

**ADDENDUM TO FINAL ENVIRONMENTAL IMPACT REPORT PA-0600028 FOR
REVISION OF APPROVED ACTIONS NO. PA-0500847**

Knife River Construction – Parcel at 4955 West Gaffery Road, Tracy

Background:

The overall Project involves phased quarry operations over an area of approximately 790 acres in unincorporated San Joaquin County near Vernalis. The initial application for the Project was subject to detailed review by the County during 2007, including environmental review under the California Environmental Quality Act (“CEQA”), which included the preparation and public review of an extensive draft and final Environmental Impact Report (“EIR”). The Final EIR (“FEIR”) included a range of mitigation measures to address identified impacts or potential impacts of the Project, as provided by CEQA.

Among the measures included in the FEIR were two measures provided to address possible impacts on special status species and potential sensitive habitat areas, Mitigation Measure MM 4.3-2, and identical Mitigation Measure MM 4.3-3. Those measures provided for two alternative means for the Project to provide mitigation for those potential impacts:

(a) Prior to site disturbance, the project proponent shall comply with the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (“SJMSCP”) (including pre-construction special-status species surveys, and implementation of Incidental Take Minimization Measures) and pay appropriate mitigation fees as determined by the SJMSCP,

OR

(b) In carrying out the operations of the proposed project, the applicant shall not take any actions that would violate the provisions of the State or Federal ESAs or any regulations promulgated pursuant thereto. Compliance with said laws shall be the sole responsibility of the applicant, and the applicant agrees to indemnify, defend and hold the County harmless from and against any claim or action by affected State or Federal agencies as to the project’s compliance with said laws.¹

The FEIR including these alternative mitigation measures MM 4.3-2 and 4.3-3, was reviewed and certified by the County Planning Commission on September 6, 2007. The Project application was concurrently reviewed by the Planning Commission which approved PA-0500847, with a condition of approval incorporating the mitigation measures of the FEIR, including mitigation measures MM 4.3-2 and 4.3-3 as stated above, providing for alternative mitigation measures to address potential biological impacts. The conditions of approval for PA-0500847 also included a

¹ “A condition requiring compliance with environmental regulations [such as MM 4.3-2] is a common and reasonable mitigating measure.” (*Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 236; CEQA Guidelines, §15126.4(a)(1)(B).)

“Condition No. 4” (Condition 4.a – 4.e, attached) which also incorporated the text of MM 4.3-2 (a) and (b) (and 4.3-3) above, but which omitted the word “or,” by which the FEIR had clearly indicated that MM 4.3-2, and 4.3-3 (a) and (b) were intended as *alternative* means of mitigation for the potential biological impacts.

The Planning Commission’s approval of PA-0500847 was appealed to the Board of Supervisors (on distinct issues unrelated to the biological resource mitigation measures), but that appeal was withdrawn by the appellant on December 11, 2007. No further administrative or judicial appeals were pursued, and therefore the County’s approvals for the Project and FEIR became final effective no later than December 11, 2007.

The initial Project applicant (Teichert) subsequently prepared to undertake Phase 1 of the Project and opted to participate in the SJMSCP and pay fees to the SJMSCP as to Phase 1. The current Applicant, Knife River Construction, subsequently acquired the 101.88 acre parcel that is the site of Phase 2 of the Project.

The current Applicant, Knife River, is now preparing to undertake work on Phase 2 of the Project, to develop the quarry resources of the site. Knife River submitted this Revision of Approved Action (“RAA”) application to the County in early January 2022, to modify or clarify the Conditions of Approval for PA-0500847, to conform to the actual text of the Mitigation Measures 4.3-2 and 4.3-3 as stated in the 2007 certified FEIR for the Project. The modification to “Condition 4” would clarify that “Condition No. 4” also provides for the *alternative* (“or”) means of mitigation as specified in MM 4.3-2 (b) and MM 4.3-3(b), and would insert the word “or” between 4.a. and 4.b. so that sub-conditions 4.c.-4.e. would only apply if the permit applicant elects to satisfy the condition by opting for alternative 4.a.²

Other than this requested text correction to Condition No. 4 of PA-0500847, the requested Revision of Approved Action does not request or result in any changes in the Project itself or the other Conditions of Approval governing the Project.

Environmental Review and Addendum to the Previously-Certified Project FEIR:

This Application requests a Revision of Approved Action regarding previously-approved Quarry Excavation Permit PA-0500847, to modify one condition of approval (“Condition No. 4”) to conform to FEIR Mitigation Measures Mitigation Measures 4.3-2 and 4.3-3 adopted by the County in the certified Project Final Environmental Impact Report (“FEIR”). The RAA does not include any other changes to the Project entitlement or to the underlying Project.

The RAA to modify Condition of Approval No. 4 is considered to be a discretionary action by the County. Although this only involves a proposed modification to the text of one condition of approval, the requested action appears to meet the definition of a “project” under CEQA pursuant to Pub. Res. Code, § 21065. Here, the Project, including Phase 2, and the appropriate CEQA mitigation measures were analyzed and approved in the certified Project FEIR and this application is within the scope and consistent with that certified FEIR..

² The proposed modified Condition No. 4 is attached hereto, combining former “4.a” with “4.c – 4.e” and inserting “or” between those provisions and alternative “4.b”

County Staff has reviewed the RAA application, the current and proposed modifications to the text of the conditions of approval, and the previously-certified FEIR, as well as the subsequently-conducted biological surveys in the area of the Project and conditions at the Project site and its environs to determine whether additional CEQA review may be allowed, appropriate, or necessary in connection with the proposed RAA, and if so, the appropriate type of CEQA review. Moreover, the proposed modification to Condition No. 4 as requested by the RAA is identical to the mitigation measures (MM 4.3-2 and 4.3-3) that were analyzed and considered during the public hearing process before the Planning Commission during 2007, and which were eventually certified as appropriate forms of CEQA mitigation as part of the Project FEIR. There is no substantial evidence or any credible reason to believe that modifying existing Condition No. 4 to provide for the alternative form of mitigation already analyzed and approved as part of MM 4.3-2 and 4.3-3, and Condition No. 4. as proposed by the RAA may have any significant new environmental impacts that were not previously addressed in the certified FEIR.

Based on those reviews and evidence, the Commission may also determine that this application is exempt from further CEQA review as provided by Pub. Res. Code § 21080(c)(1) and CEQA Guideline § 15061(b)(3), and that none of the exceptional factors specified in Pub. Res. Code § 21166 that might warrant additional CEQA analysis are present in this situation.

The CEQA statutes (Public Resources Code Section 21166) and CEQA Guidelines (§ 15162) generally limit, or preclude, new detailed environmental analysis for a project that has previously been the subject of a certified FEIR, except in narrowly prescribed situations, as follows:

- (a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report.
- (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report.
- (c) 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.

Unless one of these three exceptions applies, the agency may not prepare a new or supplemental environmental impact report. CEQA “prohibits agencies from requiring additional environmental review after an initial EIR is certified, unless certain specified conditions are met...” (*San Diego Navy etc Coalition v. City of San Diego* (2010) 185 Cal.App.4th 924, 934.)

Where, as in this case, a certified EIR has been prepared and one relatively minor change or correction to a project condition is proposed, and the proposed modification of the project condition would not result in significant new or substantially more severe environmental impacts, a lead agency may prepare an addendum to that previously-approved FEIR to explain a determination that no further CEQA review is appropriate. CEQA Guidelines Section 15164; *Friends of the College of San Mateo Gardens v. San Mateo County Community College District* (2016) 1 Cal.5th 937, at pp. 946–947. This report is therefore provided as an Addendum to the certified Project FEIR.

CEQA Guideline Section 15164 provides that an addendum is appropriate where only minor revisions are proposed:

Section 15164 (a) The lead agency or a responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.

Based on review of the application, the current and proposed modifications to the text of the conditions of approval, and the previously-certified FEIR, as well as the subsequently-conducted biological surveys in the area of the Project and conditions at the Project site and its environs, it would be appropriate for the Commission to determine that none of the exceptional factors described in Pub. Res. Code § 21166 are present in this situation, and that neither a subsequent or supplemental environmental review would be warranted or permitted under Public Resource Code 21166 and CEQA Guidelines § 15162.

Based on the same facts, County Staff further recommends that the Commission may determine that the RAA is exempt from further CEQA review as provided by the “common sense” exemption from CEQA (Pub. Res. Code § 21080(c)(1); CEQA Guideline § 15061(b)(3) [“Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.”]. We are not aware of any evidence indicating that any exception to this exemption might be applicable.

Staff therefore recommends that the Planning Commission consider and approve this Addendum to the certified FEIR, prior to and in connection with the Commission’s approval of the RAA, that the RAA is exempt, and confirm that no further environmental review of the RAA is required.

It is not necessary for the Commission to make any new “findings” in connection with the approval of this Addendum. (*Save Our Heritage Organisation v. City of San Diego* (2018) 28 Cal. App. 5th 656, 669.)