 related to comments on biological resources.

**D-08-4** The 2011 San Diego Region Aggregate Supply Study referenced in this comment and included in part as Appendix E to this letter was prepared on behalf of SANDAG, in cooperation with Caltrans District 11, to examine the supply issues related to aggregate in the region. As stated in the “Purpose of the Study” in Chapter 1, the purpose of the study was “to provide background information and tools necessary to begin developing a framework to manage aggregate to address future projected shortfalls” (SANDAG 2011). This comment notes that the study surveyed lands in the San Diego region with Mineral Resource Zone classifications, but fails to note that the 2011 analysis only identified aggregate sites that were *not developed* (emphasis added). Contrary to the commenter’s claim that the Project site was deemed unavailable due to proximity to developed and planned residential areas and environmentally protected areas, it was eliminated from further evaluation since it was developed as an active golf course at the time the study was conducted. The limitations of the study are further clarified in Chapter 1 under “Objectives and Limitations of the Study,” where it also notes that “additional groundwork is required for site-specific aggregate quality analysis” and that the GIS work performed to identify potential sites for aggregate mining “cannot provide sufficient information for the final identification of specific sites” without additional consultation and coordination with local jurisdictions that have land use authority to look at zoning ordinances and other local policies. Please see Topical Response 11, *Consistency with Plans and Policies*, regarding the Project’s consistency with the County’s land use plans, policies, ordinances, and codes, which allow extractive use within the MUP area.

Please see Topical Response 7, *Noise Impacts*, which addresses comments related to the 1,300-foot setback requested by the comment for noise impacts.

**D-08-5** Please see Topical Response 11 regarding the Project's consistency with the County's land use plans, policies, ordinances, and codes. Additionally, please see Responses to Comments D-08-46 through D-08-60, below, regarding specific comments provided in this letter related to the County's land use plans, policies, ordinances, and codes.

**D-08-5** Please see Topical Response 11 regarding the Project's consistency with the County's land use plans, policies, ordinances, and codes. Additionally, please see Responses to Comments D-08-46 through D-08-60, below, regarding specific comments provided in this letter related to the County's land use plans, policies, ordinances, and codes.

**D-08-6** Please see Topical Response 9, *Wildlife Corridors and Species Connectivity Impacts*, regarding the Project's effect on wildlife movement, habitat linkages, and connectivity.

**D-08-7** The EIR does not contend that the impacts are temporary because the Project site has been developed with golf course uses. The Project would cover a span of approximately 12 years, and, given the Project would occur in much smaller phases progressively across the site, the entire Project site would not be disturbed for the entire 12-year time horizon. Upon Project completion, the reclaimed site would look wholly different than existing conditions, containing better natural habitat than currently exists as a developed golf course. Biological values and potential Project impacts and benefits are discussed in detail in RDEIR Chapter 2.2, *Biological Resources*. Relative to the general comment that the Project would result in degradation of quality of life for area residents, no argument is made that Project effects would not occur. The EIR details potential effects for such topics as aesthetics, noise, air quality, traffic, and others, and assesses the magnitude and significance of potential adverse impacts. This is a general comment without detail. Specific responses regarding the aforementioned topics are provided for comments that raise an issue with the EIR's analysis of those topics.

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D-O8-8

As discussed in more detail below, the DEIR presents overly narrow project objectives, an incomplete description of the project setting and of the project itself, and also substantially understates the severity and extent of a range of environmental impacts, and thus fails to provide adequate mitigation. In addition, in numerous instances, the DEIR also fails to adequately analyze the Project's cumulative impacts. These inadequacies require that the DEIR be revised and recirculated so that the public and decision-makers are provided with a proper analysis of the Project's significant environmental impacts and feasible mitigation for those impacts. *See* CEQA Guidelines § 15002(a)(1) (listing as one of the "basic purposes" of CEQA to "[i]nform governmental decision makers and the public about the potential, significant environmental effects of proposed activities").

To ensure that the public and the County's decision-makers have adequate information to consider the effects of the proposed Project—as well as to comply with the law—the County must require revisions in the Project to make it compliant with the General Plan and other applicable plans, then prepare and recirculate a revised DEIR that properly describes the Project, analyzes its impacts, and considers meaningful alternatives and mitigation measures that would help ameliorate those impacts.

**II. The DEIR's Flawed Description of the Setting and the Project Does Not Permit Meaningful Public Review of the Project.**

**A. Project Setting**

D-O8-9

Accurate and complete information pertaining to the setting of the project and surrounding uses is critical to an evaluation of a project's impact on the environment. *San Joaquin Raptor/Wildlife Center v. Stanislaus County*, 27 Cal.App.4th 713, 728 (1994); *see also Friends of the Bel River v. Sonoma County Water Agency*, 108 Cal.App.4th 859, 875 (2003) (incomplete description of the Project's environmental setting fails to set the stage for a discussion of significant effects). Here, the DEIR's deficiencies in describing the Project's setting undermine its adequacy as an informational document.

D-O8-10

The DEIR fails to present important contextual information related to biological and hydrological resources on the Project site. For example, the DEIR describes the site as developed and including only small portions of high habitat value. DEIR at 2.2-2. However, this description belies the site's capacity to support special-status by way of providing a safe corridor to travel between conserved habitat areas. Hamilton Report at 27. As the Hamilton Report points out, the entire proposed Project site is designated for conservation in the County of San Diego's MSCP as an important wildlife movement

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**D-O8-8** Please see Responses to Comments D-O8-9 through D-O8-64, below, for further detailed responses to these general introductory comments.

**D-O8-9** This comment reiterates a theme relative to adequacy of the Project Description, and, based on surrounding comments and legal citations, specific to subsequent analysis of biological and hydrological resources. Please see Response to Comment D-O8-1, above, and FEIR Section 3.1.5, *Hydrology and Water Quality*, which identifies potential impacts to hydrological resources as less than significant.

**D-O8-10** The County notes that this comment letter was received during the public review and comment period on the DEIR. As explained in Topical Response 1, *Reason for the Recirculation of the DEIR and the Recirculated DEIR Process*, the biological resources analysis contained in the DEIR was significantly revised and recirculated as part of the RDEIR. The revised biological resources analysis circulated in the RDEIR wholly supersedes the original biological resources analysis contained in the DEIR. Please refer to the updated analysis in the FEIR (Subchapter 2.2), the Biological Resources Technical Report circulated as Appendix C, and responses to comments received during public review of the RDEIR.

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cont.

corridor that contributes to biodiversity and long-term sustainability of the regional conservation network.

In fact, County Planning staff, in scoping comments dated May 19, 2019 ("County Scoping Letter"), indicated that the "project contains nearly the *entire habitat linkage* between the McGinty Mountain/Sequan Peak-Dehesa Biological Resource Core Area (BRCA) and the Sweetwater Reservoir/San Miguel Mountain BRCA." County Scoping Letter at 77; emphasis added. However, despite the fact the project site occupies a critically important location in the assembled MSCP preserve system, and regardless of MSCP requirements and clear County staff direction to analyze impacts on wildlife movement in this wildlife corridor, the DEIR omits analysis of the existing level of wildlife movement through the site. Hamilton Report at 9. Because no wildlife movement data were collected, the DEIR cannot and does not provide the "analysis of potential project impacts to wildlife movement through this linkage" Id.

In addition, the DEIR overstates project site disturbance and degradation. For instance, it incorrectly states that intermittent mining has taken place on the site up until 2016. DEIR Appendix C, Biological Technical Report, at 12. Yet, the DEIR itself contradicts this statement and clarifies that the most recent material removal was related to golf course creation of water hazards and expanded fairways. DEIR at 1-28 ("Several fairways were regraded and realigned on the southwestern end of the Project site within the now closed Lakes Course. *Although not a mining project*, materials were removed from the site.") In another example, as explained in the Hamilton Report, the DEIR's assertion that "[T]he site is currently an active golf course" is factually incorrect and misleading. The western third of the site is an abandoned golf course with minimal to no human presence and a landscape that has been rewilding itself for several years. Id.

Similarly, the DEIR states that current site activities such as mowing, night lighting, fencing, and noise associated with golf course operations discourage large animals from using the site as a wildlife corridor. DEIR at 2.2-19. The DEIR fails to describe the existing night lighting, the distance of the lighting from the riparian corridor, the frequency of mowing, the extent and condition of fencing, or the existing ambient noise on the site. According to the Hamilton Report, existing lighting appears to be localized and mowing appears to take place on a limited portion of the site. Hamilton Report at 22. Moreover, area residents observe that neither the active golf course or the abandoned course are lit all night such that the lighting is limited and wildlife are still likely to use the site. The DEIR's claims that fencing on the site provides too much of a barrier for wildlife movement is not substantiated. On the contrary, some of the fences are in a state of disrepair such that animals can easily move around them. Hamilton Report at 34.

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The DEIR also fails to substantiate the claim that existing ambient nighttime noise levels at the site create a disturbance for wildlife. Salter Report, attached as Appendix D at 4 and 5. In fact, as explained in the Salter report, the DEIR fails to both adequately evaluate existing ambient noise, thus failing to establish accurate baseline conditions, and fails to analyze predicted noise levels on-site and in adjacent habitat areas. *Id.* Specifically, the DEIR acoustical site assessment noise measurements, which comprised 10 to 15 minute noise measurements, are insufficient to accurately evaluate ambient noise levels. Salter Report at 3. Existing noise levels in areas are generally between 52 dBA and 55 dBA, which would not be disruptive to wildlife. *Id.*

Further, while the DEIR acknowledges that the Project site includes sensitive vegetation communities that provide habitat for a long list of sensitive species,<sup>1</sup> the DEIR entirely ignores two additional California Species of Special Concern. DEIR at 2.2-7 to 2.2-9. California Glossy Snake (*Arizona elegans occidentalis*) and Southern California Legless Lizard (*Anniella stebbinsi*), both [California Species of Special Concern] closely associated with loose, alluvial soils (such as those found on the site), and also have a high potential to occur on the project site. Hamilton Report at 3, 4 and 5. In addition, the DEIR surveys for arroyo toad (a federally endangered species) are inadequate and cannot be used to rule out the presence of this species. Hamilton Report at 27 and 28.

D-08-11

Perhaps most egregiously, the DEIR fails to adequately describe the existing hydrologic setting of the site and the vicinity. Specifically, the DEIR fails to describe baseline groundwater conditions at the site. Kamman Report at \_\_. This is important information from which to establish a baseline. As explained in the Kamman report, without a proper description of baseline conditions, the DEIR is unable to provide an adequate analysis of Project-related increases or decreases in groundwater recharge relative to existing conditions. *Id.* A revised analysis must include a Hydrology and Water Quality section that adequately describes the hydrologic setting.

D-08-12

#### B. Project Description

Under CEQA, the inclusion in the EIR of a clear and comprehensive description of the proposed project is critical to meaningful public review. *County of Inyo v. City of Los Angeles* (1977) 71 Cal App.3d 185, 193 (“*Inyo II*”). The court in *Inyo II* explained why a thorough project description is necessary:

<sup>1</sup> The DEIR lists 17 special-status wildlife species observed on or near the project site and nine additional species determined to have high potential to occur.

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**D-08-11** The Project hydrologic setting, specifically as it relates to groundwater, is described in FEIR Section 3.1.5.1 under Groundwater, and in greater detail in Section 2.7, *Hydrologic Inventory and Groundwater Levels*, of the Groundwater Investigation Report (Appendix R to the DEIR and FEIR). Project area groundwater levels are estimated with data that was measured by Sweetwater Authority between 2007 and 2021 in wells Ivanhoe #11 and Lakes #11 within the Project site. As described in Appendix R, the average groundwater elevation at upgradient well Ivanhoe #11 is about 339 feet above mean sea level (ft-msl), while the average elevation at downgradient well Lakes #11 is about 315 ft-msl. Assuming these wells are not artesian, with a grade elevation of 371 ft-msl at Ivanhoe #11 and 329 ft-msl at Lakes #11, the average depth-to-water below grade in these wells is about 26 feet at Ivanhoe #11 and about 12 feet at Lakes #11. These baseline groundwater conditions were used to evaluate the Project pursuant to the County’s Guidelines for the Determination of Significance related to groundwater storage and well interference. Please see Responses to Comments D-08-74 through D-08-82, which address the specific comments from the report prepared by Greg Kamman of CBEC Eco Engineering (hereafter referred to as “CEC Report”), attached as Appendix A to the comment letter.

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"A curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the "no project" alternative) and weigh other alternatives in the balance."

Id. at 192-93. Thus, "[a]n accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR." *Santiago County Water District v. County of Orange* (1981) 118 Cal App 3d 818, 830.

The DEIR fails to describe aspects of the Project that are essential for the DEIR to provide a meaningful environmental analysis. In some cases, important aspects of the Project are omitted altogether. In perhaps the most glaring example, the DEIR fails to provide important details about the over-excavation of materials and subsequent fill using only the "waste material" from the excavation. CBEC Report at 4 and 5. The DEIR describes the use of waste material for backfilling excavated areas. DEIR at 1-12. However, as described in more detail below, the CBEC analysis indicates that waste materials alone are unlikely to be adequate to achieve the expected post-reclamation topography, significantly undermining the feasibility of the Reclamation Grading Plan. CBEC at 4.

CBEC conducted a cut fill analysis of the Project and reclamation grading plans. CBEC Report at 4 and 5. Although the DEIR's description of this aspect of the Project is sparse and lacking in detail, CBEC estimates that over excavation and large fill areas will require 3.4 million cubic yards of backfill materials. Id. This amount of fill is almost seven times the volume of "waste" material the Project will have left after the project is completed. CBEC Report at 4 and 5; DEIR at 1-3 (extraction of 6.4 million tons with a 10 percent waste factor). Therefore, the Project site will not have sufficient waste material from the mining operation to backfill the over-excavated pits and attain the final grades as presented in the Reclamation Plan if waste material from the mining operation is the only fill material.

This gap in the project description implicates other inadequate analysis in the DEIR. For example, trucking backfill materials from off-site areas will result in increased VMT, increased air pollutants, higher greenhouse gas emissions, and increased noise. A revised DEIR should identify the off-site sources for additional materials and evaluate the transportation, air quality, greenhouse gas, and noise impacts associated with bringing the material on-site.

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**D-08-12** The comment identifies a shortfall in backfill material required to achieve the expected post-reclamation topography, and potential analysis related to provision of that material. In response to this issue, the RDEIR for the Project included an updated Project Description, which addresses the shortfall in backfill material and the number of truck trips necessary to bring in the fill. Please see Topical Response 3, *EIR Errata and Updated Technical Reports*, for analytical updates consistent with Project Description modification, and Topical Response 5, *Imported Materials and Backfilling Process*, for information regarding the proposed backfill process.

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In another example, the DEIR fails to describe proposed uses for areas not planned for recreational uses described in the reclamation plan. These areas would be graded elevated areas, on the west and central of the proposed Project area. See red shaded areas showing graded elevated areas in CBEC Report, Figure 1. The DEIR is vague about future plans for these areas and it is unclear whether or not they will be included in conservation easements. If they are to be preserved as natural open space, this plan must be made clear in the project description and associated maps.

If the elevated areas not included in the reclamation will *not* be preserved under the proposed conservation easements, the DEIR must evaluate impacts of potential development in those locations. The DEIR states that “[F]uture development of the site is not included in the Proposed Project...” and only describes the planned recreational uses. DEIR at 1.33. The DEIR also states “Removal of the golf course could ultimately lead to the construction of housing, essential services, fire protection services, or agriculture on portions of the site outside of the floodway, although this is not proposed as part of the Project.” Id. The fact that there is no specific proposal for the development that could take place in these areas does not excuse the County from evaluating the potential impacts now. The areas in question would have a higher elevation (up to 10 feet) after Project implementation than they currently do. CBEC at 4. It is grading resulting from the proposed Project that will elevate these sites, making development viable, yet the DEIR maintains that the improvements are not a part of this proposed Project. DEIR at 1.33. Despite the DEIR’s unsupported assertions to the contrary, potential future development on the Project site is an integral part of the Project and must be analyzed as such, in this EIR. *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713. The DEIR must include a more detailed description of these sites and a full evaluation of related impacts. Instead, it defers the necessary evaluation to an undetermined date in the future, thereby illegally segmenting the Project.

CEQA prohibits such segmentation of a project. See *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonoma* (2007) 155 Cal.App.4th 1214, 1229 (“when one activity is an integral part of another activity, the combined activities are within the scope of the same CEQA project” and must be analyzed together); Guidelines § 15378(a) (“‘Project’ means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.”). Breaking the project into smaller sub-projects will lead to inadequate environmental review. See, e.g., *Bozung v. Local Agency Formation Comm’n* (1975) 13 Cal.3d 263, 283-84 (CEQA mandates that “environmental considerations do not become submerged by chopping a large project into many little ones”).

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**D-08-13** In this case, the Proposed Project is a mining project with areas of extraction proposed to be reclaimed and restored to an end use of open space, multi-use trails, and land suitable for uses allowed by the General Plan and existing zoning classifications. Specific elements of the proposed Major Use Permit and Reclamation Plan are presented in Chapter 1.0 of the FEIR. No other future uses are proposed or would be permitted upon approval of the Project, and the proposed Project does not include any change to the General Plan designation of the Project site. The comment’s reference to a “new hybrid planned community” being proposed in the future is unfounded. No future planned community is currently proposed, known to be proposed in the future, and no future planned community would be permitted with approval of this Project. CEQA does not require that speculative future impacts be analyzed in an EIR. Any future action would require its own CEQA analysis with a “clear and comprehensive description,” as described in Comment D-08-12. Project areas to be preserved as natural open space are clearly demarcated on Figure 2.2-9 of the DEIR.



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The potential new development at the proposed Project site would undoubtedly result in additional potentially significant environmental impacts that the DEIR ignores. These include, but are not limited to, construction emissions, noise, visual, and water quality impacts. However, because the DEIR never even describes the potential developments or their construction, it also fails to analyze any of these impacts or to consider mitigation measures. CEQA prohibits such omissions. CEQA Guidelines § 15378(a). It is no excuse that the description is preliminary in nature; the DEIR should include analysis of a worst-case scenario development as allowed per County land use regulations. A revised DEIR should describe the potential development and related impacts must be disclosed and analyzed now, during this CEQA process. Given the site's location, surrounding by sensitive habitat and preserved lands, and the site's importance as a wildlife corridor, this gap in the project description is especially unacceptable. A revised DEIR must either a) specify that these areas will be included in proposed conservation easements or b) identify potential uses for these sites and analyze related impacts as part of this CEQA process.

In sum, the DEIR presents an unstable and inadequate project description. This approach is not permissible under CEQA. The failure to describe the whole of the Project is a serious and pervasive deficiency, as it renders faulty the EIR's environmental impact analyses as well as the discussion of potential mitigation measures and alternatives to minimize those impacts. The EIR must provide a sufficient description of planned over-excavation of materials and fill, of the potential development on the graded elevated areas, and any other Project details. This information is necessary to allow decision makers, the public and responsible agencies to evaluate potential environmental impacts.

### III. The DEIR Fails to Analyze and Mitigate the Project's Significant Environmental Impacts.

D-08-14

CEQA requires that an EIR be detailed, complete, and reflect a good faith effort at full disclosure. CEQA Guidelines § 15151. The document should provide a sufficient degree of analysis to inform the public about the proposed project's adverse environmental impacts and to allow decision-makers to make intelligent judgments. *Id.* Consistent with this requirement, the information regarding the project's impacts must be "painstakingly ferreted out." *Environmental Planning and Information Council of Western El Dorado County v. County of El Dorado*, 131 Cal.App.3d 350, 357 (1982)

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**D-08-14** This comment purports to summarize the law as it relates to the mandatory, procedural, and substantive requirements of CEQA. However, the comment does not allege any specific deficiencies in the EIR. No further response is required.

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(finding an EIR for a general plan amendment inadequate where the document did not make clear the effect on the physical environment).

Meaningful analysis of impacts effectuates one of CEQA's fundamental purposes: to "inform the public and responsible officials of the environmental consequences of their decisions before they are made." *Laurel Heights Improvement Ass'n v. Regents of the University of California*, 6 Cal.4th 1112, 1123 (1993) (*Laurel Heights II*). To accomplish this purpose, an EIR must contain facts and analysis, not just an agency's bare conclusions. *Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal.3d 553, 568 (1990). Nor may an agency defer its assessment of important environmental impacts until after the project is approved. *Sundstrom v. County of Mendocino*, 202 Cal.App.3d 296, 306-07 (1988). An EIR's conclusions must be supported by substantial evidence. *Laurel Heights Improvement Ass'n v. Regents of the University of California*, 47 Cal.3d 376, 409 (1988) (*Laurel Heights I*).

CEQA does not allow a lead agency to defer critical studies regarding environmental impacts until after project approval. *See Sundstrom*, 202 Cal.App.3d 296. Nor may a lead agency satisfy CEQA by approving a project subject to conditions requiring the applicant to prepare future studies and mitigation measures, because in so doing the agency would be improperly delegating its legal responsibility to assess a project's environmental impact. *Id.* at 307. In contrast, CEQA requires the lead agency itself to prepare or contract for the preparation of impact assessments (citing CEQA § 21082.1) that reflect the agency's "independent judgement." *Id.* The fundamental concern underlying *Sundstrom* was that even if the required conditions of project approval had been adequate, the need for post-approval studies demonstrated the inadequacy of the County's environmental review prior to project approval. *Id.*

Finally, the DEIR may not avoid conducting a thorough analysis of the Project's impacts under the assumption that such impacts would be temporary. CEQA requires analysis of temporary or short-term impacts. CEQA Guidelines § 15126.2(a) (agency must analyze both short- and long-term impacts). CEQA defines a "significant effect on the environment" as "a substantial or potentially substantial adverse change in the environment." Pub. Res. C § 21068. The CEQA Guidelines (14 Cal. Code Regs. § 15382) expand on the statute and define "significant effect on the environment" as:

"a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic and aesthetic significance."

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An effect on the environment need not be "momentous" or "important" to meet the CEQA test for significance. Kostka and Zischke §6.44 B Evaluating Whether Effect on Environment May Be Significant. The term "significant" covers a spectrum ranging from "not trivial" through "appreciable" to "important" and even "momentous." See *No Oil, Inc. v City of Los Angeles* (1974) 13 C3d 68, 83. An agency has discretion to find a project's impacts insignificant on the basis of the scale of the project, particularly when the project's impacts are indirect and cannot reliably be predicted. *Save the Plastic Bag Coalition v City of Manhattan Beach* (2011) 52 C4th 155. An effect need not be either long term or permanent to be significant, but duration is a factor that may affect the significance of an environmental impact. *Running Fence Corp. v Superior Court* (1975) 51 CA3d 400, 416. Nothing in CEQA suggests that short-term effects cannot be of such significance as to require an EIR. *No Oil, Inc.*, 13 C3d at 85. As documented below, the Cottonwood Sand Mine DEIR fails to identify, analyze, or support with substantial evidence its conclusions regarding the Project's significant environmental impacts.

D-O8-15

**A. The DEIR's Evaluation of Hydrology and Water Quality Impacts is Inadequate.**

The DEIR's analysis of the Project's impacts to hydrology, water quality, and flooding is inadequate because it: (a) presents an inaccurate hydraulic analysis; (b) presents an inaccurate estimate of impacts on groundwater resources; (c) fails to analyze on-site and downstream impacts, including impacts to drinking water in the Sweetwater Reservoir; (d) fails to support its conclusions with the necessary facts and analysis; and (e) fails to identify mitigation capable of minimizing the Project's significant environmental impacts.

Greg Kamman, Hydrogeologist with CBEC Eco Engineering, reviewed the Cottonwood Sand Mine DEIR hydrology and water quality analysis and the document's hydrological appendices. His report (CBEC Report), attached as Appendix A, provides a detailed evaluation of the DEIR's Hydrology and Water Quality section. We summarize some of the most critical points of that report below.

D-O8-16

**1. The DEIR Presents an Inaccurate Hydraulic Analysis of the Project's Flood Impacts**

As explained in the CBEC Report, the DEIR fails to accurately analyze the Project's potential impacts related to flooding. CBEC Report at 2. The DEIR states that the Project will not raise off-site 100-year water surface elevations. DEIR at 3.15-19. The Hydraulic Model simulation results indicate a slight on-site increase in 100-year water

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**D-O8-15** Please see Responses to Comments R-O8-16 through R-O8-21, which address the summarized comments from the CBEC Report. Responses to the actual comments in the CBEC Report, attached as Appendix A to Shute Mihaly and Weinberger's letter, are provided in Responses to Comments D-O8-74 through D-O8-82.

**D-O8-16** Page 3.15-9 of the DEIR correctly states that the Project would not raise off-site 100-year water surface elevations. While there is a projected modest on-site increase in 100-year surface water elevations, this is not expected to translate to off-site increases in surface water elevations. As stated on page 2 of the CEQA-Level Drainage Study included as Appendix O to the DEIR and FEIR, "a hydraulic goal is that the excavation will dominate over revegetation/restoration resulting in no increased 100-year water elevations on off-site properties, i.e., no rise on off-site properties along the Sweetwater River."

As noted in the comment, the hydraulic model did not fully incorporate the elevated fill surface into the cross-section profiles. To address this issue, the plans and analyses have been adjusted to match in the FEIR. However, even with this adjustment, the conclusion that off-site 100-year water surface elevations would not be affected remains correct. See page 8 of the CEQA-level Drainage Study under "Conclusion and Certification" (FEIR Appendix O).



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surface elevations, but the DEIR concludes that these increases would not impact off-site water surface elevations. Id.

CBEC's analysis found significant discrepancies when comparing land surface profiles of the Phase 4 model cross-sections to the Phase 4 Reclamation Plan grades. CBEC at 2. Specifically, the Phase 4 hydraulic model does not appear to incorporate the elevated fill surface into the cross-section profiles, and instead uses existing condition ground surface elevations. Id. Had the model accurately incorporated the planned elevated fill surface, the hydraulic model would have shown that the fill area would obstruct and alter hydraulic flow patterns, which would likely raise 100-year flood water surface elevations higher than disclosed in the DEIR. Id. This flaw implicates other parts of the hydraulic analysis as well. Id. For instance, this change in flow pattern could result in increased water storage on the site and increased flooding hazards downstream. Therefore, the DEIR's conclusion that impacts relating to flooding hazards would be less than significant is unsubstantiated. Id. A revised DEIR must correct this flaw and accurately assess water surface elevations during the post-reclamation phase

## 2. Inaccurate Estimate of Future Water Demands and Impacts on Groundwater Supply

The DEIR states that project groundwater demands are primarily associated with mining operations and evapotranspiration from post-reclamation vegetation communities. DEIR at 3.1.5-15. The DEIR also asserts that estimated future water demands would be less than current golf course operation demands. Id. However, based on CBEC's review, it appears that the DEIR's estimates of future vegetation water demands is based on existing condition grades rather than the post-Reclamation grades. CBEC at 2 and 3.

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CBEC's analysis concludes that with implementation of post-reclamation grades, the Project site will have large areas of ground lowering that will intersect the groundwater table, creating surface ponding. CBEC Report at 2-3 and Figures 3 and 4. CBEC's analysis found that the ground surface elevation will be lowered by approximately 18 feet in elevation on one part of the site and by approximately 6 feet at another. This change in ground surface elevation will, in turn, expose the ponded groundwater to evaporation, which will lead to a loss of groundwater. Id. The length of exposure time of ponded groundwater would vary with prolonged (multi-month to annual) exposure during wet years (see CBEC Report Figure 3). The DEIR fails to acknowledge, let alone quantify, the losses of groundwater due to surface ponding and evaporation. This potential significant impact on groundwater supply and groundwater recharge must be accurately quantified and analyzed in a revised EIR analysis.

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**D-08-17** The comment is correct in stating that groundwater demands are primarily associated with mining operations and evapotranspiration from post-reclamation vegetation, as well as that the estimated future water demands would be less than the current golf course. This comment is incorrect, however, in stating that future vegetation water demands are calculated based on existing condition grades rather than post-reclamation grades. As described in Section 3.1.2, Methodology, of the Project Groundwater Investigation Report (Appendix R to the DEIR and FEIR), water loss was calculated for the existing vegetation communities and those proposed to be established during reclamation. Groundwater demand was estimated using historical low groundwater level data obtained from nearby wells, plant species and their associated landscape coefficients, density, microclimate, and reference evapotranspiration rate (refer to Table 3-1, including footnotes).

Estimates of evaporative groundwater use are calculated for operational conditions, whereby mining that encounters groundwater is limited to 5-acre pits in size at a time to reduce evaporative loss. Depth-to-water data (below grade) utilized in the analysis is currently available for two wells that have been monitored by Sweetwater Authority since 2007 (Ivanhoe #11 and Lakes #11). The historical water level data indicates that there is a possibility that the water table may be above grade infrequently for limited duration within limited areas of the site under future, post-reclamation conditions. There are three proposed areas of over-excavation to depths of up to 40 feet below ground surface (bgs) within the



**D-08-17 (cont.)** site. As shown on Figures 16a and 1-6b of the DEIR and FEIR, these are located within Subphase 1C, which is approximately 30 acres in the northwestern portion of the site (Figure 1-6a); Subphases 2B, 2C, 3B, and 3C, which total approximately 63 acres in the central portion of the site (Figure 1-6b); and Subphase 3A, which is approximately 29 acres in the far eastern portion of the site (Figure 1-6b). Final grade after reclamation in the western and eastern Subphase 1C and 3A areas would be approximately the same as the existing grade, so no change from existing conditions relative to the potential for evaporative loss is anticipated in these areas. Final grade after reclamation in the central portion of the site, where the over-excavation area accounts for approximately 45.29 acres of the overall 63-acre area of Subphases 2B, 2C, 3B, and 3C combined, would be lower than existing grade, at or above the current elevation of the Sweetwater River low-flow channel. In order to evaluate the potential for evaporative loss, a conservative estimate of potential annual evaporation from a groundwater-fed pond in this area indicates approximately 320 acre-feet per year<sup>1</sup> could evaporate if a shallow pond were present for 365 days per year. This value is below the overall projected gain of 467 acre-feet in the reclaimed condition where less groundwater is used than existing conditions (see FEIR Appendix R, page 26, first paragraph). In addition, based on the water level data, if a groundwater-fed pond were to develop in this area it would not be present for the entire 365 days per year. As a result, potential pond evaporation is considered less than significant. Moreover, the potential evaporative loss would be expected to be relatively minimal in the larger context of regional groundwater recharge. Additional discussion related to this topic has been added to the Project Groundwater Investigation (FEIR Appendix R).

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The Project would also result in reduced depths to groundwater that are shallower than evaluated in the DEIR. CBEC at 3. This change implicates the survival of vegetation communities as mapped in the Reclamation Plan and may result in increased evapotranspiration demand, both of which have an impact on the feasibility of implementation of the Reclamation Plan. Id. In addition, a change in evapotranspiration demands, may lead to adverse impacts on groundwater supplies and groundwater recharge.

Therefore, the DEIR's conclusion that the proposed Project would have less than significant impacts to groundwater storage is unsubstantiated by the technical studies that support the claim. DEIR at 3.1.5-16

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### 3. The DEIR Omits Important Analysis and Mitigation of Project Impacts On-site and Downstream.

Another glaring flaw is the DEIR's incomplete analysis of on-site and off-site erosion impacts resulting from the Project. CBEC Report at 3 and 4. The Project's proposed 20-foot-tall rip rap structure, intended to mitigate for potential erosion and upstream head cutting, would create high velocities during periods of high river flow that would cause erosion at the base of the structure. Id. The DEIR failed to analyze conditions with high velocity flows, turbulent hydraulics and scouring. Id. Without such analysis the EIR cannot analyze the potential that this project feature will result in erosion and transport sediment and heavy metals downstream from the project. CBEC at 6 and Hamilton Report at 44. Such pollutants would impact riparian areas, aquatic wildlife, and other biological resources downstream as well as drinking water in the Sweetwater Reservoir. Id. As explained in the CBEC Report, the concentration of wash fines in the surface soil also poses impacts to water quality through increases in source and concentration of total dissolved solids (TDS) and naturally occurring metals. CBEC Report at 6. Such pollutants would then be transmitted downstream via floodwaters that bypass the project; ponds, wetlands, channel habitats that become established on fines within project boundary; and migration of water through the fines into underlying groundwater. Id. These pathways pose a direct risk to drinking water quality of receiving water bodies including both the Sweetwater Reservoir (located 2.8 miles downstream of the project site) and the underlying groundwater aquifer that supplies residential wells surrounding the site. The DEIR fails to analyze these impacts.

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The DEIR implies that state regulations requiring review and oversight of the erosion control system by the Regional Water Board will ensure that potential impacts will be avoided or mitigated. DEIR at 3.1.5-12. Under well-established case law, compliance with regulations does not excuse the agency from describing Project

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**D-08-18** As described in Section 4.2.2 of the Biological Resources Technical Report recirculated with the RDEIR (FEIR Appendix C), the post-reclamation condition of the Project would include backfilling of excavation areas, widening of the Sweetwater River floodplain, and restoring and revegetating the channel with wetland/riparian vegetation. The groundwater study prepared for the Project calculated the post-reclamation groundwater use associated with these areas, which considered loss due to evapotranspiration, at 337 acre-feet per year, which is a reduction of approximately 467 acre-feet per year relative to golf course consumption in the baseline condition with both courses in operation (Geo-Logic Associates 2021). Assuming previously recorded groundwater use with both courses in operation is cut in half to account for closure of the western Lakes Course (i.e., approximately 402 acre-feet per year), this would still represent an annual reduction of approximately 65 acre-feet from current conditions with operation of the eastern Ivanhoe Course. This represents a 16 percent decrease in the annual groundwater consumption in the post-reclamation condition compared to existing consumption for the current golf club operation (Ivanhoe Course only) and a 58 percent decrease in the annual groundwater consumption with both golf courses operating as permitted and historically used. Therefore, site reclamation and the proposed native habitat restoration and revegetation would have a less than significant effect on groundwater.

**D-08-19** Please see Topical Response 12, *Flood Control and Bridge Design*, which provides additional description of the proposed drop structure and addresses the noted concern regarding the ability to withstand high flow velocities. The proposed energy dissipation structures would be utilized to eliminate potential high velocity flow during high river flow conditions, and therefore, also would address potential impacts related to erosion and sediment transport downstream.

**D-08-20** The theoretical conceptual model of sediment transport and potential transport and accumulation of naturally occurring metals described in the comment is inconsistent with the results of sediment transport modeling presented in the Sediment Load Analysis Report prepared for the Project (FEIR Appendix S), which demonstrate that even in a worst-case scenario where no BMPs are applied and all sediments estimated for an entire year during Phase 1 reach Sweetwater Reservoir in a single storm event, the minor amount of increased erosion estimated to occur under these conservative assumptions

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cont. activities or from analyzing resulting impacts. *Oro Fino Gold Mining Corporation v. County of El Dorado* (1990) 225 Cal. App. 3d 872, 885. The DEIR fails to support the conclusion that the Project's impacts on water quality are less than significant. DEIR at 3.1.5-13.

D-08-22 In sum, the DEIR must clearly and consistently describe the Project's elements and perform the necessary analysis prior to Project approval. Without this information, it is simply not possible to verify the accuracy of the DEIR's analysis of the Project's impact related to on-site hydrology and water quality. As to downstream impacts, the DEIR has entirely skipped over the required analysis and is wholly inadequate. A revised DEIR must include an analysis of the aforementioned significant impacts and identify feasible, effective mitigation or alternatives to avoid or minimize the impacts.

**B. The DEIR's Evaluation of Biological Resources Is Inadequate.**

The DEIR's treatment of biological impacts suffers from substantial deficiencies and fails to meet CEQA's well established standards for impacts analysis. The document's analysis both understates the severity of the potential harm to biological resources within and adjacent to the proposed Project site and neglects to identify sufficient mitigation to minimize these impacts. Given that analysis and mitigation of such impacts are at the heart of CEQA, the DEIR will not comply with these laws until these serious deficiencies are remedied. See *Sundstrom v. County of Mendocino*, 202 Cal. App. 3d 296, 311 (1988) ("CEQA places the burden of environmental investigation on government rather than the public.").

D-08-23 As discussed above, the entire proposed Project site is designated for conservation in the County of San Diego's MSCP Subarea Plan as important to biodiversity and long-term sustainability of the regional conservation network. Furthermore, the Project site includes sensitive vegetation communities that provide habitat for sensitive species, including endangered and threatened species. DEIR at 2.2-42; Hamilton Report at 3 and 4. The Project will result in significant direct and indirect impacts to these sensitive communities. *Id.*

Given the importance of the affected biological resources, one would expect the DEIR's analysis to provide careful and thorough evaluation of the Project's potential impacts. Unfortunately, the DEIR's analysis is nowhere close to meeting CEQA's well-established standards for evaluating biological resource impacts. As detailed in the attached Hamilton Report, and summarized below, the DEIR presents a cursory and incomplete evaluation and lacks evidence for its conclusions. Perhaps most egregiously, the DEIR relies on false and unsupported claims that the Project conforms to MSCP

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**D-08-20 (cont.)** would be below the applicable water quality criteria and is considered less than significant relative to the County's thresholds. Please also see Responses to Comments D-A6-14 and R-A1-3, which further describe the analysis conducted and the proposed implementation of a Project SWPPP, erosion control plan, and associated BMPs to further reduce water quality impacts to the Sweetwater River.

**D-08-21** The comment is incorrect in stating that the EIR failed to describe activities and failed to analyze impacts associated with water quality. Section 3.1.5 of the EIR describes how mining operations and reclamation activities could create new or exacerbate existing effects relating to the water quality of receiving water bodies. The analysis explains that Project activities with the potential to result in such impacts include ground disturbance, movement of earth material, and the use of heavy equipment, and how sediments from disturbed ground, particulates from extracted material, and chemicals associated with mining equipment could be discharged into receiving waters. Thus, the statement that the EIR failed to describe Project activities is false. The analysis goes on to explain how a SWPPP would be prepared, and that under the Industrial General Permit, stormwater analyses of pH, TSS, oil and grease, and nitrate/nitrite would be required. The analysis also explains how the SWPPP and erosion control plan would define BMPs to prevent erosion and the discharge of sediment into surface waters. The analysis also explains how small desiltation basins may be temporarily constructed, how runoff would be directed towards the basins, and how soil stabilization BMPs would address these concerns. The EIR reasons, on the basis of substantial evidence, that these activities would reduce potentially significant impacts to less than significant.

**D-08-22** Please see Responses to Comments D-08-16 through D-08-21, above, for detailed responses related to this general summary comment. The DEIR included an analysis of potential impacts related to hydrology and water quality. Because impacts were determined to be less than significant, no mitigation measures or alternatives related to hydrology and water quality are required.

**D-08-23** The County notes that this comment addresses the biological analyses presented in the DEIR. As explained in Topical Response 1, the biological resources analysis contained in the DEIR was significantly revised and recirculated as part of the RDEIR based on updates and DEIR comments received. The revised biological resources analysis circulated in the RDEIR wholly supersedes the original biological resources analysis contained in the DEIR. Please see the updated Project impact analyses that were included in the RDEIR (Subchapter 2.2 of the RDEIR) and Biological Resources Technical Report recirculated with the

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requirements to justify impact analyses and mitigation approaches intended to be used only for conforming projects. Hamilton Report at 3-27.

Under CEQA, decision-makers and the public must be given sufficient information about impacts and mitigation to be able to evaluate the impacts of a proposed project for themselves. *See* Pub. Res. Code 21061. Furthermore, analysis of impacts cannot be deferred to a later date but must be performed prior to project approval. *Sundstrom*, 202 Cal. App. 3d at 307 (“By deferring environmental assessment to a future date, the conditions run counter to that policy of CEQA which requires environmental review at the earliest feasible stage in the planning process.”). Accordingly, a revised DEIR must fully analyze and disclose these impacts and propose and evaluate feasible mitigation measures for each significant impact.

Because the report prepared by Hamilton Biological provides detailed comments on the DEIR’s biological resources analysis, we will not reiterate each of those comments here. *See* Hamilton Report attached as Appendix B. Instead, the discussion below highlights the most egregious deficiencies.

**1. The Project is Inconsistent with Requirements for Proposed Development Within MSCP Areas.**

Because the Project site is located within designated MSCP planning areas, any proposed development must be consistent with required Findings of Conformity. The DEIR’s MSCP consistency analysis concludes that the proposed project would comply with the Findings of Conformity, but in most cases, compliance is simply asserted rather than demonstrated. Hamilton Report at 3-27. For purposes of MSCP conformity, a proposed project is required to demonstrate conformance with eleven MSCP Findings of Conformity. *See*, Hamilton Report at 14. As explained in the Hamilton Report, nine of the eleven criteria are applicable to the Project and the proposed activities would violate all of them. *Id.* The DEIR fails to provide evidence for its conclusion that conformance has been achieved. *Id.*

To the contrary, the DEIR itself provides ample evidence that the project cannot meet the required Findings. To provide one example, the MSCP requires preservation of the biological integrity of linkages between BRCAs. Hamilton Report at 7 and 8. The DEIR implies that the Project will preserve the biological integrity of linkages between BRCAs including conservation of riparian areas. Multiple Species Conservation Program Conformance Statement For Cottonwood Sand Mining PDS2018-MUP-18-023, December 3, 2021, Section III.B.; DEIR at 45-54. However, in reality, the proposed Project would alter the floodplain and river flows that would degrade mature riparian

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**D-08-23 (cont.)** RDEIR (FEIR and RDEIR Appendix C), in response to comment letters received during the public review and comment period.



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woodland habitat and degrade the linkage. Hamilton at 14. Destroying habitat with the unsupported promise that revegetation in a few years will restore it to habitat of equal value fails to meet MSCP standards and is thus inconsistent with MSCP findings requirements. Hamilton Report at 7-14, 20, and 35.

In another example, the MSCP Findings of Conformity require projects to minimize barriers to wildlife movement. Hamilton Report at 23. As discussed in detail in the Hamilton Report, the Project's proposed implementation of the 20-foot-tall rock riprap channel erosion barrier (drop structure) would span the entire width of the post-project floodplain, posing a barrier to wildlife movement. Hamilton Report at 23. The DEIR fails to analyze or mitigate this impact. Because the DEIR fails to recognize these massive hardscaped grade-control structures as potential barriers to wildlife movement, and provides no analysis of their potential effects on the functionality of the existing linkage/corridor, the County has no basis for finding the project in conformance with MSCP requirements. Id.

As explained in detail in the Hamilton Report, approving a project in a designated habitat linkage that violates all applicable MSCP design criteria would not only fail to conform to the MSCP, but could also render the MSCP in-operable moving forward. Hamilton Report at 23.

**2. The DEIR's Description of the Existing Biological Setting Is Incomplete and Misleading**

As discussed in section II above, the DEIR downplays the site's importance to the ecological health of the area. The DEIR dismisses the site's vital role as a habitat linkage between two established wildlife preserves. As explained in the attached Hamilton Report, current aerial imagery, clearly shows that urban development along Highway 94 and Highway 54 to the north of the proposed Project site effectively blocks nearly all movement of terrestrial and aquatic wildlife between Sweetwater Reservoir/San Diego National Wildlife Refuge and the McGinty Mountain Ecological Reserve. Hamilton Report, Figures 1 and 2 at pps. 2 and 3. The Project site, an MSCP-designated habitat linkage, provides by far the most viable opportunity for terrestrial and aquatic wildlife to move through this highly fragmented landscape. Id.

In addition, the DEIR overstates disturbance on the site, and entirely omits analysis of impacts to two sensitive species: California glossy snake and southern California legless lizard. Hamilton Report at 27-32. A revised DEIR must properly document the biological resources on site and thoroughly evaluate the Project's impacts to both on- and off-site biological resources.

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**3. Analysis of Significant Impacts on Biological Resources Is Incomplete and Cursory.**

In some instances, the DEIR determines that the Project may have significant impacts, but then fails to determine the extent and severity of those impacts. Merely stating that an impact will occur is insufficient; an EIR must also provide "information about how adverse the adverse impact will be." *Santiago County Water District v. County of Orange*, 118 Cal. App. 3d 818, 831 (1981). This information, of course, must be accurate and consist of more than mere conclusions or speculation. *Id.* The DEIR's analysis of impacts to biological resources fails to fulfill this mandate in several instances.

For example, although the DEIR concludes that construction of the Project has the potential to result in significant adverse impacts to a host of sensitive animal species, several of which are federally endangered and/or threatened species, the document fails to explain the actual and specific consequences to these species. *See, e.g.*, DEIR at 2.2-26. These sensitive species include the coastal California gnatcatcher, least Bell's vireo, loggerhead shrike, Cooper's hawk, peregrine falcon, red-shouldered hawk, sharp-shinned hawk, two-striped garter snake, vermilion flycatcher, western spadefoot, white-tailed kite, yellow-breasted chat, yellow warbler, barn owl, and Belding's orange-throated whiptail, to name a few. The DEIR provides scant information regarding the number of individuals of each species that will be affected or the degree to which the populations will be impacted.

In addition, the DEIR indicates that fugitive dust emissions from the Project would adversely impact plants, and animals that depend on those plants, because fugitive dust may make plants unsuitable as habitat for insects and birds. DEIR at 2.2-42. In addition, the DEIR states that "[B]reeding birds and mammals may temporarily or permanently leave their territories" to avoid extraction operations, "which could lead to reduced reproductive success and increased mortality." *Id.* The DEIR then erroneously concludes that, with implementation of a Fugitive Dust Control Plan as a project feature, impacts to plants, birds, and mammals resulting from dust emissions would be less than significant. *Id.*

This conclusion cannot stand, for two reasons. First, under CEQA when evaluating the significance of a project's impacts, "an EIR may not 'compress[] the analysis of impacts and mitigation measures into a single issue.'" *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 656. The DEIR's failure to evaluate the impacts on biological resources from the Project's dust emissions prior to mitigation constitutes a violation of CEQA. By assuming the implementation of measures identified

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in the Fugitive Dust Control Plan as part of the Project, the EIR here did just that. And in so doing, it failed to recognize that the Project's potential to result in significant biological impacts. Yet without a significance finding, the DEIR cannot adequately identify mitigation for the impact. As was the case in *Lotus*, the EIR's failure to evaluate the significance of the Project's impacts separately from what is effectively its proposed mitigation (implementation of project design features), does not withstand scrutiny. More specifically, by conflating impacts and mitigation, the EIR fails to consider whether there may be other more effective mitigation options, thereby omitting information that is necessary for the informed decision-making and public participation that CEQA requires. *See id.* at 658; *see also San Franciscans for Reasonable Growth v. City & County of San Francisco* (1984) 151 Cal.App.3d 61, 79 (EIR is inadequate if it fails to identify feasible mitigation measures). Further, a finding of significance triggers the requirement that the Project include enforceable mitigation, as well as a monitoring program, which is lacking with the EIR's reliance on project design features as de facto mitigation. *See Lotus*, 223 Cal.App.4th at 656-57.

Second, as discussed in the Baseline Report and below, the DEIR fails to evaluate the effectiveness of the measures included in the Fugitive Dust Control Plan. Baseline at 5. As presented, the Fugitive Dust Control Plan does not ensure that impacts will be minimized. *Id.* For example, a measure related to speed limits on unpaved roads is inconsistent with a different state speed limit in the DEIR. *Id.* A measure that provides for watering unpaved roads lacks details such as how often to use water or other methods to control dust in the mining pit area. As explained in the Baseline Report, mining could disturb up to 30 acres at a time during each phase of operation. During dry weather conditions, wind erosion and equipment operation on 30 acres of disturbed sand could generate a substantial amount of fugitive dust emissions if not controlled. Baseline report at 5 and 6.

Similarly, the Fugitive Dust Control Plan is vague about how stockpiles of unused excavated materials will be managed to prevent wind erosion. *Id.* Here, the DEIR states that stockpiles that are unused for six or more months would either be seeded or covered to prevent wind erosion. DEIR Appendix I at 19. This suggests that unused stockpiles could be subject to uncontrolled wind erosion for up to 6 months before being seeded or covered, which could generate substantial dust emissions that were not accounted for in the DEIR analysis. Baseline at 6. The Fugitive Dust Control Plan's provisions for monitoring of dust emissions are equally lacking and, as written, do not ensure that dust control measures will be properly implemented, let alone effective to reduce impacts to less-than-significant levels. *Id.*

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The County must do a more complete analysis of fugitive dust impacts and identify effective, enforceable measures that will minimize impacts to the sensitive plant and animal communities on- and off-site as well as sensitive receptors in adjacent residential areas. A revised DEIR should include: (1) thorough analysis of the Project's dust emissions and the resulting impacts on biological resources in the area, (2) avoidance measures as prioritized and prescribed by the BMO/MSCP, and (3) analysis of Project alternatives or mitigation measures that ensure effective mitigation of impacts or measures are adopted and are enforceable. See Guidelines § 15002(a); see also Pub. Resources Code § 21002; Guidelines §§ 15002(a)(3), 15021(a)(2); *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433, 443-45; County's Biological Mitigation Ordinance Chapter 5 § 86.501. Findings, Purpose And Intent ("It is further the policy of this Chapter to give greater value to the preservation of *large contiguous Biological Resource Core Area or to linkages* when formulating avoidance and mitigation requirements." [emphasis added]).

**4. The DEIR Fails to Adequately Evaluate the Project's Adverse Impacts on On-Site and Downstream Habitat Areas.**

As described in both the CBEC and the Hamilton Reports, the Project's effects on site hydrology would result in water stress to existing riparian habitat areas on-site and downstream of the Project site. The Project would result in myriad changes including a substantial loss of groundwater due to increased evapotranspiration from large numbers of wetland and riparian plants proposed as part of the revegetation plan and increased evaporation in ponded areas. In addition, changes in Project site topography, hydraulics, and flow that will redirect flood waters have the potential to impact existing riparian areas on-site and sensitive habitat downstream. CBEC Report at 5 and Hamilton Report at 25 and 44. The DEIR fails to evaluate these impacts.

In addition, as discussed above in section III.A.4, the Project proposes to place a large volume of wash fines from aggregate washing at the processing plant as backfill in the large pits created from excavation on the site. However, the use of this fine-grained soil will promote poor drainage conditions and may promote ponding that reduces infiltration and groundwater recharge. CBEC Report at 5 and 6. This would in turn concentrate metals and other toxins that can contaminate aquatic food webs, create algal blooms and eutrophication, and promote methylation of mercury. CBEC Report at 5 and 6 and Hamilton Report at 44. These impacts to water quality and to aquatic habitats downstream in the San Diego National Wildlife Refuge are ignored in the DEIR.

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**5. The Project's Approach to Mitigation of Impacts on Biological Resources is Inadequate.**

Because the DEIR fails to adequately analyze significant impacts on biological resources on-site and off-site in the two adjacent wildlife refuges due to project-related hydrologic changes, fugitive dust emissions, and direct impacts from removal of habitat, it also fails to provide adequate mitigation to address all of the ways that biological resources will be impacted. An EIR is inadequate if it fails to identify feasible mitigation measures. *Lotus v. Department of Transportation* (2014) 223 Cal. App. 4th 645; *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61, 79. An EIR is inadequate if it fails to suggest mitigation measures, or if its suggested mitigation measures are so undefined that it is impossible to evaluate their effectiveness. *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61 at 79. The County may not use the inadequacy of its impacts review to avoid mitigation: "The agency should not be allowed to hide behind its own failure to collect data." *Sundstrom*, 202 Cal.App.3d at 306. The formulation of mitigation measures may not properly be deferred until after Project approval; rather, "[m]itigation measures must be fully enforceable through permit conditions, agreements, or legally binding instruments." CEQA Guidelines § 15126.4(a). Here, the DEIR's identification and analysis of mitigation measures, like its analysis of biological impacts, are legally inadequate.

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**C. The DEIR's Analysis of Project-Related Air Quality Impacts Is Inadequate.**

The DEIR's analysis of Project-related air quality impacts contains numerous deficiencies that must be remedied in order for the public and decision-makers to fully understand the Project's impacts. Specifically, the evaluation of the Project's air quality impacts must be revised to address: (1) underestimation of fugitive dust emissions; (2) an insufficient mitigation plan for particulate matter emissions; and (3) deficient analysis and mitigation of project-related public health impacts, including valley fever. These issues, and other deficiencies, are discussed in greater detail in the Baseline Report, attached as Appendix C, and below.

D-O8-25

**1. The DEIR Underestimates the Project's Particulate Matter Emissions.**

The DEIR's analysis of construction emissions grossly underestimates emissions of respirable particulate matter (PM10), a major pollutant source. Baseline at 1 and 2. The DEIR's modeling of PM10 emissions optimistically assumes that implementation of

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**D-O8-24** The County acknowledges these introductory comments regarding the DEIR's analysis of Project-related air quality impacts. Please see Responses to Comments D-O8-25 through D-O8-29, below, for further detailed responses to these general introductory comments.

**D-O8-25** Please see Topical Response 3 for details related to revised fugitive dust estimates. Dust has been re-evaluated using USEPA 1995 methodology consistent with the request made in SDAPCD's comment letter.

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dust controls would result in emission reductions of 98.3% to 99.4%. *Id.* However, these higher emission reductions are not supported by the references and methods cited in the DEIR, and the miscalculations substantially underestimate the total PM10 fugitive dust emissions, especially from vehicle movement. *Id.* As the Baseline report explains, when proposed Project emissions are calculated using more realistic emission reductions, estimated PM10 emissions are substantially higher.

The DEIR presented estimated PM10 emissions ranging from 83.6 to 85.0 pounds per day over the three mining phases of the project, which is below the threshold of 100 pounds per day. DEIR Table 3.1.1-8 at 3.1.1-29. Had the DEIR properly calculated the Project's emissions, it would have found that emissions would be more than twice the amount disclosed. Baseline Report at 2-4. According to Baseline's updated analysis, the total PM10 emissions would range from 182.8 to 184.2 pounds per day over the three phases of the project, which substantially exceeds the threshold of 100 pounds per day. Therefore, the project would generate PM10 emissions that result in a significant impact to regional air quality.

This flaw is particularly important because these emissions would expose workers and nearby receptors to health risks from exposure to particulate matter and other toxic air contaminants. It is well documented that short-term exposure to PM10 is associated with worsening of respiratory diseases, including asthma and chronic obstructive pulmonary disease (COPD), leading to hospitalization and emergency department visits. See, <https://www.arb.ca.gov/research/aaqs/common-pollutants/pm/pm.htm>. Long-term exposure (months to years) to particulate matter is linked to respiratory mortality and lung cancer. *Id.*

A revised analysis must properly evaluate the Project's particulate emissions (prior to accounting for emission reductions from implementation of mitigations), disclose the corrected emissions of PM10, and identify feasible mitigation to minimize the impacts.

**2. The DEIR's Mitigation Plan for Particulate Matter Emissions Is Insufficient.**

As discussed in section III.B.3 above, the DEIR wrongly included implementation of the Fugitive Dust Control Plan as part of the analysis of the Project's air quality emissions. Baseline at 5. Under CEQA, the County is obligated to evaluate the proposed Project's impacts prior to implementation of mitigation. *Lotus v. Department of Transportation* (2014) 223 Cal App.4th 645, 656. Moreover, even if it such an approach were allowed, the DEIR did not include the Fugitive Dust Control Plan as part of the Project Description. Therefore, there is no assurance that the plan would be implemented.

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**D-08-26** The Fugitive Dust Control Plan is enforceable as it was developed to ensure compliance with SDAPCD and County rules and regulations. The Fugitive Dust Control Plan would be required to be approved by the SDAPCD. The SDAPCD enforces regulations pertaining to air quality, including rules related to fugitive dust emissions, under its authority to implement and enforce local, state, and federal air quality laws and regulations. The Plan identifies the responsible parties and control measures that would be implemented. The Plan would be enforced through inspections and monitoring by the SDAPCD. Incorporation of the Fugitive Dust Control Plan as a Project Design Feature is adequate to ensure compliance and it is not necessary to make it a mitigation measure. Please see also Topical Response 3 for details related to revised fugitive dust estimates.



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Baseline Report at 5. The Fugitive Dust Control Plan should be a mitigation measure instead of a project design feature, so that the public and decisionmakers can fully evaluate the effectiveness of the control measures as part of the DEIR process and ensure implementation of dust control measures through enforceable permits/conditions. *San Franciscans for Reasonable Growth v. City & County of San Francisco* (1984) 151 Cal.App.3d 61, 79.

In addition, the DEIR fails to evaluate the effectiveness of the control measures proposed in the Fugitive Dust Control Plan. Baseline at 5 section III.B.3 above. Measures to mitigate the substantial amount of PM10 that would result from this Project should be specific and substantially more stringent. Baseline Report at 5 and 6. For example, the measures should include periodic air monitoring by a third party (when triggered by complaints), and should include specific information about how stockpiles and disturbed areas would be stabilized to prevent wind erosion, especially on the weekends.

### 3. The DEIR's Health Risk Assessment Lacks Substantial Evidence to Support Conclusions.

D-08-27

The DEIR presents a Health Risk Assessment evaluating cancer risk from exposure to Project-generated toxic air contaminants ("TACs") of concern, including diesel particulate matter, silica dust and trace heavy metals. DEIR at 3.1.1-17. However, anticipated emissions from mining pit activities are not properly represented in the air dispersion model, which may result in an underestimate of health impacts to nearby receptors. Baseline Report at 7. Specifically, the modeling performed for this assessment relies on one relatively small volume source to model the emissions from mining operations across the entire subphase area. Id. Because the volume source modelled was so small, it is not likely representative of the actual conditions that would occur during mining operations, particularly emissions near the perimeter of the subphase area closest to sensitive receptors. Id. Unfortunately, the DEIR fails to specify the individual health-risk contributions from each emission source for each TAC and year of exposure, therefore, there is no feasible way to confirm the validity of the Health Risk Assessment. Id.

D-08-28

The DEIR's evaluation of Project-generated risks related to Valley Fever is also problematic. Baseline Report at 8. The DEIR's analysis of impacts related to Valley Fever, or coccidioidomycosis, acknowledges that San Diego County is a suspected endemic area for *Coccidioides* spores and has climatic conditions suitable for hosting the fungus. DEIR at 3.1.1-4. The DEIR concludes that the Project would have a less-than-significant impact related to emissions of *Coccidioides* spores because the on-site soil properties and current and past golf course turf management activities do not favor the

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**D-08-27** Please see Topical Response 3 for details related to revised health risk modeling. The health risk assessment has been re-evaluated following coordination with the SDAPCD, consistent with requests made in SDAPCD's comment letter. The source type selected to represent emissions from mining operations was done in coordination with SDAPCD and intended to represent the center of activity. A single volume source was selected to not artificially dilute the emissions over a larger area, which would yield reduced concentrations and corresponding risk values. Therefore, the analysis presented in the health risk assessment represents a conservative analysis of Project emissions.

**D-08-28** Please see Topical Response 6, *Public Health Effects*, under the heading "Valley Fever" for information on why Project area soils do not favor the occurrence of *Coccidioides* fungus, as well as dust control measures to be implemented under the Fugitive Dust Control Plan. The Fugitive Dust Control Plan is enforceable as it was developed to ensure compliance with SDAPCD and County rules and regulations. Both disturbance from the golf course activities and on-site soil conditions (not alkaline, sandy, excessively drained, low in salinity, and well aerated) make it unlikely that fungus is present at the Project site. The Fugitive Dust Control Plan specifies control measures to minimize dust, which is considered the primary tool to reduce potential exposure to the *Coccidioides* fungus. Approval of the Fugitive Dust Control Plan by the SDAPCD would be required.

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occurrence of the *Coccidioides* fungus. DEIR at 3.1.1-21. In addition, the DEIR relies on the Fugitive Dust Control Plan as a project design feature to control emissions of fugitive dust and other soil materials. Id.

As explained in the Baseline report, this approach fails for several reasons. First, the DEIR's analysis of Valley Fever assumes that both golf courses are still in use and therefore turf management practices (such as irrigation, fungicides, and others) preclude the presence of *Coccidioides* spores. DEIR at 3.1.1-21. However, the western third of the Project site has not been maintained for golfing activities (and therefore has not been irrigated or otherwise managed) for approximately five years. The DEIR should evaluate the possibility of soil contamination from dormant spores.

D-08-29

Second, the DEIR fails to provide substantial evidence that the Fugitive Dust Control Plan to control particulate matter emissions will be effective to reduce risk of Valley Fever to less-than-significant levels. This is because the Fugitive Dust Control Plan generally addresses dust emissions at the property line. Baseline at 8. *Coccidioides* spores are too small to be seen by the naked eye and are more efficient at dispersing further than dust. Id. Therefore, minimizing visible fugitive dust emissions at the property line does not address the potential for nearby residents to be exposed to airborne *Coccidioides* spores generated by Project mining activities. Id.

The DEIR's air quality analysis should be revised to provide a more thorough analysis of Project-generated risks related to Valley Fever, and should identify mitigation measures that specifically address the dust emissions generated by the disturbance of topsoil that could potentially contain *Coccidioides* spores. Id. The plan should also include measures to prevent the potential transport of *Coccidioides* spores from the Project site (e.g., thoroughly cleaning equipment and vehicles before moving offsite) and a medical surveillance program that includes periodic monitoring of workers for symptoms of Valley Fever. Id. at 8 and 9 and Letter Report by Petra Pless related to Review Draft Environmental Impact Report for Safari Highlands Ranch and Citywide SOI Update, dated November 30, 2017 at 20-34, attached as Appendix F.

D-08-30

**D. The DEIR's Noise Analysis Is Inadequate.**

**1. The DEIR Ignores Applicable County Noise Limits for Residential Areas.**

The DEIR explains that composite noise levels produced by mining activities would be as high as 73.7 dBA/69.9 CNEL at area sensitive receptors, exceeding County noise limits. DEIR at 2.4-17 (Table 2.4-1: Mining Operation Noise Levels). The DEIR

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**D-08-29** Please see Response to Comment D-08-28. Additional mitigation is not required.

**D-08-30** Please see Topical Response 7 for discussion on the noise thresholds used in the analysis.



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cont.

determines that mining activities could generate noise that exceeds the 75 dBA threshold and that impacts to nearby sensitive receptors would be significant. DEIR at 2.4-5. We do not disagree that the Project's impacts on sensitive receptors would be significant. However, the DEIR fails to disclose the extent and severity of this impact.

As an initial matter, the DEIR fails to take into account the San Diego County General Plan sound level limits opting instead to focus exclusively on the limits established by the County Noise Ordinance for the extraction industry. San Diego County has two principal noise regulations, the Noise Element of the General Plan and the Noise Ordinance. The General Plan Noise Element establishes sound level limits for noise received at noise sensitive land uses while the Noise Ordinance establishes sound level limits for noise sources. County of San Diego Guidelines for Determining Significance - Noise at p. 6. According to the General Plan, if an acoustical study confirms that greater than 60 dB CNEL would be experienced at a noise sensitive land use, modifications that reduce the exterior noise level to less than 60 dB CNEL and the interior noise levels to below 45 dB CNEL must be made to the development. See id. However, by relying on the far more lenient standard that would appear to be established by the County's Noise Ordinance for the extraction industry (as discussed in footnote 3, the County's documents identify inconsistent guidance relating to the allowable noise limits for the extraction industry), the DEIR fails to disclose that the Project would expose nearby sensitive receptors to noise levels that greatly exceed the sound level limit established by the General Plan.

D-08-31

Compounding matters, the DEIR ignores County guidelines adopted with the explicit intent to protect noise sensitive land uses from harmful noise generated by the extraction industry. The County's *Guidelines for Determining Significance – Mineral Resources* ("Mineral Resources Guidelines") explain that noise from quarry and mining activities is typically the largest environmental impact to nearby sensitive land uses. See Mineral Resources Guidelines at 7. Recognizing the threat posed by siting extraction operations in close proximity to sensitive receptors, the Mineral Resources Guidelines call for a setback area of approximately 1,300 feet to achieve allowable noise levels. *Id.* The Guidelines further state that "1,300 feet would usually attenuate typical heavy equipment noise levels of 75 to 90 dBA to the County Noise Ordinance standard of 50 dBA for daytime residential land use."<sup>2</sup> *Id.* Here, rather than establish an appropriately

<sup>2</sup> There are numerous inconsistencies in the County's documents pertaining to the extraction industry's allowable noise limits. The *Mineral Resources Guidelines* explicitly state that a 1,300 foot buffer is usually sufficient to attenuate noise from extraction

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**D-08-31** Please see Topical Response 7 for discussion on whether a 1,300-foot setback between mining activities and residential land uses should be applied to the Project.

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cont.

sized buffer zone consistent with the Mineral Resources Guidelines, the Project would place excavation and reclamation activities about 100 feet from sensitive land uses, such as rural residents. DEIR at 2.4-10.

D-08-32

Further, as explained in the Salter report, the County Noise Ordinance includes applicable provisions that the DEIR ignores. Salter Report at 1. Specifically, Noise Ordinance section 36.404(a) states that the 75 dBA limit (the maximum one-hour average sound level allowed) applies not just at the property line, but also "at any location on a property that is receiving the noise." Noise Ordinance § 36.404(a) and Salter Report at 1. The DEIR fails to evaluate the Project's noise impacts against this provision. The noise limit for residential zones is 50 dBA during daytime hours. Noise Ordinance § 36.404(a).

D-08-33

As explained in the Salter Report, even with the proposed mitigation, Project-generated mining noise levels are estimated to range between 54 dBA and 68 dBA. DEIR, Appendix F, Tables 11 and 12, page 22 and Salter 2. Thus, the Project would exceed allowable noise levels in residential areas by 18 dB or more. Salter Report at 2. While the DEIR concludes that impacts to adjacent residents would be potentially significant, it errs in concluding that only nine receiver locations would be impacted. DEIR at 2.4-5. The Project as proposed has the potential to produce severe noise impacts to hundreds of households and the DEIR fails to disclose this impact.

D-08-34

In addition, the proposed mining site is in close proximity to Jamacha Elementary school, where increased noise is likely to impact classroom learning and may effect children's cognitive development. See, Does noise affect learning? A short review on noise effect on cognitive performance in children, Klatte, Berstrom and Lachmann, 2013, attached as Appendix G. Moreover, the Collaborative for High Performance School, which sets standards for background noise in schools, recently updated standards to lower the acceptable level of noise in classrooms. [https://chps.net/indoor-environmental-quality/#EQ\\_P15.0](https://chps.net/indoor-environmental-quality/#EQ_P15.0). These standards, updated in 2020, reduce the baseline background noise standard to 40 dB (Leq), from the previous standard of 45 dBA. The "enhanced" goal is 35 dBA. Id. A revised DEIR must evaluate impacts to area schoolchildren.

D-08-35

The public has a right to know just how loud noise from the Project's operations will be. California courts are clear on this subject. A DEIR may not "travel the legally impermissible easy road to CEQA compliance. . . [by] simply labeling the effect

activities to achieve the County's Noise Ordinance standard of 50 dBA for daytime residential land uses (i.e., the noise standard is 50 dBA). *Mineral Resources Guidelines* at 7. The County's Noise Ordinance, on the other hand, appears to limit extraction industry sound to 75 dB at the property line.

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**D-08-32** Please see Topical Response 7 for discussion on the noise thresholds used in the analysis.

**D-08-33** Please see Topical Response 7 for discussion on the noise thresholds used in the analysis and the receiver locations considered in the analysis. As shown in Tables 11 and 12 of Appendix F of the DEIR and FEIR (Acoustical Site Assessment Report), noise levels would not exceed the applicable limit of 60 decibel (dB) community noise equivalent level (CNEL) at residential receivers with the inclusion of proposed mitigation.

**D-08-34** Please see Topical Response 7 for discussion on potential noise impacts to Jamacha Elementary School.

**D-08-35** The DEIR evaluated and disclosed the full extent and severity of the Project's impacts on adjacent sensitive receptors consistent with County Guidelines. Please see Topical Response 7 for additional discussion on the noise analysis performed and presented in the DEIR. The DEIR also presents an alternative (Alternative 3: Noise Receptor Setback Alternative) that avoids potentially significant impacts to sensitive receptors and mitigation (M-N-1) that reduces potentially significant impacts to sensitive receptors to less-than-significant levels, based on the applicable limit of 60 dB CNEL.

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‘significant’ without accompanying analysis . . . .” *Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.*, 91 Cal.App.4th 1344, 1371 (2001). Rather, “a more detailed analysis of how adverse the impact will be is required.” *Galante Vineyards v. Monterey Peninsula Water Management Dist.*, 60 Cal.App.4th 1109, 1123 (1997).

The revised EIR must evaluate and disclose the full extent and severity of the Project’s impacts on adjacent sensitive receptors and acknowledge the Project’s clear inconsistencies with the Mineral Resources Guidelines and the County’s General Plan requirements. Moreover, because the DEIR does not address these inconsistencies, it also fails to identify alternatives or mitigation measures that would increase the Project’s buffer distance sufficient to achieve the 50 dBA noise limit.

**2. The DEIR Fails to Evaluate Project-Related Maximum “Single Event” Noise.**

Under well-established case law, the DEIR must also analyze the extent and severity of noise impacts based on single event noise (e.g., noise from each truck driving by, entering/exiting the Project site). Analyzing only average noise impacts has been rejected by California courts because impacted residents do not hear noise averages, but single events. *See Berkeley Keep Jets Over the Bay Committee v. Port of Oakland* (2001) 91 Cal.App.4th 1344, 1382. Single event noise levels have been shown to be likely to result in sleep and speech interference, and heightened levels of stress and annoyance. Noting that “sound exposure level [SEL] has been found to be the most appropriate and useful descriptor for most types of single event sounds,” the court in *Berkeley Keep Jets* held that the Port must prepare a supplementary noise analysis calculating the impacts of single-event sounds. *Id.* at 1382.

Here, the DEIR identified significant noise impacts from the Project on nearby residents and included estimated maximum noise levels from Project activities, leading to a conclusion of significance. In addition, the DEIR acknowledges that the County Noise Ordinance sets limitations on “impulsive” or “single event” noise of 82 dBA L<sub>max</sub> at residential uses, and 85 dBA L<sub>max</sub> for agricultural commercial, or industrial uses. DEIR at 2.4-3. Accordingly, the noise study for this Project should have analyzed the impacts of single event noise (from activities such as truck passbys adjacent to residences, rock and gravel being dropped into the metal bins of hauling vehicles, and similar momentary but commonly repeated activities) on sleep, speech, stress and annoyance levels, and should have identified adequate measures to mitigate those impacts. Salter Report at 4. A revised EIR must include analysis of such maximum noise levels.

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**D-O8-36** Single-event noise, also known as impulsive noise or episodic noise, was not specifically considered in the noise analysis because the Project does not include sources that would result in substantial single-event noise. Single-event noise includes events that last one second or less, such as a gunshot or explosion. Although a truck pass-by might be short in duration, the noise from the truck would be audible for longer than one second and is not considered impulsive.



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D-08-37

**3. The DEIR Fails to Properly Evaluate Existing Ambient Noise.**

The DEIR's errors extend beyond its failure to take into account the protective noise limits established by the County General Plan or to acknowledge the County's Mineral Resources Guidelines calling for a 1,300 foot buffer between a mining operation and noise sensitive land uses. The DEIR also fails to adequately evaluate ambient noise levels. As explained in the Salter Report, the acoustical site assessment only measured noise levels for 10 to 15 minute periods rather than the industry standard of measuring noise for a full 24-hour period. Salter Report at 3. A measure of 24-hour noise is also needed because the County expresses Noise Compatibility Guidelines using the Community Noise Equivalent Level (CNEL) metric, which requires a minimum of 24 hours of continuous monitoring at each location. Salter Report at 4. Moreover, several of the measurement locations were taken adjacent to roadway noise sources when many (or most) residences are not located near such noise sources. Salter Report at 3. The limited sample of existing noise conditions is not statistically valid and not representative of existing conditions and thus cannot be relied upon to describe baseline conditions. Salter Report at 3.

D-08-38

**4. The DEIR Fails to Demonstrate That The Proposed Noise Barriers Will Effectively Reduce Noise.**

Notwithstanding the DEIR's deficient noise impact analysis, the document nonetheless recognizes the need to mitigate for the Project's significant noise impacts. DEIR at 2.4-13. Yet, the proposed mitigation measure simply does not and cannot reduce to insignificance these severe impacts. When a lead agency relies on mitigation measures to find that project impacts will be reduced to a level of insignificance, there must be substantial evidence in the record demonstrating that the measures are feasible and will be effective. *Sacramento Old City Assn. v. City Council of Sacramento*, 229 Cal.App.3d 1011, 1027 (1991); *Kings County Farm Bureau v. City of Hanford*, 221 Cal.App.3d 692, 726-29 (1990). There is no such evidence in the record for this Project.

The DEIR's main mitigation measure for noise impacts calls for requiring noise barriers of 8 or 12-feet. DEIR at 2.4-13. The DEIR claims that such barriers would break the line-of sight between the noise source and sensitive receptors to disrupt the noise transmitted along that direct path. Id. and Salter Report at 4. The DEIR also relies on depth of excavated areas to provide shielding of receptors from noise. Id. However, the DEIR includes no line-of-sight studies, therefore there is simply no evidence that the proposed barriers would reduce noise sufficient to protect nearby sensitive receptors from excessive noise. In fact, as the Salter Report points out, because surrounding residences

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**D-08-37** Please see Topical Response 3 for discussion on updates that were made in relation to Appendix F of the DEIR (Acoustical Site Assessment Report), which included the collection of 24-hour measurement data to determine the applicability of the County Guideline threshold related to a 10-dB CNEL increase over pre-existing conditions.

**D-08-38** Please see Topical Response 7 for discussion on the efficacy of the proposed noise mitigation and the applicability of the 1,300-foot setback.

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cont.

are elevated in comparison to the proposed Project site, it is highly likely that noise the barriers will be ineffective at reducing noise. Salter Report at 4.

The DEIR's failure to evaluate and mitigate the Project's noise impacts is a clear violation of CEQA. Moreover, because the EIR fails to provide feasible mitigation for the Project's significant noise impacts, it lacks the evidentiary support that impacts would be reduced to a less than significant level.

As discussed above, the revised EIR should include an alternative or mitigation calling for a 1,300 foot buffer zone consistent with the County's Mineral Resources Guidelines. See, Mineral Resources Guidelines at 15 ("Impacts from noise typically require the largest setback and past County approved noise studies indicate a setback of approximately 1,300 feet is needed for most typical extractive operations. The setback is relative to the property line and may vary depending on site specific conditions such as topography or intervening structures that reduce noise levels at the property line.") Such a measure would also be consistent with the County General Plan Policy N-5.2 (Noise-Generating Industrial Facilities) which calls for "locating noise-generating industrial facilities at the *maximum practical distance from residential zones.*"

**5. The DEIR Fails to Analyze Noise Impacts on Wildlife at the Adjacent Wildlife Refuges.**

D-08-39

The DEIR fails to evaluate the Project's noise impacts on adjacent wildlife habitats. The DEIR acknowledges that an increase in noise could result in significant impacts to wildlife within the wildlife corridor. DEIR at 2.2-50. Yet the DEIR provides no substantive analysis regarding noise in neighboring wildlife areas that will be subject to noise from the project operations. Salter Report at 5 and Hamilton Report at 23 and 36. As discussed above, the DEIR fails to adequately evaluate existing ambient noise in immediately proximate wildlife refuges, fails to describe project operational noise in the wildlife refuges, and fails to provide evidence that the mining operation will not impact sensitive wildlife habitat. Id.

**6. The DEIR Fails to Analyze Noise Impacts on Area Recreational Users.**

D-08-40

Finally, the DEIR completely ignores Project-related noise impacts to nearby trail users. Instead the DEIR ignores the decades-long impacts of the mining operation and focuses its discussion on the recreational benefits once the reclamation plan is completed. As an initial matter, as discussed above, the DEIR may not avoid conducting a thorough analysis of the Project's noise impacts under the assumption that such impacts would be

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**D-08-39** Please see Topical Response 7 for discussion on potential noise impacts on wildlife species.

**D-08-40** Noise impacts to trail uses, specifically to Par 4 Trail located approximately 400 feet south of the Project's proposed mining area, were not considered because the County Guidelines for determining significant noise impacts specify the consideration of noise-sensitive land uses (NSLUs). Per the County Guidelines, NSLUs include a "residence, hospital, school, hotel, resort, library, or similar facility where quiet attribute of the environment." Trail uses are not considered NSLUs. In addition, per the County's General Plan Noise Element, noise levels below 70 CNEL are compatible with passive recreation uses. As shown in Table 2.4-1 of the DEIR, the unmitigated noise level from the Project's mining operations at the receptor at Residential Group 11, which is located closer to the mining operations than is Par 4 Trail, is below 70 CNEL. Therefore, it can be concluded that noise levels at the Par 4 Trail would be below 70 CNEL and within County standards.

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temporary. CEQA requires analysis of temporary impacts. CEQA Guidelines § 15126.2(a) (agency must analyze both short- and long-term impacts). A project that calls for sand and gravel mining operations in an area long recognized for its natural beauty and serene environs would clearly harm trail users because it would interfere with their use and enjoyment of the area. One of the purposes of open space is to provide urban users access to spaces away from the noise of urban life. The noise associated with excavation and aggregate processing activities (75 dBA and higher<sup>3</sup>) would result in the loss of connection to the natural environment. Industrial noise – like second-hand smoke – is indiscriminating; there would be no way to escape the noise except to leave the area altogether. The revised EIR must address this serious impact.

**E. The DEIR Fails to Adequately Analyze Traffic Hazards.**

D-08-41

Pursuant to Appendix G of the CEQA Guidelines, a project would have a significant impact on the environment if it would: Substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment). DEIR 3.1.7-8. Here, the development of a sand and gravel mine immediately adjacent to an established residential community is the epitome of an incompatible land use. Adding heavy-duty trucks to area roadways has the potential to adversely affect the safe movement of all vehicular users along the roadway yet the DEIR fails to analyze these impacts.

Of critical importance, given the Project's proximity to an established residential neighborhood, the Project's heavy-duty trucks and other Project-related traffic would likely pose hazards to pedestrians and bicyclists. The DEIR states that the determination of significant hazards to pedestrians or bicyclists is determined by assessing factors including: the amount of pedestrian activity near the project; the magnitude of increased traffic on the road; and the physical conditions of the project site and surrounding area that may result in vehicle/pedestrian, vehicle/bicycle conflicts. DEIR at 3.1.7-8. The DEIR's traffic hazards analysis fails to take *any* of these factors into account. Consequently, the DEIR lacks evidentiary support that the Project would not increase hazards to motorists, pedestrians and bicyclists.

<sup>3</sup> We note that the DEIR only discloses estimated noise levels within 100 feet of construction equipment and presents it in Leq, which is an averaging of noise over an 8-hour period. This noise metric is not representative of how people (and wildlife) experience noise.

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**D-08-41** This comment suggests that the additional truck trips would result in potential for increased accidents that was not disclosed in the DEIR; however; an increase in trucks cannot be directly correlated to an increase in accidents.. The cause of accidents depends on a variety of factors, including roadway design and conditions, roadway capacity, traffic volume and composition, and the various safety measures such as signage and traffic management features that may be in place. Following public circulation of the DEIR, an Addendum to the LMA was prepared, which included an inventory of the existing pedestrian conditions and recommended pedestrian improvements to further enhance mobility. Please see Figure C of the addendum (Appendix W to the RDEIR and FEIR), which depicts the existing pedestrian activity observed in the project study area intersection during AM/PM peak hours as part of the inventory conducted in July 2022. The inventory supports the conclusions noted in the comment that pedestrian activity is low.

Relative to roadway design, please see Topical Response 8 under "Roadway Improvements," which describes the refinements to the striping plan that were made following public circulation of the DEIR and the proposed Irrevocable Offer of Dedication along the Project frontage on Willow Glen Drive. A striping plan was prepared in coordination with County of San Diego Public Works Department. This striping plan incorporates several design features within the segment of Willow Glen Drive along the Project frontage that are proposed to enhance mobility for all roadway users, including buffered bike lanes, a raised median, a deceleration lane for ingress movements of heavy trucks into the Project site, and an acceleration lane for egress movements of heavy trucks from the Project site. A pathway is proposed along the Project frontage on Willow Glen Drive east of Steele Canyon Road for enhanced pedestrian mobility through the area. The pedestrian pathway along Willow Glen Drive is intended to provide safe pedestrian access where there are no existing sidewalks.



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**1. Project Background and Environmental Setting.**

D-08-42

Sand extraction operations would be conducted approximately 260 days per year, on weekdays, between the hours of 7:00 a.m. to 5:00 p.m. Trucking would occur from 9:00 a.m. to 3:30 p.m. during the week. DEIR at 1-9. Every weekday, 176 heavy-duty trucks would travel on neighborhood roads. Id.

Primary access to the Project site is via Willow Glen Drive. The DEIR identifies Willow Glen Drive as a four-lane undivided roadway between Jamacha Road and Steele Canyon Road and a three-lane roadway with a two-way left-turn lane between Steele Canyon Road and the eastern Project boundary. DEIR at 3.1-7-1. Yet, Google Maps shows the segment of Willow Glen Drive adjacent to the proposed Project site (i.e., the Cottonwood golf Course) as a two-lane highway. See Appendix H. Willow Glen Drive has a speed limit of 45 miles per hour. DEIR at 3.1-7-10.

D-08-43

Land uses in the area include residences and several schools that would be impacted by the project. Willow Glen Drive traverses a residential neighborhood. Numerous residences abut Willow Glen Drive to the north and south. Jamacha Elementary school is located one-half mile to the south of the Project site, at the intersection of Steele Canyon Road and Jamul Drive. Valhalla High School is located three-quarters of a mile to the northwest. Hillsdale Middle School is located one-half mile to the west and Cuyamaca College is located approximately two-thirds of a mile to the west. DEIR at 1-26; 2.4-2; Figure 1-3 (Project Vicinity). Hilton Head County Park is located southwest of the Project site, just north of Willow Glen Drive.

The Project would restripe Willow Glen Drive between Steele Canyon Road and the Project driveway to provide Class II bicycle lanes on both sides of the roadway. DEIR at 3.1-7-9.

**2. The DEIR Fails to Disclose, Let Alone Analyze, the Project's Potentially Significant Impacts to Motorists, Pedestrians and Bicyclists.**

D-08-44

The DEIR fails to provide *any* analysis of how the addition of 176 heavy-duty trucks to area roadways would increase the potential for passenger car/heavy-duty truck accidents. The DEIR fails to determine whether Willow Glen Drive, for example, which was presumably designed for passenger vehicles, could even accommodate heavy-duty trucks. Although trucks traveling on arterials roads can cause serious hazards—due to their comparatively slower travel speeds, or because motor vehicles may attempt dangerous maneuvers to pass these trucks—the DEIR makes no effort to disclose the

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**D-08-41 (cont.)** Specific to roadway capacity, the Project's haul trucks would utilize Willow Glen Drive, which is classified in the County General Plan Mobility Element as a 4.1B: Major Road with Intermittent Turn Lanes. As indicated in the County General Plan Mobility Element, Major Roads primarily serve medium to high volume traffic. As such, it is expected that Willow Glen Drive would be able to accommodate the Project's truck traffic. Please see Topical Response 8 under "Congestion and VMT" and response to Comment D-A5-6 regarding traffic volume and composition. The County Department of Public Works provides information on the acceptable number of accidents for each roadway type. County staff review of accident data for the segment of Willow Glen Drive between SR-54 and Hillsdale Road within the Project area demonstrated that the accident rate for a five-year period from 2017 to 2022 was below the statewide average for this type of roadway.

Based on the above, it is concluded that the Project would not increase hazards to motorists, pedestrians, or bicyclists.

**D-08-42** This comment summarizes sand extraction operations and access information cited in Chapter 1.0 and throughout the RDEIR and FEIR, as well as the access information, roadway classification, and existing conditions of Willow Glen Drive cited in DEIR Subchapter 3.1.7, *Transportation/Traffic*. This comment states that the DEIR incorrectly describes the portion of Willow Glen Drive that extends to the eastern Project boundary as three lanes with a two-way left-turn lane. The statement has been revised in the FEIR as follows:

**Willow Glen Drive** is classified as a 4.1B Major Road in the County of San Diego General Plan, Valle de Oro Mobility Element Network. Willow Glen Drive is currently constructed as a four-lane undivided roadway between Jamacha Road and Steele Canyon Road, and as a three-lane roadway with a two-way left-turn lane from between Steele Canyon Road to west of the existing Project ingress/egress driveway, and as a two-lane undivided roadway for the remainder of the segment extending to the eastern project boundary. Bus stops are not provided and on-street parking is not permitted.

**D-08-43** This comment summarizes the existing land uses in the Project area and describes the proposed restriping of Willow Glen Drive. Please see Topical Response 3 under "Appendix W – Local Mobility Analysis," which describes the refinements to the striping plan that were made following public circulation and the Irrevocable Offer of Dedication along the Project frontage as needed to accommodate the ultimate roadway classification of Willow Glen Drive.

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D-08-44  
cont.

potential for increased accidents. The fact that Willow Glen Drive is a two-lane—rather than a three- or four-lane road as the DEIR asserts—increases the potential for vehicular hazards.

D-08-45

The DEIR also fails to provide *any* analysis of traffic hazards to pedestrians caused by the Project's increase in motor vehicle and heavy-duty truck traffic. As an initial matter, the DEIR states that pedestrian activity in the Project area is generally low. DEIR at 3.1-7-10. The DEIR provides no documentation for this assumption. There are multiple schools in the area, as well as a County Park. Do residents of the area walk along Willow Glen Drive and Steele Canyon Road to access these schools and the park? The DEIR does not tell us. Based on Google Maps, there are no sidewalks near the proposed Project site. *See* Appendix H. If pedestrians are forced to share the road with intensive truck traffic, this would undoubtedly create a safety hazard, yet the DEIR provides no analysis of these potential impacts.

D-08-46

Nor does the DEIR provide any information regarding existing bicycle use on area roadways including Willow Glen Drive. The document also does not disclose whether there have been any motor vehicle accidents on area roadways involving bicyclists. Notably, the Project's installation of bicycle lanes on Willow Glen Drive will encourage bicycle use on this roadway. Yet, here too, the DEIR fails to provide *any* analysis of traffic hazards to bicyclists caused by the Project's increase in motor vehicle and heavy-duty truck traffic or by the installation of a bicycle lane on Willow Glen Drive. The DEIR's failure to analyze bicycle and pedestrian safety hazards violates CEQA. *See* CEQA Guidelines § 15151; *Environmental Planning & Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 357.

The revised DEIR must disclose and evaluate existing bicycle and pedestrian activity in the vicinity of the Project, then analyze whether the increase in both heavy-duty truck and vehicular traffic generated by the Project would cause an increase in collisions between bicycles, pedestrians and vehicles. This analysis must be supported with substantial evidence.

D-08-47

**F. The Project is Inconsistent With the County General Plan, the Valle de Oro Community Plan, and the County's Zoning Ordinance.**

The state Planning and Zoning Law (Gov't Code § 65000 et seq.) requires that development approvals be consistent with a jurisdiction's general plan. "Under state law, the propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements." *Resource Defense Fund v. County of Santa Cruz* (1982) 133 Cal.App.3d 800, 806. Accordingly, "[t]he

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**D-08-44** This comment presumes that Willow Glen Drive was only designed and constructed to handle passenger cars and not heavy vehicles, which is incorrect. Willow Glen Drive is a classified roadway in the County of San Diego General Plan, Valle de Oro Mobility Element Network, which is designed for all vehicle types, including heavy vehicles. Please see Response to Comment D-08-41 regarding the suggestion that additional truck trips would result in potential for increased accidents that was not disclosed in the DEIR. No additional response is required.

**D-08-45** Please see Topical Response 8 under "Roadway Improvements," as well as Response to Comment D-A3-7, which describe roadway improvements and implementation of a Traffic Control Plan to notify local residents and motorists of construction activities associated with the Project and ensure the safe and efficient movement of traffic through the Project area. Following public circulation of the DEIR, an Addendum to the LMA was prepared, which included an inventory of the existing pedestrian conditions and recommended pedestrian improvements to further enhance mobility. Please see Figure C of the addendum (Appendix W to the RDEIR and FEIR), which depicts the existing pedestrian activity observed in the project study area intersection during AM/PM peak hours as part of the inventory conducted in July 2022. The inventory supports the conclusions noted in the comment that pedestrian activity is low. Furthermore, analyzing specific pedestrian travel patterns relating to their origins and destinations (i.e., schools, parks, etc.) is outside the scope of the DEIR. In coordination with County staff, a pathway is proposed along the Project frontage on Willow Glen Drive east of Steele Canyon Road for enhanced pedestrian mobility through the area.

**D-08-46** Please see Responses to Comments D-08-41, D-08-44, and D-08-45, which address the comments related to safety hazards and proposed improvements that would enhance mobility along Willow Glen Drive for vehicles, bicyclists, and pedestrians. Following public circulation of the DEIR, an Addendum to the LMA was prepared, which included an inventory of the existing bicycle network and bicycle counts conducted in the Project study area during AM/PM peak hours in July 2022. No existing bicycle activity was observed during peak commute hours.

**D-08-47** This comment summarizes state planning and zoning law relating to consistency with plans and policies. However, the comment does not raise any specific issues relating to the Project's consistency with any specific plan or policy. Please see Topical Response 11, which addresses the evaluation of Project consistency with applicable land use plans, policies, and ordinances contained in

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consistency doctrine [is] the linchpin of California's land use and development laws; it is the principle which infuses the concept of planned growth with the force of law." *Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors* (1998) 62 Cal.App.4th 1332, 1336.

Moreover, CEQA requires that EIRs analyze a project's consistency with applicable local plans, including General Plans. See *Napa Citizens for Honest Govt. v. Napa County Board of Supervisors*, 91 Cal.App.4th 342, 386-87 (2001); CEQA Guidelines Appendix G, § IX (b). Inconsistencies with a General Plan or other local plan goals and policies enacted to protect the environment are significant impacts in and of themselves and can also be evidence of other significant impacts. See *id.*; *Pocket Protectors v. City of Sacramento*, 124 Cal.App.4th 903, 929 (2004). In addition, a recent California Court of Appeal opinion specifies that a City must deny a project if it does not comply with the city's General Plan. See *Kutske v. City of San Diego*, 11 Cal.App.5th 1034, 1040-42 (2017). It is an abuse of discretion to approve a project that "frustrate[s] the General Plan's goals and policies." *Napa Citizens for Honest Gov't v. Napa County* (2001) 91 Cal.App.4th 342, 379. A project need not present an "outright conflict" with a general plan provision to be considered inconsistent; the determining question is instead whether the project "is compatible with and will not frustrate the General Plan's goals and policies." *Napa Citizens*, 91 Cal.App.4th at 379.

Here, the proposed Project does more than just frustrate the General Plan's goals. As discussed in more detail below, the Project plainly conflicts with the County's General Plan, specifically General Plan policies that protect natural drainage patterns, sensitive biological resources, and community character. Moreover, the proposed Project location in close proximity to hundreds of residences, and within a wildlife movement corridor linking two wildlife refuges, make mining on the proposed site an incompatible use on its face.<sup>4</sup>

#### 1. The Project Is Inconsistent With The County's General Plan

The DEIR acknowledges that the Project must be consistent with the County's General Plan and purports to analyze the projects consistency with various General Plan

<sup>4</sup> "Compatible uses may include non-urbanized areas, very low density residential development, land that does not have high- cost improvements, and lands used for agriculture, silviculture, grazing, or open space (Note: there may be cases where *open space designated to protect sensitive environmental resources is not compatible to mining*). County Guidelines For Determining Significance And Report Format And Content Requirements, Mineral Resources, July 20, 2008 at 15; emphasis added.

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**D-08-47 (cont.)** the County of San Diego General Plan, Valle de Oro Community Plan, and the County Municipal Code and Zoning Ordinance. Please see Responses to Comments D-08-48 through DO8-60, below, for further detailed responses to these general introductory comments.

**D-08-48** Please see Topical Response 11. The Project's consistency with the General Plan is analyzed in detail within the EIR. Appendix B, *Land Use Consistency Analysis*, provides a comprehensive and accurate analysis of General Plan (in)consistencies subsequently summarized in the DEIR. A project is consistent with a general plan if, "considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment." (*San Francisco Tomorrow v. City and County of San Francisco* (2014) 229 Cal.App.4th 498, 513-514.) State law does not require conformity with each and every individual goal and policy of a general plan prior to a finding that a project is generally consistent and compatible with the general plan. (*Ibid.*) Here, the County has determined that the Project is consistent with 55 goals and policies of the General Plan, and in the long-term will be compatible with the remaining three. Despite non-permanent visual impacts to select viewers as mining proceeds across the Project Site in 30-acre subphases, the Project does not obstruct the attainment of any goal or policy of the San Diego County General Plan, including COS-11, COS-11.1, and COS 11.2, and therefore is consistent with the San Diego County General Plan.



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policies and goals. The DEIR, however, glosses over numerous inconsistencies with the General Plan. In addition to misinforming decisionmakers and the public about the Project's consistency with the General Plan, this analysis underestimates the actual impacts of the Project and ignores some of the Project's most significant impacts.

The DEIR must be revised to provide a comprehensive and accurate analysis of all general plan inconsistencies. Some examples of additional inconsistencies are described below.

(a) **Biological Resources Protection Policies**

The County General Plan includes policies to ensure protection of sensitive resources. The DEIR acknowledges these policies, but fails to address the inconsistencies with the Project. The policies and inconsistencies are addressed below.

Policy COS-2.1 Protection, Restoration and Enhancement. *Protect and enhance natural wildlife habitat outside of preserves as development occurs according to the underlying land use designation. Limit the degradation of regionally important natural habitats within the Semi-Rural and Rural Lands regional categories, as well as within Village lands where appropriate.*

Policy COS-2.2 Habitat Protection through Site Design. *Require development to be sited in the least biologically sensitive areas and minimize the loss of natural habitat through site design.*

Goal LU-6 Development – Environmental Balance. *A built environment in balance with the natural environment, scarce resources, natural hazards, and the unique local character of individual communities.*

Policies LU-6.1 Environmental Sustainability. *Require the protection of intact or sensitive natural resources in support of the long-term sustainability of the natural environment.*

LU-6.7 Open Space Network. *Require projects with open space to design contiguous open space areas that protect wildlife habitat and corridors; preserve scenic vistas and areas; and connect with existing or planned recreational opportunities.*

As discussed in sections I, II, and III.B of this letter above, much of the project will be sited in, and adjacent to, biologically sensitive areas and approval of the project will result in the unmitigated loss of sensitive habitat and sensitive species. The DEIR claims the Project would be consistent with these policies because open space would be

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**D-08-49** Please see Topical Responses 1 and 3, as well as Response to Comment D-08-1, regarding RDEIR biological resources text superseding DEIR text (and addressed in Responses to Comments R-07-1 through R-07-95 to RDEIR comments submitted by Shute, Mihaly & Weinberger on behalf of the Sierra Club San Diego Chapter).

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reclaimed after mining is completed. DEIR Appendix B at B3. The DEIR states that mining activities would avoid impacts to the existing low-flow channel and the majority of native habitat that currently remains on site. Id. However, this conclusion is unsubstantiated. To the contrary, evidence in the record indicates that the Project would result in significant adverse impacts to wildlife habitat and wildlife movement corridors (both during mining operations and after reclamation) and to scenic views. See Hamilton Report, attached as Appendix B; DEIR at 2.1-46 to 48. Moreover, reclamation would not take place for many years in the future and the success of the reclamation work is not assured. Hamilton Report at 45. Therefore, the Project does not avoid or protect sensitive habitat and conflicts with these goals and policies.

(b) **Policies Protecting Community Character and Scenic Resources**

The General Plan includes policies to conserve and enhance the County's rural setting and character and to protect communities from the harmful effects of development.

Goal LU-2: *Maintenance of the County's Rural Character. Conservation and enhancement of the unincorporated County's varied communities, rural setting, and character.*

D-08-50

Policy LU-2.8: *Mitigation of Development Impacts. Require measures that minimize significant impacts to surrounding areas from uses or operations that cause excessive noise, vibrations, dust, odor, aesthetic impairment and/or are detrimental to human health and safety.*

Policy COS-11.1 Protection of Scenic Resources. *Require the protection of scenic highways, corridors, regionally significant scenic vistas, and natural features, including prominent ridgelines, dominant landforms, reservoirs, and scenic landscapes.*

The large scale of the proposed Project will result in unmitigated significant aesthetic impacts as well as sustained noise, vibration, and dust impacts throughout the Project's duration of 12 plus years. DEIR at 2.1-46 to 48. Therefore, the Project is inconsistent with this goal and policies. The DEIR acknowledges the Project's inconsistency with Policy COS-11.1, but fails to propose alternatives to address this inconsistency.

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**D-08-50** Please see Topical Response 11, as well as Response to Comment D-08-48. The comment is incorrect regarding lack of identification of potential alternatives that could address the identified inconsistency with Policy COS-11.1. Chapter 4.0, *Alternatives*, addresses the Visual Screening Alternative, the Reduced Footprint/Deeper Excavation Alternative in Subchapter 4.1.1, and the No Project/No Development Alternative in Subchapter 4.1.2, respectively.



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(c) **Drainage and Hydrology Protection Policies**

Policy COS-4.3 Stormwater Filtration. *Maximize stormwater filtration and/or infiltration in areas that are not subject to high groundwater by maximizing the natural drainage patterns and the retention of natural vegetation and other pervious surfaces. This policy shall not apply in areas with high groundwater, where raising the water table could cause septic system failures, moisture damage to building slabs, and/or other problems.*

Goal COS-5 Protection and Maintenance of Water Resources. *Protection and maintenance of local reservoirs, watersheds, aquifer-recharge areas, and natural drainage systems to maintain high-quality water resources.*

D-08-51

Policy COS-5.3 Downslope Protection. *Require development to be appropriately sited and to incorporate measures to retain natural flow regimes, thereby protecting downslope areas from erosion, capturing runoff to adequately allow for filtration and/or infiltration, and protecting downstream biological resources.*

Policy COS-5.5 Impacts of Development to Water Quality. *Require development projects to avoid impacts to the water quality in local reservoirs, groundwater resources, and recharge areas, watersheds, and other local water sources.*

As explained in the CBEC Report, the Project would result in severe alteration of natural flow regimes, would result in unmitigated impacts related to erosion and groundwater recharge, and would adversely impact downstream biological resources. CBEC Report at 5 and 6. The DEIR fails to analyze these project inconsistencies. Given that the Project will conflict with the County's General Plan policies, state and local law forbid the County from approving it.

**2. Consistency with the Valle de Oro Community Plan**

D-08-52

The Valle de Oro Community Plan ("VDOCP") includes a vision statement specifying that "[N]ew development will conserve natural resources and topography and will provide a pleasant, safe environment for present and future residents of Valle de Oro." VDOCP at 3. The VDOCP identifies designated Resource Conservation Areas ("RCA") within the Rancho San Diego Specific Plan. This designation is intended to preserve the community's significant natural resources. The Project site is included in designated RCA 77: Sweetwater River Floodplain. Valle de Oro Community Plan at 36 and Appendix A – Map of RCAs. Here too, the DEIR dismisses the Project's inconsistencies with the VDOCP and the significant impacts of the Project.

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**D-08-51** Please see technical responses to the CBEC Report (Responses to Comments D-08-74 through D-08-82) regarding natural flow regimes and potential erosion and groundwater recharge impacts. Those impacts are identified as less than significant. With regard to specific COS-4 and COS-5 policies cited in the comment, please see Topical Response 11, as well as FEIR Appendix B for detail. Regarding downstream effects on biological resources, please see Response to Comment D-08-1.

**D-08-52** The cited sentence from the Vision Statement is preceded by the following: "The unique balance of urban, semi-rural, agricultural, and open space land uses shall be retained. The green-belt separation from adjacent cities and planning areas shall be preserved." The Project contributes to both of those elements of the Vision Statement, as well as the comment-cited sentence over the long-term. Within roughly 15 years, the Sweetwater River drainage would be improved, native habitat would be improved, and abutting areas outside the drainage would be left in vegetated open space. Impacts would occur during the mining and reclamation phase of the Project while still providing a "safe" environment (see FEIR Sections 3.1.1, *Air Quality*, 3.1.4, *Hazards and Hazardous Materials*, 3.1.7, *Transportation/Traffic*, etc.). Please also see FEIR Appendix B for detail. Specifically, consistency with the Resource Conservation Area is addressed on FEIR Appendix B pages B-68 through B69, and explains why resources would be improved over the existing condition at Project conclusion.

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**(a) Goal Regarding Community Character**

D-08-53

**Goal:** Retain the unique balance of urban, semi-rural agricultural, and open space land uses within the community, with open space and low-density buffers that separate the community from adjacent cities and unincorporated communities, while new development within the community conserves natural resources and topography.

The Project is inconsistent with this goal of preserving community character. As discussed through this letter, the Project would alter the topography of the river bed, alter drainage and flow patterns, adversely impact myriad sensitive habitats and species, and seriously degrade an important linkage between two Biological Resource Conservation Areas. Therefore, the Project conflicts with this goal of preserving community character.

**(b) Goals and Policies Regarding Industrial Development**

D-08-54

**Goal:** Provide for the kind of industrial development that *does not detract from the existing character of the community*.

**Policies**

1. New industrial areas shall be *compatible with limited impact* industrial activities.
3. All industrial activities shall provide *buffering or screening* when located adjacent to residential areas.
4. Require strict regulation of all extraction industries to *minimize dust, noise, traffic, unsightly views, undesirable accumulation of water, and safety and health hazards*.

The Project would be inconsistent with these policies because the proposed sand mine is incompatible with conservation of the biologically rich open space areas that provide habitat for sensitive species. A mining operation of this scale will adversely impact existing residents and recreational uses surrounding the Project through significant unsightly views, noise, air pollution, and truck traffic.

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**D-08-53** Please see Topical Response 11, as well as Response to Comment D-08-48. In addition, please note that the analysis of Project consistency during the mining and reclamation phase as detailed in FEIR Appendix B is consistent with the comment. Please see technical responses to the issues of topography, drainage, and flow presented in responses to focused comments of the comment letter. Please see Response to Comment D-08-1 regarding biological resources analyses. The Project conforms to Valle de Oro long-term community character goals, as described in FEIR Appendix B on page B-39.

**D-08-54** Please see Topical Response 11, as well as Response to Comment D-08-48. In addition, please note that the analysis of Project consistency during the mining and reclamation phase as detailed in Appendix B is consistent with the comment. The Project is designed to provide limited impact areas by conducting mining in 14- to 30-acre subphases, buffering or screening as possible, and would comply with BMPs and/or specified Project design and/or mitigation measures designed to minimize dust, noise, traffic effects, unsightly views, etc. Please see technical responses to the issues of visual analysis, noise, air pollution, safety, and truck traffic presented in responses to focused comments of the comment letter. Please see Response to Comment D-08-1 regarding biological resources analyses. The Project conforms to Valle de Oro long-term land use industrial goal, as described FEIR Appendix B on pages B43 through B-46.

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**(c) Goals And Policies Regarding Open Space**

**Goal:** The preservation of open space including sensitive habitat, steep slopes, canyons, floodplains, and agricultural lands; and regulation of the use of open space within the community.

**Policies**

9. Encourage the preservation of open space areas in which potential natural hazards exist (flood plains, fault lines, mudslides, etc).

11. Areas to be preserved as natural open space shall be included in open space easements.

As the VDOCP explains, the area of open space within the Valle de Oro Planning Area includes the Sweetwater River floodplain, the Rancho San Diego National Wildlife Refuge, and additional large areas of Rancho San Diego. Much of these areas within the County's jurisdiction are designated as BRCAs or PAMAs and are designated for protection from development. Sand mining is a highly invasive activity that would destroy much of the habitat in the Project area rather than preserve it. Therefore, the Project is inconsistent with these policies.

**(d) Goals And Policies Regarding Conservation**

**Goal:** Promote Conservation And Planned Management Of All Valuable Resources, Natural And Man Made, And Prevent Wasteful Exploitation And Destruction Of The Resources.

**Policies**

1. Conserve unique resources in Valle de Oro by utilizing Resource Conservation Area (RCA) overlays and appropriate land use and zoning controls. Resource Conservation Areas for Valle de Oro are delineated on a map in this Community Plan, Figure 7. This document specifically identifies unique resources and sets forth methods which will be applied to conserve those resources.

3. Encourage the strict regulation of the uses of water bodies within the planning area to ensure that such uses are compatible with existing ecosystems.

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**D-08-55** Please see Topical Response 11, as well as Response to Comment D-08-48. The County disagrees that the Project would be inconsistent with the stated policies, even during the proposed 10-year extraction period. Please see FEIR Appendix B pages B-48 and B-49 for analysis of these open space policies, as well as related Open Space Policy 7, which address the existing amount of on-site open space, how much sensitive habitat would be affected during Project actions, and status of the open space at Project conclusion.

**D-08-56** Please see Topical Responses 1 and 3, as well as Response to Comment D-08-1, regarding RDEIR biological resources text superseding DEIR text (and addressed in Responses to Comments R-07-1 through R-07-95 to RDEIR comments submitted by Shute, Mihaly & Weinberger on behalf of the Sierra Club San Diego Chapter). Please also note that the over-arching goal addresses valuable resources and prevention of wasteful exploitation and destruction of the resources. In this case, although largely consisting of open space, much of the site is in a degraded and non-natural state due to prior on-site development of golf courses. In addition to the remaining natural resources, the site contains valuable mineral resources. Project implementation would allow extraction of those needed mineral resources in a focused way, followed by stabilization and ultimately reclamation that would result in better hydrologic function and better native habitat, with invasives removed. Restored biological open space would be dedicated for preservation *in perpetuity*. Specific to the cited policies, although it is noted that a portion of the Project is within RCA 77, it is beyond the purview of an individual project to identify an RCA and institute land use and zoning controls (cited policies 1 and 14). Cited policies 10 and 11 are not relevant as long-term depletion of groundwater resources would not occur under the Project. The Project is consistent with these Valle de Oro policies. It is beyond the purview of a single project to assign Land Use Element designations (policy 17), which are the responsibility of the Lead Agency. Policy 22 addresses "development" which is not the long-term result of the Proposed Project. Policies 3, 13, 18, 20, 21 and 29 are all relevant to the Project and detailed in FEIR Appendix B. The Project is identified as consistent with these and other related Conservation policies. Please see FEIR Appendix B, pages B-56 through B-64.

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10. The County shall monitor groundwater levels throughout the plan area and institute regulatory measures if long-term depletion of groundwater resources is occurring.

11. The County shall monitor subsurface flows of the Sweetwater River basin and institute regulatory measures if long-term depletion of the groundwater resources is occurring.

13. Only uses compatible with flooding, such as agriculture, parks, recreation, riding and hiking trails, and other open space activities shall be allowed in significant natural drainage areas.

14. Include the following significant drainage areas as Resource Conservation Areas and apply the appropriate controls:

a. The Sweetwater River Floodplain and identified contiguous high value habitats. (RCA No. 77)

17. Use Land Use Element designations compatible with areas supporting unique vegetation and wildlife habitat resources.

18. Conserve unique functional plant and wildlife habitats, particularly those supporting rare, endangered, or threatened or depleted species.

20. Encourage the maintenance and enhancement of functional plant and wildlife habitats for threatened and endangered species.

21. Protect wildlife refuge areas from noise impacts, outdoor lighting impacts, and pollution impacts from stormwater runoff.

22. Require development which is in harmony with existing topography and avoids extensive and severe grading.

29. Discourage new sources of air pollution in the Valle de Oro area.

The proposed Project is also inconsistent with the Goals and Policies regarding conservation in the VDOCP. As explained in the CBEC Report, the Project would result in changes to the natural drainage pattern of the Sweetwater River and contribute to soil erosion and water pollution both on and off-site. *See*, CBEC Report at 2-5 and Hamilton Report generally. Clearly, mass excavation of the river and floodplain that will forever alter the topography and flow regime is not in harmony with the existing topography and

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does not preserve the natural state of the area. As discussed in detail in section III.A. and B. above and in the attached CBEC and Hamilton Reports, the Project will impact sensitive biological habitat on site and biological restoration areas downstream. Therefore, the Project is inconsistent with these policies.

**(e) Policies Related to Scenic Highways**

Goal: Utilize scenic highway corridors as one method of protecting and enhancing the appearance of scenic, historical, and recreational areas.

1. Support the protection of the scenic highway corridors in Valle de Oro as designated in the County General Plan.<sup>5</sup>

D-08-57

2. Scenic highway corridors in Valle de Oro are as follows: SR-94; SR-125 as an existing designated route, Jamacha Road/SR-54 from SR-94 to El Cajon, Fuerte Drive from I-8 to Chase Avenue, Willow Glen Drive, and Avocado Boulevard.

As acknowledged in the DEIR, SR 94 from SR 125 to Interstate 8 and Willow Glen Drive from Jamacha Road to Dehesa Road, which fronts the northern Project boundary are identified as scenic corridors. DEIR at 2.1-22 and 2.1-46. The DEIR also acknowledges that impacts to view from Willow Glen Drive during mining and reclamation (10-20 years until post-reclamation vegetation matures). DEIR at 2.1-32 and 2.1-47. Therefore, the Project is inconsistent with VDOCP goals and policies related to preserving scenic viewsheds along designated scenic corridors.

**(f) Policies Related to Noise**

Goal: protect and enhance Valle De Oro's acoustical environment by supporting the control of noise at its source, along its transmission path, and at the site of sensitive receivers.

D-08-58

3. Encourage land use and circulation patterns which will minimize noise in residential neighborhoods and sensitive wildlife habitat.

As explained in section III.D above, and in the attached Salter Report, the proposed Project would generate noise in excess of established standards for prolonged periods of time. DEIR at 2.4-5. The DEIR provides no evidence that the identified mitigation would be effective. Salter Report at 4. This noise will severely impact not

<sup>5</sup> See also General Plan Conservation and Open Space Element Goal COS-11.

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**D-08-57** Please see Topical Response 11, as well as Response to Comment D-08-48. In addition, please note that the comment cites the inconsistency identified in the DEIR for the mining and reclamation phase of the Project, and that the analysis detailed in Appendix B is consistent with the comment. Please see FEIR Appendix B, pages B-65 and B-66.

**D-08-58** Through implementation of mitigation, noise levels from the Project's mining operations at residences and wildlife habitat would be reduced to below a level of significance based on the applicable County Guidelines. As such, the Project would be consistent with the goal of protecting and enhancing Valle de Oro's acoustical environment by supporting the control of noise at its source, along its transmission path, and at the site of sensitive receptors.

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only area residents but also sensitive wildlife. Therefore, the Project is inconsistent with VDOCP goals and policies related to minimizing noise.

#### Consistency with the County Code of Regulatory Ordinances

The DEIR acknowledges that mining and processing on these lands will require a Major Use Permit (MUP). Section 7358 of the Zoning Ordinance requires certain findings before any use permit may be granted or modified. These findings include:

*a. That the location, size, design, and operating characteristics of the proposed use will be compatible with adjacent uses, residents, buildings, or structures, with consideration given to:*

- 1. Harmony in scale, bulk, coverage and density;*
- 2. The availability of public facilities, services and utilities;*
- 3. The harmful effect, if any, upon desirable neighborhood character;*
- 4. The generation of traffic and the capacity and physical character of surrounding streets;*

*5. The suitability of the site for the type and intensity of use or development which is proposed; and to*

*6. Any other relevant impact of the proposed use; and*

*b. That the impacts, as described in paragraph "a" of this section, and the location of the proposed use will be consistent with the San Diego County General Plan.*

*c. That the requirements of the California Environmental Quality Act have been complied with.*

As discussed throughout this letter, the project's significant, hydrological, biological, noise, air quality, and traffic hazard impacts, which surrounding residents would be exposed to for a dozen years or more, would impact the physical character of the surrounding rural residential uses and open space/recreational area making the project incompatible with the surrounding uses. As explained above, the Project is inconsistent with several County General Plan policies and VDOCP policies, including policies related to the protection of the County's rural character, sensitive biological resources, and scenic areas. Finally, as discussed throughout this letter, this DEIR is inadequate to comply with CEQA. For all these reasons, the County cannot make the necessary findings to grant the MUP.

#### 3. Consistency with Other County Ordinances

Moreover, the DEIR fails to analyze the Project's consistency with the County's Groundwater Ordinance, which requires analysis of potential groundwater impacts. San

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**D-08-59** As stated in the comment, the Project would require a MUP. This is discussed in detail in Chapter 1.0, *Project Description, Location, and Environmental Setting*, along with descriptions of a prior MUP issued for the area for extraction purposes (see discussion under Section 1.4, "Existing Land Entitlements"). Impacts during the mining and reclamation phase of the Project (most of them less than significant or mitigable) are not identified as making the Project incompatible with surrounding uses over the long-term. Please see FEIR Appendix B. Specific to the issue of scenic areas, the elements of scale, bulk, overall harmony, etc. are addressed in the impact discussions in Section 2.1.2.1, *Potential Conflict with Important Visual Elements or Inconsistency with Applicable Design Guidelines*. The County has not yet made a determination to grant the proposed MUP, but based on the responses to both technical and planning document consistency comments provided above, it is anticipated that findings can be made to support granting the MUP. The FEIR is adequate under CEQA.

**D-08-60** As stated in the comment, the DEIR on page 3.1.5-10 refers to the County Groundwater Ordinance. Text on DEIR page 3.1.5-10 states that the "Ordinance does not limit the number of wells or the amount of groundwater extraction of existing landowners. However, the Ordinance does require analysis of potential groundwater impacts for projects requiring specified discretionary permits." The statement that no analysis was actually conducted, however, is incorrect. The second issue in Section 3.1.5.3 is titled "Groundwater Storage/Well Interference." Thresholds for reduction in storage, as well as drop in well levels, are provided on FEIR page 3.1.5-13, with less than significant conclusion findings as to each of the thresholds on pages 3.1.5-16 and 17, respectively.

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Diego County Code, tit. 6, §67.701 et seq. The DEIR acknowledges this requirement but fails to actually conduct the analysis. DEIR at 3.1.5-10. A revised DEIR must evaluate potential inconsistencies and related impacts.

**IV. The DEIR Fails to Comply with CEQA's Mandate Regarding Alternatives Analysis.**

Under CEQA, an EIR must consider a "reasonable range" of alternatives "that will foster informed decision making and public participation." CEQA Guidelines § 15126.6(a), *Laurel Heights I*, 47 Cal.3d at 404. ("An EIR's discussion of alternatives must contain analysis sufficient to allow informed decision making."). The discussion of alternatives must focus on alternatives that are capable of avoiding or substantially lessening any significant effects of the Project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly. CEQA Guidelines § 15126.6(b). In addition, a "lead agency may not give a project's purpose an artificially narrow definition," to shape this determination but rather must "structure its EIR alternative analysis around a reasonable definition of underlying purpose and need." *In re Bay-Delta etc.*, 43 Cal.4th 1143, 1166 (2008). In particular, using overly narrow objectives to dismiss reasonable and feasible alternatives constitutes prejudicial error. See *North Coast Rivers Alliance v. Kawamura*, 243 Cal.App.4th 647, 669-70 (2015) (where the lead agency's overly narrow project purpose caused it to "dismiss[] out of hand" a relevant alternative, this error "infected the entire EIR").

As a preliminary matter, the DEIR's failure to disclose the extent and severity of the Project's broad-ranging impacts necessarily distorts the document's analysis of Project alternatives. As a result, the alternatives are evaluated against an inaccurate representation of the Project's impacts. Proper identification and analysis of alternatives is impossible until Project impacts are fully disclosed.

Moreover, the DEIR's alternatives analysis fails to live up to CEQA standards because: 1) it defines the Project objectives too narrowly and 2) it fails to analyze a reasonable range of alternatives that could significantly reduce the Project's impacts

**A. The DEIR Presents Overly Narrow Objectives.**

An EIR violates CEQA if it defines project objectives so narrowly as to preclude any alternatives at all (see *North Coast Rivers Alliance v. Kawamura* (2015) 243 Cal.App.4th 647, 667), or proposes purported alternatives that conflict with project objectives only so they can be easily eliminated (see *Watsonville*, 183 Cal.App.4th at 1089).

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**D-08-61** DEIR and FEIR Chapter 4.0, *Alternatives*, provides comparative environmental information for relevant environmental topics and the Objectives are not too narrowly drawn. Please see Response to Comment D-A6-24, which describes the rationale for alternative selection cited in Chapter 4.0.

The Commenter's statement that the Project objectives are too narrow is incorrect. Objectives are drawn based on Project goals (i.e., extraction of a particular quality of mineral resources) and may be linked to the property owned by a project applicant (i.e., clean up and restoration of a portion of an important County freshwater resource and associated native habitat, a Sweetwater River segment). Excluding the very focused issues addressed in Topical Response 1, the County disagrees that the DEIR failed to disclose the extent and severity of potential Project-associated impacts. Further, all new significant information that came to light after the close of the public review period on the DEIR was presented to the public in the RDEIR, and subject to an additional round of public review and comment.

**D-08-62** The Commenter is concerned that because Project Objectives 1 and 3 describe the Project Applicant's aggregate extraction goals, the objectives are drawn too narrowly. This is not so, and describing an aggregate extraction project—which is the use proposed by this Applicant at this time for this site—does not foreclose all other alternative uses. Feasible alternatives need not meet 100 percent of the stated Project Objectives. The EIR identifies no fewer than six Project Objectives. Objectives 2, 4, and 5 all describe objectives related to providing open space, and preserve and maintain the Sweetwater River channel. It is noted that the commenter does not allege that these objectives unfairly limit the end use of the Project site to open space or too narrowly require a project that would maintain and preserve the channel.



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As discussed above, the DEIR presents overly narrow and self-fulfilling project objectives. Objectives 1 and 3 effectively circumscribe and mandate selection of the Project or an alternative that is substantively similar. In particular, Objective 1 requires the project to “Recover and process construction aggregates in a financially sound and efficient manner while meeting all local, state, and federal safety requirements.” DEIR at 1-1. Objective 3 demands the extraction of “aggregate product in the amount of 570,000 tons per year (approximately one-quarter of San Diego County’s annual sand demand).” Id. These objectives leave no room for consideration of anything other than development of a sand mine operation at this location. Because the objectives leave no room to consider—and are used to justify dismissal without analysis of—relevant, feasible alternatives, they preclude consideration of a reasonable range of alternatives and violate CEQA. *North Coast Rivers Alliance v. Kawamura*, 243 Cal.App.4th 647 at 669-70 (2015). The County should withdraw the DEIR and proceed with analysis of a reasonable range of alternatives, and recirculate the EIR for a complete and adequate environmental review.

#### **B. The DEIR Fails to Consider a Reasonable Range of Alternatives**

The DEIR analyzes only two alternatives to the Project, aside from the No Project Alternative: the Biological Resources Avoidance Alternative and the Noise Receptor Setback Alternative. However, both of these alternatives still result in significant impacts that have not been disclosed. Specifically, the Biological Resources Avoidance Alternative would have a reduced mining footprint and would extract the same amount of material in shorter amount of time (i.e., six years instead of ten). DEIR at 4-5. However, this alternative would not address the significant impacts to the wildlife corridor nor the impacts related to changes in hydrology that would also impact sensitive habitat and species. Therefore, the alternative does not reduce the Project’s significant biological impacts and fails to meet CEQA standards for alternatives analysis. CEQA Guidelines § 15126.6. Moreover, like the proposed Project, this alternative would result in noise impacts to area residents and would potentially result in more severe, undisclosed, unmitigated significant impacts related to groundwater supply/recharge and water quality.

Similarly, the Noise Receptor Setback Alternative would have a reduced mining footprint with a 400-foot buffer from sensitive receptors and would extract the same amount of material overall over a period of seven years rather than ten. DEIR at 4-10. First, this Alternative would remain inconsistent with County Mineral Resources Guidelines that provide for a 1,300 foot buffer between mining operations and residential uses. Second, this alternative would do nothing to ensure avoidance of MSCP protected

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**D-08-63** The Commenter is correct relative to two feasible build alternatives being evaluated in DEIR Chapter 4.0. Because DEIR biological analyses were superseded by the RDEIR, however, specific concerns over DEIR identified impacts are now also superseded. Nonetheless, similar to the DEIR, the RDEIR concludes that Project implementation could result in potentially significant impacts to sensitive plant and animal species, sensitive natural communities and riparian habitat, jurisdictional wetland and non-wetland waters, and consistency with local policies, ordinances, and plans protecting biological resources. Also similar to the DEIR, the RDEIR concludes that implementation of mitigation measures identified in FEIR Subchapter 2.2 would reduce identified impacts to less than significant.

The County agrees that noise impacts would continue to occur under both alternatives, but is unable to discern based on the comment how a smaller impact footprint being excavated to the same depth as the Proposed Project could “result in more severe, undisclosed, unmitigated significant impacts” relative to groundwater supply/recharge and water quality. Please see FEIR Subchapter 3.1.5, *Hydrology and Water Quality*, as well as Response to Comment D-08-60. Relative to the cited 1,300-foot buffer between mining operations and residential uses, please see Topical Response 7, which specifically addresses the 2011 study statement that this setback “is not an absolute requirement” and that mitigation would be decided on a site-by-site basis.” The Alternative is not automatically inconsistent.

The noted changes to river hydraulics would be beneficial to the overall flow of the river and would not result in increased flow off-site (please see Response to Comment D-08-16). No undisclosed, unmitigated, significant impacts to river hydraulics are identified.



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areas and would also result in undisclosed/unmitigated significant impacts related to groundwater supply/quality, recharge and changes to river hydraulics.

The DEIR should have also considered other feasible alternatives that would actually *substantially lessen* the Project's multiple significant impacts. The document provides no reasonable explanation as to why additional alternatives that reduce the inevitable damage from the proposed Project were not proposed. In this case, where the proposed Project is out of scale and character with the surrounding uses, and would result in many significant environmental impacts, it is especially important that the DEIR analyze alternatives that could avoid or lessen those impacts. *See* CEQA Guidelines § 15126.6(c).

As discussed above, the Project will result in significant impacts related to hydrology, biological resources, air quality, noise, and traffic hazards. Thus, the DEIR should have considered alternatives to avoid or lessen these impacts. For example, the DEIR should have analyzed a reduced extraction alternative that would limit the depth of excavation to avoid ponding that would impact groundwater resources, limit changes to hydraulics and flood flows, and avoid on-site and downstream impacts to habitat through changes in flow. The DEIR should have also analyzed a Project alternative that substantially reduces the Project footprint *and* the amount of aggregate to be extracted from the project site. Such an alternative would incorporate the 1,300 foot buffer recommended in the Mineral Resources Guidelines, reduce impacts to sensitive habitat and special status species, and provide larger buffers to separate project operations from sensitive receptors to reduce air quality and noise impacts.

Moreover, given the site's location in close proximity to thousands of homes, within an identified important habitat linkage, and immediately adjacent to a national wildlife refuge, the DEIR should have considered alternative uses for the site. For example, the DEIR should have considered an alternative that would create a mitigation land bank rather than a sand mine. The site includes habitat for multiple sensitive species, as well as riparian habitat, and wetlands habitat, all of which are mitigation credits in high demand in the San Diego County area. Hamilton Report at 42. In fact, as discussed in the Hamilton Report, a mitigation banking professional in the area has expressed a substantial interest in creating a mitigation bank at the site and has indicated that it is a feasible alternative for the site. *Id.* A revised EIR should analyze these and other alternatives that will avoid or reduce the Project's impacts.

In short, the DEIR's alternatives analysis is riddled with flaws that improperly constrain to the County's consideration of project alternatives. Moreover, the DEIR fails

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**D-08-64** Please see Response to Comment D-A6-24 related to the rationale for alternative selection cited in Chapter 4.0. The Project is responsible for identifying feasible alternatives that would mitigate significant impacts associated with the Project. A Project consisting of approximately 14- to 30-acre extraction areas and hundreds of acres of retained open space would not be out of scale or character with other uses in the vicinity, which include schools, commercial uses, open space, and even another extractive operation to the northeast (i.e., Robertson's Ready Mix; see FEIR Section 1.5, *Environmental Setting*). Please see Response to Comment D-08-63: alternatives are specifically designed to address significant impacts. No significant impact was assigned to the 1,300-foot buffer issue, ponding-related impacts to groundwater resources, etc., so those issues do not explicitly need to be addressed in an alternative.

The Commenter suggests a project alternative that would use the site to create a mitigation land bank. However, the Project Applicant has indicated that such an alternative would not be financially feasible for this site and would not achieve the Project objectives.

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D-08-64 cont. to consider a reasonable range of alternatives that would "avoid or substantially lessen" the significant effects of the project. CEQA Guidelines § 15126.6

#### V. Conclusion

D-08-65 Substantial evidence in the record shows that the Project would have a number of potentially significant impacts on the environment, including (but not limited to) impacts on groundwater resources, water quality, special status biological resources, noise, air quality, and traffic hazards. These impacts were not adequately analyzed and mitigated in the DEIR. The DEIR can support neither the findings required by CEQA nor a determination of General Plan consistency. For the foregoing reasons, the Sierra Club urges the County to delay further consideration of the Project unless and until the County prepares and recirculates a revised draft EIR that fully complies with CEQA and the CEQA Guidelines.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Catherine C. Engberg  
Carmen J. Borg, AICP  
Urban Planner

D-08-66 Appendices:  
D-08-67 A – CBEC Report  
D-08-68 B – Hamilton Report  
D-08-69 C – Baseline Report  
D-08-70 D – Salter Report  
D-08-71 E – San Diego Region Aggregate Supply Study 2011  
D-08-72 F – Letter Report by Petra Pless related to Review Draft Environmental Impact Report for Safari Highlands Ranch and Citywide SOI Update, dated November 30, 2017  
D-08-73 G – Does noise affect learning? A short review on noise effect on cognitive performance in children, Klatte, Berstrom and Lachmann, 2013  
H – Google Map of Willow Glen Drive

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D-08-65 This comment generally summarizes the most specific comments previously raised in the comment letter. These specific comments are addressed above in Responses to Comments D-08-01 through D-08-64.

D-08-66 Please see Responses to Comments D-08-74 through D-08-82, which address the CBEC Report attached as Appendix A to this letter. Note that the figures and attachments to the letter do not individually raise specific issues with the environmental analysis for the Project, but are addressed as applicable in response to the bracketed comments in the enclosed letter.

D-08-67 Please see Response to Comment D-08-1, which explains why responses to the Hamilton Biological Report attached as Appendix B to this letter are not addressed.

D-08-68 Please see Responses to Comments D-08-83 through D-08-89, which address the Baseline Environmental Consulting Report attached as Appendix C to this letter. Note that the attached author's curriculum vitae does not raise a specific issue with the environmental analysis for the Project and is not bracketed separately.

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cc: Susan Wynn, USFWS  
Daniel Leavitt, USFWS  
David Mayer, Regional Supervisor, CDFW  
Heather Schmalbach, CDFW  
Peter Andersen  
George Courser  
Dave Hogan  
Lisa Ross  
Elizabeth Urquhart  
Dan Weber  
Barry Jantz  
Richard Miller

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**D-08-69** Please see Responses to Comments D-08-90 through D-08-97, which address the Salter Report attached as Appendix D to this letter. Note that the attached author's curriculum vitae does not raise a specific issue with the environmental analysis for the Project and is not bracketed separately.

**D-08-70** The County acknowledges the San Diego Region Aggregate Supply Study included as Attachment E to the letter. However, this document is provided for informational purposes and does not raise any specific issues with the environmental analysis for the Project. No further response is required.

**D-08-71** The County acknowledges the letter authored by Pless Environmental, Inc. included as Attachment F to the letter. However, this document is provided for informational purposes and does not raise any specific issues with the environmental analysis for the Project. No further response is required.

**D-08-72** The County acknowledges the article authored by Maria Klatte, Kirstin Bergstrom, and Thomas Lachmann detailing a review of noise effects on cognitive performance in children, included as Attachment G to the letter. However, this document is provided for informational purposes and does not raise any specific issues with the environmental analysis for the Project. No further response is required.

**D-08-73** The County acknowledges the GoogleMap image of Willow Glen Drive included as Attachment H to the letter. However, this document is provided for informational purposes and does not raise any specific issues with the environmental analysis for the Project. No further response is required.