



# SIERRA CLUB

LOMA PRIETA CHAPTER

SAN MATEO, SANTA CLARA & SAN BENITO COUNTIES

November 7, 2022

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**Re: Sargent Ranch Quarry, Environmental Impact Report, SCH # 2016072058**

Dear Mr. Salisbury,

The Sierra Club Loma Prieta Chapter is writing to submit comments on the draft Environmental Impact Report for the proposed Sargent Ranch Quarry Project. The Sierra Club Loma Prieta Chapter is an environmental organization that works to protect natural resources and healthy communities and promotes the enjoyment of nature.

We have serious concerns regarding the proposed project's significant and unavoidable impacts on cultural and biological resources.

Our specific concerns are as follows. Each section concludes with mitigation.

Section I: a. Air pollution:

The EIR acknowledges that the project will worsen air quality for sensitive receptors due to the emissions and the diesel traffic. However air quality impacts should be considered in terms of cumulative emissions. Lower income workers in Santa Clara County are displaced by rising rents into San Benito County and commute back on 101 to their jobs. The distance from place of work means add prohibitive costs in futures, time and money added to their commute. As the EIR points out this commute impact on San Benito County residents is worsened by the prevailing wind pattern- a northwesterly air flow frequently transports pollutants into the San Benito Valley from the Santa Clara Valley- page 4.3-1. Air flow brings pollutants from as far away as China to the Western US. The dEIR is deficient by not accounting for Highway 101's pollutants which should be cumulative with the mine's operating pollutants on sensitive receptors.

b. No Transit: There is virtually no transit in San Benito County and southern Santa Clara County including the termination of Caltrain service. Thus air quality

impacts from highways like 101 will continue to impact San Benito County and south Santa Clara for generations. The dEIR is deficient by not accounting for Highway 101's increased pollutants due to deficient transit which should be cumulative with the mine's operating pollutants on sensitive receptors.

c. Pesticides: Pesticide use adds to cumulative impacts in the air and water basin because the dominant economic activity in South Santa Clara County and San Benito County is agriculture and agro tourism according to Wikipedia and county reports.<sup>1</sup> UCLA reported<sup>2</sup> that California counties with a majority Latinx population use 906% more pesticides per square mile than counties with fewer than 24% Latinx residents. San Benito County is more than 60% Latinx according to most recent census. In the eleven counties with a majority Latinx population, there were 22 pounds of pesticides used per person in 2018, or 2,373 pounds per square mile. By contrast, for the 25 counties with the lowest proportion of Latinx residents (fewer than 24% like Santa Clara County), pesticide use was just 2.4 pounds per person, or 262 pounds per square mile. Cancer, ADHD, autism, birth defects learning disabilities are impacts that result for the unequal distribution of pesticides in the air and water basin in the two counties<sup>3</sup>. Children's lives are stolen and incidence of cancer and birth defects air common. The dEIR is deficient by not accounting for pesticides pollutants cumulative with the mine's operating pollutants on sensitive receptors.

d. Air pollution: especially diesel from the mine's operation even at low levels to the surrounding county harm health<sup>4</sup> according to the Harvard Medical School. "The burning of fossil fuels is a major contributor to climate change that occurs over years, but it has more immediate health effects. Research links increased levels of fine particles in the air that are tiny enough to be easily inhaled (called PM2.5) to more hospitalizations for heart disease, stroke, diabetes, and pneumonia." The additive effect of air pollution affects fetal development<sup>5</sup>.

e. Mitigation: As both studies say, within the home, air pollution from formaldehyde in carpets and burning gas from cooktops are also additive to health impacts. Mitigation of the mine's impact should involve upgrading homes with heat pump air conditioners, water heaters and induction cooktops to remove pollutants and air filters<sup>6</sup> for incoming air especially to address expanding heat and summer months when people tend to open windows. Further mitigation should involve replacing carpets and sealing windows and doors to prevent the flow of pollutants into the homes. **A**

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<sup>1</sup> <https://www.cosb.us/Home/ShowDocument?id=6203>

<sup>2</sup> <https://www.thecalifornian.com/story/news/2019/03/20/ucla-pesticides-study-finds-california-counties-not-doing-enough/3223011002/>

<sup>3</sup> <https://www.pesticidereform.org/pesticide-use-in-california-remains-at-record-high-new-data-show/>

<sup>4</sup> <https://www.health.harvard.edu/blog/even-low-level-air-pollution-may-harm-health-202202212692>

<sup>5</sup> <https://ndnr.com/womens-health/air-pollution-and-its-effect-on-fetal-development/>

<sup>6</sup> <https://loe.org/shows/segments.html?programID=22-P13-00044&segmentID=3>

**mitigation analysis for a reasonably derived cumulative impact boundary should be studied in redone dEIR.** For the Los Angeles airport expansion the Latino community around the airport were granted through the CEQA EIR process upgraded filters, triple pane windows and exterior door seals due to negative impacts of noise and air pollution<sup>7</sup>.

## Section II: Mining and restoration

a. Mines are notorious for avoiding cleanup by selling to smaller operators as NPR reported<sup>8</sup>. “By shedding those permits, more than it currently holds, the company also freed itself from the responsibility to clean up the mines.”

b. Mitigation: The mine should have to post a \$250M bond as feasible for future clean up, violations, and restoration of the site.

## Section III: Wildlife

a. Appendix C: General Plan Policies Consistency Analysis, Appendix E: Biological Resources

Appendix C notes that: “The project would not retain native plants as it would remove trees from the site... The plan encourages use of native species, but does not require them.” The 6300 acre Sargent Ranch study area contains nearly 350 native and non-native plant species, as noted in Appendix E (Biological Resources), but the last study date given for such plant species surveying was October 2016. Since that period, drought conditions in the area have intensified; given shifting regional weather patterns and the time elapsed, an updated survey of the involved vascular plant species is appropriate.

The proposed quarry project is inconsistent with the Santa Clara County General Plan Policies, as noted in Appendix C, p. 8: “...the project has a significant and unavoidable impact on wildlife migration. Project operations would interfere substantially with wildlife movement. Given the location of the Project site, in an area where movement of animals in multiple directions and among multiple populations is very important, a reduction in the frequency of successful crossings over a 30 to 35-year period would have implications for regional movements, gene exchange, and potentially population viability.” A project that openly risks the population viability of affected species is of more than significant concern. Why has this impact not been considered serious enough to re-assess the proposed project?

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<sup>7</sup> <https://pubmed.ncbi.nlm.nih.gov/18097935/>

<sup>8</sup> <https://www.npr.org/2022/10/29/1127520991/west-virginia-coal-mining-alpha>

b. Mitigation: There is no offered mitigation sufficient to compensate for the very substantial impacts of the Sargent Quarry project on wildlife populations in the affected area. As well as the anticipated effects on animal migration noted above, a project such as the Sargent Quarry, which is over 400 acres in size, will have additional impacts including inducing higher animal population pressure into adjacent areas as wildlife populations are displaced by ongoing construction, cutting, grading, leveling, heavy equipment and mining operations in the quarry site.

While Appendix C admits to “unavoidable impacts”, it does not address the ongoing stresses of prolonged and continuous noise, particulate, vibration and light pollution associated with sand and gravel quarrying operations on existing area wildlife, including predators such as mountain lions, coyotes, and their prey species, many of which are smaller rodent burrowing or nesting species. Displaced individuals of these species will then potentially be pushed out of their established migration patterns and into forced and dangerous movement toward areas of the higher coastal Santa Cruz Mountains, away from the disturbed site, or into more hazardous areas of denser human habitation, highways and roads. These more coastal areas of the Santa Cruz Mountains were previously heavily affected by the 2020 CZU Fire, and the habitat available to displaced animals is still in a recovery process which will take decades, making it less suitable as an alternative ecosystem. The proposed quarry site also closely borders the heavily trafficked US Highway 101, and this will result in otherwise avoidable animal injuries and deaths as wildlife flee the project site. Loss of current feeding and hunting grounds, secure nesting and denning locations for procreation and offspring, and the resultant destruction of species social and family groups, are also probable.

According to the April 21, 2017 Biotic Evaluation Peer Review (HTH #3909-01), Appendix E, conducted by H.T. Harvey and Associates Ecological Consultants, the Sargent Quarry draft report contains a number of troubling errors and inconsistencies, including incorrect locations given for a dedicated conservation easement area offered as a proposed mitigation; the actual location of that conservation area, as noted on the site map, is on the west side of Sargent Valley, not the east. These noted errors are not slight; they fail to include an access road over Tar Creek within the study area, despite the proposed building of a bridge over the creek; and they shift the placement of a conveyor belt, again from west to east, and a 50-foot berm which would obscure views of the quarries from sightlines of Highway 101. Given these errors and their effect on the project, it is not unreasonable to expect a closer examination of the DEIR document for other such errors; requiring a new DEIR for the relevant sections of study is a possible and merited mitigation.

#### Section IV: Tribal Resources.

The Office of Planning and Research Advisory has issued a legal guidance on State Law AB 52, the law established to protect tribal resource areas that are culturally and spiritually significant. The guidance provides that:

Public agencies shall, when feasible, avoid damaging effects to any Tribal cultural resource.

(Pub. Resources Code, §21084.3 (a).)

Culturally appropriate mitigation for a Tribal cultural resource is different than mitigating impacts to archeological resources and appropriate mitigation measures should be identified through consultation with the tribal government. If the lead agency determines that a project may cause a substantial adverse change to a tribal cultural resource, and measures are not otherwise identified in the consultation process, new provisions in the Public Resources Code describe mitigation measures that, if determined by the lead agency to be feasible, may avoid or minimize the significant adverse impacts. (Pub. Resources Code, § 21084.3 (b). Examples include:

(1) Avoidance and preservation of the resources in place, including, but not limited to, planning and construction to avoid the resources and protect the cultural and natural context, or planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.

(2) Treating the resource with culturally appropriate dignity taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:

(a) Protecting the cultural character and integrity of the resource

(b) Protecting the traditional use of the resource

(c) Protecting the confidentiality of the resource [Emphasis added.]

(3) Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places

(4) Protecting the resource (Ibid.)

It is feasible to practice avoidance and to preserve the cultural character and integrity of Juristac for two essential reasons: 1) larger alternative sources of Portland cement-grade sand and gravel are available in Monterey, Santa Cruz, Santa Clara, and San Benito Counties, and 2) the applicant, Debt Acquisition Company of America (DACA) is not a mining company, it is a debt collector, and not dependent on the proposed use for economic return. There are many other potential use options for a capital return on property. The site has existing cattle grazing and frontage on two freeways. The governing zone district allows a wide variety of uses, including restaurants and retail, camps and retreats, bed and breakfast inns, small scale manufacturing and recycling facilities along with agricultural uses – feedlots, poultry raising, nurseries, processing, ag employee housing.

The availability of alternative sources of sand and gravel is key to compliance with the OPR guidance on AB 52. The EIR's discussion of alternative sources of sand and

gravel to support development in Santa Clara County improperly omits disclosure of the abundant sand and gravel resources located both within and slightly beyond the 30-mile goal established by the project objectives to serve considered proximal to the greater Bay Area (DEIR p. 4-6). The DEIR conspicuously omits considering sand and gravel sources to the east, focusing exclusively on areas north, west and south. Yet it is to the east that the largest and most readily available gravel reserves exist. According to the 2035 San Benito County General Plan Update 2015 Revised DEIR chapter on “Geology, Soils and Mineral Resources,”

(<https://www.cosb.us/home/showpublisheddocument/1742/637205737545330000>, that the Monterey Bay Production-Consumption region alone contains 786 million tons of permitted sand and gravel reserves as estimated by the California Division of Mines and Geology. Sector E, comprised of deposits in San Benito River and Tres Pinos Creek channels, are calculated as 226 million tons – more than seven times the maximum yield estimated from the Sargent Hills. These resources are all located within 40-50 miles of the City of San Jose, close to rail lines and the Highway 25 connector to Highways 101 and 156. Unlike the proposed project, this alternative could meet all of the project objectives by rejecting the subject site in favor of future alternative sites lacking significant cultural and biological resources, as described in the comparison table below.



The discussion of offsite alternatives presented by the Sargent Quarry DEIR is presented in theoretical terms without assessing any of the alternative sources discussed with reference to specific potential sites. The “Offsite Location” section establishes 30-miles as the maximum distance that alternative gravel sources must be from “Bay Area Markets,” without describing the geographic region defined as “Bay Area Markets.” The 30-mile maximum capriciously coincides with approximate distance from the proposed quarry site to San Jose, as though any alternative that was not equal to or less than the proposed project site was disqualified solely on a basis of distance without considering any other factors. Similarly, the project objectives name the Sargent railroad spur as a quarry project objective, rather than simple proximity to a rail line. It is not legally defensible to define the objective as the subject site and to omit alternatives because they are not that site. Using this logic, the objectives could simply state that the County of Santa Clara’s objective is to mine Sargent site. No other site could fulfill the objective. This self-identification does not disqualify alternative sites; it simply invalidates the project analysis.

A Statement of Overriding Considerations is not valid unless the benefits outweigh unavoidable adverse effects. Since alternative sand and gravel resources with less-than-significant impacts are potentially available, the unavoidable project impacts are unjustified and do not outweigh unavoidable adverse impacts, particularly with respect to cultural resources that are wholly unique to the site.

The DEIR needs to provide a much more substantial, evidence-based analysis of why the floodplain sand and gravel deposits available nearby to the east are not valid alternatives to the project site. Additionally, the DEIR needs to establish precisely how the 30-mile limit for alternative sources is geographically established, and what the

basis for using that limit would be, apart from the fact that it equals the distance to the project site. A valid alternative does not have to have all identical attributes to the proposed project.

The table below sets forth a comparison of the subject property versus offsite aggregate alternatives in terms of meeting project objectives:

<b>Comparison of Project and No Project–Offsite Alternative in Meeting Project Objectives</b>				
Objective	Project Site	Meets Project Objectives	Alternative Sand / Gravel Source Offsite	
1. Develop a long-term source of high-quality aggregate needed for various uses in the County and other local markets, in furtherance of General Plan Policy R-RC 68.	Proposed project would provide 23-32 million tons of sand and grave.			Offsite permitted regional reserves could provide 786 million tons / 90 million Portland cement grade.
2. Ensure that mining occurs in an environmentally responsible and sensitive manner that is consistent with the California Surface Mining and Reclamation Act and County requirements.	Proposed project would destroy the Amah-Mutsun spiritual center, damage key wildlife corridor between two mountain ranges, affect listed animals and plants, along with severe visual impacts to Hwy 101.			Development of river channel sediments in Tres Pinos basin would avoid Juristac, leave wildlife corridor intact, and potentially not affect any listed wildlife. Potential impact on bed grades miles upstream could be mitigated.

<p>3. Locate the source of aggregate in proximity to one or more major transportation corridors and in proximity to local construction contractors and others in need of such materials, who otherwise might have to seek and transport such materials from more distant sources.</p>	<p>Subject site adjacent to Hwy 101 and rail lines.</p>	<p>✓</p>	<p>✓</p>	<p>Development of river channel sediments in Tres Pinos and San Benito river beds would be proximal to transportation corridors, rail and highways.</p>
<p>4. In furtherance of General Plan Policy R-RC 78, provide an alternative to truck transport of construction aggregates by using the Union Pacific Railroad rail spur adjacent to Sargent Ranch to replace haul trucks to the extent feasible.</p>	<p>Site adjacent to rail spur.  Text in <del>strikeout</del> unobjectively prejudices in favor of Sargent site by naming spur.</p>	<p>✓</p>	<p>✓</p>	<p>Riverbed sites proximal to railroad spur in Hollister and to connector Highway 25.</p>
<p>5. Develop the aggregate resource in a manner that is economically feasible.</p>	<p>Site may be economically feasible.</p>	<p>✓</p>	<p>✓</p>	<p>Sites may be economically feasible, based on proximity to transportation markets and lower mitigation costs.</p>
<p>6. Minimize impacts on sensitive natural and cultural resources on the Project site.</p>	<p>Site has significant, unmitigable and permanent adverse impacts.</p>		<p>✓</p>	<p>Sites would avoid sensitive resources of project site in favor of sites with few or no sensitive resources.</p>
<p>7. Minimize aesthetic impacts through site design, phasing, and concurrent reclamation.</p>	<p>Site would create significant, unmitigable and permanent adverse</p>		<p>✓</p>	<p>Sites would be in non-sensitive rural locations.</p>



	impacts to major highway and rail corridor.			
8. Implement a reclamation plan that provides for long-term slope stability, prevents wind and water erosion, and establishes self-sustaining native and naturalized vegetation cover.	Site presents unresolved challenges for long-term slope stability and self-sustaining vegetative cover.	?	✓	Riverbed sites would naturally re-develop cover and natural bedload.

On page S-2. the DEIR states that “The Santa Clara County Zoning Code requires the issuance of a Use Permit for surface mining projects ...” The proper terminology would be “requires review” of a use permit, which can be approved or denied by the County. The DEIR also fails to disclose the basis in municipal code for reviewing a use permit. According to the law, a use permit determination is necessary for proposed uses “for which the intensity, impacts, or other characteristics typically have a significant bearing on whether a use should be approved at a specific location and under what conditions it may be established and conducted.” Thus, the code does not “require” issuance of a use permit; rather, it establishes that mining may not take place unless application is received for a use permit and the Planning Commission can legally adopt the findings required by Santa Clara County Code Section 5.35.030. Further, the decision and findings may be appealed to the Board of Supervisors.

The DEIR also fails to disclose that the proposed project is inconsistent with the Santa Clara County Code. According to the Santa Clara County Code (§ 5.65.030. – Findings), the Planning Commission may grant a use permit only if it is able to legally make all of the following findings:

A. The proposed use conforms with the general plan, with the zoning ordinance, and with all other standards and guidelines applicable to the proposed use that have been adopted by the Planning Commission or Board of Supervisors;

B. The site is adequate for the proposed use, including but not limited to being of adequate size and shape to accommodate all facilities and development features to integrate the use into the surrounding area and to provide any necessary or appropriate buffers between the use and the surrounding area;

C. The proposed use, by its nature, scale, intensity or design, will not impair the integrity and character of the zoning district or neighborhood, and will not be significantly

detrimental to any important and distinctive features of the site's natural setting [Emphasis added];

D. The proposed use will not be detrimental to the public health, safety or general welfare. In this respect the Planning Commission shall further find, without limitation, that:

1. Adequate off-street parking, loading and unloading areas (if applicable), and compliant access for individuals with disabilities will be provided;
2. Appropriately designed site access will be provided, including safe and adequate access for fire and emergency vehicles (including secondary access where deemed necessary by the fire marshal);
3. The use will not adversely affect water quality. Adequate wastewater treatment, disposal and sanitation facilities will be provided and will satisfy all applicable local, state and federal requirements;
4. The use will not be detrimental to the adjacent area because of excessive noise, odor, dust or bright lights; 5.
5. The use will not substantially worsen traffic congestion affecting the surrounding area;
6. Erosion will be adequately controlled; and
7. Adequate storm drainage management exists or will be provided and will comply with all applicable local, state and federal requirements.(Ord. No. 1200.355, § 9, 4-26-16 )

The proposed project makes a mockery of above finding “C.” How can a project that lays to waste – essentially destroys – a sacred religious site fail to “impair” the integrity and character of that site, or not be “significantly detrimental” to the physical and spiritual values of that site? Would the razing of the Notre Dame Cathedral to allow, say, a transit hub not “impair” the integrity and character of that site? Or be “significantly detrimental” to the physical and spiritual values of that site? The answer is so grotesquely obvious, it is like asking if murder impairs the physical and spiritual values of a human being. In fact, the murder analogy is apt here because of the soul-crushing effect that despoiling this site will have on tribal people. If the Planning Commission were to adopt this finding for this project on this ground, it would be appealed; if the Board of Supervisors did not overturn, the approval would be legally challenged and would fail. The only question is: how much desecration can the County attempt to allow with any semblance of legal integrity? In truth, the answer is none. No open pit mine, not even one small one, on this regionally significant, irreplaceable sacred cultural site. The only defensible answer is, “no.” No sand mine on Juristac.

The Environmental Review omits plant surveys for special status plants and culturally significant plants, relying instead on partial and incomplete algorithms based on habitat characterization, followed by post-approval mitigation measures. Even with this limited approach, numerous special status plants are predicted to occur; no predictive exercise has been executed for culturally significant plants. This is not an adequate approach to addressing potential impacts to sensitive plants, because the mapped locations of sensitive plant species will affect the configuration of the project, including excavation

and transportation facilities. A comprehensive survey for biologically sensitive and culturally significant plants must be conducted prior to project consideration by the Planning Commission and certification of the EIR.

The biotic discussion does not adequately discuss the level to which the noise, light pollution and disturbance associated with the proposed mine will interfere with the movement of the area's keystone predator, mountain lions, between regional open space habitats and mountain ranges. Mountain lions avoid areas of human noise, industry and development.

The EIR needs to expand the discussion of water use impacts to evaluate the extent to which the high water consumption of the project will adversely impact the over drafted Pajaro Valley groundwater basin.

Finally, a note on international law. The Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention), to which the United States is a party, defines genocide as follows:

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

The history of the United States –California included – includes countless instances of genocide against native peoples. While the action contemplated by the County to approve surface mining at Juristac may not include the deliberate "intent" required to comprise prosecutable genocide, it does meet the test of part "b" above, in causing serious mental harm to members of a racial or religious group. In this, the County's action would constitute unintentional genocide, against an indigenous people that still struggling to recover from the spiritual and physical brutality they experienced for centuries at the hands of European colonialists. It is time for this brutality – this ceaseless persecution, both deliberate and negligent – to stop. No amount of sand and gravel can justify abrogation of human rights.

Conclusion: We urge the County to reject the DEIR for Sargent Ranch Quarry in consideration of the significant impacts to the environment and tribal cultural resources that would result from the proposed project, and from all of the alternative projects identified in the EIR. In considering the magnitude and wide scope of impacts and the minimal public benefit that would be afforded by the proposed mine, the "No Project Alternative" is the only acceptable course of action.

It is clear that any mining operation developed at Juristac would cause irrevocable ecological, cultural and spiritual harm to this sacred landscape that is of great significance to the Amah Mutsun Tribal Band and to the concerned public.

Thank you for the opportunity to provide comments on this project. Please feel free to contact me with any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gladwyn D'Souza". The signature is fluid and cursive, with a large initial 'G'.

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