

**RESOLUTION OF THE PLANNING COMMISSION OF THE COUNTY OF  
SANTA CLARA CERTIFYING THE ENVIRONMENTAL IMPACT REPORT,  
MAKING RELATED FINDINGS, ADOPTING THE MITIGATION  
MONITORING AND REPORTING PROGRAM, AND APPROVING THE  
AMENDMENT TO THE 1985 RECLAMATION PLAN FOR LEHIGH  
SOUTHWEST CEMENT COMPANY PERMANENTE QUARRY  
(File No. 2250-13-66-10P(M1)-10EIR)**

**WHEREAS**, in July 2011 the current mine operator of the Permanente Quarry, Lehigh Southwest Cement Company and its parent company Heidelberg Cement Incorporated (the “Applicant”), filed an application with the County of Santa Clara (the “County”) to amend the 1985 Permanente Quarry Reclamation Plan for approximately 1,238 acres of a 3,510 acre site at 24001 Stevens Creek Boulevard, Cupertino, located at the westerly terminus of Stevens Creek Boulevard (the “Project”);

**WHEREAS**, the Project proposes amending the previously approved 1985 Permanente Quarry Reclamation Plan to reclaim mined lands of the Permanente Quarry in a manner suitable for future open space uses, over an estimated 20-year period, and in accordance with the reclamation requirements of the Surface Mining and Reclamation Act of 1975 (SMARA), its implementing regulations, and the County’s surface mining ordinance and Surface Mining and Land Reclamation Standards;

**WHEREAS**, the County of Santa Clara’s Department of Planning and Development has reviewed the application and recommends approval of the Project, subject to conditions of approval set forth in Exhibit 1 attached hereto;

**WHEREAS**, the County is the lead agency for the Project under the California Environmental Quality Act (“CEQA”), Public Resources Code § 21000 *et seq.* The County issued a Notice of Preparation (“NOP”) of an environmental impact report (“EIR”) for the Project on August 18, 2011. The NOP was sent to all responsible agencies, trustee agencies, adjacent property owners, and members of the public who had previously requested notice, in compliance with Public Resources Code § 21080.4. The NOP comment period ended September 26, 2011. All comments received during the scoping process were considered in preparing the EIR;

**WHEREAS**, a Draft Environmental Impact Report (“DEIR”) was prepared for the Project (State Clearinghouse No. 2010042063) and published for public review and comment on December 23, 2011 for a 60-day public review period ending February 21, 2012. Copies of the DEIR were provided to all responsible agencies, trustee agencies, and members of the public who had previously requested a copy. On February 2, 2012, the County Planning Commission accepted comments on the DEIR at its duly noticed regular meeting. Several agencies, interest groups and individuals submitted written comments on the DEIR and oral comments were also submitted at the public meeting on February 2, 2012;

Resolution of the Planning Commission  
Certifying the EIR, Making Related Findings,  
Adopting the MMRP, and  
Approving a Reclamation Plan Amendment

**WHEREAS**, a Final Environmental Impact Report (“FEIR”) was prepared for the Project and published on May 11, 2012. The FEIR contains, among other things, responses to all oral and written comments received on the DEIR and text changes to the DEIR. The FEIR was provided to the public and all public agencies that commented on the Project, in accordance with CEQA;

**WHEREAS**, the County Planning Commission held a public workshop on May 18, 2012 and staff provided educational presentations on the EIR and Reclamation Plan Amendment, and the County Planning Commission convened a duly noticed public hearing on May 24, 2012 and May 31, 2012, and public meeting on June 7, 2012, and considered the EIR, Mitigation Monitoring and Reporting Program, and the Reclamation Plan Amendment.

**THE PLANNING COMMISSION HEREBY MAKES THE FOLLOWING FINDINGS WITH RESPECT TO CEQA:**

A. The EIR for the Project consists of the DEIR, dated December 23, 2011, and the FEIR, dated May 11, 2012. Both documents are collectively referred to as the “EIR” in this Resolution. The EIR is incorporated in this Resolution by reference.

B. The EIR was prepared by County staff and consultants to the County. The EIR reflects the County’s independent judgment and analysis regarding all matters stated therein and was prepared and completed in compliance with all applicable provisions of CEQA.

C. The EIR has been presented to the Planning Commission and the Planning Commission has reviewed and considered the information contained therein.

D. The information contained in the FEIR dated May 11, 2012 does not constitute significant new information requiring recirculation of the EIR because it did not change the EIR in a way that deprived the public of a meaningful opportunity to comment on any substantial adverse environmental effects of the project or feasible ways to mitigate or avoid such effects. The information in the FEIR merely clarified and amplified the impact analyses and mitigation measures previously discussed in the DEIR. The information in the FEIR did not identify any new significant environmental impacts or a substantial increase in the severity of any previously identified environmental impacts. Nor did the FEIR identify any feasible project alternatives or mitigation measures considerably different from those previously analyzed, and not accepted by the Applicant, that would clearly lessen the Project’s significant environmental impacts.

E. In taking action on the Project, the Planning Commission fully reviewed and considered the information contained in the EIR, staff reports, oral and written testimony received from members of the public and other public agencies, and additional

Resolution of the Planning Commission  
Certifying the EIR, Making Related Findings,  
Adopting the MMRP, and  
Approving a Reclamation Plan Amendment

information contained in reports, correspondence, studies, proceedings, and other matters of record included or referenced in the administrative record of these proceedings.

F. The Planning Commission has read and considered the EIR prepared for the Project, has considered each potential environmental impact of the Project, and has considered each mitigation measure and alternative evaluated in the EIR. In accordance with the requirements of CEQA and the Guidelines promulgated thereunder, the Planning Commission makes the following findings based upon substantial evidence in the record:

1. Potentially Significant Environmental Impacts. The EIR analyzes and discloses all of the Project's potentially significant environmental impacts. The Project has the potential to significantly impact the following environmental resources: aesthetics/visual quality; air quality; biological resources; cultural resources; geology, soils, and seismicity; greenhouse gas emissions; hydrology and water quality; noise; and cumulative aesthetics/visual quality. The Project's potentially significant impacts are identified in DEIR Table ES-3, pages ES-13 through ES-19, and FEIR, pages 4-1 through 4-2, which are attached hereto as Exhibit 2, and are more thoroughly discussed in the DEIR and text amendments in the FEIR. Based on information in the EIR and other documents in the record, the Planning Commission finds that the Project does not have the potential to cause any significant environmental impacts other than the impacts identified in the EIR as summarized in Exhibit 2 and listed below:

- Interim visual quality impacts to the scenic vista associated with Project construction (Impact 4.1-1);
- Impacts to scenic resources within a state- or County-designated scenic highway or route during reclamation activities (Impact 4.1-3);
- Impacts to existing visual character of the Project area during reclamation activities (Impact 4.1-5);
- Impacts to daytime or nighttime views associated with Project lighting (Impact 4.1-7);
- Impacts associated with increased levels of toxic air contaminants to people (Impact 4.3-3);
- Impacts to increase emissions of PM2.5 (Impact 4.3-5);
- Impacts to special-status bats (Impact 4.4-2);

- Impacts to aquatic habitats, including organisms and prey base, from Project activities potentially resulting in selenium-burdened runoff (Impact 4.4-5);
- Impacts to the loss of native oak woodlands (Impact 4.4-7);
- Impacts to wetlands and jurisdictional waters associated with Permanente Creek through direct removal, hydrological interruption, or other means (Impact 4.4-8);
- Impacts to historical resources (Impact 4.5-1);
- Impacts to archaeological resources (Impact 4.5-2);
- Impacts to unique paleontological resources or site (Impact 4.5-3);
- Impacts to disturbance of human remains, including those interred outside of formal cemeteries (Impact 4.5-4);
- Impacts to rock and soil slopes of the East Materials Storage Area (“EMSA”), Quarry pit, and West Materials Storage Area (“WMSA”) (Impact 4.7-1);
- Increase in greenhouse gas emission and contribution to climate change impacts (Impact 4.8-1);
- Post-reclamation impacts of increased selenium concentrations in in Permanente Creek (Impact 4.10-1);
- Interim hydrology and water quality impacts associated with contributions of selenium, Total Dissolved Solids (TDS), and sediment in Permanente Creek (Impact 4.10-2);
- Impacts to existing drainage patterns which could result in increased storm water runoff rates and on- or offside flooding (Impact 4.10-4);
- Impacts to existing drainage pattern of the site, which could result in increased stormwater ponding, accumulation of selenium, and flooding (Impact 4.10-6);
- Noise impacts associated with reclamation activities during Phase 1 (Impact 4.13-1);

- Cumulatively considerable impacts to visual resources (Impact 6-1);

Except for Impacts 4.1-1; 4.1-3; 4.1-5; 4.4-5; 4.5-1; 4.10-2; and, 6-1, all of the Project's potentially significant environmental impacts can and will be mitigated to less-than-significant levels through adoption and implementation of mitigation measures. The adopted mitigation measures are set forth in the attached Mitigation Monitoring and Reporting Program (Exhibit 3). The post-mitigation level of each of the Project's environmental impacts is set forth in Table ES-3 of the DEIR, pages ES-13 through ES-19, and pages 4-1 through 4-2 of the FEIR.

With respect to Impacts 4.1-1; 4.1-3; 4.1-5; 4.4-5; 4.5-1; 4.10-2; and, 6-1, the impacts would be significant and unavoidable even after implementation of applicable mitigation measures identified in the EIR or, in other cases, no feasible mitigation measures are available to reduce the significance of these impacts. The impacts identified as significant and unavoidable are discussed as follows:

A. Impact 4.1-1 (scenic vista); Impact 4.1-3 (views from scenic highways); Impact 4.1-5 (degradation of existing visual character):

1. Impact 4.1-1: The Anza Knoll scenic vista is located atop a hillside and provides 360-degree panoramic views. The Project contrast at this location would be strong given the close proximity of the Project area (approximately 1 mile to the southwest of the vista), and the strong industrial quality of the Project area in a generally distinct viewshed, as illustrated on page 4.1-6 of the DEIR, Figure 4.1-2c, Photo 10. Project construction would demand the viewer's attention and could not be overlooked. Due to the large size of the Project area and its geographic relation to the scenic vista, it would be impossible to screen views of the Project Area. In conjunction with the long duration of construction of approximately 10 years at the EMSA, impacts at the Anza Knoll would be significant.

The significant impact cannot be mitigated to a level less-than-significant because of the large size of the Project and its geographic relation to the scenic vista on the hillside, it would be impossible to screen views of the Project. Interim artificial screening such as fencing would be incapable of obscuring views of the large Project area, given the viewers' elevated perspective. A more aggressive planting plan to establish mature vegetation (e.g., oak trees, other evergreens) immediately on the EMSA would reduce visual contrast in the period between initial planting, hydroseeding, and eventual maturation under the normal revegetation plan; however, mature trees could not be planted on the intervening slopes, only benches. Furthermore, such an aggressive planting plan would not address visual contrast that would exist during construction of the overburden pile, particularly the dominant presence of construction equipment and activity. As such, based on the EIR and the entire record, this significant impact cannot

be mitigated to a level of less-than-significant and no feasible mitigation measures are available to reduce the significance of this impact.

2. Impact 4.1-3: For motorists on I-280, the re-contoured hillsides during construction would result in a moderate visual contrast in that the Project elements begin to attract attention and begin to dominate the characteristic landscape. The changes to the visual character of the site itself would include, during construction of the EMSA, an increased prominence and extent of disturbed areas, and the creation of a new, distinctly unnatural landform. This would be particularly noticeable immediately following the completion of construction but before the vegetation has time to establish and mature, a time period of up to ten years and as such this impact would be significant..

Artificial screening such as fencing would be incapable of obscuring views of the Project Area, because of the extensive height of the EMSA. A more aggressive planting plan to establish mature vegetation (e.g., oak trees, other evergreens) immediately on the EMSA would reduce visual contrast in the period between initial planting, hydroseeding, and eventual maturation under the normal vegetation plan; however, mature trees could not be planted on the intervening slopes, only the benches. Furthermore, such an aggressive planting plan would not address visual contrast that would exist during construction of the overburden pile, particularly the dominant presence of construction equipment and activity. As such, based on the EIR and the entire record, this significant impact cannot be mitigated to a level of less-than-significant and no feasible mitigation measures have been identified to reduce the significance of this impact.

3. Impact 4.1-5: Viewpoints from the Hammond-Snyder Loop Trail, adjacent to Cristo Rey Drive, in the Rancho San Antonio (“RSA”) Preserve/Park is one of the most visually sensitive locations within the RSA Preserve/Park, and the Quarry is a very prominent feature within the existing landscape. The increased prominence and extent of disturbed areas, and the creation of a new distinctly unnatural landform resulting from the Project would be particularly noticeable immediately following the completion of construction but before the vegetation has time to establish and mature, a period of up to ten years. Other viewsheds within the RSA Preserve/Park would also be impacted by Project construction. The PG&E Trail offers views of the upper elevations of the EMSA overburden deposits. Although the existing overburden deposits are not a dominant feature in the landscape, the substantial increase in the height of the overburden deposit during construction could block views of the scenic mountains behind the EMSA. In conjunction with the presence of construction equipment in an otherwise natural setting, construction activities would begin to attract attention and begin to dominate the characteristic landscape. The overall visual change to hikers on the PG&E trail would be moderate to high. This would result in a significant impact.

Artificial screening such as fencing would be incapable of obscuring the views of the Project Area, because of the extensive height of the EMSA. A more aggressive planting plan to establish mature vegetation (e.g., oak trees, other evergreens)

Resolution of the Planning Commission  
Certifying the EIR, Making Related Findings,  
Adopting the MMRP, and  
Approving a Reclamation Plan Amendment

immediately on the EMSA would reduce visual contrast in the period between initial planting, hydroseeding, and eventual maturation under the normal revegetation plan; however, nature trees could not be planted on the intervening slopes, only the benches. Furthermore, such an aggressive planting plan would not address visual contrast that would exist during construction of the overburden pile, particularly the dominant presence of construction equipment and activity. As such, based on the EIR and the entire record, this significant impact cannot be mitigated to a level of less-than-significant and no feasible mitigation measures have been identified to reduce the significance of this impact.

B. Impact 4.4-5 and Impact 4.10-2: The EIR identifies potential environmental impacts relating to: (1) interim project activities contributing concentrations of selenium, Total Dissolved Solids (TDS), and sediment in Permanente Creek (Impact 4.10-2; FEIR pg. 4.10-43—50) and (2) interim project activities that could result in selenium-burdened runoff reaching aquatic habitats and, thus, affecting aquatic organisms and their prey base (Impact 4.4-5; DEIR pg. 4.4-37—38). The time period for when these impacts could occur is limited to an estimated 20 years until final reclamation is complete. The EIR concludes that final reclamation will ultimately result in an overall decrease to selenium concentrations discharged to Permanente Creek expected to meet the *San Francisco Bay Basin (Region 2) Water Quality Control Plan* (“*Basin Plan*”), which has a standard of 5 µg/L (micrograms per liter) for aquatic life protection. (FEIR, pages 4.10-33 through 4.10-40.) Interim reclamation activities during a 20-year period, could, result in significant impacts related to selenium burdened runoff entering Permanente Creek.

The DEIR identified mitigation measure 4.10-2a that requires the use of Interim Stormwater Control and Sediment Management to minimize the potential for selenium burdened runoff to enter Permanente Creek. However, due to the lack of empirical evidence supporting the effectiveness of this mitigation, the DEIR concluded that the mitigation would not reduce the impact to a less than significant level. (DEIR, pages 4.10-44 through 4.10-47.)

As an additional mitigation measure, the DEIR discussed commercially available treatment systems to remove selenium and reduce selenium levels in stormwater runoff below the *Basin Plan* level of 5 µg/L (micrograms per liter) for aquatic life protection. The DEIR identified the treatment system to have a total installed cost of approximately \$86 million and an annual operation and maintenance of approximately \$2.8 million per year. The DEIR concluded that due to the high estimated cost for a selenium treatment system it was not a feasible mitigation measure. (DEIR, pages 4.10-46 through 47.)

Following DEIR publication, the County of Santa Clara, Department of Planning and Development, hired CH2M Hill (“Consultant”) to further evaluate the feasibility of installing a treatment system to reduce selenium concentrations in storm water runoff below applicable water quality standards. The Consultant prepared a *Feasibility*

Resolution of the Planning Commission  
Certifying the EIR, Making Related Findings,  
Adopting the MMRP, and  
Approving a Reclamation Plan Amendment

*Assessment* (“*Assessment*”), which is attached hereto and incorporated herein as Exhibit 4. The *Assessment* considered a range of treatment methods and determined that a fluidized bed reactor system (“FBR”) appeared to be the most promising technology for further study and pilot testing. The *Assessment* concluded that although from an engineering perspective an FBR system could be installed onsite to treat discharge from the Quarry Pit and WMSA, it was contingent upon subsequent studies evaluating the treatment facility that would be disclosed as part of further engineering studies. Based on the information available in the *Assessment*, and all other information available at this time, the Planning Commission finds that a mitigation measure requiring the installation and operation of a treatment facility to treat selenium runoff during reclamation activities is not feasible, at this time, for the following reasons:

- The Project site is subject to highly variable stormwater flows because of the rain season in the area, thus runoff can range from zero for many months of the year to tens of thousands of gallons per minute at other months of the year. An FBR system presents unique challenges relating to variable flows because treatment goals are not achieved when flows are at zero since the system must be shut down and restarted. Once the system is restarted, it can take several days before performance can be re-established. Further studies are needed to determine if a treatment system can be designed and installed that accommodates the storage of stormwater to allow equalized flows into the FBR system. (*Assessment*, pg. 1-2—1-13.)
- The *Assessment* does not identify any examples of an FBR system in the United States that has been installed or operating on a site similar to the Project site, where runoff from highly disturbed areas occurs at variable levels. Although the *Assessment* identifies five North American coal industry projects where FBR systems targeting selenium were designed or are in construction, none of the systems are fully operational and do not appear to involve the specific technical challenges identified in the *Assessment* for the Project site. Therefore, at this time, there is uncertainty as to the application of the FBR technology to the Project site because the effectiveness of such a system at a similarly situated site has not been proven. (*Assessment*, Appx. A, p. 7; *Assessment*, p. 1-2—1-6.)
- Reclamation activities that potentially cause interim increases in concentrations of selenium in stormwater runoff will occur for an approximately 20-year period. Following final reclamation, the EIR concludes that selenium concentrations in stormwater runoff are not expected to exceed applicable water quality standards in the *Basin Plan* level of 5 µg/L (micrograms per liter) for aquatic life protection. The 20-year interim period is divided into two ten-year periods. The first 10-year period when interim impacts to concentrations in water runoff potentially exist is when reclamation activities occur at the East Materials Storage Area (“EMSA”). (FEIR, pages



4.10-43 through 4.10-44.) The second 10-year period is when reclamation activities occur at the West Materials Storage Area and Quarry pit (“WMSA/Pit”). (FEIR, page 4.10-44.)

- The *Assessment* did not provide specific costs or design parameters for an FBR to treat stormwater flows from the EMSA during the first ten-year period. Therefore, at this time, there is insufficient information to determine the cost and specific design parameters for an FBR system to treat flows from the EMSA and further work is necessary to determine the feasibility, costs and design parameters to install such a system.
- The *Assessment* did evaluate an FBR system to treat flows from the WMSA/Pit during the second ten-year period. The Assessment concluded that the estimated cost for installation would be approximately \$63.6 million, with a range of \$31.8 million (-50%) to \$127 million (+100%) and the estimated cost for operation and maintenance would be \$6.5 million with a total initial estimated cost of \$101 million, based on a 10-year life cycle cost and an 8 percent annual interest rate of return. Therefore, the total cost to install and operate an FBR system to treat stormwater flows from the WMSA/Pit for ten years during Phase 2 and 3 would be approximately \$228 million. (*Assessment*, pg. 1-13—15.) The financial burden of approximately \$228 million for the installation and operation of an FBR system for the WMSA/Pit for the limited term of ten years is economically disproportionate, considering the limited duration of the impact and the finding that selenium concentrations in stormwater runoff are not expected to exceed applicable water quality standards following final reclamation of the Project site.
- Mitigation Measures 4.10-2c; 4.10-2d; and, 4.10-2e in the FEIR require continued study to determine the feasibility of installing a treatment facility or alternative treatment method to address stormwater runoff during the 20-year interim reclamation period. (FEIR, pages 4.10-47 through 4.10-49.) Together these mitigation measures will require the installation of a selenium treatment facility if later studies determine its feasibility and ongoing testing shows that interim reclamation activities causes increased concentrations of selenium in stormwater runoff. In accordance with the mitigation measures, the Planning Commission shall hold a public hearing to determine the feasibility of the treatment facility or alternative, as specified in the mitigation measure. In addition, Mitigation Measures 4.10-2a and 4.10-2b require the implementation of Best Management Practices (BMPs) in accordance with the drainage plan and Storm Water Pollution Prevention Plan (SWPPP). Because the BMPs are

specific to the site conditions and rainfall and have not been installed yet, there is insufficient empirical data supporting a conclusion that the BMPs alone will mitigate the interim impact. Therefore, the implementation of Mitigation Measures 4.10-2a and 4.10-2b will not reduce the impact to less than significant and Impact 4.4-5 and 4.10-2 remain significant and unavoidable.

Based on the above, there is insufficient evidence to support a finding that the requirement to install a selenium treatment facility, using FBR technology, or an alternative technology, is a feasible mitigation measure. Therefore, no feasible mitigation measure exists to reduce the potentially significant impacts identified in Impact 4.4-5 and Impact 4.10-2 to less-than-significant levels and the impacts remain significant and unavoidable.

C. Impact 4.5-1 (loss of known historic resources): The Project area is located within the boundaries of a potential Kaiser Permanente Quarry Mining District. Because the potential District is eligible for listing in the California Register, it is considered an historical resource pursuant to CEQA Section 15064.5. The Project proposes to demolish the following contributing features of the potential District; the existing Permanente Quarry Conveyor System and related tunnel, powerhouse, and structures including the remains of the early 1940s crusher. The loss of the Permanente Quarry Conveyor System and related tunnel, powerhouse, and structures including the remains of the early 1940s crusher would cause a substantial adverse change to a historic resource because it would demolish in an adverse manner those physical characteristics that convey the District's historical significance and that justify its eligibility for inclusion in the California Register.

The EIR identifies Mitigation Measures 4.5-1a, 4.5-1b, and 4.5-1c that will require documentation and salvage of the Conveyor System and related tunnel, powerhouse, and structures including the remains of the early 1940s crusher. (DEIR, page 4.5-26.) While these mitigation measures would reduce the extent of the significant impact, it would not mitigate for the ultimate loss of these historic resources. There is no feasible way to move or avoid these features and implement the Project and this impact would be significant and unavoidable.

E. Impact 6-1: The Project would have a significant impact to views from the Anza Knoll and trails within the RSA Preserve/Park, including the PG&E and Hammond-Snyder Loop trails. Construction of the Permanente Creek Flood Protection Project would occur concurrent with construction of Phase 1 of the Project, and would result in temporary visual disruption related to grading for the flood basin, and would create views of construction debris, construction staging and material storage areas, soil stockpiles, and construction vehicles and equipment. The Project would cumulatively contribute to the impacts caused by the Permanente Creek Flood Protection Project, resulting in a significant cumulative impact to visual resources.

Resolution of the Planning Commission  
Certifying the EIR, Making Related Findings,  
Adopting the MMRP, and  
Approving a Reclamation Plan Amendment

No mitigation measures or Project alternatives have been identified to reduce the cumulative impact to a less-than-significant level and, thus, it remains significant and unavoidable.

2. Alternatives. The EIR analyzes a reasonable range of alternatives to the Project sufficient to foster public and informed decision-making and to permit a reasoned choice, and the EIR adequately discusses and evaluates the comparative merits of the alternatives. An EIR must identify the “environmentally superior alternative” among all of the alternatives considered that feasibly implements the objectives of the proposed project (CEQA Guidelines Section 15126.6). For the proposed Project, the EIR analyzed which alternative was superior based on the analysis of the proposed Project and alternatives to it. None of the alternatives identified would provide a material lessening of significant adverse impacts compared with the proposed Project. Therefore, the EIR concluded that the Project was the environmentally superior alternative. The Planning

The EIR analyzed three alternatives to the proposed Project, including the Complete Backfill Alternative (Alternative 1), Central Materials Storage area Alternative (Alternative 2), and the No Project Alternative (Alternative 3). (See, EIR Chapter 3 and Chapter 5.) The Planning Commission finds that the EIR presents a reasonable range of alternatives with respect to the Project as required under CEQA. For the reasons set forth below and considering the entire record of proceedings, the Planning Commission approves the proposed Project rather than any of the alternatives. Each alternative is summarized below and the reason why the Planning Commission rejected it.

A. Complete Backfill Alternative (Alternative 1)

i. Description of the Alternative

The Complete Backfill Alternative would be similar to the Project in all respects except that overburden materials stored in the EMSA would be backfilled into the Quarry pit upon the conclusion of mineral extraction activities. The EMSA was designed to accept total overburden placement of approximately 6.5 million tons (approximately 4.8 million cubic yards) and to provide overburden storage for the surface mining operation until approximately 2015, when final contouring and revegetation would occur. Under Alternative 1, the approximately 4.8 million cubic yards of overburden stored in the EMSA would be returned to the Quarry pit as backfill during reclamation Phase 2.

ii. Reasons for Rejecting the Alternative

This alternative would not avoid any of the significant and unavoidable impacts identified for the Project and would result in the following increased severity of impacts as compared to the Project:

Resolution of the Planning Commission  
Certifying the EIR, Making Related Findings,  
Adopting the MMRP, and  
Approving a Reclamation Plan Amendment

- Greater impacts to scenic vista, scenic and major roadways and the visual character or quality of the Project as a result of lowering the height of the EMSA that provides visual buffering of the Project site.
- Greater impact to air quality and health risk.,energy conservation, and greenhouse gas emission due to a longer duration of construction required to excavate and move the EMSA materials and thereafter to contour the area.
- Impacts to energy conservation would be greater than the Project, as more fossil fuel would be required to excavate and move the EMSA materials and thereafter to contour the area.
- Implementation of Alternative 1 would cause a greater impact to greenhouse gas emissions.
- Impacts related to long term selenium leaching to surface water would be less than under the Project; however, the larger area and higher slopes would result in more severe drainage and flooding impacts, and the longer interim period before WMSA and EMSA reclamation could result in more severe interim impacts to water quality.
- Impacts from noise would be greater than the Project due to the additional heavy equipment activity required to excavate and remove the EMSA, combined with removal of the feature that would help shield nearby residences from equipment noise.

The Complete Backfill Alternative (Alternative 1) does not avoid any of the significant and unavoidable impacts identified in the EIR and could result in increased severity of environmental impacts in several areas. Therefore, it is not environmentally superior to the Project and thus is not adopted by the Planning Commission.

## B. Central Materials Storage Area Alternative (Alternative 2)

### i. Description of the Alternative

The Central Materials Storage Area (CMSA) Alternative would be similar to the Project in all respects except that reclamation of the eastern and central portions of the EMSA (as it exists as of reclamation plan amendment approval) would begin immediately, and overburden generated by continued mining in the Quarry pit would be stored in an area further to the west, farther removed from the closest viewers and air quality- and noise-sensitive receptors, as indicated on Figures 3-1 and 3-2 of the DEIR (pages 3-11 through 3-12). Reclamation activities in the EMSA would be the same as under the Project (including installation of a “cap” to prevent selenium-containing

surface runoff from reaching Permanente Creek) except that such activities would begin immediately upon reclamation plan amendment approval and no new materials would be stockpiled in that area. Mitigation measures recommended to address interim Project impacts (i.e., impacts that could occur while reclamation activities are underway) for the EMSA also would be implemented to avoid or reduce impacts associated with the CMSA before final reclamation of the CMSA begins, which would occur upon the conclusion of mineral extraction in the Quarry pit during reclamation Phase 2.

ii. Reasons for Rejecting the Alternative

This alternative would not avoid any of the significant and unavoidable impacts identified for the Project and would result in the following increased severity of impacts as compared to the Project:

- Greater impacts to scenic vista, scenic and major roadways and the visual character or quality of the Project as a result of lowering the height of the EMSA that provides visual buffering of the Project site.
- Implementation of Alternative 2 would cause greater impact to natural habitat than the Project because it would result in the conversion of native habitats such as oak woodlands and chaparral.
- Impacts to energy conservation would be greater than the Project, as more fossil fuel would be required to implement this alternative based on increased surface area.
- Impacts to geology and soils would be similar to slightly greater than the Project due to the combined height of the EMSA/Central Materials Storage Area and slightly reduced factors of safety.
- Implementation of Alternative 2 would cause a greater impact to greenhouse gas emissions.

As the Central Materials Storage Area Alternative (Alternative 2) does not avoid any of the significant and unavoidable impacts identified in the EIR and could result in increased severity of environmental impacts in several areas, it is not environmentally superior to the Project and thus is not adopted by the Planning Commission.

C. No Project Alternative (Alternative 3)

i. Description of the Alternative

Under the No Project Alternative, it is expected that mining would continue at the Quarry at the baseline rate of 2,600,000 metric tons. However, SMARA mandates that the Project Area be reclaimed in compliance with all regulatory criteria. The Project is intended to fulfill this legal requirement and abate the issues related to Orders to comply/Notices of Violation (NOVs) issued by the County in 2006 and 2008 related to deviations from the 1985 Reclamation Plan (i.e., engaging in mining activities outside the approved reclamation boundary). Under the No Project Alternative, the proposed Reclamation Plan would not be approved, these NOVs would not be abated, and the Applicant would remain in violation of SMARA and County requirements because an approved reclamation plan would not encompass all mining-related operations and disturbance. This would result in no additional placement of overburden at the EMSA. Ultimately, however, in order to address the existing NOVs, a SMARA-compliant reclamation plan would have to be developed, approved following its evaluation under CEQA, and implemented by the Applicant. It is expected that such a reclamation plan would be substantially similar in scope and level of activity to that proposed as the Project, including reclamation of the EMSA to address the existing overburden material at that location. Under the No Project Alternative, the principal difference compared to the Project is not whether reclamation would begin, but rather when reclamation would begin.

ii. Reasons for Rejecting the Alternative

This alternative would not avoid any of the significant and unavoidable impacts identified for the Project and would result in the following increased severity of impacts as compared to the Project:

- Greater impacts to scenic vista, scenic and major roadways and the visual character or quality of the Project as a result of lowering the height of the EMSA that provides visual buffering of the Project site.
- Impacts to geology and soils would be greater, because baseline conditions of marginal slope stability would continue for a longer period of time.
- The interim period before reclamation would be longer than for the Project; the extended timeframe would result a longer period of selenium-related water quality impacts, also affecting aquatic habitat in Permanente Creek.

As the No Project Alternative (Alternative 3) does not avoid any of the significant and unavoidable impacts identified in the EIR and could result in increased severity of environmental impacts in several areas, it is not environmentally superior to the Project and thus is not adopted by the Planning Commission.

3. Finding Regarding Mitigation or Avoidance of Impacts and Adoption of Mitigation Monitoring and Reporting Program. Based on the adopted mitigation measures, changes or alterations have been required in, or incorporated into, the Project which mitigate or avoid all of the Project's potentially significant environmental effects with the exception of Impacts 4.1-1; 4.1-3; 4.1-5; 4.4-5; 4.5-1; 4.10-2; and, 6-1. In addition, a Mitigation Monitoring and Reporting Program ("MMRP") has been prepared pursuant to Public Resources Code § 21081.6 that provides for implementation, monitoring, reporting, and enforcement of all conditions and mitigation measures adopted to mitigate and/or avoid the Project's significant environmental impacts. The MMRP is attached to this resolution as Exhibit 3 and incorporated herein.

4. Statement of Overriding Considerations. Regarding Impacts 4.1-1; 4.1-3; 4.1-5; 4.4-5; 4.5-1; 4.10-2; and, 6-1, the Planning Commission finds that all feasible mitigation measures and alternatives have been adopted; however, these impacts are still significant and unavoidable. There are no feasible mitigation measures or alternatives to the Project that could reduce the impacts to a level less than significant. Pursuant to Public Resources Code section 21081(b), there are specific overriding economic, social and other benefits of the proposed Project that outweigh this impact. These benefits, which will accrue to the general public, warrant approval of the Project notwithstanding the Project's remaining significant impact, and include the following:

- Under SMARA, every person or entity who operates a surface mining operation must receive approval of a reclamation plan. The objective of the reclamation plan must be to restore the mined lands to a useable condition which is readily adaptable for alternative land uses, to minimize effects on the environment, and to protect public health and safety. (Pub. Res. Code §§ 2700; 2711-12.) The County's Zoning Code also requires approval of a reclamation plan for any surface mining operation. (County Zoning Code § 4.10.370.) Therefore, approval of the Project fulfills the state law mandate and Zoning Ordinance Code requirement that a surface mining operation receive approval of a reclamation plan.
- The 1985 Reclamation Plan is inadequate and does not include sufficient mechanisms to protect the public health, safety, and welfare. The Project is superior to the 1985 Reclamation Plan because the 1985 Reclamation Plan covers approximately 330-acres and today the mined lands comprise approximately 1,238 acres. The Project would cover the 1,238 acres currently mined and apply SMARA reclamation standards.
- The Project would result in the stabilization of the site, improvement to long term water quality issues in Permanente Creek, and facilitation in the restoration of Permanente Creek.

- The Project would result in the rehabilitation and restoration of highly disturbed areas and otherwise smooth the transition to future open space uses that would be more compatible with surrounding areas.
- The Project would ensure that a sufficient Financial Assurance is posted by the Applicant and updated annually. The Financial Assurance provides financial resources to the County in the event the Applicant is incapable of performing reclamation in accordance with its approved reclamation plan or abandons the surface mining operation without commencing or completing reclamation. The Financial Assurance posted for the 1985 Reclamation Plan is \$11.4 million. The Financial Assurance posted for the Project is over \$47.7 million.
- The Planning Commission finds that further detail regarding the Project benefits and information to support the determination that specific overriding economic, legal, social, technological, or other benefits of the Project outweigh the significant and unavoidable impacts on the environment are included in a statement of overriding considerations prepared by the Applicant, attached as Exhibit 5 to this resolution and incorporated herein. The reports and other documents supporting the Applicant's statement of overriding considerations is on file at the County Planning Office, 70 W. Hedding Street, 7<sup>th</sup> Floor, East Wing, San Jose, CA 95110.

5. Absence of Significant New Information. CEQA Guidelines section 15088.5 requires a lead agency to recirculate an EIR for further review and comment when significant new information is added to the EIR after public notice is given on the availability of the Draft EIR but before certification of the Final EIR. New information added to an EIR is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect that the project proponent declines to implement. The Guidelines provide examples of significant new information under this standard. Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modification in an adequate EIR. The Planning Commission recognizes that the Final EIR contains additional information in response to comments and question from agencies and the public. The Planning Commission finds that this additional information does not constitute significant new information requiring recirculation, but rather that the additional information merely clarifies or amplifies the information in, or makes insignificant modifications to, the legally adequate DEIR.

G. The administrative record upon which the Planning Commission's decision is based includes, but is not limited to, the following:

Resolution of the Planning Commission  
 Certifying the EIR, Making Related Findings,  
 Adopting the MMRP, and  
 Approving a Reclamation Plan Amendment



1. The EIR (Draft EIR dated December 2011 & Final EIR dated May 2012);
2. The reports and other documents cited as reference in the EIR;
3. All oral, written and electronic evidence submitted to the County prior to the close of the Planning Commission's hearing on the Project;
4. All documents constituting the record pursuant to Public Resources Code section 21167.6; and
5. All matters of common knowledge to this Planning Commission including, but not limited to, state and federal laws and regulations and County policies, ordinances, guidelines and regulations and the General Plan.

The administrative record is located in the Office of the Clerk of the Board of Supervisors and in the County Planning Office. The custodian of documents for the administrative record is: Clerk of the Board, 70 W. Hedding Street, 10th Floor, East Wing, San Jose, CA 95110.

**THE PLANNING COMMISSION HEREBY MAKES THE FOLLOWING FINDINGS REGARDING THE PROPOSED RECLAMATION PLAN AMENDMENT:**

A. The Permanente Quarry is a single large pit where limestone and aggregate are quarried. West of the Quarry Pit (the "Pit") is a stockpile area where overburden has historically been placed identified as the West Materials Storage Area (the "WMSA"). Mining overburden is currently being placed in a permanent location east of the Quarry Pit identified as the East Materials Storage Area (the "EMSA").

B. The State Mining and Reclamation Act of 1975 ("SMARA," Cal. Pub. Res. Code §§ 2710 *et seq.*), as amended, and its implementing regulations (Title 14 of the California Code of Regulations §§ 3500 *et seq.*) require all active surface mine quarries to have an adopted Reclamation Plan in compliance with SMARA standards that demonstrates how the quarry site will be reclaimed following the conclusion of mining.

C. The County is a lead agency under SMARA and has the principal responsibility for approval of a reclamation plan in accordance with SMARA and Section 4.10.370 of the Zoning Ordinance of the County of Santa Clara. As a SMARA lead agency the County is responsible for reviewing applications for reclamation plans and in accordance with the County's Zoning Ordinance, the Planning Commission is responsible for approving a reclamation plan and amendments thereto.

Resolution of the Planning Commission  
Certifying the EIR, Making Related Findings,  
Adopting the MMRP, and  
Approving a Reclamation Plan Amendment

D. The proposed Reclamation Plan Amendment (the “RPA”) modifies a previously approved 1985 Reclamation Plan, which covers approximately 330-acres. Today, the disturbed areas associated with surface mining comprise approximately 1,238 acres and the RPA will cover these lands. The primary objective for the Applicant’s RPA is to amend the 1985 Reclamation Plan to comply with SMARA and County regulations. Other objectives for the proposed RPA include:

1. Maintain a local, reliable, and economic source of Portland cement-grade limestone and construction aggregate to serve market demands in Santa Clara County, the San Francisco Bay Area and northern California.

2. Continue operations at an existing limestone quarry that is uniquely situated to provide for regional needs and that lies in a state-classified MRZ-2 resource area meeting the requirements of SMARA and County Code Section 4.10.370.

3. Reclaim existing mining disturbance to conform to the surrounding topography in contour and vegetation, to achieve long-term slope stability, protect water quality, and permit alternative post-mining uses.

4. Apply reclamation standards under SMARA to areas disturbed by mining operations within the Permanente Quarry.

5. Reclaim existing mining disturbance to avoid or eliminate residual hazards to the environment and public health and safety.

E. In October 2006, the County issued a Notice of Violation (“NOV”) and Order to Comply to the Applicant due to the identification of areas disturbed by mining located outside the boundary of the 1985 Reclamation Plan. In 2008, the County issued a second NOV to the Applicant for placing additional overburden materials outside the Reclamation Plan boundary in the EMSA. The RPA application submitted by the Applicant will effectively abate these prior violations and encompass all disturbed mined lands into the RPA.

F. On February 8, 2011, the County Board of Supervisors held a public hearing and made a determination that the mining operations at the Permanente Quarry are a legal nonconforming use (i.e., a vested right) in the area that is subject to the RPA. As such, continued surface mining within the RPA does not require a user permit. However, SMARA and the County’s Ordinance Code require all surface mining operations to have an approved reclamation plan.

G. In accordance with SMARA and the County’s Ordinance Code, the Applicant has posted a Financial Assurance (“FA”) in the amount of more than \$47.7 million to reflect the cost to reclaim the area identified in the RPA. The FA provides financial resources to the County in the event the Applicant is incapable of performing reclamation

Resolution of the Planning Commission  
Certifying the EIR, Making Related Findings,  
Adopting the MMRP, and  
Approving a Reclamation Plan Amendment



**NOW, THEREFORE, BE IT RESOLVED** by the Planning Commission of the County of Santa Clara, based upon all of the oral and documentary evidence received, that the Environmental Impact Report is certified, the Statement of Overriding Considerations adopted, the Mitigation Monitoring and Reporting Program is adopted, and the proposed Reclamation Plan Amendment, subject to conditions of approval, is approved.

**PASSED AND ADOPTED** by the Planning Commission of the County of Santa Clara, State of California on JUNE 7, 2012 by the following vote:

**AYES:** Bohan, Chiu, Couture, Lefaver, Ruiz, Schmidt, Vidovich  
**NOES:**   
**ABSENT:**   
**ABSTAIN:**

Scott Lefaver  
Scott Lefaver, Chair  
Planning Commission

Attest:

Michele Napier  
Michele Napier  
Board Clerk

APPROVED AS TO FORM AND LEGALITY:

Nancy Clark  
Nancy Clark  
Deputy County Counsel

Exhibits to this Resolution—

- 1—Reclamation Plan Amendment Conditions of Approval
- 2—Table of Impacts (DEIR Table ES-3, pages ES-13 through ES-19; FEIR, pages 4-1 through 4-2)
- 3—Mitigation Monitoring and Reporting Program
- 4—*Feasibility Assessment*
- 5—Statement of Overriding Considerations Submitted by Applicant

Resolution of the Planning Commission  
Certifying the EIR, Making Related Findings,  
Adopting the MMRP, and  
Approving a Reclamation Plan Amendment