



November 7, 2022

Mr. Robert Salisbury
Senior Planner
Santa Clara County
Department of Planning & Development
70 W Hedding Street
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San Jose, CA 95110
sgtquarry.comments@pln.sccgov.org

Re: Sargent Ranch Quarry Draft Environmental Impact Report
SCH # 2016072058

Dear Mr. Salisbury:

This letter represents the comments of Green Foothills regarding the Draft Environmental Impact Report (DEIR) for the above-referenced project. Green Foothills works to protect open space, farmland and natural resources for the benefit of all in San Mateo and Santa Clara Counties through advocacy, education and grassroots action.

These comments provide highlights of some of our concerns with the DEIR. We have also joined with the Amah Mutsun Tribal Band in more extensive comments submitted by the law firm of Shute, Mihaly and Weinberger. These comments are not intended to be comprehensive and they do not sum up the whole of our concerns with the DEIR.

Project Description

The DEIR's Project Description states that a rail spur will be constructed to connect to the existing Union Pacific rail line adjacent to the processing plant, and states that the quarry will contract with Union Pacific or one of its subcontractors to provide freight cars and locomotives for this purpose. DEIR at 2-28. The DEIR does not state whether an agreement has been reached with Union Pacific to provide this service. If Union Pacific has not agreed to the connection of a private rail spur with its existing rail line, and to provide the necessary service for the quarry to take advantage of the rail transport option, then the use of the rail spur to transport quarried material is speculative. Should the project applicant, or some future owner/operator of the quarry, be unable to reach agreement with Union Pacific, that would have significant effects on the conclusions in the Air Quality, Greenhouse Gas Emissions, and Transportation chapters of the DEIR. This fact needs to be recognized in the DEIR, especially in the assessment of whether the mitigation measures proposed for the relevant chapters are adequate.

Aesthetics

As stated in the DEIR, Highway 101 adjacent to the Project site is a County-designated scenic highway. Currently, views of the Project site from this scenic highway include grassy, oak-dotted hillsides and tall trees growing along the Tar Creek riparian corridor. The Project would alter these views by creating a giant quarry pit in the hillsides (Phases 1 and 2) and a massive pile of overburden (the screening berm) next to Highway 101 to block the processing plant.

Although the screening berm is considered a mitigation measure, it would itself create a negative visual impact for many months at least. The DEIR passes over this, stating merely that “[w]ithin a season, the berm would be vegetated and within 1 year it would look similar to the surrounding hillsides, which contain mostly annual grasses. In the longer term, trees planted along the screening berm would grow, blending the view of the screening berm in with the surrounding landscape.” DEIR at 3.2-23. The DEIR thus fails to acknowledge the impact to scenic resources created by the months during which motorists along Highway 101’s scenic corridor will be treated to a several-hundred-foot-long wall of gravel, rather than to views of the hillsides. Additionally, a pile of gravel with grass growing on it does not look like a grassy hillside – especially at the close range from which motorists will be viewing the screening berm. It will take several years at least before the screening berm begins to “look similar” to the surrounding hillsides. The significant visual impacts created by the screening berm must be identified as such in the DEIR.

A side issue is that the screening berm does not seem to appear on any of the maps or figures in the DEIR. Based on the verbal description of the location of the screening berm, as well as the photosimulations in Chapter 3.2, the screening berm would appear to be the feature labeled “Phase 1 Topsoil Stockpile A” on Figure 2-5b and “Topsoil Stockpile Area” on Figure 2-15. If so, Figures 2-5b and 2-15 are inaccurate and should be amended to correctly label the structure at issue as “Screening Berm,” and the correct location for the topsoil stockpile should be identified on all maps and figures.

Mitigation Measure 3.2-1 states “The screening berm shall either be extended around the northern portion of the processing plant, or fencing and vegetation shall be used to further screen views of the processing plant from southbound traffic on U.S. 101.” The DEIR does not state how wide the screening berm is at its base, but since it is 40 feet tall and constructed from overburden, it must be well over 100 feet wide at the base, and more likely in the neighborhood of 200 feet wide. The Santa Clara County General Plan requires a setback of at least 150 feet from the banks of Tar Creek for all development, as is recognized in the DEIR (DEIR at 3.4-114). According to Figure 2.5a, the northern edge of the processing plant is only 150 feet from the creek, leaving no room (as the project is currently designed) for the screening berm. Therefore, Mitigation Measure 3.2-1 should state that if the screening berm is extended around the northern portion of the processing plant, the outside edge of the base of the screening berm must be located at least 150 feet from the riparian edge of Tar Creek, and that the footprint of the processing plant will either be reduced in size accordingly, or will be shifted further south.

Biological Resources

1. Inadequacy of off-site compensatory mitigation

The DEIR relies greatly upon off-site compensatory mitigation, whereby habitat areas outside of the Project site are set aside for preservation and management for the benefit of impacted species. Specifically, Mitigation Measures 3.4-1a (for special-status plant species), 3.4-4c (for California red-legged frog), 3.4-5b (for California tiger salamander), 3.4-6 (for western pond turtle), and 3.4-8b (for tricolored blackbird), all rely on off-site compensatory mitigation, and the DEIR mentions that this compensatory mitigation will also benefit numerous other species known to be present on the Project site, including burrowing owl, several different special-status bird species, western red bat, pallid bat, dusky-footed woodrat, mountain lion, and American badger. This reliance upon off-site compensatory mitigation is problematic in several respects.

First, preservation of land alone is not adequate mitigation, considering that the remainder of the Sargent Ranch property (where such mitigation will almost certainly take place) is highly unlikely to ever be developed, given its remoteness and the restrictive County land use policies. In such a situation, a commitment to “preserve” this land for mitigation is not so much a commitment as an acceptance of reality.

In some cases, active habitat management on protected land may adequately mitigate for impacts from the Project. However, the DEIR does not describe with sufficient specificity what management methods will be implemented in order to benefit species such as tricolored blackbird. Mitigation Measure 3.4-8b (for tricolored blackbird) merely states that “[c]ompensatory mitigation will be provided in the form of habitat preservation or creation at a ratio of 1:1 (on an acreage basis) and shall be described within the Project’s HMMP prepared for the CRLF and CTS as described in Mitigation Measures 3.4-4c and 3.4-5b.” DEIR at 3.4-84. This is an impermissible deferral of mitigation to after Project approval. Merely stating that management will be done and that a plan will be created to describe this management is not sufficient when the DEIR provides no information on whether such management is even feasible on the proposed off-site mitigation lands.

Furthermore, as stated above, the DEIR states that the same management activities undertaken to benefit California red-legged frog and California tiger salamander will somehow also benefit numerous other species, including burrowing owl, several different special-status bird species, western red bat, pallid bat, dusky-footed woodrat, mountain lion, and American badger. Given that the DEIR’s recommended management of habitat for CRLF involves actions concentrated on small sites (e.g. eradication of bullfrog from ponds), it is hard to see how this will in any way mitigate impacts to mountain lion or badger. This serves to underline the vagueness of this proposed type of mitigation, where

unspecified “management” is expected to somehow benefit over a dozen extremely diverse species of plants and animals.

The DEIR should be revised to provide specific details on the management techniques expected to provide benefit to the various species at issue.

Finally, where off-site compensatory mitigation is provided for loss of habitat, such mitigation needs to be at a sufficient ratio. For example, Mitigation Measure 3.4-14a (regarding loss of wetlands) only calls for a 1:1 mitigation ratio. By contrast, the Santa Clara Valley Habitat Conservation Plan (VHP) requires 2:1 mitigation for loss of wetlands. (See Table 5-12 in Chapter 5 of the VHP.) Although the Project is not a covered project under the VHP, the DEIR nevertheless relies on the VHP’s beneficial actions to mitigate cumulative impacts to wildlife. DEIR 3.4-122 and 123. If the DEIR is attempting to piggyback the Project, which is not required to pay fees under the VHP, onto the restoration provided by fees paid in from other projects, the very least that should be expected is that the Project will comply with the mitigation ratios required under the VHP.

2. Tar Creek underpass

One of the most glaring omissions in the Biological Resources section of the DEIR is with regard to impacts to wildlife movement. Although the DEIR concludes that the Project would create a significant and unavoidable impact to wildlife movement, it bases this on the proximity of the processing plant to the Tar Creek underpass, while neglecting to recognize the impact of 167 new vehicle trips per day (almost entirely heavy trucks) driving through the Tar Creek underpass, alongside Tar Creek. The DEIR notes that 167 vehicle trips per day amounts to an average of one vehicle every 4.5 minutes. DEIR at 3.4-107. Considering that the existing baseline situation at the Tar Creek underpass consists of an almost complete lack of vehicle traffic, one vehicle every 4.5 minutes is a massive increase, and would be a huge deterrent to animal movement through this underpass.

The DEIR also ignores the importance of the entire Tar Creek riparian corridor as a wildlife movement pathway. Animals utilize creek and river corridors for movement by preference over open grassland, since they both offer better cover and provide much greater opportunity for most animals to find food. Thus, both locating a noisy, busy processing plant right next to Tar Creek, and turning the now-deserted road under Highway 101 adjacent to Tar Creek into a highly trafficked vehicle route, will have a major impact on the viability of that section of Tar Creek as a habitat area and movement pathway.

3. Conveyor belt

The DEIR also fails to adequately mitigate for impacts from the 1.6-mile-long conveyor belt from the Phase 3 and 4 mining pits to the processing plant. This conveyor belt would be four feet wide and its height would vary from between 3 to 5 feet off the ground, with supports every 10 to 20 feet. (As a side

note, the DEIR states that the conveyor belt's alignment would generally follow the east side of the western ridge of the Sargent Valley; however, according to the maps in the DEIR, it would actually follow the west side of the eastern ridge, assuming that the valley formed by Sargent Creek is what is meant by "Sargent Valley." This error was also noted in H.T. Harvey's peer review of the Live Oak Associates biotic evaluation [Appendix E.2, p. 2].)

The DEIR states that "[t]he conveyor belt's height of 3 to 5 feet, combined with a width of 4 feet, would allow most animals, and even larger mammals such as coyotes and mountain lions, to readily pass underneath the structure." DEIR at 3.4-108. This claim is not supported by any evidence cited in the DEIR. Simply because animals are physically capable of crawling underneath a conveyor belt does not mean that there would be no deterrent effect on animal movement. If there are any studies showing that wildlife movement is not constrained or restricted by the presence of conveyor belts at this height off the ground and extending for this length, that should be cited in the DEIR; if not, the DEIR should not assume that the conveyor belt will not have a deterrent effect to wildlife movement.

4. Lighting

The DEIR states that "[s]ome permanent nighttime lighting would remain on at the [processing] plant throughout the night, though this lighting would be the minimum necessary for site security." DEIR at 3.4-110. Permanent nighttime lighting that will be illuminated all night long is a serious environmental impact for wildlife, all the more so since this lighting would be located at the processing plant, immediately adjacent to the Tar Creek undercrossing. Assurances that the lighting would be "the minimum necessary for site security" are worth little without concrete standards embodied in enforceable mitigation measures. The County's standards for lighting should not be relied upon, as they are based on potential impacts to neighboring land uses, not to wildlife movement. Furthermore, it is not clear that permanent nighttime lighting is necessary at all for site security. The Project is located in a remote area. Is there a concern that criminal activity would take place at the processing plant if there were no permanent lighting? Is trespassing a concern, so far away from any residences or businesses?

The DEIR should require the quarry to turn off all lighting when no personnel are on site, and impose strict restrictions on the type and intensity of lights that can be installed at the processing plant to begin with. At a site that is so important for wildlife movement, it is critical that stringent standards for lighting be required. At minimum, all outdoor lighting on the Project site should be kept to a Correlated Color Temperature (CCT) of 2700 Kelvin or less.

5. Fencing

Mitigation Measure 3.4-15 includes requirements for fencing to facilitate wildlife movement, including the use of barbed wire fencing. DEIR at 3.4-112. Barbed wire fencing should not be used anywhere on the Project site, as it has been known to cause serious injury to wildlife. For example, deer attempting to

jump over barbed wire fencing may get their legs entangled in the wires and become trapped. This mitigation measure should be revised to prohibit the use of barbed wire fencing on the Project site. Additionally, fencing in areas that would not be hazardous for animals to traverse is an unnecessary impediment to wildlife movement. The DEIR should include provisions for safe exclusionary fencing for areas on the Project site that would be hazardous for animals, and for wildlife-friendly fencing on all other areas so that animals may safely traverse these areas.

Greenhouse Gas Emissions

1. Failure to consider off-site emissions from construction resulting from the Project.

In its list of emission sources (DEIR at 3.8-8) the DEIR fails to analyze offsite greenhouse gas emissions induced by the addition of what is purported to be an “economically valuable” aggregate, a “major component of construction materials” (DEIR at 2-2) to be provided at a price that is “economically feasible” (DEIR at 2-7) for the market. If the Project succeeds in its objectives making construction even marginally more efficient, one would expect more construction to occur. The DEIR fails to acknowledge, calculate, or mitigate this impact. At a minimum, all the emissions associated with the construction of asphalt and concrete made from the aggregate should be calculated.

2. Emissions as a result of degraded land’s ability to sequester carbon.

The DEIR’s list of emission sources in Section 3.8 fails to identify the loss of ability to sequester carbon as a source of emissions. The currently productive habitat to be converted into a sand mine will not be sequestering carbon underground during the entire period of the mine’s existence, and reclamation is unlikely to build it back up to the biotic richness and sequestration capability that existed beforehand. Increased sedimentation in associated streams will also impair their ability to function effectively as carbon sequestration sinks. These emission sources should be included.

3. Embedded emissions from equipment.

The DEIR’s list of emission sources underestimates the significant impact of greenhouse gas emissions because it fails to include the embedded emissions - the production emissions - of the equipment used in whole or in part at the Project, including the pro-rata portion of the lifetime use of vehicles used to travel to and from the Project site. These production/embedded emissions are considerable and quantifiable. As a significant impact, the DEIR is required to accurately quantify this impact and it has failed to do so. For more information, see “Carbon Footprint of Construction Equipment” by Climate Neutral Group (attached as Attachment A). In addition to construction equipment, the various heavy and light vehicles used to haul aggregate should have a proportion of their production emissions allocated to the project in accordance with the percentage of their overall mileage that is spent traveling to and from the Project site, and the failure to do so results in an underestimation of this significant impact.

4. Mitigation Measure 3.8-1b: replacement with electric vehicles.

Replacement of onsite diesel and gas-engine equipment with electric equipment (or other low emission replacement) is a feasible and therefore obligatory method to partly mitigate significant greenhouse gas emissions, but MM 3.8-1b (DEIR at 3.8-12) fails to apply it adequately. Replacement of diesel and gas equipment is supposedly required when “feasible, based on availability of the technology and whether the cost would be prohibitive.” Ibid. By failing to define the terms “availability of the technology” and “whether the cost would be prohibitive,” the mitigation measure is stripped of its meaning. If for example a replacement piece of equipment costs no more than one third more than the equipment it is replacing, then that replacement equipment is not cost-prohibitive and its availability for sale proves the availability of the technology. The failure to be specific renders inadequate this required mitigation measure. For the exact same reason, MM 3.8-1b is also inadequately specific about replacing diesel with biodiesel and renewable diesel. Finally, the mitigation measure fails to mention blending biodiesel and renewable diesel with petroleum diesel, another feasible mitigation that could reduce costs and work as a step towards full replacement.

Alternatives Analysis

The DEIR’s alternatives analysis states that Alternatives 2 and 3 would still include a rail spur “to partially offset the use of haul trucks . . .” DEIR at 4-11. However, under the Project, the processing plant is located right next to the existing Union Pacific rail line. Under Alternatives 2 and 3, the processing plant would be moved approximately 1 mile north, to an area that is nowhere near the UP rail line. This raises numerous questions that the DEIR does not answer, including:

- If Alternatives 2 and 3 would include a rail spur running from the same point on the existing Union Pacific rail line to the relocated processing plant, what would be the exact alignment of the rail spur? The rail spur is not shown on the errata sheet published by the County that provides Figures 4-1 and 4-2. These figures should be revised to show the alignment of the rail spur.
- What would be the impacts of this 1-mile-long rail spur? The spur would need to cross Tar Creek in order to reach the relocated processing plant. What construction impacts would there be from a rail bridge crossing the creek?
- If a 1-mile-long rail spur is not intended to be part of the design of Alternatives 2 and 3, presumably the number of truck trips would increase significantly. What would be the increased impacts to air quality, greenhouse gases, and transportation?

Finally, in light of the project applicant’s public statements indicating a preference for Alternative 3 instead of the Project, it must be noted that the County cannot legally approve Alternatives 2 or 3 based on this DEIR. All of the technical studies upon which the DEIR is based are limited to the footprint of the Project site, which is clearly delineated in the DEIR’s maps and figures, and does not include the site of



the relocated processing plant. This is not something that can be cured merely by redrawing the outline of the Project footprint on these maps. If the applicant is serious in wishing to pursue Alternative 3, the DEIR must be revised based on updated technical studies that include analysis of the new footprint, and recirculated for public comment.

Thank you for the opportunity to submit these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Alice Kaufman".

Alice Kaufman
Policy and Advocacy Director, Green Foothills

A handwritten signature in black ink, appearing to read "Brian Schmidt".

Brian Schmidt
Policy and Advocacy Director, Green Foothills

