**From:** Tiffany Yap <TYap@biologicaldiversity.org>
**Sent:** Friday, January 15, 2021 3:55 PM
**To:** Bertoline, Justin <Justin.Bertoline@ventura.org>
**Subject:** Comments on the Draft Environmental Impact Report for the Proposed Pacific Rock Mine Project (Case Number LU10-0003)

Dear Mr. Bertoline,

On behalf of the Center for Biological Diversity, California Wildlife Foundation, and California Native Plant Society, I am submitting these comments on the Draft Environmental Impact Report for the Proposed Pacific Rock Mine Project (Case Number LU10-0003).

Here is a link to the references cited:
https://centerforbiologicald-my.sharepoint.com/:f:/g/personal/tyap_biologicaldiversity_org/EkONQRiKsN5LhWS_qr7l1YQBL6lEOFJCWAxWGZrTVInAEw?e=7E74ut

Please confirm that you have received these comments and are able to access the references.

Thank you for the opportunity to provide comments. Please let me know if you have any questions.

Warmly,

Tiffany

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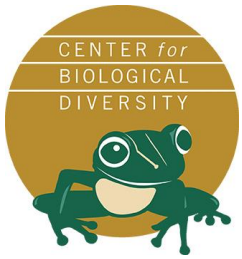




January 15, 2021

***Sent via email***

Justin Bertoline
Planning Division
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**Re: Comments on the Draft Environmental Impact Report for the Proposed Pacific Rock Mine Project (Case Number LU10-0003)**

Dear Mr. Bertoline,

On behalf of the Center for Biological Diversity ("Center"), the California Native Plant Society ("CNPS") and the California Wildlife Foundation ("CWF"), we are submitting comments on the Draft Environmental Impact Report (DEIR) for the proposed Pacific Rock Mine Project ("Project"). After reviewing the DEIR, the environmental organizations are concerned about the Project's impacts to special-status animals and plants, including mountain lions (*Puma concolor*) and Conejo buckwheat (*Eriogonum crocatum*), wildlife connectivity, and sensitive habitats. Such a project, located within the Sierra Madre-Castaic Connection and in Ventura County's habitat connectivity overlay zone, constrains one of the last remaining natural corridors between the Santa Monica Mountains and the Sierra Madre Mountains. Increased habitat loss, degradation, and fragmentation will lead to significant impacts to mountain lions as well as many other special-status animals and plants that occur in and adjacent to the Project area. The DEIR fails to adequately assess and mitigate impacts to the area's natural resources.

## I. Background on the Environmental Organizations

The Center for Biological Diversity ("Center") is a non-profit, public interest environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has over 1.7 million members and online activists throughout California and the United States. The Center and its members have worked for many years to protect imperiled plants and wildlife, open space, air and water quality, and overall quality of life for people in Ventura County and Southern California.

The California Native Plant Society ("CNPS") is a non-profit environmental organization with over 10,000 members. CNPS' mission is to protect California's native plant heritage and preserve it for future generations through application of science, research, education, and conservation. CNPS works closely with decision-makers, scientists, and local planners to advocate for well-informed and environmentally friendly policies, regulations, and land management practices.

The California Wildlife Foundation ("CWF") is committed to conserving, restoring, and maintaining habitats and corridor linkages throughout the state in order to ensure the biological diversity of species over time. The California Oaks program of California Wildlife Foundation works to conserve oak ecosystems because of their critical role in sequestering carbon, maintaining healthy watersheds, providing habitat, and sustaining cultural values.

## II. The DEIR fails to adequately assess and mitigate impacts to mountain lions to less than significant.

### A. Inadequate assessment of impacts to mountain lions

The DEIR falsely and inappropriately concludes that mountain lions (*Puma concolor*), a candidate species under the California Endangered Species Act, have a "moderate" potential to occur within or adjacent to the Project site (DEIR at 3.5-18), when in fact they should be categorized as "Present." The Project site is located in high quality mountain lion habitat within one of the last remaining corridors between the Santa Monica Mountains and the Sierra Madre (Penrod et al. 2006) and there is a wealth of data from the National Park Service (NPS) that demonstrates their presence in and adjacent to the Project area. Maps of the NPS data are publicly available at www.flickr.com, and they clearly show that the area is used by mountain lions. Figure 1 shows NPS telemetry locations for lions P-1 through P-22 from 2002 to 2013 (from GPS collars on individuals), and numerous individuals were documented in and adjacent to the Project site. Similarly, Figure 2 shows the home ranges of several mountain lions encompassing the Project area. Figure 3 shows predation sites where collared mountain lions fed on mule deer, some of which are located in and adjacent to the Project area (Benson et al. 2016b). This clearly shows that the DEIR fails to adequately assess the Project's impacts to mountain lions, as they provide a false representation of the likelihood of mountain lions being present, using, and moving through habitat in and near the Project area. Mountain lions should be considered "Present" in and adjacent to the Project site.

In failing to adequately determine the presence of mountain lions in and near the Project site, the DEIR fails to adequately assess impacts to mountain lions. The Project would have insurmountable impacts on struggling local mountain lions. Local mountain lions are at risk of extinction as their genetic health deteriorates due to inbreeding caused by roads and development slicing through their habitat and isolating populations (Ernest et al. 2014; Riley et al. 2014; Vickers et al. 2015; Gustafson et al. 2018; Benson et al. 2019). Low genetic diversity combined with high human-caused mortalities (*e.g.*, from car strikes, depredation kills, rodenticide poisoning, and poaching) threaten the long-term survival of several populations. Mountain lions in the Santa Monica Mountains are especially imperiled, as abnormalities linked with inbreeding depression was recently observed.[1] Should inbreeding depression occur, scientists predict there is a >99% chance of extinction, which could occur within as little as 15 years (Benson et al. 2019). Therefore, high quality habitat that is being used by mountain lions within one of the last remaining natural corridors between the Santa Monica Mountains and the Sierra Madre is critical for the population's long-term survival. The DEIR fails to adequately assess the severely low genetic diversity of the Santa Monica Mountains puma population that is driven by isolation and the significant impacts the Project will have on this population by eliminating portions of the corridor and degrading connectivity in the area.

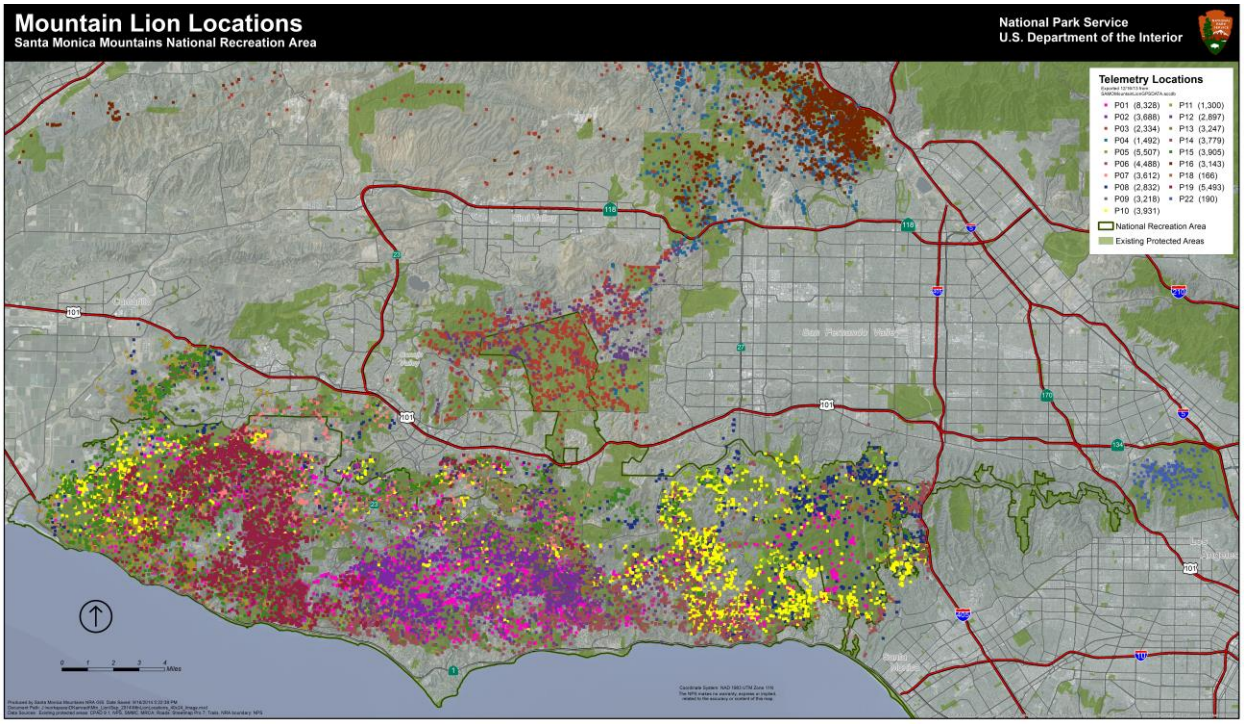


**Figure 1**: Mountain Lion GPS Data Points of lions P-1 through P-22 from 2002 through 2013 (NPS 2015).

[1] News Release: NPS Biologists Report First Abnormalities Linked to Inbreeding Depression in Mountain Lions P-81, a Subadult Male, Has Reproductive and Tail Defects. Available at: https://www.nps.gov/samo/learn/news/first-abnormalities-linked-to-inbreeding-depression.htm

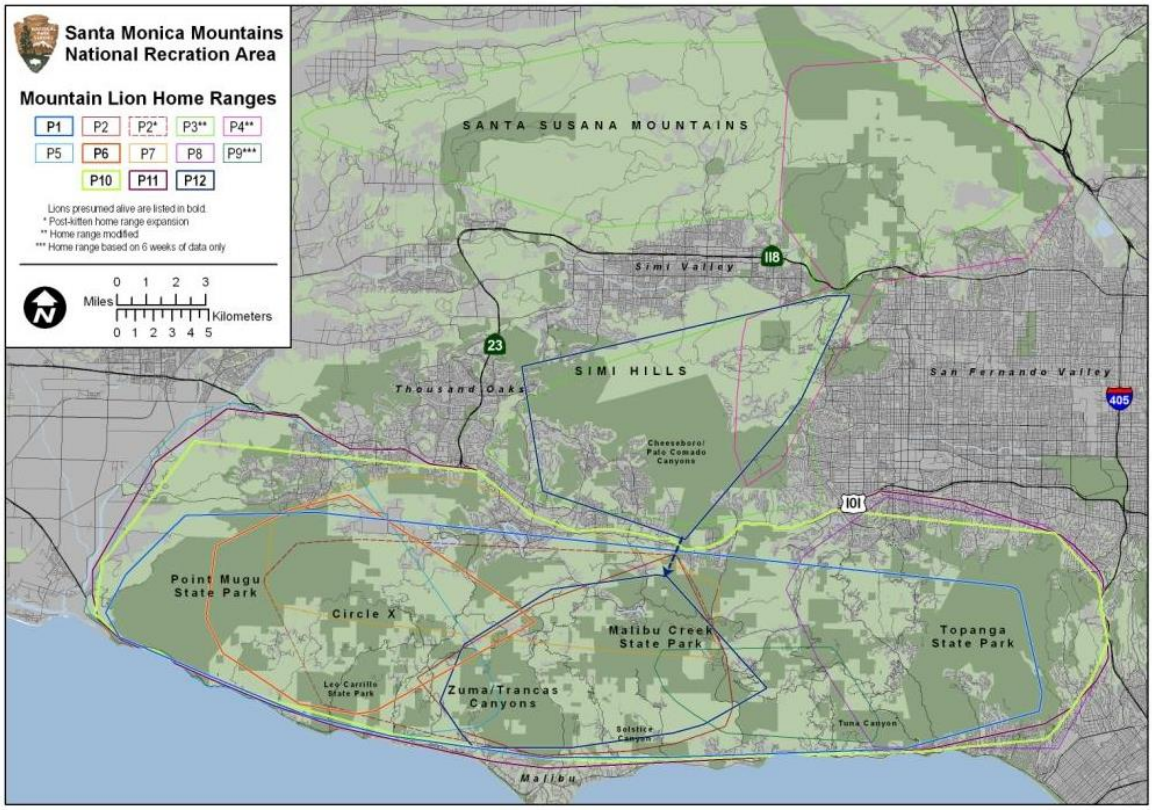


**Figure 2**: Home Range Map for Lions P-1 through P-12 (NPS 2013).

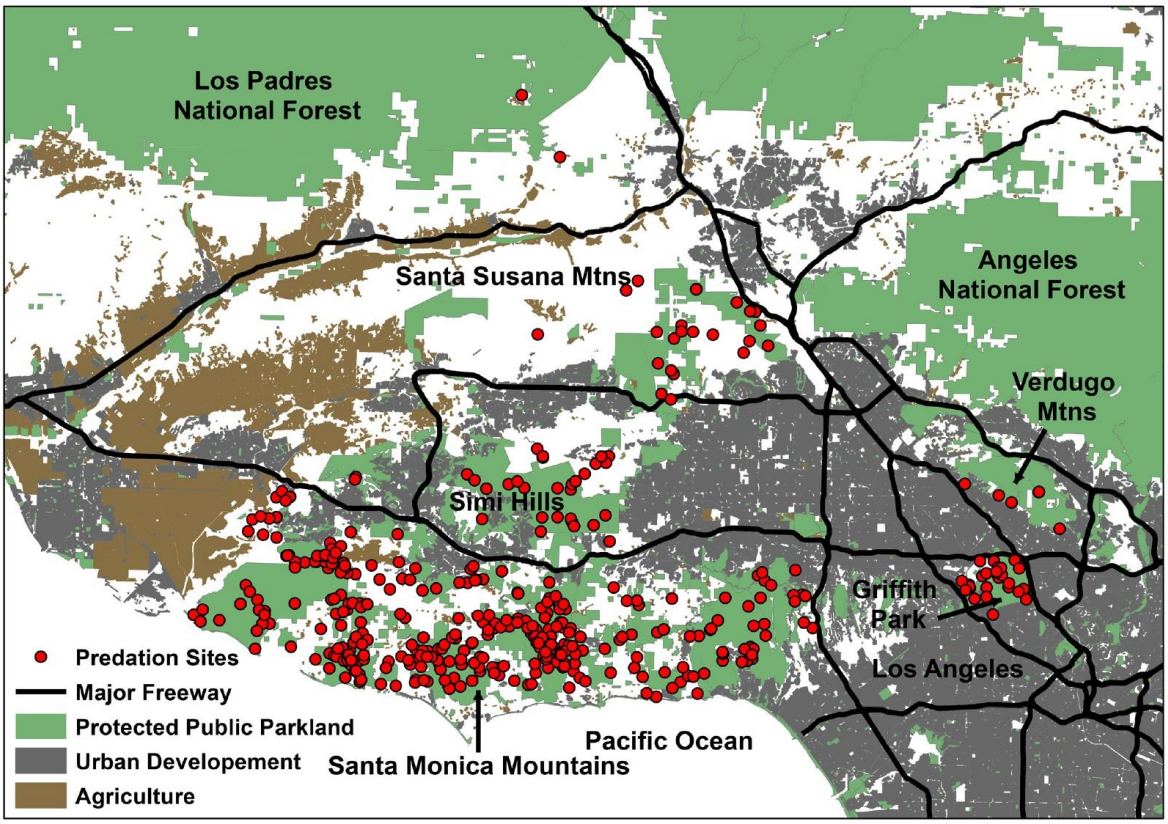


**Figure 3**: Predation sites where mountain lions fed on mule deer (Benson et al. 2016b).

The DEIR fails to adequately disclose how the Project could impact mountain lion movement, behavior, and long-term survival and therefore fails to adequately assess the impacts to mountain lions in and around the Project area. There are many scientific studies that provide insights on the profound impacts human activities and infrastructure have on mountain lion survival, and they emphasize the need to adequately assess and mitigate impacts to these California Endangered Species Act (CESA) candidate species in the Project area. There is cumulating scientific evidence that mountain lions require a habitat mosaic that provides sufficient room to roam away from human-disturbed areas and connected to expansive, intact, heterogeneous habitats (Beier et al. 1995; Dickson and Beier 2002; Dickson et al. 2005; Kertson et al. 2011; Zeller et al. 2017). Expanding the mining operation in the Conejo Mountain and Mountclef Ridge connection, an area identified as highly suitable mountain lion habitat and one of the last remaining natural corridors between the Santa Monica Mountains and the Sierra Madre Range (Penrod et al. 2006), will limit the lions' ability to move through the area, further isolate pumas in the Santa Monica Mountains, and drive them closer to extinction.

The DEIR only discusses blasting as a potential direct impact of the Project on mountain lions and fails to adequately assess the significance of other impacts on mountain lions due to the proposed Project. Expanding the area and operation of the mine would increase human activities in important mountain lion habitat, thereby increasing the chances of other direct impacts from things like vehicle strikes, rodenticide poisoning, increased fire ignitions, disease spread, poaching, etc. In addition, cutting the width of the existing natural corridor from 1,500 ft to 800 ft would significantly constrict mountain lion movement and connectivity, which would directly impact the mountain lion population in the Santa Monica Mountains by impeding gene flow. Edge effects of development and human activities could deter mountain lions from using a narrower corridor. The combination of low genetic diversity and added human-caused mortalities from the Project will drive the Santa Monica Mountains puma population closer to extinction.

The DEIR fails to consider the best available science regarding the Project's potential impacts to mountain lions. In a study conducted from 2002 to 2019 in the Santa Monica Mountains, Benson et al. (2020a) found high human-caused mortality rates in puma adults and high intraspecific mortalities among subadults. Most known causes of death among adults and subadults (14/20) were directly human-caused: vehicle strikes, rodenticide poisoning, poaching, and wildfire. The remaining six known causes of deaths were intraspecific killing (Benson et al. 2020a). And while intraspecific killings have been documented to naturally occur in mountain lion populations, they were likely exacerbated in the Santa Monica Mountains with the presence of significant movement barriers that prevent subadults from being able to adequately disperse, which likely led to increased conflicts with territorial males (Riley et al. 2014; Benson et al. 2020a). The Santa Monica Mountains puma population is relatively small, extremely isolated, and geographically limited. Demographic and environmental stochasticity and high mortality rates increase the risk of local extinction, particularly when combined with small population size, low density, female-biased sex ratios, and skewed male reproductive success (Ernest et al. 2014; Riley et al. 2014; Vickers et al. 2015; Benson et al. 2016a; Gustafson et al. 2018; Benson et al. 2019). Increased movement barriers and human-caused mortalities of adult males could lead to occasional male extinctions, which have been documented in the Santa Ana Mountains puma population (Beier and Barrett 1993). Lack of breeding males would disrupt reproduction and

could severely limit the short- and long-term viability of a population (Beier 1993; Benson et al. 2016; Benson et al. 2019; Benson et al. 2020a). This highlights the need to reduce human-caused mortalities, in part, by improving connectivity and stopping the use of anticoagulant rodenticides. The proposed Project would increase movement barriers of an already extremely isolated mountain lion population.

Numerous studies highlight the impacts of human activities on mountain lions. For example, Shilling et al. (2019) reported 299 observed roadkill mountain lions throughout the state from 2015 to 2018, but these deaths are likely underreported. CDFW biologist Justin Dellinger estimates there could be 200 puma deaths on roads every year (Price 2020). And a recent University of California (UC) Davis special report identified a 58% reduction in mountain lion road mortalities after a 71% decrease in road use due to COVID-19 pandemic "stay-at-home" orders (Nguyen et al. 2020). This report highlights how roads and traffic are deadly barriers to puma movement and gene flow. Therefore, vehicles traveling on roads used for the operation of the mine pose a threat to mountain lions in the area.

Human activities alter these large carnivores' behavior in ways that likely further impede important movement and gene flow that is important for their long-term survival. For example, Smith et al. (2017) found that mountain lions are so fearful of humans and noise generated by humans that they will abandon the carcass of a deer and forgo the feeding opportunity just to avoid humans.[2] The study concluded that even "non-consumptive forms of human disturbance may alter the ecological role of large carnivores by affecting the link between these top predators and their prey" (Smith et al. 2017). In addition, mountain lions have been found to respond fearfully upon hearing human vocalizations, avoiding the area and moving more cautiously when hearing humans (Smith et al. 2017; Suraci et al. 2019).

Other studies have demonstrated that mountain lion behavior is impacted when exposed to other evidence of human presence, such as noise, lighting, or vehicles/traffic (Wilmers et al. 2013; Smith et al. 2015; Wang et al. 2017). In addition, preliminary results from study by researchers at UC Davis and University of Southern California, as well as those by other researchers, suggest that the light, noise, and other aspects of roads can have negative impacts on wildlife numbers and diversity near the highways (Shilling 2020; Vickers 2020). Thus, roads, traffic, development, and other human activities have negative impacts on puma survival and behavior, which can reduce the genetic health of populations and ultimately diminish their chances of long-term survival.

Yovovich et al. (2020) documented the impacts of human activities on mountain lion communication and reproductive behaviors important for their survival. Males use scrapes to delineate territories as well as attract potential mates (Allen et al. 2015; Allen et al. 2016), and the males in the study preferred to use relatively flat areas away from human influence as scrape habitat (Yovovich et al. 2020). Similarly, when nursing females (with kittens less than 8 weeks old) shrank their home ranges to an average of 9 $km^2$ while their young were most vulnerable, they also selected undeveloped lands away from human disturbance, opting for habitat with

[2] *See also* Sean Greene, "How a fear of humans affects the lives of California's mountain lions," *Los Angeles Times* (June 27, 2017), available at https://www.latimes.com/science/sciencenow/la-sci-sn-pumas-human-noise-20170627-story.html.

protective cover and sufficient water and prey availability (Yovovich et al. 2020). The loss of adequate undisturbed communication and nursery habitat could disrupt important communication and reproductive behaviors that facilitate social structure and overall survival.

The DEIR fails to adequately assess the impacts of increased wildfire ignitions due to the Project on mountain lions. Most wildfires in California are caused by human ignitions, like power lines, arson, improperly disposed cigarette butts, debris burning, fireworks, campfires, or sparks from cars or equipment (Keeley and Syphard 2018). In fact, almost all (95-97%) contemporary wildfires in California are caused by humans and human infrastructure (Syphard et al. 2007; Balch et al. 2017; Keeley and Syphard 2018; Radeloff et al. 2018; Syphard and Keeley 2019; Keeley and Syphard 2020; Syphard and Keeley 2020). In the Santa Monica Mountains, fires from 1978-2017 were often ignited near roads and other human infrastructure (Figure 4).

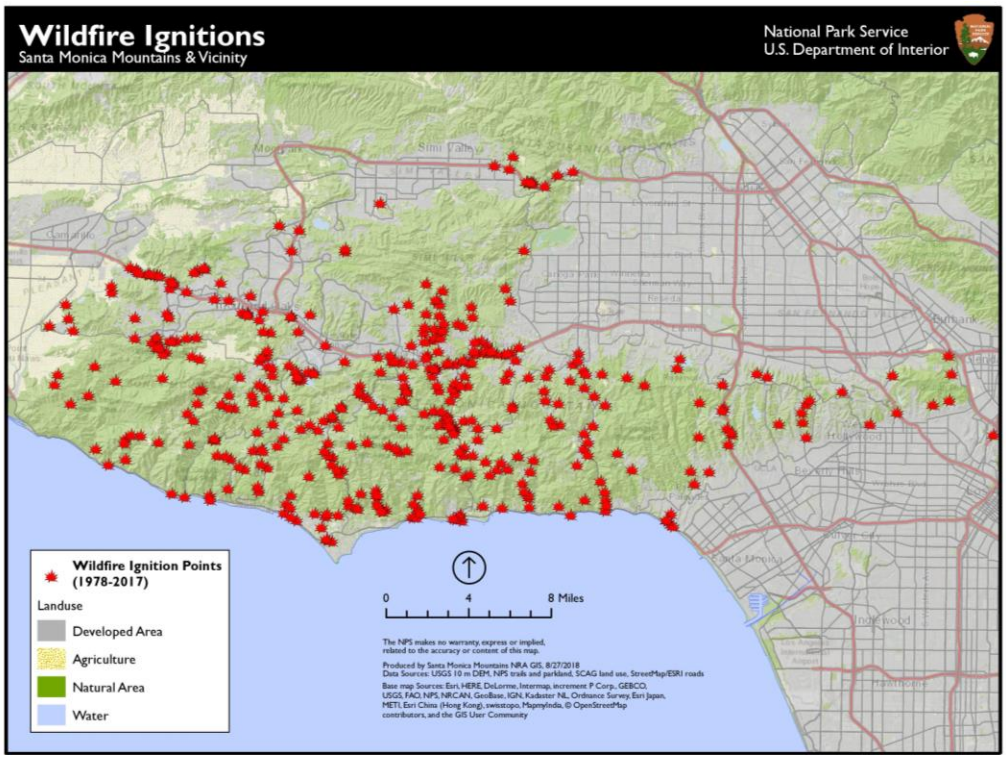


**Figure 4**: Wildfire Ignition Points in the Santa Monica Mountains and Vicinity (NPS 2018).

The Project would place more people and infrastructure and more human activity in high fire-prone areas, which would increase wildfire risk and threaten humans and nearby neighborhoods as well as mountain lions. Although mountain lions are highly mobile and generally able to move away from wildfires, in severe weather conditions wind-driven fires can spread quickly. The 2018 Hill Fire in Ventura County, which occurred just north of the Project site, spread three miles in 15 minutes (County of Los Angeles 2019). If mountain lion movement is constrained by roads and development and the lions are unable to access escape routes, then their chances of surviving wildfires are greatly reduced. Two NPS-collared mountain lions, P-64 and P-74, were killed in the 2018 Woolsey Fire. Such stochastic events (*e.g.*, wildfires, flooding) could destabilize small mountain lion populations and make them more vulnerable to extinction

(Benson et al. 2016a; Benson et al. 2019). The DEIR fails to consider and assess impacts of increased wildfire ignitions to mountain lions.

Mountain lions are a key indicator species of wildlife connectivity and healthy ecosystems. As the last remaining wide-ranging large carnivore in the region, the ability to move through large swaths of interconnected habitat is vital for genetic connectivity and their long-term survival. Local extinction of mountain lions in the region could have severe ecological consequences. Many scavengers, including many raptors, foxes, and numerous insects, would lose a reliable food source (Ruth and Elbroch 2014; Elbroch et al. 2017; Barry et al. 2019). Fish, birds, amphibians, reptiles, rare native plants, and butterflies could potentially diminish if this apex predator were lost (Ripple and Beschta 2006; Ripple and Beschta 2008; Ripple et al. 2014). Loss of this ecosystem engineer and important predator-prey dynamics could have cascading effects on other plant and animal species, potentially leading to a decrease in biodiversity and diminished overall ecosystem function (Ripple et al. 2014; Elbroch et al. 2017; Barry et al. 2019; Benson et al. 2020b).

### B. Mitigation Measures do not minimize impacts to mountain lions to less than significant

The DEIR fails to mitigate impacts to mountain lions to less than significant. MM BIO-3(j)(2) states that a biologist will conduct mountain lion surveys prior to vegetation clearing or ground disturbance, including drilling and blasting, and "provide direction for such activities as deemed appropriate…to avoid take or other adverse effects to mountain lions" (DEIR at 3.5-48). This mitigation measure is vague and lacks any explanation or scientific-based methods of how it would actually minimize impacts to mountain lions. What would the surveys entail? How large would the survey area be? At what distance from any blasting would a mountain lion be considered unimpacted? When would the surveys be conducted in relation to the ground disturbance – that morning, a few days before, that year? How will they determine if there is a den with kittens in or near the ground disturbance zone? What will be the course of action if there is a den with kittens in or near the ground disturbance zone? If a predation site is found and it is possible the lion is nearby and still visiting the site, how will they ensure that the animal is not in the ground disturbance zone when blasting occurs? If the blast zone is within the home range of a mountain lion, what kind of "direction" would the biologist provide to make the blasting "appropriate"? The mitigation measure provided has insufficient detail with no evidence of it actually mitigating impacts from ground disturbance to mountain lions. The DEIR fails to provide the public and decisionmakers sufficient information needed to understand if/how impacts will be mitigated. As currently written, MM BIO-3(j)(2) does not mitigate impacts to mountain lions to less than significant.

Mountain lions are nocturnal, elusive creatures that are difficult to find in the wild. They are so stealthy and secretive that lion sightings are rare despite the high numbers of outdoor recreationists in mountain lion habitat. They occur in low densities and have large home ranges. In California, resident adult and total population densities have been found to be 1.1 and 3.6 per 100 $km^2$, respectively (Pierce and Bleich 2003). Riley et al. (2014) found that mountain lions in the Santa Monica Mountains have home ranges of 100-200 $km^2$ for females and 300-500 $km^2$ for males. If one does not see a mountain lion or evidence of a mountain lion in the area, a lion could

still be there using the site in some way. For example, a wildlife camera study conducted in the Northlake project area found no trace of mountain lions on the site, yet in November 2020 a mountain lion was recorded on a wildlife camera using a culvert adjacent to the site (Exhibit 1). Kitten dens are very well hidden in rocky outcrops or dense vegetation. Experts often find them because the mother has a GPS collar, and her behavior (*e.g.*, having a smaller home range, staying in one location frequently) can signal she has had kittens. Such dens could be easily missed during surveys, which could result in kittens being killed or orphaned if the mother is deterred by the blasting and abandons them. Simply conducting mountain lion surveys (with undisclosed protocols) is insufficient and inadequate mitigation.

More appropriate mitigation would be to work closely with mountain lion experts at NPS, who have been studying mountain lions in the area for almost 20 years, to determine if collared or tagged mountain lions are in the vicinity or using the area when vegetation clearing and ground disturbance is planned. Although they have not collared all mountain lions in the area, they have the most on-the-ground data, knowledge, and experience regarding this mountain lion population, they have a critical understanding of both collared and uncollared lions in the area, and they would be able to provide the best science-based guidance to minimize impacts to mountain lions.

See Section III(B) for comments regarding MM BIO-6.

## III. The DEIR fails to adequately assess and mitigate impacts to wildlife movement and habitat connectivity to less than significant.

### A. Inadequate assessment of impacts to wildlife movement and habitat connectivity

Roads and development create barriers that lead to habitat loss and fragmentation, which harms native wildlife, plants, and people. As barriers to wildlife movement, poorly-planned development and roads can affect an animal's behavior, movement patterns, reproductive success, and physiological state, which can lead to significant impacts on individual wildlife, populations, communities, landscapes, and ecosystem function (Mitsch and Wilson 1996; Trombulak and Frissell 2000; van der Ree et al. 2011; Haddad et al. 2015; Marsh and Jaeger 2015; Ceia-Hasse et al. 2018). For example, habitat fragmentation from roads and development has been shown to cause mortalities and harmful genetic isolation in mountain lions in southern California (Ernest et al. 2014; Riley et al. 2014; Vickers et al. 2015), increase local extinction risk in amphibians and reptiles (Cushman 2006; Brehme et al. 2018), cause high levels of avoidance behavior and mortality in birds and insects (Benítez-López et al. 2010; Loss et al. 2014; Kantola et al. 2019), and alter pollinator behavior and degrade habitats (Trombulak and Frissell 2000; Goverde et al. 2002; Aguilar et al. 2008). Habitat fragmentation also severely impacts plant communities. An 18-year study found that reconnected landscapes had nearly 14% more plant species compared to fragmented habitats, and that number is likely to continue to rise as time passes (Damschen et al. 2019). The authors conclude that efforts to preserve and enhance connectivity will pay off over the long-term (Damschen et al. 2019). In addition, connectivity between high quality habitat areas in heterogeneous landscapes is important to allow for range shifts and species migrations as climate changes (Heller and Zavaleta 2009; Cushman et al.

2013; Krosby et al. 2018). Loss of wildlife connectivity decreases biodiversity and degrades ecosystems.

The DEIR fails to adequately describe the Project area's importance in wildlife connectivity. Although the DEIR acknowledges that the Project site is located in the Santa Monica-Sierra Madre Connection and within a Ventura County habitat connectivity and wildlife corridor overlay zone, the DEIR states that the Project is "not expected to significantly affect wildlife movement through the area compared to baseline conditions" (DEIR at 3.5-53). This is pure conjecture not based on any scientific evidence or understanding.

The proposed development will increase human activities in open space and further fragment the landscape, which could affect the diverse animals and plants in the area. For instance, field observations and controlled laboratory experiments have shown that traffic noise can significantly degrade habitat value for migrating songbirds (Ware et al. 2015). Subjects exposed to 55 and 61 dBA (simulated traffic noise) exhibited decreased feeding behavior and duration, as well as increased vigilance behavior (Ware et al. 2015). Such behavioral shifts increase the risk of starvation, thus decreasing survival rates. Another study also highlighted the detrimental impacts of siting development near areas protected for wildlife. The study noted that "Anthropogenic noise 3 and 10 dB above natural sound levels . . . has documented effects on wildlife species richness, abundance, reproductive success, behavior, and physiology" (Buxton et al. 2017). The study further noted that "there is evidence of impacts across a wide range of species [] regardless of hearing sensitivity, including direct effects on invertebrates that lack ears and indirect effects on plants and entire ecological communities (*e.g.*, reduced seedling recruitment due to altered behavior of seed distributors)" (Buxton et al. 2017). Moreover, human transportation networks and development resulted in high noise exceedances in protected areas (Buxton et al. 2017). Blasting and other ground disturbance as well as mine operation could impact species and species movement in the area. The DEIR fails to adequately assess such impacts.

In addition, preliminary results from studies underway by researchers at UC Davis and University of Southern California, as well as those by other researchers, suggest that the light, noise, and other aspects of roads can have negative impacts on wildlife numbers and diversity near the roadways (Shilling 2020; Vickers 2020). The researchers found a significant difference between species richness and species type, with lower richness and fewer species at along roadsides compared to background areas 1 km away from the roads (Shilling 2020). They also found that as traffic noises surpassed 60 dBC, the number of visits by small to large mammals decreased, and most of the species in their study avoid traffic noise (Shilling 2020). It is clear that different species have variable sensitivities to noise and light associated with development and transportation infrastructure; this can lead to changes in species distributions and population health and survival, which can have ecosystem-level impacts (*e.g.*, Suraci et al. 2019). Again, the DEIR fails to adequately assess and mitigate impacts of edge effects on functional connectivity.

The Project would result in shrinking the width of the corridor from 1,500 feet to 800 feet, which would result in habitat loss and degradation due to edge effects. Negative edge effects from human activity, traffic, lighting, noise, pollutants, invasive weeds, and increased fire frequency have been found to be biologically significant up to 300 meters (~1000 feet) away

from development in terrestrial systems (Environmental Law Institute 2003). By reducing the corridor width to 800 feet, the Project would diminish the functionality of one of the last remaining natural corridors between the Santa Monica Mountains and the Sierra Madre.

The Project's placement will subject the limited surrounding open space to development edge effects and will likely impact key, wide-ranging predators, such as mountain lions and bobcats (Crooks 2002; Riley et al. 2006; Delaney et al. 2010; Lee et al. 2012; Vickers et al. 2015), as well as smaller species with poor dispersal abilities, such as song birds, small mammals, and herpetofauna (Cushman 2006; Benítez-López et al. 2010; Kociolek et al. 2011). Limiting movement and dispersal can affect species' ability to find food, shelter, mates, and refugia after disturbances like fires or floods. Individuals can die off, populations can become isolated, sensitive species can become locally extinct, and important ecological processes like plant pollination and nutrient cycling can be lost. In addition, linkages and corridors between major core habitat areas are important to allow for range shifts and species migrations as climate changes. Therefore, it is imperative that thorough analyses are conducted to determine if Project activities will affect species movement. The DEIR fails to provide sufficient details and analyses to warrant their conclusion that Project impacts on habitat connectivity and wildlife movement would be mitigated to less than significant.

The DEIR fails to consider the need for corridor redundancy (*i.e*. the availability of alternative pathways for movement), or in this case, a wider corridor. Wider corridors provide a level of corridor redundancy in that they help to ensure that appropriate habitat is available for numerous species. Corridor redundancy is important because it allows for improved functional connectivity and resilience. Compared to a single or narrow pathway, multiple or wider connections between habitat patches increase the probability of movement across landscapes by a wider variety of species, and they provide more habitat for low-mobility species while still allowing for their dispersal (Mcrae et al., 2012; Olson & Burnett, 2008; Pinto & Keitt, 2008). In addition, corridor redundancy provides resilience to uncertainty, impacts of climate change, and extreme events, like flooding or wildfires, by providing alternate escape routes or refugia for animals seeking safety (Cushman et al., 2013; Mcrae et al., 2008; Mcrae et al., 2012; Olson & Burnett, 2008; Pinto & Keitt, 2008).

Corridor redundancy is critical when considering the impacts of climate change on wildlife movement and habitat connectivity. Climate change is increasing stress on species and ecosystems, causing changes in distribution, phenology, physiology, vital rates, genetics, ecosystem structure and processes, and increasing species extinction risk (Warren et al. 2011). A 2016 analysis found that climate-related local extinctions are already widespread and have occurred in hundreds of species, including almost half of the 976 species surveyed (Wiens 2016). A separate study estimated that nearly half of terrestrial non-flying threatened mammals and nearly one-quarter of threatened birds may have already been negatively impacted by climate change in at least part of their distribution (Pacifici et al. 2017). A 2016 meta-analysis reported that climate change is already impacting 82 percent of key ecological processes that form the foundation of healthy ecosystems and on which humans depend for basic needs (Scheffers et al. 2016). Genes are changing, species' physiology and physical features such as body size are changing, species are moving to try to keep pace with suitable climate space, species are shifting their timing of breeding and migration, and entire ecosystems are under stress (Parmesan and

Yohe 2003; Root et al. 2003; Parmesan 2006; Chen et al. 2011; Maclean and Wilson 2011; Warren et al. 2011; Cahill et al. 2012). Therefore, functional habitat connectivity is critical for many animals and plants to adapt to climate change. Again, the DEIR fails to use the best available science and adequately assess and mitigate impacts to wildlife movement and functional connectivity.

**B. Mitigation Measures do not minimize impacts to wildlife movement and habitat connectivity to less than significant**

MM BIO-6 is insufficient to mitigate impacts to habitat connectivity and wildlife movement to less than significant. Although the DEIR states the Project will comply with County zoning code requirements associated with development and activities in wildlife corridor areas that modifies lighting (MM BIO-6(a)) and fencing (MM BIO-6(b)) to minimize impacts to wildlife movement, such measures do not negate the impacts of the Project extending 700 feet into one of the last remaining corridors between the Santa Monica Mountains and Sierra Madre. Even with reduced lighting and wildlife-friendly fencing, increased human activities extending into an already tenuous corridor will also increase noise, vehicles/traffic, and the chances of fire ignitions, for which the DEIR does not provide sufficient mitigation.

The Project will degrade the existing corridor, inhibit wildlife movement, and directly and indirectly impact special-status species like mountain lions. As mentioned previously, local mountain lions are facing an extinction vortex largely driven by lack of connectivity and human-caused mortalities. Encroaching on this corridor will further isolate the Santa Monica Mountains puma population and drive them closer to local extinction. The DEIR fails to adequately mitigate impacts to wildlife movement and habitat connectivity to less than significant.

MM BIO-6(c) mentions the establishment and maintenance of a wildlife passage where development is prohibited, but the DEIR improperly defers mitigation by not providing acreage or a map of the wildlife passage areas being proposed. As written, it appears the wildlife passage areas they are referring to are simply outside the Project boundary. The DEIR refers to "restoration of native plants as a component of reclamation" as the only permitted activity within the wildlife passage areas, but there is no native plant restoration plan provided for the public or decisionmakers to review. This amounts to improperly deferred mitigation. Mitigation measures for the Project must be considered in the DEIR so that the proper environmental analysis can take place. (See *Sundstrom v. Co. of Mendocino* (1988) 202 Cal.App.3d 296.). The amount and location of the land to be set aside for wildlife passage and a restoration plan need to be included in the DEIR to enable the public and decisionmakers to evaluate the effectiveness of the mitigation measures to minimize impacts to wildlife movement and habitat connectivity. Such wildlife passage areas should also be conserved, restored, and adaptively managed with measurable success criteria in perpetuity.

## IV. The DEIR fails to adequately assess and mitigate impacts to oaks and oak woodlands to less than significant.

### A. Impacts to all oaks of 5 inches or greater in diameter must be assessed and mitigated.

California Public Resources Code §21083.4 (2004, Senate Bill 1334) requires that when a county is determining the applicability of the CEQA to a project, it must determine whether that project "may result in a conversion of oak woodlands that will have a significant effect on the environment." If such effects (either individual impacts or cumulative) are identified, the law requires that they be mitigated for the removal of oaks that are not commercial species, which are five (5) inches or more in diameter as measured at a point 4.5 feet (breast height) above natural grade level. The DEIR summarizes California Public Resources Code §21083.4, but it is not clear that that the analysis includes all oaks of 5-inches or greater that would be impacted by the project, or if the DEIR instead simply assesses project impacts to oak trees that are encompassed by Ventura County's tree protections.

California Fish and Game Code §1361, enacted with the passage of the Oak Woodland Conservation Act (2001, Assembly Bill 242), defines oak woodlands: "*Oak woodlands* means an oak stand with a greater than 10 percent canopy cover or that may have historically supported greater than 10 percent canopy cover." The DEIR and its appendices designate a section of the property as Coast Live Oak Woodland and include photographs that suggest the presence of a greater number of oaks than the 13 described in the DEIR.

### B. Impacts on oaks proximate to the construction footprint must be assessed and mitigated.

The Protected Trees Map presented on page 27 of Appendix C-1 identifies a number of protected trees within the project impact area (T1 – T6) and others that are proximate to the impact area (T7-T16). Given the scope and scale of the proposed project, what basis is used to determine that proximate trees, especially trees T8-T10, are not subject to project impacts? Further, as noted in IV(A), above, other oak trees of five-inches in diameter or greater that subject to impacts from the construction or operation of the proposed project must be included in the DEIR's analysis and mitigation sections.

Ventura County's *Arborist Verification of Tree Protection Measures* provides guidance on steps to assess project impacts on protected trees. Specifically it requires:

> …The area within the dripline of protected trees, called the tree protection zone (TPZ), be protected from any encroachment (or intrusion) that could cause soil compaction, injury to lower limbs, grade changes, contamination of soil, or damage to the root system… If development or other disturbance will occur near a protected tree, certain measures, such as temporary protective fencing around the TPZ, must be in place first to protect the tree. Arborist Verifications of Tree Protection Measurers provide the Planning Division with confirmation that such required protective measures are in place. The final approved tree protection measures shall be shown on the final construction plans for the project. Verification that these protection measures were in place throughout the time of

construction may be requested by the Planning Division. Written confirmation or photos may be requested.

Ventura County defines the tree protection zone (See Performance Standards for Ministerial Tree Permits) as: "The TPZ extends out from the trunk to 5 feet beyond the dripline, **or** a minimum of 15 feet from the trunk—whichever is greater." California Wildlife Foundation/California Oaks finds the TPZ area to be insufficiently protective and instead recommends no disturbance within the root protection zone for oaks. The root protection zone is the area that is half as large again as the area from the dripline—the area directly below the outer canopy—to the trunk. That area is the most critical to oaks. Many problems are initiated by disturbance within this zone. Additional information can be found at: http://californiaoaks.org/wp-content/uploads/2016/05/CareOfCAsNativeOaks.pdf.

Further, the potential mitigation areas map presented on page 49 of Appendix C-1 shows mitigation zones that are also proximate to the construction footprint. Again, it is unclear that these areas will not be subject to impacts from the construction or operation of the project. Nor is it clear that these areas have been assessed as viable oak habitat, including whether there is a sufficiency of surface and groundwater to sustain oaks after the seven-year establishment period.

### C. Habitat connectivity impacts of oak removals must be fully assessed in the DEIR.

The DEIR does not provide information on how habitat connectivity would be maintained during the period after oak habitat is destroyed and before restored oak habitat near the project site again provides ecosystem services. Ventura County's Oak Woodland Management Plan articulates the importance of mitigation that addresses habitat value (p. 24-25):

> ….[R]eplacing a century-old tree with 1, 3, or 10 one-year-old seedlings does not adequately replace the lost habitat value of large trees. It has become evident that simply focusing on mitigation planting based on a tree to seedling ratio is not a sufficient strategy to ensure the viability of oak woodlands...there is broad recognition that it is critical to conserve the inherent values that exist in mature oak forests wherever possible.[3]
>
> Additional studies have noted that many important habitat elements, such as understory, cavities, acorns, and snags, will not be mitigated through a tree planting strategy alone.

The county's oak woodland management plan provides further guidance on the analysis necessary to fully assess proposed oak ecosystem impacts (p. 24):

> …A wide range of tree densities and site characteristics can sustain functional woodlands. In addition, different oak species have different natural canopy cover densities. For example, both coastal oak and valley oak woodlands can vary from open savannahs to closed canopy forests. Density variation can also promote greater biodiversity of animal species, as some species prefer closed canopy

[3] A Planners Guide for Oak Woodlands, Second Edition, University of California, Agriculture and Natural Resources, 2005.

> woodlands, while others use openings within the woodlands or edges between woodlands and other habitat types.
>
> ...Given that oak size ("WHR size") data available for Ventura County indicates potential oak regeneration problems, protecting seedlings and sapling trees is crucial for maintaining future oak woodland viability. Therefore, the County should include an evaluation of oak seedlings/saplings during an Initial Study Assessment for a given project.

Given that Section 3.5.1.4 of the DEIR, ***Habitat Connectivity and Wildlife Corridors***, notes "the entirety of the existing and proposed CUP areas are designated as a habitat connectivity and wildlife corridor area" Ventura County should consider the no project alternative.

**D. The DEIR's oak mitigation plan is inadequate.**

A number of Ventura County and California Public Resources Code §21083.4 oak mitigation requirements are missing from the DEIR:

1. The DEIR lacks language about restrictive covenants from pages 8 and 9 of *Content Requirements for Tree Protection Plans,* which is reproduced in Exhibit 2.
2. The DEIR's formula for mitigation plantings (from page 44 of Appendix C-1 MM4: Oak Trees) does not incorporate Ventura County's Tree Protection Guidelines specifications for replacement (p.4):
   Section 8107-25.10 of the Ventura County Zoning Ordinance Code (Tree Protection Regulations) states tree replacement shall be on a "Cross-sectional" basis. This basis is defined as the aggregate areas of the cross sections of the replacement trees must be equal to or greater than the cross sectional areas of the altered elements of a tree (e.g., trunks, limbs, or roots)… Use the resulting circumference, divide by pi (3.14) to get the diameter. Divide the diameter by 2 to get the radius (or use the chart on next page). The radius squared (times itself) multiplied by pi is the cross sectional area. ($r^2$x 3.14 = Area) As long as the aggregate areas of the replacement trees equal or exceed the lost tree elements, any number of trees can be used. Trees below one inch in area cannot be used.
3. Public Resources Code requires a seven-year rather than the two-year establishment period presented in Appendix C-1 MM4: Oak Trees.

**E. Greenhouse Gas impacts of vegetation removal must be assessed.**

Section 3.4, ***Air Quality and Greenhouse Gases***, of the DEIR does not analyze the greenhouse gas (GHG) impacts of tree or other native vegetation removal, which is in violation of California law. CEQA's sole GHG focus is "the mitigation of greenhouse gas emissions or the effects of greenhouse gas emissions." Net present value of GHG emissions forms the foundation of the state's greenhouse reduction objectives, as well as the California Forest Protocol preservation standards. Every ton of carbon dioxide ($CO_2$) released into the atmosphere by oak woodland or forest conversion represents a measurable potential adverse environmental effect, which is covered by CEQA. Thus California requires the analysis and mitigation of greenhouse gas emissions associated with proposed oak woodland or forest conversions.

Similarly, the removal and degradation of the Project area's chaparral- and sage scrub-dominated landscapes would also result in high amounts of carbon release. Above-ground biomass of these shrub communities were found to be as high as 3461 $g/m^2$, with the amount of carbon stored increasing with the age of the stand (Bohlman et al. 2018). In addition, a substantial amount of carbon may be stored belowground in their roots and in the microbial communities and symbiotic fungi that are associated with the roots (Bohlman et al. 2018; Kravchenko et al. 2019; Soudzilovskaia et al. 2019). The removal and degradation of these systems have been found to result in the loss of both above- and below-ground carbon storage (*e.g.*, Austreng 2012). And although these systems are often overlooked in the fight against climate change, they are adapted to hot and dry weather conditions and have been found to be resilient to drought (Luo et al. 2007; Vicente-Serrano et al. 2013), which makes them an untapped opportunity to sequester more carbon as the climate crisis becomes exceedingly urgent. Therefore, the DEIR fails to adequately analyze and mitigate GHG emissions from the removal and degradation of native ecosystems.

## V. Impacts to Rare Plants

### A. An Incidental Take Permit (ITP) for Conejo Buckwheat Is Required.

Surveys in 2010, 2016, and 2018 documented individuals of Conejo buckwheat (*Eriogonum crocatum*) on the project site. This globally rare species is endemic to Ventura County, is known only from 13 occurrences, and is restricted to volcanic rock substrates in the Conejo Grade area. As a result, any impacts to this species are likely to be significant and must be mitigated fully.

Conejo buckwheat is listed as Rare under California's Native Plant Protection Act. 14 Cal. Code Reg. § 670.2(c)(21)(C). As indicated in scoping comments submitted by the California Department of Fish and Wildlife (CDFW) in 2017 (DEIR Appendix A-2, pg. 52-60), impacts to this species may only take place following the issuance of an Incidental Take Permit (ITP) by CDFW. 14 Cal. Code Reg. § 786.9. An application for such a permit requires the applicant to analyze the impacts of the proposed taking on the species, propose measures to minimize and *fully mitigate* the impacts of the proposed taking, and propose a plan to monitor compliance with the minimization and mitigation measures and the effectiveness of the measures. 14 Cal. Code Reg. § 783.2(a) (emphasis added). The ITP will only be issued if CDFW finds that the applicant will minimize and fully mitigate the impacts of the take authorized under the permit. 14 Cal. Code Reg. § 783.4(a)(2). The DEIR (Vol. 1, 2-22) makes no reference to the need to obtain an ITP for impacts to State Rare species, and the analysis and proposed mitigation plan required for the ITP pursuant to Section 783.2 of the California Code of Regulations has not been provided. This oversight must be corrected and the process of obtaining this necessary permit should be commenced.

### B. Negative Survey Results for Federally-Listed Species of Dudleya

Surveys in 2010 located individuals of the federally-listed Conejo dudleya (*Dudleya parva*) and Verity's dudleya (*Dudleya verityi*). Yet, surveys in 2016 and 2018 failed to locate

either of these species, despite the fact that the 2018 surveys were timed correctly, and botanists visited nearby reference sites to ensure that both species were detectable. Regardless of the negative results, the DEIR correctly considers both of these species to be present on the site. (DEIR Volume 1, 3.5-13-14). We concur with this assessment given that plant species, even though not detected in a given year, may be dormant or could exist solely in the soil seedbank. These species of dudleya should be treated as present and mitigated accordingly.

The county should also consider and disclose factors that may have influenced the negative results. Did botanists visit the exact locations where these species were located in 2010, possibly aided by survey maps from prior surveys? If so, had conditions on the site changed between 2010 and 2016/2018, such that the negative survey results are explainable? In short, the EIR should explain the possible reasons for the negative survey results for both Conejo dudleya and Verity's dudleya in 2016 and 2018.

Additionally, since the project has a potential federal nexus due to its impacts to wetlands and the potential for the presence of least bell's vireo, California gnatcatcher, and dudleya in the project area, the project may require Section 7 consultation with the U.S. Fish and Wildlife Service (USFWS) and the subsequent issuance of a Biological Assessment and Biological Opinion. These processes are necessary to ensure that the project does not result in jeopardy for listed species. Has the project applicant initiated consultation with the USFWS?

### C. Inadequate Quantification of Impacts to All Rare Species

The DEIR fails to include an accounting of the level of impacts to rare species, and thus fails as an informational document for the public and decision makers. Pub. Resources Code § 21061 states that, "The purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project." An EIR that merely states that a species is present or absent on the site does not provide enough information for the public to understand the gravity of impact to those species. EIRs should, at the very least, disclose the acres and/or number of individuals of each species that will be impacted directly or indirectly by the project in order to fulfill their purpose as an informational document. *See Lotus v. Dep't of Transp.*, 223 Cal.App.4th 645, 658 (2014) (an EIR did not comply with CEQA because it failed to evaluate the significance of a project's impact on the root systems of old growth redwood trees, "preclud[ing] both identification of potential environmental consequences arising from the project and also thoughtful analysis of the sufficiency of measures to mitigate those consequences"). Not only is this level of information necessary for the EIR to satisfy its purpose as a public disclosure document, these data are also necessary to assess a project's level of impact.

This information is also crucial to the development of mitigation measures and to inform CEQA findings of significance. Yet, the EIR concludes that impacts to rare plant species is less than significant with mitigation. What data and rationale did the county apply to arrive at this conclusion? At a minimum, the EIR should be revised to include an accounting of the quantitative impacts to each rare species that is present on the site. Lastly, the fact that Conejo

dudleya and Verity's dudleya are listed as present on the site but were not located during surveys in recent years makes it impossible to adequately assess levels of impact to these species and to adopt appropriate mitigation measures.

### D. Mitigation Measures for Rare Species Are Inadequate

Mitigation measure BIO-2 refers to the possibility of conferring with CDFW for concurrence on the mitigation plan prior to project approval. Yet, this mitigation measure makes no reference to the need to obtain legally mandated permits for the loss of State Rare species (ITP issued by CDFW), and possibly also federally-listed plant species (Biological Opinion issued by the USFWS). Mitigation Measure BIO-2 requires that all impacts to rare species be mitigated at a ratio of 1:1 at a site where "no future disturbance will occur." The EIR fails to disclose the standard used to conclude that this mitigation ratio is sufficient to adequately mitigate impacts to rare plants to less than significant. The lack of information and specificity in this mitigation measure renders it vague, uninformative, and speculative. *See Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners*, 91 Cal.App.4th 1344, 1371 (2001) (failure to support an EIR's conclusory statements with scientific or objective data is a violation of CEQA); *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 205 (an EIR must "disclose the analytic route the agency traveled from evidence to action" (internal quotations omitted)). CEQA requires the lead agency to present mitigation measures that have a reasonable likelihood of adequately compensating for a project's impact. Impacts to Conejo buckwheat, for example, must be fully mitigated in order to meet the requirements for a take permit under Section 783 *et seq.* Yet, the EIR does not contain an analysis supporting the conclusion that a 1:1 mitigation ratio is sufficient to fully mitigate impacts to this species. The lack of information in the EIR renders it impossible for the county or the public to assess if the proposed mitigation is even feasible, not to mention sufficient to fully mitigate impacts. For example, the EIR relies solely on the securing of offsite mitigation lands, when the availability of potential mitigation lands for each impacted species has not been identified. Has the county identified land that is available for the purchase of conservation easements for each of the rare species that have been documented on the project site? The EIR should disclose whether offsite mitigation credits have been secured, and if so, identify the locations.

## VI. Impacts to Plant Communities

### A. Documentation of Impacts to Sensitive Plant Communities

The County's "Summary of Biological Resource Regulations" states that EIRs must document impacts to plant communities that have been assigned a NatureServe rank of G/S1 thorough G/S3, in order to make "CEQA findings of significance." Remarkably, table ES-1, the "Summary of Project Impacts and Mitigation Measures" does not even address the need to account for impacts to sensitive plant communities. The Initial Study documents at least two plant communities, Red Willow Thicket (G3/S3) and Giant Wild Rye Grasslands (G5/S3), which meet the county's definition of sensitive plant communities. However, in contrast to the sparse analysis of impacts to rare plants, the DEIR Table 3.5-7 quantifies the acreage of impact to plant communities. This table confirms that 1.5 acres of Giant Wild Rye Grasslands (75% of the

acreage on the site) will be eliminated by the project. The loss of these 1.5 acres is a significant impact and the DEIR should contain mitigation measures to address this impact.

### B. Lack of analysis and mitigation for impacts to plant communities

While the Initial Study details the distribution and abundance of plant communities on the site, it concludes that "this Biological assessment DID NOT provide adequate information to make CEQA findings regarding potentially significant impacts or to develop mitigation measures necessary to mitigate potentially significant project and cumulative impacts." (DEIR Appendix C-1, pg. 2). Subsequently, in conflict with the county's own regulations, the EIR fails to make CEQA findings of significance for impacts to sensitive plant communities. Instead, the EIR states that the following impacts to sensitive plant communities are considered potentially significant: "construction, grading, clearing, or other activities that would temporarily or permanently remove sensitive plant communities. Temporary impacts to sensitive plant communities would be considered significant unless the sensitive plant community is restored once the temporary impact is complete." (DEIR Vol. 1, 3-5-33). This vague assessment does not provide decision makers or the public with enough information to determine the extent to which these resources will be impacted by the project. Consistent with this omission is the failure to adopt mitigation measures to compensate for the loss of plant communities.

## VII. The County Should Require Stronger Air Quality Mitigation Measures.

### A. Air Pollution is a Public Health Crisis.

According to a recent Stanford University study, poor air quality cost the U.S. seven hundred and ninety billion dollars in 2014.[4] The study noted that air quality has improved over the last ten years but still cost the U.S. about five percent of the yearly GDP in 2014.[5] The study indicated that air pollution near urban centers has a higher impact because of the proximately to people.[6] Additionally, a recent study found that someone who lives for decades in a county with high levels of fine particulate pollution is 8% more likely to die from COVID-19 than someone who lives in a region with just one unit less of such pollution.[7]

In addition to public health, many plants and trees, including agricultural crops, are injured by air pollutants. This damage ranges from decreases in productivity, a weakened ability to survive drought and pests to direct mortality. (VCAQR) Wildlife is also impacted by air pollution because the plants and trees that comprise their habitats are weakened or killed (yet the DEIR contains no analysis of the impacts of air pollution on crops, native plants, or wildlife). Greenhouse gases, such as the air pollutant carbon dioxide released by fossil fuel combustion, contribute directly to human-induced climate change.[8] In this feedback loop, poor air quality that

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[4] Ellis Robinson, *How Much Does Air Pollution Cost the U.S.?* Stanford Earth (Sept 19, 2019).
[5] *Id.*
[6] *Id.*
[7] Xiao Wu, Rachel C. Nethery, Benjamin M. Sabath, Danielle Braun, Francesca Dominici, *Air pollution and COVID-19 mortality in the United States: Strengths and Limitations of an Ecological Regression Analysis*, *Science advances*, 6(45) (2020) https://doi.org/10.1101/2020.04.05.20054502.
[8] EPA, *Causes of Climate Change*, Webpage https://19january2017snapshot.epa.gov/climate-change-science/causes-climate-change_.html (last update 12/26/2016)

contributed to climate change will, in turn, worsen the impacts of climate change and attendant air pollution problems.[9]

Although there are many different types of air pollution, Ozone, Fine Particulate Matter, and Toxic Air Contaminants are the most significant concern in urban areas, particularly in Southern California. These three air pollutants have been linked to an increased incidence and risk of cancer, congenital disabilities, low birth weights, and premature death, in addition to a variety of cardiac and lung diseases such as asthma, COPD, stroke, and heart attack.[10] Ozone, also commonly referred to as smog, is created by the atmospheric mixing of gases from fossil fuel combustion and other volatile organic compounds and sunlight. Although it is invisible, ozone poses one of the greatest health risks, prompting the EPA to strengthen its National Ambient Air Quality Standard for Ozone in 2015.[11] Fine Particulate Matter is generally found in urban areas due to vehicle exhaust emissions, and these microscopic particles contribute to visible air pollution. These tiny participles are dangerous because they are small enough to escape our body's natural defenses and enter the bloodstream. Fugitive dust is a term used for fine particulate matter that results from disturbance by human activity such as construction and road-building operations. Toxic Air Contaminants are released from vehicle fuels, especially diesel, which accounts for over 50% of the cancer risk from TACs.[12] This is especially relevant for Southern California with its abundance of diesel shipping traffic.[13]

The DEIR analyzes the air pollutants' health impacts and finds that only NOx needs mitigation as required by the Clean Air Act standards. Yet the DEIR states the air quality monitoring sites near the project are at times out of attainment for ozone, while PM 10 and PM 2.5 frequently exceed the Federal 24-hour standard.[14] The DEIR believes that the increased diesel trucks and fugitive dust are not harmful enough to warrant mitigation despite the detrimental effects of these pollutants, as discussed above.[15] Additionally, the majority of pollution from the project comes from diesel fumes from transporting mined materials, and the DEIR citing the California Air Resources Control Board states that seventy percent of the cancer risk the average Californian faces from breathing TACs stems from diesel exhaust particles, which is up from fifty percent in 2016.[16]

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[9] Bay Area Air Quality Management District (BAAQMD), *Planning Healthy Places: a guidebook for addressing local sources of air pollutants in community planning* (2016).

[10] American Lung Association (ALA), *State of the Air 2016;* Laurent, O. et al., *Low birth weight and air pollution in California: which sources and components drive the risk?*, Environment International 92-93:471-477 (2016).

[11] American Lung Association (ALA), *State of the Air 2016.*

[12] Bay Area Air Quality Management District (BAAQMD), *Planning Healthy Places: a guidebook for addressing local sources of air pollutants in community planning* (2016).

[13] Betancourt, S. and Mark Vallianatos, *Storing harm: the health and community impacts of goods movement warehousing and logistics*, THE Impact Project (2012); Bailey, D., et al., *Clean cargo: a guide to reducing diesel air pollution from the freight industry in your community*, NRDC.

[14] DEIR 3.4-5.

[15] DEIR 3.4-24-25.

[16] DEIR 3.4-4.

## B. The Air Pollution Mitigation is Inadequate Under CEQA

The California Environmental Quality Act (CEQA) mandates that significant environmental damage be avoided or substantially lessened where feasible.[17] Moreover, although "an EIR need not consider every conceivable alternative to a project . . . it must consider a reasonable range of potentially feasible alternatives that will foster informed decision decision-making and public participation."[18] Additionally, the "key to the selection of the range of alternatives is to identify alternatives that meet most of the project's objectives but have a reduced level of environmental impacts."[19]Accordingly, a rigorous analysis of reasonable alternatives to the project must be provided to comply with this strict mandate.

CEQA requires all feasible mitigation measures, yet the DEIR does not discuss what is feasible. Instead, it discusses what would be minimally required by the Federal and California Clean Air Acts. Ventura County should require a higher standard for the project; Table 3.4-2 shows that the El Rio Monitoring station exceeded CAAQS and NAAQS NOx standard 180 and 100 days, respectively, during 2016 and 2018.[20] Thus the County must, at a minimum, require the DEIR to analyze whether further mitigation could allow the County to meet the minimum air quality standards. As this DEIR stands, the County will continue to exceed NOx emissions because this project is only maintaining the polluted status quo. The DEIR suggests mitigation that will allow NOx to double its current levels as its mitigated response.[21] The standard the DEIR uses requires no more than 25 additional NOx emissions by a project, but since the project currently emits 25 NOx, the NOx will double from this project site by allowing the expansion.[22] CEQA does not just require the bare minimum meeting of state and federal requirements but all feasible mitigation of significant environmental impacts. Here, doubling NOx after the proposed mitigation is still significant. The DEIR should discuss further mitigation to allow knowledgeable participation by decision-makers and the public regarding this project's impacts. This project proposes moving much closer to residential areas, which will increase the health impacts residents' experience.[23] Unless the project can further mitigate its increased air pollution, the County should not expand the project closer to residential areas.

Additionally, ozone and PM10 and PM2.5 are not meeting attainment levels, and this project plans to increase these pollutants with no mitigation efforts. This is especially troubling since the project will expand closer to residential and agricultural zones. Thus residents will be impacted by both increased air pollution and through closer vicinity to these dangerous pollutants. Ozone is a very toxic substance that endangers public health, increases climate change impacts, and can decrease crop yields.[24] By reclassifying agricultural lands to allowing nearby mining activities, the County would go against the general plan requirement to not endanger agricultural lands and hurt nearby farmers.[25]

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[17] Pub. Res. Code § 21002; Guidelines §§ 15002(a)(3), 15021(a)(2), 15126(d).
[18] CEQA Guidelines § 15126.6(a).
[19] *Watsonville Pilots Assn. v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1089.
[20] DEIR 3.4-17.
[21] DEIR 3.4-24.
[22] DEIR 3.4-25.
[23] DEIR 3.4-23.
[24] DEIR 3.4-26.
[25] *Id.*

Instead of the EIR proposals, this project could decrease air pollution in this area by requiring more innovative renewable requirements. Electric trucks or solar electrical generation on the property would reduce the air pollutants this project emits. Yet, the DEIR did not consider any renewable options; instead, the EIR focuses solely on mitigation through emission reduction technology and reduction of use. As it currently stands, the DEIR does not discuss all feasible mitigation measures, instead only focusing on required mitigations under the Clean Air Act, ignoring CEQA's added mitigation requirements. CEQA and the residents near this project deserve more to protect their health and welfare.

## VIII. The DEIR Lacks GHG Mitigation Measures.

### A. Climate Change Is a Catastrophic and Pressing Threat to California.

A strong, international scientific consensus has established that human-caused climate change is causing widespread harm to human society and natural systems. The threats from climate change are becoming increasingly dangerous. The Intergovernmental Panel on Climate Change ("IPCC"), the leading international scientific body for the assessment of climate change, concluded in its 2014 Fifth Assessment Report that: "[w]arming of the climate system is unequivocal, and since the 1950s, many of the observed changes are unprecedented over decades to millennia. The atmosphere and ocean have warmed, the amounts of snow and ice have diminished, and sea level has risen," and further that "[r]ecent climate changes have had widespread impacts on human and natural systems."[26] These findings were echoed in the United States' own 2014 Third National Climate Assessment and 2017 Climate Science Special Report, prepared by scientific experts and reviewed by the National Academy of Sciences and multiple federal agencies. The Third National Climate Assessment concluded that "[m]ultiple lines of independent evidence confirm that human activities are the primary cause of the global warming of the past 50 years"[27] and "[i]mpacts related to climate change are already evident in many regions and are expected to become increasingly disruptive across the nation throughout this century and beyond."[28] The 2017 Climate Science Special Report similarly concluded:

> [B]ased on extensive evidence,…it is extremely likely that human activities, especially emissions of greenhouse gases, are the dominant cause of the observed warming since the mid-20th century. For the warming over the last century, there is no convincing alternative explanation supported by the extent of the observational evidence.
> In addition to warming, many other aspects of global climate are changing, primarily in response to human activities. Thousands of studies conducted by researchers worldwide have documented changes in surface, atmospheric, and oceanic temperatures; melting glaciers; diminishing snow cover; shrinking sea

[26] IPCC [Intergovernmental Panel on Climate Change]. (2014). Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change, [Core Writing Team, R.K. Pachauri & L.A. Meyer (eds.)]. 2, Available at: http://www.ipcc.ch/pdf/assessment-report/ar5/syr/SYR_AR5_FINAL_full_wcover.pdf.

[27] Melillo, Jerry M, Terese (T.C.) Richmond & Gary W. Yohe (eds.). (2014). Climate Change Impacts in the United States: The Third National Climate Assessment, U.S. Global Change Research Program. 7, Available at: http://nca2014.globalchange.gov/downloads.

[28] *Id.* at 10.

ice; rising sea levels; ocean acidification; and increasing atmospheric water vapor.[29]

The U.S. National Research Council concluded that "[c]limate change is occurring, is caused largely by human activities, and poses significant risks for—and in many cases is already affecting—a broad range of human and natural systems."[30] Based on observed and expected harms from climate change, in 2009, the U.S. Environmental Protection Agency found that greenhouse gas pollution endangers the health and welfare of current and future generations.[31]

These authoritative climate assessments decisively establish the dominant role of anthropogenic GHG emissions in driving climate change. As the Third National Climate Assessment explains: "observations unequivocally show that climate is changing and that the warming of the past 50 years is primarily due to human-induced emissions of heat-trapping gases."[32] The Assessment makes clear that "reduc[ing] the risks of some of the worst impacts of climate change" will require "aggressive and sustained greenhouse gas emission reductions" over the course of this century.[33]

The impacts of climate change will be felt by humans and wildlife. Climate change is increasing stress on species and ecosystems—causing changes in distribution, phenology, physiology, vital rates, genetics, ecosystem structure, and processes—in addition to increasing species extinction risk.[34] Climate-change-related local extinctions are already widespread and have occurred in hundreds of species.[35] Catastrophic numbers of species extinctions are projected to occur during this century if climate change continues unabated.[36] In California, climate change will transform our climate, resulting in impacts including, but not limited to, increased temperatures and wildfires and a reduction in snowpack and precipitation levels and water availability.

Therefore, immediate and aggressive greenhouse gas emissions reductions are necessary to keep warming well below 2°C above pre-industrial levels. The IPCC Fifth Assessment Report and other expert assessments have established global carbon budgets, or the total amount of carbon that can be burned while maintaining some probability of staying below a given

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[29] USGCRP [U.S. Global Change Research Program]. (2017). Climate Science Special Report: Fourth National Climate Assessment, Volume I [Wuebbles, D.J. et al. (eds.)], U.S. Global Change Research Program, 10. Available at: https://science2017.globalchange.gov/.

[30] NRC [National Research Council]. (2010). Advancing the Science of Climate Change, 2.

[31] 74 Fed. Reg. 66496 (December 15, 2009) [U.S. EPA, Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act; Final Rule].

[32] Melillo et al. 2014, p. 2; *see also id.* at 15 [Finding 1: "The global warming of the past 50 years is primarily due to human activities, predominantly the burning of fossil fuels."].

[33] Id. at 13-14, 649; *see also id.* at 15 [Finding 3: "Human-induced climate change is projected to continue, and it will accelerate significantly if global emissions of heat-trapping gases continue to increase."].

[34] Warren, Rachel et al.. (2011). Increasing impacts of climate change upon ecosystems with increasing global mean temperature rise, 106 *Climatic Change* 141.

[35] Wiens, John J. (2016). Climate-related local extinctions are already widespread among plant and animal species, 14 *PLoS Biology* e2001104.

[36] Thomas, Chris. D. et al. (2004). Extinction risk from climate change, 427 *Nature* 145; Maclean, Ilya M. D. & Robert J. Wilson. (2011). Recent ecological responses to climate change support predictions of high extinction risk, 108 *PNAS* 12337; Urban, Mark C. (2015). Accelerating extinction risk from climate change, 348 *Science* 571.

temperature target. According to the IPCC, total cumulative anthropogenic emissions of $CO_2$ must remain below about 1,000 $GtCO_2$ from 2011 onward for a 66 percent probability of limiting warming to 2°C above pre-industrial levels, and to 400 $GtCO_2$ from 2011 onward for a 66 percent probability of limiting warming to 1.5°C.[37] These carbon budgets have been reduced to 850 $GtCO_2$ and 240 $GtCO_2$, respectively, from 2015 onward.[38]

Given that global $CO_2$ emissions in 2016 alone totaled 36 $GtCO_2$,[39] humanity is rapidly consuming the remaining carbon budget needed to avoid the worst impacts of climate change. As of early 2018, climate policies by the world's countries would lead to an estimated 3.4°C of warming, and possibly up to 4.7°C of warming, well above the level needed to avoid the worst dangers of climate change.[40]

The United States has contributed more to climate change than any other country. The U.S. is the world's biggest cumulative emitter of GHGs, responsible for 27 percent of cumulative global $CO_2$ emissions since 1850, and the U.S. is the world's second-highest emitter on an annual and per capita basis.[41] Nonetheless, U.S. climate policy is wholly inadequate to meet the international climate target to hold global average temperature rise to well below 2°C above pre-industrial levels to avoid the worst dangers of climate change. Current U.S. climate policy has been ranked as "critically insufficient" by an international team of climate policy experts and climate scientists.[42]

In response to inadequate action on the national level, California has taken steps through legislation and regulation to fight climate change and reduce statewide GHG emissions. Enforcement of and compliance with these measures is essential to help stabilize the climate and avoid catastrophic impacts to our environment. AB 32 mandates that California reach 1990 levels of GHG emissions by the year 2020, equivalent to approximately a 15 percent reduction from a business-as-usual projection.[43] Based on the warning of the IPPC and leading climate scientists, Governor Brown issued an executive order in April 2015 requiring GHG emissions reductions to 40 percent below 1990 levels by 2030.[44] The Executive Order is in line with a previous Executive Order mandating the state reduce emission levels to 80 percent below 1990 levels by 2050 in order to minimize significant climate change impacts.[45] In enacting SB 375, the

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[37] IPCC [Intergovernmental Panel on Climate Change]. (2013) 2013: Summary for Policymakers. In: Climate Change 2013: The Physical Science Basis, Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Stocker, T.F. et al. (eds.)], Cambridge University Press, 25; IPCC [Intergovernmental Panel on Climate Change]. (2014). Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change, [Core Writing Team, R.K. Pachauri & L.A. Meyer (eds.)], 63-64 Table 2.2. Available at: http://www.ipcc.ch/pdf/assessment-report/ar5/syr/SYR_AR5_FINAL_full_wcover.pdf.

[38] Rogelj, Joeri et al. (2016). Differences between carbon budget estimates unraveled, 6 *Nature Climate Change* 245, Table 2.

[39] Le Quéré, Corrine, et al. (2017). Global Carbon Budget 2017, *Earth Syst. Sci. Data Discuss.*, https://doi.org/10.5194/essd-2017-123. Available at: http://www.globalcarbonproject.org/carbonbudget/17/data.htm.

[40] Climate Action Tracker. (November 2017). Improvement in warming outlook at India and China move ahead, but Paris Agreement gap still looms large. Available at: http://climateactiontracker.org/publications/briefing/288/Improvement-in-warming-outlook-as-India-and-China-move-ahead-but-Paris-Agreement-gap-still-looms-large.html.

[41] World Resources Institute. (November 25, 2014). 6 Graphs Explain the World's Top 10 Emitters.

[42] Climate Action Tracker, USA (last updated November 29, 2018). Available at: http://climateactiontracker.org/countries/usa.

[43] Health & Saf. Code § 38550.

[44] Executive Order B-30-15 (2015).

[45] Executive Order S-3-05 (2005).

legislature has also recognized the critical role that land use planning plays in achieving greenhouse gas emission reductions in California.

The legislature has found that failure to achieve GHG emissions reductions would be "detrimental" to California's economy.[46] In 2018, Governor Brown issued Executive Order B-55-18, in which he declared it to be a statewide goal to "achieve carbon neutrality as soon as possible, and no later than 2045, and achieve and maintain net negative emissions thereafter."

Governor Newsom continued this zero-emissions mandate in September 2020, signing an executive order to require all new passenger cars and trucks be zero-emission vehicles by 2035.[47] The California Air Resources Control Board voted in June 2020 to "require Manufacturers who certify Class 2b-8 chassis or complete vehicles with combustion engines to sell zero-emission trucks as an increasing percentage of their annual California sales from 2024 to 2035."[48] By 2035, zero-emission truck/chassis sales would need to be 55% of Class 2b – 3 truck sales, 75% of Class 4 – 8 straight truck sales, and 40% truck tractor sales.[49] CARB states that there are seventy zero-emission buses, vans, and trucks currently commercially available. Most major truck manufacturers plan to phase zero-emission trucks into their inventory in the future as well.[50]

Although some GHG emissions sources may appear insignificant in isolation, climate change is a problem with cumulative impacts and effects.[51] One source or one small project may not appear to have a significant effect on climate change, but the combined impacts of many sources can drastically damage California's climate as a whole. Therefore, project-specific GHG emissions disclosure, analysis, and mitigation are vital to California meeting its climate goals and maintaining our climate.

### B. The DEIR Should Include an Analysis of GHG Mitigation Alternatives.

Here, the DEIR concludes that the GHG increases from the project are not significant. The DEIR came to this conclusion by reviewing the Wayne J Sand and Gravel Re-circulated Draft EIR (March 2015), which found its GHG emission standard from the Ventura County Greenhouse Gas Thresholds of Significance Options for Land Use Development Projects in Ventura County (VCAPCD, 11/8/2011). 2011 is a very old standard in climate change terms, especially since California has added numerous GHG reduction requirements in the last ten years, as discussed above.[52] CARB has recently approved expanding the phase-in of medium and heavy-duty truck zero-emission standards, which shows that although the VCAPOD may be the

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[46] Health & Saf. Code § 38501(b).

[47] Office of Governor Gavin Newsom, Governor Newsom Announces California Will Phase Out Gasoline-Powered Cars & Drastically Reduce Demand for Fossil Fuel in California's Fight Against Climate Change, (Sept 23, 2020) Available at: https://www.gov.ca.gov/2020/09/23/governor-newsom-announces-california-will-phase-out-gasoline-powered-cars-drastically-reduce-demand-for-fossil-fuel-in-californias-fight-against-climate-change/.

[48] California Air Resource Control Board, *Advanced Clean Trucks Fact Sheet* (June 25, 2020) Available at: https://ww2.arb.ca.gov/resources/fact-sheets/advanced-clean-trucks-fact-sheet.

[49] *Id.*

[50] *Id.*

[51] *Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, (9th Cir. 2008) 538 F.3d 1172, 1217 ["the impact of greenhouse gas emissions on climate change is precisely the kind of cumulative impacts analysis" that agencies must conduct].

[52] See DEIR Appendix B-1 *Air Quality, Health Risk, and Climate Change Impact Assessment*, (Sespe 2019b).

most recent standard published in Ventura County, the DEIR could and should consider further GHG emission mitigations. This project will raise the $CO_2$ from approximately 155.3 tons to 3466.6 tons.[53] This increase is twenty-two times higher than the current project. The DEIR states that since the $CO_2$ will not exceed ten thousand, then it is not significant. But climate change is too important not to discuss mitigation when a twenty-two level increase occurs; particularly when CEQA mandates feasible mitigation to environmental damage, and climate change is our most pressing environmental concern. The County should not approve a project that will increase GHG emissions without even considering GHG mitigation options. There are zero-emission trucks on the market and although there is a higher upfront cost, CARB states that the fuel costs are less than traditional trucks, which offsets the upfront costs. [54] Additionally, on-site solar generation or even purchasing carbon offsets could all reduce the GHG impacts of this project.

The DEIR claims that mitigation is not required because the state requires RPS increases from Southern California Edison, which will decrease the project's reliance on GHG electrical generation.[55] Additionally, the California Low-Carbon Fuel Standard will reduce diesel fuel GHG emissions by raising the standard.[56] But these statements are just riding the coattails of others and the project should also be committing to GHG reductions to further mitigate climate impacts from occurring now when the project is proposing greatly increasing its GHG emissions.

Lastly, the DEIR cites Berck as proof that GHG impacts from VMT will be less because otherwise, mining materials will come from farther away.[57] But the DEIR does not analyze competing mine locations and whether this expansion will allow the project to expand its service area and thus its VMTs. The County states that it does not have the expertise or time to determine a different site for an alternative mine because of the numerous factors involved in mine siting.[58] This determination might be reasonable, but claiming that VMT will decrease by allowing expansion without further verification of this fact is inadequate.

## IX. The DEIR should have considered a wider range of alternatives, including those with a significantly smaller development footprint.

The DEIR should have analyzed a wider range of alternatives. As courts have made clear, "[a] potential alternative should not be excluded from consideration merely because it would impede to some degree the attainment of the project objectives, or would be more costly."[59] The DEIR should have included a more extensive range of alternatives from which decision-makers could choose.

The DEIR does not consider any alternatives that would allow the project but take wildlife and endangered plants into account or significantly lower the project's GHG impacts besides the no project alternative or the no increased expansion alternative. These may seem

[53] DEIR 3.4-31 Table 3.4-9.
[54] California Air Resource Control Board, *Advanced Clean Trucks Fact Sheet* (June 25, 2020) Available at: https://ww2.arb.ca.gov/resources/fact-sheets/advanced-clean-trucks-fact-sheet.
[55] DEIR 3.4-31.
[56] DEIR 3.4-31.
[57] DEIR 3.9-9.
[58] DEIR 5.3-1.
[59] *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal. App. 4th 1437, 1456-57 (quotations omitted).

adequate, but both are alternatives to bar the project and one alternative is to approve the project. There is no middle ground with a project that needs to incorporate further mitigation, which may cost more for the applicant but still allow the project. The DEIR does not state that a middle ground alternative would be infeasible because it does not consider this option. For an informed decision to occur, the decision-makers should have an alternative that works to meet the project goals while lessening environmental impacts.

By refusing to include any alternatives that provide for a moderately reduced project size, the DEIR sets up a false "all or nothing" decision for the County and prohibits the County from considering or approving a smaller version of the project that does not have such profound environmental impacts on California's wildlife corridors, air quality, and carbon footprint. CEQA's mandate that a reasonable range of alternatives be considered is violated by a DEIR that fails to include any alternatives with a moderately reduced footprint.

The project could be considerably down-sized or mitigated and still be considered feasible. Whether a project is economically unfeasible "is not measured by increased cost or lost profit, but upon whether the effect of the proposed mitigation is such that the project is rendered impractical."[60] In *Citizens of Goleta Valley v. Board of Supervisors* (1988) 197 Cal.App.3d 1167, 1180, the Court agreed with the trial court that the administrative record did not contain an analysis of the project alternatives in terms of comparative costs, comparative profit or losses, or comparative economic benefit to the project proponent or the community at large. Here, the EIR does not include feasibility of the project alternatives based on the projects expected costs and profits and losses, leaving it impossible to assess the viability of the alternatives. This is an inadequate under CEQA and the EIR should be required to include additional environmentally conservative alternatives and their feasibility.

[60] *Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587, 600 (internal citation omitted).

## X. Conclusion.

Thank you for the opportunity to submit comments on the proposed Pacific Rock Mine Project. Please include the undersigned environmental organizations on your notice list for all future updates to the project and do not hesitate to contact us with any questions at the email listed below.

Sincerely,


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(*Provided via OneDrive*)


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# Exhibit 1

December 22, 2020

***Sent via email***

Los Angeles County Board of Supervisors
c/o Ms. Celia Zavala
Executive Officer
500 West Temple Street
Los Angeles, CA 90012
executiveoffice@bos.lacounty.gov

**Re: Supplemental EIR for the Northlake Specific Plan**

Dear Supervisors Mitchell, Kuehl, Solis, Hahn, and Barger:

We are writing to urge you to direct staff at the Los Angeles County Department of Regional Planning to prepare a supplemental environmental impact report ("EIR") for the Northlake Specific Plan ("Northlake Development"). The Northlake Development is a 1,300-acre housing development proposed on fire-prone wildlands adjacent to Castaic Lake State Recreation Area approved by the Board in April 2019. Even though the Northlake Development sits within a wildlife connectivity linkage known as the Sierra Madre-Castaic Connection, County staff did not require enforceable or adequate measures to address wildlife connectivity because the project proponent claimed mountain lions do not use the crossings in the area. **We are submitting evidence showing these claims are incorrect: the Mountains Recreation and Conservation Authority recently captured photographic evidence of a mountain lion using the crossing immediately adjacent to the development site.**

***Background on the Conservation Groups***

The Center for Biological Diversity ("Center") is a non-profit, public interest environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has over 1.7 million members and online activists throughout California and the United States. The Center and its members have

worked for many years to protect imperiled plants and wildlife, open space, air and water quality, and overall quality of life for people in Los Angeles.

Endangered Habitats League (EHL) is a non-profit, public interest conservation group for Southern California. It is dedicated to ecosystem protection and sustainable land use for all the region's inhabitants. EHL is and has been a stakeholder in several County of Los Angeles planning and environmental initiatives.

***Photographic Evidence from the Mountains Recreation and Conservation Authority Confirms that Mountain Lions Use the Crossing Adjacent to the Northlake Development Site***

We are submitting photos to you which were taken by staff at the Mountains Recreation and Conservation Authority ("MRCA") which demonstrate that mountain lions use the culverts under the I-5 freeway immediately next to the Project site. In particular, the attached photos (which we received from MRCA and are authenticated by the attached declaration from Chad Christensen) depict a mountain lion crossing from the east side of the southbound direction of the separated I-5 freeway from Grasshopper Canyon and westerly into the Marple Canyon on November 5, 2020 approximately between 2:49 a.m. and 2:59 a.m. (the "Mountain Lion Photos"). The single-lane box culvert for the Marple Canyon access road that crosses under this southbound section of I-5 is identified as "Tunnel 2" and "Underpass 2" in Santa Monica Mountains Conservancy's April 17, 2018 letter on the Northlake Development. Underpass 2 is one of two freeway crossing structures along a ten-mile section of I-5 between Templin Highway and Castaic Creek. The MRCA owns 245 acres of Marple Canyon west of Underpass 2 between the separated north-/southbound sections of I-5 and six acres east of Underpass 2 that connect with Grasshopper Canyon. The Mountain Lion Photos were taken by a camera placed on MRCA conservation lands by Mr. Christensen for the MRCA's Marple Canyon I-5 Wildlife Crossing Enhancement Project.

While the EIR for the Northlake Project does generally acknowledge that mountain lions may use the Project area (Final EIR at 2-136), County counsel joined the project proponents (which include Northlake Associates, LLC, which is controlled by NLDP Associates, LLC, Castaic Development Partners, LLC, and Michael Rosenfeld of Woodridge Capital Partners, LLC) in representing in court proceedings that "mountain lions will not be impacted by the Project" and "mountain lions are not using Project site crossings as confirmed by expert studies, including a wildlife camera study . . . ." (Respondents' and Real Parties in Interest's Joint Opposition Trial Brief at pp. 8 & 16-17.) **The Mountain Lion Photos demonstrate that these claims (which were based on a developer-commissioned study) are incorrect.**[1]

We further note that the County's own staff biologist, Joseph Decruyenaere, urged the developer's EIR drafters not to minimize the connectivity value of the existing culverts under the

[1] On December 17, 2020, the Conservation Groups requested judicial notice of these photos in Los Angeles County Superior Court case *Center for Biological Diversity et al. v. County of Los Angeles et al*., Case No. 19STCP01610, and the County and developer submitted a brief opposing the request for judicial notice.

I-5, which are far from perfect but are the only available means for mountain lions to cross the I-5 in the area. Mr. Decruyenaere wrote that the EIR language prepared by the developer's consultant:

> unduly minimizes the value of compromised movement opportunities. Nowhere else in biological conservation would you want to argue that because a resource is rare it's less than valuable. The fact that the use of a highly constrained opportunity for movement between natural areas might be made more difficult should always be considered a potentially significant impact unless there simply aren't any wildlife around to use the crossing. If a movement opportunity lacks a vegetated approach or some other feature that would seem to make it work better, that doesn't mean it doesn't pose an opportunity for movement. It just suggests that an animal might be less inclined to use it in the imaginary scenario that they have a better alternative. **However, in the real world, and in the highly fragmented, difficult to navigate landscapes that wildlife are consigned to, compromised movement opportunities may be the only opportunities available.** Revise the discussion to acknowledge the value of the crossings and instead of devaluing them, talk about how the project might change the potential for their use.[2]

Mr. Decruyenaere also wrote that the developer's consultant relies "chiefly on the idea that existing crossing features are not ideal but [they] neglect[] to provide conclusions as to how overall wildlife movement on the site and through the crossing features may actually change with buildout of the project."[3]

The Mountain Lion Photos confirm that mountain lions are using the culverts adjacent to the Project site even if they could be enhanced to be more friendly for wildlife. If built as proposed, the Northlake Development would permanently block these crossings and further constrain the already-limited movement opportunities for mountain lions.

We are submitting this evidence to the Board so the County can prepare an EIR for the Project that accurately discloses the impacts of this Project on the Central Coast South mountain lions. With an accurate EIR the Board can determine whether to reconsider the Project or require mitigation measures or project modifications to ensure the Northlake Development does not harm these mountain lions.

***The County Must Prepare A Supplemental EIR for the Northlake Development***

Relevant authorities require preparation of a subsequent or supplemental EIR in these circumstances. The California Environmental Quality Act ("CEQA") states that a subsequent or supplemental EIR may be required when either (1) substantial changes occur with respect to the

[2] Mr. Decruyenaere's comments were attached to an email sent by County Planner Jodie Sackett on February 18, 2018 and are accessible in the administrative record ("AR") of the Los Angeles County Superior Court case *Center for Biological Diversity et al. v. County of Los Angeles et al*., Case No. 19STCP01610 at AR025874 (and Mr. Sackett's email is located at AR025825-26).
[3] Mr. Decruyenaere's comments are included in an email sent on February 12, 2018, and is available at AR025822-23.

circumstances under which the project is being undertaken which will require major revisions in the environmental impact report or (2) new information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available. (Pub. Res. Code § 21166.)

The Mountain Lion Photos qualify as either (or both) of these two categories. Mountain lions in the Project area are part of the Central Coast South population, which were granted "candidacy status" under the California Endangered Species Act ("CESA") in April 2020, such that they are afforded the same protections as other CESA-listed species. CEQA requires a "mandatory finding of significance" when a project has the potential to impact a CESA-listed species. (CEQA Guidelines § 15065(a)(1); *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 792 fn. 12.) And such a finding triggers a duty to consider and adopt all feasible alternatives or mitigation measures to reduce such impacts. (Pub. Res. Code § 21002.)

***We Urge The Board Not To Drive Struggling Mountain Lions Closer to Local Extinction***

Prior to the Board's approval of the Northlake Development last year, we submitted a letter to the Board on April 1, 2019 which included multiple peer-reviewed studies showing that Southern California's mountain lions are facing an extinction vortex due primarily to a loss of habitat connectivity. The Central Coast South population is particularly at risk with studies noting that a subset of the Central Coast South population in the Santa Monica mountains has "extremely low genetic diversity" while diversity of broader Central Coast South population is only "slightly higher."[4]

As currently proposed, the Northlake Development would permanently block connectivity over a significant portion of the Sierra Madre-Castaic Connection, which is a linkage critical to the survival of the Central Coast South mountain lions. Numerous expert agencies including the Santa Monica Mountains Conservancy ("SMMC") and California Department of Fish and Wildlife have raised serious concerns about the Northlake Development's permanent impacts on wildlife connectivity, with SMMC even filing an administrative appeal asking the Board to reconsider the Planning Commission's approval of the Project.

[4] Gustafson KD, Gagne RB, Vickers TW, Riley SPD, Wilmers CC, Bleich VC, Pierce BM, Kenyon M, Drazenovich TL, Sikich JA, Boyce WM, Ernest HB (2018) Genetic source–sink dynamics among naturally structured and anthropogenically fragmented puma populations. Conserv Genet 1–13 . doi: 10.1007/s10592-018-1125-0

Ensuring regional wildlife connectivity and protecting local mountain lions will require cooperation from conservation groups and state and local officials. We ask the Board to be part of the solution – and not part of the problem – by re-assessing the impacts of this development proposal.

Sincerely,

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**Declaration of Chad Christensen**

I, Chad Christensen, hereby declare as follows:

1. The facts set forth in this declaration are based on my personal knowledge. If called as a witness, I could and would testify competently to these facts. As to those matters which reflect an opinion, they reflect my personal opinion and judgment on the matter.

2. I am the Deputy Chief of Natural Resources and Planning for the Mountains Recreation and Conservation Authority (MRCA) and have been in this position since April 2020. Previously I was a Project Analyst hired in February 2017.

3. Attached are true and correct copies of photos taken on November 5, 2020 approximately between 2:49 a.m. and 2:59 a.m. of a mountain lion crossing from the east side of the southbound direction of the separated I-5 freeway from Grasshopper Canyon and westerly into the Marple Canyon. The single-lane box culvert for the Marple Canyon access road that crosses under this southbound section of I-5 is identified as "Tunnel 2" and "Underpass 2" in Santa Monica Mountains Conservancy's April 17, 2018 letter on the Northlake Project (AR010051-59). Underpass 2 is one of two freeway crossing structures along a ten-mile section of I-5 between Templin Highway and Castaic Creek. The MRCA owns 245 acres of Marple Canyon west of Underpass 2 between the separated north-/southbound sections of I-5 and six acres east of Underpass 2 that connect with Grasshopper Canyon.

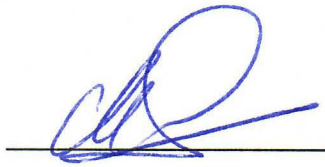
4. These photos were taken by a wildlife camera that I placed on MRCA conservation lands on June 9, 2020 in my official capacity as Deputy Chief of Natural Resources and Planning and as Project Manager for the MRCA's Marple Canyon I-5 Wildlife Crossing Enhancement Project (Project).

5. The Project was awarded Wildlife Conservation Board (WCB) funding in 2020 to enhance 2.75 acres of habitat on the west and east approaches to Underpass 2 in order to promote wildlife movement between Marple and Grasshopper Canyons. On March 27, 2020, I received a Caltrans Encroachment Permit No. 07-20-N-SV-0894 to install the wildlife cameras within the freeway right-of-way as an MRCA in-kind contribution towards the Project. The

Project Area and Underpass 2 are part of the South Coast Wildland's *Castaic – Sierra Madre Connection.*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 15th of December 2020,



Chad Christensen

Ventura, California


28.32 inHg - 68°F 11/05/2020 02:49AM MARPLE1


28.32 inHg - 68°F 11/05/2020 02:49AM MARPLE1


28.32 inHg - 68°F 11/05/2020 02:49AM MARPLE1


28.38 inHg - 73°F 11/05/2020 02:59AM MARPLE2


28.38 inHg - 73°F 11/05/2020 02:59AM MARPLE2


28.38 inHg - 73°F 11/05/2020 02:59AM MARPLE2

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# Exhibit 2

## 10. Restrictive Covenants to Guarantee Protected Tree Offsets/Mitigation

*In order to ensure the success of trees planted or transplanted as offsets for impacts, and that any future landowners are notified about requirements for protection and maintenance of these trees, a restrictive covenant must be recorded. The following language must be included in Tree Protection Plans (TPP).*

If protected trees are damaged and require offsets/mitigation and planting new trees onsite is the approved offset/mitigation measure, the Permittee shall record against the parcel(s) governed by this permit a restrictive covenant indicating that the Planning Division has authorized development on the subject property subject to terms and conditions that restrict the use of that property.

The restrictive covenant shall be recorded by the Permittee on a form provided by the Planning Division and shall conform to the requirements outlined in the County's *Content Requirements for Tree Protection Plans* document. The restrictive covenant shall include the planting instructions and performance targets required by the TPP for tree replacement planting and shall be imposed as covenants and restrictions on the use of the property. The term of the restriction shall be (5 or 7) years as indicated in the TPP. The restrictive covenant shall include a legal description of the parcel(s) governed by this permit. In addition, the restrictive covenant shall:

a) Prohibit removal or transplanting of replacement or transplanted trees without a permit modification;

b) Restrict activities within the tree protection zone of replacement or transplanted trees;

c) Require appropriate care of replacement or transplanted trees;

d) Commit any future landowners to the tree protection conditions of this permit, including posting of financial assurances, tree monitoring and reporting; and

e) Designate the County of Ventura as a beneficiary of the restrictive covenant in order to allow court action by the County if necessary.

## 11. Attachments

**Arborist Report**. The Arborist Report submitted with the project's application should be included as an attachment.

**Tree Appraisals**. If tree appraisals were not included in the Arborist Report and are needed for offsets, they must be included in the TPP. Appraisals must be done of all trees that require tree protection fencing, on those that will be felled and offset by replacement trees, and on all trees that will be transplanted as offsets. Appraisals shall be done using the most current edition of the Guide for Plant Appraisal (as it applies to Ventura County), published by the Council of Tree and Landscape Appraisers.