THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA
SAN DIEGO CHAPTER, INC.
[redacted]

Meeting Date: September 10, 2025
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September 9, 2025

San Diego County Board of Supervisors
1600 Pacific Highway, Room 335
San Diego, CA 92101

Re: Support for the Appeal of the Cottonwood Sand Mining Project, Agenda Item #6

Dear Supervisors:

On behalf of the 900 member companies of the Associated General Contractors, San Diego Chapter (AGC San Diego), I write to express our support for the appeal of the proposed Cottonwood Sand Mining Project (project).

AGC San Diego represents general contractors, subcontractors, suppliers, engineers, and others who support the construction industry. Our members have been building San Diego for a century. AGC San Diego has a standing position to educate decision makers about the aggregate shortage and support industry and local entities' efforts to expand aggregate production sites in the region.

This project represents a vital opportunity to secure a high-quality, construction-grade resource that our region urgently needs. This site is projected to supply up to 25% of the region's aggregate needs, helping to stabilize costs and improve supply chain certainty for public and private construction projects. Local projects significantly reduce the need for long-distance hauling, cutting down on emissions, vehicle miles traveled, and traffic impacts. Cottonwood's output will directly support housing, transportation, utility, and commercial development — all of which rely on timely, cost-effective access to quality materials. Additionally, this project is conditioned through a Major Use Permit, phasing, and reclamation plans to ensure responsible operations and would be subject to strict environmental oversight by numerous local and state agencies.

We urge your careful consideration and respectfully request your support of this important regional project.

Sincerely,

Dustin M. Steiner
Vice President, Government and Industry Relations
AGC San Diego

SHUTE, MIHALY & WEINBERGER LLP

[redacted]

KEVIN P. BUNDY
Attorney
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September 9, 2025

Via Electronic Mail

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Re: Appeal of Planning Commission Disapproval of Cottonwood Sand Mine (September 10, 2025 Land Use Agenda Item No. 6; File No. 25-457)

Dear Chair Lawson-Remer and Members of the Board:

This firm represents Sierra Club in connection with the proposed Cottonwood Sand Mine project (the "Project"). Cottonwood Cajon ES LLC (the "Applicant") has appealed the Planning Commission's denial of a Major Use Permit and Reclamation Plan for the Project. The Board of Supervisors ("the Board") should deny the appeal, as recommended by Planning staff and the Valle De Oro Community Planning Group, among others.[1] For the reasons stated in the Board Letter, Planning Commission Hearing

[1] Letter from Dahvia Lynch, Deputy Chief Administrative Officer, to Board of Supervisors, Re: Appeal of the Cottonwood Sand Mine Major Use Permit, Reclamation Plan, and Associated CEQA Determination (Sept. 10, 2025) ("Board Letter") at 2-4, 8-9. The Valle De Oro, Spring Valley and Jamul Community Planning Groups, and the Board of Directors of the San Miguel Consolidated Fire Protection District, also expressed opposition to the project in written comments provided during the public comment periods of the draft EIR and draft Recirculated EIR. Board Letter at 4, 6.

Report,[2] Sierra Club's June 11, 2025 comments to the Planning Commission,[3] and elsewhere in the record, the Board cannot make the findings that the Zoning Ordinance requires for approval.

This letter primarily responds to the Applicant's assertions that the Board cannot make findings of denial for the Project based on the Planning Commission Hearing Report, evidence submitted by the public, and environmental impacts considered in the Final Environmental Impact Report ("FEIR").[4] As discussed below, the Applicant is incorrect. Moreover, as addressed in prior letters from Sierra Club and others, the FEIR fails to comply with the California Environmental Quality Act ("CEQA") and would be inadequate to support Project approval even if the Zoning Ordinance's findings could be made.

I. Zoning Ordinance Background

The Board's review on appeal is de novo regardless of whether a majority of the Planning Commission voted to deny the Project. (Zoning Ordinance § 7366(h) ["The public hearing shall be a hearing de novo and all interested persons may appear and present evidence."].)

In order to grant the appeal and approve the Major Use Permit for the Project, the Board must (among other things) make a specific finding that "the location, size, design, and operating characteristics of the proposed use will be compatible with adjacent uses, residents, buildings, or structures." (Zoning Ordinance § 7358(a).) In making that finding, consideration must be given to several factors, including "[t]he harmful effect, if any, upon desirable neighborhood character," "[t]he suitability of the site for the type and intensity of use or development which is proposed," and "[a]ny other relevant impact of

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[2] Planning Commission Hearing Report (July 9, 2025), available at https://www.sandiegocounty.gov/content/dam/sdc/pds/PC/07092025-supporting-documentation/Item%203%20-%20Cottonwood.pdf (accessed Sept. 2, 2025).

[3] Letter from Catherine Engberg, Shute Mihaly &Weinberger LLP, to Christopher Jacobs, San Diego County Planning and Development Services, Re: Cottonwood Sand Mining Project (June 11, 2025) ("June 11 Letter"). The June 11 Letter and Sierra Club's prior correspondence to the County regarding this Project (including but not limited to comment letters from this firm dated September 1, 2023, August 19, 2023, and February 28, 2022) are hereby incorporated by reference.

[4] Sierra Club reserves the right to submit additional written and/or verbal comments prior to the close of the Board's public hearing on the appeal.

the proposed use." (*Id.*, § 7358(a)(3), (5), (6).) The Board also must find that the "impacts" and "location" of the proposed use will be consistent with the General Plan and that "the requirements of the California Environmental Quality Act have been complied with." (*Id.*, § 7358(b), (c).)

II. The Board may rely on impacts disclosed in the FEIR to deny the project.

The Planning Commission Hearing Report cited several community and environmental impacts as the basis for its conclusion that the findings in Zoning Ordinance section 7358(a)(3) and (5) could not be met. In particular, the report concluded that the Project "will have a harmful effect upon desirable neighborhood character because it will add haul trucks on the roads, increase potential sources of noise, change the way the site looks for residents and visitors, and create a nuisance from dust."[5] The report further found the Project site unsuitable "due to its location within a suburban setting . . . in a river valley near a variety of existing residences, schools, a health care facility (now closed), and open space"; as a result, the "proposed mining operation will introduce trucks, noise, dust pollution and heavy machinery into an established neighborhood."[6] The Hearing Report supported each of these conclusions with specific facts and analysis. The Board Letter similarly supports its recommendation of denial with citations to factual evidence in the record and reasoned conclusions.[7]

The Applicant contends that there is no substantial evidence to support denial of the Project because the Final EIR found some of the environmental and community impacts discussed in the Hearing Report less than significant under CEQA.[8] The Applicant is wrong on the law and the facts.[9]

The Court of Appeal in *Dore v. County of Ventura* (1994) 23 Cal.App.4th 320, rejected an almost identical argument, holding that an EIR's conclusions regarding the insignificance of environmental impacts "do[] not and should not resolve the question whether a permit application should be approved" based on findings required by a zoning

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[5] Planning Commission Hearing Report at 15.
[6] *Id.* at 18.
[7] Board Letter at 8-14.
[8] Cottonwood Sand Mind [*sic*] Project Appeal; Appeal Justification at 7-9 (Attachment B to Appeal Application Received July 21, 2025) ("Appeal Justification").
[9] The Applicant largely ignores that the Final EIR found the Project's aesthetic impacts would remain significant and unavoidable even after mitigation. Planning Commission Hearing Report at 2.

ordinance. (*Id.* at 329.) The court observed that zoning ordinances often call upon planning commissions and boards of supervisors "to determine 'the suitability of the project within the affected neighborhood.'" (*Ibid.*, quoting *Guinnane v. San Francisco City Planning Com.* (1989) 209 Cal.App.3d 732, 742-43.) Regardless of the conclusions in the CEQA document, the court concluded that"[f]indings which relate to private community concerns such as traffic, parking and visual impact are ones which fall within the domain of public interest and welfare which are among the standards set forth in the [zoning] ordinance." (*Dore*, 23 Cal.App.4th at 329.) The *Guinnane* decision cited in *Dore* reached the same conclusion regarding a negative declaration's conclusions regarding the significance of impacts. The EIR's conclusions regarding the significance of Project impacts are not determinative of the Board's findings under the zoning ordinance.

III. Even if the Project were consistent with land use regulations, the Board would still have discretion to deny it.

The Applicant also argues that the Project is consistent with the General Plan and zoning ordinance and therefore cannot be found unsuitable for the location.[10] As stated in the June 11 Letter and other communications, Sierra Club disagrees that the Project is consistent with local land use requirements. But even if the Project were consistent with the General Plan and zoning regulations, the Zoning Ordinance preserves the Board's discretion to deny it.

Where a use is permitted under local general plan and zoning regulations, but subject to local development review, "the local agency has the power to determine that a particular development is not suitable for a particular location and to deny an application on such basis." 1 Longtin's California Land Use § 3.25[2], p. 270. "The fact that the site in question is in a zone where a [use] *may* be lawfully maintained does not diminish the [local government's] power to determine that a particular development is not suitable for that location." *Wesley Inv. Co. v. County of Alameda* (1984) 151 Cal.App.3d 672, 678 (italics in original). The *Dore* court put it even more bluntly: "[c]ompliance with zoning laws does not necessarily entitle one to a permit." (*Dore*, 23 Cal.App.4th at 328.) Rather, where (as here) an ordinance vests a decision-making body with authority to make discretionary findings, that body "is entitled to consider subjective matters such as the spiritual, physical, aesthetic and monetary effect the project may have on the surrounding neighborhood." (*Id.* at 328-29; *see also Guinnane*, 209 Cal.App.3d at 737-42.)

[10] *Id.* at 8.

IV. The Planning Commission Hearing Report, the Board Letter, and public comments provide sufficient substantial evidence to support denial.

Finally, the Applicant argues that the Planning Commission Hearing Report's conclusions, including those based on evidence submitted by the public, cannot provide substantial evidence in support of findings of denial.[11] Again, the Applicant is wrong.

Citations to and incorporation by reference of factual findings in a staff report are sufficient to support findings of denial. (*Dore*, 23 Cal.App.4th at 328.) Moreover, public comments can provide substantial evidence basis to support findings of denial. (*Id.* at 330; see also *Breneric Associates v. City of Del Mar* (1998) 69 Cal.App.4th 166, 176-77 [noting that because a determination of "incompatibility with the neighborhood does not require expert testimony[,] the opinions and objections of neighbors can provide substantial evidence to support rejection of a proposed development"]; *Ideal Boat & Camper Storage v. County of Alameda* (2012) 208 Cal.App.4th 301, 319-20 [holding county properly relied on public testimony in finding conflict between proposed project and initiative measure]; *Linborg-Dahl Investors, Inc. v. City of Garden Grove* (1986) 179 Cal.App.3d 956, 962 [holding city council "properly relied on evidence generated by public testimony" in evaluating site plan review]; *Wesley*, 151 Cal.App.3d at 679 [holding county did not abuse its discretion by crediting public testimony that proposed convenience store was inconsistent with "orderly, attractive, and harmonious development"].)

Here, factual findings in the Planning Commission Hearing Report, the Board Letter, and public comments regarding the Project's incompatibility with surrounding uses amply support a decision to deny the Project based on the Board's inability to make the findings in Zoning Ordinance section 7358(a)(3) and (5). Moreover, as outlined in Sierra Club's June 11 Letter and other communications, the Board also should deny the Project based on an inability to make the findings in Zoning Ordinance section 7358(a)(6), (b), and (c).

[11] Appeal Justification at 8. The Applicant claims "case law is clear" on this point, but cites none. As discussed herein, the case law is "clear"—but it is directly contrary to the Applicant's arguments.

V. The EIR for the Project violates the California Environmental Quality Act.

The EIR prepared for the Project violates CEQA, for all the reasons set forth in our prior comments,[12] and therefore does not provide an adequate legal basis for project approval. The County received copious comments on the DEIR and RDEIR for this Project from resource agencies, community members, and technical experts enumerating the EIR's flaws. The EIR's analysis understates the severity of the potential harm to area residents and the environment, fails to acknowledge the Project's inconsistency with the County's General Plan, the Valle De Oro Community Plan, and County's Multiple Species Conservation Program, and neglects to identify sufficient mitigation to minimize the project's impacts. The Final EIR for the Project fails to correct the EIR's flaws and remains inadequate. Consequently, in addition to the County's inability to make Findings 3 and 5 (as discussed in the Board Letter), the County also cannot make the findings required by Zoning Ordinance § 7358(b) and (c) regarding consistency with the County's General Plan and with CEQA).[13]

For all of the foregoing reasons, Sierra Club supports staff's recommendation to deny the Project.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

Kevin P. Bundy
Carmen J. Borg, AICP, Urban Planner

cc: Andrew Potter, Clerk of the Board (via e-mail: Andrew.Potter@sdcounty.ca.gov)
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[12] See note 3, *supra*.
[13] Sierra Club June 11 Letter at 4-5.