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**Via E-Mail**

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Re: Sargent Ranch Quarry Draft Environmental Impact Report  
SCH # 2016072058

Dear Mr. Salisbury:

This firm represents the Amah Mutsun Tribal Band (“the Tribe”) in connection with the proposed Sargent Ranch sand and gravel surface 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”) Pub. Resources Code § 21000 et seq., and the CEQA Guidelines, California Code of Regulations, title 14, § 15000 et seq. (“CEQA Guidelines”). In addition, as the County recognizes, the Project conflicts with several provisions of the Santa Clara County General Plan and Code of Ordinances, in violation of state Planning and Zoning Law, Gov’t Code § 65000 et seq. For all of these reasons, the County cannot certify this fundamentally flawed EIR or approve the Project. Green Foothills, a nonprofit organization committed to protecting the open spaces, farmlands, and natural resources of San Mateo and Santa Clara Counties for the benefit of all, also joins this letter.

This letter is submitted along with reports prepared by Greg Kamman, Hydrogeologist with CBEC Eco Engineering, Attachment A (“CBEC Report”); Tanya Diamond, Wildlife Ecologist, Pathways for Wildlife, Attachment B (“Pathways Report”); Christopher Wilmers, Ph.D., Professor of Environmental Studies at University of California at Santa Cruz, Attachment C (“Wilmers Report”); Stuart

Weiss. Ph.D, Chief Scientist with Creekside Sciences, Attachment D (“Weiss Report”); and John M. Wallace, Principal Engineering Geologist and David T. Schrier, Principal Geotechnical Engineer with Cotton, Shires and Associates, Inc., Attachment E (“Cotton Shires Report”). We respectfully refer the County to these 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.

Detailed comments on the DEIR’s analysis of impacts to Tribal Cultural Resources are not included herein and will be submitted separately by Berkey Williams, LLP, counsel for the Tribe on such issues.

## **I. Introduction**

### **A. Project Background**

The Project site is located within Santa Clara County’s jurisdiction on land designated as ranchland and zoned as agricultural ranchland. The Debt Acquisition Company of America, working as Sargent Ranch Partners LLC (“Applicant”) proposes to develop a sand and gravel mining operation on approximately 403 acres within the Sargent Ranch property, which currently is used for cattle ranching. DEIR at S-1. The proposed Project includes the following approvals: a Use Permit to allow sand mining over a period of 30 years; Design Review, Architecture and Site Approval, Reclamation Plan; variance to allow extended hours of operation; Hazardous Materials Business Plan and permit; septic system permit; water well approval; right-of-way and encroachment permits; and a host of discretionary permits from resource agencies. DEIR at 2-57. The Project would extract 35 million cubic yards of material (approximately 49 million U.S. tons) over a period of 30 years. DEIR at 2-9. The Reclamation Plan and revegetation would be implemented as each Project phase is completed over the 30-year period.

The entire Project site comprises a sacred site for the Amah Mutsun Tribal Band. The Juristac Tribal Cultural Landscape is the heart of the ancestral lands of the Tribe. It is the home of a powerful spiritual being known as Kuksui and contains a complex of storied cultural sites and features of spiritual significance. For thousands of years, the ancestors of tribal members lived and held sacred ceremonies at this location. The decision to pursue this Project, despite the Tribe’s repeated explanation of the site’s spiritual significance, reflects a clear disregard for the Amah Mutsun’s history, religious practices, and beliefs.

Several creeks cross the Project site, including Sargent Creek, Tar Creek, and Tick Creek. DEIR at 2-2. Importantly, the site supports a high concentration of sensitive habitat and sensitive species and serves as a critical landscape linkage, providing a corridor allowing for the movement of wildlife and plant species from one area of suitable habitat to another. DEIR at 3.4-35. The fragmentation or loss of one of the few remaining linkages between the Santa Cruz Mountains/Gabilan Range and the Diablo Range would jeopardize the ecological benefit of the regional network of protected lands and the hundreds of millions of public and philanthropic dollars invested therein, and could not be replaced or mitigated elsewhere.

Despite the tribal and biological significance of the site, this is not the first time it has been proposed for destructive development. In 1992, developers sought to build thousands of houses, a hotel, and a one-million square foot industrial park. Later owners sought to cluster dozens of homes among two golf courses. *See* Attachment F (newspaper articles regarding previous development proposals on the site). After significant opposition from both the County and the public, the owners eventually abandoned their plans. They later went bankrupt and put the land up for auction. The Applicant bought the property at auction and set its sights on mining entitlements to bolster their investor's return. Once entitled, it is expected that the Applicant will sell the project to a yet-to-be-identified mine operator.

## **B. Summary of Comments**

Our review of the Project's DEIR revealed serious inadequacies and conflicts with CEQA and State Planning and Zoning Law. A brief summary is provided here to guide review:

- The DEIR does not contain any support for its contention that the Project will produce high-quality aggregate in meaningful quantities.
- The DEIR relies on outdated survey information for numerous species and biological resources, despite the known significance of the site.
- The DEIR's study of site hydrology fails to consider the ways in which the Project is likely to result in adverse water quality and water supply impacts to on-site and nearby waterways and groundwater resources.
- The DEIR admits that the Project is irreparably inconsistent with applicable plans and policies. As such, it cannot be approved in its current form.

- The DEIR erroneously omits information about the strong potential for a conservation acquisition in the No Project alternative.
- The DEIR proposes to reduce the Project’s greenhouse gas “GHG” emissions using an offset scheme found unlawful by the California Court of Appeal.
- The DEIR fails to provide adequate information about proposed alternatives now supported by the Applicant. For instance, the proposed site for relocating the processing plant is within a mapped Alquist-Priolo Fault Hazard Zone, a fact not disclosed in the DEIR.
- The DEIR ignores at least three nearby projects in its cumulative analysis, despite having ready access to information about their combined impacts.

These failures render the DEIR inadequate as an informational document. See CEQA Guidelines § 15002(a)(1) (one of the “basic purposes” of CEQA is to “[i]nform governmental decision makers and the public about the potential, significant environmental effects of proposed activities”).

In summary, the proposed Project would result in significant impacts that cannot be mitigated. Allowing the Applicant to mine the Project site would desecrate a tribal cultural sacred site. It would jeopardize a critical habitat linkage needed to protect biodiversity in the region’s mountain ranges. It would directly harm unspecified numbers of animals and plants designated as sensitive species and their habitat. It would also result in direct conflicts with the County’s General Plan policies and ordinances. For these reasons, it is our legal opinion that the County cannot lawfully approve this project and the Planning Commission and Board of Supervisors have every right to deny the application.

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

### **A. Project Setting**

Accurate and complete information pertaining to the setting of a 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* (1994) 27 Cal.App.4th 713, 728-29; see also *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 875 (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.

## 1. Biological Resources

An EIR's description of a project's environmental setting crucially provides "the baseline physical conditions by which a Lead Agency determines whether an impact is significant." CEQA Guidelines § 15125(a). Here, the DEIR fails to accurately portray the site's underlying environmental conditions and therefore undercuts the legitimacy of the environmental impact analysis. Specifically, the DEIR lacks sufficient information regarding the biological resources at the Project site. It therefore fails to provide important contextual information and lacks a sufficient baseline for determining impacts.

Notwithstanding the acknowledged rich array of biological resources on and adjacent to the Project site, the DEIR fails to sufficiently describe these resources because it relies on insufficient biological surveys. With few exceptions, surveys for sensitive plant and animal species are outdated or entirely absent. *See* DEIR at 3.4-8 (acknowledges that many of the surveys the DEIR relies on were conducted between 2000 and 2017); DEIR at 3.4-7 and 3.4-8 and Appendices E1, E3, E4. According to James Strittholt, biologist with Conservation Biology Institute, vegetation maps and biological survey information should normally be no more than a year or two old when the CEQA document is released to the public. Personal Communication, C. Borg, Urban Planner, SM&W with J. Strittholt, Biologist and President/Executive Director with Conservation Biology Institute, August 29, 2022. Dr. Strittholt explains that populations of wildlife species expand and contract over time, and thus cannot be expected to remain constant for several years. For example, some of the target species (e.g., tricolored blackbird) are noted as being itinerant (frequently moving from place to place). *Id.* Older singular surveys are inadequate to evaluate potential use of the site by these types of species in the present day. *Id.* Other species (e.g., ambystomid salamanders) are only detected at specific times of the year and depend on specific environmental conditions. *Id.* Even properly designed and well-executed survey efforts may fail to detect plant or wildlife populations found to be present during a different year, either because (a) the initial survey missed individuals that were present or (b) individuals were not present during the first survey, but later moved into the survey area. *Id.* Some plant species can be quite ephemeral and are only detected during certain seasons or during wet years. *Id.* It is not uncommon to sample for plants at multiple seasons and under different environmental conditions. *Id.*

The DEIR attempts to defend its approach to its surveys suggesting that although the surveys were not conducted within the past year, they are sufficient to support the EIR's conclusions. DEIR at 3.4-7 and 3.4-8. Yet, the surveys were completed long before the past year. The wetland determination was conducted in 2016. The focused surveys for the California red-legged frog and California tiger salamander were conducted in 2017, at a time when the county had just experienced a five-year drought between 2012 and 2016, which may have suppressed the detections surveys in 2017. Personal Communication, C. Borg, Urban Planner, SM&W with J. Strittholt biologist and President/Executive Director with Conservation Biology Institute, August 29, 2022.

In some cases, surveys are impermissibly deferred until after Project approval. For instance, the DEIR fails to include surveys for special status plants. DEIR at 3.4-44. Instead of performing the requisite surveys, the DEIR assumes the plants are present and defers surveys until the preconstruction period. The DEIR proposes a mitigation measure that specifies the surveys are to be performed no more than four years prior to construction. DEIR at 3.4-44. The mitigation measure further states that if special status plants are found, the project will be redesigned to avoid them. This approach is inadequate under CEQA.

First, CEQA allows deferred analysis and mitigation only if there is a reason or basis for the deferral and the measures contain specific performance standards that will be met. *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 669-71. Here, the DEIR provides no rationale for why an updated survey cannot be performed until after the Project has been approved. The DEIR's deferral of current, accurate surveys of habitat and sensitive plant species, and development of mitigation based thereon, until after Project approval violates CEQA.

Second, given that the discovery of special status plants would trigger Project redesign, it is even more important that the surveys are conducted now, prior to Project approval. As discussed in more detail below, a stable and accurate project description is required to allow for meaningful environmental review and analysis of alternatives to the Project. A redesigned Project may change the suitability of certain mitigation measures, change the weighing of alternatives, or the potential benefits of approving the Project. Because the DEIR relies on outdated or deferred surveys, it does not provide an accurate description of the existing physical conditions on the Project site. The document is therefore incapable of evaluating the Project's impact on sensitive biological resources.

## **2. Hydrology**

The DEIR likewise fails to adequately describe the existing hydrologic setting of the site and the vicinity. Specifically, the DEIR fails to accurately describe baseline groundwater conditions at the site, instead providing inconsistent and misleading information. CBEC Report at 2, 3. The DEIR's hydrology analysis characterizes the site groundwater conditions as "a shallow groundwater table." DEIR at 3.10-17. However, as explained in the CBEC report, the DEIR's geotechnical appendix describes the area differently, as a perched water area with sand/clay layers that are discontinuous. In perched water areas, water percolates down through the sand until it encounters the clay layer and then perches, rather than percolating further. CBEC Report at 2. In this way, the perched water forms a sort of mini-aquifer that provides multiple ecological benefits, including ecological habitat. Without a consistent and accurate 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.

## **3. Transportation**

The DEIR also fails to provide complete information about existing conditions and potential hazards on U.S. 101 in the Project vicinity. This omission undermines the DEIR's conclusion that the "Project operation and reclamation would not create or contribute to safety hazards on roadways used to access the Project site." DEIR at 3.13-15.

While the DEIR does note that near the Project site U.S. 101 is limited to two lanes in each direction (DEIR at 3.13-4), it omits other significant details. The freeway bridge passing over Tar Creek is particularly narrow and has no shoulder. Surface streets and driveways—including those leading to residences, local farms, and fruit stands—directly abut U.S. 101 along this stretch, and there are generally no acceleration lanes to facilitate vehicles entering the freeway to come up to the speed of freeway traffic. Vehicles exiting the freeway likewise must pull off abruptly without the benefit of deceleration lanes, and there is often stop and go traffic in the area.

The Project proposes to add an acceleration lane to Northbound U.S. for haul trucks and other vehicles exiting the Project site at the Old Monterey Road Extension. DEIR at 2-25, Figure 2-12. The DEIR explains that the current northbound on-ramp in that location does not include an acceleration lane and does not meet Caltrans standards under existing conditions. DEIR at 3.13-5. However, the DEIR fails to disclose that there is no deceleration lane for Northbound vehicles

in that location and does not explain whether that Northbound U.S. 101 exit meets Caltrans standards. It also fails to explain why the Project does not include a deceleration lane for Northbound vehicles exiting U.S. 101. Without providing all relevant information about the existing roadway setting, the DEIR cannot properly evaluate whether vehicles entering and exiting the Project site will contribute to roadway hazards.

## **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. The court in *County of Inyo* explained why a thorough project description is necessary:

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 a meaningful environmental analysis. In one glaring example, it fails to provide sufficient information about the temporary, prefabricated sand and gravel processing plant that will be set up and used before a permanent processing plant is constructed. DEIR at 2-9, 2-21. The DEIR suggests that the temporary plant could be used for up to the first five years of quarry operations. DEIR at 2-24. Yet beyond noting the temporary plant's water use rate and processing capacity and including a site plan showing a "Temporary Batch Plant" (which is presumably the temporary processing plant), the DEIR provides no other information about the temporary plant. DEIR at 2-21, 2-24, Figure 2-5b. It does not indicate how the temporary plant might differ in form or function from the permanent plant, and whether any protective measures proposed for the permanent processing plant would also apply to the temporary processing plant. For example, it is unclear whether excavated product would be transported to the temporary plant via conveyor belt (*see* DEIR at 2-24), and whether the temporary plant would be protected from floodwaters by a berm, as proposed for the permanent plant (*see* DEIR at 3.10-46, 3.10-47).

In addition, the DEIR lacks sufficient detail on specific activities needed to process mined aggregate. The DEIR references these activities and related equipment at only the most general level. *See e.g.*, DEIR at 3.8-9 (“The quarry processing facility would include numerous fixed equipment that would be powered by electricity such as washing, separation, and classification equipment, and screens, conveyors, and stacking conveyors.”), 3.12-21 (“A total of 30 pieces of equipment would operate at the processing site, including hoppers, crushers, screens, conveyors, and stackers.”). It fails to give the reader a clear sense of what these activities entail and what role the equipment would play in those activities. Moreover, the DEIR states that processing activities will use approximately 800 gallons of water per minute, predicated on using 80 percent recycled water (DEIR at 2-21, 2-28), but fails to explain how that use rate was determined. Without providing more information about how the aggregate would be processed, it is not possible to assess the accuracy of these water use assumptions. Similarly, 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 all other Project details.

Further, it is unclear whether the Project site plans in the DEIR depict the location of the screening berm, which would be constructed in the vicinity of the processing plant. DEIR at 2-12. The site plans do not show any area labelled as “screening berm,” making it unclear whether they include the screening berm at all. *See, e.g.*, Figure 2-5b. The screening berm is a key Project component. Therefore, the DEIR must show its location clearly on Project site plans to make clear how the screening berm stands in relation to other Project areas.

The DEIR also fails to provide an adequate and consistent description of work needed for the planned railroad spur to become operational. In some places, the DEIR suggests that the spur will need to be constructed from scratch. *See* DEIR at 2-24 (“A new rail spur would be constructed approximately 900 feet south of the rail undercrossing of U.S. 101”). In others, the DEIR suggests that a spur exists but will need to be extended. *See* DEIR at 3.6-10 (“the Project would also transport product by train, using *the Union Pacific Railroad rail spur proposed to be extended* from its undercrossing of the U.S. 101 to the processing area”) [emphasis added]. The DEIR must describe the condition of any existing portion of the spur and whether repair work on that portion is needed. The DEIR must also describe the process for securing any needed approvals from and for coordinating with Union Pacific both to repair and/or construct the spur and to enable the Project’s rail cars to be picked up at night by existing trains carrying freight. DEIR at S-5, 2-28.

Finally, the DEIR also fails to adequately describe how Phase 1 reclamation can take place at the same time as Phase 2 mining. Specifically, the DEIR and Reclamation Plan (Appendix B) state that the easterly portion of the Phase 1 mining area will be reclaimed at the time that Phase 2 is being mined. DEIR at 2-14; DEIR Appendix B at 4, 43. The DEIR claims that this phased reclamation will ostensibly take place “[t]o reduce the duration of the maximum visibility of mining areas at the ridge” mined in Phase 1. DEIR at 2-14. However, portions of the Phase 1 and Phase 2 areas are coextensive (DEIR Figure 2-6, 2-8, 2-18, 2-21a, 2-21b), and the DEIR and Reclamation Plan fail to explain how Phase 1 reclamation can take place without interfering with Phase 2 mining operations, and vice versa. Figures in the DEIR and Reclamation Plan do not clarify how this is possible. DEIR at Figures 2-6, 2-8, 2-18, 2-21a; Reclamation Plan at Figures 11, 13, 14, 15, 18, 20, 21. Moreover, given that Phase 2 mining will take place at higher elevation than the Phase 1 reclamation, it is unclear how Phase 1 reclamation will substantively reduce visibility of Phase 2 mining activities.

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 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. This information is necessary to allow decisionmakers, the public and responsible agencies to understand and evaluate potential environmental impacts.

**C. The DEIR Does Not Support Its Conclusion that the Project Will Provide a Significant Source of High-Quality Aggregate.**

The entire DEIR is premised on the idea that the proposed Project will produce “high-quality aggregate needed for various uses in the County and other local markets,” specifically meeting “regional demand for construction sand.” DEIR at S-2. The DEIR claims that the aggregate “would be composed of 60 percent sand, 20 percent gravel, and 20 percent clay.” DEIR at 2-13.

As a preliminary matter, this conclusion is at odds with the Sargent Quarry Mining and Reclamation Plan, which states that only 50 percent of the mined material is expected to contain sand. DEIR Appendix B, at 34.

Moreover, the DEIR provides little support for either assertion. Sierra Geotechnical Services, Inc. (“SGS”) conducted subsurface investigations as part of the slope stability analysis – these soil borings advanced to depths between 47 and 100 feet. DEIR at 3.7-9. The EIR preparers also had access to exploratory drillings

conducted by Graniterock Exploration Services in 2007, which advanced to depths of 150, 250 and 360 feet. DEIR at 3.7-9. During mining operations, excavation would occur to a depth of 250 feet. DEIR at 2-14. Thus, only two of Graniterock Exploration Services bore holes advanced far enough to reach the extent of mining; the remaining bore holes only provide information about the upper reaches of the mining pits.

Moreover, the data provided in the DEIR is insufficient to establish that the site will produce high-quality material in meaningful quantities. “Construction sand,” i.e., Portland cement concrete-grade aggregate (*see* DEIR at 3.11-1), must have certain characteristics. Sand is classified by its size and shape (generally, very fine sands are less than 0.075 mm; fine sands are between 0.075 and 0.425 mm; medium sands are between 0.425 to 2 mm, and coarse sand is between 2.0mm to 4.75 mm). Concrete-grade aggregate is generally between 2.0mm to 3.5mm, or “well-graded.” Moreover, it cannot contain too much reactive silica, or else the resulting concrete can suffer from spalling or loss of strength.

The boring logs provided in Appendix G do not contain information about whether the sand available on site will actually meet these characteristics, or the relative quantity of construction sand. Review of the boring logs indicate significant clay layers, with shorter mineral intervals. Within these intervals, much of the sand is described as very fine to moderate, with significant amounts of “silty” or “clay” materials intermixed *See, e.g.*, Appendix G, at Appendix A (Exploratory Boring and Test Pit Logs<sup>1</sup>); *id.* at 88-91 (particle size distribution reports showing between 0.2 and 13.2 percent “coarse sand,” nowhere near the 60 percent promised in the DEIR). Cotton Shires summarized the issue as follows: “The viability of the proposed project and the estimated quantity of materials that will be needed for market, for buttress fills, or to be stockpiled on site is highly dependent on the proportions of gravel and sand versus fines.” Attachment E, Cotton Shires Report at 3. However, Cotton Shires concludes that no explanation is given for the percentage estimates provided above, and insufficient data is provided to “enable [a] grain size breakdown.” *Id.* And no discussion is provided about the potential reactivity of the sand on site in order to enable a determination of whether the materials is of sufficient quality to be used in major construction projects, as touted by the Applicant.

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<sup>1</sup> The DEIR states that these logs are from Graniterock Exploration Services (DEIR at 3.7-9), while Appendix G, at Appendix A provides Sand and Gravel Logs from “Granite Construction, Inc.” To the extent additional logs are available from *Graniterock* (a wholly separate company), they must be included in the revised EIR.

In other words, the DEIR contains insufficient information to support the key claim of the Applicant: that this Project will result in a material source of construction-grade sand and gravel. This unsupported assumption infects much of the DEIR.

First, the Project Objectives are drafted with the assumption that the Project will produce high-quality aggregate, specifically construction sand. DEIR at S-2. However, given that it is unclear whether the proposed Project will even meet this objective, the Project Objectives are too narrow as to be useful. *See We Advoc. Through Environmental Review v. County of Siskiyou* (2022) 78 Cal.App.5th 683, 692 (artificially narrow project objectives transform alternatives section into “empty formality”).

Second, the uncertainty of whether the site will produce high-quality aggregate renders the Project description unstable. The DEIR presumes that the Project will result in certain quantities of high-quality aggregate, gravel, clay, overburden, and topsoil. But if the mining pits produce less saleable material and more clay or overburden, then the plans for processing, sale, and reclamation necessarily change too. For instance, if saleable material is mixed with higher quantities of clay than expected, then additional washing is likely needed, with a different processing plant layout, stockpiles, and water supply and treatment. If less saleable material and more waste is produced, then a different plan may be required for truck hauling and transport, or for rail pickup. Likewise, if the mining results in different amounts of waste or overburden than anticipated, implementation of the reclamation plan may be infeasible. Finally, the percentages of saleable material are critical to determining whether the Project is economically feasible. Commencement of operation without sufficient assurances that the Project developers will be able to financially support the Project’s required mitigation is reckless.

These uncertainties are not just speculative or hypothetical. A nearby sand mine – the Lomerias Muertas Quarry on the hills east of Sargent – shut down well before the end of its 50-year permit (set to expire in 2041). Likewise, the operator of the Freeman Quarry, directly north of Sargent Ranch, abandoned expansion plans in 2012. It would be a true loss to the County, the Tribe, the public, and the site’s

natural resources if Applicant desecrates the Property but produces little to no construction-grade aggregate.<sup>2</sup>

These uncertainties carry forward to the DEIR's analysis of the Project's potential impacts. For instance, the DEIR states that the Project will require an average of 76,800 gallons of water per day for "aggregate washing." DEIR at 3.10-33. This amount is based on assumptions about how dirty the raw material is, and how efficiently the resulting water can be recycled. However, if the material contains significantly more clay than expected, then more water will be required to clean the sand, and the resulting wastewater will be harder to recycle. *See* Attachment G, article regarding alternatives to sand in cement. Thus, the DEIR's assumptions about water use may be grossly underestimated.

Likewise, the DEIR assumes that the overburden and waste piles will be contained to a certain size. *See* DEIR at 2-12 (Table 2-1 states that processing plant and related facilities, including stockpiles, will result in 61.83 acres of disturbance). However, if the Project produces significantly more overburden, or if the overburden must be stored in lower stockpiles due to different material composition than anticipated, then the Project could result in additional, undisclosed disturbance areas (or additional haul truck trips to remove the overburden from the site). None of these potential impacts are studied or disclosed in the DEIR.

Finally, if the site will not produce the amount of aggregate anticipated by the proponents, the DEIR's analysis of alternatives falters as well. For instance, the DEIR concludes that both an alternate use (i.e., a park) and the No Project Alternative would not meet any of the Project's objectives, suggesting that they should not be considered further by the County. DEIR at 4-7 to -8. However, if the proposed Project also will not meet the stated project objectives, then these alternatives merit greater consideration.

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<sup>2</sup> Available information also suggests that the region already has sufficient construction-grade aggregate supplies, especially given the increasing availability of recycled and alternative concrete products. *See* DEIR at 3.11-3 (nearby, permitted reserves anticipated to last between 21 and 50 years), Attachment G (article re alternatives to sand in cement). However, even if we assume that the Applicant's assertions as to regional need are accurate, they are particular to *construction-grade aggregate*. Other forms of sand and gravel, such as fill sand, are readily available from nearby sources like the nearby A.R. Wilson Quarry and Don Chapin Quarry.

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

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 decisionmakers to make intelligent judgments. *Id.* Consistent with this requirement, the information regarding the project's impacts should not need to be "painstakingly ferreted out." *Environmental Planning and Information Council of Western El Dorado County v. County of El Dorado* (1982) 131 Cal.App.3d 350, 357 ("*EPIC*") (finding an EIR 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 its responsible officials of the environmental consequences of their decisions before they are made." *Laurel Heights Improvement Assn. v. Regents of the University of California* (1993) 6 Cal.4th 1112, 1123 ("*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* (1990) 52 Cal.3d 553, 568. Nor may an agency defer its assessment of important environmental impacts until after the project is approved. *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 306-07; *Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal.App.5th 467, 518-19. An EIR's conclusions must be supported by substantial evidence. *Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376, 409 ("*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 at 306-07. 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 Pub. Resources Code § 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.*

As documented below, the DEIR falls woefully short with regard to many of CEQA's impact areas. The Sargent Ranch Quarry DEIR fails to identify, analyze, or support with substantial evidence its conclusions regarding the Project's potential environmental impacts.

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

The DEIR's analysis of the Project's impacts to hydrology and water quality is inadequate because it: (a) presents inaccurate hydraulic and hydrologic analyses; (b) presents an inaccurate estimate of impacts on groundwater resources; (c) fails to adequately analyze on-site and downstream impacts; and (d) fails to support its conclusions with the necessary facts and analysis.

Greg Kamman, Hydrogeologist with CBEC Eco Engineering, reviewed the Sargent Ranch Quarry DEIR hydrology and water quality analysis and the document's hydrological appendices. His report (CBEC Report, Attachment 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.

**1. The DEIR Presents An Inaccurate and Incomplete Hydrologic Analysis of the Project's Impacts Related to Drainage and Flooding.**

The DEIR fails to accurately analyze the Project's potential impacts related to changes in drainage and flooding. CBEC Report at 2, 3. As explained in the CBEC Report, the DEIR mischaracterizes the site's land and soil types, which results in an inaccurate analysis. *Id.* Specifically, the site is best characterized as agricultural rangeland, but the hydrologic model incorrectly characterizes the site as pinyon juniper (arid forest). *Id.* Pinyon juniper areas allow less runoff than open rangeland. The implication of this error is that the hydrologic model underestimates runoff magnitude on the site. *Id.* Therefore, the hydrologic analysis has underestimated peak runoff rates, resulting in an inaccurate DEIR analysis of the hydrologic conditions and potential impacts. Had the DEIR used an accurate hydrologic model, it would likely have found the Project would result in a substantial amount of runoff and that related impacts would be significant. *See* CEQA Guidelines § 15384 ("evidence which is clearly erroneous or inaccurate . . . does not constitute substantial evidence").

The DEIR's flood analysis is also problematic because the DEIR only presents peak flow results for the 100-year storm event, despite the fact that flood impacts

can occur during lesser magnitude events. CBEC Report at 3. The DEIR concludes, without evidence, that impacts during storm events of lesser intensity than the 100-year event would result in less-than-significant flood impacts. However, the DEIR fails to present modeling results for events of lesser magnitude than the 100-year event. Therefore, the DEIR's conclusion is unsupported.

In addition, regarding the design of the Tar Creek bridge, the DEIR presents hydraulic modeling results and states that the bridge would be designed to convey the 100-year flood with 0.7 feet of freeboard. CBEC Report at 3; DEIR at 3.10-39. The DEIR then concludes that this amount of freeboard is deemed adequate for the 100-year event since the County's drainage manual states the 10-year event must be conveyed with one foot of freeboard. CBEC Report at 3; DEIR at 3.10-39. Of course, the magnitude of freeboard required *increases* with increasing flood magnitude so that the amount of freeboard needed for a 100-year flood would necessarily need to be greater than for a 10-year flood. *Id.* These errors render the analysis of flood impacts related to Project-related bridge construction inadequate for purposes of CEQA.

## **2. The DEIR Fails to Analyze Erosion Impacts Due to Changes to Site Drainages.**

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. The DEIR explains that the Project would reroute existing natural surface water channels to two newly excavated drainages near the proposed locations of the Phase 1 and 3 mining pits. CBEC at 3. The drainage around the Phase 1 pit would be directed into a culvert that would drain onto a 25-foot length of rock riprap channel or apron. *Id.* Similarly, the drainage around the Phase 3 pit would be redirected into a series of swales and culverts before entering Sargent Creek. CBEC at 3, 4. The DEIR fails to provide hydraulic modeling to demonstrate that the culvert outflow velocity will be reduced enough to preclude erosion of the earthen channel downstream. *Id.* The DEIR discloses that flow during a 100-year flood event will exit the culverts draining areas near Phase 1 and 3 mining pits at velocities of 12.25 feet per second and 9.1 feet per second respectively. *Id.* At those velocities, drainage during a flood event could result in substantial erosion, impacting water quality downstream. *Id.* The DEIR fails to disclose or analyze this impact.

Perhaps of greater concern, the proposed change in topography and gradient around the Phase 3 pit would result in potentially significant erosion from the upper swale constructed on the Phase 3 pit benches. CBEC Report at 4. The DEIR states that the Phase 3 pit grading plan includes steep slope excavation cuts of

greater than 2:1 with 20-foot-wide benches every 30-foot vertical cut. *Id.* The DEIR indicates that the slope of the swale will be 4 percent, which is relatively steep given the swale will presumably be constructed on level benches. *Id.* As the CBEC report explains, if the swale bed slope is constructed at less than the stated 4 percent, it will result in water levels within the swale being higher than predicted, resulting in potential overtopping of the swale during large storm events. Any overflow from the bench swale would then spill onto the 2:1 to 3:1 pit slopes below the bench, causing excessive erosion and potentially cut-bank instability. *Id.*

If the swale bed slope is constructed at 4 percent slope, the predicted 100-year storm runoff flow velocity in the swale is 11.51 feet per second. CBEC Report at 4. This velocity has significant potential to erode an unlined, earthen swale. *Id.* Thus, this component of the Project has the high probability of eroding an earthen swale and contributing sediment to downstream receiving waters. The DEIR fails to analyze this potentially significant impact. As discussed further below, this flaw implicates the impact analyses for biological resources as well.

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

Currently, site runoff drains from the hillsides towards Sargent Creek. CBEC at 4. Construction of the proposed mining pits will significantly alter the topography of the site and the volume and timing of upland runoff reaching Sargent Creek. *Id.* As discussed below, these changes will, in turn, impact the ecological functions in the creek and in adjacent areas.

The DEIR explains that, under existing conditions, groundwater beneath the proposed pit areas flows toward Sargent Creek and sustains the riparian corridor and wetland habitats downstream. *Id.* With implementation of the Project, the pits will capture and retain the groundwater as well as rainfall, some of which would otherwise flow to Sargent Creek. *Id.* In this way, the Project will reduce the amount of water supplying the creek and habitats along it. This reduction in water supply to corridor habitats will also reduce the duration of ponding and saturation (hydroperiod) and may have an adverse impact on associated aquatic species. (See also the related discussion in the biological resources section of this letter below.) The DEIR only appears to evaluate potential impacts to Monterey roach and Monterey hitch, but fails to address general wetland and riparian habitats and other associated species. CBEC at 4. Thus, the DEIR does not fully address potential impacts to wetland and riparian habitats and other associated plant and wildlife species resulting from the hydrological changes. Therefore, the DEIR's conclusion that the proposed Project would have less than significant impacts to

downstream flows and groundwater storage is unsubstantiated by the DEIR's analysis and technical studies.

#### **4. The DEIR Fails to Adequately Analyze Project-Related Impacts to Groundwater Resources.**

The DEIR's evaluation of the Project's impact to groundwater resources is inadequate for multiple reasons. First, the DEIR entirely fails to adequately evaluate the project's impacts on perched aquifer systems. The DEIR describes the presence of perched water tables within the mining areas. DEIR at 2-16, 2-20. However, as the DEIR concedes, no groundwater test wells were constructed to confirm the extent of these systems. DEIR at 3.10-17. Thus, the DEIR fails to establish the baseline condition of this resource.

Excavation of the mining pits would eliminate perched water zones that likely provide water supply to downstream wetlands and aquatic habitat. CBEC Report at 2. As the CBEC Report explains, perched aquifer systems cannot be recreated through mitigation. *Id.* Their loss will be complete and permanent and in-kind mitigation for these losses is not available. *Id.* The DEIR fails to quantify the water supply and habitat supported by perched aquifer systems and fails to analyze related impacts to sensitive habitat areas that benefit from these systems. Therefore, the DEIR fails to analyze this significant impact.

Second, the DEIR's technical appendix discloses that the water supply needed by the Project for dust suppression may be as much as three times greater than the value estimated. CBEC at 4, 5; DEIR Appendix I, Todd Groundwater Memorandum at 6. However, this amount of water is not used in the DEIR's analysis. CBEC Report at 4, 5. Therefore, the DEIR underestimates the Project's water supply demand. CBEC at 4, 5.

Third, the DEIR's methodology for evaluating project-induced drawdown of area groundwater resources is flawed. The evaluation was performed by conducting a one-day 12-hour pumping test and a sequence of pumping cycles of 12 hours per day for five days. The results showed drawdown on the neighbors' well of 0.8 to 4.0 for the one-day test and 0.9 to 5.6 feet for the five-day test. However, the DEIR indicates that project operations would take place six days a week, not five. As discussed further below, this inconsistency in the pumping cycle between the pumping test and anticipated Project operations results in a skewed evaluation impacts to groundwater availability.

In addition, the increase in estimated drawdown at the neighbor's well during the one-day test versus the five-day test indicates that groundwater levels do not fully recover during the 12-hour period when no pumping takes place. The DEIR fails to address the question of whether the groundwater levels would recover fully during the 24-hour period when the mine would not operate, or whether Project operation would result in long-term or permanent impacts.

The DEIR analysis also fails to consider the combined effects of simultaneous and long-term pumping from the neighboring well, which would also contribute to total drawdown values. Therefore, the DEIR fails to analyze the cumulative effect of well pumping drawdown over longer periods such as a month, a year, or multiple years, and the potential impact to the productivity of neighbor's well. In this way, the DEIR underestimates the Project's impacts on neighboring wells.

#### **5. The DEIR Fails to Adequately Analyze Project-related Impacts of Decreased Groundwater Availability on a Regional Scale.**

The DEIR discloses that Project well pumping would deplete Pajaro River flow, but ultimately concludes that Project-related impacts to downstream water flow would be less than significant. CBEC at 5; DEIR at 3.4-54. However, the DEIR analysis is flawed and misleading.

As discussed in detail in the attached CBEC Report, the analysis of impacts to Pajaro River flow was conducted at a considerable distance downstream of the site at the USGS gauge at Chittenden near Watsonville. CBEC Report at 5; DEIR Appendix I Todd Memorandum at 4. This location receives at least an additional 550 square miles of intervening tributary inflow from the San Benito River, Sargent Creek, and Pescadero Creek watersheds. CBEC Report at 5. As the CBEC Report explains, the DEIR should instead have compared Project-related stream flow reductions to river flows and all other beneficial uses adjacent to the site, rather than to sites far downstream where tributary and groundwater inflows drastically increase associated storage and flow volumes. *Id.* Comparing Pajaro River flow magnitudes so far downstream from Project water demands masks or dilutes the potential impacts. *Id.* Thus, the DEIR fails to properly evaluate the potential impacts on Pajaro River flow rates and water levels as they relate to the river's ecological values and all surface water beneficial uses closest to the site, where the impacts would be most significant. *Id.* The result is an inaccurate analysis and conclusion, a failure to disclose potentially significant impacts, and a failure to identify feasible, effective mitigation or alternatives to avoid or minimize the impacts.

In sum, the DEIR must clearly and consistently describe the Project's components 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.

**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, these serious deficiencies must be remedied. *See Sundstrom*, 202 Cal.App.3d at 311 ("CEQA places the burden of environmental investigation on government rather than the public.").

As discussed above, and acknowledged in the DEIR, the proposed Project site comprises a wildlife linkage corridor 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 Table 3.4-3 at 3.4-20 to 3.4-23. The Project will result in significant direct and indirect impacts to these sensitive communities. *Id.*

Given the acknowledged 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 Pathways Report, Wilmers Report, and Weiss Letter, and summarized below, the DEIR presents a cursory and incomplete evaluation and lacks evidence for several of its conclusions. The discussion below highlights additional deficiencies.

**1. The DEIR Fails to Adequately Describe Future Permitting Requirements and Agency Consultations.**

The DEIR reveals that the Applicant will likely need additional review, permits, and approvals from several federal, state, and regional agencies related to biological resources on site. DEIR at 2-57. These include the U.S. Army Corps of Engineers ("Army Corps"), the U.S. Fish and Wildlife Service ("USFWS"), the

California Department of Fish and Wildlife (“CDFW”) and the Central Coast Regional Water Quality Control Board (“RWQCB”). *Id.* The Army Corps has authority to regulate projects that may impact waters of the United States, and the RWQCB has authority to regulate projects that may impacts waters of the state. CDFW has the authority to regulate projects that may impact species protected by the California Endangered Species Act, as well as projects that may impact waters of the state. USFW has authority to regulate projects that may impact species protected by the federal Endangered Species Act.

Under CEQA case law, the DEIR should have discussed these agencies’ permitting and review processes and any potential mitigation or project modifications that may be required by the agency. Specifically, the DEIR must include a list of consultation requirements and “to the fullest extent possible, the lead agency should integrate CEQA review with these related environmental review and consultation requirements.” CEQA Guidelines § 15124(d)(1)(C); *see Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 936-42. In *Banning Ranch*, the city ignored its “obligation to integrate CEQA review with the requirements of the Coastal Act” (specifically the Coastal Act’s habitat designation requirements). *Id.* at 936. The Court invalidated the City’s CEQA analysis because the “omission resulted in inadequate evaluation of project alternatives and mitigation measures. Information highly relevant to the Coastal Commission’s permitting function was suppressed. The public was deprived of a full understanding of the environmental issues raised by the Banning Ranch project proposal.” *Id.* at 942.

The DEIR includes high level information about the scope of these agencies’ authority and notes instances where their permitting and consultation will be required. But it fails to provide sufficient detail about permit and approval requirements. For example, the EIR states that permits from the Army Corps, RWQCB, CDFW, and USFWS would variously be required to minimize Project impacts on numerous species and habitats, including special status fish (DEIR at 3.4-53); the California Red Legged Frog (DEIR at 3.4-59); California tiger salamander (3.4-68); western pond turtle (DEIR at 3.4-74); protected birds and their habitats (DEIR at 3.4-86); mountain lions (DEIR at 3.4-92, 3.4-93); dusky-footed woodrats and their habitats (DEIR at 3.4-94, 3.4-95); jurisdictional wetlands, other waters, and riparian habitats (DEIR at 3.4-103); and oak woodlands (3.4-114). However, the DEIR does not provide any explanation of the consultation and agency approval process, or where current compliance and consultation stands. Indeed, the DEIR provides no indication that there has been preliminary consultation with any of these agencies, even though extensive agency involvement will apparently be

required and may result in conditions that could significantly shape Project design and operations. Vague references to future permitting and Army Corps, RWQCB, CDFW, and USFWS involvement is not enough. The DEIR must discuss the consultation with Army Corps, RWQCB, CDFW, and USFWS and compliance with their requirements, as well as those of any other local, state, regional, or federal agency with jurisdiction over the Project.

## **2. Analysis of Significant Impacts on Biological Resources Is Incomplete and cursory.**

The California Supreme Court held that an EIR must include enough detail “to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.” *Sierra Club v. County of Fresno* (2018) 6 Cal. 5th 502, 516. This DEIR fails to do so. 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*, 118 Cal.App.3d at 831. 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 3.4-16, 3.4-87, 3.4-90, 3.4-93, 3.4-95, 3.4-98, 3.4-103. These sensitive species include the California red-legged frog, California tiger salamander, and mountain lion, 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. The DEIR’s analysis is hampered by the lack of existing setting information. *See* Section II.A.1. The lack of information regarding the presence and distribution of resources/species making it challenging to adequately assess the degree and type of impact.

Specific examples of incomplete or inadequate analyses are described below.

### **a. Wetlands and Jurisdictional Areas**

The DEIR fails to adequately describe the Project’s significant impacts on wetlands and other jurisdictional areas. The DEIR discloses that the proposed

Project would adversely affect approximately 7,000 linear feet of potentially jurisdictional intermittent and ephemeral channels and drainages, and approximately 12 acres of ponds, seasonal wetlands, wetland seep, and mixed riparian woodland and forest, and rightly concludes that this impact would be significant. DEIR at 3.4-100, -103. However, the DEIR fails to describe the extent and severity of the impacts. This is due to the fact that the DEIR relies on outdated surveys prepared more than five years ago, which as discussed in Section II above, are inadequate to accurately establish baseline conditions for a CEQA analysis.

In addition, the DEIR defers development of appropriate, feasible mitigation measures to minimize the identified impacts to wetlands and jurisdictional areas. Under CEQA, 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, 79-80. 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 gather relevant data.” *Sundstrom*, 202 Cal.App.3d at 311. 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 is legally inadequate. First, the County should have prepared a current wetlands delineation and evaluation of jurisdictional areas to accurately quantify and evaluate the Project’s impacts. In addition, the DEIR should have evaluated the opportunities for on-site mitigation and committed to an approach to mitigation (e.g., avoidance, restoration, creation, or enhancement of similar or higher-quality habitat, the purchase of mitigation credits, or a specific combination of these approaches). Instead, rather than prescribing specific, effective measures that ensure appropriate mitigation, the measure only provides a laundry-list of options. It includes future evaluation to “determine the extent of impacts,” which as described above is prohibited by CEQA. DEIR at 3.4-103 (Mitigation Measure 3.4-14a). Finally, the measure allows for purchase of mitigation credits in an agency approved mitigation bank, such as the Pajaro River Mitigation Bank, but fails to provide any information as to whether such mitigation credits are even available. *Id.* Thus, Mitigation Measure 3.4-14a is vague and unenforceable.

**b. Perched Aquifer Systems and Associated Indirect Impacts to Sensitive Habitat**

As discussed in Section III.A.4 above, the proposed Project would result in the destruction of perched aquifer systems. CBEC Report at 2. These systems provide water supply that sustains sensitive habitats, such as wetlands and riparian habitats. Perched aquifer systems cannot be recreated through mitigation. CBEC Report at 2. Their loss will be complete and permanent and in-kind mitigation for these losses is not available. *Id.* The DEIR fails to quantify this water supply and fails to analyze impacts to sensitive habitat supported by these impacted perched aquifer systems, and species that use them. Therefore, the DEIR fails to adequately address this significant impact.

**c. Sargent Creek and Pajaro River Flow and Related Impacts to Sensitive Habitat and Steelhead Passage**

As indicated in the DEIR, there are riparian, pond, and wetland habitats along the Sargent Creek corridor downstream of the proposed pits. DEIR at 3.4-13, 3.4-101. These habitats likely support special status species that will be subject to changes in water flow and quality. CBEC at 4. Specifically, the mining pits would capture and retain direct rainfall, which would otherwise flow to Sargent Creek. Groundwater pumping will also decrease flows. *Id.* and DEIR at 3.4-55. As acknowledged by the DEIR, the Project therefore will likely reduce the volume of water supplying Sargent Creek, resulting in a decline in the extent and quality of habitat for Monterey roach and Monterey hitch in the lower reaches of Sargent Creek. DEIR at 3.4-56. This reduction in water supply to corridor habitats will also reduce the duration of ponding and saturation (hydroperiod), which may have an adverse impact on associated aquatic species. CBEC Report at 4. The DEIR fails to analyze or address these potential impacts.

Similarly, the DEIR acknowledges that the Project “could reduce the amount of flow in the Pajaro River.” DEIR at 3.4-54. The DEIR discloses the National Marine Fisheries Service has designated the Pajaro River and Tar Creek as critical habitat for the federally threatened South-Central California Coast Distinct Population Segment of steelhead. DEIR at 3.4-2. The document also discloses that the anticipated reduction in flow would impact steelhead passage up and down the river, particularly during the primary migration months. *Id.* However, the DEIR’s conclusion that impacts to steelhead would be less than significant is not supported by evidence.

The DEIR analysis provides a general discussion of the Project's interception of groundwater and surface flow, stating that the amount of runoff that would be intercepted by the mining pits would comprise a small proportion of the Pajaro River watershed. DEIR at 3.4-56. According to the DEIR, most of the water in the mining pits would infiltrate and continue to move down-gradient into groundwater supplies. *Id.* The DEIR then concludes that the proposed Project would not result in a substantial reduction in flow in the Pajaro River and that impacts related to baseflow depletion and effects on steelhead habitat would be less than significant. DEIR at 3.4-55.

However, as explained in the CBEC Report, the DEIR analysis is flawed and misleading. As discussed in detail in Section III.A above and in the attached CBEC Report, the analysis of impacts related to flow depletion fails to consider all of the Project's water demands. CBEC Report at 4. In addition, the analysis of impacts to Pajaro River flow was conducted at a considerable distance downstream of the project site at the USGS gauge at Chittenden near Watsonville. CBEC Report at 5. This location receives a substantial amount of intervening tributary inflow from other watersheds. *Id.* Therefore, comparing Pajaro River flow magnitudes at this downstream location to Project water demands masks or dilutes Project-related impacts. *Id.* Finally, even if water from the mining pits infiltrates and continues to move down-gradient, as presumed by the DEIR, the timing of this infiltration may have adverse impacts on ecological impacts that have not been analyzed or disclosed.

As discussed in the CBEC Report, the DEIR thus fails to adequately analyze how the Project will modify the timing and volume of water runoff to site drainages and downstream areas. CBEC Report at 4. The construction of the pits will significantly alter the volume and timing of upland runoff reaching Sargent Creek, and eventually, the Pajaro River. As the CBEC Report explains, the DEIR should instead have compared Project stream flow reductions to current river flows. *Id.* Instead, the DEIR fails to properly evaluate the potential impacts on Pajaro River flow rates and water levels as they relate to impacts to steelhead closest to the site where the impacts would be most significant.

**d. California Red-legged Frog and California Tiger Salamander**

The DEIR discloses that the proposed Project would result in significant impacts to two sensitive amphibious species: California red-legged frog ("CRLF") and California tiger salamander ("CTS"). DEIR at 3.4-58. The DEIR explains the various ways that these species will be impacted through direct injury or mortality;

loss of upland dispersal and refugial habitat; indirect harm due to vibration and noise that drive them out of protective refugial; project lighting that makes them susceptible to predation; degradation of water quality; and changes in hydrology. DEIR at 3.4-58 to -61; 3.4-68 to -71.

As a preliminary matter, the DEIR has not adequately supported its analysis of potential impacts on these sensitive species. As discussed above, the DEIR relies on outdated survey data. The County failed to conduct protocol level surveys and relies on larval surveys for CRLF and CTS conducted between 2000 and 2017. DEIR at 3.4-7. Site conditions have likely changed in the past five years, especially due to climate change, requiring up-to-date, protocol-level surveys.

Further, the DEIR fails to demonstrate that the proposed mitigation will reduce the Project's significant impacts to less-than-significant levels. For instance, Mitigation Measure 3.4-4b(1), which addresses impacts to CRLF, indicates that impacts to breeding ponds would only be avoided "if feasible," making the measure unenforceable and meaningless. DEIR at 3.4-65.

Mitigation Measure 3.4-4c(1), which addresses compensatory mitigation for CRLF, prescribes surveys prior to initiation of impacts, to "determine the extent of impacts on CRLF habitat based on the acreage of habitat to be impacted." DEIR at 3.4-66. Similarly, Mitigation Measure 3.4-4c(4) prescribes preparation of a Habitat Mitigation Monitoring Plan "describing the measures that shall be taken to manage the created/enhanced breeding and upland habitat described above and to monitor the effects of management on the CRLF." DEIR at 3.4-67. Under CEQA, however, surveys should be done now, during the environmental review process, so that survey data can inform the extent and severity of project's impacts, not after 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."); CEQA Guidelines § 15126.4(a). 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*, 118 Cal.App.3d at 831.

The DEIR concludes that the mitigation measures will reduce impacts to CRLF to less-than-significant levels. DEIR at 3.4-68. However, given that the baseline conditions for CRLF are not yet clearly determined, decisionmakers and the public cannot know the severity and extent of impacts to this species. In addition, due to deferral of analysis and a lack of clarity regarding the effectiveness of the proposed mitigation, and how and to what extent the Applicant would be

accountable for full mitigations to CRLF, the proposed measures do not support the DEIR's conclusion.

The DEIR's analysis of Project-related impacts to CTS is equally lacking. The DEIR's description of baseline conditions on the site relies on the same outdated surveys used for CRLF to evaluate impacts to CTS. As discussed above, relying on outdated surveys and deferring the requisite additional surveys is inconsistent with CEQA requirements. *Sundstrom*, 202 Cal.App.3d at 307; CEQA Guidelines § 15126.4(a).

The document acknowledges that CTS may disperse onto the Project site, may use on-site ponds for breeding, and could use upland habitat anywhere on the 403-acre Project site for dispersal and refugia. DEIR at 3.4-68. The DEIR concludes that impacts to CTS related to construction and operation of the Project would be significant. DEIR at 3.4-68 to -71. Despite the disclosed significant impacts to this special status species, the DEIR's proposed mitigation measures for CTS are similar to the ones proposed for CRLF. DEIR at 3.4-71, -73. Mitigation Measure 3.4-5a requires implementation of Mitigation Measures 3.4-4a and 3.4-4b for the CRLF, which suffer the same flaws as described above. DEIR at 3.4-71. Mitigation Measure 3.4-5b for CTS also prescribes surveys prior to initiation of impacts, to "determine the extent of impacts on CRLF habitat based on the acreage of habitat to be impacted." *Id.* Like the analysis of impacts to CRLF, the DEIR concludes, without evidence or support, that impacts to CTS will be mitigated to less-than-significant levels. In short, the DEIR's impact analysis and proposed mitigation for these special status species fails to comply with CEQA.

#### **e. Mountain Lion**

The DEIR acknowledges that Project-related impacts to mountain lion would be significant. DEIR at 3.4-92 to -93. However, the DEIR once again fails to provide relevant context about the existing baseline conditions of this species. Instead, the DEIR states only that "[M]ountain lions are present in fairly low densities in the Santa Cruz Mountains and the Diablo Range, though they occur widely." DEIR at 3.4-33. This cursory description of the baseline condition for this species fails to meet CEQA standards for multiple reasons, as discussed below.

First, as explained in the Wilmers Report comments attached to this letter as Attachment C, the Central Coast North population of mountain lions in both mountain ranges is now a candidate for listing as a state threatened species under the California Endangered Species Act. Attachment C, at 1. Second, a statewide study of mountain lions found the species to be dangerously low in genetic diversity.

*Id.* The study found that mountain lions in the Santa Cruz Mountains have an effective population size of only 16, whereas an effective population size of 50-500 individuals is required to avoid extinction. *Id.* This context is important because, given the species' provisional listing as threatened, the DEIR is obliged to perform a more detailed analysis of the Project's impacts on individuals of the species as well as the population as whole.

Under CEQA, if the EIR does not accurately describe the existing setting, it cannot then accurately represent how the Project would change and impact the biological resources of that area. *See* CEQA Guidelines § 15125 (EIR “must include a description of the environment in the vicinity of the project, from both a local and a regional perspective”); *see also EPIC*, 131 Cal.App.3d at 354. The DEIR's deficiency in describing the current peril for mountain lions undermines its adequacy as an informational document.

What analysis the DEIR does provide about potential impacts to mountain lion is cursory. Specifically, the analysis describes the species as “occurring widely” which is clearly misleading. DEIR at 3.4-33. The DEIR declares that mountain lions, along with other large mammals “can move among these mountain ranges where they are able to navigate impediments, such as U.S. 101.” DEIR at 3.4-37. Thus, the DEIR implies that there are sufficient numbers of mountain lion such that any impacts would not be of consequence and that they are able to navigate crossing highways with no problems. Because the DEIR inaccurately depicts the overall status of mountain lions in the region and because the document assumes that lions can safely cross a highly trafficked highway adjacent to the Project site, the DEIR erroneously concludes that the Project's impacts on mountain lions would be less-than-significant with mitigation. The DEIR's description of the mountain lion's plight is far from accurate.

Evidence in the record also undermines the DEIR's attempts to downplay the habitat value of the Project site and surrounding area. Specifically, the DEIR fails to account for the fact that an effective population size of only 16 individual lions remain in the region. Wilmers Report at 1. Given that the status of the Central Coast North population of mountain lions is in such dire straits, *any* impacts to an individual lion, the species' foraging and dispersal habitat, ability to hunt, and ability to travel to linkages connecting to preserved open space the east could be detrimental to the species' survival. *Id.*; *see also* CEQA Guidelines § 15065(a)(1) (lead agency must find a significant impact if a project will cause “a fish or wildlife population to drop below self-sustaining levels). Therefore, the DEIR's analysis of impacts to mountain lions is unlawful.

In addition, the DEIR fails to provide evidence that the mitigation measures relied upon to support the conclusion that impacts to mountain lions would be less than significant. Wilmers Report at 2. The DEIR relies on Mitigation Measure 3.4-11 to minimize impacts on mountain lions. *Id.* This mitigation measure provides that the Applicant shall implement three aforementioned measures: Measures 3.4-4c, 3.4-5b and 3.4-15. Mitigation Measures 3.4-4c addresses impacts to California red-legged frog and Mitigation Measure 3.4-5b addresses impacts to California tiger salamander. The DEIR states that these measures, which may or may not include compensation through the preservation, management, and enhancement of habitat that is already occupied by the California red-legged frog and California tiger salamander, would preserve open space that could also be used by mountain lions. DEIR at S-22, S-24, 3.4-66 to -67, 3.4-72 to -73 (describing mitigation measures for CRLF and CTS), and DEIR at 3.4-94 (citing CRLF and CTS measures as reducing impacts on mountain lions). However, even if these measures were sufficient to address impacts to amphibian species, they would not necessarily mitigate impacts to mountain lions. Wilmers Report at 2. As the measures specify, the compensatory habitat would be *targeted toward the amphibian species*, which have different requirements for size and type of habitat and different needs for dispersal and connectivity. *Id.* Thus, compensatory habitat for amphibians and mountain lions is not comparable. Moreover, the survival of the species depends not only on open space for foraging and dispersal in a limited area. It is critical that mountain lions continue to have access to established, safe crossings to linkage areas, such as the one at Tar Creek on the Project site. *Id.*

The DEIR also relies on Mitigation Measure 3.4-15 to reduce impacts on mountain lion movement. DEIR at 3.4-94. However, Mitigation Measure 3.4-15 requires fencing design to allow animals easier passage through the area. While this measure might reduce impediments for some wildlife species, it does nothing to address the fact that the proposed Project would construct a loud industrial operation that would drastically alter the topography and ecological function of the project site. Wilmers Report at 3. The functionality of these passages for mountain lions—even if the required fencing is implemented—is not established or supported in the DEIR.

As the DEIR acknowledges, the project would result in an unmitigable significant impact to an established crossing for mountain lions and other wildlife. DEIR at 3.4-112. Furthermore, as Dr. Wilmers explains in his letter, the corridor between the Santa Cruz Mountains and the Gabilan range represents the best, and possibly only, opportunity to restore genetic connectivity and to save mountain lions from eventual extinction in the Santa Cruz Mountains. Wilmers Report at 1. None

of the DEIR's proposed mitigation measures adequately address these serious concerns.

Finally, the DEIR fails to adequately evaluate cumulative impacts to mountain lions. Here, the DEIR relies on the fact that the Valley Habitat Plan ("VHP") "would preserve, restore, and/or create breeding and foraging habitats for the terrestrial species listed above through a reserve system funded by impact fees paid by covered projects." DEIR at 3.4-122. The DEIR reasons that "due to the beneficial effects of VHP on terrestrial species and their habitat, and the less-than-significant impact of the U.S. 101 Widening Project on this species, the cumulative impact with respect to the harm to protected species and loss of their habitats would be less than significant." DEIR at 3.4-123. However, the proposed Project is not covered by the VHP. DEIR at 3.4-7. Therefore, the proposed Project's contribution to cumulative impacts must be considered separately from the VHP. Furthermore, the DEIR fails to adequately evaluate cumulative impacts of other known projects proposed in the area, including Betabel, Strada Verde, Traveler's Station, and Searle Road developments. Wilmers Report at 2; *see also* Section VI. As Dr. Wilmers explains, without analysis of the impact of this Project in concert with other cumulative developments on this important wildlife corridor, there is a substantial risk that the ability of animals to traverse this area will be interrupted for a long time, causing or contributing to the local extinction of mountain lions in the Santa Cruz Mountains and possibly other species as well over the long term. *Id.*

### **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 for the public and decisionmakers to fully understand the Project's impacts. Specifically, the evaluation of the Project's air quality impacts is flawed in the following ways: (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 below.

#### **1. The DEIR Fails to Analyze the Potential Health Effects of Its Significant, Unmitigated Nitrous Oxides (NO<sub>x</sub>) Emissions.**

The DEIR quantifies Project-related long-term NO<sub>x</sub> emissions and discloses that the emissions would exceed established significance thresholds. DEIR at 3.3-

18. The emissions would result in significant impacts even with the implementation of proposed mitigation measures. *Id.* However, disclosure of the data estimating the amount of emissions fails to provide any information to the reader about how much ozone would be produced as a result. *Sierra Club*, 6 Cal.5th at 520.

According to the United States Environmental Protection Agency:

Breathing air with a high concentration of NO<sub>2</sub><sup>3</sup> can irritate airways in the human respiratory system. Such exposures over short periods can aggravate respiratory diseases, particularly asthma, leading to respiratory symptoms (such as coughing, wheezing or difficulty breathing), hospital admissions and visits to emergency rooms. Longer exposures to elevated concentrations of NO<sub>2</sub> may contribute to the development of asthma and potentially increase susceptibility to respiratory infections.

See Attachment H (U.S. EPA, Health Impacts of NO<sub>x</sub>).

Here, the NO<sub>x</sub> emissions from the Project's off-road equipment, on-site and off-site vehicle exhaust, and rail traffic would exceed significance thresholds and would impede implementation of the regional Clear Air Plan. DEIR at 3.3-18. Two important goals of the Clean Air Plan are to protect public health and eliminate health risk disparities. DEIR at 3.3-11. Yet, the DEIR ignores NO<sub>x</sub>-related health effects and fails to analyze and disclose potential health impacts resulting from these emissions. See DEIR at 3.3-28 to 3.3-31 (analysis only includes a discussion of cancer risk and health risks associated with asbestos and silica emissions).

The DEIR instead dismisses the potential for NO<sub>x</sub>-related health effects, reasoning that "the impacts of ozone are typically considered on a basin-wide or regional basis instead of a localized basis." The DEIR further attempts to excuse itself from conducting the analysis based on the fact that the Bay Area Air Quality Management District has not established a significance threshold for ground-level ozone. DEIR at 3.3-25. However, the absence of an established threshold of significance does not excuse the County from performing this analysis. See *Berkeley Keep Jets Over the Bay Com. v. Port Comrs.* (2001) 91 Cal.App.4th 1344, 1379-83.

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<sup>3</sup> Nitrogen Dioxide (NO<sub>2</sub>) is one of a group of highly reactive gasses known as oxides of nitrogen or nitrogen oxides (NO<sub>x</sub>). Other nitrogen oxides include nitrous acid and nitric acid. NO<sub>2</sub> is used as the indicator for the larger group of nitrogen oxides.

As the DEIR itself explains, CEQA criteria pollutant significance thresholds were set at emission levels tied to the region's attainment status. Since air quality standards are set at levels that protect public health, ozone precursor emissions that exceed significance thresholds are assumed to lead to adverse regional health effects. DEIR at 3.3-26. However, the DEIR implies that because the Project's exceedance of the emissions threshold does not *necessarily* indicate that the Project would expose workers and local sensitive receptors to ground-level concentrations in excess of health-protective levels, the analysis of these health impacts is not required. DEIR at 3.3-26. This reasoning is incorrect. The EIR must inform the public how exceedances above thresholds set to protect public health *will actually impact public health*.

The DEIR discloses the amount of emissions and exceedance of the relevant thresholds but foregoes analysis of related health effects. DEIR at 3.3-18. This omission violates CEQA. *Cleveland National Forest v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 514-15. An EIR is required to not only disclose the amount of emissions and whether relevant thresholds would be exceeded; it must disclose the health consequences that result from the emissions. *Sierra Club*, 6 Cal.5th at 519-22; *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1220. In addition, the EIR must explain the nature and magnitude of the health impacts. *Id.* CEQA requires that an EIR make a reasonable effort to discuss relevant specifics regarding the general health effects associated with a particular pollutant and the estimated amount of that pollutant the project will likely produce. *Id.*; *Cleveland National Forest*, 3 Cal.5th at 514-15.

Moreover, it appears that the DEIR underestimates NO<sub>x</sub> emissions for two reasons. First, the DEIR analysis assumes that quarry operation would utilize rail for significant portion of transport of construction aggregates. DEIR at 3.3-24 and Appendix D at pdf page 4. However, the DEIR makes clear that rail service would only be implemented 'if feasible'. DEIR at S-2, 2-7. Because the rail spur has not yet been approved or permitted, there is substantial uncertainty as to whether it will be built. The DEIR acknowledges this significant uncertainty, but then proceeds to analyze Project emissions with the assumption that rail transport would definitely occur. DEIR e.g., at S-5, 2-9, 2-19, 2-24. Given that rail transport is far from assured, the DEIR should have provided NO<sub>x</sub> emissions calculations for both rail and truck transit in the event that the rail spur is never built.

Second, the average daily NO<sub>x</sub> emissions from trains were calculated based on 310 days of quarry operation per year. DEIR at 3.3-24; Appendix D at pdf page 4. However, the train trips would only occur three times a week for a total of 125 train trips per year. DEIR at S-5, 2-12, 2-28. By averaging the total NO<sub>x</sub> emissions from

trains over 310 days instead of 125 days, the average daily NOx emissions from trains were essentially diluted. Therefore, the DEIR fails to accurately disclose the extent and severity of these emissions.

**2. The DEIR Fails to Identify Feasible, Effective Mitigation to Minimize the Project's Significant Particulate and NOx Emissions.**

The DEIR discloses that the Project would result in significant particulate matter ("PM") emissions that would remain significant even with implementation of the proposed mitigation measures. DEIR at 3.3-24, 3.3-26, 3.3-28. However, additional feasible measures to further reduce PM emissions exist and must be included in a revised EIR.

The Project's emissions would represent more than a six-fold increase compared to applicable thresholds for PM. DEIR Table 3.3-6 at 3.3-24. In light of this disclosure, measures to mitigate the substantial amount of particulate matter that would result from this Project should be specific and substantially more stringent. For example, Mitigation Measure 3.3-2a would require all off-road mobile equipment and site-owned trucks powered by diesel used during the construction and operation phases of the Project to meet USEPA Tier 4 engine standards, which would reduce both PM and NOx. However, the measure qualifies the requirement based on whether it is 'feasible.' This undefined term undermines the required implementation of the mitigation measure by creating a loophole that renders the measure unenforceable.

It is our understanding that this technology is widely available and other jurisdictions are unequivocally requiring engines that meet Tier 4 standards. For example, Contra Costa County recently incorporated conditions of approval ("COA") for a warehouse project that require the site operator to ensure, at a minimum, all off-road diesel-powered construction equipment to meet Tier 4 standards. *See, e.g.*, Attachment I at 10 (Conditions of Approval for CenterPoint Properties Warehouse Project in the unincorporated North Richmond).

Contra Costa County's approval of the CenterPoint Project also provide that the facility operator must implement a phased program of incorporating zero emission vehicles into the Project as they become commercially available. *Id.* at COA 13. Santa Clara County can impose a similar requirement.

In addition, the DEIR should have included measures such as periodic air monitoring by a third party, and measures that include specific information about

how stockpiles and disturbed areas would be stabilized to prevent wind erosion, especially on the weekends.

### **3. The DEIR Defers Analysis and Mitigation of Project-Related Toxic Emissions.**

The DEIR acknowledges the potential for soils on the proposed Project site to contain naturally occurring asbestos and silica. DEIR at 3.3-29. The DEIR also acknowledges that silica can be harmful. *Id.* Although the DEIR is silent regarding the potential health effects of asbestos, according to the California Air Resources Board, “Exposure to asbestos fibers may result in health issues such as lung cancer, mesothelioma (a rare cancer of the thin membranes lining the lungs, chest and abdominal cavity), and asbestosis (a non-cancerous lung disease which causes scarring of the lungs).” *See* Attachment J California Air Resources Board, “Naturally Occurring Asbestos”; and Attachment K OEHHA, Asbestos Fact Sheet. Nonetheless, the DEIR fails to adequately analyze the impacts resulting from disturbing these pollutants and fails to identify appropriate mitigations to minimize the impacts.

Instead, the DEIR defers the analysis and states that if the disturbed rock is found to contain naturally occurring asbestos, then the Project would be subject to the Bay Area Air Quality Management District’s airborne toxic control measures. DEIR at 3.3-31. As discussed above, this approach of delaying analysis until after project approval is not allowed under CEQA. *See Sundstrom*, 202 Cal.App.3d at 306-07.

Regarding the potential for silica occurring in on-site soils, the DEIR uses dust sample testing of overburden and road dust for crystalline silica at an unspecified active quarry in the south bay region, and then employs modelling to see if concentrations of silica dust would be significant to on-site workers and at the receptors near this Project site. DEIR at 3.3-29, 3.3-31. The DEIR concludes that, because the model shows that concentrations of silica at receptor sites would be low, related impacts would be less than significant. However, the DEIR fails to specify the parameters of the model used to reach this conclusion, which leads to several unanswered questions. For instance, what is the concentration of silica in the dust sample used? What assumptions were used in the model? Did the undisclosed quarry have similar geologic conditions and mine operations? Most importantly, why did the analysis forego using *actual* samples from the Project site and access road?

Given that asbestos and silica both have the potential to occur at the site, the DEIR should have first determined whether the pollutants are present. Thus, the DEIR should have performed the required geotechnical evaluation to assess whether serpentine soils containing asbestos are present at the site now, not at some unspecified time in the future. Similarly, the DEIR should have test dust samples from the proposed Project site to determine if crystalline silica is in project site soils and then evaluated the potential health impacts on area receptors and on-site workers.

#### **4. The DEIR's Health Risk Assessment Ignores Potential Significant Impacts Related to Valley Fever.**

The DEIR's evaluation of Project-generated health risks is also problematic. The DEIR fails to analyze impacts related to valley fever, or coccidioidomycosis, a microscopic fungus found in soils. According to the California Department of Public Health, valley fever is a disease caused by the *Coccidioides* fungus that grows in the soil and dirt in some areas of California and the southwestern United States. *See* Attachment L California Department of Public Health, Valley Fever Basics. "This fungus can infect the lungs and cause respiratory symptoms, including cough, difficulty breathing, fever, and tiredness or fatigue." *Id.* People can contract valley fever when soil or dirt is disturbed by digging or stirred up by strong winds, and dust containing these fungus spores disperse through the air. *Id.* Nearby residents, on-site workers, and people traveling through the area where the valley fever fungus grows can breathe in these fungus spores and become infected. The number of cases of valley fever in California has been increasing. "Since 2000, the number of cases has increased from less than 1,000 cases to more than 9,000 cases in 2019." *Id.*

The DEIR's air quality analysis should have included a full analysis of Project-generated risks related to Valley Fever, and should have identified mitigation measures that specifically address the dust emissions generated by the disturbance of topsoil that could potentially contain *Coccidioides* spores. Such a plan would 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. *See* Attachment M, at 20-34 (Letter Report by Petra Pless related to Review Draft Environmental Impact Report for Safari Highlands Ranch and Citywide SOI Update, dated November 30, 2017, concerning similar issues).

**D. The DEIR Erroneously Concludes that Greenhouse Gas Emission Impacts are Less than Significant.**

“The Legislature has ‘emphatically established as state policy the achievement of a substantial reduction in the emission of gases contributing to global warming.’ . . . This policy is implemented in CEQA.” *Golden Door Properties*, 50 Cal.App.5th at 484. With the Project emitting at least 7,408 metric tons of climate pollution every year, the EIR acknowledges that the Project’s climate change impacts are significant, and cumulatively considerable. DEIR at 3.8-8. However, the DEIR both underestimates the Project’s contribution to climate change and erroneously contends that these impacts would be mitigated to a less-than-significant level.

**1. The DEIR Omits Any Discussion of Emissions Generated by Reclamation Activities.**

The Project includes construction activities, quarry operation, and reclamation activities. DEIR at 2-7. While the DEIR quantifies greenhouse gas emissions associated with construction and quarry operation, it appears to omit information on emissions associated with reclamation. The DEIR at Section 3.8 – Greenhouse Gas Emissions does not include a single mention of reclamation activities, much less any discussion of their contribution to emissions. And Appendix D – Air Quality and Greenhouse Gas Calculations appears to omit quantification of emissions resulting from reclamation activities. The DEIR must be revised to disclose the greenhouse gas emissions generated by reclamation and ensure mitigation of those emissions.

**2. The DEIR Improperly Defers Installation of Electric Vehicle Charging Station Infrastructure.**

Mitigation Measure 3.8-1c requires the Applicant to install conduit and electric vehicle (EV) charging stations on-site “[i]f and when electric haul trucks are used for product hauling associated with the Project.” DEIR at 3.8-12. This approach is backward. By allowing the Applicant to defer installation of the EV infrastructure until when electric haul trucks are already in use, the Project will not be ready to accommodate and encourage the use of electric haul trucks when they become commercially available. MM 3.8-1c must be revised to require that EV infrastructure, such as the conduit system, be installed during project construction and that the location of EV charging system be integrated into Project design. Although MM 3.8-1c directs EV charging stations to be installed “at location where trucks will be parked or idling,” the Project site plans do not indicate where these

locations will be. They must be revised to do so. The measure should be further revised to require the Applicant to present the County with information on the availability of electric haul trucks annually and require installation of EV changing stations as soon as electric haul trucks come on the market.

### **3. The DEIR Relies on an Offset Scheme Found Invalid by the Court of Appeal.**

The EIR concludes that the Project will have a less-than-significant impact on greenhouse gas emissions in large part because of Mitigation Measure 3.8-1a, which requires the purchase of carbon offset credits. However, this mitigation measure does not assure that the emissions generated by the Project actually will be offset. Instead, it relies on an offset scheme—in which emission reduction projects undertaken by others but funded by the Applicant through the purchase of “credits” from a private carbon registry—that was invalidated by the Court of Appeal in *Golden Door*.

“Mitigating conditions are not mere expressions of hope.” *Lincoln Place Tenants Assn. v. City of Los Angeles* (2005) 130 Cal.App.4th 1491, 1508. “They must be enforceable through permit conditions, agreements, or other legally-binding instruments.” *Golden Door*, 50 Cal.App.5th at 506. A lead agency must have substantial evidence demonstrating that the measures are feasible and effective. *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1027.

In *Golden Door*, the Court of Appeal concluded that a carbon offset program established by San Diego County violated these core CEQA requirements. 50 Cal.App.5th at 505-07, 511-21. The San Diego offset scheme was developed to purportedly mitigate climate change impacts associated with projects not otherwise allowed by the County’s General Plan. *Id.* at 494-95. Project developers would be required to purchase credits from carbon offset “registries” or marketplaces approved by the California Air Resources Board (“CARB”). *Id.* at 511. The offsets would purportedly have to meet some of the standards for the state’s cap-and-trade program, found in Health and Safety Code § 38562(d)(1), including that they be real, permanent, quantifiable, verifiable, and enforceable. *Id.* at 506-07. Project developers would have to prioritize purchased offsets geographically, focusing first within the County, then moving on to California, the United States, and finally, the world. *Id.* at 568.

The Court of Appeal held that these requirements did not provide “sufficient safeguard[s]” to assure the public and decisionmakers that the purchase of voluntary offset credits would actually result in the purported emission reductions.

*Id.* at 511. *First*, because the San Diego offset scheme allowed developers to purchase offsets from voluntary, private registries, the County could not be assured that the offsets would actually meet the alleged performance standards. *Id.* at 511-12. *Second*, the Court found that the County lacked authority to enforce the San Diego offset scheme, especially outside of California. *Id.* at 512-13. *Finally*, the Court found that the San Diego offset scheme improperly delegated and deferred mitigation, by allowing the County planning director to approve offsets based on “unidentified and subjective criteria.” *Id.* at 518-21.

The Project’s carbon offset program, found in Mitigation Measure 3.8-1a, suffers from the same legal deficiencies, and then some. MM 3.8-1a relies on the same inadequate and unenforceable private registry standards and prioritizes offset project geography in a similar way. DEIR at 3.8-11. While there are minor differences in wording between the San Diego offset scheme and MM 3.8-1a, these are distinctions without a difference. The Court of Appeal already considered a substantively identical offset scheme and found it to be unlawful.

The DEIR purports to require that Project offsets meet the standards of real, permanent, quantifiable, verifiable, additional, and enforceable. DEIR at 3.8-11. But, as the Court of Appeal acknowledged in invalidating the San Diego offset scheme, “the devil is in the details.” *Golden Door*, 50 Cal.App.5th at 506. By relying on the same voluntary registries—Climate Action Reserve, American Carbon Registry, and Verra—to implement MM 3.8-1a, the DEIR fails to ensure that these standards are met and that the Project’s significant emissions are offset. *See* Attachments N (Barbara Haya letter re similar offset programs, outlining the “profound and well-documented uncertainties in voluntary greenhouse gas offsets”), and O (articles explaining the underlying flaws in common offset programs).

In some ways, MM 3.8-1a is even more flawed than the San Diego offset scheme struck down in *Golden Door*. Those mitigation measures required that the registries where developers would purchase their credits be approved by CARB. While the Court found this reference to CARB to be an insufficient safeguard, MM 3.8-1a is even less restrictive, requiring only programs “verified by a recognized third-party registry.” DEIR at 3.8-11. But a registry is a private entity that provides a marketplace for sellers and buyers of carbon credits by listing carbon credit projects that meet their own private standards. *Golden Door*, 50 Cal. App.5th at 485, 510. There is no regulatory entity ensuring that programs listed on such registry meet the standards set forth in the DEIR. *See id.* at 508, 511-12.

As a result of this program design, it will be nearly impossible for the County to determine if the Applicant’s purchased offsets actually meet any of the standards

outlined in the mitigation measure. “Real,” “permanent,” “verifiable,” etc. are all terms of art, and their implementation requires both expertise and rigorous oversight. For instance, to meet the “permanent” standard, the particular offset must demonstrate that emissions reductions will remain in place (i.e., not be “reversed”), or that if it is, there are “mechanisms [] in place to replace” the reversal. *Id.* at 506. The Court of Appeal in *Golden Door* found it would be impossible for the County to make such determinations with respect to individual programs listed on voluntary registries because the San Diego offset scheme contained no “objective criteria” for the County to use. *Id.* at 522. The same is true here. Just like the San Diego offset scheme, MM 3.8-1a impermissibly relies on the private registries themselves to verify reductions. *See Golden Door*, 50 Cal.App.5th at 513 (County’s reliance on registries to ensure the validity of offsets is improper, because it wrongly assumes the adequacy of the registry’s offsets).

MM 3.8-1a’s geographic priorities are also problematic. Mitigation measures must be fully enforceable. *Lincoln Place Tenants Assn. v. City of Los Angeles* (2007) 155 Cal.App.4th 425, 455 (citing Pub. Resources Code § 21081.6(b)). Yet, *all* of the Project’s carbon credits could be purchased from projects outside of the County, and even outside of California, based on vague and amorphous feasibility findings. This allowance renders the mitigation measure unenforceable.

The DEIR purports to prioritize offsets “within Santa Clara County.” DEIR at 3.8-11. But in-county offsets are very hard to come by; indeed, none of the cited registries appear to list Santa Clara County projects. *See also Golden Door*, 50 Cal.App.5th at 498 [given the “paucity of offsets available within the County,” “offsets are all but certain to come from outside the County”].) The Project Offsets are all but certain to include out-of-state offsets.

Out-of-state offsets, however, present serious jurisdictional and enforcement issues. The Court of Appeal explained: “The fundamental problem, unaddressed by [the San Diego County scheme] is that the County has no enforcement authority in another state . . . .” *Id.* at 512-13. Under MM 3.8-1a, there are no limits to the use of out-of-County and out-of-state offsets. “In sharp contrast, cap-and-trade offsets cannot exceed 8 percent of an entity’s entire compliance obligation.” *Golden Door*, 50 Cal.App.5th at 513. Allowing up to 100 percent of offsets from non-California sources exacerbated the Court of Appeal’s verification and enforcement concerns.

Further, MM 3.8-1a provides inadequate enforcement mechanisms and objective standards. Indeed, the only enforcement requirement is to “provide verification to the County that carbon offset credits have been purchased.” DEIR at 3.8-11. Moreover, although MM 3.8-1a requires the Applicant to purchase offset

credits in the amount of 7,408 metric tons of climate pollution (i.e. the DEIR's calculation of the Project's annual emissions) before starting construction, it does not require the Applicant to provide any verification to the County before construction. Unlike CARB, which can invalidate cap-and-trade offsets that violate regulatory standards, MM 3.8-1a provides no remedy should the County discover that previously issued offsets fell short. *See Golden Door*, 50 Cal.App.5th at 510 (noting CARB's ability to reverse cap-and-trade offsets). The *Golden Door* court found that a similar lack of objective standards for the San Diego offset scheme amounted to improper delegation and deferral. *Id.* at 520-25. The Court held that the San Diego offset scheme established only a "generalized goal," the achievement of which depends on "meeting one person's subjective satisfaction." *Id.* at 520. MM 3.8-1a does precisely the same thing, and contravenes CEQA for the same reasons.

MM 3.8-1a provides the Applicant with two options electing how many offsets to be purchase for each year of the Project. Under Option 1, the Applicant must purchase 7,408 metric tons of CO<sub>2</sub>e each year of the project. Yet Option 1 falls short by failing to require that the Applicant provide the County any verification that these credits have been purchased on an annual basis, and by failing to provide the County authority to review credits that have been purchased. Meanwhile, Option 2 allows the Applicant to annually calculate emissions from the prior year of project construction and operational activities, to provide the County with those emissions estimates for review and approval, and then to purchase the credits after County approval. CEQA does not permit such analysis to be conducted in a bilateral negotiation between Applicant and the County away from public scrutiny. *See Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 93 (overturning a greenhouse gas emission mitigation program because "[t]he only criteria for 'success' of the ultimate mitigation plan adopted is the subjective judgment of the City Council, which presumably will make its decision outside of any public process a year after the Project has been approved. Fundamentally, the development of mitigation measures, as envisioned by CEQA, is not meant to be a bilateral negotiation between a project proponent and the lead agency after project approval; but rather, an open process that also involves other interested agencies and the public.").

Finally, MM 3.8-1a fails to indicate whether offsets must still be purchased annually after quarry operations have ceased, and only reclamation activities are underway. MM 3.8-1a must be revised to apply for the entire period that any Project-associated activities are being conducted on site.

**E. The DEIR Fails to Analyze and Mitigate the Project's Impacts on Agricultural Resources.**

The California Legislature has repeatedly emphasized that the preservation of agricultural land, including rangeland, is an important public policy. In adopting the California Land Conservation Act of 1965, Gov. Code section 51200 et seq., (unofficially, the “Williamson Act”), the Legislature found that “the preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state’s economic resources, and is necessary not only to the maintenance of the agricultural economy of the state, but also for the assurance of adequate, healthful and nutritious food for future residents of this state and nation.” Gov. Code § 51220; *see also* Civ. Code § 815 (“the preservation of land in its natural, scenic, *agricultural*, historical, forested, or open-space condition is among the most important environmental assets of California”) (emphasis added); Pub. Resources Code § 10201 (“These lands contribute to the economic betterment of local areas and the entire state and are an important source of food, fiber, and other agricultural products. . . . The long-term conservation of agricultural land is necessary to safeguard an adequate supply of agricultural land . . .”).

The Legislature has also declared that CEQA is intended to effectuate this important public policy. Stats. 1993, ch. 812, § 1, p. 4428 (“Agriculture is the state’s leading industry . . . . The conversion of agricultural lands to nonagricultural uses threatens the long-term health of the state’s agricultural industry. The California Environmental Quality Act plays an important role in the preservation of agricultural lands.”).

Santa Clara County has also emphasized the importance of agricultural land, adopting numerous General Plan policies and goals to protect and conserve the County’s agricultural lands. *See, e.g.*, General Plan policies C-RC 37, C-RC 40, Policy C-RC 42, Policy R-RC 59, Policy SC14.0. The County has a long history of agricultural operations and encompasses harvested agricultural land and rangeland. The DEIR’s conclusion that there will be no significant Project-specific or cumulative impacts to agricultural lands is not supported by substantial evidence. DEIR at S-5. The Project would convert hundreds of acres of grazing land for at least 30 years, which is a significant impact.

As an initial matter, the DEIR may not avoid conducting a thorough analysis of the Project’s impacts to agricultural lands under the assumption that such impacts would be temporary. CEQA requires analysis of temporary impacts. CEQA Guidelines § 15126.2(a) (agency must analyze both short- and long-term impacts). An effect on the environment need not be “momentous” or “important” to meet the

CEQA test for significance. Kostka and Zischke, *Practice Under the Cal. Environmental Quality Act* (2d ed Cal CEB) §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 Cal.3d 68, 83, fn. 16. Nothing in CEQA suggests that short-term effects cannot be of such significance as to require disclosure, analysis, and development of mitigation. *Id.* at 85.

Because the DEIR fails to adequately analyze significant impacts on agricultural lands impacted by the Project, it also fails to provide adequate mitigation to address all of the ways that farmland will be impacted. The requirement of mitigation measures is at the core of CEQA. See Pub. Resources Code § 21080(c)(2); *Citizens of Goleta Valley*, 52 Cal.3d at 564. As such, a revised EIR for the Project must correct this egregious flaw.

**F. The DEIR Fails to Adequately Analyze the Project’s Aesthetic Impacts.**

**1. The DEIR Fails to Analyze Impacts on Views from the Required Conservation Easement and from a Proposed Regional Trail.**

To be adequate, an EIR must analyze impacts on scenic vistas, and views from public parks and trails. See *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1605, 1607 (holding that a housing project could have significant aesthetic impacts if it would block views of the ocean from a public park); *Ocean View Estates Homeowners Assn., Inc. v. Montecito Water Dist.* (2004) 116 Cal.App.4th 396, 402 (an EIR must analyze the project’s visibility from public trails). The DEIR fails to meet this standard.

The DEIR does recognize that recreationalists are the viewers generally “most sensitive to visual impacts.” DEIR at 3.2-11. But it goes on to conclude that no public trails and/or other recreational facilities are in proximity to the Project site. In reaching this conclusion, the DEIR fails to disclose that a proposed regional off-street trail runs along or close to the eastern boundary of the Sargent Ranch site. A County map titled “Existing and Proposed Regional Trail Connections” shows this proposed trail. See Attachment P (Existing and Proposed Regional Trail Connections map, County of Santa Clara Parks and Recreation Department, August 18, 2015). The DEIR must be revised to provide more information about the precise location to this proposed trail, its proximity to the Project, and to analyze how the Project would impact views from this proposed trail.

The DEIR likewise fails to consider impacts to views from the conservation easement, Mitigation Measure 3.5-4b. The DEIR states that the easement is intended to “partially offset and compensate for impacts to” three Tribal Cultural Resources. DEIR at 3.5-40. The County would determine the easement area “in consultation with the Amah Mutsun Tribal Band” and the easement “shall include areas and/or resources that are of particular importan[ce] in their contribution to the [Juristac Tribal Cultural Landscape].” *Id.* Given that this easement may be used by the Amah Mutsun for tribal cultural access, the DEIR must analyze impacts on views from areas where the easement may be located. Although a specific easement location has not yet been designated, areas of particular cultural significance have been identified through consultation. The DEIR therefore must analyze the Project’s impacts on views from these sites and assess the significance of these impacts.

## **2. The DEIR Fails to Evaluate the Project’s Impacts on Public Views of the Site.**

In analyzing the Project’s aesthetic impacts, the DEIR fails to adequately evaluate impacts on public views of the site. First, the DEIR concludes that from U.S. 101, the Phase 3 and Phase 4 mining areas’ visual impacts on public views and scenic resources would be less than significant. DEIR at 3.2-23. It reaches this conclusion largely because mining activities would be facing away from the freeway for the first few years of extraction. *Id.* Even if mining may be less visible in an early period, Phase 3 and 4 mining would be conducted over a full six years. DEIR 2-13. As the DEIR itself notes, those areas are just a quarter mile from U.S. 101 and lie 300 feet higher than the highway. DEIR at 3.2-23. While the DEIR includes five different “key observation point” photo simulations from U.S. 101 showing visual impacts of Phase 1 and Phase 2 mining, it fails to include a single photo simulation to help the public or decisionmakers evaluate Project impacts from Phase 3 and Phase 4. The DEIR must include such simulations and must be evaluate the extent to which Phase 3 and Phase 4 mining will be visible after the first years of mining in those areas.

Second, the DEIR also concludes that U.S. 101 “provides the only publicly accessible areas from which the Project site is easily visible.” DEIR at 3.2-1. Yet Old Monterey Road, Highway 129, and School Road are also publicly accessible areas proximate to the Project site. In addition, Amtrak Coast Starlight passenger trains may daily trips along the scenic railroad corridor, which features prominent views of the Project site. The DEIR must be revised to assess potential aesthetic impacts from locations these thoroughfares and should include photo simulations of the project site from those locations as well.

**3. The DEIR's Analysis of Aesthetic Impacts from Project Construction Is Inadequate.**

The DEIR erroneously concludes that construction impacts to the visual character of the Project site and scenic resources would be less than significant. DEIR at 3.2-21, 3.2-22. The DEIR's conclusion rests in part on the fact that portions of the Project site activities will be less visible after the screening berm is constructed. The DEIR downplays the visibility of these impacts by stating that “[o]ne of the first activities would be to construct the screening berm, which would shield views of the Project site from U.S. 101.” DEIR at 3.2-22. Yet the Project's construction schedule indicates that the berm would not be in place until nine months after construction begins, exposing viewers to all construction activities for the better part of a year before any screening is in place. DEIR at 2-42 (noting that Project construction components in Table 2-6 will be carried out sequentially over nine months), 2-43 (Table 2-6 showing screening berm as final Project component to be constructed). Given the duration of these impacts, the DEIR should revise its conclusion to significant. *See* CEQA Guidelines § 15126.2(a).

**4. The DEIR Fails to Analyze How Omitting Topsoil from the Screening Berm May Impact Success of Plantings and Increase Aesthetic Impacts.**

The Project relies on a screening berm to reduce visual impacts of the processing plant area. DEIR at 3.2-23. The berm would be “graded to resemble the form and shape of the surrounding hills and would be planted to blend in with the surroundings.” DEIR at 3.2-23. Mitigation Measure 3.2-1 further calls for planting fast-growing native vegetation on the berm to achieve a “natural appearance.” DEIR at 3.2-23. However, while the DEIR states that the berm will be constructed using overburden (DEIR at 2-25, 3.2-22, 3.2-23), it does not specify that topsoil will be applied as a final layer. This contrasts to areas of the site planned for reclamation, where several feet of topsoil will be applied as a final layer before planting and hydroseeding to “support plant growth” and “enhance vegetation.” DEIR at 2-50. The DEIR does not explain why topsoil will not likewise be required for the screening berm and does not evaluate how failure to apply topsoil may reduce the success of the plantings and increase visual impacts of the berm and the potential of invasive plant species to colonize the berm.

**G. The DEIR Fails to Adequately Study the Slope Stability and Other Geotechnical Aspects of the Project.**

The mine and processing plant are proposed for an area rife with geologic instability. The EIR admits that “[l]andslides are prevalent at the Project site and in the near-vicinity due to the character of the geologic materials and the seismic setting.” DEIR at 3.7-12. It further admits that landslides could be “re-activated by the excavations proposed under the mining plan.” *Id.* In addition, the Sargent Fault Zone and a related splay fault run through or near the Project site, and have the “potential for generating strong ground motions and surface rupture at the Project site.” DEIR at 3.7-13.

As such, the DEIR properly establishes that the Project would have significant impacts if it presents a risk of loss, injury, or death involving seismic-related ground failure or landslides, or if it results in unstable soil that could potentially cause landslides or slope failure. DEIR 3.7-17, -23. However, the DEIR’s ultimate conclusion that such impacts are “less than significant with mitigation incorporated” (DEIR at 3.17-23) is not supported by substantial evidence, as explained below.

**1. The DEIR Contains Insufficient Data and Analyses to Support its Less-than-Significant Conclusion.**

John Wallace, a Principal Engineering Geologist, and David Schrier, a Principal Geotechnical Engineer, with Cotton, Shires and Associates, Inc. reviewed the DEIR and underlying technical materials. Cotton Shires has significant experience reviewing quarries for slope stability and other geotechnical issues. After review, Cotton Shires concluded that there is “insufficient data to form opinions regarding the future static and seismic stability of the permanent slopes and proposed stockpiles.” Attachment E at 2. Therefore, “conclusions reached in the EIR and associated documents are not fully supported by substantial evidence.” *Id.*

Specifically, their review found that the completed geotechnical analysis was not up to professional standards for a project of this size and scope. Cotton Shires details a list of laboratory tests needed to demonstrate future slope stability, both within the mining pits and the stockpiles, during both normal conditions and earthquakes. *Id.* at 2-6, 8. They also concluded that additional samples are necessary to ensure that modeling is representative of actual conditions on the site. *Id.* at 5. In addition, Cotton Shires noted that the DEIR’s methodologies are not part of the current standard of practice (*id.* at 5), and thus may miss potential impacts. And they found that the analysis failed to take into account the effects of

perched groundwater on slope stability. *Id.* at 7. These significant issues undermine the DEIR's conclusions.

Cotton Shires also points out missing analysis related to remediated slopes and seismic events. *Id.* at 6-7. The DEIR notes that “the Project site would likely experience ground shaking from a major earthquake on a regional fault system sometime during the operation period of the mining and reclamation.” DEIR at 3.7-23. Underlying data shows that seismic shaking could result in peak ground acceleration of up to 2.2g, values that are “considered high.” Cotton Shires Report at 6. Under these conditions, the remediated slopes “could undergo large deformations.” *Id.* at 7. However, the amount of potential displacement and resulting impacts are not disclosed in the DEIR, contrary to CEQA's requirements. *Id.* at 7. Likewise, the DEIR looks at only one type of landslide; other “possible landslide configurations” are unanalyzed, despite the geotechnical complexity of the site. *Id.* at 7-8.

These omissions are all the more glaring given that the remediated site could be used for residential structures. The Mining and Reclamation Plan notes that “all of the quarry area . . . will remain suitable for future cattle ranching, agriculture, or any use permitted by the County General Plan and Zoning ordinance.” DEIR, Appendix B at 64 (emphasis added). This could include residential structures, which would be uniquely at risk from future landslides and slope instability. Cotton Shires Report at 10.

Finally, Cotton Shire's review reveals a number of errors and inconsistencies that call into question the overall reliability of the geotechnical analysis. *See id.* at 3 (inconsistent sample numbers), 5-6 (lack of correlation between analyses and graphic plots), 6 (inaccurate data points), 8 (missing figures), 8 (inconsistencies in Mining and Reclamation Plan). These must be remedied in a revised EIR.

## **2. The Proposed Mitigation Measures Do Not Provide Sufficient Assurance.**

Instead of conducting a thorough analysis of the Project's potential geotechnical impacts for the DEIR, the County proposes to delay further analysis until Project construction. *See* DEIR at 3.7-25 (slope stability analysis will be confirmed as “the soil conditions are exposed,” with adjustments to the setback areas “to allow area for landslide remediation if needed.”) As discussed above, however, additional testing can and must be completed now. *See* Section III.G.1.

Moreover, even if the County had thoroughly investigated the site and determined that additional analysis could only be completed during construction, mining, and remediation, its mitigation measures are insufficient to this task. Specifically, MM 3.7-2a requires a licensed geotechnical engineer to inspect and monitor “twice annually” and “each time a new 30-foot bench has been excavated.” Likewise, MM 3.7-2b requires a Certified Engineering Geologist to “observe” and “inspect” the site twice per year or if “conditions [] vary significantly.” DEIR at 3.7-25.

As explained by Cotton Shires, these visits are “essential during excavations” in order to “ensure that the site conditions are as anticipated, and that the slopes are stable and performing adequately.” Cotton Shires Report at 10-11. The proposed mitigation includes an inadequate number of visits. In addition, they must include more than just observation and inspection to be sufficient. The mitigation measures must be revised to require field and laboratory tests and geologic mapping, to ensure that the remediation can be completed safely. *Id.* at 11. Without these modifications, the DEIR’s less-than-significant conclusion is unsupported.

#### **H. The EIR Fails to Disclose and Analyze Conflicts with Applicable Land Use Plans.**

The DEIR provides an inadequate analysis of the Project’s consistency with the County’s General Plan and foregoes analysis of the Project’s inconsistency with the County’s regulations. It includes an appendix to the DEIR that provides a partial list of applicable General Plan policies and no analysis whatsoever of the Project’s inconsistencies with the County’s Code of Ordinances. DEIR Appendix C; DEIR at S-5 (stating that the Project would have no impacts to a list of resource areas, including Land Use and Planning). Moreover, the Project directly conflicts with several General Plan and Code provisions and these inconsistencies are significant and unmitigable under CEQA.

In addition, as the DEIR acknowledges, the Project would conflict with implementation of the applicable air quality plan. DEIR at 3.3-18. Together, these inconsistencies reveal that the Project contradicts applicable plans and regulations implemented to ensure protection of the environment and public health. The DEIR’s failure to adequately disclose and analyze these inconsistencies is a fatal flaw.

**1. The DEIR Fails to Disclose the Project's Inconsistency with Multiple General Plan Policies.**

In reading the body of the DEIR, the public or decisionmakers would reasonably conclude that the Project is consistent with all applicable plans and policies. *See, e.g.* DEIR at 3.1-4 (“The County may not issue a Use Permit for the Project unless it finds that the Project is consistent with applicable General Plan policies and complies with Zoning Ordinance requirements. Thus, the Project would only be approved if it did not conflict with an applicable County land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect. Based on the above analysis, the Project would have no impact on land use and planning.”).<sup>4</sup>

However, if an enterprising reader digs into Appendix C, they would find that the Project is admittedly *inconsistent* with at least a dozen County General Plan policies. DEIR Appendix C at 1, 3, 8, 9, 10. Yet, the DEIR utterly fails to include an analysis chapter on the topic at all and instead limits its analysis to a table in an appendix. *See* DEIR Table S-1, Summary of Impacts and Mitigation Measures (analysis of land use impacts omitted); DEIR Appendix C. As discussed throughout this section, CEQA requires a thorough analysis of these impacts. CEQA Guidelines Appendix G, § XI.b (requiring analysis to disclose whether a project would cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect). The DEIR fails to meet this standard as detailed below.

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<sup>4</sup> To the extent this statement intends to imply that the Project cannot be approved as proposed given its inconsistencies with the General Plan, we agree. *See* Section IV below. Nevertheless, an EIR must analyze the project as proposed, and cannot assume that all or parts of it will not be built. *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 429 (“While it might be argued that not building a portion of the project is the ultimate mitigation, it must be borne in mind that the EIR must address the project and assumes the project will be built.”) (quoting *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, 206).

**a. County General Plan Provisions Relating to the Protection of Agricultural Lands.**

As discussed above, the Project site is designated as ranchland and zoned as agricultural ranchland. DEIR at 4.9-4. The Project would convert more than 400 acres of ranchland into an industrial site to mine sand and gravel over a period of 30 years, and potentially longer. DEIR at 2-9. The General Plan contains myriad policies requiring the protection of agricultural lands, yet the DEIR fails to analyze the project's compliance with these policies, except for one paragraph of text in DEIR Appendix C. DEIR Appendix C at 4. The DEIR Appendix focuses on only one policy related to agricultural resources, which states:

**Policy C-RC 40** Long term land use stability and dependability to preserve agriculture shall be maintained and enhanced by the following general means:

- a. limiting the loss of valuable farmland from unnecessary and/or premature urban expansion and development;
- b. regulating non-agricultural uses in agricultural areas, and their intensity and impacts on adjacent lands;
- c. maintaining agriculturally-viable parcel sizes; and
- d. minimizing conflicts between adjacent agricultural and non-agricultural land uses, through such means as right-to-farm legislation and mediation of nuisance claims.

The DEIR reasons that, because the loss of agricultural land would be “temporary” and parcel sizes will not be altered, the Project would not conflict with this policy. This conclusion is flatly wrong. The loss of grazing land and cropland should not be dismissed as temporary; thirty years is not a short period of time for this land to be out of agricultural production. In addition, it is not clear that the site, which will be sculpted into benches with steeply sloped walls, would be conducive to grazing after reclamation.

Many other County General Plan policies similarly provide for protection of agricultural lands. For example, Policies C-RC 37, C-RC 42, R-RC 59, and SC14.0, are enumerated below:

**Policy C-RC 37** Agriculture should be encouraged and agricultural lands retained for their vital contributions to the overall economy, quality of life, and for their functional importance to Santa Clara County, in particular:

- a. local food production capability;

- b. productive use land not intended for urban development; and
- c. protection of public health and safety.

**Policy C-RC 42** Interjurisdictional coordination and cooperation necessary to achieve agricultural preservation goals and strategies should be encouraged.

These goals should include:

- a. preservation of remaining areas of large and medium scale agriculture in South County;
- b. encouragement of retention of agricultural lands in San Benito County adjoining South County agricultural areas . . . .

**Policy R-RC 59** Sizeable remaining areas of agricultural lands shall be preserved in large parcels in order to:

- a. stabilize long term land use patterns;
- b. allow for long term agricultural investment;
- c. facilitate entry of individuals into agricultural livelihoods; and
- d. avoid introduction of incompatible residential or other development in agriculture areas.

**Policy SC 14.0** Agriculture should be continued and supported since it contributes to the local economy and helps to delineate urban boundaries. Among other benefits, it is the most productive use for land which is not immediately planned for urban development. More effective methods of support and preservation should be developed. The County and the Cities should reaffirm their commitment to long – term maintenance of agricultural land uses and to agriculture as an economic enterprise in South County.

The DEIR fails to analyze the Project’s consistency with all of these policies. Should the County approve this Project, the result would be the opposite of achieving the agricultural preservation goals set out in the aforementioned policies. Surface mining would remove more than 400 acres from agricultural uses for at least 30 years. Moreover, approval of this Project would set a precedent for conversion of agricultural lands, increase development pressure on remaining agricultural lands, and weaken the County’s ability to encourage retention of agricultural lands in adjoining South County agricultural areas, especially given the cumulative impacts of agricultural land conversion that will occur with San Benito projects such as

Strata Verde, Betabel, Traveler's Station, and Searle Road. Despite the lack of analysis in the DEIR, it is clear that the Project would be inconsistent with these General Plan provisions. The EIR must be revised to include this analysis.

**b. County General Plan Provisions Relating to the Protection of Natural Streams and Riparian Areas.**

The Project would conflict with General Plan policy R-RC 31, which states:

**Policy R-RC 31** Natural streams, riparian areas, and freshwater marshes shall be left in their natural state providing for percolation and water quality, fisheries, wildlife habitat, aesthetic relief, and educational or recreational uses that are environmentally compatible. Streams which may still provide spawning areas for anadromous fish species should be protected from pollution and development impacts which would degrade the quality of the stream environment.

County General Plan, Book B at O-24. As the DEIR acknowledges, the Project would reduce the amount of flow in the Pajaro River, a designated critical habitat for the federally threatened South-Central California Coast Distinct Population Segment of steelhead. DEIR at 3.4-54, 3.4-2. The document discloses that the anticipated reduction in flow would impact steelhead passage up and down the river, particularly during the primary migration months. DEIR at 3.4-2. As discussed further below, contrary to the DEIR's assertion that this impact would be mitigated, this impact would remain significant and unavoidable. DEIR at 3.4-55. In addition, the Project is likely to result in increased sedimentation in the Pajaro, which would degrade the quality of the stream environment. *See* Section III.A.2 above. Finally, the proposed Project would involve the construction of numerous structures within or directly adjacent to Sargent Creek and Tar Creek (DEIR at 2-9, 3.4-53), which would also degrade the quality of the stream environment. The DEIR fails to address these inconsistencies and must be revised to include this analysis.

Similarly, General Plan Policies R-RC 32 and R-RC 37 provide that riparian and freshwater habitat shall be protected by means of a setback, or protected buffer area. For creeks or streams that are predominantly in their natural state, as is the case with Tar Creek on the Project site, the County requires a minimum buffer of 150 feet.

Specifically, General Plan policy R-RC 32 requires that “riparian and freshwater habitats shall be protected,” including by using “bridges to . . . avoid alteration of the streambed and stream bank.” And General Plan Policy R-RC 37 states that “lands near creeks, streams, and freshwater marshes shall be considered to be in a protected buffer area, consisting of the . . . 150 feet from the top bank on both sides where the creek or stream is predominantly in its natural state . . .” The DEIR discloses that the proposed Tar Creek Bridge would not be compliant with these requirements, and instead would be constructed within the required stream buffer. DEIR at 3.4-114 (“With *the exception of the proposed Tar Creek Bridge*, the Project would maintain a 150-foot or greater buffer from Project site creeks . . . .”) (emphasis added).

Moreover, County General Plan Policy R-RC 38 prohibits any structures to be built within the stream buffer area referenced in policy R-RC 37. Policy R-RC 38 provides that:

- Policy R-RC 38** Within the aforementioned buffer areas, the following restrictions and requirements shall apply to . . . private non-residential development:
- a. *No building, structure or parking lots are allowed, exceptions being those minor structures required as part of flood control projects.*
  - b. No despoiling or polluting actions shall be allowed, including grubbing, clearing, unrestricted grazing, tree cutting, grading, or debris or organic waste disposal, except for actions such as those necessary for fire suppression, maintenance of flood control channels, or removal of dead or diseased vegetation, so long as it will not adversely impact habitat value.
  - c. Endangered plant and animal species shall be protected within the area.

DEIR Appendix C at 14 (emphasis added). The DEIR includes this policy in its analysis in Appendix C, but concludes that the Project would be consistent with the policy. Clearly, the Project, which would include construction activities within the stream buffer area, and would endanger animals within the habitat, would be inconsistent with this policy as well. DEIR at 3.4-53, 3.4-59. These inconsistencies must be disclosed and analyzed in a revised DEIR.

Instead, the DEIR claims that mitigation measures can “create” consistency with these policies. While on the one hand, the DEIR acknowledges the plain inconsistency with policy R-RC 37 (DEIR at 3.4-114 [at Tar Creek, the proposed

bridge would be constructed within the required buffer]), the DEIR states that because proposed mitigation measures would “minimize” impacts to biological resources, the Project would be consistent with this policy. *Id.* However, while the mitigation measures may serve to address the specific resource-based impacts, they cannot overcome the actual conflicts between the Project and policy requirements.

The DEIR similarly dismisses other policy inconsistencies by generally relying on implementation of the identified mitigation measures. For example, General Plan Policy R-RC 1 provides:

**Policy R-RC 1** Natural and heritage resources shall be protected and conserved for their ecological, functional, economic, aesthetic, and recreational values. . . . 2. Heritage resources shall be preserved to the maximum extent possible for their scientific, cultural, and “sense of place” values.

County General Plan, Book 2 at O-6; DEIR Appendix C at 6. Despite the fact that the Project would desecrate important tribal cultural resources and significantly impact numerous habitat areas, special status species, and a habitat linkage corridor, the DEIR concludes that the Project would not conflict with these policies due to proposed implementation of a Habitat Mitigation and Monitoring Plan. *Id.* Yet, impacts to tribal cultural resources and to biological resources would remain significant, even after mitigation. DEIR at S-34, S-38, S-42, S-44.

Here, the proposed mitigation measures do not prevent impacts; indeed, they are after-the-fact measures designed to make up for losses. Therefore, the proposed measures do nothing to avoid the conflicts with the General Plan. Restoring habitat elsewhere does not preserve the riparian area and stream, or the County’s open space and biological resources, as the General Plan requires. Thus, the Project remains inconsistent with the General Plan, and the DEIR must be revised to address these inconsistencies.

In other instances, the DEIR erroneously concludes that the Project is consistent with County policies protecting biological resources. For example, County

General Plan Policies R-RC 20, R-RC 24, C-RC 27, and C-RC 31 all provide for the preservation of wildlife habitat and biodiversity. Specifically,

**Policy R-RC 20** Strategies and policies for maintaining and enhancing habitat and biodiversity should include the following:  
. . . Protect the biological integrity of critical habitat areas. . . .

**Policy R-RC 24** Areas of habitat richest in diversity, of particularly fragile ecological nature, or necessary for preserving threatened or endangered species should receive special consideration for preservation as open space and protection from development impacts. . . .

**Policy C-RC 27** Habitat types and biodiversity within Santa Clara County and the region should be maintained and enhanced for their ecological, functional, aesthetic, and recreational importance.

**Policy C-RC 31** Areas of habitat richest in biodiversity and necessary for preserving threatened or endangered species should be formally designated to receive greatest priority for preservation . . . .

The DEIR concludes that the Project is consistent with these policies because mining would not extend outside of the Project boundaries. DEIR Appendix C at 5, 7. However, the proposed mining and processing facilities would themselves result in significant impacts to wildlife habitat and biodiversity. DEIR at 3.4-127 (DEIR concludes that the Project reduces the degree to which animals can safely traverse U.S. 101); 3.4-112 (DEIR concludes that the Project would result in an unmitigable significant impact to an established crossing for mountain lions and other wildlife.).

Similarly, Policy C-RC 33 provides for preservation of habitat linkages and corridors between habitat areas. DEIR Appendix C at 5, 7. This policy specifies:

**Policy C-RC 33** Linkages and corridors between habitat areas should be provided to allow for migration and otherwise compensate for the effects of habitat fragmentation.

County General Plan, Book A at H-26. The DEIR states that the Project would be consistent with this policy because the project would preserve linkages with a bridge creek crossing and by elevating the conveyor belt and because proposed

mitigation measures would address potential impacts to wildlife corridors. However, this conclusion ignores impacts to wildlife that would remain significant and despite proposed mitigations. DEIR at 3.4-106 to -115. This DEIR conclusion is particularly surprising given that the DEIR concedes inconsistency with a similar policy, R-RC 51 (discussed below), which provides for preservation of habitat linkages and migration. DEIR Appendix C at 8. In that case, the DEIR correctly acknowledges the Project's inconsistency with Policy R-RC 51 and states "[P]roject operations would interfere substantially with wildlife movement. Given the location of the Project site, in an area where movement of animals in multiple directions and among multiple populations is very important, a reduction in the frequency of successful crossings over a 30 to 35-year period would have implications for regional movements, gene exchange, and potentially population viability." DEIR Appendix C at 8. The DEIR should have disclosed the same inconsistency for policy C-RC 33.

In some instances, the DEIR acknowledges that proposed Project activities would conflict with County policies intended to protect biological resources, but then fails to disclose the related significant land use impact under CEQA. See, e.g., DEIR Appendix C at 8; DEIR at S-35, S-36. For example, the DEIR acknowledges the Project's inconsistency with General Plan policy R-RC 51, which states:

**Policy R-RC 51** Preservation of habitat linkages and migration corridors should be encouraged where needed to allow for species migration, prevent species isolation, and otherwise compensate for the effects of habitat fragmentation.

County General Plan, Book 2 at O-30; DEIR Appendix C at 8. The DEIR plainly concludes that the Project is inconsistent with this County policy and states:

Project operations would interfere substantially with wildlife movement. Given the location of the Project site, in an area where movement of animals in multiple directions and among multiple populations is very important, a reduction in the frequency of successful crossings over a 30 to 35-year period would have implications for regional movements, gene exchange, and potentially population viability.

Appendix C at 8; DEIR at 3.4-106 to -115. Therefore, DEIR Appendix C correctly identifies the Project's impacts to wildlife movement as significant, but fails to disclose the related significant land use impact under CEQA due to the Project's inconsistency with the General Plan. DEIR Appendix C at 8. The DEIR similarly errs with respect to R-RC 4, relating to degradation of

natural resources: the DEIR identifies an inconsistency, but then fails to analyze or acknowledge the inconsistency as a CEQA impact. DEIR Appendix C at 10.

**c. County General Plan Policy Relating to Landslides.**

Despite the DEIR's conclusions, the Project would also conflict with General Plan policy R-HS 19, which states that in "areas of high potential for activation of landslides, there shall be *no avoidable alternation of the land or hydrology which is likely to increase the hazard potential, including . . . removal of vegetative cover and steepening of slopes . . .*" DEIR, Appendix C at 10 (emphasis added). Specifically, the Project is zoned as a landslide geologic hazard zone, based on the large number of existing landslides. DEIR at 3.7-3, -4. The DEIR notes that "landslide debris above top-of-slope cuts may be encountered and the slides reactivated by the excavations proposed under the mining plan." DEIR at 3.7-12. Indeed, even after reclamation, the factor of safety of some slopes under seismic conditions is less than one, indicating a "potential to fail as a landslide or slump." DEIR at 3.7-23 to -24; *see also* Section III.G (explaining the DEIR's failure to support its slope stability analysis). The County General Plan has protections to prevent exacerbation of landslide hazards, yet the proposed Project would introduce new landslide hazards in an area of high potential for activation of landslides. This inconsistency must be disclosed.

**d. County General Plan Policy Related to Heritage Resources.**

In addition, the DEIR fails to acknowledge the Project's inconsistency with Policy R-RC 85 which provides:

**Policy R-RC 85** No heritage resource shall knowingly be allowed to be destroyed or lost through a discretionary action (zoning, subdivision site approval, grading permit, building permit, etc.) of the County of Santa Clara unless:

- a. the site or resource has been reviewed by experts and the County Historic Heritage Commission and has been found to be of insignificant value; or
- b. there is an overriding public benefit from the project and compensating mitigation to offset the loss is made part of the project.

County General Plan, Book 2 at O-47, O-48; DEIR Appendix C at 9.

Here, as described in detail in comments submitted by Berkey Williams, the Project would irreparably impact the Juristac Tribal Cultural Landscape. The DEIR also discloses significant impacts to other tribal cultural resources as well, including impacts to Betabel Bluffs and archaeological resources. DEIR at 3.5-38, -40. Undoubtedly, approval of this Project would be inconsistent with the directive in Policy R-RC 85 to avoid knowingly destroying a heritage resource. Moreover, the County cannot make the findings required by this policy to move ahead with approval. Specifically, given that the Project site is irrefutably a significant tribal cultural resource, the County would have to make findings that the Project would provide an overriding public benefit *and* that compensatory mitigation is available. This finding cannot be made. *See* DEIR at S-7 (impacts to tribal cultural resources remain significant and unavoidable). This inconsistency must be addressed in a revised and recirculated DEIR.

The DEIR acknowledges the Project's inconsistency with policy R-RC 81, which provides:

**Policy R-RC 81** Heritage resources within the rural unincorporated areas of Santa Clara County shall be preserved, restored wherever possible, and commemorated as appropriate for their scientific, cultural, historic and place values.

County General Plan, Book 2 at O-46; DEIR Appendix C at 8. However, the DEIR falls short of identifying this inconsistency as a significant land use impact. *Id.*; DEIR Table S-1, Summary of Impacts and Mitigation Measures (conclusion regarding significant impacts related to land use inconsistencies omitted). This approach violates CEQA.

**e. County General Plan Provisions Relating to the Protection of Visual Resources and Rural Character.**

The DEIR's evaluation of the Project's consistency with General Plan policies related to aesthetics and visual resources is equally lacking. For example, the DEIR identifies three policies with which the Project is inconsistent: Policy C-PR 38, Policy C-PR 39 and Policy R-GD 31, enumerated below.

**Policy C-PR 38** Land use should be controlled along scenic roads so as to relate to the location and functions of these roads

and should be subject to design review and conditions to assure the scenic quality of the corridor.

**Policy C-PR 39** The visual integrity of the scenic gateways to the South County (Pacheco Pass, Hecker Pass, Route 101 south of Gilroy, and a Coyote greenbelt area north of Morgan Hill) should be protected.

**Policy R-GD 31** Ridgelines and ridge areas have special significance for both public policy and private interests. Ridgeline and hillside development that creates a major negative visual impact from the valley floor should be avoided or mitigated, particularly for those areas most immediately visible from the valley floor. . . .

DEIR Appendix C at 1, 3. These policies address protection of scenic views along county roads, including Highway 101 south of Gilroy in the vicinity of the proposed Project. However, the DEIR again fails to disclose the related significant land use impact under CEQA. As discussed throughout this section, inconsistencies with established County General Plan policies are significant land use impacts under CEQA. See CEQA Guidelines, Appendix G, XI.b.

In summary, for all of these conflicts with the County's General Plan the EIR has consistently failed to recognize or adequately analyze the inconsistencies. Thus the present version of the EIR cannot be certified as complete and adequate and cannot support approval of this Project.

#### **IV. The Project Is Inconsistent with the County General Plan and Other Policies and Cannot Be Approved.**

The State Planning and Zoning Law (Gov't Code § 65000 et seq.) requires that development decisions be consistent with the jurisdiction's general plan. See, e.g., Gov't Code §§ 65860 (requiring consistency of zoning to general plan); 66473.5 & 66474 (requiring consistency of subdivision maps to general plan); 65359 & 65454 (requiring consistency of specific plan and other development plan and amendments thereto to general plan). Thus, "[u]nder 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 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. Inconsistency with even a single General Plan policy can warrant denial of a project, if the policy is fundamental, mandatory, and specific. *Id.* at 1342.

Moreover, 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. The 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.” *Id.*

Here, the proposed Project does more than just frustrate the General Plan’s goals. It is directly inconsistent with numerous provisions in the General Plan, as admitted in the DEIR. As explained above, a more thorough review of County policies reveals even more inconsistencies. Consequently, ***the County cannot lawfully approve the Project, a fact the DEIR appears to acknowledge.*** See DEIR at 3.1-14.

The Project also conflicts with the County’s zoning code. The Santa Clara County Zoning Code requires the issuance of a Use Permit for surface mining projects. DEIR at S-2. County Zoning Ordinance Section 4.10.370 includes provisions regulating surface mining to minimize their adverse effects. The proposed Project is inconsistent with at least four of these provisions.

*First*, the ordinance requires that the Project be consistent with the County’s General Plan. County Zoning Ordinance § 4.10.370, Part I, I. As discussed above, the Project does not meet this standard.

*Second*, the Project is inconsistent with ordinance requirements pertaining to the protection of streams and water-bearing aquifers. County Zoning Ordinance § 4.10.370, Part II, A.9. This Code section provides that mining operations must keep “streams, percolation ponds, or water bearing strata free from undesirable obstruction, silting, contamination or pollution of any kind.” § 4.10.370, Part II, A.9.a. The DEIR claims that the Applicant has designed the Project to be consistent with these requirements. DEIR at 2-7. However, the Project would excavate and remove the perched water forming a shallow aquifer and fill the area after mining operations are completed. CBEC Letter at 2; DEIR at 2-20. The Project would thus obstruct the perched aquifer with silt and soil, removing its ecological function.

CBEC Letter at 2. Likewise, the Project is likely to cause erosion and sedimentation downstream. *See* Section III.A.2.

*Third*, this Code section also requires that excavations that penetrate usable water-bearing strata, such as the aforementioned perched water aquifer, “will not reduce the transmissivity or area through which water may flow unless approved equivalent transmissivity or area has been provided elsewhere, nor subject such groundwater basin or sub-basin to pollution or contamination.” County Zoning Ordinance § 4.10.370, Part II, A.9.e. Here, quarry pits excavated during phase 3 and phase 4 would be closed depressions that intersect the groundwater table, capture groundwater and direct rainfall, and direct this water to two retention basins within the base of the pits. CBEC Report at 2. The partial removal of aquifer strata through creation of these pits will reduce the groundwater transmissivity. *Id.* Thus, the creation of Phase 3 and 4 pits will reduce the area through which groundwater can flow as well as the associated groundwater transmissivity. *Id.* In this way, Phase 3 and 4 pits will reduce the groundwater transmissivity. Therefore, the Project would be inconsistent with Code provisions implemented to protect stream and aquifer resources from environmental degradation.

*Finally*, the Code section requires that screening be required for excavations in scenic corridors at the time of excavation. County Zoning Ordinance § 4.10.370 Part II, A.8.a. However, the proposed berm will not be constructed until after mining has begun. DEIR at 2-12 (berm to be created out of the overburden from Phase I), 3.2-22 (“in the initial phases of excavation, while overburden is being removed from mining areas, the screening berm will not yet be constructed and views of mining equipment on hillsides will be visible”). The Project is likewise inconsistent with this code provision.

## **V. The DEIR’s Analysis of the Project’s Growth-Inducing Impacts Is Incomplete and Flawed.**

An EIR must address any growth-inducing impacts of the project. CEQA Guidelines § 15126(d). Specifically, the EIR must discuss “the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment.” CEQA Guidelines § 15126.2(d). It must also address project characteristics “which may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively,” and may not “assume that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment.” *Id.*

Here, the DEIR's analysis is unlawfully incomplete. The document concludes that the Project would not contribute to growth-inducing impacts. DEIR at 5-1. As the DEIR makes clear, transportation of aggregate over long distances can be very expensive. DEIR at 3.11-3. However, to the extent the mine will provide lower cost aggregate, it may have a growth-inducing impact. The DEIR fails to consider this possibility.

This is a significant omission. In its analysis, the DEIR fails to disclose expected demand for construction grade aggregate, useable in Portland cement concrete or other uses. However, the DEIR suggests that this Project would supply a substantial amount of the demand for aggregate in the County and the broader Bay Area for years to come. *See, e.g.*, DEIR S-2, 2.2-8. The Applicant has claimed that suitable imported aggregate is likely to be more expensive than locally mined material due to high transportation costs. The cost of concrete-quality aggregate would be a factor in many growth-related decisions, and, to the extent the Applicant is correct, the availability of a local source could make development projects more cost-effective. In this sense, a project that will satisfy a substantial portion of the County's demand, without the added cost of long-distance transport, may well facilitate growth. The Applicant cannot have it both ways. If they want to claim that local aggregate supplies will be a boon to the local economy, the DEIR must undertake this analysis and clarify that local availability of construction-grade aggregate will significantly influence growth in the area.

## **VI. The DEIR Failed to Include Numerous Probable Future Projects in Its Cumulative Impact Analysis.**

A cumulative impact is one "created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts." CEQA Guidelines § 15130(a)(1). For a specific project, it is the "change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects." *Id.* § 15355(b).

Environmental impacts of probable future projects must be analyzed because "consideration of the effects of a project or projects as if no others existed would encourage the piecemeal approval of several projects that, taken together, could overwhelm the natural environment and disastrously overburden the man-made infrastructure and vital community services. This would effectively defeat CEQA's mandate to review the actual effect of the projects upon the environment." *Golden Door*, 50 Cal.App.5th at 527 (quoting *Las Virgenes Homeowners Federation v. County of Los Angeles* (1986) 177 Cal.App.3d 300, 306).

The DEIR omits at least three “reasonably foreseeable probable future projects” from its cumulative impact analysis (DEIR at 3.1-8 to -9):

- **The Strada Verde Project:** According to the County of San Benito, the Strada Verde Innovation Park Project consists of an application for a General Plan Amendment, Specific Plan, Zoning Change, Vesting Tentative Map and Development Agreement to establish an automated vehicle testing and research and development business center incorporating up to 7,221,159 square feet of development. The approximately 2,767-acre, triangular shaped project site is located approximately 2.5 miles southeast of the US-101/SR-25 interchange in an incorporated area of northwest San Benito County, directly adjacent to the Sargent Quarry Project. The components of the proposed specific plan include Vehicle testing grounds (915 net ac./996,435 sq. ft.), research park (108 net ac./1,411,344 sq. ft.), e-commerce (215 net. ac./4,682,700 sq. ft.), commercial (20 net ac./130,689 sq. ft.) agricultural (227 ac.), greenway (252 ac.), biological preserves (547ac.), and infrastructure (260 ac.). The County of San Benito is currently preparing an EIR for the Project, as the Notice of Preparation was released on April 11, 2022, over three months prior to the release of this DEIR. Significant details and technical studies are available on the San Benito County’s website, and are attached here as Attachment Q.
- **The Betabel Commercial Development Project:** According to the County of San Benito, the Betabel project would involve a Conditional Use Permit to build a roadside attraction near the intersection of U.S. Highway 101 and Betabel Road, just south of the Project site, incorporating 108,425 square feet of building site coverage. The proposed development site would be concentrated along Betabel Road, with a range of new commercial, lodging, and recreational uses on the site, including a 3-story, 116 Room Motel, 9-room motel villas, an outdoor pool, outdoor movie screen, outdoor event center, convenience center, gas station, restaurant, concession stand, amusement center, and visitor center. A Draft EIR was released for the Betabel project on July 22, 2022, and was prepared by the same consulting firm as this Project (Ascent). A copy of the EIR is included as Attachment R. The Project was approved by the San Benito County Planning Commission on October 12, 2022.

- **San Benito Travelers Station Project:** The project is proposed on a 2.6-acre site, located at the southwest corner of the intersection of U.S. Hwy 101 and State Route 129, within the Juristac Tribal Cultural Landscape. The proposed Traveler’s Station is comprised of a 4,000 sq. ft. convenience store, auto fueling and truck fueling services, propane sales, electric vehicle charging stations and a County Informational Kiosk. A mitigated negative declaration was released by the County of San Benito on April 1, 2022, and is included as Attachment S.
- **San Benito Searle Road Commercial Project:** In December of 2020, San Benito County rezoned a 21-acre parcel as Commercial Thoroughfare C-1 in anticipation of a forthcoming development application on the property. This project site is on the west side of Searle Rd near the intersection of U.S. Hwy 101 and State Route 129, directly across Searle Rd from the proposed Travelers Station site. Additional information may be available from the San Benito County Planning and Land Use Division; *see also:* <https://sanbenito.com/planning-commission-recommends-searle-road-node-rezoning/>.

The DEIR fails to mention either the Betabel, Traveler’s Station projects, even though the Betabel EIR—prepared by the same consulting firm and released on the same day—includes a thorough analysis of Strada Verde, Travelers Station, and Sargent Quarry. And rather than include analysis of the Strada Verde project, the DEIR spends a full page attempting to justify its exclusion. These significant errors must be addressed in a revised and recirculated DEIR.

“The primary determination is whether it was reasonable and practical to include the projects and whether, without their inclusion, the severity and significance of the cumulative impacts were reflected adequately.” *Golden Door*, 50 Cal.App.5th at 528. Here, the County attempts to say that it was “unreasonable” or impractical to include the Strada Verde project due to unspecified “review timelines.” DEIR at 3.1-7 and 3.1-9. But the Betabel EIR – again, prepared by the same consulting firm and released on the same day – reached the exact opposite conclusion, and included the Strada Verde project in its analysis. And the County makes no mention of Betabel, Travelers Station, or Searle Road, let alone providing a sufficient explanation for their exclusion.

The omission is obviously prejudicial. For instance, all projects have significant impacts on the Juristac Tribal Cultural Landscape and other cultural resources in the area. All projects will interfere with the wildlife corridors that link the Santa Cruz Mountains with the Gabilan Range and the Diablo Range, with

potentially devastating consequences. All projects may impact water supply and water quality. All projects will result in additional air pollution, in an airshed that is already polluted. And all projects will increase vehicle miles travelled and increase congestion and hazards on nearby roadways. Without their inclusion, the “severity and significance of the cumulative impacts” cannot be adequately reflected. *Golden Door*, 50 Cal.App.5th at 528.

## **VII. The DEIR Fails to Comply with CEQA’s Mandate Regarding Alternatives Analysis.**

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. The Alternatives section, however, raises additional flaws.

### **A. The No Project Alternative Fails to Include Adequate Information About a Conservation Purchase.**

In *Save the Hill Group v. City of Livermore*, the Court found that an EIR for a residential development project “failed to disclose and analyze information regarding the availability of funding sources that could have been used to purchase and permanently conserve the Project Site.” (2022) 76 Cal.App.5th 1092, 1108. The same is true here.

In *Save the Hill Group*, the EIR identified a “No Project, No Development” alternative that was environmentally superior to the Project. *Id.* at 1109. However, the EIR ultimately rejected the no-project alternative, finding that “it would not meet the Project’s objectives of . . . contributing to housing availability and providing housing near employment centers” and that it was “not necessarily feasible to assume the site would remain undeveloped in the long term because . . . there is no current proposal for the City or other agency to purchase or otherwise preserve it.” *Id.* The EIR did not mention the “existence and feasibility of using available funding sources to purchase the Project site and set aside [the Property] for conservation rather than development,” even though such funding was available. *Id.* Ultimately, the court found that the failure of the EIR to include this information about the no project alternative was fatal: “Lacking adequate information regarding the no-project alternative, the city council could not make an informed, reasoned decision on whether this Project should go forward.” *Id.* at 1113.

The Project EIR takes the same flawed approach. Rather than provide any information to the public or decisionmakers about the potential acquisition of the Project site, the EIR includes only the following information in a footnote: that in 2018, the County sought to work with interested conservation partners, and that the County General Plan identifies some areas of potential acquisition “surrounding the Sargent Ranch property.” DEIR at 4-8.

However, potential public agencies and conservation partners stand ready and willing to acquire the entire property at fair market value. Indeed, the Santa Clara Valley Habitat Agency, together with conservation non-profits, made an offer to buy the entirety of Sargent Ranch for fair market value in 2017. As summarized in the *Santa Clara Valley Greenprint*, the Sargent Hills, of which Sargent Ranch is a critical part:

figure prominently in a number of organizations’ conservation visions; they are included in the *Valley Habitat Plan* as a top priority for land protection; and portions of the Sargent Hills are included in the *County General Plan*, *Countywide Trails Master Plan*, and the *County Park Acquisition Plan*. The Land Trust of Santa Cruz County and their partners are actively working in this area to protect habitat, watershed integrity, and working timberlands, and a consortium of conservation organizations including the Peninsula Open Space Trust and The Nature Conservancy is working to protect this area as part of the critical linkage to the Diablo Range. The Sargent Hills represent an opportunity for the Authority to work with these and other partners to protect vital rangelands and critical habitat.

Attachment T at 81. An acquisition outcome would be the environmentally superior alternative. Contrary to the DEIR’s statements, it would also meet two of the Project’s objectives: minimizing impacts on sensitive natural and cultural resources on the Project site and minimizing aesthetic impacts. DEIR at 4-3.

Without information about potential acquisitions, the County Board of Supervisors cannot make an informed decision. Inclusion of a robust discussion of a potential conservation outcome is not only required by CEQA, but would make clear that there is a viable alternative to approval of the mine: acquisition of the entire Property at fair market value. The owners would be fairly compensated, but not for the speculative value of the potential mining entitlements.

As drafted, the DEIR threatens to lead the County to the same error as the City of Livermore. There, several councilmembers asked for information about the

feasibility of acquiring the Project Site for open space (including funding sources). The Court found that “Councilmembers should have been directed to specific information in the [EIR], but there was none.” *Save the Hill Group*, 76 Cal.App.5th at 1111. The same issue will occur here, unless the EIR is revised to include information about these very real alternatives.

### **B. The County Cannot Rely on This EIR to Approve Alternative 3.**

As soon as the DEIR was released, the Applicant suggested to the public that they would “move the processing plant a mile to the north.” Attachment U (San Jose Spotlight article quoting Howard Justus: “to avoid interfering with the migration of mountain lions, the company will move the processing plant a mile to the north”). Indeed, just prior to the Planning Commission’s public hearing on the draft EIR, the Applicant submitted a letter stating that it supports Alternative 3 “as the best way to minimize our project’s impacts and as a way to protect and permanently preserve wildlife habitat and crossings and establish formal lands for the landless Amah Mutsun Tribal Band.”<sup>5</sup>

As a preliminary matter, Alternative 3 is not a win to the Tribe, the biological resources that rely on Sargent Ranch, or the communities downwind and downstream of the Project site. Even with minimal analysis, the draft EIR concludes that Alternative 3 only reduces one of 14 significant impacts to a less than significant level. DEIR at S-54 to -56 (finding that impacts to Betabel Bluffs would be avoided). Thirteen significant and unavoidable impacts still remain, including those of greatest public concern: impacts to the Juristac Tribal Cultural Landscape, impacts to the key wildlife corridor, and impacts to public health. Alternative 3 is no compromise.

Moreover, the draft EIR provides little information about Alternative 3, rendering its analysis inadequate as a matter of law. Under CEQA, an EIR must discuss alternatives with enough detail to permit informed decisionmaking and public participation. CEQA Guidelines § 15126.6; *Laurel Heights I*, 47 Cal.3d at 406-07.

Here, scant detail is provided about Alternative 3, especially the new processing plant location. The DEIR states that “the processing plant would be moved approximately 0.85 miles north of Tar Creek,” “Old Monterey Road would be realigned” and “Tar Creek bridge would be located upstream of the location

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<sup>5</sup> Later correspondence confirms, however, that the Applicant is still seeking entitlements for the entire Project, *not* Alternative 3.

proposed for the Project.” DEIR at 4-3. This alternative site is apparently “outside of the Project site, but within Sargent Ranch.” At the last moment, the County released an “Errata” document providing sketch figures of the processing plant location, but no information about existing resources, potential hazards, or new circulation patterns. Consequently, the public is left guessing about Alternative 3’s potential impacts.

The EIR’s failure to adequately describe Alternative 3 leads to serious inadequacies. For instance, the lack of an adequate description mars the DEIR’s discussion of Alternative 3’s transportation impacts. Without maps or plans, it is impossible to determine the potential truck circulation on site, the location or use of the conveyor belt, and the feasibility of using trains to transport aggregate off the site. The “cut and paste” figures provided in the County’s “Errata” document (Figures 4-1, 4-2) are poorly presented, incomplete and difficult to interpret. The figures lack key contextual features to orient viewers, leading to widespread confusion regarding the alternative processing plant location.

The original project includes construction of a rail spur within the processing plant area. DEIR at S-5. However, the rail line north of the original project site is on the opposite side of Highway 101. The DEIR does not explain if Alternative 3 will somehow connect to the line anyway or what the impacts from such a connection would be. Likewise, the DEIR does not explain the potential impacts that may result from losing access to the rail line, including to air quality, greenhouse gas emissions, vehicle miles traveled, and transportation. Without this information, the Board cannot “ascertain the project’s environmental significant effects [or] assess ways of mitigating them.” *Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 533.

The Applicant’s late focus on Alternative 3 has also rendered the project description unstable. See *Stoepthemillenniumhollywood.com v. City of Los Angeles* (2019) 39 Cal.App.5th 1, 18. Here, the EIR includes a proposed project, on which the public has focused its attention during this comment period. However, the Applicant’s statements about Alternative 3 have caused public confusion. Should people focus their attention on the impacts of the Project, and specifically the impacts of the processing plant at its original location? Or should they focus their attention on the impacts of Alternative 3, including the potential impacts of the new processing plant location and site design? Even if Alternative 3 was adequately described—which it is not—this unstable project description has frustrated informed public participation. *Id.* at 17-18.

Moreover, available information suggests that adequate consideration of Alternative 3 would result in disclosure of significant new information, including new or different significant impacts, necessitating recirculation. Contrary to alternative analyses that have been upheld by the courts, Alternative 3 is not simply a smaller or narrower version of the Project. Instead, it involves opening an entirely new site to industrial development.

Most alarmingly, the relocated processing plant would be located squarely within a mapped Alquist Priolo Fault Zone. DEIR Figure 3.7-2 (“Fault Rupture Zones”) does not include the location of the relocated processing plant. DEIR at 3.7-14. Perhaps it’s no surprise then that the DEIR is completely devoid of any information about this potential impact. *See* DEIR at 4-16, 4-26 (claiming geologic impacts would be less under Alternatives 2 and 3, making no mention of fault rupture hazard); *Id.* at 3.7-17 (significance threshold reached if Project would directly or indirectly cause substantial adverse effects, including the risk of loss, injury, or death involving rupture of known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning map).

However, the County’s own maps show that most of the relocated processing plant would be located within a surface trace of the active Sargent Fault. *See* Attachment V Alquist Priolo Zone Map. The Alquist-Priolo Act, as stated in the DEIR, “prevent[s] construction of buildings intended for human occupancy on the surface traces of active faults.” DEIR at 3.7-2. The DEIR explains that in such zones, geologic investigations must be prepared by a licensed geologist to demonstrate that buildings will not be constructed across active faults. However, no such investigations have been completed here, and the available information suggests that much of the relocated processing plant would be unbuildable. The County General Plan (Policy R-HS 16) likewise prohibits new building sites on hazardous fault traces, like the one identified in this area.

Second, as detailed in the letter from Berkey Williams, the relocated processing plant would result in increased impacts to tribal cultural resources in the northern portion of the Project site. Placement of the processing plant at this alternative site would result in a range of additional impacts to the Tick Creek Valley, a highly culturally sensitive component of the Juristac Tribal Cultural Landscape. Because significant development in the Tick Creek Valley was not previously contemplated or discussed during AB52 consultation with the Amah Mutsun Tribal Band, the County did not receive necessary input from the Tribe regarding potential impacts to tribal cultural resources in this sensitive area. And since proposed development at the alternative Tick Creek processing plant site area was not part of the Project Area/APE defined to consultants in preparation of the

DEIR, this area does not appear to have been included for focused review in the Ethnohistoric and Ethnographic Study (Albion 2021) and other key studies underpinning the DEIR.

Third, the DEIR states that impacts to wildlife connectivity would be “less severe” under Alternatives 2 and 3. DEIR at 4-15, 4-27 (noting that the relocated processing plant “would be 0.2 mile from the Tick Creek undercrossing, so it would likely deter some wildlife from using that culvert. However, the Tick Creek undercrossing is not nearly as heavily used by mammals, particularly large mammals, as Tar Creek and the Pajaro River”). However, this conclusion is not well supported. Under the reconfigured site design, mine operations would be in close proximity to *three* wildlife undercrossings, rather than two (Pajaro, Tar, and Tick). Moreover, the Tick Creek undercrossing is noted as “an important culvert for facilitating movement of medium-sized mammals,” such as bobcats and coyotes. Attachment W South Santa Cruz Mountains Wildlife Connectivity Study at 62. Thus, the relocated processing plant introduces a new, adverse impact that must be more fully analyzed and disclosed.

In these ways, the DEIR is similar to the EIR found deficient in *North Coast Rivers Alliance v. Kawamura* (2015) 243 Cal.App.4th 647. In that case, the Department of Food and Agriculture prepared an EIR that analyzed an invasive moth eradication program. *Id.* at 653. However, the Department ultimately approved an invasive moth “control” program that was markedly different than the proposed project, involving different impacts and potential mitigation. *Id.* For that reason, the alternative expanded the scope of the project, rather than narrowing it. *Id.* at 6773. The same is true here. The EIR must be revised to actually address these impacts, especially if the Applicant intends to rely on this EIR to seek approval of Alternative 2 or 3.

### **VIII. The EIR Must Be Revised and Recirculated.**

CEQA requires recirculation of an EIR when significant new information is added to the document after notice and opportunity for public review was provided. Pub. Resources Code § 21092.1; CEQA Guidelines § 15088.5. “Significant new information” includes: (1) information showing a new, substantial environmental impact resulting either from the project or from a mitigation measure; (2) information showing a substantial increase in the severity of an environmental impact not mitigated to a level of insignificance; (3) information showing a feasible alternative or mitigation measure that clearly would lessen the environmental impacts of a project and the project proponent declines to adopt the mitigation measure; or (4) instances where the draft EIR was so fundamentally and basically

Robert Salisbury  
November 7, 2022  
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inadequate and conclusory in nature that public comment on the draft EIR was essentially meaningless. CEQA Guidelines § 15088.5(a); *Laurel Heights II*, 6 Cal.4th at 1130.

As this letter explains, the DEIR clearly requires extensive new information and analysis. This analysis will likely result in the identification of new, substantial environmental impacts or substantial increases in the severity of significant environmental impacts. Moreover, the flaws that permeate the entire document, particularly the DEIR's unsupported claim that the Project will produce significant quantities of construction-grade aggregate, constitute precisely the sort of pervasive flaws in the document that independently require recirculation under Guidelines section 15088.5(a)(4). *See Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043, 1052-53. Consequently, the County must revise and recirculate the EIR for public review and comment.

## **IX. Conclusion**

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 and supply, special status biological resources, regionally important wildlife corridor and linkages, air quality, and agricultural resources. 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 Amah Mutsun Tribal Band and Green Foothills urges the County to deny further consideration of the Project.

Sincerely,

SHUTE, MIHALY & WEINBERGER LLP



Sara A. Clark  
Marlene Dehlinger  
Carmen J. Borg, AICP  
Urban Planner

Attachments:

- A. Letter report from G. Kamman, CBEC Eco Engineering, November 2, 2022
- B. Letter report from T. Diamond, Pathways for Wildlife, September 29, 2022
- C. Letter report from C. Wilmers, Ph.D., Professor of Environmental Studies at University of California at Santa Cruz, September 14, 2022
- D. Letter report from S. Weiss , Ph.D., Chief Scientist with Creekside Sciences, November 3, 2022
- E. Letter report from J.M. Wallace and D.T. Schrier, Cotton, Shires and Associates, Inc.
- F. Articles regarding previously proposed housing development in 1992
- G. “Setting up your wash operation for success” Pit & Quarry, July 28, 2021
- H. Nitrogen Dioxide Pollution, U.S. Environmental Protection Agency, website accessed September 2022
- I. Conditions of Approval for CenterPoint Properties Warehouse Project, Contra Costa County, 2022
- J. “Naturally Occurring Asbestos”, California Air Resources Board, website accessed October 2022
- K. Asbestos Fact Sheet, California Office of Environmental Health Hazard Assessment, website accessed October 2022
- L. Valley Fever Basics, California Department of Public Health, website accessed September 2022
- M. 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, concerning similar issues
- N. Barbara Haya letter regarding offset programs, May 7, 2019
- O. Articles explaining the underlying flaws in common offset programs
- P. Existing and Proposed Regional Trail Connections map, County of Santa Clara Parks and Recreation Department, August 18, 2015
- Q. Strada Verde Project Information, San Benito County website, October 2022.
- R. Betabel Project EIR, San Benito County website, October 2022
- S. San Benito Travelers Station Project, San Benito County website, October 2022
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