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Via E-Mail

Mr. Christopher Jacobs
Land Use/Environmental Planner
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Re: Cottonwood Sand Mining Project (PDS2018-MUP-18-023),
(PDS2018-RP-18-001); Log No. PDS2018-ER-18-19-007; SCH#
2019100513

Dear Mr. Jacobs:

On behalf of the Sierra Club San Diego Chapter (“Sierra Club”), we have reviewed the Recirculated Draft Environmental Impact Report (“RDEIR”) for the proposed Cottonwood Sand Mining Project (“Project”). We submit this letter to state our position that the RDEIR fails to meet the requirements of 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. (“Guidelines”). Like all concerned members of the public, Sierra Club relies on the environmental document required by CEQA for an honest and thorough assessment of the environmental impacts of a project such as this. The RDEIR’s failure to provide that assessment undermines CEQA’s core purpose and renders the document inadequate.

We previously submitted extensive comments on behalf of the Sierra Club regarding the deficiencies in the original Draft Environmental Impact Report (“DEIR”). See comments on the Cottonwood Sand Mining Project DEIR dated February 28, 2022. Since those comments remain applicable to the County’s analysis of the Project, Sierra Club incorporates its earlier comments and all accompanying exhibits by reference as if fully set forth herein. Sierra Club also submits with this letter reports prepared by Robert Hamilton, Biologist, attached as Appendix A (“Hamilton Report”) and Greg Kamman, Hydrogeologist with CBEC Eco Engineering, attached as Appendix B (“CBEC Report”).

We respectfully refer the County to these attached reports, both here and throughout these comments, for further detail and discussion of the RDEIR'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. Because the reports prepared by Hamilton Biological and CBEC provide detailed comments on the RDEIR's revised analyses, we will not reiterate each of those comments in this letter. Instead, the discussion below highlights the most egregious deficiencies.

After carefully reviewing the RDEIR for the proposed Project, we have again concluded that the EIR¹ fails in numerous respects to comply with the requirements of CEQA. The EIR is “the heart of CEQA.” *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392. It “is an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return. The EIR is also intended ‘to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.’ Because the EIR must be certified or rejected by public officials, it is a document of accountability.” *Id.* (citations omitted).

As explained in our prior comments, the Project as proposed will have significant, adverse impacts on both the natural and the human environment in San Diego County. These impacts include, but are not limited to, potentially devastating effects on: local hydrology and water quality, habitat for both terrestrial and aquatic wildlife, local traffic, air quality, and noise. Importantly, the Project also remains inconsistent with the San Diego County Multiple Species Conservation Program (“MSCP”).

The County recirculated portions of the DEIR due to changes made to the project description and analysis of biological resource impacts. Unfortunately, the RDEIR does not correct the flaws in the DEIR. Instead, as discussed in detail in the attached Hamilton Report and below, the technically deficient revised biological analysis serves only to further obscure the true impacts of the Project. *See generally* Appendix A. Moreover, while the RDEIR indicates that the County prepared a new analysis of air quality emissions altered by some of the project changes, the RDEIR fails to present any evidence showing the work done in that analysis. The details (i.e., methods, approach, data, and analysis) must be provided for review so that the public and decisionmakers can fully evaluate the analysis for accuracy and adequacy.

With regard to each of CEQA's substantive requirements—a complete and stable project description, a thorough analysis of significant impacts, identification of feasible

¹ This letter refers to the original DEIR and the RDEIR collectively as the “EIR”.

and enforceable mitigation measures, an analysis of a reasonable range of alternatives—the DEIR falls woefully short. As a result, the EIR fails to meet CEQA’s fundamental purpose of providing disclosure to the public of the Project’s environmental effects.

I. Introduction and Background

The proposed Project includes the following components: Major Use Permit to allow sand mining over a period of 10-12 years; Reclamation Plan, Landscape Plan (for revegetation), Public Improvement Plan, right-of-way permits; and a host of discretionary permits from resource agencies. The Project would extract 6.4 million tons of material. RDEIR at S-15. The Reclamation Plan and revegetation would be implemented as each Project phase is completed over the 12 year period.

The Project site is located within San Diego County’s jurisdiction on land designated as Semi-Rural Regional and Specific Plan Area Land Use and zoned Open Space (S80), Specific Plan (S88), and Holding Area (S90). The majority of the proposed Project site is located in the flood plain for the Sweetwater River and within both the northeastern portion of the South County Segment and southwestern portion of the Metro-Lakeside-Jamul Segment of the adopted the MSCP subarea plans. RDEIR at 1-29. These plan areas have already suffered extensive depletion by past development. Remaining intact habitat blocks—identified as Pre-Approved Mitigation Areas (“PAMAs”) with linkages to large open space areas—are rare.

The project site is also within an area identified by the MSCP as a Biological Resource Core Area (“BRCA”), which is defined as “land that qualifies as an integral component of a viable regional ecosystem” under the County’s Biological Mitigation Ordinance (“BMO”). BMO section 86.508(a). The BRCAs are areas supporting a high concentration of sensitive biological resources, which, if lost or fragmented, could not be replaced or mitigated elsewhere. The fragmentation and loss of ecological value of a BRCA or PAMA—as exemplified by this project site—would jeopardize the assembly of a preserve system.

There are no intact core areas to spare. Importantly, the *whole* of the Project site is designated BRCA and an important habitat corridor linkage between the McGinty Mountain/Sycuan Peak-Dehesa and Sweetwater Reservoir/San Miguel Mountain BRCAs. This Project will have serious long-term consequences, not only for the area residents, but for the San Diego County region. Those consequences include potentially devastating effects related to changes in drainage patterns, impacts to groundwater recharge, jeopardizing habitat planning efforts and loss of designated conservation lands, impacts to multiple sensitive species and their habitats, loss of open space, visual impacts,

impacts to sensitive cultural sites, increased traffic congestion, an increased risk of air and water pollution, and impacts to quality of life for thousands of area residents.

The RDEIR for the proposed Project suffers from several major problems. First, the RDEIR fails to address any of Sierra Club's and other public comments on biological resources. Instead, it focuses only on addressing comments by the California Department of Fish and Wildlife ("CDFW"). Similarly, the RDEIR fails to address any comments on the DEIR's hydrology and water quality analysis. Second, the RDEIR, like its predecessor, downplays significant impacts resulting from the proposed 10-12 year mining operation, treating impacts from mining as temporary. A project that calls for sand and gravel mining operations over a dozen years, in an area long recognized for its natural beauty, high-value biological resources, and serene environs would clearly harm biological values and degrade quality of life for residents of the area.

As discussed in more detail below, the RDEIR continues to present an incomplete description of the project setting and of the project itself, and also substantially understates the severity and extent of a range of environmental impacts, and thus fails to provide adequate mitigation. 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, the Multiple Species Conservation Plan and other applicable plans, then prepare and recirculate a revised DEIR that properly describes the Project, analyzes all of its impacts, and considers meaningful alternatives and mitigation measures to ameliorate those impacts.

II. The RDEIR Fails to Describe Important Elements of the Project

As discussed in detail in SMW's comments on behalf of the Sierra Club dated February 28, 2022, 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*"). As explained below, the RDEIR fails to remedy the gaps in the Project description described in our prior comments and fails to include critical details about new Project features.

The Project would require 2.5 million cubic yards of backfill over the course of 10 years yet the RDEIR fails to provide key information regarding where the backfill material needed for the Project will originate. As explained in Sierra Club's comments on the DEIR, this information is required to accurately evaluate resulting Project-related vehicle miles travelled, increased air pollutants, higher greenhouse gases and increased noise. In addition, the RDEIR fails to disclose what protocols will be in place to ensure

the material is not contaminated, and what standards will be implemented guiding the placement of the backfill in the channel and floodplain to ensure that it will not result in scour and erosions. CBEC Report at 3. This information is important to disclose because these features will result in water quality, erosion, and downstream habitat impacts as well as air quality and noise impacts to area residents. Yet, the RDEIR omits details of these project elements and activities.

In addition, the RDEIR provides no description or design of the 20-foot-tall rock riprap channel erosion barriers (drop structures) that span the entire project floodplain width located at the upstream end of the project and Steele Canyon Road. As explained in the CBEC Report dated February 24, 2022 and in the current CBEC Report, attached as Appendix B to this letter, design information is important because certain designs would create high velocities during periods of moderate to high river flows. See CBEC Report at 2 and CBEC Attachment A at 3 and 4.

In sum, the RDEIR presents an unstable project description. The failure to describe the whole of the Project is a serious and pervasive deficiency, as it renders faulty the EIR's environmental impact analyses as well as the discussion of potential mitigation measures and alternatives to minimize those impacts. The information described above is necessary to allow decision makers, the public and responsible agencies to evaluate potential environmental impacts.

III. The RDEIR Uses An Improper Baseline to Analyze Impacts to Biological Resources and Hydrological Resources.

Under CEQA, an EIR must describe the physical conditions and environmental resources within the project site and in the project vicinity, and evaluate all potential effects on those physical conditions and resources. CEQA Guidelines § 15125. The purpose of this requirement is to give the public and decision makers the most accurate and understandable picture practically possible of the project's likely near-term and long-term impacts. *Id.* "If the description of the environmental setting of the project site and surrounding area is inaccurate, incomplete or misleading, the EIR does not comply with CEQA ." *Cadiz Land Co. v. Rail Cycle L.P.* (2000) 83 Cal.App .4th 74,87. Moreover, an inadequate environmental setting "tenders the identification of environmental impacts legally inadequate ." *San Joaquin Raptor/Wildlife Center v. Stanislaus County* (1994) 27 Cal.App.4th 729.

A. The RDEIR Should Employ a Different Baseline for Biological Resources Due to Changed Conditions at the Site.

This project began with the issuance of a Notice of Preparation (NOP) on October 24, 2019. Two years later, the Notice of Availability for the Draft EIR was published on December 16, 2021. A year and a half after that, the Notice of Availability for the Recirculated Draft EIR was published on June 29, 2023. CEQA provides that the date of the Notice of Preparation (“NOP”) is “normally” the date upon which the DEIR’s baseline conditions should be set. CEQA Guidelines § 15125. However, as the courts have emphasized, “the date for establishing the baseline cannot be a rigid one” and must be evaluated in light of other relevant factors. *Save Our Peninsula Committee*, 87 Cal.App.4th at 125. In some cases, conditions closer to the date the project is approved are more relevant to a determination whether the project's impacts will be significant." *Save Our Peninsula Comm. v. Monterey County Board of Supervisors* (2001) 87 Cal.App 4th 99, 125. Further, CEQA allows that a lead agency may define the baseline differently where existing conditions change or fluctuate over time, and where necessary to provide the most accurate picture practically possible of the project’s impacts. CEQA Guidelines § 15125(a)(1).

In the case of this Project, the use of a more current baseline for the purposes of assessing impacts to sensitive habitat is not only acceptable, but imperative. First, the RDEIR describes site conditions largely based on surveys conducted in 2018 and 2019 (e.g., RDEIR at 2.2-2 and 2.2-3) with some additional surveys in 2022. The RDEIR, like the DEIR before it, mischaracterizes site conditions and describes conditions during and following one of the worst droughts in California history. See, e.g., <https://www.nbcnews.com/science/environment/us-megadrought-worst-least-1200-years-researchers-say-rcna16202> and <https://www.cnn.com/2021/10/14/us/california-summer-drought-worst-on-record/index.html>. As the Hamilton Report shows, current site conditions are dramatically different than described in the RDEIR. For example, recent rains have resulted in substantial areas of healthy Southern Willow Scrub and Non-native grassland, and have altered and improved the Sweetwater River channel. Hamilton Report at 9 and photos at pages 11-17. The changed conditions on the site warrant an updated description of existing conditions and use of a different baseline to evaluate the Project’s impacts.

In addition, as discussed throughout this letter, and in more detail in the Hamilton Report, the RDEIR fails to correct the DEIR’s serious errors in the description of the existing vegetation and habitat on the site. Specifically, the RDEIR mischaracterizes 93 acres of the project site – consisting of Non-native Grassland (an MSCP designated Tier IIIB habitat) – as Disturbed Habitat. The document also fails to address two California

Species of Special Concern closely associated with loose, alluvial soils, that have a high potential to occur on the project site. Appendix A, Hamilton Report at pages 5 through 7 and 18. Hamilton Biological pointed out these errors in comments dated February 28, 2022. However, the Updated Biological Resources Technical Report (BRTR 2023) supporting the Recirculated Draft EIR (Helix Environmental Planning, March 2023) fails to correct the errors and perpetuates the problem by continuing to mischaracterize the vegetation and habitat on the site and relying on inaccurate information regarding baseline conditions at the site.

Under CEQA, knowledge of the regional setting is critical to the assessment of environmental impacts. “Special emphasis should be placed on environmental resources that are rare or unique to that region and would be affected by the project.” CEQA Guidelines § 15125 (c). Especially here, where the project site is an important wildlife movement linkage between established reserves, correcting these errors is crucial. The RDEIR’s use of outdated and incorrect baseline conditions ignores reality and virtually ensures that the resultant analysis is uninformative and inaccurate. Accordingly, to provide a meaningful and accurate baseline, the County must conduct revised biological surveys to determine the current, actual baseline conditions in light of recent changes in rainfall and to correct the mischaracterization of important habitat. Only by doing so can the County provide a meaningful analysis of Project impacts.

While the RDEIR acknowledges that the proposed Project site is within the County’s MSCP, it fails to present important contextual information related to biological resources on the Project site. For example, the RDEIR describes the site as developed and including only small portions of high habitat value. RDEIR at 2.2-1 and 2.1-2. This description ignores the site’s capacity to support special-status species by way of providing a safe corridor to travel between conserved habitat areas. As the Hamilton Report and our prior comments on the DEIR point out, the entire proposed Project site is designated for conservation in the County of San Diego’s MSCP as an important wildlife movement corridor that contributes to biodiversity and long-term sustainability of the regional conservation network.

Further, while the RDEIR acknowledges that the Project site includes sensitive vegetation communities that provide habitat for a long list of sensitive species,² the RDEIR is dismissive of the potential for two California Species of Special Concern. RDEIR Appendix C at PDF page 336 (the two species, California Glossy Snake and Southern California Legless Lizard, are included on the list of Special Status Animal

² The RDEIR lists 22 special-status wildlife species observed on or near the project site and 14 additional species determined to have moderate or high potential to occur.

Species Observed or with Potential to Occur with a moderate potential to occur but not included in the RDEIR analysis of impacts to special status species). California Glossy Snake (*Arizona elegans occidentalis*) and Southern California Legless Lizard (*Anniella stebbinsi*), are both closely associated with loose, alluvial soils (such as those found on the site), and also have a high potential to occur on the project site. Hamilton Report at 18 and 19. In addition, as Hamilton Biological pointed out in the DEIR comments, the surveys for arroyo toad (a federally endangered species) are inadequate and cannot be used to rule out the presence of this species. The RDEIR fails to remedy this failure. The RDEIR provides inadequate information to evaluate the adequacy of the survey, and no reassessment was made in 2023 after large areas of willow-riparian scrub naturally regenerated throughout the Sweetwater River channel. Hamilton Report at 20 and 36

B. The RDEIR Presents Inconsistent Information About Existing Conditions for Groundwater at the Project Site.

The RDEIR also presents conflicting information about the depth range of shallow groundwater on the project site. CBEC Report at 2. Specifically, RDEIR Appendix P indicates that “the depth range for shallow groundwater is 25 to 70 feet below grade.” RDEIR, Appendix P at PDF page 16. However, Figure 9 the November 5, 2021 Groundwater Investigation Report by Geo-Logic indicates that the depth to groundwater in monitoring wells at the site are much shallower than reported in the RDEIR (i.e., 0’ to 25’ below ground surface at one monitoring well and 6’ to 33’ at another). CBEC Report at 2. This is important information from which to establish a baseline. Without a proper description of baseline conditions, the EIR is unable to provide an adequate analysis of Project-related increases or decreases in groundwater recharge relative to existing conditions.

IV. The RDEIR Fails to Correct Many of the DEIR’s Shortcomings in Evaluating the Project’s Impacts on Biological Resources.

A. The RDEIR Perpetuates the Misclassification of Grasslands and Willow Scrub Habitat.

As an initial matter, the RDEIR’s inaccurate environmental setting “fails to set the stage” for a complete discussion of impacts and alternatives. *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 873-75. Both the DEIR and the RDEIR erroneously classify 93.1 acres of the site as “Disturbed Habitat.” Hamilton Report at 3 through 17. As explained further below, and in detail in the Hamilton Report, this error is critical because proper classification of the area as Non-native Grassland affords the site protection under the MSCP and is subject to mitigation if impacted. By

mischaracterizing this sensitive habitat, the DEIR and RDEIR present misleading information and dismiss the importance of this Tier III habitat protected by the MSCP.

As explained in the Hamilton Report, the DEIR and the RDEIR confusingly employ two systems (County 2010a and Oberbauer et al. 2008) of habitat classification interchangeably, failing to distinguish some key differences between the two. Hamilton Report at pages 4-5. Specifically, the definitions of “Disturbed Habitat” differ as follows:

- The definition provided by the County (2010a) states that “vegetative cover comprises less than 10 percent of the surface area” and also requires “evidence of soil surface disturbance and compaction from previously legal human activity.”
- The definition provided by Oberbauer et al. (2008) does not include a specific statement about percent vegetative cover but states that disturbed areas “are no longer recognizable as a native or naturalized vegetation association” and provides a more complete list of invasive, non-native forb species that characterize Disturbed Habitat. (p. 5).

In any event, the project site does not qualify as “Disturbed Habitat” under either classification system. Indeed, a criterion shared by the definitions of “disturbed habitat” in both systems is that non-native grasses make up only a *minor* component of the vegetation. Hamilton Report at 5. The Hamilton Report includes recent site photos (see Appendix A Hamilton Report at pages 11 to 17) that show the golf course is dominated by non-native grasses. Hamilton Report at 5. This is an important point because, regardless of which classification system is employed, the site does not fit the definition of “Disturbed Habitat.” Hamilton Report at 5. Instead, the site should be classified as a form of “Non-Native Grassland” interspersed with large Fremont Cottonwoods (*Populus fremontii*). Hamilton Report at 5. Therefore, an accurate account of the impacts to this grassland habitat reveals that the proposed sand mine would impact a large area of Tier III habitat within a Biological Resource Core Area.

As explained in the Hamilton report, Non-native Grassland is a natural community that provides habitat for a variety of wildlife, including raptors and several special-status species. As mentioned above, under the MSCP, it is a Tier IIIB community, recognized as sensitive habitat, that requires 0.5 to 1.0 acre of mitigation for every 1.0 acre of impact. Moreover, this habitat provides potentially suitable habitat for California Glossy Snakes, Western Spadefoots, and other severely declining species.

By contrast, actual Disturbed Habitat is characterized as possessing no “capability of providing viable natural habitat for uses other than dispersal” (Oberbauer et al. 2008). Obviously that is not the case here. where the 93-acre project site consists of sensitive habitat that provides an important wildlife linkage corridor.

Ironically, the RDEIR concludes that the Western Spadefoot, a CDFW Species of Special Concern and County Group 2 species, has a high potential to occur on the proposed Project site. RDEIR at 2.2-20. However, this species does not use Disturbed Habitat for upland aestivation habitat. Hamilton Report at 7. Thus, the RDEIR’s identification of Western Spadefoot having a high likelihood of occurring on the site, while at the same time classifying the abandoned golf course as Disturbed Habitat makes the document internally inconsistent.

The RDEIR similarly misclassifies Southern Willow Scrub habitat, a Tier I sensitive natural community in the MSCP, as Disturbed Wetland. Hamilton Report at 9 to 17. As explained in the Hamilton Report, large sections of the river channel have regenerated naturally to Southern Willow Scrub. Id. In fact, a ribbon of Southern Willow Scrub habitat has established in the middle of the site. This habitat improves opportunities for wildlife movement through the site and provides suitable habitat for sensitive species, including the Arroyo Toad, Western Spadefoot, and Least Bell’s Vireo. These discrepancies are due to the County’s reliance on old maps and the failure to conduct surveys for this species in 2023, despite changed site conditions. Hamilton Report at 9.

B. The RDEIR’s Conclusion That The Project Would Not Result in Significant Impacts to the Linkage Between Preserved Habitat Is Not Supported By Evidence.

One of the most important biological functions that the proposed Project site serves is as a habitat linkage for wildlife movement between the two refuges of the McGinty Mountain/ Sycuan Peak-Dehesa Biological Resource Core Area (BRCA) to the east and Sweetwater Reservoir/San Miguel Mountain BRCA to the west. RDEIR Appendix C, Biological Resources Technical Report at 36 to 37 and Hamilton Report at 1 and 2. The RDEIR itself provides evidence of the critical corridor linking the two refuges in RDEIR Appendix C, Figure 14 “Conceptual Wildlife Corridors and Linkages” shows the project site as a key linkage corridor.

The RDEIR, like the DEIR before it, continues to downplay the importance of this linkage. Id. For example, the RDEIR concludes that impacts to the habitat linkages would be less than significant, in part due to restoration of the site in 10-12 years when the

mining is completed. RDEIR Appendix C at 109. However, in reality, the existing habitat linkage will be significantly impacted by the proposed Project.

Specifically, the RDEIR improperly redefines “habitat” to refer only to certain patches of riparian areas and other sensitive natural communities, and by misclassifying 93 acres of grasslands, and many more acres of Willow Scrub habitat. As explained in the Hamilton Report, the project site is designated as a regional habitat linkage, and a Biological Resource Core Area, because it is an expansive area of non-native grassland and golf course punctuated with cottonwood trees that occupies an ecologically important position in the MSCP preserve system. Hamilton Report at 20. The site’s importance as a linkage corridor is made clear in the County’s 2019 comments on the proposed Project which stated that the “project contains nearly the *entire habitat linkage* between the McGinty Mountain/Sequan Peak-Dehesa Biological Resource Core Area (BRCA) and the Sweetwater Reservoir/San Miguel Mountain BRCA.” County Scoping Letter at 77; emphasis added.

The RDEIR makes a feeble attempt to study wildlife movement on the site, but as the Hamilton Report explains, that study is also incomplete and inadequate. Hamilton Report at 22 and 23. The study employed an inadequate number of cameras for too short a period of time. *Id.* In addition, the RDEIR fails to explain the study design and rationale, and fails to analyze the observations or provide context, and the results of the study were presented in a paltry single paragraph, thus providing little to no helpful information. *Id.* To make matters worse, the revised DEIR’s biological resources report deleted the most obviously flawed and biased, unsupported statements about habitat linkages, but left in place the findings and conclusions without support or evidence. Hamilton Report at 23.

The RDEIR also claims that “[T]he Project would not narrow the existing wildlife linkage width.” RDEIR at 2.2-69. However the Project would narrow the existing corridor from the current 850 to 1,700 feet to “an average width of 600 feet” with some areas narrowing to 350 to 400 feet at the western end of the site. RDEIR at 2.2-69 and Hamilton Report at 19. This change is significant because preserving linkages for wildlife movement in an area under development pressure is critical to preserving biodiversity, preserving areas wildlife can move to during changing climate conditions, and preserving the overall function of the MSCP preserve system. In this case, impacts to this habitat linkage would be significant and cannot be mitigated to less than significant levels. Hamilton Report at 19.

This approach to analyzing impacts on important biological resources does not comport with CEQA. 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. The DEIR failed to provide a thorough and accurate evaluation of the proposed Project's impacts to wildlife, habitat, and linkages in the region and the RDEIR only maintains and carries forward the DEIR's failures.

C. The RDEIR's Analysis of the Project's Compliance with the County's MSCP is Fatally Flawed.

As discussed in our prior comments and at length in the Hamilton Report, the Project is inconsistent with the MSCP's requirements for development proposed within MSCP areas. The proposed Project is subject to making Findings of Conformity with MSCP policies. The DEIR's MSCP consistency analysis concludes that the proposed project would comply with the Findings of Conformity, but in most cases, compliance is simply asserted rather than demonstrated with supporting evidence. The RDEIR fails to correct the DEIR's mistakes. Instead, it too claims that the proposed Project conforms with MSCP requirements but it fails to substantiate these claims with adequate survey data, an accurate description of the site's resources, and incorporation of relevant scientific information from peer-reviewed literature. Hamilton Report at 37. Because the Hamilton Report provides a thorough analysis explaining why the RDEIR's analysis of the proposed Project's conformance with MSCP requirements is inadequate, we will not reiterate all the points here. Hamilton Report at 17 through 37. Instead, we highlight some key deficiencies below.

The MSCP requires that the proposed Project 'preserve the biological integrity of linkages between BRCAs.' RDEIR at 2.2-73 to 2.2-73 and Hamilton Report at 22. As discussed above, rather than 'preserve the biological integrity of linkages between BRCAs,' the Project will substantially disturb more than 209 acres of linkage/corridor and habitat. Hamilton at 25. Although the RDEIR asserts that the Project will conform to the MSCP requirements for habitat linkages/corridors (RDEIR at 2.2-67), this conclusion is unsupported.

As discussed in the Hamilton Report, the following points illustrate that the proposed Project site is indeed a viable and important habitat linkage/corridor:

- The habitat linkage through the project site was identified in the MSCP Subarea Plan because, despite being occupied by two golf courses (one now abandoned), *this is the only viable pathway* for terrestrial and aquatic wildlife to move between the McGinty Mountain/Sycuan Peak-Dehesa BRCA and the Sweetwater Reservoir/San Miguel Mountain BRCA.

- Closure of the Lakes Course in 2017 increased the functioning of the wildlife linkage compared with when it was originally designated in the MSCP Subarea Plan, because the southwestern third of the project site is no longer manicured and human presence has been completely removed. As shown in photos 9, 10, 12, 13, 16, and 17 of the Hamilton Report (at pages 11-17), willow-riparian vegetation has grown back in the main channel following the wet winter of 2022/2023, improving movement opportunities for wildlife. This RDEIR does not account for this important change in the existing conditions.
- The Ivanhoe Course, although still in use, represents a viable habitat linkage for use by terrestrial wildlife, most of which move at night, when human presence, lighting, and noise are minimal.
- Although the project biologists assert that this regional habitat linkage is of little value for wildlife, they collected only minimal wildlife movement data in support of this conclusion. Their observational study was not designed to provide adequate information upon which to base a legitimate impact analysis.

Hamilton Report at 25.

In another example, the proposed Project, if implemented would violate *nine* MSCP design criteria for linkages and corridors. Hamilton Report at 26-34. These include: failure to maintain habitat linkages as defined by the County's Biological Mitigation Ordinance (Hamilton Report at 26); failure to identify, maintain, and protect existing linkages/corridors (Hamilton Report at 27); failure to protect a regional linkage that accommodates travel for a wide range of wildlife species (Hamilton Report at 28 and 29); failure to protect the width of the linkage based on the biological information for target species (Hamilton Report at 29); failure to maintain the corridor at a width wide enough for animals to hide in during the day with a minimum width greater than 1,000 feet for large mammals (Hamilton Report at 31), among others. See Hamilton Report at 26-34.

Finally, the County's required Findings of Conformity for proposed development within the MSCP mandate that "No project shall be approved which will jeopardize the possible or probable assembly of a preserve system within the Subarea Plan." Hamilton Report at 35. Once again, the RDEIR asserts that the Project would conform to the County's requirements. To contrary, as described throughout this letter above, in the Hamilton Report, and in our prior comments, allowing sand mining through the heart of this important linkage would violate multiple linkage/corridor design criteria and would clearly jeopardize the assembly of a functioning preserve system. Furthermore, approval

of this Project would not only degrade this particular linkage/corridor, but would also establish a precedent that any or all of the MSCP design criteria can be ignored when proposing impacts within designated regional habitat linkages.

D. The RDEIR Fails to Mitigate Significant Impacts to Sensitive Species, Sensitive Habitat, and Linkage Corridors.

As explained in our prior comments, because the EIR fails to accurately describe the existing setting and fails to adequately analyze significant impacts to sensitive species, sensitive habitat, and designated wildlife linkage/corridor, it necessarily fails to identify measures to mitigate the Project's impacts. The RDEIR fails to correct this flaw. For example, as discussed above, in the attached Hamilton Report and in prior comments, the RDEIR fails to mitigate the significant impacts associated with destruction of habitat and narrowing of the habitat linkage/corridor. Hamilton Report at 19. In another example, the RDEIR fails to address significant impacts and mitigation to the Glossy Snake and Southern California Legless Lizard. *Id.* Both of these species are California Species of Special Concern, yet the County failed to conduct surveys for them or properly analyze direct and indirect impacts to individuals and their habitat. *Id.* Instead, the RDEIR lists them as 'Special Status Animal Species Observed or with Potential to Occur' on the site, discloses that suitable habitat is present on the site, but dismisses their occurrence due to past disturbance. RDEIR Appendix C Biological Resources Technical Report, Appendix L Special Status Animal Species Observed or with Potential to Occur for the Cottonwood Sand Mine Project at PDF page 336.

Similarly, the RDEIR's proposed mitigation measures fail to effectively address significant impacts to the Western Spadefoot. While the RDEIR acknowledges that this California Species of Special Concern and County Group 2 species has a high potential to occur within the proposed Project site (RDEIR at 2.2-35) and would be significantly impacted by the Project (RDEIR at 2.2-45), the measures identified as mitigation are inadequate. Hamilton Report at 19 and 20. Specifically, the measures proposed focus only on direct impacts to individuals and breeding habitat. RDEIR at M-BIO-12 at p. 2.2-84. The RDEIR inappropriately ignores impacts to aestivation, or wintering, habitat for these species, yet such habitat is equally important to the species. Hamilton Report at 19 and 20.

Under CEQA, an EIR is inadequate if it fails to suggest mitigation measures, or if its suggested mitigation measures are so undefined that it is impossible to evaluate their effectiveness. *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61 at 79. Here, like the DEIR before it, the RDEIR's

identification and analysis of mitigation measures, like its analysis of biological impacts, are legally inadequate.

V. The RDEIR's Evaluation of Hydrology and Water Quality Impacts is Inadequate.

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

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

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

As explained in the CBEC Report, the RDEIR fails to correct the DEIR's faulty analysis of the Project's potential impacts related to flooding. CBEC Report at 2. Instead, the RDEIR states that the prior Hydraulic (HEC-RAS) Modeling are correct. CBEC Report, Appendix A at 2 and RDEIR Appendix P at PDF p 39). However, the RDEIR fails to respond to CBEC's comments detailing the flaws identified in the modeling.

In the comments on the DEIR, CBEC explained that the hydraulic model failed to incorporate the elevated fill surface into the cross-section profiles, and instead used existing condition ground surface elevations. Appendix B, CBEC Report, at 2 and CBEC Report, Appendix A at 3. CBEC's identified discrepancies in the model that raise serious concerns about the Project's impacts on site hydraulics. Had the model accurately incorporated the planned elevated fill surface, the hydraulic model would have shown that the fill area would obstruct and alter hydraulic flow patterns, which would likely raise 100-year flood water surface elevations higher than disclosed in the DEIR. Id. As explained in our prior comments, this flaw implicates other parts of the hydraulic analysis as well. Id. For instance, this change in flow pattern could result in increased water storage on the site and increased flooding hazards downstream. Therefore, the RDEIR's

conclusion that the model is accurate is wrong and the EIR's conclusion that impacts relating to flooding hazards would be less than significant remains unsubstantiated. CBEC Report at 2. Until the EIR corrects this flaw and accurately assesses water surface elevations during the post-reclamation phase, the EIR will be legally inadequate.

2. The RDEIR Presents An Inaccurate Estimate of Future Water Demands and Impacts on Groundwater Supply

The RDEIR, like the DEIR before it, fails to adequately evaluate or substantiate how the proposed Project will impact groundwater supply. CBEC Report at 2. The RDEIR states that “[E]xposure of groundwater as a free water surface at any given time in each of three pits would be limited to approximately five acres in size.” RDEIR at 1-22. However, based on CBEC's review, groundwater conditions under final project grades will lead to much more extensive exposure of groundwater leading to significant evaporative losses that are not quantified or accounted for either the DEIR or the RDEIR.

CBEC's own analysis, presented in their comments on the DEIR, concludes that with implementation of post-reclamation grades, the Project site will have large areas of ground lowering that will intersect the groundwater table, creating surface ponding. CBEC Report, Attachment A at 2-3 and Figures 3 and 4. CBEC's analysis found that the ground surface elevation will be lowered by approximately 18 feet in elevation on one part of the site and by approximately 6 feet at another. This change in ground surface elevation, which would vary by as much as 18 feet of elevation in some places, will in turn expose the ponded groundwater to evaporation, which will lead to a loss of groundwater. *Id.* The length of exposure time of ponded groundwater would vary with prolonged (multi-month to annual) exposure during wet years (see CBEC Report Figure 3). The RDEIR fails to acknowledge CBEC's prior comments or to accurately quantify the losses of groundwater due to surface ponding and evaporation. Therefore, the EIR's conclusion that the proposed Project would have less than significant impacts to groundwater storage is unsubstantiated by the technical studies that support the claim. DEIR at 3.1.5-16 and RDEIR at 1-22.

Moreover, as discussed in our prior comments, the Project would also result in reduced depths to groundwater that are shallower than evaluated in the EIR. CBEC Report at 2 and CBEC Report Attachment A at 3. This change implicates the survival of vegetation communities as mapped in the Reclamation Plan and may result in increased evapotranspiration demand, both of which have an impact on the feasibility of implementation of the Reclamation Plan. *Id.* In addition, a change in evapotranspiration demands, may lead to adverse impacts on groundwater supplies and groundwater recharge.

3. The RDEIR Fails to Perform Important Analysis and Mitigation of Project Erosion and Water Quality Impacts On-site and Downstream.

The RDEIR's evaluation of the Project's impacts related to erosion and water quality is equally problematic. The RDEIR fails to perform an accurate analysis of on-site and off-site erosion impacts resulting from the Project. CBEC Report at 2 and CBEC Attachment A at 3 and 4. As explained in our prior comments on the DEIR, the Project's proposed drop structures, intended to mitigate for potential erosion and upstream head cutting, would create high velocities during periods of high river flow that would cause erosion at the base of the structure. *Id.* The DEIR's analysis of the hydraulics of the drop structures omitted effective analysis of high velocity flow under during high river flow conditions. *Id.* The RDEIR fails to correct this omission and fails to analyze conditions with high velocity flows, turbulent hydraulics and scouring. *Id.* These conditions will result in erosion and transport of sediment and heavy metals downstream from the project. CBEC Report, Attachment A at 3 and 4.

As explained in our prior comments, such pollutants would impact not only riparian areas, aquatic wildlife, and other biological resources downstream, but also drinking water in the Sweetwater Reservoir. *Id.* The concentration of wash fines in the surface soil poses impacts to water quality through increases of total dissolved solids (TDS) and naturally occurring metals. CBEC Report at 3 and at Attachment A at 6. Such pollutants would then be transmitted downstream via floodwaters that bypass the project; ponds, wetlands, channel habitats that become established on fines within project boundary; and migration of water through the fines into underlying groundwater. *Id.* These pathways pose a direct risk to drinking water quality of receiving water bodies including both the Sweetwater Reservoir (located 2.8 miles downstream of the project site) and the underlying groundwater aquifer that supplies residential wells surrounding the site. The County should not ignore these serious impacts to habitat and drinking water sources.

Nor may the County rely on compliance with state regulations requiring review and oversight of the erosion control system to ensure that potential impacts will be avoided or mitigated. CEQA requires lead agencies to describe Project activities and analyze the resulting impacts. *Oro Fino Gold Mining Corporation v. County of El Dorado* (1990) 225 Cal.App.3d 872, 885. In sum, the RDEIR perpetuates the DEIR's failures and skips over the required analysis of the Project's impacts related to erosion and water quality downstream.

VI. The RDEIR Fails to Provide Evidence to Support Its Conclusion That Polluting Emissions from Increased Truck Traffic Would Be Less Than Significant.

The RDEIR revises the Project Description related to additional materials required to backfill the mined areas of the proposed Project site, and to achieve the Project's proposed post-reclamation elevations. RDEIR S-2 and S-3. Importing this additional fill material will result in approximately 58 additional truck haul trips a day to and from the site over the 10 years of proposed mining operations. RDEIR at S-2 and S-3. The RDEIR states that the Draft EIR had assumed 89 truck trips, so that with the addition of the import truck trips, the new total daily truck trips would be 147. RDEIR at S-4.

Clearly, the increase in truck trips will result in additional emissions. The RDEIR indicates that modeling of the additional emissions was performed to evaluate the revised Project's air quality and greenhouse gas emissions and potential impacts related to health risks. RDEIR at S-14 and S-15. The RDEIR provides the revised calculations in Table S-2, and indicates that the emissions would still be below the thresholds of significance. RDEIR at S-15. However, the RDEIR fails to provide the raw data for public review.

Similarly, the RDEIR revises the modelling done for greenhouse gas emissions resulting from the proposed Project. RDEIR S-17. However, the RDEIR fails to provide the data from this modeling as well. Instead, the RDEIR only provides a summary table of estimated greenhouse gas emissions. RDEIR Table S-4 at S-18 and S-19.

This approach does not conform with CEQA requirements. The RDEIR's 'trust us' approach lacks the required factual support that the Project's impacts involving the Project's air quality emissions would be less than significant. The RDEIR should have provided all the revised data outputs to allow the public to thoroughly review the changes and determine whether the revised analysis is adequate. As it is, the RDEIR fails to provide the required supporting evidence and the public and Decisionmakers cannot possibly assess the accuracy and adequacy of the revised air quality analysis.

VII. Conclusion

As discussed throughout this letter, both the DEIR and the RDEIR's analysis understate the severity of the potential harm to protected sensitive habitat and special status biological resources, groundwater resources and water quality, and air quality, among others as described in Sierra Club's prior comments, and neglects to identify sufficient mitigation to minimize these impacts. These impacts were not adequately analyzed and mitigated in the DEIR, nor are they remedied in the RDEIR. The EIR can support neither the findings required by CEQA nor a determination of General Plan

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consistency. For the foregoing reasons, the Sierra Club urges the County to delay further consideration of the Project unless and until the County prepares and recirculates a revised draft EIR that fully complies with CEQA and the CEQA Guidelines. Additionally, the Project must be modified to comply with the County's General Plan, Multiple Species Conservation Program, and other governing plans.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



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Appendices:

- A – Hamilton Report
- B – CBEC Report

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