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Via E-Mail

David Randall, Senior Planner County of Fresno Department of Public Works and Planning Development Services and Capital Projects Division 2220 Tulare Street, Sixth Floor Fresno, CA 93721 E-Mail: <u>drandall@fresnocountyca.gov</u>

> Re: Rockfield Quarry Modification Project Environmental Impact Report No. 7763 and Unclassified Conditional Use Permit Application Nos. 3666 and 3667; SCH# 2020060123

Dear Mr. Randall:

This firm represents the San Joaquin River Parkway & Conservation Trust, Inc. ("the Trust") in connection with the proposed Rockfield Quarry Modification Project ("Project"). We submit these comments to inform the County that this draft Environmental Impact Report ("DEIR"), is inadequate under the California Environmental Quality Act ("CEQA"), Public Resources Code § 21000 et seq., and the CEQA Guidelines, California Code of Regulations, title 14, § 15000 et seq. ("CEQA Guidelines").

The Project as proposed will have significant, adverse impacts on both the natural and the human environment in Fresno County. These impacts include, but are not limited to, potentially devastating effects on: local hydrology and water quality, habitat and movement corridors for both terrestrial and aquatic wildlife, local traffic, air quality, and noise. But none of these impacts or the inconsistencies of the Project can be discerned from reading the DEIR. With regard to each of CEQA's substantive requirements—a complete and stable project description, a thorough analysis of significant impacts, identification of feasible and enforceable mitigation measures, an analysis of a reasonable range of alternatives—the DEIR falls woefully short. As a result, the DEIR fails to meet CEQA's fundamental purpose of providing disclosure to the public of the Project's environmental effects. The County and the applicant need to start over—beginning with

revised Project objectives that allow for consideration of a reasonable range of alternatives that would be consistent with the General Plan—and prepare and recirculate a new, legally adequate DEIR.

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

I. Introduction and Background

The Project site is located within Fresno County's jurisdiction on land designated as 'Agricultural' and falls within the San Joaquin River Corridor Overlay, which allows agricultural activities with incidental homesites, sand and gravel extraction, various recreational activities, wildlife habitat areas, and uses which serve the San Joaquin River Parkway. Fresno County General Plan at 2-25 and DEIR at 2-2. The Project site is zoned AE-20 Exclusive Agriculture, 20-acre minimum parcel size, which allows "surface mining" operations but not hard rock mining. We note that County General Plan Table LU-1 at p. 2-25 similarly allows "Surface Mining Operations" in AE and other agricultural zones, but omits any reference to hard rock mining.

The proposed Project includes: two Conditional Use Permits (one to expand surface mining and processing for another 30 years and one to allow hard rock mining over a period of 100 years; approval of a Surface Mining and Reclamation Plan (SMRP) and the associated Financial Assurance Mechanism (FAM), a Landscape Plan (for revegetation), right-of-way permits; and a host of discretionary permits from resource agencies. DEIR at 2-52 and 2-53. The Project would expand extraction of material by almost double (from the current 1.4 million tons per year to 3 million tons) and would allow a total extraction of approximately 300 million tons of material from the plant and quarry sites over a period of 100 years. DEIR at ES-4 and 2-5.

The project site has been mined by various companies for many decades. The community anticipated that operations would be completed sometime between 2005 and 2008 and the site restored in accordance with the Project Reclamation Plan. Instead, the County granted several extensions and operations continue today. Now, CEMEX proposes to extend and expand operations for *another* 100 years. The proposed Project



would result in an enormous increase in the amount of material to be excavated and would include a substantial change from mining alluvial sands and gravel (i.e., surface mining) to hard rock mining (blasting for granite). CEMEX proposes to mine to a depth of 600 feet, which will result in much worse impacts to both human residents and wildlife and to the river and riparian ecosystems as a whole. As discussed throughout this letter, the DEIR fails to adequately evaluate the project's impacts, fails to identify feasible mitigation measures, and presents an inadequate alternatives analysis.

The DEIR for the proposed Project suffers from several major problems. First, the DEIR generally downplays the importance of the Project site as part of the San Joaquin River Restoration Program and the site's location adjacent to conserved lands including Ledger Island to the west, Lost Lake County Park to the north, and Ball Ranch and Sumner Peck Ranch to the south. As discussed in detail below, the Project's expansion of operations, especially the change to allow hard rock mining, has the potential to result in significant, long-term impacts to both people and wildlife, yet the DEIR fails to conduct a thorough analysis of impacts to these areas.

This Project will have serious long-term consequences, not only for area residents, but for the hydrology of the river and the ecology of the region. Those consequences include, but are not limited to: potentially devastating effects related to changes in drainage patterns and river flow; impacts to water quality; impacts to groundwater recharge and groundwater quality; impacts to recreational use in adjacent areas, impacts to multiple sensitive species and their habitats; visual impacts; increased truck traffic; increased noise; and increased air pollution. Moreover, as the DEIR acknowledges, the Project would result in significant, unmitigable impacts to visual resources. DEIR at ES-9.

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

To ensure that the public and the County's decision-makers have adequate information to consider the effects of the proposed Project—as well as to comply with the



law—the County must require revisions in the Project to make it compliant with the General Plan and other applicable plans, then prepare and recirculate a revised DEIR that properly describes the Project, analyzes its impacts, and considers meaningful alternatives and mitigation measures that would help ameliorate those impacts.

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

A. Project Setting

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

The DEIR fails to present important contextual information related to biological and hydrological resources on the Project site. For instance, as described by American Rivers:

[T]he health of the San Joaquin River has suffered the impacts of hundreds of dams, levees stretching thousands of miles, and countless water diversions. More than 95 percent of floodplain and freshwater tidal marsh habitat has been converted to development or agriculture. Once-iconic salmon runs teeter on the brink of extinction. The problems are so acute that American Rivers named the San Joaquin River one of America's Most Endangered Rivers® in 2014. In 2016, it rose to the No. 2 position on the list.¹

The majority of the proposed Project site is located in the flood plain for the San Joaquin River. The plant site is located approximately 2,800 feet from the River and encroaches on the San Joaquin River Willow Unit of the San Joaquin River Ecological Reserve managed by the CA Department of Fish and Wildlife. The Plant site is

¹ American Rivers, San Joaquin River, at

https://www.americanrivers.org/river/sacramento-and-san-joaquin-rivers/ (attached as Ex. D).

surrounded by the Willow Unit, which is adjacent to Ball Ranch, conservation lands owned by the State of California San Joaquin River Conservancy (SJR Conservancy) and operated by the Trust. The quarry site is adjacent to Lost Lake Recreation Area, which is land purchased by the Wildlife Conservation Board² and operated by the County; and Sumner Peck Ranch, which is owned by the SJR Parkway & Conservation Trust, Inc. Ledger Island, which is also owned by the SJR Conservancy, is located immediately to the southwest of the quarry site.

Furthermore, the Project site is located within Reach 1A of the San Joaquin River Restoration Program ("SJR Restoration Program"), which is a comprehensive, long-term effort to "restore flows to the San Joaquin River from Friant Dam to the confluence of the Merced River and restore a self-sustaining Chinook salmon fishery in the river while reducing or avoiding adverse water supply impacts from Restoration Flows."³ The restoration came out of a legal settlement following an 18-year lawsuit and was signed into federal law as the SJR Restoration Act in 2009. Pub. L. 111-11, 123 Stat. 1349 (Mar. 30, 2009). Both the Federal and State Governments have invested substantial effort and funds to establish and maintain the Restoration Program, and the result is a successful fishery for a species widely protected under laws including the federal Endangered Species Act (ESA).⁴

Despite the importance of the SJR Restoration Program, the DEIR mentions it only twice. It is mentioned once in an isolated sentence about the reintroduction of Chinook salmon under the program (DEIR at 4.4-63), and in another instance where the DEIR evaluates the Project's consistency with SJR Parkway Master Plan Policies. DEIR 4.11-46. In both cases, the DEIR fails to provide any context about the importance of the habitat areas in and around the River to the success of the Restoration Program. The DEIR also fails to disclose that under the federal ESA, San Joaquin River Spring-Run Chinook are listed as an experimental population. *See* 78 Fed. Reg. 79622 (Dec. 13,

² The Wildlife Conservation Board is a state grant-making agency dedicated to safeguarding California's spectacular biological diversity and wild spaces for the benefit of present and future generations. Cal. Wildlife Conservation Board, About WCB, at <u>https://wcb.ca.gov/About.</u>

 ³ See San Joaquin River Restoration Program, Annual Report (2007) (attached as Ex. E); see also generally San Joaquin River Restoration Program, at <u>https://www.restoresjr.net/.</u>
⁴ See, e.g., 64 Fed. Reg. 50394 (Sept. 16, 1999) (listing Central Valley Spring-Run Chinook salmon as threatened under the federal ESA); Cal. Dept. of Fish & Wildlife, Chinook Salmon, at <u>https://wildlife.ca.gov/Conservation/Fishes/Chinook-Salmon</u> (attached as Ex. F).

2013). Finally, the DEIR does not mention steelhead at all, even though San Joaquin River steelhead are listed as threatened in the Project area. 50 C.F.R. § 223.102(a)(16); 71 Fed. Reg. 834 (Jan. 5, 2006).

Perhaps most egregiously, the DEIR fails to adequately describe the existing hydrologic setting of the site and the vicinity. Specifically, the DEIR fails to accurately describe baseline groundwater conditions especially at the quarry site. Kamman Report at 1. This is important information from which to establish a baseline. As explained in the Kamman report, without a proper description of baseline conditions, the DEIR is unable to provide an adequate analysis of Project-related increases or decreases in groundwater recharge relative to existing conditions. *Id.* A revised analysis must include a Hydrology and Water Quality section that adequately describes the hydrologic and hydraulic setting.

B. Project Description

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

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.

Here, the DEIR lacks sufficient detail on specific activities needed to mine and process the aggregate material. The DEIR references these activities at only the most general level. *See e.g.*, DEIR at 2-36 ("The hardrock would then be mined in approximately 50-foot-high benches by drilling and blasting of the hardrock material to a depth of approximately 600 feet bgs using a drill rig and truck with blasting supplies" but provides no information on the amount of area to be disturbed each day); at 2-39 ("If necessary, secondary breakage of oversize material within the quarry pit would be accomplished by conventional methods including, but not limited to, drop ball or hydraulic breaker," but provides no information on either one of these types of equipment



or the process involved with each); at 2-42 ("The estimated borehole depth at the Quarry Site quarry would be approximately 50 feet. Boreholes would be drilled using a percussion drill rig" but provides no information on the length of time the drilling process to prepare for each blast day would take).

These gaps in the project description are important because they implicate other inadequate analysis in the DEIR. For example, the amount of daily ground disturbance implicates the air quality analysis; and the use of drop balls or hydraulic breakers and the amount of time required for drilling boreholes in preparation for each blast implicate the noise analysis. On the latter point, the DEIR states that blasting would occur up to twice a week, but if drilling boreholes for explosives took a day to complete, receptors would suffer increased noise from drilling and blasting four days a week. Therefore, the DEIR fails to give the reader a clear sense of what these activities entail and how these activities would affect particulate matter emissions and noise impacts to nearby receptors.

Moreover, the DEIR indicates that the Project has a lighting design, but fails to provide it. DEIR at 2-40. Instead, it states only that "[H]igh pressure sodium and/or cutoff fixtures (or equivalent International Dark-Sky Association [IDA]-approved fixtures) would be used instead of mercury-vapor fixtures," and that illumination would be confined to the Quarry Site. *Id.* If the Project has a lighting design, it should have been disclosed as part of this DEIR so that the public and decision-makers can understand the planned illumination for the Quarry Site. Lighting on the site would affect light and glare experienced by nearby residents, yet these impacts cannot be properly evaluated because the lighting design has not been included.

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 decision-makers to make intelligent judgments. *Id.* Consistent with this requirement, an EIR must contain "extensive, detailed evaluations of the impacts of the proposed plans on the environment in its current state" in order to serve its function as an "informative document." *Environmental Planning and Information Council of Western El Dorado County v. County of El Dorado*, 131

Cal.App.3d 350, 358 (1982) (finding an EIR for a general plan amendment inadequate where the document did not make clear the effect on the physical environment).

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

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

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

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

CEQA Guidelines § 15382. As a leading CEQA treatise explains,

An effect on the environment need not be "momentous" or "important" to meet the CEQA test for significance. 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. An agency has discretion to find a project's impacts insignificant on the basis of the scale of the project, particularly when the project's impacts are indirect and cannot reliably be predicted. *Save the Plastic Bag Coalition v City of Manhattan Beach* (2011) 52 Cal.4th 155. An effect need not be either long term or permanent to be significant, but duration is a factor that may affect the significance of an environmental impact. *Running Fence Corp. v Superior Court* (1975) 51 Cal.App.3d 400, 416.

1 Kostka and Zischke, Practice Under the California Environmental Quality Act (Cont.Ed.Bar 2024) §6.44. As documented below, the Rockfield Modification Project fails to identify, analyze, or support with substantial evidence its conclusions regarding the Project's significant 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, water quality, and flooding is inadequate because it: (a) presents an inaccurate hydraulic analysis; (b) presents an inaccurate estimate of impacts on groundwater resources; (c) fails to analyze downstream impacts; (d) fails to support its conclusions with the necessary facts and analysis; and (e) fails to identify mitigation capable of minimizing the Project's significant environmental impacts.

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



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

As explained in the CBEC Report, the DEIR fails to accurately analyze the Project's potential impacts related to flooding. CBEC Report at 2. The DEIR's analysis of Project-related flood impacts used the Federal Emergency Management Agency ("FEMA")100 -year flow rate estimate to conclude that that existing floodplain does not encroach into the Quarry site or the western portion of the Plant site. *Id.* However, the DEIR's approach to the analysis failed to account for the long-term climate change effects on the River flood flow rates at both sites. *Id.* When the analysis is conducted using more recent data models by the California Department of Water Resources ("DWR") that include climate change information, the result indicates drastically higher 100-year flow rates.

The related DWR report discussed in the CBEC Report⁵ states that under climate change, peak flows in the snow-dominated upper San Joaquin River watershed will shift to earlier in the winter and spring. CBEC Report at 2. This change in peak flows will result in high flow events (like the 100-year flow) that cannot be fully contained by Lake Millerton and will be released downstream. *Id.* Specifically, future (year 2072) 100-year flow rates will increase to 126,800 cubic feet per second because of climate change⁶. This is a flow rate that is 179% of the FEMA estimate used in the DEIR. *Id.*

According to the CBEC Report, an increase of flow rate of this magnitude would encroach into and inundate both the Quarry and Plant sites. CBEC Report at 2. Importantly, the estimated increase in 100-yr flood flow rates under climate conditions represents a condition only halfway through the life of the Project. *Id.* In fact, 100-year flood flow rates are likely to continue to rise even further through the second 50 years of proposed Project operations. *Id.* Therefore, the DEIR's analysis of flood hazards evaluating the potential impacts from encroachment of the Project site into the floodplain is erroneous.

⁵ Nemeth, K., Tjernell, K.A., and Lippner, G. (2021). *Revised Draft Central Valley Flood Protection Plan Conservation Strategy 2022 Update*. California Department of Water Resources.

⁶ The related DWR report states that under climate change, peak flows in the snowdominated upper San Joaquin River watershed will shift to earlier in the winter and spring and high flow events like the 100-year flow cannot be fully contained by Lake Millerton and will be released downstream. CBEC Report at 2.

2. The DEIR's Analysis of Groundwater-Surface Water Interaction at the Project Site Is Inaccurate and Unsupported.

As the DEIR explains, understanding the interaction between groundwater on the site and surface water during different river stages⁷ is important because when the water level in the river is high enough that the water surface is above the adjacent groundwater table surface, there is seepage of water from the river into groundwater flowing towards the quarry. DEIR Appendix G-5 at 20-21 and CBEC Report at 3. The DEIR's analysis inappropriately uses stream gage data from below Friant Dam, which is located 4.0 miles and 6.5 miles from the Quarry site and Plant sites respectively, to compare river stages to on-site groundwater levels. CBEC Report at 3. As explained in the CBEC Report, extrapolating data from these distances results is an invalid comparison because of differences in channel geometry and water flow between the sites. *Id.* Instead, to make an accurate comparison between river water levels and groundwater levels at the Quarry and Plant Sites, the DEIR should have included monitoring of channel geometry and flow differences immediately adjacent to the project sites. The DEIR concludes that there is no correlation between river stage and pond water levels at the Quarry site location; however, this conclusion is unsupported. *Id.*

Until the analysis is revised to correct the aforementioned flaws, the DEIR's conclusions regarding the interaction between groundwater and surface water, and the corresponding potential for river water to seep into the Quarry site, are unsupported and the DEIR is inadequate under CEQA.

3. The DEIR Fails to Provide Evidence to Support Mitigation Measures Related to Lowering Groundwater Levels.

The DEIR purportedly analyzes the groundwater drawdown that would occur in the areas surrounding the Quarry Site due to dewatering of the quarry pit. DEIR Impact 4.10-10 at 4.10-105. The DEIR indicates that because the alluvium has already been removed from the Quarry site, no further effects related to dewatering (such as seepage of alluvial groundwater into the mining pit) can occur. *Id*. As explained in the CBEC report, this statement is incorrect because alluvial groundwater in off-site areas adjacent to and surrounding the Quarry site would still seep into the mining pit. CBEC Report at 4.

Nonetheless, the DEIR concludes that impacts to groundwater supplies related to the development of a large cone of depression radiating around the site due to pit dewatering and groundwater seepage into the Quarry site mining pit would be potentially

⁷ The water level in the River, in this case, above the alluvium on the river bed.

significant. DEIR at 4.10-107 and 4.10-108. In addition, the DEIR concludes that potential impacts to the groundwater supply wells will occur "due to the local decrease in static groundwater levels as a result of the flow of groundwater to the proposed quarry pit." *Id*.

To mitigate these impacts of lowered groundwater levels in the cone of depression and increased groundwater seeping into the mining areas, the DEIR proposes Mitigation Measure 4.10-10a, which prescribes preparation of a Groundwater Adaptive Management Program. *Id.* The project includes recharge trenches along portions of the outer edge of the mining pit. As described in the CBEC report, water from mine pit dewatering would be discharged into the recharge trenches and various recharge ponds with the idea that 50% of the water delivered to the recharge trenches would recharge the underlying groundwater and reduce the amount of drawdown by fifty percent, reducing the amount of groundwater level decline around the pits to less than significant levels. CBEC Report at 4.

The DEIR does not substantiate the benefits and effectiveness of the recharge trenches. *Id.* As explained in the CBEC Report, the DEIR presents no data or analysis to support the claim that 50% of the water delivered to the trenches will recharge the underlying groundwater and the amount of drawdown would be reduced by fifty percent. *Id.* Even if the fifty percent estimate of trench infiltration to recharge the underlying groundwater was accurate, which has not been demonstrated, the drawdown effects would not be fully mitigated. *Id.* The DEIR fails to evaluate how the residual drawdown (after assumed benefits of the recharge trenches) would impact surrounding Groundwater Dependent Ecosystems ("GDE") or increased groundwater flow gradients between the San Joaquin River and mining sites. *Id.*

In sum, the DEIR must revise the necessary analyses as described in the CBEC Report to accurately disclose Project-related impacts to groundwater systems, and substantiate with data and/or analysis the benefits of the recharge trenches. Without this information the DEIR's analysis of the Project's impact related to on-site groundwater impacts is inadequate. As to downstream impacts, the DEIR's analysis is wholly inadequate. A revised DEIR must include an analysis of the aforementioned significant impacts and identify feasible, effective mitigation or alternatives to avoid or minimize the impacts.



4. The DEIR's analysis of potential impacts on Groundwater Dependent Ecosystems Is Inadequate.

As discussed above, in the CBEC report, and further in sections III.B.2(a) and III.B.3 below, the DEIR's incomplete analysis of potential impacts to groundwater dependent ecosystems ("GDEs") is a glaring flaw. CBEC at 5. The DEIR presents contradictory information regarding the effects of dewatering on groundwater supplies and GDEs. In one instance the DEIR erroneously claims that the effects of dewatering would be the same as effects already occurring because alluvium on the Quarry Site has already been removed. *Id.* and DEIR at 4.4-56.

As discussed above and in more detail in the CBEC Report, this statement in the DEIR is incorrect. *Id.* The GDEs located adjacent to the river and north of the Quarry site are rooted in alluvium with rooting depths of less than 30 feet below ground service. *Id.* Far from being identical to current conditions, lowering the alluvium groundwater levels, dewatering remaining alluvium, and ending operation of the infiltration trenches after mining is completed would result in effects that are significantly different. *Id.* The effects would be complete dewatering of the alluvium and associated GDE rooting zone adjacent to the river and north of the quarry. *Id.* This would result in potential adverse impacts on the GDE after, and possibly during, mining operations.

The CBEC Report shows that the DEIR itself presents evidence to support a conclusion that impacts to GDEs would be significant and would threaten the viability and sustainability of existing and future GDEs. A revised DEIR must correct these errors and identify mitigations or alternatives to avoid these significant impacts.

5. The DEIR Fails to Conduct A Quantitative Analysis of Streamflow Depletions From the San Joaquin River.

The DEIR at 4.10-114 and 4.10-115 presents an incomplete and inadequate analysis of the Project's potential to interfere with groundwater recharge at both mining sites such that the Project would conflict with the requirements of the California Sustainable Groundwater Management Act (SGMA) and sustainable management of the Basin. It claims that related impacts at both sites would be less than significant. However, as explained in detail in the CBEC Report, the DEIR itself presents findings and conclusions that show this conclusion to be inconsistent. CBEC Report at 7 and 8.

The DEIR shows that the San Joaquin River and groundwater in the alluvium, weathered rock and hard rock beneath and adjacent to the river are in hydraulic connection. CBEC Report at 7. For example, as discussed in detail in the CBEC Report



and above, the DEIR indicates that mining operations in the Quarry and Plant Sites will increase the water table flow gradients moving from the river towards the mining pits. DEIR at 4.10-114. The result of an increased groundwater hydraulic gradient causing an increased rate of groundwater flow holds true for any saturated aquifer material, whether it is alluvium, weathered rock or fractured hard rock. CBEC Report at 7 and 8. Therefore, when groundwater that is in hydraulic connection to the San Joaquin River experiences an increase in hydraulic gradient toward the Quarry or Plant Sites, there will be an increase in the rate of depletion of water from the river into the groundwater system. *Id*.

Similarly, the DEIR acknowledges that San Joaquin River flows will be depleted due to mining operation. CBEC Report at 8 and DEIR Appendix G-3 at 48 (acknowledging that groundwater and river water are connected so that river water would enter the reclamation pond or mining pit). Therefore, the DEIR fails to demonstrate that it complies with SGMA requirements regarding interconnected surface water depletions because it presents no data or analyses that: a) identify potential unreasonable impacts to beneficial uses of surface water; b) quantify the amount of depletions; or c) develop mitigations for any potential undesirable results due to Project depletions of San Joaquin River flow.

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

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

As discussed above, the proposed Project site is surrounded by conserved lands that protect habitat important to biodiversity and long-term sustainability of river and adjacent lands ecosystems. Furthermore, the Project site is located in Reach 1 of the San Joaquin River Restoration Program.⁸ The Project will result in significant direct and indirect impacts to sensitive habitats, especially adjacent to the Quarry site and downstream. *Id*.

⁸ See Ex. E (San Joaquin River Restoration Program Annual Report) at 3 (Fig. 1).



Given the importance of the affected biological resources, one would expect the DEIR's analysis to provide careful and thorough evaluation of the Project's potential impacts. Unfortunately, the DEIR's analysis is nowhere close to meeting CEQA's wellestablished standards for evaluating biological resource impacts. As detailed in the attached Colibri Report, and summarized below, the DEIR presents a cursory and incomplete evaluation and lacks evidence for its conclusions. The DEIR downplays the Project Site's importance to the ecological health of the region; is based on an inadequate search radius for records of special-status species; inadequately analyzes impacts to sensitive species such as burrowing owl, Swainson's hawk, tricolored blackbird, and western red bat; fails to analyze impacts to sensitive species from blasting and fugitive dust emissions; neglects to analyze impacts to riparian areas and downstream habitats; and proposes vaguely defined mitigation measures that do not address all the impacts to species that the Project will cause.

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

The report prepared by Colibri provides detailed comments on the DEIR's biological resources analysis. *See* Colibri Report attached as Appendix B. The discussion below highlights the most egregious deficiencies.

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

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.

As discussed in section I above, the DEIR dismisses the site's location adjacent to conserved lands and wildlife corridors. As explained in the attached Colibri Report, the Project site is located near conserved lands that play a key role in promoting biodiversity and the long-term sustainability of ecosystems in the area. Federally designated Critical Habitat for California tiger salamander, succulent owl's clover, and San Joaquin Valley Orcutt grass are located across the San Joaquin River from the Plant Site and Quarry Site, and Critical Habitat for California tiger salamander is located roughly 2.0 miles northeast of the eastern boundary of the project sites. DEIR at 4.4-37. Moreover, the San Joaquin River corridor—a significant wildlife movement corridor that provides critical natural areas—encompasses the western boundary of the Quarry Site and is roughly 0.6 miles west of the Plant Site. Little Dry Creek, which includes a riparian corridor with a connection to the San Joaquin River, is located approximately 0.1 mile north of the Plant Site. Id. at 4.4-18-19. These areas are likely to be impacted by the Project. As explained in the attached CBEC and Colibri Reports, mining to 600 feet below ground surface at the Quarry Site adjacent to the San Joaquin River may impact river flows, leading to adverse impacts to sensitive species like Chinook salmon. Colibri Report at 6. And common sense dictates that fugitive dust emissions from blasting-which results in a significant amount of particulate matter—would be highly likely to carry to off-site areas, including these conserved lands and wildlife corridors, on windy days. The DEIR ignores this latter impact entirely.

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. In some cases, surveys are impermissibly deferred until after Project approval. It seems, for example, that the County did not conduct surveys for western pond turtle or western spadefoot. Rather, the DEIR merely notes that western spadefoot and western pond turtle were not observed on-site during a habitat assessment conducted six years ago, and relies on unsubstantiated presumptions to conclude that the species are unlikely to occur on the Project Site. DEIR at 4.4-35. Even though silt ponds are located on the Plant Site and pits that accumulate water are located on the Quarry Site, creating potential habitat for western pond turtle and western spadefoot, the DEIR presumes that western pond turtle and western spadefoot are unlikely to occur on the sites because the level of disturbance throughout the sites "severely limits movement opportunities" for spadefoot and pond turtle. Id. at 4.4-35, 3.3-36. This conclusory statement is no substitute for the analysis required under CEQA. Simply presuming the absence of western spadefoot and western pond turtle without conducting surveys constitutes deferred analysis, which is impermissible. Sundstrom, 202 Cal. App. 3d at 307. A revised DEIR must properly analyze whether western pond turtle

and western spadefoot are present and in what numbers, and determine whether the project will result in permanent loss of habitat for these species.

The DEIR's description of the existing setting also mischaracterizes jurisdictional waters on the Project Site. The DEIR does not characterize the wash water conveyance ditch at the Plant Site at a stream. But as explained in the Colibri Report, the California Department of Fish and Wildlife generally considers a stream to be any feature with a bed, channel, and banks that conveys water and supports stream dependent life, regardless of the origins and use of that feature. The wash water conveyance ditch meets those criteria, and therefore likely qualifies as a stream—meaning that diverting or obstructing its natural flow, altering its bed, channel, or bank, or depositing any materials into the ditch is subject to the provisions of California Fish and Game Code Section 1600 et seq. Colibri Report at 3. By neglecting to characterize the conveyance ditch as a stream—and consequently failing to consider the impacts associated with the removal of the wash water conveyance ditch at the Plant Site.

Moreover, the entire DEIR relies on outdated record searches and an inadequate search radius for records of special-status species. *See* Colibri Report at 3. The record searches cited in the DEIR were conducted in 2019—*six years* ago—meaning that any records added since 2019 were not considered. *Id.* Moreover, as the Colibri Report explains, the industry standard for EIR-level record searches is a nine-quadrangle search radius, including the topographic quadrangle containing the project site and the eight surrounding quadrangles. But the County only searched *four* quadrangles when preparing the DEIR. The DEIR's reliance on this insufficient, sub-standard search radius means that special-status species that may occur on or near the project site were almost certainly overlooked, and potential impacts to them were not considered. *Id.*

These errors result in a DEIR that does not accurately reflect the existing setting. Searching the California Natural Diversity Database today and extending the search radius to encompass nine quadrangles, for example, reveals several species not addressed in the DEIR that may occur on or near the Project Site, including California glossy snake, western mastiff bat, pallid bat, spotted bat, and Townsend's big-eared bat. *Id.* A revised DEIR must conduct a new record search using more up-to-date data and, at minimum, a nine-quadrangle search radius.

Because the DEIR does not provide an accurate description of the existing physical conditions on the Project site, it is incapable of adequately evaluating the Project's impact on sensitive biological resources.

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

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

(a) Failure to Disclose The Extent and Severity of Impacts to Sensitive Wildlife

For example, 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 state-listed as threatened or proposed for federal listing. Nonetheless, the document fails to explain the actual and specific consequences to these species. *See, e.g.*, DEIR at 4.4-48. These sensitive species include burrowing owl, western pond turtle,⁹ western spadefoot,¹⁰ Swainson's hawk,¹¹ bald eagle,¹² and osprey. *Id.* Further, the DEIR notes that "[a]bundant nesting habitat for raptor species" is found along the San Joaquin River west of the project site and along Little Dry Creek north of the Plant site, and that ground disturbances and noise impacts from mining could thus disturb nesting birds on or near the sites. *Id.*, at 4.4-49. Despite this disclosure, the DEIR fails to discuss the specific consequences to nesting birds. *Id.*, at 4.4-49. The DEIR provides insufficient information

⁹ The U.S. Fish & Wildlife Service has proposed to list both the northwestern and southwestern pond turtle as "threatened" under the federal ESA. 88 Fed. Reg. 68370 (Oct. 3, 2023).

¹⁰ The U.S. Fish & Wildlife Service has proposed to list both the northern and southern distinct population segments of the western spadefoot as "threatened" under the Federal ESA. 88 Fed. Reg. 84252 (Dec. 5, 2023).

¹¹ Swainson's hawk is listed as "threatened" under the California ESA. Cal. Dept. of Fish & Wildlife, Cal. Natural Diversity Database Special Animals List 18 (Jan. 2025), available at <u>https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109406&inline</u> (attached as Ex. G).

 $^{^{12}}$ Bald eagle is a fully protected species under California law and listed as endangered under the California ESA. *Id.* at 18.

regarding the number of individuals of each species that will be affected or the degree to which the populations will be impacted.

Moreover, the DEIR fails to adequately assess impacts to several listed species that have the potential to be harmed by the project. Tricolored blackbirds (a state-listed threatened species)¹³ have over a dozen breeding season occurrence records within two miles of the project site and potential nesting habitat in the southeastern portion of the Plant Site, but the DEIR ignores possible significant indirect impacts due to activities like blasting, excavating, trenching, or use of heavy equipment. Colibri Report at 5. These activities could cause tricolored blackbird nests to fail, constituting a significant impact. *Id.* Western red bats, a sensitive species, have a moderate potential to occur on the project site, DEIR at Appendix C, Table C-1, yet the DEIR fails entirely to address the potential effects of the project on this species—including likely significant impacts from blasting given the western red bat's sensitivity to noise and vibration. Because bats are acoustic predators, noise from blasting could compromise their ability to effectively forage. Colibri Report at 5.

Swainson's hawks have more than four dozen breeding season occurrence records within two miles of the Project Site and numerous potential nest trees within half a mile of the Project Site, yet the DEIR fails to address potential indirect effects of the Project on nesting Swainson's hawks. *Id* at 4. Noise and dust from blasting and other Project activity could cause Swainson's hawks' nests to fail, constituting a significant impact. *Id*. Similarly, the DEIR neglects to address potential indirect impacts to burrowing owls that could result from the Project. Noise and dust from blasting, excavating, scraping, or use of heavy equipment could cause burrowing owl nests to fail and/or substantially modify their habitat, constituting a significant impact. *Id*. The DEIR also presumes Sanford's arrowhead, a California Rare Plant, to be absent—even though this species occurs in aquatic habitats like those in the southeastern portion of the Plant Site, and could be present. *Id*. at 6.

As explained in the attached CBEC Report, the DEIR also fails to adequately consider potentially significant impacts to species in groundwater dependent ecosystems that will result from the Project's interference with groundwater levels. CBEC Report at 5. Although groundwater dependent ecosystems are located near the Project Site, the DEIR contains no quantitative analysis of potential impacts to these ecosystems. *Id.* Groundwater dependent ecosystems are rooted in the alluvium extending outside the Project boundary. The Project may result in lowering the alluvium groundwater levels and dewatering remaining alluvium—which would totally dewater the alluvium and

¹³ *Id.* at 22.

associated groundwater dependent ecosystem rooting zone adjacent to the San Joaquin River and north of the Quarry Site. This would result in potentially significant adverse impacts to groundwater dependent ecosystems, and the species that inhabit them, after and possibly during—mining operations. *Id.* The DEIR fails to analyze these impacts.

A revised DEIR must properly document the biological resources on site and thoroughly evaluate the Project's impacts to both on- and off-site biological resources.

(b) Failure to Analyze and Mitigate Impacts from Blasting and Fugitive Dust Emissions

The DEIR fails to analyze, let alone mitigate, impacts on sensitive wildlife and vegetation from dust emissions generated during blasting, aside from a cursory analysis of potential impacts to riparian habitats. DEIR at 4.4-57. The DEIR concludes that project operations associated with mining, processing, and reclamation activities would emit criteria air pollutants "from construction equipment and from mobile equipment and motor vehicles associated with excavation and blasting, and operation of an aggregate plant, ready-mix concrete plant, asphalt plant, and portable recycle plant on the Plant Site and Quarry Site." *Id.* at 4.3-57. However, the DEIR fails to consider particulate matter impacts of blasting on species—even though it admits in later sections that the generation of dust resulting from blasting would cause fine materials and dust to settle on vegetation, thereby indirectly harming habitats. *Id.* at 4.4-58. To address blasting impacts the DEIR proposes a Fugitive Dust Control Plan (Mitigation Measure 4.3-2), which prescribes upgrades to off-road engines, use of chemical dust suppressants, and daily application of water to stockpiles, but does not include any mitigation measures aimed at protecting sensitive wildlife and vegetation. *Id.* at 4.3-62

As the Colibri Report illustrates, fugitive dust emissions from the Project may adversely impact plants, and animals that depend on those plants, because fugitive dust may make plants unsuitable as habitat for insects and birds. Blasting results in a significant amount of particulate matter and would certainly carry to off-site areas on windy days. Blasting could thus harm or substantially modify the habitat of sensitive species like Swainson's hawks, tricolored blackbirds, burrowing owls, and western red bats, resulting in potentially significant impacts. Colibri Report at 4-6. The DEIR fails to address these impacts entirely (although it does admit, in its discussion of Project alternatives, that the no project alternative would "not create any new impacts to wildlife or associated habitat" because there would be "no expansion of mining operation and no blasting." DEIR at 6-14).

The DEIR *does* conclude that the generation of dust by blasting could indirectly impact riparian habitats when fine materials and dust settle on vegetation. DEIR at 4.4-58. To address this, the DEIR proposes the Fugitive Dust Control Plan, which would require upgrades to off-road engines and would require that stockpiles be controlled through the application of dust suppressants. But as discussed further below, the Fugitive Dust Control Plan does not ensure that dust control measures will be properly implemented, let alone effective to reduce impacts to less-than-significant levels. A revised DEIR must include the prescribed analysis and identify feasible mitigation measures that ensure minimization of impacts.

In addition to inadequately analyzing the impacts of fugitive dust emissions, the DEIR fails to fully analyze the impacts of noise and vibration on wildlife. As described in the attached Salter Report, aside from its analysis of impacts to fish, the DEIR includes virtually no noise or vibration thresholds, analysis, or mitigation for wildlife in areas near the Project Site. Salter Report at 2. Although the DEIR concludes that "[g]round disturbance and noise impacts from mining could disturb nesting birds located on or near the project sites," DEIR at 4.4-49, and that mining could "result in potential adverse impacts to special-status species in the riparian habitat surrounding the project sites" due to substantial disturbances caused by noise and vibration, Id. at 4.4-52, it provides insufficient substantive analysis. Salter Report at 10. The County did not measure existing ambient noise levels in the neighboring wildlife areas; nor did it predict Project operational noise levels for these areas. Absent such analysis, the potential noise increase and ensuing impacts to wildlife cannot be evaluated adequately. Id. Indeed, the DEIR completely omits any analysis of blasting impacts on wildlife and other nearby riparian habitat. Because the DEIR's analysis of noise and vibration impacts is so deficient, impacts to wildlife remain largely unknown. Id. And since there are no noise and vibration mitigation measures that control operational noise or blasting vibration—such as stopping blasting during times when birds are nesting near the Project Site—noise and vibration from the Project will likely disrupt nearby wildlife. Id.

(c) Failure to Disclose Impacts to Special Status Species After Reclamation of the Site.

The DEIR's analysis of impacts to special-status plant and wildlife species after mining and reclamation are complete suffers from similar deficiencies. The DEIR concludes that there would be no significant impacts once reclamation is complete because "all activities would cease, and all equipment would be removed," sources of lighting, noise, and vibration would be removed, and the area would be reverted to open space. DEIR at 4.4-53. However, the current reclamation plan in place for completion of alluvial mining and the sites does not match the proposed one. The existing reclamation



plan would leave a large, but comparatively shallow (approximately 20 feet deep) lake at the Quarry site; the proposed reclamation plan would leave an 108-acre, 600-foot-deep pit with a water surface elevation of approximately 500 feet below the surrounding grade. *Id.* at 4.4-53-54. Compared to the proposed reclamation plan, the existing reclamation plan would offer better opportunities for aquatic plant and animal life, as habitat value is often inversely related to water depth. Colibri Report at 6. But the DEIR ignores likely impacts to wildlife that would result from the creation of the 600-foot-deep pit and fails to analyze the impacts of the proposed reclamation plan compared to the existing plan. Similarly, the DEIR notes that the formation of quarry pit ponds that would cover the majority of the Plant and Quarry Sites would constitute an "irreversible" environmental change that would preclude future land uses, but fails to analyze whether this change would result in impacts to sensitive species or their habitats. *Id.* at 7-3.

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

As described in both the CBEC and the Colibri Reports, the Project's effects on site hydrology would result in water stress to existing riparian habitat areas on-site and downstream of the Project site. The Project would result in myriad changes including a substantial loss of groundwater due to increased evapotranspiration from large numbers of wetland and riparian plants proposed as part of the revegetation plan and increased evaporation in ponded areas. In addition, changes in Project site topography, hydraulics, and flow that will redirect flood waters have the potential to impact existing riparian areas on-site and sensitive habitat downstream. CBEC Report at 5 and Colibri Report at 6. The DEIR fails to evaluate these impacts.

The San Joaquin River to the west of the project site supports a Great Valley Mixed Riparian Forest, and riparian habitat is also located just north of the Plant Site and south of Little Dry Creek. DEIR at 4.4-55, The DEIR notes that pumping of quarry pits on the project sites and the ensuing formation of a quarry pit pond on the Plant Site and quarry pit lake on the Quarry Site "would result in decreased groundwater levels in the areas surrounding the project sites," which could lead to adverse impacts to riparian habitat should plant species lose access to groundwater or river flow water important to their survival. *Id.* at 4.4-55. Mulefat and sandbar willow, for instance, are groundwater dependent species that have been identified within 500 feet of the Plant Site. *Id.* at 4.4-11. As explained in the attached CBEC Report, the Project will interfere with groundwater dependent ecosystems, resulting in potentially significant impacts on these ecosystems after, and possibly during, mining operations. CBEC Report at 5.

Moreover, blasting at the Quarry Site could impact riparian habitat by destabilizing the San Joaquin River bank, or by generating projectiles that could damage riparian habitat. Id. at 4.4-57. To address this, the DEIR proposes Mitigation Measure 4.10-1, which would implement blasting protocols that would require blasting to begin at the center of the Quarry Site so that "monitoring of groundborne vibration can occur and be used to verify that predicted maximum ground vibrations are consistent with actual ground vibration measurements and allow for adjustments in blasting design to occur based on the monitoring results." Id. If it is determined that blasting is causing instability (of the river bank), a "corrective action plan must be developed that identifies changes to the blasting program to prevent future exceedances." *Id.* at 4.4-58. The blasting protocol would also require the development of an annual Blasting Plan submitted to the county each year for review. *Id.* These mitigation measures are both vague and impermissibly deferred. Indeed, these measures would allow significant impacts to occur before any steps are taken to avoid or minimize impacts; corrective action would be taken only after the damage is already done. CEQA prohibits a delay in implementation of mitigation until after a significant impact occurs. See King and Gardiner Farms, LLC v. County of Kern (2020) 45 Cal.App.5th 814, 860, 862; POET, LLC v. State Air Resources Bd. (2013) 218 Cal.App.4th 681, 738, 740. Compounding the problem, the DEIR fails to articulate exactly what corrective action must be taken if significant impacts occur. This is also unlawful. See, e.g., California Clean Energy Committee v. City of Woodland (2014) 225 Cal.App.4th 173, 195-96; Preserve Wild Santee v. City of Santee (2012) 210 Cal.App.4th 260, 280-81.

The DEIR also reaches unsupported and unreasonable conclusions about impacts to on-site and downstream wildlife from mining operations and blasting. For instance, it concludes that the project's interference with native resident or migratory fish or wildlife species movement, corridors, or nursery sites would be less than significant, DEIR at 4.4-63, but justifies this conclusion by discussing post-operating conditions; the DEIR claims that mining operations on the Plant Site will not compromise wildlife movement, in part, because "[u]pon completion of mining and reclamation, the final reclaimed use on the site would be open space." *Id.* But the Project envisions operation for a period of 100 years. *Id.* at ES-4 and 2-5. That reclamation would take place at the end of this period does not mean that there will not be significant impacts in the interim. Disruption of the site over a 100-year period will cause significant impacts, even if the site will one day be



reclaimed. The DEIR may not just ignore a century of adverse impacts to wildlife simply because the Project Site will be converted to open space thereafter.¹⁴

Furthermore, the DEIR's discussion of impacts to special-status wildlife species in riparian habitat surrounding the Plant and Quarry sites during mining operations is devoid of any real analysis. Without providing a single citation to back its claims, the DEIR asserts that "wildlife is often observed to habituate well to daily recurring activities and noise associated with the operations," DEIR at 4.4-52. The DEIR provides several examples of species habituating—again, without offering any citations to substantiate these claims. *Id.* at 4.4-52-53. Many of these examples, including the primary example offered, Cajon Creek Conservation Bank, were projects involving alluvial surface mining without blasting, and are therefore not reflective of whether species exposed to blasting on the Quarry Site are likely to habituate or not. *Id.* The DEIR's conclusion that impacts to special-status wildlife species in riparian habitat surrounding the Plant and Quarry sites during mining operations will be less than significant lacks any basis.

In addition, as discussed above, the Project proposes to excavate hard rock to a depth of 600 feet, leaving a large pit even after reclamation has taken place. As described in the attached CBEC report, groundwater in the alluvium beneath off-site areas will likely flow into the Quarry Site pit, resulting in potential groundwater contamination as well as potentially significant impacts to neighboring groundwater dependent ecosystems. CBEC Report at 4. The DEIR ignores these impacts to water quality and to downstream aquatic habitats. *Id*.

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

The DEIR not only fails to adequately analyze potentially significant impacts on biological resources on-site and off-site in the adjacent wildlife refuges due to project-related hydrologic changes, fugitive dust emissions, and direct impacts from removal of habitat, but also fails to provide adequate mitigation to address all of the ways that biological resources will be impacted. An EIR is inadequate if it fails to suggest mitigation measures, or if its suggested mitigation measures are so undefined that it is impossible to evaluate their effectiveness. *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61 at 79. The County may not use the inadequacy of its impacts review to avoid mitigation: "The agency should not be

¹⁴ Nor is there any guarantee that the site actually will be reclaimed even after another century of operation. As discussed above, the site would have been reclaimed decades ago had the County not repeatedly extended the expiration of existing permits.

allowed to hide behind its own failure to collect data." *Sundstrom*, 202 Cal.App.3d at 306. The formulation of mitigation measures may not properly be deferred until after Project approval; rather, "[m]itigation measures must be fully enforceable through permit conditions, agreements, or legally binding instruments." CEQA Guidelines § 15126.4(a). Here, the DEIR's identification and analysis of mitigation measures, like its analysis of biological impacts, are legally inadequate.

The DEIR concludes that the project could result in significant impacts to specialstatus species—including burrowing owls, western pond turtles, western spadefoot, Swainson's hawks, bald eagles, and ospreys—on the Plant Site or Quarry Site during mining operations, DEIR at 4.4-48-49, and that ground disturbance and noise impacts from mining could disturb nesting birds on or near the sites. *Id.* at 4.4-49. But the mitigation measures it proposes, which involve conducting preclearance surveys and relocating any members of these species found on the Project Site, fail to mitigate potential irreversible impacts to these species' habitat. *Id.* at 4.4-50 to 4.4-52, 4.4-57 to 4.4-58. Activities such as mining operations, blasting, and the creation of the 600-foot deep pit could result in the irrevocable destruction of habitat. Even if sensitive species are relocated, loss of their habitat is nevertheless an impact that requires evaluation and mitigation. A revised DEIR should include mitigation measures that adequately address potential irreversible harms to species habitat.

The DEIR's biological mitigation measures are inadequate for additional reasons. For example, the measures calling for relocation of burrowing owls, western pond turtles, and spadefoot (4.4-1a and 4.4-1b) fail to discuss any potential adverse impacts on these species resulting from capture and relocation. An EIR must evaluate whether mitigation measures may cause significant environmental impacts of their own (CEQA Guidelines § 15126.4(a)(1)(D)), but this EIR fails to do so. Nor do these measures cite any evidence that suitable habitat is available in areas where relocation would be feasible and the relocated species would not be further disturbed.

Measure 4.4-1c for nesting birds is also arbitrary, inadequate and inconsistent. Although the measure contemplates that a buffer zone of 300 to 500 feet may be necessary to protect nests from disturbance, it would require surveys only within 50 feet of "the immediate area of the mining phase where construction is to be initiated." DEIR at 4.4-50. Nests outside this 50-foot buffer, but within the 300- to 500-foot radius where nest protection is necessary, would receive no protection at all. This arbitrary limitation on survey distance is unlawful. *See Sierra Watch v. County of Placer* (2021) 69 Cal.App.5th 86, 106-07.

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

The DEIR's analysis of Project-related air quality impacts contains numerous deficiencies that must be remedied in order for the public and decision-makers to fully understand the Project's impacts. Specifically, the evaluation of the Project's air quality impacts must be revised to address: (1) inadequate analysis of direct and indirect impacts 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. These issues, and other deficiencies, are discussed in greater detail below.

1. The DEIR Fails to Adequately Evaluate the Project's Direct and Indirect Impacts Resulting from Particulate Matter Emissions.

The DEIR concludes that Project-related particulate matter emissions (specifically fugitive dust emissions) would be significant. DEIR at 4.3-60. However, the DEIR fails to provide adequate details about dust-producing elements of the Project. As a result, readers of the evaluation cannot know whether all direct impacts were evaluated. For example, the DEIR fails to provide information about the area that would be disturbed at both sites each day; the anticipated size, number, and location of stockpiles; and how material would be transported to avoid fugitive dust emissions. This information is important for readers to understand the daily volume of exposed material and how handling of the material may or may not result in additional pollutant emissions.

Similarly, the DEIR states that if topsoil or overburden stockpiles are expected to remain *longer than one year*, the stockpiles would be protected from wind and erosion with planted grasses. DEIR at 2-29, 2-36 (for both the Plant and Quarry sites; emphasis added). This suggests that unused stockpiles could be subject to uncontrolled wind erosion for up to 12 months before being seeded, which could generate substantial dust emissions that were not accounted for in the DEIR analysis.

In addition, the DEIR fails to adequately evaluate the indirect impacts related to Project-related fugitive dust. Specifically, as discussed above and in the attached Colibri Report, the DEIR ignores potential impacts of particulate matter on adjacent wildlife and plant habitats. *See* Colibri Report at 3. The DEIR fails to evaluate the effects of fugitive dust drifting into immediately proximate ecological reserves and other open space.

A revised analysis must properly evaluate the Project's particulate emissions, disclose the corrected emissions of particulate matter, and identify feasible, effective mitigation to minimize the impacts.



2. The DEIR's Proposed Mitigation for Significant Project-Related Particulate Matter Emissions Is Insufficient.

The DEIR proposes Mitigation Measure 4.3-2 to address the Project's significant impact due to particulate matter emissions. DEIR at 4.3-62. However, as presented, the measure fails to ensure that impacts will be minimized to a less-than-significant level. The measure indicates that a Fugitive Dust Control Plan will be prepared sometime in the future. The deferred plan would include three elements. However, the measure is generic, vague, and fails to provide any mitigation at all for several potential sources of particulate pollution. As discussed above, the DEIR fails to address fugitive dust control in the mining pit area. DEIR at ES-13 and 4.3-62. During dry weather conditions, wind erosion and excavation equipment operation would generate a substantial amount of fugitive dust emissions if not properly controlled. Blasting also produces large amounts of particulate matter, and yet the mitigation measure fails to address these emissions. Finally, although the measure provides for controlling unpaved roads with dust suppressants, it fails to specify how often or under what conditions.

In addition, the DEIR fails to evaluate the effectiveness of the control measures proposed in the Fugitive Dust Control Plan. Measures to mitigate the substantial amount of particulate matter that would result from this Project should be specific and substantially more stringent. For example, the measures should include periodic air monitoring by a third party (when triggered by complaints), and should include specific information about how unpaved roads, stockpiles, and disturbed areas would be stabilized to prevent wind erosion.

As discussed above, impacts from these fugitive dust emissions are not only harmful to people but can also impact animals and plants on adjacent sites. See Colibri Report at 3. The County must identify effective, enforceable measures that will minimize impacts to the sensitive plant and animal communities on- and off-site as well as sensitive receptors in adjacent residential areas.

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

The DEIR presents a Health Risk Assessment evaluating cancer risk from exposure to Project-generated toxic air contaminants (TACs) of concern, including diesel particulate matter, silica dust and trace heavy metals. DEIR at Appendix D-1. However, giving that the Project more than doubles production from the mines, it is unclear how the evaluation concludes there would be a net reduction in cancer risk at the maximum exposed individual sensitive receptor (or MEIR). Specifically, the DEIR identifies an



unmitigated cancer risk of 281 in a million. DEIR Table 4.3-24 at p. 4.3-63. However, the DEIR then claims that the cancer risk after implementation of mitigation measures would be reduced to less than zero. DEIR at Table 4.3-25 at p. 4.3-64. This seems to suggest that the mitigation causes a beneficial net reduction relative to baseline conditions, but the DEIR fails to explain how the analysis arrives at this confounding conclusion.

Furthermore, the health risk analysis assumptions are unclear. For example, it is unclear what baseline health risk scenario is assumed for the existing condition. The DEIR, at Appendix D, indicates that baseline data is based on data in Appendix G to Appendix D1. A review of that data, however, fails to clarify the baseline assumptions.

A revised DEIR must clearly state the baseline health risk scenario and how it was derived, and must include an apples-to-apples comparison between the existing conditions and the proposed net change for to project operations. The assumptions must also be clearly articulated so that the public and decisionmakers can understand the basis for the analysis

D. The DEIR's Noise Analysis Is Inadequate.

1. The DEIR Uses Inappropriate Thresholds of Significance to Evaluate Blasting-Related Impacts on People.

The Project proposes frequent blasting (once or twice a week) for a period of approximately 70 years during the hard rock mining phase. DEIR at 2-42 and 2-43. Blast waves, or pressure waves, are also referred to as airblast. Salter Report at 3 through 7.

The DEIR acknowledges that the nearest sensitive receptors to the Project site are located approximately 250 feet from the noisiest operations at the Quarry site. DEIR at 4.13-59. While the DEIR purports to evaluate the impacts of blasting on nearby residents, it fails to actually do so. DEIR at 4.13-65. As further explained in the Salter Report, the DEIR's thresholds of significance for blasting-related impacts are based on U.S. Bureau of Mines thresholds that focus only on building damage resulting from blast waves, not on the potential for human disturbance. Salter at 3; DEIR at 4.13-65. As the Salter Report shows, human disturbance from vibration and "airblast" can occur at levels far below those that may cause structural damage. Indeed, multiple agencies in the United States and elsewhere have established standards addressing blasting impacts on people that are different from, and far more stringent than, thresholds for assessing the potential for structural damage. Salter at 3. By using a structural damage threshold to assess the potential for human disturbance, the DEIR effectively omits any analysis of potential vibration and airblast impacts on people.



Given that the DEIR's thresholds of significance for the project's ground-borne vibration and airblast impacts only address structural damage, it follows that the analysis of this impact is also limited only to structural damage. This approach does not comport with CEQA. People can perceive levels of motion and sound that are well below (by a factor of 100 to 1000 or more) those levels that could cause damage to the average structure.¹⁵ People can detect the effects of airblast from a distance up to 2,000 feet. Salter at 8. The DEIR's analysis is therefore incomplete and inadequate.

Under CEQA, the public has a right to know just how disruptive noise and vibration from the Project's operations will be. California courts are clear on this subject. A DEIR may not "travel the legally impermissible easy road to CEQA compliance . . . [by] simply labeling the effect 'significant' without accompanying analysis" *Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.*, 91 Cal.App.4th 1344, 1371 (2001). Rather, "a more detailed analysis of how adverse the impact will be is required." *Galante Vineyards v. Monterey Peninsula Water Management Dist.*, 60 Cal.App.4th 1109, 1123 (1997).

The revised DEIR must use thresholds of significance that account for effects on people (not just structures) to evaluate and disclose the full extent and severity of the Project's blasting impacts on adjacent sensitive receptors. Absent identification of applicable thresholds, the DEIR's conclusions regarding the significance of human disturbance impacts fail to inform the public and lack evidentiary support.

2. The DEIR Fails to Adequately Analyze the Project's Impacts Related to Nighttime Noise and Extended Operational Hours.

The DEIR analysis indicates that operational noise at night is projected to exceed thresholds of significance, resulting in significant impacts. DEIR Tables 4.13-16 and 4.13-17, DEIR 4.13-57 through 4.13-60). Making things worse, the Project site would extend operational hours (DEIR at 4.1-62 and 4.1-63) to allow loading/unloading and aggregate trucking to regularly occur between the hours of 4 a.m. and 9 p.m. under the proposed project, compared to existing conditions where the earliest operations begin between 4 a.m. and 6 a.m. seasonally, and end at 6:00 p.m. year-round. As the Salter Report explains, extended operations before 6 a.m. and after 7 p.m. come with increased risk and potential for sleep and speech disturbance for the nearby sensitive receivers. Salter at 10. The DEIR omits analysis of these impacts. A revised DEIR should include

¹⁵ See Wesley L. Bender, Understanding Blast Vibration and Airblast, Their Causes, and Their Damage Potential at 9 (2019), available at

http://www.iseegoldenwest.org/articles/Blast%20Effects.pdf (attached as Exhibit H).

an analysis of nighttime noise and the potential for sleep disturbance at nighttime hours (4 a.m. to 7 a.m.). The sleep disturbance study should evaluate both average and singleevent maximum noise (i.e., Leq/L50 and Lmax noise levels) from processing, truck loading, and truck pass-by noise. Salter at 10.

3. The DEIR Proposes Inadequate Mitigation and Fails to Provide Evidence That The Proposed Measures Will Reduce Noise to Less Than Significant Levels.

Notwithstanding the DEIR's deficient noise impact analysis, the document recognizes the need to mitigate for the Project's significant noise impacts. DEIR at ES-45 to ES-49; 4.13-58; and 4.13-61 and 4.13-62. Specifically, the DEIR concludes that changes in ambient noise levels at both the Plant Site and at the Quarry site, would be potentially significant during both stages of production. *Id*. The DEIR identifies two mitigation measures that it claims will reduce impacts to less-than-significant levels. *Id*.

Under CEQA, "[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 are legally inadequate. The identified mitigation measures for the significant noise impacts at both sites include a laundry list of elements. DEIR at ES-45 and ES-46; 4.13-58; and 4.13-61 and 4.13-62. The measures provide that the facility operator "shall implement one or more of the following measures..." so that the operator can choose to implement measures at their discretion. *Id*. The measures include no performance standards to ensure that the combination of elements implemented would control noise to any particular level. *Id*. Without such standards, the measure is not enforceable and the DEIR cannot rely on either measure to conclude that noise would be reduced to less-than-significant levels. *See, e.g., King and Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 872-79.

In addition, the DEIR fails to provide any analysis of the proposed mitigation measures' efficacy, and fails to provide evidence to support the conclusion that, with the mitigation, impacts would be reduced to less-than-significant levels. Instead, the DEIR defers analysis of the measures' efficacy until after project approval. Specifically, item 7 in Mitigation Measure 4.13-2 and item 12 in Mitigation Measure 4.13-3 call for noise monitoring to determine if the measures adequately lower noise levels. However, under well-established caselaw, when a lead agency relies on mitigation measures to find that project impacts will be reduced to a level of insignificance, there must be substantial evidence in the record demonstrating that the measures are feasible and will be effective. *Sacramento Old City Assn. v. City Council of Sacramento*, 229 Cal.App.3d 1011, 1027



(1991); *Kings County Farm Bureau v. City of Hanford*, 221 Cal.App.3d 692, 726-29 (1990). Because the DEIR defers analysis regarding the effectiveness of the proposed measures, there is no such evidence in the record for this Project.

Furthermore, as discussed above, the DEIR's mitigation measure for blasting impacts is impermissibly deferred, overly vague, and insufficient to support a conclusion that impacts will be less than significant. In particular, the measure relies on inadequate monitoring of blasting to determine whether thresholds are exceeded and requires preparation of a "Corrective Action Plan" if they are. See DEIR at 4.10-91 (MM 4.10-1); DEIR Appendix H-6 ("Blasting Protocols"). This measure thus impermissibly defers both analysis and mitigation of significant impacts; indeed, the DEIR proposes to allow significant impacts to occur before mitigation is even proposed, much less implemented. Compounding the problem, the mitigation measure does not identify any specific measures that must be included in a "Corrective Action Plan." Mitigation measure 4.10-1 is mentioned several times in the DEIR as the basis for concluding numerous impacts are less than significant. These conclusions are without evidentiary support, and the DEIR's failure to identify and describe adequate mitigation renders the document inadequate as a matter of law.

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

Finally, the DEIR completely ignores Project-related noise impacts to recreational users of the San Joaquin River (e.g., kayaking, canoeing) and of nearby Sumner Peck Ranch, Ball Ranch, and Lost Lake Recreation Area, the southern border of which is adjacent to the Quarry site. Sumner Peck Ranch is open to the public daily from 12-5 pm thanks to Solitary Cellars Winery, which offers an outdoor wine tasting area. Ball Ranch is also open to the public daily and is operated by the Trust under contract to the Conservancy. In addition to recreation, Lost Lake County Park is the location of many elementary school field trips during the school year. According to the County's website, "[T]he primitive nature study area and 38 acre lake make Lost Lake one of the most popular County parks."¹⁶ Lost Lake Recreation Area provides multiple features and activities, such as group picnic areas, softball field, volleyball courts, hiking trails, nature study area and trail, bird watching, hiking, kayaking, canoeing, fishing, camping and

¹⁶ See Fresno County, Lost Lake Recreation Area, at

<u>https://www.fresnocountyca.gov/Departments/Public-Works-and-Planning/divisions-of-public-works-and-planning/resources-and-parks-division/parks/lost-lake-recreation-area</u> (attached as Ex. I).

playgrounds, and serves various members of the community, including individuals, groups, students, scouts, and families. *Id.*

It is therefore improper for the DEIR to omit any analysis of impacts to recreational River users and to users of the park. A project that calls for blasting and hard rock mining operations would clearly impact recreational users because it would interfere with their use and enjoyment of the area and may result in safety concerns. One of the purposes of open space and parks is to provide urban users access to spaces away from the noise of urban life. The noise associated with drilling, blasting, excavation, and aggregate processing activities for 100 years would result in the loss of connection to the natural environment. Industrial noise – like second-hand smoke – is indiscriminating; there would be no way to escape the noise except to leave the area altogether. The revised DEIR must address this serious impact.

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

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

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

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

A. The DEIR Presents Overly Narrow Objectives.

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

As discussed above, the DEIR presents overly narrow and self-fulfilling project objectives. The DEIR characterizes the "overall goal" of the Project as "continu[ing] and expand[ing] existing mining and processing operations at the Plant Site and Quarry Site." DEIR at 6-3. Objectives 2 and 4 effectively circumscribe and mandate selection of the Project or an alternative that is substantively similar. In particular, Objective 2 requires the project to continue to use "known aggregate reserves from existing partially mined properties." *Id.* Objective 4 demands the Project "maintain a local source of construction aggregate with enough annual sales capacity (3.0 million tons [MT])." *Id.* These objectives leave no room for consideration of anything other than expansion of the existing operation, at the capacity proposed, at this location.

Indeed, the DEIR rejects the possibility of using alternative site locations because use of a different location would "result in eliminating aggregate production and reclamation impacts that would occur at the project site," "introduce new impacts to a site with no previous aggregate mining activity," and "restrict the full mineral development of the Quarry Site." *Id.* at 6-7. Similarly, the DEIR dismisses the reduced operational life alternative because it would restrict the full mineral development of the Project Site, *id.* at 6-8, and rejects reduced mining depth (200 feet) alternative because this option would require finding "another aggregate source to supply the County's and Fresno regional needs." *Id.* at 6-9.

Because the objectives leave no room to consider—and are used to justify dismissal without analysis of—relevant, feasible alternatives, they preclude consideration of a reasonable range of alternatives and violate CEQA. *North Coast Rivers Alliance v. Kawamura*, 243 Cal.App.4th 647 at 669-70 (2015). The County should withdraw the DEIR and proceed with analysis of a reasonable range of alternatives, and recirculate the EIR for a complete and adequate environmental review.

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

The DEIR analyzes four alternatives to the Project, aside from the No Project Alternative. The alternatives presented are:

- Alternative 2: Reduced Mining Depth Alternative (400 feet);
- Alternative 3: Reduced Mining Depth Alternative (300 feet);
- Alternative 4: Reduced Mining Depth Alternative (300 feet) with Additional Setback (100 feet); and
- Alternative 5: Reduced Mining Depth Alternative (400 feet) with Reduced Annual Sales (2.5 MT/Y). DEIR at 6-10.

However, these alternatives do little to address the DEIR identified significant impacts to visual resources and safety impacts to pedestrians and bicyclists. Indeed, the DEIR concludes that adverse impacts to the scenic vista and degradation of the existing visual character in nonurbanized areas would be the same in Alternatives 2, 3, and 5 as in the Project. DEIR at 6-60.

Critically, each of these alternatives would still include blasting and hard rock mining and would still result in significant impacts that have not been disclosed. Specifically, Alternatives 2 through 5 would conduct hard rock mining with blasting to a reduced depth of 300 or 400 feet. DEIR at 6-10. Thus, Alternatives 2, 3, 4, and 5 would still continue mining operations for 86, 68, 63, and 86 years respectively. DEIR at 6-20, 6-30, 6-39, 6-52.

Furthermore, the alternatives presented fail to address the undisclosed significant impacts to people and sensitive habitat and species in the area associated with blasting and changes in hydrology. Therefore, the alternatives fail to reduce the Project's significant biological, hydrological, and noise impacts and fail to meet CEQA standards for alternatives analysis. CEQA Guidelines § 15126.6. Similarly, Alternative 4 would allow hard rock mining to a depth of 300 feet and increase the setback from the river by 100 feet. DEIR at 6-39.

The DEIR should have also considered other feasible alternatives that would actually *substantially lessen* the Project's multiple significant impacts. The document provides no reasonable explanation as to why additional alternatives that reduce the inevitable damage from the proposed Project were not proposed. In this case, where the proposed Project would result in many significant environmental impacts for 100 years, it is especially important that the DEIR analyze alternatives that could avoid or lessen those impacts. *See* CEQA Guidelines § 15126.6(c).



As discussed above, the Project will result in significant impacts related to hydrology, biological resources, air quality, and noise. Given the site's location in close proximity to residences, immediately adjacent to a river that provides important aquatic and riparian habitat for multiple sensitive wildlife species, the DEIR should have considered additional alternatives that would reduce impacts to a substantive degree. For example, the DEIR should have analyzed a reduced extraction alternative that would allow further shallow mining of aggregate resources at the Plant and Quarry sites, but limit the operation to excavation of shallow sand and gravel resources only. Such an alternative would reduce impacts to groundwater resources, avoid changes to hydraulics and flood flows, avoid on-site and downstream impacts to habitat through changes in flow and water temperature, and avoid impacts to people and wildlife from blasting. Analysis of such an alternative would also reduce visual impacts and impacts to cyclists and pedestrians, which the current slate of alternatives fail to mitigate. DEIR at 6-60. A revised EIR should analyze these and other alternatives that will avoid or reduce the Project's impacts.

In short, the DEIR's alternatives analysis is riddled with flaws that improperly constrain to the County's consideration of project alternatives. Moreover, the DEIR fails to consider a reasonable range of alternatives that would "avoid or substantially lessen" the significant effects of the project. CEQA Guidelines § 15126.6.

V. The Project Is Inconsistent with the County's General Plan and Zoning Ordinance.

Neither the General Plan nor the Zoning Ordinance expressly allow hard rock mining and blasting in agricultural land use designations or the Exclusive Agriculture (AE) zone. The type of mining proposed in this Project is categorically different from the "surface mining" operations contemplated in the County's land use documents. The Project is therefore inconsistent with the General Plan and Zoning Ordinance.

As discussed above, General Plan Table LU-1 (at 2-25) allows "Surface Mining Operations" in AE and other agricultural zones, but does not expressly allow hard rock mining. The Zoning Ordinance similarly lists "Surface Mining Operations" as an allowable use in the AE zone (with a conditional use permit), but does not authorize hard rock mining. Zoning Ord. § 808.2.020, Table 2-2 (at 2-14).

In the AE zone, "[f]or land uses not listed in Table 2-2, the provisions of Section 802.1.020 (Rules of Interpretation) shall apply." *Id.*, § 808.2.020(D). Those "Rules of Interpretation" require specific findings regarding uses of land that are not specifically listed as allowable in particular zones. *See id.*, § 802.1.020(E). Among other things, the



Director has to make a determination that "[t]he characteristics of, and activities associated with, the proposed use are equivalent to those of one or more of the uses listed in the zone as allowable, and will not involve a greater level of activity, dust, intensity, noise, parking, population density, or traffic generation than the uses listed in the zone." Id., § 802.1.020(E)(1)(a).

Here, the Project will entail a fundamental shift from surface mining of aggregates to hard rock mining of granite. Hard rock mining involves regular blasting and entails a "greater level" of intensity, activity, dust, and noise than surface mining. These uses are not "equivalent" as required by the Zoning Ordinance.

Nor does hard rock mining fit within the definition of "surface mining" in the Zoning Ordinance: "All, or any part of, the process involved in the mining of minerals on mined lands by removing overburden and mining directly from the mineral deposits, open-pit mining of minerals naturally exposed, mining by the auger method, dredging and quarrying, or surface work incident to an underground mine." Zoning Ord. § 834.4.220. Nothing in this definition contemplates continuous, regular blasting and removal of materials from areas far deeper than those typically involved in surface mining operations. The proposed Project therefore cannot be found consistent with the General Plan or Zoning Ordinance.

VI. Conclusion

The Project will have a number of potentially significant impacts on the environment, including (but not limited to) impacts on groundwater resources, water quality, special status biological resources, noise, and air quality. Yet these impacts and others were not adequately analyzed and mitigated in the DEIR. As a result, the DEIR fails to serve as an adequate informational document and its conclusions are not supported by substantial evidence. For the foregoing reasons, the Trust urges the County to delay further consideration of the Project unless and until the County prepares and recirculates a revised DEIR that fully complies with CEQA and the CEQA Guidelines.



Very truly yours,

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Exhibits:

- Ex. A: CBEC Report
- Ex. B: Colibri Report
- Ex. C: Salter Report
- Ex. D: American Rivers, San Joaquin River
- Ex. E: San Joaquin River Restoration Program, Annual Report
- Ex. F: Cal. Dept. of Fish & Wildlife, Chinook Salmon
- Ex. G: Cal. Dept. of Fish & Wildlife, Cal. Natural Diversity Database Special Animals List
- Ex. H: Wesley L. Bender, Understanding Blast Vibration and Airblast, Their Causes, and Their Damage Potential
- Ex. I: Fresno County, Lost Lake Recreation Area
- cc: California Wildlife Conservation Board San Joaquin River Conservancy Julie Vance, CDFW regional director Members of the Fresno County Planning Commission Members of the Board of Supervisors

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