CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE 7/29/04
AGENDA ITEM 2
WORK SESSION ITEM _____

TO: **Planning Commission**

FROM: **David Rizk, AICP, Associate Planner**

SUBJECT: **Text Amendment (PL-2004-0314) – Request to Amend the Municipal Code by establishing provisions in accordance with the State's Surface Mining and Reclamation Act (SMARA) and establishing provisions related to asphalt and concrete batch plants.**

RECOMMENDATION:

That the Planning Commission recommend that the City Council adopt the Negative Declaration and associated ordinances, subject to the findings in this report.

DISCUSSION:

Background

In July of last year, unincorporated properties in the Mission-Garin area were prezoned and an annexation application was submitted to the Alameda Local Agency Formation Commission (LAFCO). Action on that application by LAFCO is expected later this year, pending finalization of a City-County tax-sharing agreement. Assuming the annexation is approved, it is anticipated that the final recordation of the annexation documents would not occur until next year.

One of the uses in the proposed annexation area is the La Vista Quarry, which includes operation of a asphalt batch plant. That operation is currently regulated by the County's Surface Mining Ordinance and the State Surface Mining and Reclamation Act (SMARA), with Alameda County serving as the SMARA lead agency and permitting authority. As the SMARA lead agency, the County is responsible for ensuring that reclamation of the land is completed, conducting annual inspections, reviewing annual reports from the mining operator and verifying that there exist sufficient financial assurances to ensure reclamation will be done. As the permitting authority, the County oversees enforcement of their ordinance and ensures compliance with the Quarry's surface mining permit conditions.

Currently, the quarry and batch plant operate under a County surface mining permit (SMP-37) issued in 2000 that expires at the end of 2008, at which time all reclamation is required to be finished. However, the operators of the La Vista Quarry, Dumbarton Quarry Associates, have submitted a permit application to the County that requests permission to allow operations to continue through the year 2028. Working closely with the City to address concerns the City may

have in association with the permit request, the County is processing that permit application and preparing an associated environmental impact report. It is anticipated that the County will complete its processing of the permit application by the end of the calendar year.

If the La Vista Quarry lands are annexed into the City of Hayward, Hayward would serve as the SMARA lead agency. Under State law, to serve as lead agency, Hayward must have a SMARA ordinance that is certified by the State Mining and Geology Board. If Hayward does not have its own SMARA ordinance, the State's Office of Mine Reclamation would perform SMARA lead agency duties.

If the La Vista Quarry is annexed, the County permit in effect at that time would be applicable and the City, serving as the SMARA lead agency, would ensure operations complied with the terms of that permit and would perform other SMARA lead agency duties. However, if the La Vista Quarry operators wanted to expand or make changes to their operation after annexation, the City would be responsible for reviewing such changes and establishing new permit conditions. In order to have SMARA lead agency authority over the La Vista Quarry if it is annexed, staff is recommending that the City adopt its own SMARA ordinance (see Attachment A).

Also, to address the batch plant operation, staff is also recommending that the City adopt amendments to the Zoning Ordinance that would allow batch plants as conditional uses in the Industrial zoning district and, when ancillary to quarry operations, as conditional uses in the Agricultural zoning district (see Attachment B). The La Vista Quarry site is currently prezoned Agricultural, with a minimum parcel size of 10 acres (AB10A).

Overview of Draft SMARA Ordinance

Many of the SMARA lead agencies throughout the State, including the three SMARA lead agencies in Alameda County (Alameda County, Oakland and Fremont), have ordinances that are similar to the State's model SMARA ordinance. The proposed ordinance for Hayward is also similar to the model ordinance. The major components of the State model ordinance are summarized below, with corresponding sections of the draft Hayward ordinance noted in brackets.

Basic Requirements [10-18.03]: This section indicates that a permit, reclamation plan and financial assurances are required to be approved by the lead agency prior to a surface mining operation being conducted. Some lead agencies require a special mining permit (like Alameda County), while other agencies (like Fremont) require a conditional use permit. Staff is recommending that a conditional use permit be required in the Hayward ordinance, so that the conditional use permit provisions of the Hayward Zoning Ordinance can be utilized (e.g., appeals, findings, etc.).

Exceptions [10-18.04]: This section lists activities that are exempt from SMARA, such as grading associated with an approved project/permit, or operation of an asphalt batch plant located on lands designated in the lead agency's general plan and zoning ordinance as industrial or commercial where reclamation is completed and no on-site extraction is occurring. Such exception would not be applicable to the La Vista Quarry batch plant.

Vested Rights [10-18.05]: The State's model ordinance includes a provision stating operations that pre-date the effective date of SMARA (January 1, 1976) are not required to have a permit, and are only required to have reclamation plans for mining that occurs after that date. Since the La Vista Quarry operates under a permit issued by the County under SMARA, this section related to vested rights is not required for Hayward's ordinance. However, staff has included a subsection (10-18.05(b)) that addresses the situation of the La Vista Quarry were it to be annexed to the City, recognizing the validity of any permit and reclamation plan approved by the County, provided operations continue in compliance with such permit and approvals.

Process [10-18.06]: This section of the State model ordinance outlines the basic procedure for processing a permit and/or reclamation plan application, with the Planning Commission identified as the approving authority (similar to Alameda County and Fremont). Staff is recommending that the City Council serve as the approving authority (like Oakland), with the Planning Commission serving as the recommending body. The model ordinance and SMARA also require that the lead agency certify to the State Department of Conservation that any approved reclamation plan and financial assurance complies with SMARA and require the lead agency to forward any such reclamation plan and financial assurance to the State for review. The model ordinance requires mining operators to forward an annual report to the State Department of Conservation and to the lead agency.

Standards for Reclamation [10-18.07]: The model ordinance essentially references sections in the State law that pertain to reclamation plans, including those related to reclamation performance standards. Additional performance standards, determined to be necessary as part of the permit review process, could be added as conditions of the use permit approval.

Inspections [10-18.13]: Lead agencies are required by SMARA to conduct at least one inspection of a surface mining operation annually, and within six months of receiving the required annual report from the operator. Many agencies, such as Fremont, hire professionals to conduct such inspections. All costs associated with such inspections, as stated in the model ordinance and SMARA, are borne by the operator.

Fees [10-18.16]: As allowed by SMARA, all costs incurred in implementing the lead agency's ordinance and the State SMARA regulations are to be borne by the operator. As the model ordinance indicates, such costs include, but are not limited to those associated with processing of applications, annual reports, inspections, monitoring, enforcement and compliance. Hayward will need to amend its fee schedule to include such fees.

Findings

In evaluating the amendments to the Zoning Ordinance, the Planning Commission should consider the following findings:

A. *Substantial proof exists that the proposed change will promote the public health, safety, convenience, and general welfare of the residents of Hayward.*

The proposed ordinances would give SMARA lead agency and local permitting authority to the City of Hayward, should the La Vista Quarry site be annexed into the City. Period reviews and processing of any changes to the Quarry's mining and batch

plant operations would be performed by the City as opposed to the County or the State, ensuring more local control of quarry activities.

B. *The proposed change is in conformance with the purposes of this Ordinance and all applicable, officially adopted policies and plans.*

The purpose of the Zoning Ordinance is to "promote the public health, safety, general welfare and preserve and enhance the aesthetic quality of the City by providing regulations to ensure an appropriate mix of land uses in an orderly manner." Part of the proposed SMARA ordinance contains provisions that require proper reclamation of a quarry site after mining is completed, and requires financial assurances be established to guarantee that such reclamation occurs. The proposed SMARA ordinance would allow the City to serve as SMARA lead agency for the Quarry site should annexation be approved, ensuring the City would review reclamation activities and financial assurances, conduct annual inspections to ensure compliance with permit conditions, etc.

The *Conservation and Environmental Protection* chapter of the General Plan indicates the State has "classified aggregate mineral zones throughout the state. The only designated "sector" of regional significance in Hayward meeting tests of economic feasibility and current compatible land use that is to be protected from land uses incompatible with mineral extraction is La Vista Quarry..." The proposed ordinances would be consistent with State law and regulations that promote preservation of mineral resources, and would establish provisions related to batch plants, which are currently not addressed as specific uses in the Zoning Ordinance.

C. *Streets and public facilities existing or proposed are adequate to serve all uses permitted when property is reclassified.*

Although no reclassification of property is proposed as part of the attached ordinances, the La Vista Quarry has been served for a number of years by a private road and related facilities. Any deficiencies in such roadway or facilities will be addressed this year as part of the County's processing and review of the Quarry's new permit application.

D. *All uses permitted when property is reclassified will be compatible with present and potential future uses, and, further, a beneficial effect will be achieved which is not obtainable under existing regulations.*

As noted above, the La Vista Quarry, identified as a mineral resource of regional significance, is protected by State law from incompatible land uses. The beneficial effects of Hayward adopting its own SMARA ordinance and serving as SMARA lead agency for the La Vista Quarry are noted above.

ENVIRONMENTAL REVIEW (CEQA):

This proposal is defined as a "project" under the parameters set forth in the California Environmental Quality Act (CEQA) Guidelines. There will be no significant environmental impacts, as determined from staff's Environmental Checklist (Attachment C). Therefore, a Negative Declaration, Attachment C, has been prepared in the event that the Planning Commission recommends for adoption of the ordinances.

PUBLIC NOTICES:

A work session on the draft SMARA ordinance was held before the City Council on February 24, 2004, during which general support for the ordinance was expressed. That draft ordinance was sent for preliminary review to the State Mining and Geology Board, which provided minor comments/clarifications, which have been incorporated into the current draft.

On June 22, 2004, a notice of public hearing and associated Negative Declaration was published in the Daily Review. That notice was sent to the Mission-Garin Annexation Study interested parties list and that notice, the Negative Declaration, Environmental Checklist and draft ordinances were mailed to property owners and occupants within 300 feet of the La Vista Quarry site, as shown on the latest equalized assessment roll, to the Fairway Parks Neighborhoods Association, the Alameda County Community Development Agency, the County Clerk-Recorder, the State Mining and Geology Board and the State Clearinghouse. The notice indicated interested persons could submit comments on the Negative Declaration through July 29, 2004. No comments have been received to date in response to the notice.

CONCLUSION:

The proposed ordinances would allow the City to have SMARA lead agency and local permitting authority for the La Vista Quarry operations, should that site be annexed into Hayward, and would establish provisions that specify where batch plant operations would be allowed in the City as conditional uses.

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Attachments:

A. Draft SMARA Ordinance
B. Draft Zoning Ordinance Amendment related to batch plants
C. Negative Declaration, Environmental Checklist

ORDINANCE NO. 04-____

AN ORDINANCE ADDING ARTICLE 18 TO CHAPTER 10 OF THE HAYWARD MUNICIPAL CODE, ESTABLISHING PROVISIONS FOR SURFACE MINING AND RECLAMATION

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. FINDINGS AND PURPOSE. The City of Hayward recognizes that the extraction of minerals benefits the economic well-being of the City, region and needs of society and that the reclamation of mined lands is necessary to prevent or minimize adverse effects on the environment and to protect the public health and safety. The City also recognizes that surface mining within the City occurs in a diverse, established, urban environment, which presents unique health, safety and welfare issues where geologic, topographic, climatic, biological, and other conditions are significantly different than in less urbanized areas. Therefore, reclamation operations and the applicable specifications, inspections, reporting, and monitoring must be appropriate to the surrounding conditions.

The purpose and intent of this article is to ensure the continued availability of important mineral resources, while regulating surface mining operations as required by California's Surface Mining and Reclamation Act of 1975 (Public Resources Code Sections 2710 et seq.), as amended, hereinafter referred to as "SMARA", Public Resources Code (PRC) Section 2207 (relating to annual reporting requirements), and State Mining and Geology Board regulations (hereinafter referred to as "State regulations") for surface mining and reclamation practice (California Code of Regulations [CCR], Title 14, Division 2, Chapter 8, Subchapter 1, Sections 3500 et seq.), to ensure that:

(a) Adverse environmental effects are prevented or minimized in accordance with CEQA and other applicable requirements and that mined lands are reclaimed to a usable condition which is readily adaptable for alternative land uses that will enhance the community;

(b) The production and conservation of minerals are encouraged, while giving consideration to values relating to recreation, watershed, wildlife, range and forage, and aesthetic enjoyment; and

(c) Residual hazards to the public health and safety are eliminated.

Section 2. Article 18 of Chapter 10 of the Hayward Municipal Code entitled "Surface Mining and Reclamation" is hereby added, as set forth below.

DRAFT

ATTACHMENT A

"Chapter 10 Article 18 Surface Mining and Reclamation

Sections:

10-18.01 Definitions
10-18.02 Incorporation by Reference
10-18.03 Conditional Use Permit and Reclamation Plan Required
10-18.04 Exceptions
10-18.05 Existing Operations
10-18.06 Process
10-18.07 Standards for Reclamation
10-18.08 Statement of Responsibility
10-18.09 Findings for Approval
10-18.10 Financial Assurances
10-18.11 Interim Management Plans
10-18.12 Annual Report Requirements
10-18.13 Inspections
10-18.14 Violations and Penalties
10-18.15 Appeals
10-18.16 Fees
10-18.17 Mineral Resource Protection

Section 10-18.01 Definitions

The definitions set forth below shall govern the construction of this Article.

"Area of Regional Significance." An area designated by the State Mining and Geology Board which is known to contain a deposit of minerals, the extraction of which is judged to be of prime importance in meeting future needs for minerals in a particular region of the State within which the minerals are located and which, if prematurely developed for alternate incompatible land uses, could result in the premature loss of minerals that are of more than local significance.

"Area of Statewide Significance." An area designated by the Board which is known to contain a deposit of minerals, the extraction of which is judged to be of prime importance in meeting future needs for minerals in the State and which, if prematurely developed for alternate incompatible land uses, could result in the permanent loss of minerals that are of more than local or regional significance.

"Borrow Pits." Excavations created by the surface mining of rock, unconsolidated geologic deposits or soil to provide material (borrow) for fill elsewhere.

"Compatible Land Uses." Land uses inherently compatible with mining and/or that require a minimum public or private investment in structures, land improvements, and which may allow mining because of the relative economic value of the land and its improvements. Examples of such uses may include, but shall not be limited to, very low density residential, geographically

extensive but low impact industrial, recreational, agricultural, silvicultural, grazing, and open space.

"Exploration" or "Prospecting." The search for minerals by geological, geophysical, geochemical or other techniques, including, but not limited to, sampling, assaying, drilling or any surface or underground works needed to determine the type, extent, or quantity of mineral present.

"Haul Road." A road along which material is transported from the area of excavation to the processing plant or stock pile area of the surface mining operation.

"Idle." Surface mining operations curtailed for a period of one year or more, by more than 90 percent of the operation's previous maximum annual mineral production, with the intent to resume those surface mining operations at a future date.

"Incompatible Land Uses." Land uses inherently incompatible with mining and/or that require public or private investment in structures, land improvements, and landscaping and that may prevent mining because of the greater economic value of the land and its improvements. Examples of such uses may include, but shall not be limited to, high density residential, low density residential with high unit value, public facilities, geographically limited but impact intensive industrial, and commercial.

"Mine." All mineral bearing properties of whatever kind or character, whether underground, or in a quarry or pit, or any other source from which any mineral substance is or may be obtained.

"Mined Lands." The surface, subsurface, and ground water of an area in which surface mining operations will be, are being, or have been conducted, including private ways and roads appurtenant to any such area, land excavations, workings, mining waste, and areas in which structures, facilities, equipment, machines, tools, or other materials or property which result from, or are used in, surface mining operations are located.

"Minerals." Any naturally occurring chemical element or compound, or groups of elements and compounds, formed from inorganic processes and organic substances, including, but not limited to, coal, peat, and bituminous rock, but excluding geothermal resources, natural gas, and petroleum.

"Mining waste" or "mine waste." The residual of soil, rock, mineral, liquid, vegetation, equipment, machines, tools, or other materials or property directly resulting from, or displaced by, surface mining operations.

"Operator." Any person who is engaged in surface mining operations, or who contracts with others to conduct operations on his/her behalf, except a person who is engaged in surface mining operations as an employee with wages as his/her sole compensation.

"Overburden." Soil, rock, or other materials that lie above a natural mineral deposit or in between deposits, before or after their removal by surface mining operations.

"Permittee." Any person or operator who possesses a valid permit to operate a surface mine in the City of Hayward that meets the requirements of this Article and SMARA. When the operator and the permittee are not the same person, the operator shall identify the permittee to the City.

"Reclamation." The combined process of land treatment that minimizes disruption or alteration of groundwater movement, water quality degradation, air pollution, damage to aquatic or wildlife habitat, flooding, erosion, sedimentation, and other adverse effects from surface mining operations, including adverse surface effects incidental to underground mines, so that mined lands are reclaimed to a usable condition that is readily adaptable for alternate land uses and so that adverse impacts on groundwater resources are mitigated and no danger to public health or safety is created. The process may extend to affected lands under the control of the operator surrounding mined lands, and may require backfilling, grading, resoiling, revegetation, soil compaction, erosion and sediment control, stabilization, restoration of groundwater recharge areas, or other measures.

"Stream Bed Skimming." Excavation of sand and gravel from stream bed deposits above the mean summer water level or stream bottom, whichever is higher.

"Surface Mining Operations." All, or any part of, the process involved in the mining of minerals on mined lands by removing overburden and mining directly from the mineral deposits, open-pit mining of minerals naturally exposed, mining by the auger method, dredging and quarrying, or surface work incident to an underground mine. Surface mining operations include, but are not limited to, in-place distillation, retorting or leaching, the production and disposal of mining waste, the removal of overburden, prospecting and exploratory activities, borrow pit activity, streambed skimming, and segregation and stockpiling of mined materials (and recovery of same).

Section 10-18.02 Incorporation by Reference

The provisions of SMARA (PRC Sections 2710 et seq.), PRC Section 2207, and State regulations CCR Sections 3500 et seq., as those provisions and regulations may be amended from time to time, are made a part of this article by reference with the same force and effect as if the provisions therein were specifically and fully set out herein, excepting that when the provisions of this Article are more restrictive than correlative State provisions, this Article shall prevail.

Section 10-18.03 Conditional Use Permit and Reclamation Plan Required

Except as provided in sections 10-18.04 and 10-18.05 of this Article, no person shall conduct surface mining operations unless a conditional use permit, reclamation plan and financial assurances for reclamation have first been approved by the City of Hayward. Any applicable exemption from this requirement does not automatically exempt or limit a project or activity from the application of other regulations, ordinances or policies of the City, including but not limited to, the application of CEQA, the requirements of conditional use permits or other permits, the payment of development impact fees, or the imposition of other dedications and

exactions as may be permitted under the law. The provisions of this Article shall apply to all lands within the City, public and private.

Section 10-18.04 Exceptions

The provisions of this Article shall not apply to the following activities, subject to the above-referenced exceptions:

(a) Excavations or grading conducted for farming or on-site construction or for the purpose of restoring land following a flood or natural disaster.

(b) Onsite excavation and onsite earthmoving activities that are an integral and necessary part of an approved construction project that are undertaken to prepare a site for construction of structures, landscaping, or other land improvements, including the related excavation, grading, compaction, or the creation of fills, road cuts, and embankments, whether or not surplus materials are exported from the site, if all of the following conditions are met:

(1) All required permits for the construction, landscaping, or related land improvements have been approved by a public agency or agencies in accordance with applicable provisions of state law and locally adopted plans and ordinances, including, but not limited to, the California Environmental Quality Act ("CEQA", Public Resources Code, Division 13, Sections 21000 et seq.).

(2) The City's approval and CEQA review (if applicable) of the construction project included the onsite excavation and onsite earthmoving activities.

(3) The approved construction project is consistent with the General Plan and zoning of the site.

(4) Surplus materials shall not be exported from the site unless and until actual construction work has commenced and shall cease if the City determines, in its discretion, that construction activities have terminated, have been indefinitely suspended, or are no longer being actively pursued.

(c) Permitted operation of a plant site used for mineral processing, including associated onsite structures, equipment, machines, tools, or other materials, including the onsite stockpiling and onsite recovery of mined materials, if all of the following conditions are met:

(1) The plant site is located on lands designated for industrial or commercial uses in the City's general plan.

(2) The plant site is located on lands zoned industrial or commercial, or is contained within a zoning district intended exclusively for industrial activities by the City.

(3) None of the minerals being processed are being extracted onsite.

(4) All reclamation work has been completed pursuant to the approved reclamation plan for any mineral extraction activities that occurred onsite after January 1, 1976.

(d) Prospecting for, or the extraction of, minerals for commercial purposes or the removal of overburden in total amounts of less than 1,000 cubic yards on any property of one acre or less shown as a unit on the latest county assessment roll.

(e) Surface mining operations that are required by federal law in order to protect a mining claim, if such operations are conducted solely for that purpose.

(f) Any other surface mining operations that the State Mining and Geology Board determines to be of an infrequent nature and which involve only minor surface disturbances.

(g) The solar evaporation of sea water or bay water for the production of salt and related minerals.

(h) Emergency excavations or grading conducted by the Department of Water Resources or the Reclamation Board for the purpose of averting, alleviating, repairing, or restoring damage to property due to imminent or recent floods, disasters, or other emergencies.

Section 10-18.05 Existing Operations

(a) Vested Rights. No person who obtained a vested right to conduct surface mining operations prior to January 1, 1976, shall be required to secure a conditional use permit to mine, so long as the vested right continues and as long as no substantial changes have been made in the mining operation except in accordance with SMARA, State regulations, this article and any other applicable requirements. Where a person with vested rights has continued surface mining in the same area subsequent to January 1, 1976, City approval of a reclamation plan covering the mined lands disturbed by such subsequent surface mining shall be obtained. In those cases where an overlap exists (in the horizontal and/or vertical sense) between pre- and post-Act mining, the reclamation plan shall call for reclamation proportional to that disturbance caused by the mining after the effective date of the Act (January 1, 1976). All other requirements of State law and this article shall apply to vested mining operations.

(b) Existing Operations approved by another lead agency. Any surface mining operation authorized to operate under a permit, reclamation plan and financial assurances approved by another agency serving as lead agency pursuant to SMARA, shall not be required to obtain a conditional use permit and approval of a reclamation plan from the City so long as such permit remains in effect and surface mining is conducted in accordance with regulations and the approved reclamation plan in effect at the time the permit was issued, including any permit conditions imposed. The City Council shall serve as the approving authority for any reviews required under the terms of such permit as hereinafter set forth, and the City shall conduct inspections, review financial assurances and perform other duties required of a lead agency as indicated in this Article and SMARA.

Section 10-18.06 Process

(a) Submittal Requirements. Applications for a conditional use permit or approval of a reclamation plan for surface mining or land reclamation projects shall be made on forms provided by the Planning Division. Said applications shall be filed in accord with this Article and procedures established by the Planning Director. The reclamation plan shall be filed concurrently with the conditional use permit application, along with all required environmental review forms and information prescribed by the Planning Director.

The forms for reclamation plan applications shall require, at a minimum, each of the elements required by SMARA (Sections 2772-2773) and State regulations, and any other requirements deemed necessary to facilitate an expeditious and fair evaluation of the proposed reclamation plan, to be established at the discretion of the Planning Director. All documentation for the reclamation plan shall be submitted to the City at one time.

For surface mining operations that are exempt from a conditional use permit pursuant to this article, the reclamation plan application shall include information concerning the mining operation as needed to process the reclamation plan.

(b) Notice of Filing to State. Within thirty (30) days of acceptance of an application for a conditional use permit for surface mining operations and/or a reclamation plan as complete, the Planning Division shall notify the State Department of Conservation of the filing of the application(s). Whenever mining operations are proposed in the 100-year flood plain of any stream, as shown in Zone A of the Flood Insurance Rate Maps issued by the Federal Emergency Management Agency ("FEMA"), and within one mile, upstream or downstream, of any state highway bridge, the Planning Division shall also notify the State Department of Transportation ("Caltrans") that the application has been received.

(c) Environmental Review. The Planning Division shall process the application(s) in accordance with the California Environmental Quality Act (Public Resources Code Sections 21000 et seq.) and the City's environmental review guidelines.

(d) Public Hearings Required. Upon completion of the environmental review procedure and filing of all documents required by the Planning Director, consideration of the conditional use permit and/or reclamation plan for the proposed or existing surface mining operation shall be conducted pursuant to Chapter 10, Article 1, Section 10-1.3200 of the Hayward Municipal Code at public hearings before the Planning Commission and City Council, and pursuant to Section 2774 of the Public Resources Code, excepting the Planning Commission shall serve as the recommending body to the City Council and the City Council shall serve as the approving authority. Subsequent to the appropriate environmental review, the Planning Division shall prepare a staff report with recommendations for consideration by the Planning Commission and City Council.

The Planning Commission and City Council shall each hold at least one noticed public hearing on the conditional use permit and/or reclamation plan. Notice for each hearing shall be given by mail or delivery to the operator/applicant, to all persons shown on the last available equalized assessment role as owning real property within three hundred feet (300 feet) of the property

involved and to other individuals who have expressed an interest in receiving such notifications. All such notices shall be given not less than ten days prior to the dates set for the hearings.

(e) Certification to State of Reclamation Plan and Financial Assurances. Prior to final approval by the City Council of a reclamation plan, financial assurances (as provided in this Article) or any amendments to a reclamation plan and/or existing financial assurances, the Planning Director shall certify to the State Department of Conservation that the reclamation plan and/or financial assurance complies with the applicable requirements of State law, and submit the plan, assurance, or amendments to the State Department of Conservation for review. The City Council may conceptually approve the reclamation plan and financial assurance before submittal to the State Department of Conservation. If a conditional use permit is being processed concurrently with the reclamation plan, the City Council may simultaneously also conceptually approve the conditional use permit. However, the City Council may defer action on the conditional use permit until taking final action on the reclamation plan and financial assurances. If necessary to comply with permit processing deadlines, the City Council may approve the conditional use permit upon the condition that the conditional use permit for the mining operations shall not take effect until cost estimates for financial assurances have been reviewed by the State Department of Conservation and final action has been taken on the reclamation plan and financial assurances.

Pursuant to PRC Section 2774(d), the State Department of Conservation shall be given 30 days to review and comment on the reclamation plan and 45 days to review and comment on the financial assurance. The Planning Division shall evaluate written comments received, if any, from the State Department of Conservation during the comment periods. Staff shall prepare a response describing the disposition of the major issues raised by the State for the City Council's approval. In particular, when the City Council's position is at variance with the recommendations and objections raised in the State's comments, staff's written response shall address, in detail, why specific comments and suggestions were not accepted. Copies of any written comments received and responses prepared by the Planning Division staff shall be promptly forwarded to the operator/applicant.

(f) Final Action. The City Council shall then take action to approve, conditionally approve, or deny the conditional use permit and/or reclamation plan, and to approve the financial assurances pursuant to PRC Section 2770(d).

(g) Routing to State. The Planning Division shall forward a copy of each approved conditional use permit for mining operations, and/or approved reclamation plan, and a copy of the approved financial assurances to the State Department of Conservation. By July 1 of each year, the Planning Division shall submit to the State Department of Conservation for each active or idle mining operation a copy of the approved conditional use permit or reclamation plan amendments, as applicable, or a statement that there have been no changes during the previous year.

Section 10-18.07 Standards for Reclamation

(a) All reclamation plans shall comply with the provisions of SMARA (Sections 2772 and 2773) and State regulations (California Code of Regulations Sections 3500-3505). Reclamation plans

approved after January 15, 1993, reclamation plans for proposed new mining operations, and any substantial amendments to previously approved reclamation plans, shall also comply with the requirements for reclamation performance standards (CCR Sections 3700-3713).

(b) In approving a reclamation plan, the City may impose additional performance standards either in review of individual projects, as warranted, or through the formulation and adoption of Citywide performance standards.

(c) Reclamation activities shall be initiated at the earliest possible time on those portions of the mined lands that will not be subject to further disturbance. Interim reclamation may also be required for mined lands that have been disturbed and that may be disturbed again in future operations. Reclamation may be done on an annual basis, in stages compatible with continuing operations, or on completion of all excavation, removal, or fill, as approved by the City. Each phase of reclamation shall be specifically described in the reclamation plan and shall include (a) the beginning and expected ending dates for each phase; (b) all reclamation activities required; (c) criteria for measuring completion of specific reclamation activities; and (d) estimated costs for completion of each phase of reclamation.

(d) The information, analysis and other specifications submitted as part of the reclamation plan shall demonstrate that the improvements and financial assurances are sufficient to reclaim the site in a condition that meets all applicable State and City standards, and that is appropriate for the proposed reuse of the site and consistent with the land use and other applicable policies of the General Plan.

Section 10-18.08 Statement of Responsibility

The permittee and/or operator for which a reclamation plan has been approved shall sign a statement accepting responsibility for reclaiming the mined lands in accordance with the reclamation plan. Prior to sale or transfer of the operation, the new permittee and/or operator shall submit a signed statement of responsibility as well as evidence required to demonstrate the financial assurance requirement set forth in this article to the Planning Division for placement in the permanent record.

Section 10-18.09 Findings for Approval

(a) Conditional Use Permits. In addition to any findings required by the Hayward Municipal Code for conditional use permits, a conditional use permit for surface mining operations shall include a finding that the project complies with the provisions of SMARA and State regulations.

(b) Reclamation Plans. For reclamation plans, the following findings shall be required:

(1) That the reclamation plan complies with SMARA and any other applicable provisions;

(2) That the reclamation plan complies with the requirements of all applicable State regulations.

(3) That the reclamation plan and potential use of reclaimed land pursuant to the plan are consistent with this article, the City's General Plan and any applicable resource plan or element.

(4) That the reclamation plan has been reviewed pursuant to CEQA and the City's environmental review guidelines, and all significant adverse impacts from reclamation of the surface mining operations are mitigated to the maximum extent feasible.

(5) That the land and/or resources such as water bodies to be reclaimed will be restored to a condition that is compatible with, and blends in with, the surrounding natural environment, topography, and other resources, or that suitable off-site development will compensate for related disturbance to resource values.

(6) That the reclamation plan will restore the mined lands to a safe, stable and usable condition that is readily adaptable for alternative land uses consistent with the General Plan and applicable resource plan.

(7) That a written response to the State Department of Conservation has been prepared, describing the disposition of any major issue raised by that Department. Where the City's position is at variance with the recommendations and objections raised by the State Department of Conservation, said response shall address, in detail, why specific comments and suggestions were not accepted.

Section 10-18.10 Financial Assurances

(a) To ensure that reclamation will proceed in accordance with the approved reclamation plan, the City shall require as a condition of approval security which will be released upon satisfactory performance. The applicant may pose security in the form of a surety bond, trust fund, irrevocable letter of credit from an accredited financial institution, or other method acceptable to the City and the State Mining and Geology Board as specified in State regulations and which the City reasonably determines are adequate to perform reclamation in accordance with the surface mining operation's approved reclamation plan. Financial assurances shall be made payable to the City of Hayward and the State Department of Conservation.

(b) Financial assurances shall be required to ensure compliance with elements of the reclamation plan, including but not limited to, revegetation and landscaping requirements, restoration of aquatic or wildlife habitat, restoration of water bodies and water quality, slope stability and erosion and drainage control, disposal of hazardous materials, and other measures, if determined necessary by the Planning Director to comply with the requirements of a conditional use permit/reclamation plan.

(c) Cost estimates for the financial assurance shall be submitted to the Planning Division for review and approval prior to the operator securing financial assurances. The Planning Director shall forward a copy of the cost estimates, together with any documentation received supporting the amount of the cost estimates, to the State Department of Conservation for review. If the State Department of Conservation does not comment within 45 days of receipt of these estimates, it shall be assumed that the cost estimates are adequate, unless the City has reason to determine

that additional costs may be incurred. The Planning Director shall have the discretion to approve the financial assurance if it meets the requirements of this Article, SMARA and State regulations.

(d) The amount of the financial assurance shall be based upon the estimated costs of reclamation for the years or phases stipulated in the approved reclamation plan, including any maintenance of reclaimed areas as may be required, subject to adjustment for the actual amount required to reclaim lands disturbed by surface mining activities since January 1, 1976, and new lands to be disturbed by surface mining activities in the upcoming year. Cost estimates shall be prepared by a California registered Professional Engineer and/or other similarly licensed and qualified professionals retained by the operator. The estimated amount of the financial assurance shall be based on an analysis of physical activities necessary to implement the approved reclamation plan, the unit costs for each of these activities, the number of units of each of these activities, and the actual administrative costs. Financial assurances to ensure compliance with revegetation, restoration of water bodies, restoration of aquatic or wildlife habitat, and any other applicable element of the approved reclamation plan shall be based upon cost estimates that include, but may not be limited to labor, equipment, materials, mobilization of equipment, administration, monitoring, inspections and reasonable profit by a commercial operator other than the permittee. A maximum contingency factor of ten percent (10%) shall be added to the cost of financial assurances.

(e) In projecting the costs of financial assurances, it shall be assumed without prejudice or insinuation that the surface mining operation could be abandoned by the operator and/or permittee and, consequently, the City or State Department of Conservation may need to contract with a third party commercial company for reclamation of the site.

(f) The financial assurances shall remain in effect for the duration of the surface mining operation and any additional period until reclamation is completed (including any maintenance required).

(g) The amount of financial assurances required of a surface mining operation for any one year shall be adjusted annually to account for new lands disturbed by surface mining operations, inflation, and reclamation of lands accomplished in accordance with the approved reclamation plan. The financial assurances shall include estimates to cover reclamation for existing conditions and anticipated activities during the upcoming year, excepting that the permittee and/or operator may not claim credit for reclamation scheduled for completion during the coming year.

(h) Revisions to financial assurances shall be submitted to the Planning Director each year prior to the anniversary date for approval of the financial assurances. The financial assurance shall cover the cost of existing disturbance and anticipated activities for the next calendar year, including any required interim reclamation. If revisions to the financial assurances are not required, the operator shall explain, in writing, why revisions are not required.

Section 10-18.11 Interim Management Plans

(a) Within 90 days of a surface mining operation becoming idle, the operator shall submit to the Planning Division a proposed Interim Management Plan (IMP). The proposed IMP shall fully comply with the requirements of SMARA and all conditional use permit conditions, and shall provide measures the operator will implement to maintain the site in a stable condition, taking into consideration public health and safety. The proposed IMP shall be submitted on forms provided by the Planning Division, and shall be processed as an amendment to the reclamation plan, as hereinafter provided. IMPs shall not be considered a project for the purposes of environmental review.

(b) Financial assurances for idle operations shall be maintained as though the operation were active, or as otherwise approved through the idle mine's IMP.

(c) Upon receipt of a complete proposed IMP, the Planning Division shall forward the IMP to the State Department of Conservation for review. The IMP shall be submitted to the State Department of Conservation at least 30 days prior to review by the Planning Commission.

(d) Within 60 days of receipt of the proposed IMP, or a longer period mutually agreed upon by the Planning Director and the operator, the Planning Commission shall review and recommend approval or denial to the City Council of the IMP in accordance with this Article. The operator shall have thirty (30) days, or a longer period mutually agreed upon by the operator and the Planning Director, to submit a revised IMP. The Planning Commission shall recommend approval or denial of the revised IMP within sixty (60) days of receipt. The City Council shall consider the recommendation of the Planning Commission and approve or deny the IMP.

(e) The IMP may remain in effect for a period not to exceed five years, at which time the City Council may renew the IMP for another period not to exceed five years, or require the surface mining operator to commence reclamation in accordance with its approved reclamation plan.

Section 10-18.12 Annual Report Requirements

Surface mining operators shall forward an annual surface mining report to the State Department of Conservation and to the Planning Division on a date established by the State Department of Conservation, upon forms furnished by the State Mining and Geology Board. New mining operations shall file an initial surface mining report and any applicable filing fees with the State Department of Conservation within 30 days of permit approval, or before commencement of operations, whichever is sooner. Any applicable fees, together with a copy of the annual inspection report, shall be forwarded to the State Department of Conservation at the time of filing the annual surface mining report.

Section 10-18.13 Inspections

The Planning Division shall arrange for inspection of a surface mining operation within six months of receipt of the annual report required in section 10-18.12, to determine whether the

surface mining operation is in compliance with the approved conditional use permit and/or reclamation plan, approved financial assurances, and State regulations. In no event shall less than one inspection be conducted in any calendar year. Said inspections may be made by a state-registered geologist, state-registered civil engineer, state-licensed landscape architect, or state-registered forester, who is experienced in land reclamation and who has not been employed by the mining operation in any capacity during the previous 12 months, or other qualified specialists, as selected by the Planning Director. All inspections shall be conducted using a form approved and provided by the State Mining and Geology Board.

The Planning Division shall notify the State Department of Conservation within thirty (30) days of completion of the inspection that said inspection has been conducted, and shall forward a copy of said inspection notice and any supporting documentation to the mining operator. The operator shall be solely responsible for the reasonable cost of such inspections.

Section 10-18.14 Violations and Penalties

If the Planning Director, based upon an annual inspection or otherwise confirmed by an inspection of the mining operation, determines that a surface mining operation is not in compliance with this Article, the conditional use permit, any required permit and/or the reclamation plan, the City shall follow the procedures set forth in Public Resources Code, Sections 2774.1 and 2774.2 concerning violations and penalties, as well as those in Chapter 10, Article 1, Sections 10-1.3255 and 10-1.3260 of the Hayward Municipal Code, related to revocation and/or abandonment of a conditional use permit, that are not preempted by SMARA.

Section 10-18.15 Appeals

Any person aggrieved by an act or determination of the Planning Director or Planning Commission in the exercise of the authority granted herein, shall have the right to appeal as provided in Chapter 10, Article 1, Section 10-1.3245 of the Hayward Municipal Code

Section 10-18.16 Fees

The City shall establish such fees as it deems necessary to cover the reasonable costs incurred in implementing this Article and the State regulations, including but not limited to, processing of applications, annual reports, inspections, monitoring, enforcement and compliance. Such fees shall be paid by the operator, as required by the City, at the time of filing of the conditional use permit, reclamation plan application, and at such other times as are determined by the City to be appropriate in order to ensure that all reasonable costs of implementing this article are borne by the mining operator.

Each operator of a permitted surface mine in the City of Hayward shall pay an administrative fee of $0.045 per ton beginning January 1, 2003, $0.06 per ton beginning January 1, 2004, and $0.075 per ton beginning January 1, 2005, for aggregate material sold, including gravel, sorted and/or crushed rock, sand, crushed shale or dirt, and also including any component mass of asphalt and concrete products consisting of these materials, to the Planning Division to help cover the Division's costs in administering Hayward's surface mining, reclamation and

associated programs. This administrative fee shall be paid into an account annually on January 31 of each year, beginning 2003. The quantity of aggregate on which the administrative fee is based shall be the total tonnage of material sold from January 1 through December 31 of the previous year. The amount of the administrative fee may be reconsidered every five years commencing in 2008.

Section 10-18.17 Mineral Resource Protection

Mine development is encouraged in compatible areas before encroachment of conflicting uses. Mineral resource areas that have been classified by the State Department of Conservation's California Geologic Survey or designated by the State Mining and Geology Board, as well as existing surface mining operations that remain in compliance with the provisions of this Article, shall be protected from intrusion by incompatible land uses that may impede or preclude mineral extraction or processing, to the extent possible for consistency with the City's General Plan. In accordance with PRC Section 2762, the City's General Plan and resource maps will be prepared to reflect mineral information (classification and/or designation reports) within 12 months of receipt from the State Mining and Geology Board of such information. Land use decisions within the City will be guided by information provided on the location of identified mineral resources of regional significance. Conservation and potential development of identified mineral resource areas will be considered and encouraged. Recordation on property titles of the presence of important mineral resources within the identified mineral resource areas may be encouraged as a condition of approval of any development project in the impacted area. Prior to approving a use that would otherwise be incompatible with mineral resource protection, conditions of approval may be applied to encroaching development projects to minimize potential conflicts."

Section 3. SEVERANCE. Should any part of this ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent the excised portion, can be reasonably interpreted to give effect to intentions of the City Council.

Section 4. EFFECTIVE DATE. This ordinance shall become effective thirty (30) days after its adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the _____ day of _____, 2004, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the _____ day of _____, 2004, by the following votes of members of said City Council:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: _____
Mayor of the City of Hayward

DATE: _____

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

_____
City Attorney of the City of Hayward

ORDINANCE NO. 04-____

AN ORDINANCE AMENDING SECTIONS 10-1.1620(b)(1), 10-1.2020(b)(3) AND 10-1.3510 OF ARTICLE 1 OF CHAPTER 10 OF THE HAYWARD MUNICIPAL CODE, ESTABLISHING PROVISIONS FOR BATCH PLANTS

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Section 10-1.1620(b)(1) of the Hayward Municipal Code relating to Conditional Uses in the Industrial (I) District is hereby amended to add the following:

"(a) Asphalt or concrete batch plant."

Existing subsections (a) through (d) are renumbered as (b) through (e).

Section 2. Section 10-1.2020(b)(3) of the Hayward Municipal Code relating to Conditional Uses in the Agricultural (A) District is hereby amended to add the following:

"(a) Asphalt or concrete batch plant, when ancillary to a quarry."

Existing subsections (a) through (f) are renumbered as (b) through (g).

Section 3. Section 10-1.3510 of the Hayward Municipal Code is hereby amended to add the following definition:

"BATCH PLANT. Any operation that involves sorting, crushing, reducing, refining, mixing, packaging or other processing of minerals for intermediate or final consumption."

Section 4. SEVERANCE. Should any part of this ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent the excised portion, can be reasonably interpreted to give effect to intentions of the City Council.

Section 5. EFFECTIVE DATE. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective upon its adoption.

DRAFT

ATTACHMENT B

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the _____ day of _____, 2004, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the _____ day of _____, 2004, by the following votes of members of said City Council:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: _____
Mayor of the City of Hayward

DATE: _____

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

_____
City Attorney of the City of Hayward

DEPARTMENT OF
COMMUNITY AND ECONOMIC DEVELOPMENT
Planning Division

NEGATIVE DECLARATION

Notice is hereby given that the City of Hayward finds that no significant effect on the environment as prescribed by the California Environmental Quality Act of 1970, as amended will occur for the following proposed project:

I. *PROJECT DESCRIPTION*:

Amendments to the Hayward Municipal Code (see attached):

1) establishing new provisions for surface mining and reclamation, in accordance with the State Surface Mining and Reclamation Act of 1975 (SMARA) (Public Resources Code Sections 2710 et seq.), which would allow the City of Hayward to serve as SMARA lead agency for any surface mining operation within its jurisdiction, and
2) allowing batch plants as conditional uses in the industrial and agricultural zoning districts.

II. *FINDING PROJECT WILL NOT SIGNIFICANTLY AFFECT ENVIRONMENT*:

The proposed project will have no significant effect on the area's resources, cumulative or otherwise.

III. *FINDINGS SUPPORTING DECLARATION*:

1. The project application has been reviewed according to the standards and requirements of the California Environmental Quality Act (CEQA) and an Initial Study Environmental Checklist Form has been completed for the proposed project. The Initial Study has determined that the proposed project could not result in significant effects on the environment.

2. The proposed amendments to the Municipal Code would establish provisions related to surface mining and reclamation, in accordance with State law, including establishing a process for issuing permits, reviewing reclamation plans and financial assurances, developing reclamation standards and conducting annual inspections. Such amendments would help ensure such operations are conducted in accordance with State law and would further promote the City's position to encourage mineral resource protection, recognizing a State-identified mineral resource of regional significance at the La Vista Quarry, while minimizing environmental impacts.

3. The proposed amendments to the Municipal Code would also allow concrete and asphalt batch plants as conditional uses in the industrial zoning district and, when ancillary to a quarry/mining operation, as conditional uses in the agricultural zoning district. This ordinance contributes to establishing uses and structures that are often associated with mineral extraction and quarrying activities, which are allowed in the agricultural zoning

district as conditional uses, and in keeping with the purpose of the industrial zoning district "to provide for and encourage the development of industrial uses in areas suitable for the same, and to promote a desirable and attractive working environment with a minimum of detriment to surrounding properties."

IV. *PERSON WHO PREPARED INITIAL STUDY*: David Rizk, AICP, Associate Planner, City of Hayward

Dated: June 11, 2004

V. *COPY OF INITIAL STUDY IS ATTACHED*

For additional information, please contact David Rizk at the City of Hayward Planning Division, 777 B Street, Hayward, CA 94541-5007 or telephone (510) 583-4004

DISTRIBUTION/POSTING

- Provide copies to project applicants and all organizations and individuals requesting it in writing.
- Reference in all public hearing notices to be distributed 20 days in advance of initial public hearing and/or published once in Daily Review 20 days prior to hearing.
- Project file.
- Post immediately upon receipt at the City Clerk's Office, the Main City Hall bulletin board, and in all City library branches, and do not remove until the date after the public hearing.

Environmental Checklist Form

1. Project title:
   Amendments to the Hayward Municipal Code establishing provisions for surface mining and reclamation and allowing batch plants as conditional uses in the industrial zoning district.

2. Lead agency name and address:
   City of Hayward
   777 B Street
   Hayward, CA 94541

3. Contact person and phone number and e-mail address:
   David Rizk, AICP, (510) 583-4004, david.rizk@hayward-ca.gov

4. Project location:
   Citywide

5. Project sponsor's name and address:
   City of Hayward Planning Director
   777 B Street
   Hayward, CA 94541

6. General Plan:
   All limited open space and industrial corridor General Plan land use designations

7. Zoning:
   All agricultural and industrial zoning designations

8. Description of project:
   Amendments to the Hayward Municipal Code establishing new provisions for surface mining and reclamation, in accordance with the State Surface Mining and Reclamation Act of 1975 (SMARA) (Public Resources Code Sections 2710 et seq), which would allow the City of Hayward to serve as SMARA lead agency for any surface mining operation within its jurisdiction, and amendments to the Municipal Code to allow batch plants as conditional uses in the industrial and agricultural zoning districts (see attached draft ordinances).

9. Surrounding land uses and setting:
   Citywide

10. Other public agencies whose approval is required:
    State Mining and Geology Board

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

☐ Aesthetics	☐ Agriculture Resources	☐ Air Quality
☐ Biological Resources	☐ Cultural Resources	☐ Geology /Soils
☐ Hazards & Hazardous Materials	☐ Hydrology / Water Quality	☐ Land Use / Planning
☐ Mineral Resources	☐ Noise	☐ Population / Housing
☐ Public Services	☐ Recreation	☐ Transportation/Traffic
☐ Utilities / Service Systems	☐ Mandatory Findings of Significance	

DETERMINATION:

On the basis of this initial evaluation:

☒ I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.

☐ I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.

☐ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

☐ I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.

☐ I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

David Rizk — June 11, 2004

Signature — Date

David Rizk, AICP — City of Hayward

Printed Name — Agency

ENVIRONMENTAL ISSUES:

	Potentially Significant Impact	*Potentially Significant Unless Mitigation Incorporation*	*Less Than Significant Impact*	*No Impact*
I. **AESTHETICS** -- Would the project:				
a) Have a substantial adverse effect on a scenic vista?	☐	☐	☐	☒
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	☐	☐	☐	☒
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	☐	☐	☐	☒
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	☐	☐	☐	☒
II. **AGRICULTURE RESOURCES**: In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. Would the project:				
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	☐	☐	☐	☒
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	☐	☐	☐	☒
c) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use?	☐	☐	☐	☒
III. **AIR QUALITY** -- Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:				
a) Conflict with or obstruct implementation of the applicable air quality plan?	☐	☐	☐	☒
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	☐	☐	☐	☒

	Potentially Significant Impact	*Potentially Significant Unless Mitigation Incorporation*	*Less Than Significant Impact*	*No Impact*
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?	☐	☐	☐	☒
d) Expose sensitive receptors to substantial pollutant concentrations?	☐	☐	☐	☒
e) Create objectionable odors affecting a substantial number of people?	☐	☐	☐	☒
IV. **BIOLOGICAL RESOURCES** -- Would the project:				
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	☐	☐	☐	☒
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service?	☐	☐	☐	☒
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	☐	☐	☐	☒
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	☐	☐	☐	☒
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	☐	☐	☐	☒
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	☐	☐	☐	☒
V. **CULTURAL RESOURCES** -- Would the project:				
a) Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5?	☐	☐	☐	☒
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?	☐	☐	☐	☒

	Potentially Significant Impact	*Potentially Significant Unless Mitigation Incorporation*	*Less Than Significant Impact*	*No Impact*
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	☐	☐	☐	☒
d) Disturb any human remains, including those interred outside of formal cemeteries?	☐	☐	☐	☒
VI. **GEOLOGY AND SOILS** -- Would the project:				
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:	☐	☐	☐	☒
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	☐	☐	☐	☒
ii) Strong seismic ground shaking?	☐	☐	☐	☒
iii) Seismic-related ground failure, including liquefaction?	☐	☐	☐	☒
iv) Landslides?	☐	☐	☐	☒
b) Result in substantial soil erosion or the loss of topsoil?	☐	☐	☐	☒
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?	☐	☐	☐	☒
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?	☐	☐	☐	☒
e) Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?	☐	☐	☐	☒
VII. **HAZARDS AND HAZARDOUS MATERIALS** - Would the project:				
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	☐	☐	☐	☒
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	☐	☐	☐	☒
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	☐	☐	☐	☒

	Potentially Significant Impact	*Potentially Significant Unless Mitigation Incorporation*	*Less Than Significant Impact*	*No Impact*
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	☐	☐	☐	☒
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?	☐	☐	☐	☒
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?	☐	☐	☐	☒
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	☐	☐	☐	☒
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	☐	☐	☐	☒
VIII. **HYDROLOGY AND WATER QUALITY** -- Would the project:				
a) Violate any water quality standards or waste discharge requirements?	☐	☐	☐	☒
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?	☐	☐	☐	☒
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?	☐	☐	☐	☒
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?	☐	☐	☐	☒
e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?	☐	☐	☐	☒
f) Otherwise substantially degrade water quality?	☐	☐	☐	☒
g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	☐	☐	☐	☒

	Potentially Significant Impact	*Potentially Significant Unless Mitigation Incorporation*	*Less Than Significant Impact*	*No Impact*
h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?	☐	☐	☐	☒
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?	☐	☐	☐	☒
j) Inundation by seiche, tsunami, or mudflow?	☐	☐	☐	☒
IX. **LAND USE AND PLANNING** - Would the project:				
a) Physically divide an established community?	☐	☐	☐	☒
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	☐	☐	☐	☒
The proposed amendments to the Municipal Code strengthen the statements in the Conservation and Environmental Protection Chapter of the General Plan related to mineral resources that encourage preservation of resources of regional significance that have been identified by the State in the Hayward area.				
c) Conflict with any applicable habitat conservation plan or natural community conservation plan?	☐	☐	☐	☒
X. **MINERAL RESOURCES** -- Would the project:				
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	☐	☐	☐	☒
The proposed amendments to the Municipal Code would actually increase the likelihood that such resources would not be lost, since the amendments reflect the State Surface and Mining Reclamation Act provisions, which encourage the preservation of such resources.				
b) Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	☐	☐	☐	☒
XI. **NOISE** - Would the project result in:				
a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	☐	☐	☐	☒

	Potentially Significant Impact	*Potentially Significant Unless Mitigation Incorporation*	*Less Than Significant Impact*	*No Impact*
b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?	☐	☐	☐	☒
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	☐	☐	☐	☒
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	☐	☐	☐	☒
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?	☐	☐	☐	☒
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?	☐	☐	☐	☒
XII. **POPULATION AND HOUSING** -- Would the project:				
a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	☐	☐	☐	☒
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	☐	☐	☐	☒
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	☐	☐	☐	☒
XIII. **PUBLIC SERVICES**				
a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:				
Fire protection?	☐	☐	☐	☒
Police protection?	☐	☐	☐	☒
Schools?	☐	☐	☐	☒
Parks?	☐	☐	☐	☒
Other public facilities?	☐	☐	☐	☒

	Potentially Significant Impact	*Potentially Significant Unless Mitigation Incorporation*	*Less Than Significant Impact*	*No Impact*
XIV. **RECREATION** --				
a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	☐	☐	☐	☒
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?	☐	☐	☐	☒
XV. **TRANSPORTATION/TRAFFIC** -- Would the project:				
a) Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections)?	☐	☐	☐	☒
b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?	☐	☐	☐	☒
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?	☐	☐	☐	☒
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	☐	☐	☐	☒
e) Result in inadequate emergency access?	☐	☐	☐	☒
f) Result in inadequate parking capacity?	☐	☐	☐	☒
g) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)?	☐	☐	☐	☒
XVI. **UTILITIES AND SERVICE SYSTEMS** - Would the project:				
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	☐	☐	☐	☒
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	☐	☐	☐	☒
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	☐	☐	☐	☒

	Potentially Significant Impact	*Potentially Significant Unless Mitigation Incorporation*	*Less Than Significant Impact*	*No Impact*
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?	☐	☐	☐	☒
e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	☐	☐	☐	☒
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	☐	☐	☐	☒
g) Comply with federal, state, and local statutes and regulations related to solid waste?	☐	☐	☐	☒

XVII. **MANDATORY FINDINGS OF SIGNIFICANCE --**

a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	☐	☐	☐	☒
b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?	☐	☐	☐	☒
c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?	☐	☐	☐	☒