SHUTE, MIHALY & WEINBERGER LLP

550 CALIFORNIA STREET, SUITE 1200
SAN FRANCISCO, CA 94104
T: (415) 552-7272 F: (415) 552-5816
www.smwlaw.com

HEATHER M. MINNER
Attorney
minner@smwlaw.com

October 7, 2026

Via Electronic Mail Only

Fresno County Planning Commission
Marianne Mollring
Principal Planner
Department of Public Works and Planning
County of Fresno
2220 Tulare Street, 6th Floor
Fresno, CA 93721
Email:
PlanningCommissionComments@fresnocountyca.gov;
mmollring@fresnocountyca.gov

Re: CEMEX Rockfield Quarry Modification Project and Final Environmental Impact Report

Dear Commissioners and Ms. Mollring:

This firm represents the San Joaquin River Parkway & Conservation Trust, Inc. ("the Trust") in connection with the proposed Rockfield Quarry Modification Project ("Project") and its Environmental Impact Report ("EIR"). As part of its mission, the Trust works to preserve and restore San Joaquin River lands of ecological, scenic or historic significance, and to promote educational, recreational and agricultural uses of the river bottom consistent with the protection of the river's resources.

We submit this letter to protest any approval of this Project and to inform you that the final environmental impact report ("FEIR")[1] fails to correct the inadequacies of the Draft EIR ("DEIR"). We previously submitted extensive comments on behalf of the Trust regarding the deficiencies in the DEIR. See comments on the CEMEX Rockfield Quarry Modification Project DEIR dated March 10, 2025. Since those comments remain

[1] The DEIR and the FEIR, are hereafter referred to as "EIR" unless further specified.

applicable to the County's analysis of the Project, the Trust expressly incorporates its earlier comments and all accompanying exhibits by reference as if fully set forth herein.

The EIR prepared for the Project violates the California Environmental Quality Act ("CEQA"), for all the reasons set forth in our prior comments dated March 10, 2025 and below, and therefore does not provide the legal basis for Project approval. The County received copious comments on the DEIR on this project from resource agencies, community members, and technical experts enumerating the EIR's flaws. Unfortunately, the FEIR for the Project fails to correct the EIR's flaws and remains inadequate.

The Project consists of expansion of operations at the existing Plant Site and establishment of a hard-rock quarry at the former sand mine (Quarry Site), which would excavate a 600-foot pit while mining over 100 years. As explained in our prior comments, the Project as proposed will have significant, adverse impacts on both the natural and the human environment in the project area. The Project would result in numerous adverse effects, including but not limited to: polluting of the San Joaquin River; impacting local surface and groundwater hydrology; impacting sensitive species and their habitat; increasing truck traffic and congestion, and increasing air pollution and noise. Despite ample evidence in the record, the FEIR dismisses many substantive comments and continues to defer analysis of critical issues. For example, the EIR stubbornly insists that conducting surveys for special-status wildlife on and near the project site is not required, despite a strong recommendation by the California Department of Fish and Wildlife (CDFW) to do so. FEIR Comment and Response 15-15 at 4.2-291 and Comment and Response 15-31 at 4.2-306 to 4.2-307.

Most egregiously, the Project would cause significant impacts related to flood hazards and changes in groundwater hydrology. As explained in the Kamman Report, his comments on the DEIR pointed out that a quantitative analysis of project-related streamflow depletions from the San Joaquin River is necessary to determine compliance with the Sustainable Groundwater Management Act ("SGMA"), identify any related impacts to alluvial groundwater supplies, and develop mitigations for any potential undesirable results due to Project River depletions. Rather than conducting the necessary analysis, the FEIR response is insistent that the analysis provided is sufficient, thus turning a blind eye to potentially significant impacts that remain unmitigated. FEIR Comment and Response 58A-6 at 4.3-235 to 236.

This letter is submitted along with the following reports prepared by: Greg Kamman, Senior Ecohydrologist with Verdantas, Inc., attached as Exhibit A ("Kamman Report"); Robert Hamilton, Biologist, attached as Exhibit B ("Hamilton Report"); Jeremy Decker, Acoustical Engineer with Salter and Associates, attached as Exhibit C ("Salter

Report"); and Ray Kapahi, Senior Air Quality Consulting Engineer, attached as Exhibit D ("Kapahi Report"). We respectfully refer the County to the aforementioned attached reports for further detail and discussion of the DEIR's inadequacies and also incorporate those comments herein. To highlight just a few critical points in these letters:

Hydrology

1. The EIR's failure to consider current scientific data and resource agency guidance regarding consideration of climate change effects on river flow and flooding impacts results in an incomplete and inaccurate analysis.

2. The EIR analysis of surface and groundwater interactions at the site is incomplete and omits an analysis of actual river level data below Friant to the Project sites.

3. The EIR fails to provide adequate analysis and support for several key impact areas, including:
   a) evidence to support the conclusion that the mitigation measures provided for lowering groundwater levels will be sufficient, given the scale of changes to the hydrologic system resulting from the proposed Project;
   b) potential impacts to Groundwater Dependent Ecosystems (GDE);
   c) potential project impacts on surrounding alluvial water supplies, which are conducive to and reliant on groundwater recharge.
   d) flood hazards and potential inundation of the Project.

Biology

4. The EIR presents an inaccurate baseline and continues to rely on outdated and inadequate biological surveys, eschewing strong recommendations to the contrary from the California Department of Fish and Wildlife ("CDFW") and other experts.

5. The EIR fails to adequately analyze the proposed Project's direct and indirect impacts resulting from blasting noise, particulate matter, and changes in water temperature to potentially occurring sensitive and special-status wildlife species on- and off-site.

6. The EIR fails to evaluate and address the reasons why CDFW rejects the proposed reclamation plan and dismisses CDFW's concerns out-of-hand.

7. The EIR fails to adequately evaluate or mitigate cumulative impacts to sensitive habitat and species.

Noise

8. The EIR's blasting impacts analysis thresholds fail to adequately address human disturbance at nearby sensitive receptors. In response to expert comments regarding the need for a different threshold, the FEIR employs a different threshold for human response to impulsive vibration for offices. The FEIR provides no justification for why an office standard is being considered here. The nearby receptors are residences, and a residential standard should apply. With a more appropriate human response threshold between 0.5 PPV in/sec and 0.1 PPV in/sec, the project would result in a significant impact and further mitigation would be applicable.

9. The EIR proposes noise mitigation that would only be required if operational noise was shown to exceed the thresholds, via monitoring or complaints. This is deferred mitigation, which is not permissible under CEQA.

10. Beyond the impact analysis for fish, the EIR includes no noise or vibration thresholds, analysis, or mitigation for impacts to other wildlife in nearby areas. In particular, an analysis of blasting noise, vibration, and "airblast" should be included.

Air Quality

11. The EIR presents an erroneous and misleading evaluation of nitrogen oxide (Nox) emissions that understates the proposed Project's impacts on ambient air quality.

12. Project operations will violate the National Ambient Air Quality 1-Hour NO_2 Standard, a significant air quality impact that the EIR does not disclose or mitigate.

For these and other reasons discussed below, the Trust urges the County to deny the Project. At the very least, the EIR must be revised to correct its numerous deficiencies and recirculated for comment.

I. The FEIR Adds Significant New Information That Requires Recirculation of the EIR.

When significant new information is added to an EIR after public notice of the draft EIR's availability but before certification, the lead agency must recirculate the EIR

for public review and comment.[2] As the California Supreme Court has explained, recirculation is required when information added to the EIR "changes the EIR in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement."[3] The term "information" encompasses "changes in the project or environmental setting as well as additional data or other information."[4]

The CEQA Guidelines identify four non-exclusive examples of significant new information requiring recirculation: (1) a new significant environmental impact from the project or from a new mitigation measure proposed to be implemented; (2) a substantial increase in the severity of an environmental impact unless mitigation measures are adopted that reduce the impact to a level of insignificance; (3) a feasible project alternative or mitigation measure considerably different from others previously analyzed that would clearly lessen impacts, but which the project's proponents decline to adopt; or (4) the draft EIR was so fundamentally and basically inadequate and conclusory that meaningful public review and comment were precluded.[5] Recirculation is not required, however, where the new information "merely clarifies or amplifies … or makes insignificant modifications in an adequate EIR."[6]

Recirculation is "the exception, not the rule."[7] But where, as here, a FEIR is fundamentally rewritten across multiple resource areas—with wholesale replacement of technical studies, reversal of significance conclusions, deletion of previously proposed mitigation, and the addition of entirely new analyses on which the public has had no opportunity to comment—the exception is triggered. A decision not to recirculate must be supported by substantial evidence in the administrative record.[8]

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[2]Pub. Resources Code § 21092.1; CEQA Guidelines (14 Cal. Code Regs.) § 15088.5.
[3]*Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* (1993) 6 Cal.4th 1112, 1120.
[4]CEQA Guidelines § 15088.5(a).
[5]CEQA Guidelines § 15088.5(a)(1)–(4); *Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043.
[6]CEQA Guidelines § 15088.5(b); *Laurel Heights*, 6 Cal.4th at 1129–30.
[7]*Laurel Heights*, 6 Cal.4th at 1132; *Environmental Council of Sacramento v. County of Sacramento* (2020) 45 Cal.App.5th 1020, 1034.
[8]CEQA Guidelines § 15088.5(e); *Laurel Heights*, 6 Cal.4th at 1123 (CEQA's purpose is to "inform the public and responsible officials of the environmental consequences of their decisions before they are made").

A. The FEIR Adds a Large Volume of New Analysis, Not Mere Clarification

The FEIR itself acknowledges that it includes "revised analyses and supplemental information, including updated technical studies and additional mitigation measures."[9] The scope of new material is extraordinary. A non-exhaustive list of specific, significant additions and changes is provided below:

1. Replacement of the Air Quality and Health Risk Assessment and the Impact 4.3-3 Significance Downgrade

The FEIR replaces the DEIR's air quality analysis "in its entirety."[10] It introduces new NO_2 dispersion modeling of above-ground blasting with nine emission sources; changes the Health Risk Assessment from two 30-year segments (60 years total) to two 70-year periods; and recalculates off-site haul truck emissions using a "proportional share of regional demand growth" methodology, rather than the continuous-maximum-throughput methodology used in the DEIR.[11] In short, the County prepared an entirely new analysis with a fundamentally different methodology and premises—including the novel assumption that project approval "would not result in increased demand for aggregates"[12]—and presented it for the first time in the FEIR. Critically, this wholesale revision resulted in Impact 4.3-3—whether the Project would expose sensitive receptors to substantial pollutant concentrations—changing from a "potentially significant" impact to a "less than significant" impact, for which no mitigation is required.[13]

This is precisely the type of significant new information that the Supreme Court identified in *Laurel Heights* as triggering recirculation: new technical studies materially altering the EIR's analysis of health and toxic air contaminant impacts.[14] The public was deprived of any opportunity to scrutinize or comment on the new methodology, the new demand-growth assumptions, or the reversed significance determination. Where, as here, a changed methodology reverses a significance conclusion, the public has been deprived

[9]FEIR at 1-5.
[10]FEIR at 1-3, 3-79 (Revised Section 4.3, App. D-4, "replaces Draft EIR Section 4.3 in its entirety"; 2026 Air Report "replaces the prior air reports contained in Appendix D-1 and Appendix D-2 of the Draft EIR, in their entirety.")
[11]FEIR at 3-79 to 3-80 (new NO_2 dispersion modeling; HRA changed from two 30-year segments to two 70-year periods; off-site emissions recalculated using "proportional share of regional demand growth").
[12]FEIR at 3-80 (off-site haul truck emissions recalculated premised on assertion that approval "would not result in increased demand for aggregates"; App. J of App. D-3).
[13]FEIR at 3-79 (Impact 4.3-3 changed from potentially significant to less than significant).
[14]*Laurel Heights*, 6 Cal.4th at 1122 (describing "information that was not present in the draft EIR" including "three new noise studies, [and] two new studies relating to potential toxic discharges" that were added to FEIR).

of a "meaningful opportunity to comment upon a substantial adverse environmental effect."[15]

Recirculation is also required under CEQA Guidelines § 15088.5(a)(4), because the County's preparation of an entirely new air quality assessment shows that the "draft EIR was so fundamentally and basically inadequate and conclusory in nature that public comment on the draft was in effect meaningless."[16] In *Preservation Action Council v. City of San Jose*, the court found that an EIR's "revision of the amended DEIR to remedy its inadequate" analysis of the reduced-size alternative required recirculation because "the public should have had the opportunity to assess and comment upon an adequate analysis."[17] Similarly, here, recirculation necessary because the public should have had an opportunity to comment on an adequate air quality analysis.

2. Revised GHG Methodology and Deletion of Mitigation Measure 4.8-1

The FEIR revised the greenhouse gas analysis after the close of the DEIR comment period, changing the methodology that had relied in part on a Kern County refinery EIR cap-and-trade analysis.[18] On the basis of this revised methodology, the FEIR changes the DEIR's conclusion that GHG impacts would be "potentially significant" before mitigation to "less than significant."[19] The FEIR thus concludes that GHG emissions "require no further mitigation" and deletes the "previously proposed Mitigation Measure 4.8-1, requiring premium efficiency electric motors with exhaust fan motors equipped with variable frequency speed control."[20]

As with the FEIR's revision of air quality impacts discussed above, this reversal of a significance conclusion deprives the public of a "meaningful opportunity to comment

[15]CEQA Guidelines § 15088.5(a)(1) and (2) (recirculation required when "[a] new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented" or "a substantial increase in the severity of an environmental impact unless mitigation measures are adopted that reduce the impact to a level of insignificance*"); King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 830 (the addition of a "cumulative health risk assessment constituted new information that had been omitted from the draft EIR. In the context of this case, the new information was significant because the draft EIR inadequately addressed the subject and there was no meaningful public review and comment on the new assessment. Consequently, the cumulative health risk assessment must be included in any revised EIR that is recirculated to correct the other CEQA violations.").
[16] *Laurel Heights*, 6 Cal.4th at 1130;
[17] *Preservation Action Council v. City of San Jose* (2006) 141 Cal.App.4th 1336, 1358.
[18]FEIR at 3-110-3-111; App. D-5.
[19] FEIR at 4.8-37-4.8-38.
[20]FEIR at 3-110-3-111 ("previously proposed Mitigation Measure 4.8-1, requiring premium efficiency electric motors with exhaust fan motors equipped with variable frequency speed control has been removed").

upon a substantial adverse environmental effect."[21] Further, the deletion of a previously proposed mitigation measure based on a post-comment-period methodological revision deprives the public of the opportunity to comment on whether that measure—or a different version of it—remains feasible and should be adopted. This triggers recirculation under section 15088.5(a)(3), which requires recirculation when "[a] feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it."[22] The public had no chance to evaluate the new GHG methodology or to argue that MM 4.8-1—or a comparable measure—should be retained.

3. New Blasting and Human Response Memorandum and Revised Blasting Protocols

The FEIR prepared an entirely new Blasting and Human Response Technical Memorandum (App. H-8) and revised the Blasting Protocols (App. H-9).[23] These additions were prepared specifically because the DEIR's analysis was inadequate—yet the public was given no opportunity to review or comment on the adequacy of the new analysis or the revised protocols. Moreover, with a more appropriate human response threshold between 0.5 PPV in/sec and 0.1 PPV in/sec, the project would result in a significant impact and further mitigation would be applicable. Recirculation is thus required. *Id.* and Salter Report attached as Exhibit C at p. 2.

4. New 200-Year Flood Analyses and Berm Adjustments

The FEIR includes entirely new 200-year flood hazard analyses for both the Quarry and Plant Sites (App. G-7, G-8), which "inform[] site design considerations, including localized berm adjustments."[24] This constitutes both new analysis and a project

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[21]CEQA Guidelines § 15088.5(a)(1) and (2) (recirculation required when "[a] new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented" or "a substantial increase in the severity of an environmental impact unless mitigation measures are adopted that reduce the impact to a level of insignificance*"); King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 830 (the addition of a "cumulative health risk assessment constituted new information that had been omitted from the draft EIR. In the context of this case, the new information was significant because the draft EIR inadequately addressed the subject and there was no meaningful public review and comment on the new assessment. Consequently, the cumulative health risk assessment must be included in any revised EIR that is recirculated to correct the other CEQA violations.").

[22]CEQA Guidelines § 15088.5(a)(3).

[23]FEIR at 1-4; App. H-8; App. H-9.

[24]FEIR at 1-3 to 1-4; App. G-7; App. G-8.

change that the public has not reviewed. When project circumstances change and are reflected in the FEIR, the agency must consider whether recirculation is required.[25]

5. Expanded Biological Evaluation, New Species Analysis, and New Mitigation Measures

The FEIR expanded the biological resources evaluation to a nine-quadrangle CNDDB search, evaluated additional special-status species, and prepared an expanded bat analysis (App. E-6).[26] The FEIR also revised Mitigation Measure 4.4-1c to expand the raptor survey buffer to 0.25 miles prior to blasting and increase the number of pre-blast surveys from one to three.[27] It also added a new Mitigation Measure 4.4-1d requiring pre-construction bat surveys.[28]

The DEIR was fundamentally flawed because it failed to include these analyses of multiple special-status species. The public deserved an opportunity to comment on an adequate analysis of impacts to special-status species.[29] Recirculation is thus required.

6. Revised Project Objectives

The FEIR revised Project Objective 2 to expand the definition of "aggregate" to include "all crushed rock," and revised Objective 8 to include General Plan consistency.[30] Changes to project objectives after the close of the comment period constitute changes in the project itself that may affect the range of feasible alternatives. These revisions, which the public had no opportunity to review, alter the project objectives in ways that constrain the alternatives analysis and deprive the public of a meaningful opportunity to comment on feasible alternatives.[31]

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[25] *Save Our Capitol! v. Department of Gen. Servs.* (2023) 87 Cal.App.5th 655, 706 (if project or circumstances change and are reflected in FEIR, agency must consider whether recirculation is required).
[26] FEIR at 1-4 to 1-5; App. E-6.
[27] FEIR at 4.4-730.
[28] FEIR at 3-16.
[29] *Laurel Heights*, 6 Cal.4th at 1130 (recirculation is required where a DEIR is "so fundamentally and basically inadequate and conclusory in nature that public comment on the draft was in effect meaningless.")
[30] FEIR at 3-2 to 3-3 (Objective 2 expanded to include "all crushed rock"; Objective 8 expanded to include General Plan consistency; revisions made "in response to requests by the Operator").
[31] *See* CEQA Guidelines § 15088.5 (defining "information" to include "changes in the project"); *Laurel Heights* 6 Cal.4th at 1130 (requiring recirculation where "new information demonstrates that an EIR commented upon by the public was so fundamentally and basically inadequate … that public comment was in effect meaningless.")

None of these additions can fairly be characterized as "clarification" or "amplification" of an adequate draft. They represent wholesale replacement and augmentation of the analytical basis for the EIR's conclusions.

B. The Cumulative Effect of These Additions Further Demonstrate That the DEIR Was Fundamentally Inadequate and That Public Comment Was Precluded

Even if any one of the additions described above could arguably be characterized as amplification or clarification, which is not the case, their cumulative scope and substance demonstrate that the DEIR's analyses were so inadequate that meaningful public comment was precluded—the fourth independent basis for mandatory recirculation under section 15088.5(a)(4).[32] The County itself concedes that it "determined that additional analyses were necessary to respond to comments … and to more fully present information."[33] If the DEIR's analyses were adequate, additional analyses would not have been "necessary." CEQA's informational purpose demands that the public be afforded the opportunity to evaluate and comment on these new analyses before the EIR is certified.[34] The EIR must be revised and recirculated for public comment as a result. Guidelines § 15088.5.

II. The FEIR Inadequately Responds to Comments Raised on the EIR.

In an FEIR, a lead agency must respond to all comments made on the DEIR. Pub. Res. Code § 21091(d); CEQA Guidelines §§ 15088(a), 15132. When a comment objects to the DEIR's analysis and raises significant environmental issues, the FEIR's response must give a reasoned, good-faith analysis and "describe the disposition of significant environmental issues raised," such as how revisions to the project will mitigate anticipated impacts. CEQA Guidelines § 15088(c). Comments must be "addressed in detail giving reasons why specific comments and suggestions were not accepted." *Id.*

Detailed responses are required to "ensure that the lead agency will fully consider the environmental consequences of a decision before it is made." *City of Long Beach v. Los Angeles Unified Sch. Dist.* (2009) 176 Cal.App.4th 889, 904. The required level of detail "depends on factors such as the significance of the issues raised, the level of detail of the proposed project, the level of detail of the comment, and the extent to which the matter is already addressed in the DEIR or responses to other comments." *Id.* at 901.

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[32]CEQA Guidelines § 15088.5(a)(4); *Mountain Lion Coalition*, 214 Cal.App.3d 1043.
[33]FEIR at 4.1-5 to 4.1-6 (Collective Response #1: County "determined that additional analyses were necessary to respond to comments … and to more fully present information").
[34]*See Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 447.

Generally, the level of detail in the response must match the level of detail in the comment. *Pfeiffer v. City of Sunnyvale* (2011) 200 Cal.App.4th 1552, 1568. "Conclusory statements unsupported by factual information" are never an adequate response. Guidelines § 15088(c); *City of Maywood v. Los Angeles Unified Sch. Dist.* (2012) 208 Cal.App.4th 362, 391.

In numerous instances, the FEIR's responses to comments fail to meet these requirements. Many responses are dismissive and fail to sufficiently address the comment. For example, our prior letter on the DEIR included a comment that the DEIR failed to adequately describe baseline conditions related to threatened and endangered species. FEIR Comment 58-40 at 4.3-179. The FEIR response only reiterates its assertion that impacts to wildlife would be temporary and minimized with implementation of Mitigation Measure 4.3-2a and 4.3-2b. However, casting impacts from regularly reoccurring blasting activities for decades is inaccurate and misleading. At any rate, the mitigation proposed fail to address dust from blasting activities. See also, Hamilton Report attached as Exhibit B, at pp. 4 and 5.

This approach runs afoul of CEQA's mandate that in responding to comments, an agency must provide a reasoned analysis supported by factual information. CEQA Guidelines § 15088(c). The County has not shown a good faith effort to consider public input, much less modify the EIR as a result.

III. The FEIR Fails to Correct Errors and Omissions in the Analyses of and Mitigation for the Project's Environmental Impacts.

A. Expert Comments on the FEIR Detail Continuing Inadequate Analysis and Mitigation Measures

Rather than comprehensively correcting the errors and omissions in the EIR and providing meaningful disclosure of the Project's environmental impacts, the FEIR seeks to defend the erroneous assertions and conclusions of its predecessors. This letter does not reiterate the comments from our prior submittals or from the respective attachments, which are incorporated herein. We direct the County to the experts' responses attached to this letter (Exhibits A-D), and incorporated herein. The attached exhibits make clear that the EIR, in many instances, fails to make corrections or to include new analysis or mitigation as required by CEQA.

B. The FEIR Fails to Propose Adequate, Effective, and Enforceable Mitigation Measures.

An EIR must "describe feasible measures which could minimize significant adverse impacts."[35] These mitigation measures "must be fully enforceable through permit conditions, agreements, or other legally-binding instruments."[36] Because "reliance on tentative plans for future mitigation after completion of the CEQA process significantly undermines CEQA's goals of full disclosure and informed decision making," formulation of mitigation measures "shall not be deferred until some future time."[37]

An agency may not lawfully find that mitigation measures will reduce project impacts to an insignificant level based on an inadequate discussion in an EIR.[38] Nor may an agency find impacts significant and unavoidable, and approve a project based on a statement of overriding considerations, in reliance on an EIR that inadequately addresses or improperly defers mitigation.[39] An agency may not "travel the legally impermissible easy road to CEQA compliance" by finding that impacts "would be significant but that overriding considerations warranted proceeding with the project anyway"; as one court put it, "[t]his approach has the process exactly backward."[40]

The FEIR insists that the Draft EIR's mitigation measures, "some of which are further amplified and clarified through errata …. provide clearly defined requirements and performance standards as necessary to ensure their efficacy."[41] A close reading of the measures themselves, and of the technical appendices on which they depend, shows otherwise. The FEIR repeatedly pushes the core of the County's CEQA duties into the future, relying on plans that have not been prepared, studies that have not been conducted, funding mechanisms whose amounts will not be set for decades, and determinations of causation and feasibility left to the CEMEX Construction Materials Pacific, LLC ("CEMEX" or "Operator") and its consultants. The result is a set of unlawfully deferred, improperly delegated, ineffective, and unenforceable mitigation measures. The primary deficiencies are detailed below.

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[35]CEQA Guidelines § 15126.4(a)(1).
[36]*Id.* § 15126.4(a)(2); Pub. Resources Code § 21081.6(b).
[37]*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92–93; *see also POET, LLC v. State Air Resources Bd.* (2013) 218 Cal.App.4th 681, 735.
[38]*Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 280–82.
[39]*King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 869–70.
[40]*Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.* (2001) 91 Cal.App.4th 1344, 1371.
[41]FEIR at 4.2-103-104 (Response 8-5).

1. The FEIR Improperly Defers Development and Implementation of Mitigation Measures.

An agency cannot defer the development of specific measures unless doing so is necessary and: (1) an EIR contains performance standards to govern future actions implementing the mitigation, and (2) the agency has assurances that the future mitigation will be both "feasible and efficacious."[42] Put another way, the agency must "commit itself" to achieving "specific performance criteria," not merely "a generalized goal."[43]

Where it is impractical or infeasible to develop the specific details of a mitigation measure during the project's environmental review, those details may be developed later, but only if the agency "(1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve that performance standard and that will [be] considered, analyzed, and potentially incorporated in the mitigation measure."[44] Thus, "[d]eferred mitigation violates CEQA if it lacks performance standards to ensure the mitigation goal will be achieved."[45] Simply requiring that a future "report be prepared and followed … without setting any standards" constitutes improper deferred mitigation.[46]

Moreover, implementation of mitigation may not be deferred until after impacts occur. "Once the project reaches the point where activity will have a significant adverse effect on the environment, the mitigation measures must be in place."[47] The FEIR violates these requirements repeatedly. In many instances where the FEIR improperly defers mitigation, it provides no evidence that mitigation measures could not be developed now, during environmental review. Examples include, but are not limited to, the following.

- **Mitigation Measures 4.17-1a & 4.17-1c:** The FEIR's mitigation for the Project's significant traffic impacts consists almost entirely of bare promises to pay an

[42]*Communities for a Better Environment*, *supra*, 184 Cal.App.4th at 94–95.
[43]*King & Gardiner Farms*, *supra*, 45 Cal.App.5th at 856; *see also POET*, *supra*, 218 Cal.App.4th at 738–40.
[44]CEQA Guidelines § 15126.4(a)(1)(B); *King & Gardiner Farms*, *supra*, 45 Cal.App.5th at 856.
[45]*Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal.App.5th 467, 520; *see also California Clean Energy Com. v. City of Woodland* (2014) 225 Cal.App.4th 173, 196 (measures that "lack[] any 'criteria for success'" do "not ensure any actual mitigation").
[46]*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 794; *see also Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1396.
[47]*POET*, *supra*, 218 Cal.App.4th at 738; *see also id.* at 740 ("mitigation itself cannot be deferred past the start of the project activity that causes the adverse environmental impact"); *King & Gardiner Farms*, *supra*, 45 Cal.App.5th at 860.

unspecified "equitable share" of unspecified future improvements. For example, Mitigation Measure 4.17-1a provides only that "[t]he project shall pay an equitable share of the cost of future signalization" at Friant Road and Willow Avenue. Mitigation Measure 4.17-1c repeats the same sentence for the five-year cumulative scenario.[48] The FEIR describes these measures as "primarily consist[ing] of the payment of equitable share of costs of future roadway improvements in the County."[49] These measures identify no dollar amount, no fee program or other adopted funding mechanism, no timing for payment, and no schedule or commitment for construction.[50]

- **Mitigation Measures 4.10-5a:** Mitigation Measure 4.10-5a addresses the potential for the Plant Site pit lake to mobilize naturally occurring iron and manganese in violation of water quality standards. But the measure allows exceedances to persist for years before any action is required, and it leaves the corrective actions themselves undefined.[51] Mitigation actions are triggered only "[i]f the iron and/or manganese levels persist for five consecutive years above their respective water quality standards."[52] The County concedes that "[t]imelines for corrective actions are not yet determined"; the Operator's annual report "would disclose what corrective actions would be taken and when they would be implemented."[53] A measure that tolerates five years of water quality violations, and then defers the choice of remedy and its timing to future annual reports prepared by the Operator's consultant, neither sets enforceable performance standards nor ensures that mitigation will be in place when impacts occur.[54]

- **Mitigation Measure 4.1-1:** Mitigation Measure 4.1-1 is the only measure identified to address the significant and unavoidable visual impacts of the exposed quarry pit walls. As revised, it provides that "[w]ithin two years of the completion of active mining in each western facing highwall/bench," visual modeling will occur, and visible portions "shall be treated to reduce the color contrast to the extent feasible."[55] By its terms, then, the measure will not be implemented until after each highwall has been fully excavated and exposed, and it may be delayed up to two years beyond that. Its only standard, reducing contrast "to the extent feasible," is not a performance

[48]FEIR at 3-53 (Table ES-1, Mitigation Measures 4.17-1a, 4.17-1c).
[49]FEIR at 3-167.
[50]FEIR at 3-53; *see also* FEIR at 4.4-181 to 4.4-182 (Response 170-1).
[51] FEIR at 3-32.
[52]FEIR at 3.34.
[53]FEIR at 4.2-232 (Response 12-76).
[54]*See POET*, *supra*, 218 Cal.App.4th at 738–40; *King & Gardiner Farms*, *supra*, 45 Cal.App.5th at 856–60.
[55]FEIR at 3-5, 3-75 (Mitigation Measure 4.1-1).

standard at all.[56] Mitigation that begins only after the impact has fully occurred, and that commits to no measurable outcome, violates CEQA.[57]

2. The Proposed Mitigation Measures Are Not Adequately Enforceable.

Relatedly, many of the FEIR's proposed mitigation measures are not adequately enforceable. Mitigation measures "must be fully enforceable through permit conditions, agreements, or other legally binding instruments."[58] An EIR may rely on measures to mitigate environmental impacts under CEQA only if those measures set forth firm, enforceable commitments to implementation.[59] Moreover, "[t]he responsibility of the public agency does not end with simply imposing enforceable mitigation measures"; the agency must also adopt a mitigation monitoring and reporting plan "to ensure compliance with the mitigation measures imposed as conditions of the project approval."[60] Enforceability is vital because CEQA requires that mitigation measures actually be implemented, not merely adopted and then disregarded.[61]

Here, multiple mitigation measures are unenforceable. Examples include, but are not limited to, the following:

- The Blasting Protocols are phrased largely in directory ("should") rather than mandatory ("shall") terms, and they leave the adequacy of corrective action to the Operator's opinion.[62]
- The pothole-repair obligation is triggered only by County request and may be reduced by future cost-sharing agreements.[63]
- Monitoring of private wells appears to depend on access that may not be granted.[64]

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[56]*Id.*; *see also* FEIR at 4.4-89 (Response 122-1) (measure "would be funded and implemented by CEMEX following completion of active mining in each phase").
[57]*POET*, *supra*, 218 Cal.App.4th at 738–40; *King & Gardiner Farms*, *supra*, 45 Cal.App.5th at 856, 860.
[58]CEQA Guidelines § 15126.4(a)(2).
[59]*See Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 358; *Mission Bay Alliance v. Office of Community Investment & Infrastructure* (2016) 6 Cal.App.5th 160, 190.
[60] *King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 853; Pub. Res. Code § 21081.6(a)(1).
[61]*Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1186–87; *Federation of Hillside & Canyon Assns. v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261.
[62]FEIR App. H-9, §§ B, D, J & Flyrock Mitigation Plan.
[63]FEIR at 3-59.
[64]FEIR at 4.1-37 ("Individual well owners or private property owners would not be required or obligated to collect or analyze any data. The monitoring, data collection, data analysis, and development of conclusions and

- Enforcement of the dust control plan is left to a separate agency's post-approval permitting process. The FEIR states that "[t]he SJVAPCD is the responsible agency to monitor compliance with and enforce rules and policies related to air quality including the approved plan."[65]

The FEIR's general assurance that the County "retains full authority to enforce compliance with mitigation measures, including the ability to suspend or revoke permits"[66] cannot cure measures that do not contain enforceable requirements in the first place.

3. Several Mitigation Measures Improperly Delegate the County's Responsibilities Under CEQA.

The County is ultimately responsible for compliance with CEQA, and the FEIR must reflect the County's independent judgment.[67] The County, as the decision-making body under CEQA, may not delegate the responsibility for disclosing, analyzing, and mitigating significant environmental impacts to others.[68] In particular, "a public agency cannot charge a developer with the responsibility to study the impact of a proposed project."[69] Provisions for post hoc County review and approval of improperly delegated analyses and mitigation plans, which do not and cannot adequately inform decision-makers and the public, are insufficient to correct the legal error inherent in improper delegation.[70]

Several of the FEIR's mitigation measures unlawfully delegate to the Operator and its consultants the County's fundamental responsibilities for assessing the significance of impacts and determining appropriate mitigation. Examples include, but are not limited to:

- **Mitigation Measure 4.10-1 (Blasting Protocols):** The corrective action plan following an exceedance will contain whatever corrective action "in their opinion" (that of the Operator and its blasting contractor) will reduce vibration or air

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recommendations related to potential corrective actions would all be performed by an independent consultant under oversight from Fresno County …").
[65]FEIR at 4.4-660 (Response 437-6).
[66]FEIR at 4.4-377.
[67]CEQA Guidelines § 15084(e).
[68]*See POET*, *supra*, 218 Cal.App.4th at 730–31.
[69]*California Clean Energy Com.*, *supra*, 225 Cal.App.4th at 194.
[70]*See Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 307 (county could not delegate its "legal responsibility to assess environmental impact by directing the applicant himself to conduct the [necessary] studies subject to the approval of [county] planning commission staff").

overpressure.[71] Blasting resumes once the Operator implements that action.[72] The Operator also prepares the Annual Blasting Plan that sets charge-weight limits, which is merely "submitted to the County."[73]

- **Mitigation Measure 4.10-10a (Quarry Site Groundwater):** Whether a drawdown exceeding the adopted significance criterion is "attributable to the mining operations," and thus whether any mitigation is required at all, is left to an assessment conducted by a consultant paid by the Operator.[74] Subsequent County review of the consultant's conclusions does not remedy the delegation of the significance determination itself.[75]
- **Mitigation Measure 4.10-5a (Plant Site Pond):** The Operator's qualified professional prepares the annual reports that "would disclose what corrective actions would be taken and when they would be implemented."[76]

Due to these and other deficiencies, the County cannot lawfully find that these measures will reduce the Project's impacts to less-than-significant levels. Nor can it adopt a statement of overriding considerations for the impacts the FEIR concedes will remain significant. At a minimum, before any action on the Project, the County must revise the mitigation measures to include specific, enforceable performance standards and firm commitments to implementation.

IV. The County Should Deny the Project and Must Not Certify the EIR.

The many harmful and dangerous environmental impacts associated with the Project provide ample justification for denying the Project. If it denies the Project, the County is under no obligation to certify the EIR. *Las Lomas Land Co., LLC v. City of Los Angeles* (2009) 177 Cal.App.4th 83 (upholding decision to stop preparation of an EIR and specific plan where city determined the project was not consistent with its land use policies); Pub. Res. Code § 21080(a) (CEQA applies only to projects that public agencies carry out or approve).

Regardless, certification of the EIR would violate CEQA. As discussed throughout this letter, the EIR's analysis understates the severity of the potential harm to area residents, groundwater resources and water quality, air quality; and biological resources, among others as described in the Trust's comments. Having failed to rigorously evaluate

[71]FEIR App. H-9, p. 5.
[72]*Id.* § F.
[73]*Id.* p. 7,
[74]FEIR at 3-121-3-122; FEIR at 4.1-37 (Collective Response #24).
[75]*Sundstrom*, *supra*, 202 Cal.App.3d at 307.
[76]FEIR at 4.2-232 (Response 12-76); FEIR at 3-118 to 3-119.

the impacts, the EIR neglects to identify sufficient mitigation to minimize these impacts. The Project's impacts were not adequately analyzed and mitigated, nor are they remedied in the FEIR. Moreover, the EIR cannot support the findings required by CEQA. For the foregoing reasons, the Trust urges the County to deny the Project. At the very least, it must revise and recirculate the EIR for public comment.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Heather M. Minner, Attorney

Exhibits:

A. Verdantas, Gregory Kamman, Certified Hydrologist, Technical Review of Final Environmental Impact Report CEMEX Rockfield Quarry. October 5, 2026.
B. Hamilton Biological, Robert Hamilton, Biologist, Responses to FEIR Rockfield Quarry Modification Project, October 7, 2026.
C. Salter and Associates, Jeremy Decker, Acoustical Engineer, Acoustical Comments on Final Environmental Impact Report Response to Comments. October 7, 2026.
D. Environmental Permitting Specialists, Ray Kapahi, Senior Air Quality Consulting Engineer, Review of Air Quality Section of the Final Environmental Report (FEIR) CEMEX Rockfield Quarry. October 7, 2026.

Appendix:
Central Valley Flood Protection Plan, CVFPP Conservation Strategy 2022 Update, California Department of Water Resources, December 2021

Cc: San Joaquin River Parkway & Conservation Trust Board of Directors

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