

County of Santa Clara

Department of Planning and Development
Planning Office

County Government Center, East Wing, 7th Floor
70 West Hedding Street
San Jose, California 95110-1705
(408) 299-5770 FAX (408) 288-9198
www.sccplanning.org



MEMORANDUM

Date: February 16, 2011

To: **President Dave Cortese and Members of the Board of Supervisors**

Jeffrey V. Smith, County Executive
Gary Graves, Deputy County Executive
Sylvia Gallegos, Deputy County Executive

From: Gary Rudholm, Senior Planner, Planning Office *GR*

Re: **Responses to comments made during the Public Comment portion of the Board of Supervisors Meeting on February 8, 2011, from Barry Chang related to Lehigh Southwest Cement Plant and the Permanente Quarry**

During the Public Comment portion of the February 8, 2011, meeting of the Board of Supervisors Mr. Barry Chang made statements to the Board regarding the Lehigh Southwest Cement Plant and the Permanente Quarry reclamation plan amendments currently under review by the Planning Office. The following responses are provided for your information.

SPEAKER COMMENT:

"Good morning, Honorable Supervisors. What I'm going to talk about is the Notice of Violation of Lehigh. Nothing to do with this afternoon, Item 27. I'm fully aware of that. This is my 13th request to please put Lehigh's Notice of Violation on the agenda. You have ignored me all seven months, but the more I figure out, the more astounding. I just recently learned that the County Planning Department signed an agreement with Lehigh to abate the Notice of Violation. Does the County of Planning Department have the authority to do that? Who also has without a public hearing. Without an environmental impact report, which is very alarming. Please put this item on agenda. Santa Clara County residents have a right to know what's going on about the Notice of Violation. Why there's no enforcement. There's no penalty. Thank you."

Response:

In August 2010 Mr. Chang was made aware, and was provided a copy, of the Agreement between the County of Santa Clara and Lehigh Southwest Cement Company that allows the mine operator to use an area known as the East Materials Storage Area (EMSA) while the mine operator also pursues a Reclamation Plan Amendment (RPA) that would abate the Notice of Violation (NOV) he referenced. The issue regarding enforcement of the NOV by staff is the

subject of memorandums, all of which are posted on the Planning Office web page, and it is summarized below.

The County investigated a complaint that alleged Lehigh Southwest Cement Company (“Lehigh”) stockpiled petroleum coke in the EMSA. Following a field inspection, the County determined the material to be overburden excavated from the mine pit. The County issued an NOV, which provided the operator two options for addressing the violation: (1) remove the material, or (2) apply for and obtain an amendment to the existing approved reclamation plan for Permanente Quarry. An approved amended reclamation plan could authorize retaining the material in the EMSA and provide for reclamation consistent with state and County mine reclamation standards. The mine operator chose to apply for the reclamation plan amendment, and the application is currently under review.

The Surface Mine and Reclamation Act (SMARA) establishes a process to cure violations such as this, including filing for and obtaining a Reclamation Plan Amendment from the lead agency. Fines may be imposed if the mine operator fails to take action to correct the violation(s). Lehigh has taken actions to correct the EMSA NOV, therefore, no fines can or should be imposed at this time. Approval of the proposed amendment would abate the violation and is thus the means of enforcement.

The operator approached the County and explained that immediate use of the EMSA is necessary for operational reasons, because the approved location to permanently store the overburden, known as the West Materials Storage Area, is running out of room. Without using the EMSA the operator would be forced to leave the material in the pit, which would prevent the operator from excavating some of the remaining mineral reserves.

Following consultation with the State Office of Mining and Reclamation, the County signed an agreement with Lehigh stipulating a rigorous schedule to complete the work necessary to submit a reclamation plan amendment application, and all other information required to complete the environmental impact review. The agreement also stipulates that the County retains its authority to impose fines against the operator, if necessary. Should Lehigh not comply with a strict compliance schedule, or fail to cooperate with the County as it processing the reclamation plan amendment, then fines will be imposed.

The reclamation plan amendment described above requires review under the California Environmental Quality Act and this review is underway. A Draft Environmental Impact Report (DEIR) is expected to be published by the summer of 2011 for public review. A public hearing will be convened before the Planning Commission to receive comments regarding the DEIR.

Mr. Chang has again asked, “Why is the County not taking action?” The County *has* taken action by issuing the NOV. By filing for reclamation plan amendment, Lehigh has taken action to cure the violation. The Board of Supervisors is aware of actions taken to date by staff and Lehigh, and does not appear believe any other actions are warranted at this time.

cc:

Colleen Valles, District One

Gustavo Caraveo, District Two

Mike Donohoe, District Three

Tony Filice, District Four
Scott Strickland, District Five

Jody Hall Esser, Director, Department of Planning & Development
Michael M. Lopez, Planning Manager, Planning Office
Rob Eastwood, Senior Planner
Marina Rush, Associate Planner

Miguel Márquez, County Counsel
Orry Korb, Assistant County Counsel
Lizanne Reynolds, Deputy County Counsel