

CHAPTER 4

Alternatives

CEQA requires a lead agency to analyze a reasonable range of alternatives to a proposed project that could feasibly attain most of the basic objectives of the project while substantially reducing or eliminating its significant environmental effects. CEQA also requires an EIR to evaluate a “no project” alternative to allow decision-makers to compare the impacts of approving a project with the impacts of not approving it. Other than the requirement to analyze a “no project alternative,” no ironclad rule governs the nature or scope of the alternatives to be discussed other than the rule of reason, which demands that an EIR set forth only those alternatives necessary to permit a reasoned choice and examine in detail only the alternatives that the lead agency determines could feasibly attain most of the project’s basic objectives. The range of feasible alternatives is selected and discussed in a manner to foster meaningful public participation and informed decision making (California Code of Regulations [Cal. Code Regs.] Title 14, Section 15126.6).

Consistent with these tenets of CEQA, this chapter describes the key considerations used to identify and screen potential alternatives for the Permanente Creek Restoration Plan (PCRP), explains why potential alternatives were eliminated from further consideration, and describes the alternatives that were carried forward for more detailed analysis.

4.1 Potential Alternatives Screening Process

The following factors were considered in determining whether to carry potential alternatives to the PCRP forward for more detailed consideration in this SEIR:

- (1) Whether the potential alternative would meet most of the basic Project objectives. The Project objectives are identified in Section IV.A.33 of the amended consent decree between the Sierra Club and Lehigh/Hanson Permanente Cement, Inc., dated May 11, 2016 (Amended Consent Decree) (see **Appendix B**); in Section 1.2 of the *Permanente Creek Restoration Plan Updated 90% Level Submittal Design Basis Technical Memorandum* (see **Appendix C**); and in Section 2.2, *Project Objectives*. They are repeated below for ease of reference. Lehigh’s objectives for the PCRP are as follows:
 - (a) Increase quantity and quality of resident rainbow trout habitat through creation of pools, increased channel complexity (e.g., cascade and step channeling, floodplain roughness with floodplain logs, boulders, planting pockets, live stake trench packs), increased channel cover, and by fish passage through and between reaches consistent with a geomorphically stable, self-sustaining channel unless California Department of Fish and Wildlife (CDFW) California Salmonid Stream Habitat Restoration Manual (CDFW

- Restoration Manual) hydraulic design criteria cannot be met due to: (1) the gradient of the reach, or (2) bedrock grade controls confirmed by an independent geologist.
- (b) Improve riparian habitat, including improvement to channel and stream bank stability and ecological/geomorphic function.
 - (c) Remove mining-related fill and sediments in the bed, banks, and adjacent slopes.
 - (d) Remove or alter man-made structures so as to improve riparian habitat.
 - (e) Lay back creek banks and adjacent hill slopes to provide stable slopes sufficient to prevent fill from entering the creek.
 - (f) Require restoration that is no less stringent than any restoration that is approved or required by any agency,¹ including but not limited to the County of Santa Clara Department of Planning and Development (County Planning Department), CDFW, and the Regional Water Quality Control Board (RWQCB), and that is to be performed in a period of time no greater than any restoration that is approved or required by any agency, including but not limited to the County Planning Department, CDFW, and the RWQCB.
- (2) Whether it would be “feasible,” where feasible means capable of being accomplished in a successful manner within a reasonable period of time, considering economic, environmental, legal, social, and technological factors (Public Resources Code Section 21061.1; 14 Cal. Code Regs. Sections 15126.6 and 15364). Among the factors that may be considered when addressing the feasibility of alternatives are environmental impacts, site suitability, economic viability, social and political acceptability, technological capacity, availability of infrastructure, general plan consistency, regulatory limitations, jurisdictional boundaries, and whether the proponent could reasonably acquire, control, or otherwise have access to an alternative site (14 Cal. Code Regs. Section 15126.6[f]).
- (3) Whether it would be able to avoid or substantially lessen any of the potentially significant impacts of the Project.
- (4) Whether its implementation is remote or speculative.

Any potential alternative determined to be infeasible, to not avoid or substantially lessen a potential significant impact of the PCRCP, or to be remote or speculative was not carried forward for more detailed review.

4.2 Potential Alternatives Initially Considered but Not Carried Forward for Detailed Review

In light of the facts of this Project and direction in CEQA and the CEQA Guidelines that an EIR consider “only those alternatives necessary to permit a reasoned choice,” the County Planning Department, as lead agency, has determined that there are no suitable alternatives to the PCRCP. Accordingly, the agency has determined that it is appropriate to analyze three alternatives in detail: the PCRCP (i.e., the Project) and two no project alternatives, the No Grading Approval/No Project

¹ For purposes of the analysis, this SEIR understands “restoration that is no less stringent than any restoration that is approved or required by any agency” to mean that the creek restoration activities can be no less stringent than as set forth in permits or other approvals issued by regulatory agencies for the proposed Project.

Alternative and the No Approvals/No Project Alternative. Each no project alternative is described later in this chapter; the rationale for the County Planning Department’s determination is summarized below.

To satisfy the first screening criterion, a potential alternative must have the capacity to feasibly attain “most of the basic objectives of the project [and] avoid or substantially lessen any of the significant effects of the project. . . .” (CEQA Guidelines Section 15126.6[a]). The potential alternative must also have the capacity to attain the “underlying fundamental purpose” of the project, which in this case is to restore the approximately 9,000 linear feet of Permanente Creek (135.6 acres) for the beneficial purposes of aquatic and riparian habitat and other related conditions specified in the objectives listed above.² No such alternative was identified.

Regarding feasibility, the second screening criterion, the County Planning Department determined two factors to be particularly limiting: legal feasibility and environmental feasibility. Authorization of the requested Grading Approval would result in the restoration of a specific segment of Permanente Creek in accordance with the provisions of an amended consent decree resolving a lawsuit (Appendix B). Thus, to be legally feasible, any potential alternative would have to comply with the creek restoration requirements set forth in the Amended Consent Decree. Accordingly, a “no project” alternative that would not include any creek restoration was initially considered, because it could marginally reduce air pollutant emissions and greenhouse gas emissions by resulting in reduced truck traffic. However, such an alternative was not carried forward because it would be legally infeasible because of its inconsistency with a federal consent decree (*Tiburon Open Space Committee v. County of Marin* (2022) 78 Cal.App.5th 700).

To be environmentally feasible, any potential alternative must also be capable of avoiding or substantially lessening a significant effect of the project. Under the circumstances of this Project, no site outside the geographic scope considered in the Amended Consent Decree would be suitable or capable of avoiding or substantially lessening a significant impact of the Project. Instead, off-site alternatives or alternatives that limit the restoration would either raise new significant impacts or fail to achieve the Project’s legally required conditions. No such potential alternative was identified.

Regarding the third screening criterion, the County Planning Department notes that, with mitigation incorporated and in considering the long-term beneficial effects of creek restoration, the PCRCP would cause no new significant impact and no substantial increase in the severity of a significant impact already analyzed and disclosed in the 2012 EIR. This is supported by the analysis documented in Chapter 3, *Project Impacts and Mitigation Measures*. To satisfy Screening Criterion 3, any potential alternative would have to be at least equally beneficial.

The final screening criterion restricts detailed analysis of potential impacts that would be either remote or speculative. One potential alternative—a restoration design focus alternative—that would have provided for sustainable passage of anadromous fish through the Project site and

² See *In re Bay-Delta* (2008) 43 Cal.4th 1143, 1165. (“An EIR need not study in detail an alternative that is infeasible or that the lead agency has reasonably determined cannot achieve the project’s underlying fundamental purpose.”)

year-round habitat within it was initially considered (Lehigh Southwest Cement Company 2021). However, this potential alternative was determined to be remote or speculative because Permanente Creek is not an anadromous fish stream and was determined not to be able to support anadromy. Thus, the restoration design focus alternative was not carried forward for more detailed review in the SEIR.

The County Planning Department requested input about potential alternatives from agencies and members of the public during the scoping period, but no potential alternatives were suggested in response. The notice of preparation (NOP) expressly invited input to assist the County in identifying and evaluating potential alternatives. See page 5 of the NOP, a copy of which is included as Exhibit A to **Appendix A, Scoping Report**. The County's identification of potential alternatives as a special area of focus also was discussed during the agency and public scoping meeting. See, e.g., slides 17 and 18 of the public scoping meeting presentation (Exhibit D to Appendix A). One entity, the Sierra Club, responded to these specific requests, noting that a more expensive restoration option would be enforceable if it fit within the cost escalation values in the Amended Consent Decree; however, neither this scoping letter nor any other offered details or suggestions as to what such an option might look like. A copy of the Sierra Club letter is provided in Exhibit E to Appendix A of this SEIR.

4.3 Alternative A—No Grading Approval Alternative

4.3.1 Characteristics

Under Alternative A, the Project site would be restored in accordance with the PCRFP, except in areas outside the existing Reclamation Plan boundary (where Grading Approval would be required), because inside that boundary, no further discretionary authorization would be required from the County Planning Department and because other agencies with jurisdiction over resources in and adjacent to Permanente Creek reasonably could be expected to authorize the proposed restoration. Thus, under Alternative A, the proposed restoration activities would proceed as proposed in all areas of the Project site except Reaches 6–8. See Table 2-1, *Specific Areas of Focus for the Supplemental EIR*, for a summary of the activities and locations of the restoration work that would occur in Reaches 1–5 and 9–22 under the No Grading Approval Alternative.

4.3.2 Screening

There is a question about whether the No Grading Approval Alternative would be legally feasible because it would result in less restoration than is described and required by the Amended Consent Decree.³ Nonetheless, this alternative has been carried forward for consideration for consistency with CEQA Guidelines Section 15126.6(e). Otherwise, the No Grading Approval Alternative would meet most of the basic Project objectives: increasing the quantity and quality of resident

³ Because it is not a party to the Amended Consent Decree, the County of Santa Clara is not bound to require restoration of the creek to occur as set forth in the Amended Consent Decree. Despite not being bound by the Amended Consent Decree, the County is not mandated to evaluate alternatives that are inconsistent with a stipulated judgment—here, the Amended Consent Decree in *Sierra Club v. Hanson Permanente Cement, Inc., et al.* (See, e.g., *Tiburón Open Space Committee v. County of Marin* (2022) 78 Cal.App.5th 700 [evaluation of reduced-project alternative not required where it would be inconsistent with federal stipulated judgments].)

rainbow trout habitat; improving riparian habitat (including by removing or altering man-made structures); removing mining-related fill and sediments; stabilizing slopes to prevent fill from entering the creek; and resulting in restoration consistent with the agencies' permits. No economic, environmental, social, or technological factors have been identified that would eliminate the No Grading Approval Alternative from consideration, and its implementation would be neither remote nor speculative. However, because this alternative would result in a lesser amount of restoration than would result from the PCRCP, its implementation would result in a reduced overall restoration benefit compared to the Project as proposed.

4.3.3 Impacts

Impacts of the No Grading Approval Alternative would be the same as those of the Project except in Reaches 6–8, where all impacts and all benefits of the Project would be avoided. The No Grading Approval Alternative would cause no new significant impact, and no more severe an impact than was analyzed and disclosed in the 2012 EIR. The environmental conditions that would result are described in the following environmental setting sections of this SEIR:

- *Air Quality*: Section 3.1.1.2
- *Biological Resources*: Section 3.2.1.2
- *Cultural Resources*: Section 3.3.1.2
- *Energy*: Section 3.4.1.2
- *Geology, Soils, Seismicity, and Paleontology*: Section 3.5.1.2
- *Greenhouse Gas Emissions*: Section 3.6.1.2
- *Hydrology and Water Quality*: Section 3.7.1.2

Other impacts of the No Grading Approval Alternative have been analyzed and documented on a resource-by-resource basis in the 2012 EIR and are not repeated here.

4.4 Alternative B—No Project Alternative

4.4.1 Characteristics

CEQA Guidelines Section 15126.6(e) requires consideration of a no project alternative. This analysis discusses the conditions that existed on or about April 13, 2021—the date that the County Planning Department published the NOP to issue notice of its intention to prepare this SEIR—and what reasonably would be expected to occur in the foreseeable future if neither the lead agency nor any of the responsible or trustee agencies approved necessary authorizations to implement the PCRCP.

Should the No Project Alternative be implemented, the Project site would be restored in accordance with the creek restoration identified in the 2012 EIR. None of the revisions included as part of the PCRCP would be implemented within the existing Reclamation Plan boundary.

4.4.2 Screening

There is a question about whether the No Project Alternative would be legally feasible because it would result in less restoration than is described and required by the Amended Consent Decree. Nonetheless, this alternative has been carried forward for consistency with CEQA Guidelines Section 15126.6(e). The No Project Alternative would meet most of the basic Project objectives to a lesser extent than the Project as proposed: increasing the quantity and quality of resident rainbow trout habitat; improving riparian habitat (including by removing or altering man-made structures); removing mining-related fill and sediments; stabilizing slopes to prevent fill from entering the creek; and resulting in restoration consistent with agencies' permits in accordance with the restoration activities described in the 2012 EIR. No economic, environmental, social, or technological factors have been identified that would eliminate the No Project Alternative from consideration, and its implementation would be neither remote nor speculative. However, because this alternative would result in a lesser amount of restoration than would result from the PCRCP, its implementation would result in a reduced overall restoration benefit compared to the Project as proposed.

4.4.3 Impacts

Impacts of the No Project Alternative would result in no change to the baseline condition because restoration activities would be conducted in accordance with the creek restoration analyzed in the 2012 EIR. No restoration would occur outside the existing Reclamation Plan boundary. The No Project Alternative would cause no new significant impact, and no more severe an impact than was analyzed and disclosed in the 2012 EIR. The environmental conditions that would result are described in the 2012 EIR and are not repeated here.

4.5 Environmentally Superior Alternative

The CEQA Guidelines define the environmentally superior alternative as that alternative with the least adverse impacts on the project area and its surrounding environment. In the case of a restoration project, the County considers the environmentally superior alternative to be that alternative with the greatest long-term benefit to the physical environment of the project area and its surroundings. For this Project, the PCRCP is considered the environmentally superior alternative for CEQA purposes because it would cause no new or more significant impacts relative to the Project analyzed in the 2012 EIR and because it would result in the restoration and related long-term benefits to acres outside the existing Reclamation Plan boundary.

4.6 References

Lehigh Southwest Cement Company. 2021. 2013 Consent Decree and 2016 Amended Consent Decree Comparison. September 7, 2021.