



Midpeninsula Regional  
Open Space District

R-25-124  
Meeting 25-28  
October 8, 2025

## AGENDA ITEM 5

### AGENDA ITEM

Presentation by Heidelberg Materials/Lehigh Southwest Cement Company on Actions of Mutual Interest regarding the Permanente Quarry

### GENERAL MANAGER'S RECOMMENDATION

Receive a Presentation by Heidelberg Materials/Lehigh Southwest Cement Company on the status of the proposed 2023 Reclamation Plan Amendment and other topics of mutual interest. No formal Board action required.

### SUMMARY

The Midpeninsula Regional Open Space District (District) Board of Directors (Board) will receive an oral presentation by staff of Heidelberg Materials/Lehigh Southwest Cement Company (Lehigh) on the status of Permanente Quarry and their application for the proposed 2023 Reclamation Plan Amendment (RPA). In June 2023, Lehigh submitted an RPA application to Santa Clara County (County), which the County deemed complete in January 2025. In June 2025 the County began preparing a Subsequent Environmental Impact Report (SEIR) to the 2012 Lehigh Permanente Quarry RPA Environmental Impact Report (EIR) and anticipates it will be available for review in spring 2026.

### BACKGROUND

In August 2014, the District agreed to dismiss its judicial appeal challenging Lehigh's Environmental Impact Report for the 2012 Reclamation Plan in exchange for various public benefits (R-14-98). One of the important conditions of the settlement was an agreement for the District and Lehigh to participate in regular, open public meetings regarding opportunities and issues of mutual concern. The Board has received presentations from Lehigh and its predecessors roughly annually starting in 2015 with the latest meeting in October 2024.

#### 2019 Reclamation Plan Amendment (RPA)

Lehigh proposed an RPA for the quarry in 2019 and provided tours for District Board members that same year and in 2020. On June 10, 2020, the Board formed an Ad-Hoc Committee to review the proposed 2019 RPA (R-20-61). On August 16, 2021, the Board adopted a Resolution approving a Memorandum of Agreement with the County regarding the inspection and enforcement of the Ridgeline Easement held by the County on Lehigh lands and authorizing the General Manager to execute the Agreement (R-21-110). On August 17, 2021, the County assigned the inspection and enforcement provisions of the Ridgeline Easement that buffers and separates quarry operations from Rancho San Antonio Open Space Preserve to the District. The

2019 RPA proposed mining in the quarry and lowering the ridgeline protected by the Ridgeline Easement, which would have required County approval to amend the Ridgeline Easement. After the County and the District's agreement to monitor and enforce violations of the Ridgeline Easement, Lehigh withdrew the application for the 2019 RPA. After 15 meetings, the District's Lehigh Quarry Review Ad Hoc Committee was dissolved as of the October 27, 2021, Board meeting.

#### Ridgeline Easement Monitoring

In March 2022, the District hired Cotton, Shires, and Associates, Inc., (CSA) to perform aerial and ground-based surveys to monitor the impacts of quarry operations on the Ridgeline Easement. CSA conducted a baseline survey in 2022 and monitoring surveys in 2023 and 2024 and determined that no significant alteration of the ground surface has occurred along the existing top of the quarry rim, or within the District's Triangular Easement by either natural processes or grading since the baseline survey of 2022. The quarry walls, however, remain highly unstable and the large 1987 landslide remains active.

#### Cement Plant

In August 2023, the County and Lehigh entered into a binding agreement to permanently close the Lehigh Cement Plant, which is separate from the quarry operations and not included in the approved 2012 RPA or the proposed 2023 RPA.

#### 2023 Reclamation Plan Amendment

In June 2023, Lehigh submitted another Reclamation Plan Amendment application with the County. The 2023 RPA proposes cessation of mining activities, re-using quarry waste rock for aggregate sale, and a new Reclamation approach—principally filling the main quarry pit with construction fill from around the Bay Area instead of re-placing material from the West Materials Storage Area back into the quarry pit, as approved in the 2012 Reclamation Plan.

### **DISCUSSION**

In October 2024 the District submitted a letter to Lehigh on the proposed 2023 RPA (Attachment 1) and in July 2025 submitted a joint letter with City of Cupertino to the County on the Notice of Preparation of a SEIR (Attachment 2). The letters restated the District's concerns on several critical issues. Some important concerns include:

- The 2023 amendment proposes to primarily reclaim the main quarry pit using imported construction fill in lieu of filling the quarry pit with material from the West Materials Storage Area (WMSA), as approved in the 2012 RPA. This would leave the waste rock pile as a permanent feature of the landscape, representing a significant visual impact to the region. Importing the proposed quantity of construction fill would require at least 600 truck trips a day, five days a week, for 30 years, representing a substantial source of pollution, greenhouse gas emissions, and public safety issues. In addition, the WMSA was not designed for permanent storage and has failed both with a slide into Permanente Creek and a debris flow into Rancho San Antonio Preserve in the past. While the 2023 RPA application proposes some slope stabilization and transferring a portion of WMSA materials into the quarry pit, substantial removal of the WMSA and its placement in the quarry pit would reduce the likelihood of slope failure prior to final reclamation and avoid significant impacts caused by importing fill.

- The proposed revegetation plan will not restore adequate ecological functions to the quarry lands. Importantly, the proposed plan fails to establish wildlife corridors across the quarry property to connect Rancho San Antonio Preserve to other open space areas and habitats.
- The proposal will not permanently protect the undeveloped parcels surrounding the quarry owned by Heidelberg, which are critical to maintain the ecological integrity of the region.

#### Timeline of 2023 RPA application.

- June 2023, Lehigh submitted a Reclamation Plan Amendment application
- December 10, 2023: The county issued an incomplete letter to Lehigh
- May 30, 2024: First resubmittal
- December 2024: Second resubmittal
- December 10, 2024: Incomplete letter December 16, 2024 (referenced District comment letter of August 16, 2024- Attachment 2)
- December 2024: Third resubmittal
- January 27, 2025: County issued noticed that the 2023 RPA Application was deemed complete.
- June 12, 2025: County issued a notice of preparation of subsequent environmental impact report
- July 8, 2025: County held a public scoping community meeting

The District's basic position is that the existing 2012 Reclamation Plan is preferable to the 2023 RPA application. However, as the 2023 RPA enters the environmental review preparation period District staff are engaging outside legal counsel and technical consultants to review both the RPA and the forthcoming SEIR with the intent to ensure environmentally preferable options are considered and evaluated. In particular, maximizing the amount of the WMSA that is used to fill the pit to restore natural contours and accelerate the buttressing of over steepened quarry walls.

### FISCAL IMPACT

None - future contracts or services related to District review of the County's environmental review process will come before the Board at a later time.

### PRIOR BOARD AND COMMITTEE REVIEW

The Lehigh Quarry Review Ad Hoc Committee met 15 times to review the 2019 RPA, and these efforts resulted in the District becoming a partner in the protection of the County owned Ridgeline Easement.

In addition, the full Board has received updates and considered actions relevant to the quarry at the following meetings:

- **August 13, 2014** Board approved the settlement agreement with Lehigh ([R-14-98](#), [minutes](#))
- **May 27, 2015** District/Lehigh Update Meeting ([R-15-84](#), [minutes](#))
- **October 14, 2015** District/Lehigh Update Meeting ([R-15-147](#), [minutes](#))
- **May 10, 2017** District/Lehigh Update Meeting ([R-17-55](#), [minutes](#))
- **November 14, 2018** District/Lehigh Update Meeting ([R-18-127](#), [minutes](#))

- **During 2019/2020** Lehigh hosted several tours of the Quarry
- **June 10, 2020** Formation of Ad-Hoc Committee to review the proposed 2019 RPA ([R-20-61](#), [minutes](#))
- **August 16, 2021** The Board authorized entering into an agreement with the County regarding the Ridgeline Easement on Lehigh Quarry lands ([R-21-110](#), [minutes](#))
- **October 27, 2021** District's Lehigh Quarry Ad Hoc Committee was dissolved ([FYI](#))
- **December 8, 2021** District/Lehigh Update Meeting ([R-21-162](#), [minutes](#))
- **July 26, 2023** District/Lehigh Update Meeting ([R-23-92](#), [minutes](#))
- **October 23, 2024** District/Lehigh Update Meeting ([R-24-127](#), [minutes](#))

## PUBLIC NOTICE

Public notice was provided as required by the Brown Act.

## CEQA COMPLIANCE

This item is not a project subject to the California Environmental Quality Act.

## NEXT STEPS

With the County's determination that the 2023 RPA is complete and environmental review underway, District staff are engaging outside legal counsel and technical consultants to review both the RPA and the forthcoming SEIR. District staff may also return to the Board to provide status updates and to obtain authorization for contracts for consultants to support the District's review.

### Attachments:

1. October 14, 2024: Letter from the District to Lehigh Quarry regarding the 2023 RPA application
2. August 16, 2024: Letter from the District to the County regarding supplementary information for the RPA application
3. July 15, 2025: Letter from the District and City of Cupertino to County regarding the Notice of Preparation of a SEIR

Responsible Department Head:

Kirk Lenington, Natural Resources Manager

Contact Person and Prepared by:

David Liefert, Senior Resource Management Specialist, Natural Resources



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October 14, 2024

Heidelberg Materials

Attn: Vice President Environment and Sustainability Gregory Ronczka

Transmitted via Email: [gregory.ronczka@heidelbergmaterials.com](mailto:gregory.ronczka@heidelbergmaterials.com)

Dear Gregory Ronczka

As we look forward to hosting Heidelberg/Lehigh Southwest Cement Company (Lehigh) at our upcoming Midpeninsula Regional Open Space District (Midpen) Board of Directors (Board) meeting on October 23, 2024, we wanted to provide you with an outline of Midpen's continued concerns regarding the proposed 2023 Reclamation Plan Amendment (RPA) for the Permanente Quarry (Quarry). We also want to acknowledge Heidelberg's proactive outreach to discussing the proposed Reclamation Plan Amendment and appreciate your work to maintain a dialogue with Midpen as you work towards the eventual closure and reclamation of the Quarry.

As you know, the Quarry is adjacent to our most popular preserve, Rancho San Antonio Open Space Preserve (Rancho Preserve) and Rancho San Antonio County Park (Rancho County Park) (collectively Rancho). Rancho County Park is managed by Midpen through a management agreement with Santa Clara County and collectively Rancho receives over 1 Million visitors annually, making it our most popular and highest visited preserve. Along with being the most visited site, Rancho Preserve is also home to our Foothills Field Office, where ~30 employees report to work.

We provide the following comments to express our desire to uphold the public's interest and Midpen's mission "to acquire and preserve a regional greenbelt of open space land in perpetuity, protect and restore the natural environment, and provide opportunities for ecologically sensitive public enjoyment and education." These critical issues and concerns are much the same as we have previously submitted to both you and Santa Clara County in 2021 and we wish to reiterate them now, as the proposed 2023 Reclamation Plan Amendment application fails to adequately address many of these concerns.

The West Materials Storage Area (WMSA) continues to be a large environmental issue for Midpen and the surrounding communities. The aesthetic impacts from the materials are significant, as viewed from many Rancho trails and from Fremont Older Open Space Preserve, as well as regionally throughout the greater southern San Francisco Peninsula area. The WMSA also presents long term issues of stability and water quality. It was not intended for permanent waste material storage and has failed at least twice with a slide into Permanente Creek in the Yeager Yard and with a debris flow into Rancho San Antonio Preserve in the past. The 2012 Reclamation Plan committed to the removal of the WMSA and Midpen would like to hold Lehigh accountable to that commitment. Midpen's

preferred alternative is for all suitable material in the WMSA to be returned to the quarry pit, as approved in the 2012 Reclamation Plan. Midpen opposes importing fill from outside the quarry until all reasonable sources within the reclamation area, including the WMSA and EMSA are expended. Importing fill material unnecessarily from outside the Quarry will introduce unacceptable emissions, safety issues, and noise that will dramatically impact Lehigh's neighbors.

The proposed revegetation plan is not adequate to leave the property in an ecologically functional condition that will support biodiversity and climate resiliency in the lands surrounding Rancho. Midpen desires to see a focus on habitat connectivity in the revegetation plan. Establishing habitat corridors to connect Rancho to other open space habitats adjacent to the western boundary of the Quarry will entail both designating these corridors and developing revegetation plans that can reclaim and restore these areas to functional habitat corridors for target wildlife species such mountain lion that is proposed as a threatened species under the California Endangered Species Act. The permanent protection of undeveloped lands around the reclamation area either through conservation easements or transfer to Midpen would enhance the development of wildlife corridors through the reclamation area by preserving intact wildlife habitat.

Ten undeveloped parcels and portions of three parcels, in the jurisdictions of Palo Alto, Cupertino and Santa Clara County owned by Lehigh are crucial to protecting habitat surrounding the Quarry reclamation area. Midpen and Lehigh have a history of working on public access in these parcels. Lehigh has granted a trail easement to Midpen for public access for the existing Quarry Trail and on another parcel for a future planned extension of the Black Mountain Trail. Now is the time to protect these parcels. Midpen requests that Lehigh, as part of its application process, grant through easement or ownership an assurance to the public that these lands will be protected in perpetuity.

The protection of Permanente Creek and its habitats is very important to Midpen's mission protecting the natural environment. This creek and many environmental issues extend beyond the quarry boundary and affect surrounding habitats in Rancho and downstream. Natural waterways like this provide invaluable ecosystem benefits and connect our visitors with the natural environment. The full realization and completion of the Permanente Creek Restoration project that Lehigh has already committed to (but has not yet implemented) is of the utmost importance because it will provide important benefits to the impacted watershed. We recognize the work Lehigh has done to treat selenium containing waters and to manage the discharge with the Regional Water Quality Control Board. The potential for selenium discharge is an issue that may outlast the mining operations on the property. Continued vigilance by Lehigh and the Water Board to monitor and manage water quality is critical to a healthy ecosystem and safe drinking water.

Midpen is also interested in public access to Rancho from Stevens Creek Boulevard. Midpen requests that Lehigh work with Union Pacific to grant a trail easement either via Lehigh's existing easement or on a new right of way to either the county or Midpen to provide public access to Rancho trails from Stevens Creek Boulevard. This potential trail connection is highlighted in the *Joint Cities Coordinated Stevens Creek Trail Feasibility Study*.

Midpen recognizes that Lehigh has taken a major step towards addressing the significant environmental effects of the Quarry and cement production that has been a fixture on the local landscape for multiple generations by closing the cement plant and ceasing new quarrying operations on the property. The last significant step is to return the lands to "a usable condition readily adaptable for alternate land uses," which Midpen sees including open space and important habitat functions. We hope that Lehigh will work with us to ensure that its reclamation activities are done responsibly.

Midpen's mission requires a vision into 'perpetuity' for recreation and ecosystem resilience in the Permanente Creek area. We appreciate Lehigh's consideration of these issues.

Sincerely,

Brian Malone  
Assistant General Manager

cc:

Kelsey Martinez Combellick, Office of Supervisor Jos Simitian, County of Santa Clara  
Robert Salisbury, Principal Planner, County of Santa Clara  
Keith Roberson, Senior Engineering Geologist, San Francisco Regional Water Quality Control Board  
Chad Mosley, Public Works Director, City of Cupertino  
Ed Shikada, City Manager, City of Palo Alto  
Pamela Wu, City Manager Cupertino  
Gabriel Engeland, City Manager, City of Los Altos  
Alice Kaufman, Legislative Advocacy Director, Green Foothills  
Shani Kleinhaus, Environmental Advocate, Santa Clara Valley Audubon Society  
James Eggers, Senior Chapter Director, Sierra Club Loma Prieta Chapter



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August 16, 2024

County of Santa Clara, Planning Office  
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SUBJECT: Revised 2023 Lehigh Quarry Major Reclamation Plan Amendment Application  
(County File No. PLN23-100)

Dear Mr. Salisbury,

On behalf of the Midpeninsula Regional Open Space District (Midpen), we appreciate the opportunity to comment on the revised 2023 Lehigh Quarry Major Reclamation Plan Amendment Application. Midpen owns and maintains Monte Bello and Rancho San Antonio Open Space Preserves and manages Rancho San Antonio County Park, which share property boundaries with Lehigh Quarry (Quarry). We appreciate the County's careful review of the revised Reclamation Plan Amendment Application to ensure that it contains sufficient information to fully consider the potential impacts on the region's sensitive resources that Midpen strives to protect.

Upon reviewing the Quarry's revised application materials dated May 30, 2024, Midpen offers the following comments to the County Planning Department to aid in the analysis of the Project. These comments are organized according to the County's summary of required supplemental information:

### 1. Availability of Imported Clean Fill

It remains unclear whether the local economic market supports importing clean fill suitable for reclamation on the timeframe proposed under the reclamation plan amendment. Midpen recommends that the County require the Quarry to revise the "Suitable Surplus Soil Availability Study" (2019), which was previously submitted as part of the application, as it insufficiently assesses current or future market conditions.

An assessment of projected suitable surplus soil should be substantiated by transparent, verifiable economic data. The Suitable Surplus Soil Availability Study identifies permitting documents submitted to the San Francisco Bay Regional Water Quality Control Board (RWQCB) as one source of the reported quantities of available fill but relies heavily on confidential conversations with industry operators and developers. The study states that "...extrapolation and estimates are necessary to account for volumes..." because "Quantities of SCS and SSS received, annual receiving capacities and remaining capacities discussed in this report are estimated using expert professional judgement".

Considering that only two years (2017 and 2018) of clean fill quantities were evaluated in this assessment and that the influence of unverified sources on the report's findings is unknown, forecasting the availability of clean fill over the next 30 or more years remains highly uncertain and is inadequately addressed in the current



application. To complete the application, the 2019 study should be revised to include only reported fill quantities or more clearly indicate the influence of industry expert opinion on the findings. For example, the verified quantities of fill — those based on public records — could be reported separately from the unverified quantities — those based on professional judgement — so that the relative influence of less reliable sources can be weighed against the total reported quantities.

It is also critical to highlight that the economic market's support for importing clean fill should not only be assessed but also verified through continuous monitoring and updated reports. The 2019 Suitable Surplus Soil Availability Study does not adequately account for potential fluctuations in market conditions over the extended timeline of the reclamation project. Therefore, we recommend the inclusion of periodic updates to the soil availability assessment throughout the duration of the project. These updates should be made publicly accessible to ensure transparency and allow for independent verification. The Quarry should provide a contingency plan in case the projected quantities of suitable surplus soil are not met. This plan should outline alternative sources of clean fill and the steps that would be taken to secure these sources without causing additional environmental impacts.

## **2. Protocol for Imported Soil**

The revised application insufficiently describes the screening criteria for selecting and importing fill at the Quarry. Attachment 6 of the Quarry's response letter provides information on the standard approach to developing and complying with imported fill protocols, but the Quarry's application still lacks the proposed methodologies and screening criteria that would define a future Imported Soils Management Plan. This information is necessary to evaluate the proposed avoidance measures specific to the Quarry's unique geohydrological setting that would prevent impacts from contaminated fill. Given that the main argument presented by the applicant for amending the existing reclamation plan action of using WMSA material to fill the quarry pit is that this could result in a groundwater contamination risk, protocols to ensure imported fill materials do not present their own (or greater) risk of contamination must be substantial.

The Imported Soils Management Plan should include a communication and notification protocol involving Midpen and other relevant agencies. This protocol should ensure that all stakeholders are promptly informed of any updates or changes to the Plan, allowing for agency review and input. The Reclamation Plan should also clarify how Lehigh Quarry will address the fill removed from the Permanente Creek Restoration Area and how much of this fill will be used for the quarry backfill.

## **3. Water Quality and Disposition of Drainage Outfalls**

The Quarry's response letter states that in Phase I of the Reclamation Plan, "Discharge Point 001 (the upper discharge location for the final treatment system) set forth in the facility's NPDES Permit will be eliminated, and stormwater will ultimately runoff and passively drain in a sheet-flow manner to Permanente Creek." It further states that "Reclamation of the EMSA is also expected during Phase 1, which will reduce the volume of water that may require treatment from Discharge Point 007 (the lower discharge location for the final treatment system) prior to discharge to Permanente Creek; stormwater will ultimately runoff and passively drain from the EMSA to the creek once the EMSA is covered and vegetated."

The application proposes to establish passive stormwater drainage under Phase I, but it does not provide sufficient detail about the conditions and criteria under which discharge points in the Quarry's NPDES permit would be eliminated such that changes in water quality and drainage patterns do not negatively impact Permanente Creek. These details are critical to estimate the timing of when the discharge points and water treatment facility can safely be eliminated. The application should include timelines and milestones for achieving these conditions, supported by hydrological monitoring data.

Specifically, the application should include additional details to verify that the Phase I modifications to runoff have resulted in the expected outcomes, such as the plans for a hydrological monitoring study that could measure such outcomes. The monitoring plan should include regular sampling and analysis of water quality parameters to detect changes resulting from Phase I that would be used to establish the timing of discharge

elimination. Without these additions it would be difficult to accurately assess the progress of drainage corrections under Phase I and the subsequent timing of discharge elimination.

Furthermore, the application should provide a detailed analysis of the potential selenium leaching from the WMSA and EMSA materials used as fill and that the sorting of the materials to separate greenstone and other components presents sufficient risk to groundwater quality to deem it as infeasible. This analysis should be based on site-specific data to confirm the selenium concentrations and demonstrate the level of risk to groundwater quality.

Considering our incomplete understanding of the biological impacts of Leigh Quarry's discharges on wildlife and habitat suitability, the County and Lehigh Quarry should evaluate how water discharged adheres to water quality standards and whether treatment for other contaminants, including but not limited to arsenic, mercury, and vanadium present in onsite materials, is warranted to protect Permanente Creek and local water resources.

#### **4. Impacts from Truck Trips**

The Quarry's response letter to the County's comments regarding truck routes for materials hauling with limited specifics about which roads would be utilized and if impacts would be increased from baseline conditions, as the comment states that these approved routes have been utilized for decades. Impacts from trucking materials include noise, traffic, air quality impacts, and greenhouse gas emissions. The Quarry has failed to conduct an adequate study of how many truck trips would be conducted over the baseline use level and what the impacts would be to the communities that they traverse. Many of the communities around the Quarry already face heavy traffic during commute hours and it is unclear from the Quarry's response both if heavily commuted roads would be used and if there would be any time restrictions or limitations (e.g. non-commute hours, weekends, etc.). Midpen recommends that the Quarry conduct a full analysis of trucking required for fill import and the environmental impacts over the baseline conditions.

The Quarry's response also states that the 2023 RPA allows for import of fill material via rail. Rail transport is not mentioned in any other part of the document including in the 2023 RPA document or appendices. While rail transport of imported fill material could alleviate some pressure on the surrounding communities for traffic, there is no information about the feasibility of rail transport moving materials from the local source onto the railcars to then move materials from the railcars to the Quarry, current uses of rail transport and any impacts caused by increased or ongoing uses such as impacts relating to noise, air quality, greenhouse gases, etc. The application should provide a detailed analysis of which rail lines would be used and if this rail transport would reduce or eliminate the need for truck transport on local roads in Cupertino as well as the associated impacts of using rail transport.

#### **5. Storage Impacts**

The Quarry's response to the County's comment requesting details about how and where materials will be stored in the interim do not adequately answer the question or provide sufficient detail to determine potential aesthetic impacts to trail users on Midpen lands. The Quarry's response states that "comparatively small volumes of imported fill placed in interim storage, the material will likely be placed above and east of the east rim of the pit or in the WMSA." The stated 500,000 to 1,000,000 c.y. per year placed in interim storage could reach great heights and cause visual impacts visible from public trails in Rancho San Antonio and Monte Bello Open Space Preserves. For example, a pile of 50,000 square feet (approximately 225 feet by 225 feet) at a depth of 500 feet deep is slightly less than the 1,000,000 c.y. projected annual fill amount. A pile of this size would be highly visible even if the Quarry determines that it would be comparatively small. Analysis of these visual impacts should also evaluate consistency with existing easement conditions and agreements that limit WMSA waste material heights and resulting visual and aesthetic impacts.

Additionally, the Quarry's answer does not specify how the material would be stored. If it would be stored dry in a pile, there is no accounting for impacts from dust that could be windblown into the park. If it would be wetted down periodically, there is no accounting for the amount of water that would be necessary and if the amounts would be sustainable for the region in times of drought that are predicted to become ever more

frequent in the face of climate change. Midpen recommends that the Quarry prepare a comprehensive interim storage plan that accounts for all impacts of storing large amounts of fill material including aesthetics, air quality, and water impacts.

Thank you for the opportunity to submit our comments on the completeness of the revised application. If you have questions, please contact me at [bmalone@openspace.org](mailto:bmalone@openspace.org) or call me at (650) 625-6562.

Sincerely,

*Brian Malone*

Brian Malone  
Assistant General Manager, Visitor and Field Services

CC: Midpen Board of Directors  
Ana M. Ruiz, General Manager

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July 14, 2025

**Via E-Mail**

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**Re: Comments on Notice of Preparation of a Subsequent Environmental  
Impact Report for the Permanente Quarry Reclamation Plan  
Amendment Project (SCH # 2010042063, State Mine ID # 91-43-0004**

Dear Mr. Salisbury:

On behalf of our clients, the Midpeninsula Regional Open Space District (“the District”) and the City of Cupertino (“City”), we write to provide comments on the Notice of Preparation (“NOP”) of a Subsequent Environmental Impact Report (“SEIR”) for the Permanente Quarry Reclamation Plan Amendment Project (“Project”). The District owns and maintains Monte Bello and Rancho San Antonio Open Space Preserves which share property boundaries with Permanente Quarry (“Quarry”), West Materials Storage Area (“WMSA”), and Permanente Creek Restoration Area. In addition, the District manages Rancho San Antonio County Park under a management agreement with Santa Clara County. The City of Cupertino is the local jurisdiction immediately adjacent to the Quarry, and Cupertino residents will be directly impacted by the transportation and air quality impacts of the proposed Project.

We have reviewed the NOP and offer the following comments regarding issues that should be evaluated in the SEIR. The issues identified in this letter are not intended to be exhaustive. Our clients reserve their rights to raise other issues during the environmental review process after the SEIR is circulated for public review.

The NOP lists many potentially significant probable environmental effects from the Project, including but not limited to impacts to air quality, biological resources,

Robert Salisbury  
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cultural and tribal resources, geology and soils, seismicity, paleontology, hazards and hazardous materials, hydrology and water quality, noise and vibration, transportation, wildfire. The SEIR will also evaluate cumulative impacts and project alternatives. NOP p. 5.

The Project includes bringing in an enormous volume of off-site fill for the Quarry pit while simultaneously proposing to leave WMSA overburden material in place. This proposal to bring 31.2 million cubic yards from off site to fill the Quarry pit will have substantial impacts to transportation, air quality and Greenhouse Gas emissions, as well as visual and aesthetic impacts from leaving pit waste above ground instead of using it to fill the Quarry pit as originally intended. These impacts, in addition to concerns about slope stability, and impacts to Permanente Creek and local groundwater, are all significant concerns for the District, the City, other neighboring jurisdictions, and the local community.

The California Environmental Quality Act (“CEQA”) requires a comprehensive assessment of the environmental impacts of the Project. The SEIR must provide detailed analysis of the Project’s environmental impacts; evaluate alternatives to the proposed Project; and consider any and all potentially feasible mitigation measures to lessen or avoid the Project’s significant impacts. Informed decision-making and public participation are fundamental purposes of CEQA. *See Union of Med. Marijuana Patients, Inc. v City of San Diego* (2019) 7 Cal. 5th 1171, 1184-1185; *California Bldg. Indus. Ass’n v Bay Area Air Quality Mgmt. Dist.* (2015) 62 Cal. 4th 369, 381; *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 404. This can only occur if the EIR comprehensively discloses and rigorously evaluates the Project’s environmental impacts, potential mitigation measures, and Project alternatives as CEQA requires. The following are specific comments relating to the scope of the Project SEIR and the impacts that it must address.

## **Project Description**

One of CEQA’s fundamental requirements is that an EIR contain an accurate and complete project description. *See County of Inyo v. City of Los Angeles* (1977) 71 Cal. App. 3d 18; *see also* 14 Cal. Code Regs. § 15124 (“CEQA Guidelines”). A clear and comprehensive project description is essential for meaningful public review. The NOP describes that the amended Reclamation Plan proposes removal of the “Exploration Area,” which would remove approximately 317.6 acres from the original 1,238.6-acre plan boundary. The remaining 921-acre area would consist of areas needed for processing stockpiled aggregates and reclamation and closure work. However, this is different than the 353 acres stated in Section 2.7 Permit and Planning Boundaries of the Plan Amendment: “[u]nder this amendment the 353 acres south of Permanente Creek are

Robert Salisbury  
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removed from the reclamation plan.” The SEIR must ensure that the CEQA analysis and proposed Plan Amendment are aligned and that the Project Description is stable and comprehensive to allow a full understanding of the Project’s anticipated impacts. It should also discuss and analyze the restoration of the removed acres south of Permanente Creek because habitat and species along Permanente Creek may be affected by the Project’s restoration activities.

### **Alternatives**

CEQA requires that an EIR analyze a range of reasonable alternatives to a project that can feasibly attain most of the basic project objectives while avoiding or substantially lessening the project’s environmental impacts. *See* Public Resources Code § 21100(b)(4); *see also* CEQA Guidelines § 15126.6(a). Although the NOP notes that the SEIR will evaluate a reasonable range of alternatives, it does not give any indication as to what alternatives may be considered. NOP p. 5.

It is imperative that the SEIR include a thorough analysis of the No Project Alternative because it is not clear that the Project is actually needed. The Project will have impacts to residents, students, and community members along the entirety of the truck route along which 31.2 million cubic yards of off-site fill will be transported. The NOP offers no reason why the 2012 Reclamation Plan needs to be amended, and no indication that other options for filling the Quarry pit (with onsite materials instead of new fill that needs to be transported in) have been, or are being, considered.

In light of the impacts the Project will bring to the environment and surrounding community, the SEIR must adequately justify and explain the need for the Project. The SEIR should also analyze alternatives such as using a greater volume of WMSA overburden material as Quarry fill along with measures to ensure that leaching into the water table is prevented. One such alternative could include using lesser amounts of clean fill and a cap or barrier, before filling the remainder of the pit with WMSA or EMSA materials, to minimize the amount of clean fill that would need to be transported to the site. The analysis of alternatives should be robust and should include a thorough evaluation of any option that minimizes importing materials to fill the Quarry pit.

### **Analysis of the Project’s Probable Environmental Effects**

An EIR must provide enough analysis and detail about environmental impacts that will enable decisionmakers to understand environmental consequences of their decisions. CEQA Guidelines §15151; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692. To this end, the County must make a good faith effort at full disclosure of environmental impacts.

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The NOP states that the SEIR will address the Project's effects on air quality, biological resources, cultural and tribal resources, geology and soils, seismicity, paleontology, hazards and hazardous materials, hydrology and water quality, noise and vibration, transportation, wildfire. NOP p. 5. In addition to any other potentially significant impacts, the SEIR must analyze the following:

#### **Aesthetic and Visual Resource Impacts**

- Conduct a visual simulation of the Project site with the WMSA overburden material left in place, covered with suitable material, and revegetated. Leaving the overburden material largely in place will have visual impacts to the surrounding community and public trail corridors in Rancho San Antonio and Monte Bello Open Space Preserves that has not been analyzed.

#### **Air Quality and Health Impacts**

- Assess localized air pollution and Greenhouse Gas (GHG) emissions impacts from importing and placing 31.2 million cubic yards of fill with acceptable WMSA overburden material, including diesel emissions and particulate matter from haul trucks, which can impact nearby sensitive receptors like schools, homes, and open space areas. Conduct a Health Risk Assessment (HRA) for communities near the Quarry and along the fill haul route.
- Assess impacts from fugitive dust emissions and dirt release from haul trucks during fill transport to and from the site.
- Study cumulative impacts from Project-generated truck traffic in combination with nearby development and roadways (I-280, Highway 85).
- Consider measures to require haul trucks used for the project to transition from internal combustion engines to electric motors over the course of the multi-year Quarry Reclamation project to reduce the air quality impacts.

#### **Geotechnical Stability**

- Long-term geotechnical stability of the ridgeline during the reclamation process continues to concern the District and directly threatens the open space condition of its neighboring properties. Historic, and ongoing, erosion of the ridgeline by both small-scale and catastrophic slope failures has been a problem. The geotechnical stability of the ridgeline will not be achievable until the Quarry pit is filled and buttresses are in place. As such, interim stability measures should be provided as mitigation measures, as well as contingency measures that consider uncertainties in, and the past failures of, slope stability assumptions.
- Evaluate slope stability of the Quarry walls and backfilled areas with proposed fill material and provide an engineering analysis of fill compaction, settlement, and long-term structural integrity.

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### **Hazards and Hazardous Materials**

- If the Project includes removing contaminated materials from the project site, evaluate the impacts of accidental release of contaminated materials on communities near and along the haul route.

### **Noise and Vibration**

- Evaluate long-term noise and vibration impacts from heavy equipment and haul truck operations, especially near residential, school, or recreational areas.
- Consider all methods and technologies available to reduce truck noise both on-site as well as on-route, including engine, break, and vibration noise.

### **Truck Traffic and Transportation Impacts**

- Quantify daily and peak truck trips over the material import period, identify specific roadways and haul routes, and analyze related impacts of new truck trips over baseline conditions.
- Include hour-of-day and seasonal timing restrictions for truck transport to minimize community impacts.
- Conduct a new Suitable Surplus Soil Availability Study that evaluates current market conditions and assesses the availability and location of where the fill would need to be sourced to meet the demands of the Project for 31.2 million cubic yards of clean fill. The study should assess fill availability based on publicly documented, verifiable sources and consider competing regional demands (e.g., wetland restoration, flood protection projects). The location of the volume of clean fill needed will factor into the vehicle miles travelled (VMT) for the haul trucks and will be significant in determining the air quality impacts and GHG emissions of the Project.
- Analyze contingency scenarios in the event that projected fill quantities are not available.
- Evaluate emergency access and traffic impacts on local evacuation routes from the volume of daily truck trips expected to be generated.
- Assess potential roadway degradation and need for roadway rehabilitation or improvements along the fill haul route.
- Consider employing all available measures to eliminate dirt and dust release from haul trucks before they enter the public right of way by equipping transport vehicles with effective containment equipment and by implementing measures for removing soil and other debris from truck tires on site.



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### **Water Quality and Hydrology**

- Assess potential impacts on surface water and groundwater from runoff or sedimentation during haul truck deliveries and backfilling of the Quarry.
- Evaluate long-term drainage and erosion control measures that account for NPDES discharge point elimination.
- Address potential impacts to biotic and abiotic conditions in Permanente Creek resulting from proposed amendments to the 2012 Reclamation Plan, a substantial increase in truck traffic and potential runoff and sedimentation, and assess any changes that impact consistency with the Permanente Creek Restoration Project.

### **Ecological Functionality**

- Assess impact on habitat connectivity through the reclamation plan area to connect to surrounding open space habitat.
- Evaluate functional habitat corridors for target wildlife species such as mountain lion that is proposed as a threatened species under the California Endangered Species Act.

### **Wildfire Risk**

- Assess how truck access might affect wildfire risk, particularly in high and moderate fire hazard zones.

### **Cumulative Impacts**

The EIR must analyze the cumulative impacts of the Project in combination with the effects of other past, current, and reasonably foreseeable future projects in the area. CEQA Guidelines §§ 15130(a), 15065(c). In particular, the EIR must evaluate the cumulative air quality, GHG emissions, and transportation impacts of the proposed reclamation activities, as amended, in combination with any projects currently under environmental review. *See San Franciscans for Reasonable Growth v. City & County of San Francisco* (1984) 151 Cal.App.3d 61, 74 n.13; *Bozung v. Local Agency Formation Comm'n* (1975) 13 Cal.3d 263, 284.

### **Conclusion**

The proposed Project is likely to have substantial environmental impacts, and it is essential that the SEIR rigorously and comprehensively assess the Project. The County must provide detailed analysis of the Project's environmental impacts, evaluate alternatives to the proposed Project, and consider any and all potentially feasible mitigation measures to lessen or avoid the Project's significant impacts.

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Thank you for the opportunity to provide these comments. Please place Hilary Stevenson at Midpeninsula Regional Open Space District, Floy Andrews at the City of Cupertino, and this office on the notice list for this Project. Please keep us informed of the release of the Draft SEIR as well as all notices, hearings, staff reports, briefings, meetings, and other events related to the Project.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Edward T. Schexnayder