

APPENDIX A

Scoping Report

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LEHIGH PERMANENTE QUARRY RECLAMATION PLAN AMENDMENT

Scoping Report

Santa Clara County
Department of Planning & Development
Planning Office

November 2011



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SCOPING REPORT

Lehigh Permanente Quarry Reclamation Plan Amendment

1. Introduction

This report summarizes the comments received by the Santa Clara County Department of Planning and Development Planning Office during the public scoping period for the Permanente Quarry Reclamation Plan Amendment (RPA, or Project) Environmental Impact Report (EIR). The County is preparing this EIR to consider the environmental impacts that could be caused if the application filed by Lehigh Southwest Cement Company (Lehigh, or Applicant) for the Project were approved.¹ The application for this Project supersedes three previous applications made by the Applicant: the 2007 application to amend and expand the 1985 Reclamation Plan (the “2007 Proposed RPA”), the 2009 application to include the East Materials Storage Area (EMSA) within the approved reclamation boundary (the “EMSA RPA”), and the 2010 application for a comprehensive reclamation plan amendment (the “Comprehensive RPA”).

CEQA Guidelines Section 15083 provides that a “Lead Agency may... consult directly with any person... it believes will be concerned with the environmental effects of the project.” Scoping is the process of early consultation with affected agencies and the public prior to completion of a Draft EIR. Section 15083(a) states that scoping can be “helpful to agencies in identifying the range of actions, alternatives, mitigation measures, and significant effects to be analyzed in depth in an EIR and in eliminating from detailed study issues found not to be important.” Scoping is an effective way to bring together and consider the concerns of affected state, regional, and local agencies, the project proponent, and other interested persons (CEQA Guidelines Section 15083(b)). Scoping is not conducted to resolve differences concerning the merits of a project or to anticipate the ultimate decision on a proposal. Rather, the purpose of scoping is to help ensure that a comprehensive and focused EIR will be prepared that provides a firm basis for the decision-making process.

This report is intended for use by the public to have access to and understand the comments received during the scoping period. It includes written and oral comments received during the scoping period for the Project, as well as comments received during the scoping periods for the three prior applications to amend the existing reclamation plan: the 2007 Proposed RPA, the EMSA RPA, and the Comprehensive RPA. The scoping periods for each project were as follows:

¹ The County of Santa Clara Planning Office is the lead agency pursuant to the California Environmental Quality Act (CEQA) for the preparation of an EIR for the Project.

**TABLE 1
SCOPING PERIODS INCLUDED IN THIS REPORT**

Project Name	Scoping Period Began	Scoping Period Ended
2007 Proposed RPA EIR	May 25, 2007	July 29, 2007
EMSA RPA EIR	April 14, 2010	May 14, 2010
Comprehensive RPA EIR	March 10, 2011	April 10, 2011
Lehigh Permanente Quarry RPA (Project) EIR	August 18, 2011	September 26, 2011

The County will use this report as a tool to ensure the preparation of a comprehensive and focused EIR. Pursuant to CEQA Guidelines Section 15082, all public comments will be considered² in the EIR process.

2. Description of the Project

Project Summary

The Project is a proposed amendment to the existing 1985 Reclamation Plan for the Permanente Quarry. The Surface Mining and Reclamation Act (SMARA) requires that surface mining operations, such as the Permanente Quarry, have a lead agency-approved reclamation plan. The Permanente Quarry has been in operation since at least as early as 1903, and in continuous operation since 1939. Existing operations consist of mining of limestone and other materials and processing these materials for use in aggregate rock products and cement. The Project proposes to reclaim all areas at the Permanente Quarry that have been disturbed by surface mining operations since the Surface Mining and Reclamation Act (SMARA) was adopted in 1975. Reclamation activities would begin immediately upon Project approval and continue until 2025 or until reclamation standards are met. The reclamation process would include backfilling the main mining pit (the “North Quarry”) primarily with overburden materials now stored in the West Materials Storage Area (WMSA). Overburden materials now stored in the EMSA would be subject to final grading, contouring, and revegetation.

Project Location

The Project site is located in unincorporated Santa Clara County near the City of Cupertino, about 2 miles west of the intersection of Interstate 280 and State Route 85, at 24001 Stevens Creek Boulevard. The area proposed for reclamation (the “Project Area”) consists of the approximately 1,095-acres of the Applicant’s 3,510-acre ownership that has been disturbed by surface mining operations since SMARA was adopted in 1975.

² Comments not within the scope of CEQA will not be addressed as part of the CEQA process.

3. Opportunities for Public Comment

Notification

On August 18, 2011, the County published and distributed a Notice of Preparation (NOP) to advise interested local, regional, state, and federal agencies, as well as the public, that an EIR would be prepared for the Project. The NOP presented the description and location of the Project, potential issues to be addressed in the EIR, where to locate supporting documents, and the contact name for additional information regarding the Project. The NOP is provided in Appendix A.

The NOP was sent to a mailing list that included the owners of 60 properties near the Project site; the Governor's Office of Planning and Research; the State Clearinghouse (15 copies); 28 local, state, and federal agencies; Santa Clara County libraries in Cupertino, Los Altos, and Saratoga; and interested parties who had commented on previous NOPs or who had requested information.

The NOP solicited written comments to be received during the 39-day comment period, which ended September 26, 2011, that address potential environmental concerns resulting from implementation of the Project. The public was encouraged to submit comments to the County by either U.S. mail or e-mail. The County also held a public scoping session, i.e., a meeting to solicit oral comments on the NOP. The meeting was held on August 30, 2011, at 7:00 pm at the City of Cupertino Quinlan Center, Cupertino Room, at 10185 North Stelling Road in Cupertino.

Previous NOPs for Related Projects

Prior to the Applicant's submission of the current application for the Project, the County published and distributed an NOP for the 2007 Proposed RPA EIR in May 2007, the EMSA RPA EIR in April 2010, and the Comprehensive RPA EIR in March 2011. These NOPs were mailed to a similar list of interested parties to describe the projects and to solicit comments from agencies, organizations, and the public. A public scoping session for the 2007 Proposed RPA EIR was held at 4:00 pm on July 26, 2007, at the City of Cupertino Community Hall, 10350 Torre Avenue in Cupertino. A public scoping session for the EMSA RPA EIR was held at 6:30 pm on April 28, 2010, also at the Cupertino Community Hall. A public scoping session for the Comprehensive RPA EIR was held at 7:00 pm on March 30, 2011, in the Cupertino Room at the Quinlan Center in Cupertino. The NOP for the Comprehensive RPA EIR is presented in Appendix B, the NOP for the EMSA RPA EIR is presented in Appendix C, and the NOP and Revised NOP for the 2007 Proposed RPA EIR are presented in Appendix D.

4. Summary of Scoping Comments

Written and oral comments were collected throughout each of the scoping periods described above. Several letters were received after the formal comment periods ended. The County accepted these comments, and has considered them in the scoping process. Appendix E contains copies of the submitted written comments and summaries of the oral comments received during the scoping meetings. The comments are arranged by scoping period and numbered chronologically by receipt. The comments received during the scoping period for the Project are

numbered beginning with “A,” comments from the Comprehensive RPA EIR scoping period begin with “B,” comments from the EMSA RPA EIR scoping period begin with “C,” and comments from the 2007 Proposed RPA EIR scoping period begin with “D.”

Commenting Parties

The following individuals and agencies submitted written and/or verbal comments on the scope of the Project EIR (A), the Comprehensive RPA EIR (B), the EMSA RPA EIR (C), and the 2007 Proposed RPA EIR (D).

**TABLE 2
PARTIES SUBMITTING COMMENTS DURING
THE LEHIGH PERMANENTE QUARRY RECLAMATION PLAN AMENDMENT EIR SCOPING PROCESS**

Name (Last, First)	Organization	2007 Proposed RPA	EMSA RPA	Comprehensive RPA	Proposed RPA	Comment Number(s)
(Unreadable), Nick		X				D-20
Abbors, Stephen E.	MROSD			X		B-67
Abhganker, Raj		X				D-51
Acha, Dennis	Breathe California of the Bay Area	X				D-15
Agdassi, Farro		X				D-27, D-193
Alba, Larry		X				D-47
Allen, Tom & Christina		X				D-151
Almon, Bill	Quarry No		X	X	X	A-14, A-23 B-6, B-30, C-5, C-29
Alvarado, Jane	Lehigh		X			C-13
Amistad, Irene		X				D-56
Arledge, John		X				D-103
Arnold, Gary	Caltrans District 4				X	A-17
Arquie, Louis		X				D-122
Baik, Hellen		X				D-37
Baldzikowski, Matt	MROSD	X		X		B-66, B-69, D-7, D-176
Bapat, Shekhar		X				D-36
Bartas, John		X		X	X	A-5, B-16, D-201
Bell, Rowena				X		B-55
Borel, Kristin	Saratoga Public Works	X				D-140, D-172
Bourp, Gail			X			C-22
Bowen, Gail	West Valley Citizens Air Watch (WVCAW)	X				D-50
Bower, Gail		X				D-120, D-204
Bowyer, Dale	California Environmental Protection Agency	X				D-117

Name (Last, First)	Organization	2007 Proposed RPA	EMSA RPA	Comprehensive RPA	Proposed RPA	Comment Number(s)
Brand, Tim	WVCAW	X	X	X	X	A-8, B-17, B-35, C-8, D-196
Brosseau, Kimberly	County of Santa Clara Parks Department		X	X	X	A-24, B-45, C-28
Brown, George & Alice		X				D-98
Buell, Celia		X				D-178
Buell, Joan		X				D-181
Buenz, John		X		X		B-32, D-67
Buenz, Marilyn		X				D-67
Bunzel, David		X				D-24
Caldwell, Jeffrey		X				D-41, D-150, D-156, D-157
Carboni, Lisa	Caltrans District 4 Local Development – Intergovernmental Review		X	X		B-56, C-30
Carlton, Nadine		X				D-52
Chamberlain, Catherine		X				D-40
Chang, Barry	Cupertino City Council; No Toxic Air		X	X	X	A-13, A-18, B-11, B-33, B-35, B-57, B-73, C-7
Chang, Darwin			X			C-35
Chang, Wayne		X				D-102
Chen, Julia		X				D-182
Chen, Yun Ning				X		B-21
Cherbone, John	Saratoga Public Works	X				D-29, D-173
Chot, Christine			X			C-9
Christensen, Mette				X		B-58
Chu, Lynn		X				D-68, C-223
Clansky, Kathy		X				D-200
Cohen, Eran		X				D-21, D-187
Cohen, Helena		X				D-195
Cook, David	Santa Clara Valley Audubon Society			X		B-2
Cress, William & Kathy		X				D-206
Cushman, Ashley	Breathe California		X			C-4
Dauber, Steve		X				D-38, D-111
Davis, Jim		X				D-53, D-197
Day, Marilyn		X				D-18, D-137
Day, Will		X				D-137
Del Compare, Karen	WVCAW	X	X	X	X	A-2, B-1, B-35, B-54, C-12, D-1,

Name (Last, First)	Organization	2007 Proposed RPA	EMSA RPA	Comprehensive RPA	Proposed RPA	Comment Number(s)
						D-66, D-77, D-96, D-152, D-183
DeMellopine, Pattie		X				D-100
Dhir, Vandana and Samir		X				D-188
Ding, Ignatius	WVCAW		X			C-10
Dishkit, Ashutosh		X				D-149
Donahue, Linda		X				D-138
Drapper, Paul	Ridge Vineyard		X			C-6
Duran, Hugo & Denise		X				D-213, D-216
Dvorak, Vicki		X				D-155, D-164
Eden, Joyce M.	WVCAW	X	X	X	X	A-16, B-15, B-35, B-36, C-25, D-1, D-198
Elbogen, Rudy		X				D-221
Ennals, John		X				D-34
Ennals, Tessa		X				D-126
Epstein, Thelma		X				D-28
Erlund, Maxine		X				D-222
Fantozzi, Mark				X		B-59
Faust, Lynn		X				D-54, D-107
Fein, Hemi		X				D-32
Feng, Jean		X				D-75
Fisher, Fred		X				D-162
Flores, Margaret		X				D-72
Fowler, Leslie				X		B-26
Frescura, Bert		X				D-114
Fretz, Gregory		X				D-46
Fry, Rhoda		X		X		B-37, B-60, D-154
Geefay, Frank				X		B-10, B-62
Geiger, Janet		X		X		B-38, D-23
Ghosh, Indraneel		X				D-139
Gianettoni, Jill		X				D-169
Gilley, April		X				D-55
Goldberg, Sandra	Deputy Attorney General, California Department of Justice			X		B-61
Grant, Nadine		X				D-91, D-133, D-135
Grinels, Fran				X		B-29

Name (Last, First)	Organization	2007 Proposed RPA	EMSA RPA	Comprehensive RPA	Proposed RPA	Comment Number(s)
Guldenbrein, Jillian	California Historical Resources Information System, Northwest Information Center				X	A-19
Gupta, Amar		X				D-110
Guske, Garry		X				D-203
Hammond, Martin L.		X				D-2, D-116
Hampton, Alice				X		B-27
Hargreaves, Peter				X		B-63
Harp, Janet		X				D-76
Harriman, Lani		X				D-99
He, Chengjian		X				D-112
Heilmann, Kathy		X				D-35
Helgerson, Cathy		X	X	X	X	A-1, B-5, B-39, C-3, C-34, D-16, D-165
Hertel, Terry		X				D-202
Ho, Patrick Y.		X				D-61, D-64, D-125, D-131
Ho, Vicky		X	X	X		B-64, C-18, C-31, D-62, D-86, D-89, D-144
Howell, Marvin	Lehigh/Hanson		X	X	X	A-7, B-7, C-2
Hultgren, Craig		X				D-219
Hylkema, Carle		X				D-83
Hylkema, Randall		X	X			C-20, D-83
Jacobs, Robert		X				D-71
Jamison, Deborah		X				D-26
Jung, Colin	City of Cupertino Office of Community Development		X		X	A-20, C-24
Kashkooli, Eva		X	X			C-16, D-159
Kashyap, Lola		X				D-97
Kerr, Breene	Town of Los Altos Hills		X			C-26
Kim, Daniel		X				D-19
Kim, Lillian		X				D-143
King, Stacey		X				D-215
Kinner, Emily					X	A-15
Kleinhaus, Shani	Santa Clara Valley Audubon Society		X	X		B-31, C-23
Kolev, Veneta		X				D-44
Kolski, John		X				D-94

Name (Last, First)	Organization	2007 Proposed RPA	EMSA RPA	Comprehensive RPA	Proposed RPA	Comment Number(s)
Kotes, Jana & Stefan		X				D-175
Kougiouris, Panagiotis		X				D-113
Kroth, Anya				X	X	A-12, B-25
Laccabue, Fred C.		X				D-74
Landzaat, Martin		X				D-167
Lariz, Mondy	Sierra Club Loma Prieta Chapter	X				D-185
Latshaw, Gary	Sierra Club Loma Prieta Chapter			X	X	A-3, B-50
Lee, Dennis		X				D-13
Lee, Dick T.		X				D-63, D-186, D-189
Lee, Ed		X				D-211
Lee, Kenneth		X				D-118
Lee, Simon		X				D-80
Lee, YF		X				D-170
Leyfman, Elena		X				D-163
Lieber, Sally J.	California State Assembly 22 nd District	X				D-9
Lin, Adrian		X				D-68, D-223
Lin, Bor-Jen		X				D-65
Lin, Chih-Pong		X				D-68, D-223
Lucas, Libby	California Native Plant Society			X	X	A-11, A-21, B-19, B-41, B-42
Maar, Elise		X				D-3, D-166
MacCubbin, Don		X				D-174
Mahalawat, Sanjeev					X	A-22
Makihara, Naomi				X		B-71
Marks, Rosemary		X				D-210
Martin, Michael	Santa Clara Valley Water District			X	X	A-25, B-49
Mats, Tim	Lehigh/Hanson			X		B-9
Mautino, Nancy				X		B-65
McCarthy, Marylin	WVCAW			X		B-14, B-35, B-43
McKibbin, Robert					X	A-4
Mendias, Linda		X				D-123
Middleton, Stacey		X				D-214, D-217
Mojgani, Mehrad		X				D-14
Monahan, Leah		X				D-160
O'Rorke, Paul		X				D-136
Otto, Jane		X				D-58

Name (Last, First)	Organization	2007 Proposed RPA	EMSA RPA	Comprehensive RPA	Proposed RPA	Comment Number(s)
Packard, Ron D.	Mayor, Los Altos			X		B-34
Pamukcu, Mehmet				X		B-44
Pann, Jennifer		X				D-127
Pedro, Debbie	Planning Director, Town of Los Altos Hills			X		B-46
Peregrino, Marina		X				D-190
Petition	Cupertino Knolls Homeowner Association	X				D-60
Pflager, Anne E.				X		B-3, B-47
Pflager, Phillip P.				X		B-4, B-47
Phillips, Lee		X				D-79
Phillips, Mike		X				D-43
Piedmont, Diane		X				D-145
Pilas-Treadway, Debbie	Native American Heritage Commission	X				D-5
Pittenger, Tammy		X				D-179
Plasecki, Steve	Cupertino Community Development Department	X				D-11
Plonowski, Artur	No Toxic Air			X		B-12
Pompy, James S.	Office of Mine Reclamation	X				D-6
Power, Bob		X				D-70
Ramanathan, Meera	Active and Determined Hanson Oversight Committee	X				D-30, D-199, D-208
Rao, Arvind				X		B-22
Reynard, Nima		X				D-191
Riola, Gloria		X				D-177
Rittiman, Frank		X		X		B-48, D-33
Rittiman, Joan				X		B-48
Ross, Wanda				X		B-70
Ruiz, Ana	MROSD		X	X		B-68, C-27
Russel, Dave		X				D-31
Rutter, Gillian		X				D-84, D-87
Rynas, Stephanie	Waldorf School of the Peninsula	X				D-4
Sadrzadeh, Ali		X				D-45
Saunders, Jonathan E.				X		B-72

Name (Last, First)	Organization	2007 Proposed RPA	EMSA RPA	Comprehensive RPA	Proposed RPA	Comment Number(s)
Scheffer, Lynde		X				D-207
Schmidt, Brian A.	Committee for Green Foothills	X				D-124
Scholer, Mary E.		X				D-220
Schuler Ferro, Nathalie	Active and Determined Hanson Oversight Committee	X				D-17, D-59, D-69, D-73, D-78, D-81, D-92, D-93, D-95, D-101, D-142
Scott, Anne		X				D-212
Segal, Maria		X				D-104
Shabel, Jack			X			C-21
Shiah, Winston			X			C-17
Shingai, Randall				X		B-71
Sievert, Susan					X	A-26
Sinks, Rod				X		B-13
Smith, Arthur & Norma		X				D-82
Smyth, Ken	WVCAW		X	X		B-23, B-51, C-15, D-130
Snell, Amy & Addison		X				D-209
Snyder, Celeste & Andy		X				D-194
Solari, Michael		X				D-218
Srinivasan, Neela			X			C-19
Stallman, Jim		X				D-12, D-88
Staub, Don	No Toxic Air			X		B-28
Stevens, Leigh & Tim		X				D-129
Sullivan, Peter		X				D-109
Summit, Ginger					X	A-10
Szabo, Nicholas		X				D-8, D-20
Tadros, Karim		X				D-119
Takara, Kurt		X				D-205
Takemori, Claire		X				D-153
Taylor, Mark		X				D-115
Tenold, Margo		X				D-39
Thai, Muoi		X				D-128
Tholen, Greg		X				D-106
Tolles, Bryant		X				D-146
Tong, Homer	Fremont Union High School District			X		B-24
Tseng, Jocelyn		X				D-161
Tung, Tung Sun				X		B-20
Uruena, Carmen		X				D-90

Name (Last, First)	Organization	2007 Proposed RPA	EMSA RPA	Comprehensive RPA	Proposed RPA	Comment Number(s)
Van Horne, Steve		X				D-3, D-166
Vandersteen, Robina and Anthony		X				D-10
Vecchiet, Jean		X				D-168
Walgren, James	Los Altos Community Development Department	X				D-134
Wallis, Paula	No Toxic Air			X	X	A-9, B-18, B-52
Walster, G. William and J. Kaye		X				D-85
Wang, Jingyi		X				D-158
Warrington, Janet A.				X		B-72
Wessling, Henrik	Lehigh/Hanson		X	X	X	A-6, B-8, C-1
West, Barbara			X	X		B-53, C-11, C-32, C-33
West, Dennis		X				D-22, D-48
Wheeler, Jim		X				D-121, D-180
Whong, Jason		X				D-108, D-192
Williams, Erika		X				D-49
Winegar, Beverly		X				D-42
Wong, Andy		X				D-105
Wu, Harry		X				D-132, D-141
Yew, Ken		X		X		B-54, D-171
Yu, Jiyu		X				D-147
Yu, Linyun		X				D-148
Zagar, Heather	Lehigh		X			C-14
Zeidman, Bob		X				D-25
Zhang, Ying		X				D-184

Comments Received During the Scoping Process

The comments received during the four scoping periods that are relevant to the Project are summarized below.

Comments Not Within the Scope of CEQA

The following comments are not within the scope of CEQA and will not be analyzed in the EIR:

- Comments regarding the assessment of penalties for legal violations;
- Comments regarding financial liability for reclamation; and

- Comments generally in support of or against the proposed Project.

These comments are noted and will be considered by the County in its evaluation of whether or not to approve the Project.

Comments Not Relevant to Current Project

The comments received during the Comprehensive RPA EIR, EMSA RPA EIR, and 2007 Proposed RPA EIR scoping periods that refer to aspects of these earlier projects that are not part of the current Project are not relevant to this Project or this EIR, and so are not considered further.

5. Consideration of Issues Raised in Scoping Process

A primary purpose of this scoping report is to document the process of soliciting and identifying comments from interested agencies and the public. The scoping process provides the means by which the County can determine those issues that interested participants consider to be the principal areas for study and analysis. Every issue that has been raised during scoping that falls within the scope of CEQA and is relevant to the Project will be addressed in the Draft EIR. Many commenters raised similar concerns. These are summarized by issue area below.

Procedural Concerns

- Concern that evaluating an amendment to the 1985 Reclamation Plan may be piecemealing under CEQA.
- The EIR should analyze operations at peak production levels to determine worst-case scenarios for impacts such as air quality, noise, and traffic.
- Data about environmental impacts used for analysis in the EIR should be collected by an independent, third-party source, not by the Applicant.

Project Description

- If future extraction or overburden placement activities are possible within the RPA area, they should be evaluated in the EIR.
- What are the height restrictions on EMSA and WMSA, and depth restrictions, if any, on the mining pit?
- List and discuss historic violations of SMARA, Clean Water Act, Clean Air Act, and regulations by the Applicant and actions taken by the County and other regulatory agencies in response to these violations.
- The Project location map should delineate the facilities associated with the cement plant.
- The cement plant adjacent to the Project Area should be included in the scope of the RPA and/or EIR.
- Would the reclamation timeline be affected by slower than average sales of mining products that would extend the useful life of the quarry?
- The proposed reclamation timeline is too long.

- Is a Conditional Use Permit required and, if so, what is the nature of this permit?
- Describe the relationship between the current Project and the proposed Comprehensive RPA, EMSA RPA, and 2007 RPA.
- What volume of soils would be needed to fill the quarry pit and are these materials readily available?

Alternatives

- A No Project Alternative must be evaluated.

Aesthetics and Visual Resources

- Materials storage should not obscure views of ridgelines, especially Kaiser-Permanente ridge. The current height of the WMSA violates a County permanent scenic easement meant to protect this view. Would the WMSA remain visible above Permanente Ridge after reclamation is completed? The Project should bring the WMSA into compliance with previous aesthetic requirements.
- Landslides on Project slopes would adversely affect the scenic easement along Permanente Ridge.
- Follow all County General Plan policies for protecting scenic ridgelines.
- The Project site is located within the Santa Clara Valley viewshed and within an area covered by a Design Review overlay under the County Zoning Code.
- The EIR should assess views from Los Altos Hills, Highway 280, Highway 85, Monte Bello and Rancho San Antonio Open Space Preserves, and adjacent public parklands and trails.
- Numerous additional viewing points suggested.
- Due to the large size of the Project site, the EIR should assess impacts on viewsheds from 1 mile to up to 30 miles away.
- Concern that slope terracing and benches are and will remain visible, adversely affecting views of hillsides.
- The Project should include vegetated buffers between Project slopes and adjacent parkland to protect views.
- The EIR should accurately represent grade and color in document graphics when describing visual impacts.
- The EIR should analyze the Project's nighttime lighting effects.

Air Quality

- Concern that air pollutant emissions include diesel emissions, nitrous oxide, sulfur dioxide, dust, and arsenic, mercury, and asbestos.
- Piles of excavated materials should be kept moist to avoid dust emissions.
- Include an updated Health Risk Analysis and should not disregard any data. Justify all assumptions made in preparing HRA and EIR analyses.
- Assess air quality impacts on sensitive receptors in the Project area.
- Concern about acute cancer risk of Project air pollutants.

- Concern that the available background data on air quality effects is not sufficient for analysis.
- Conform to NESHAP and NSPS standards.
- Analyze odor impacts.

Biological Resources

- Heat emissions into Permanente Creek could adversely affect portions of the creek that are designated as Cold Freshwater Habitat.
- Steelhead impacts.
- Concern about effects of selenium bioaccumulation, mercury, and heavy metals discharged into creek on riparian wildlife.
- Analyze effects on California red-legged frog, California tiger salamander, dusky-footed woodrat, and white-tailed kite, red-shouldered hawks, and any threatened or endangered animal species.
- Analyze effects on plants including *Clarkia concinna ssp automixa* and *Piperia michaelii*, which are present at or near the Project site.
- The Project should use native plants for both short-term erosion control and long-term reclamation.
- Analyze effects on existing California red-legged frog mitigation sites in Rancho San Antonio Park.
- Would the Project result in changes to the riparian corridor in Permanente Creek?
- Analyze effects on native oak woodland and habitat for endangered species.
- The EIR should include plant surveys of at least one rainfall-representative year.
- How precisely can backfill measures be implemented to protect creek and wetlands vegetation habitat?
- What is the timeline for implementing test plot sites, and can the public review revegetation protocols and progress?

Cultural Resources

- Analyze effects on cultural and historic resources. The Project site once was occupied by Harry Kaiser, and was a location for WWII weapons manufacture.
- Any building over 45 years old may be of historical value; a qualified professional should conduct a formal evaluation of any such buildings in the Project Area.
- Previous studies have documented the known resources in the Project Area. Discuss consultation procedures in the event of inadvertent discovery of human remains and/or cultural material.
- Coordinate with local tribal governments regarding traditional, cultural, and religious heritage values.

Geology and Soils

- Project-related slopes must be safe. Assess potential for landslides, particularly in northeast corner of the quarry pit.
- Assess stability of fill for supporting post-reclamation vegetation and uses.
- Analyze effects related to the Berrocal Fault adjoining the San Andreas Fault; conduct a geological study of faults and slide risks.
- Shear lines between limestone and greenstone could result in earthquake hazards.
- Under SMARA, reclamation should be done concurrently with disturbance.
- Was the Request for Emergency Grading Authorization (#2002-4) work ever completed?

Greenhouse Gas Emissions

- Analyze greenhouse gas impacts. Applicant should consider using low-carbon fuels for operations to reduce greenhouse gas emissions pursuant to AB 32.

Hazards and Hazardous Materials

- Identify all agencies with regulatory authority over the Project with respect to health and safety hazards and describe Applicant's compliance with and/or violation of applicable permits.
- During analysis, test all soils for asbestos.
- Concern about hazards of selenium and mercury at parks and schools.
- Concern that overburden contains materials hazardous to human health. Concern that high levels of mercury could cause autism.
- Comply with SMARA requirement that restored lands "create no danger to public health or safety."
- Concern that crushed limestone releases arsenic.
- Does the overburden contain petroleum coke and/or radioactive material?
- Rocks falling off trucks could create a physical or traffic hazard.
- How would Applicant ensure safety of storage, handling, transport, and disposal of toxic materials?
- Analyze soils under EMSA and other parts of Project Area for toxin content. If toxins are found, how will the Applicant remedy this?

Hydrology and Water Quality

- Would the Project release toxic metals into County watersheds?
- Analyze the Project's effects with respect to the Section 303(d) listing for Permanente Creek for toxicity and selenium levels.
- Concern that runoff from Project site could contain arsenic and mercury. What would the effects of contaminated runoff be on Stevens Creek, Stevens Creek Reservoir, and groundwater/aquifers/wells?

- Would the Project violate San Francisco Regional Water Quality Control Board water quality standards through unpermitted industrial process water dumping into Stevens Creek? Concern that discharge damages creek and contributes to groundwater contamination and contamination in San Francisco Bay.
- Ensure Project compliance with stormwater and sediment control requirements.
- Concern that grading, contouring, and seeding of slopes for reclamation could result in adverse hydrology and water quality impacts.
- Concern that the existing silt fence is not adequate to prevent sediment discharge into Permanente Creek. The Project should implement stronger sedimentation prevention measures. The EIR should analyze the Project with respect to a sedimentation study for the creek prepared by the USGS in the early 1980s.
- The data used for Permanente Creek is deficient; more appropriate sources and methods suggested.
- The RPA should include restoration of the riparian corridor and continuity of stream flow in Permanente Creek.
- The Project should implement vegetated terraces in the reclamation plan to reduce hydrologic impacts.
- How will the RPA guarantee that seeps and springs be preserved with natural wetlands vegetation?
- How would the Project affect TMDLs for area waterways?
- The EIR should analyze the Project's effects on Ohlone Creek, West Branch Permanente Creek, San Francisco Bay, and all waters that flow into/through regional and local parks.
- The EIR should analyze the Project's effects on the beneficial uses of waters in the Project area.
- Concern that water quality measurements are biased and should be reviewed by an independent third party.
- Concern that background data on water quality effects is not sufficient for analysis.
- Concern about methylmercury contamination in created wetlands after reclamation.
- The Applicant should work with the Santa Clara Valley Water District to provide flood protection facilities in the Project Area.
- Would the Project affect the safety of edible fish in Stevens Creek due to pollutants?
- Discuss past violations of NPDES permit requirements at the Project site and consider substantial, ongoing water quality violations by the Applicant.
- Consider extended vegetated terracing and sediment basins at the north end of the Project Area to protect the aquifer.

Land Use

- The County must ensure that site will eventually be used as Open Space.
- The EIR should analyze the Project's consistency with the Guidelines and Standards for Land Uses near Streams prepared by the Santa Clara Valley Water Resources Protection Collaborative.

Noise and Vibration

- Concern that noise from the quarry operation and reclamation may affect users of adjacent parks and recreational resources.
- The EIR should analyze vibration effects.
- Analyze blasting noise and vibration.
- Analyze truck noise and vibrations, trucks braking at Foothill and Stevens Creek.
- Analyze noise and vibration effects from nighttime blasting, earth moving, and diesel truck trips. The Project should have restrictions on operation and truck travel hours to reduce nighttime noise and vibration impacts.
- Evaluate noise levels from storage areas at the boundary between the quarry and regional open space.
- Concern that if trees were removed, it would remove a noise barrier.

Recreation

- Countywide trail route R1-A, Juan Bautista de Anza trail, is located near the Project site and is important for regional recreational connectivity. The trail route is also within other public lands used for recreation.
- How would recreational use of MROSD lands be affected?
- There is a PG&E trail near the existing materials storage areas.

Transportation and Traffic

- The EIR should specifically list any traffic mitigation fees assessed on the Applicant.
- Required road improvements must be completed prior to issuance of occupancy permit.
- An encroachment permit would be needed for any work inside a State Right of Way.
- Analyze impacts on the State Highway System. The traffic impact analysis should identify impacts on all affected State facilities.
- The Traffic Impact Analysis must include trip generation, distribution, assignment, Average Daily Traffic, morning and evening peak hour volumes, and cumulative traffic volumes.
- Mitigation for traffic impacts should focus on alternatives to State highway use.
- Analyze traffic impacts on Stevens Creek Boulevard and Foothill Expressway.
- Drainage from WMSA has in the past affected MROSD road infrastructure. The Project and/or mitigation should ensure that it would not do so in the future.

Utilities and Service Systems

- Concern that waste materials are not properly recycled or disposed of at Project site.
- Sedimentation from unpermitted discharges may create need for extra maintenance or repairs to the city storm drain system.
- Discuss the Project's water consumption and available or necessary new water supply.

- Describe the state and local water efficiency requirements that would apply to the revegetation component of the Project.

Cumulative Effects

- The EIR should analyze the contributions to cumulative effects of the facilities at the Project site and the adjacent cement plant.
- Analyze the Project's effects on the Permanente Creek Flood Protection Project.

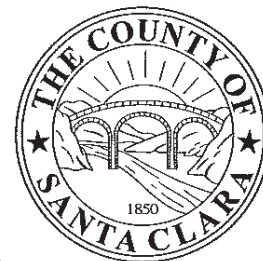
Mitigation Measures

- The EIR should include a detailed and enforceable monitoring plan for mitigation compliance.
- Incorporate surprise inspections into any monitoring program.
- Ensure that the reclaimed site does not contribute to water quality or sedimentation problems in Permanente Creek after the operator leaves.

APPENDIX A

Notice of Preparation for Project EIR

County of Santa Clara
Department of Planning and Development
County Government Center, East Wing
70 West Hedding Street, 7th Floor
San Jose, California 95110



	Administration	Development Services	Fire Marshal	Planning
Phone:	(408) 299-6740	(408) 299-5700	(408) 299-5760	(408) 299-5770
Fax:	(408) 299-6757	(408) 279-8537	(408) 287-9308	(408) 288-9198

**NOTICE OF PREPARATION OF AN ENVIRONMENTAL IMPACT REPORT
RECLAMATION PLAN AMENDMENT (CONSOLIDATED) FOR PERMANENTE QUARRY
(STATE MINE ID# 91-43-004)**

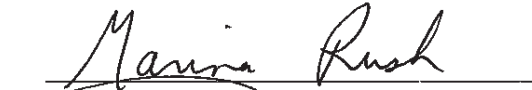
County File Number: 2250-13-66-10P(M1)-10EIR(M1)
Property Owner: Hanson Permanente Cement, Incorporated; Mine Operator: Lehigh Cement Company/Heidelberg Cement Group (collectively Lehigh).
Assessors Parcel Numbers: 351-09-023, -013, -020, -025 -022; 351-10-005, -033, -037, -038; and 351-11-001.


As the Lead Agency, the County of Santa Clara (County) will prepare an Environmental Impact Report (EIR) for a proposed amendment to the existing 1985 Reclamation Plan for the Permanente Quarry. The Quarry is operated by Lehigh, and is a limestone and aggregate mining operation located in the western foothills of the County, approximately one half mile west of the City of Cupertino. The proposed application, received July 29, 2011, supersedes both the prior East Materials Storage Area Reclamation Plan Amendment (2009) and Comprehensive Reclamation Plan Amendment (2010) applications. The proposed reclamation area is approximately 811 acres and encompasses all portions of the property that have been disturbed by mining related operations. The application does not propose a new mining area. Please view the complete application materials and general information regarding Lehigh on the County website at: www.sccplanning.org.

The County would like your views regarding the scope and content of the environmental information to be included in the EIR. A Public Scoping Session to solicit comments for the Notice of Preparation will be held in the City of Cupertino on **Tuesday, August 30, 2011, 7:00 PM** at the City of Cupertino Quinlan Center, Cupertino Room, 10185 North Stelling Road, Cupertino, California 95014. In accordance with the California Environmental Quality Act (CEQA), **comments on the Notice of Preparation are due to the County Planning Office by September 26, 2011, 5:00 PM.**

In order to efficiently process comments and inquires, please send emails regarding the NOP or other CEQA related issues to: permanentequarry@pln.sccgov.org, and for general inquires and SMARA related issues, please contact Gary Rudholm at: (408)299-5747 gary.rudholm@pln.sccgov.org. Written comments should be mailed to: **County of Santa Clara Planning Office, Att: Marina Rush, 70 West Hedding, 7th Floor, East Wing, San Jose CA 95110.**

Prepared by:
Marina Rush, Planner III





8-18-11

Approved by:
Rob Eastwood, Senior Planner

8-18-11

INTRODUCTION

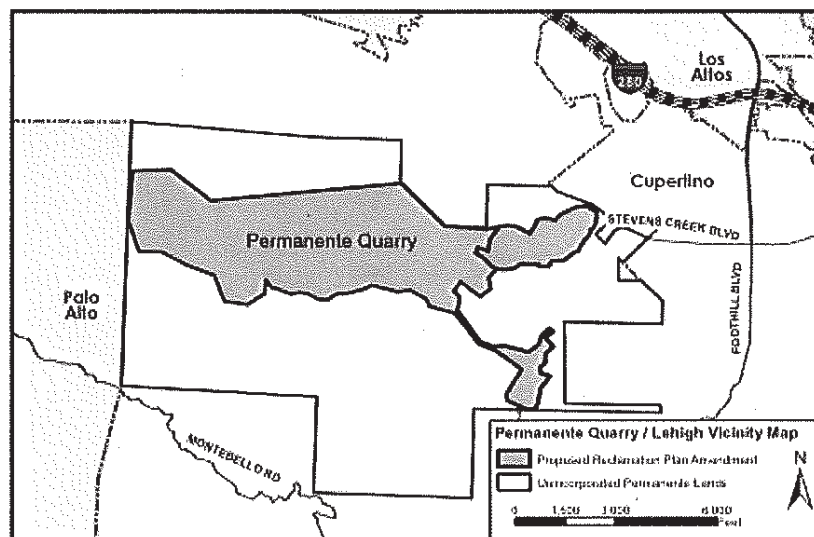
The purpose of an Environmental Impact Report (EIR) is to inform decision-makers and the general public of the environmental effects of a proposed project that an agency may implement or approve. The EIR process is intended to provide information sufficient to (a) evaluate a proposed project and its potential for significant impacts on the environment, (b) to examine methods of reducing adverse impacts; and (c) to consider alternatives to the project.

The EIR for the Comprehensive Reclamation Plan Amendment and Conditional Use Permit will be prepared and processed in accordance with the California Environmental Quality Act (CEQA) of 1970, as amended. In accordance with CEQA, the EIR will include the following:

- A summary of the project
- A project description;
- A description of the existing environmental setting, potential environmental impacts, and mitigation measures;
- Cumulative impacts;
- Alternatives to the proposed project; and
- CEQA required environmental consequences, including (a) any significant environmental effects which cannot be avoided if the project is implemented; (b) any significant irreversible and irretrievable commitments of resources; (c) the growth inducing impacts of the proposed project; and (d) effects found not to be significant.

PROJECT LOCATION

The project is located in the unincorporated area of the western foothills of Santa Clara County, near the City of Cupertino, approximately two miles west of the intersection of Interstate 280 and Highway 85, at 24001 Stevens Creek Boulevard. Quarry access is via Stevens Creek Boulevard and Foothill Expressway, continuing to the terminus of Permanente Road. The proposed reclamation project area encompasses all mining areas, including the East Materials Storage Area, West Materials Storage Area, main mining pit, and rock crushing facility. The cement plant is a separate industrial use authorized under a use permit (No. 173.23), and is not located within the boundary of the existing or proposed reclamation plan area.



PROJECT DESCRIPTION

Lehigh is proposing to amend the existing Permanente Quarry 1985 Reclamation Plan. Mining at the Quarry is subject to the Surface Mining and Reclamation Act, which requires mining operations to have a lead-agency approved reclamation plan. The County of Santa Clara County will serve both as the Lead Agency under SMARA, and also the Lead Agency responsible for administering the environmental review for the proposed Project. Existing operations at the Quarry include mining of limestone and other raw materials, and processing of these materials for use in producing aggregate rock products and in cement manufacturing at the Cement Plant, which is located on an adjoining site. Mining activities have taken place at the Quarry since approximately 1903, and the Quarry and Cement Plant have been in continuous operation since the 1939.

According to the submitted reclamation plan application, mining operations at the quarry will continue for approximately 14 years, and is dependant on market conditions for material. Reclamation of the main mining pit will be accomplished by backfilling with material currently stored in the West Materials Storage Area (WMSA), and will have final elevations between 990 and 1,750 feet mean sea level (msl) with slopes at a maximum 2.5H:1.0V. The WMSA will be reduced to a lower elevation, and during the overburden relocation process, limestone and aggregate may be screened out for processing. Final slope angles in the WMSA will reach a maximum 2.5H:1.0V. The East Material Storage Area (EMSA) will remain as a permanent overburden storage site with slopes at a maximum 2.6H:1.0V. Reclamation consists of grading slopes to final contours, applying growth medium, reseeding and replanting activities, and maintenance and monitoring of all disturbed areas. It is also includes removing and dismantling the rock crusher, surge pile, and rock plant.

The EIR will provide a project-level evaluation of the potential environmental impacts caused by the implementation of project though approval of the proposed Comprehensive Reclamation Plan Amendment. Practical mitigation measures will be developed and presented for all direct, indirect and cumulative impacts that are found to be potentially significant. The following describes the environmental aspects of the project, and how they are potentially affected.

POTENTIAL ENVIRONMENTAL EFFECTS OF THE PROJECT

The EIR will identify the significant environmental effects anticipated to result from implementation of the proposed project. Specific environmental topics addressed will include:

A. Visual Resources

The project site is located in a Zoning District with a Design Review overlay for the Santa Clara Valley Viewshed (d1). Much of the proposed project area is considered visible from the Santa Clara valley floor. The EIR will describe the anticipated changes to the visual environment as a result of the proposed mining and reclamation activities, including ultimate completion of the landscape and final design of the reclamation area, assessing any potentially significant aesthetic impacts. Visual simulations of the project site will be prepared. The County is requesting public feedback regarding suggested viewpoints to be used in the EIR for the visual impact analysis.

B. Biological Resources

Permanente Creek runs adjacent to the project site. The EIR will describe impacts to biological resources that are anticipated to occur as a result of the proposed project, including indirect impacts associated with any identified water quality impacts. Mitigation measures will be identified for significant impacts, as warranted.

C. Cultural Resources

The EIR will present findings of a cultural resources evaluation that will identify and describe how the proposed project would impact cultural resources (both historical and prehistorical). Mitigation measures will be identified for significant impacts, as warranted.

D. Geology & Soils

Geologic and slope stability analysis for the project has been submitted by Lehigh. The EIR will describe

geology and soil conditions of the site and potential for the proposed mining and reclamation activities to cause increased slope instability or erosion potential, and include a peer review of the submitted geology reports. Mitigation measures will be identified for significant impacts, as warranted.

E. Surface Hydrology, Drainage & Water Quality

Permanente Creek runs adjacent to the project, and is on the State of California 303d list for selenium impairment. The EIR will describe hydrology and storm water quality impacts from the mining and reclamation process, and mitigation measures will be identified for significant impacts, as warranted. The EIR will evaluate the potential for the project to result in impacts to water quality, groundwater, and the hydrograph of Permanente creek.

G. Public Services

The EIR will describe the availability of services to serve the project site and identify, at a programmatic level, potential utilities and services impacts from the project. Mitigation measures will be identified for significant impacts, as warranted.

H. Noise and Vibration

The EIR will characterize ambient noise conditions in the vicinity of the project site and evaluate noise and vibration impacts from the proposed mining and reclamation activities with the County General Plan and Noise Ordinance standards. Mitigation measures will be identified for significant impacts, as warranted.

I. Land Use

Proposed mining activities in the quarry pit and final use, appearance and stability of the reclamation area will be examined to assess whether these activities would conflict with any County General Plan Policies or Zoning Ordinances.

J. Air Quality

Impacts of the proposed project on local air quality and sensitive receptors will be evaluated with emphasis on dust generation and emissions related to mining and reclamation activities. Air Quality analysis will include a health hazards risk assessment to nearby sensitive receptors. The EIR will not evaluate emissions related to existing cement plant operations. Mitigation measures will be identified for significant impacts, as warranted.

K. Greenhouse Gas Emissions

The EIR will address the potential impact of the project on global climate change. It will include the most recent information regarding the current understanding of the mechanisms behind global climate change, greenhouse gas emissions, current conditions and trends, while also incorporating the Bay Area Air Quality Management District CEQA thresholds for greenhouse gas emissions.

L. Alternatives

The EIR will describe a range of reasonable alternatives to the proposed project, including a Reduced Project Alternative and a No Project Alternative.

M. Growth Inducing Impacts

The EIR will discuss methods by which the proposed project will directly or indirectly induce economic, population, or housing growth.

N. Cumulative Impacts

The EIR will include a Cumulative Impacts section which will address the potential significant or irreversible cumulative impacts of the proposed mining and reclamation activities under the Reclamation Plan Amendment when considered with past, present, and probable future projects producing related or cumulative impacts, or projections contained in applicable land use documents of regional or area-wide conditions contributing to the cumulative impact.

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APPENDIX B

Notice of Preparation for Comprehensive RPA EIR

County of Santa Clara
Department of Planning and Development
Planning Office



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

**NOTICE OF PREPARATION OF AN
ENVIRONMENTAL IMPACT REPORT
COMPREHENSIVE RECLAMATION PLAN AMENDMENT
AND CONDITIONAL USE PERMIT
FOR PERMANENTE QUARRY (STATE MINE ID# 91-43-004)**

Project Owner/Applicant: Hanson Permanente Cement, Inc. (owner) and Lehigh Southwest Cement Company (operator), collectively Lehigh.

County File Number: 2250-13-66-10P-10EIR

Assessors Parcel Numbers: 351-09-011, -013, -020, -021, -022; 351-10-005, -033, -037, -038; 351-11-001, -005, -006, -007, and -012.



As the Lead Agency, the County of Santa Clara (County) will prepare an Environmental Impact Report (EIR) for a Comprehensive Reclamation Plan Amendment, to amend the existing 1985 Reclamation Plan, for expanding the mining area, including a new mining pit. Portions of the expanded reclamation area will also require a Conditional Use Permit. The County would like your views regarding the scope and content of the environmental information to be included in the EIR. Attached are a brief project description, site boundary, and summary of the potential environmental effects. For more information, please visit the County Planning Department Website at: www.sccplanning.org.

A Public Scoping Session to solicit comments for the Notice of Preparation will be held in the City of Cupertino on **Wednesday, March 30, 2011, 7:00 PM** at the **City of Cupertino Quinlan Center, Cupertino Room, 10185 North Stelling Road, Cupertino, California 95014**. In accordance with the California Environmental Quality Act (CEQA), comments on the Notice of Preparation are due within 30 days of receipt of this notice. However, an earlier response, if possible, would be appreciated. Please send comments to:

County of Santa Clara
Planning Office, Att: Marina Rush
70 West Hedding, 7th Floor, East Wing
San Jose CA 95110
(408) 299-5770 marina.rush@pln.sccgov.org

Prepared by:
Marina Rush, Planner III

Approved by:
Rob Eastwood, Senior Planner



Signature

3-10-11
3-10-11
Date

*** Complete application materials and maps are available on the County website: www.sccplanning.org.**

Board of Supervisors: Mike Wasserman, George Shirakawa, Dave Cortese, Ken Yeager, Liz Kniss
County Executive: Jeffrey V. Smith

INTRODUCTION

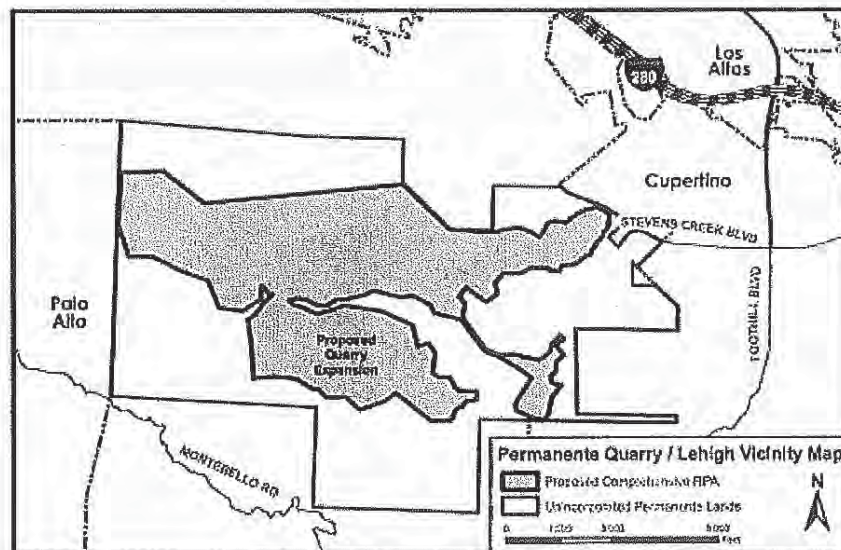
The purpose of an Environmental Impact Report (EIR) is to inform decision-makers and the general public of the environmental effects of a proposed project that an agency may implement or approve. The EIR process is intended to provide information sufficient to (a) evaluate a proposed project and its potential for significant impacts on the environment, (b) to examine methods of reducing adverse impacts; and (c) to consider alternatives to the project.

The EIR for the Comprehensive Reclamation Plan Amendment and Conditional Use Permit will be prepared and processed in accordance with the California Environmental Quality Act (CEQA) of 1970, as amended. In accordance with CEQA, the EIR will include the following:

- A summary of the project
- A project description;
- A description of the existing environmental setting, potential environmental impacts, and mitigation measures;
- Cumulative impacts;
- Alternatives to the proposed project; and
- CEQA required environmental consequences, including (a) any significant environmental effects which cannot be avoided if the project is implemented; (b) any significant irreversible and irretrievable commitments of resources; (c) the growth inducing impacts of the proposed project; and (d) effects found not to be significant.

PROJECT LOCATION

The project is located in the unincorporated area of the western foothills of Santa Clara County, near the City of Cupertino, approximately two miles west of the intersection of Interstate 280 and Highway 85, at 24001 Stevens Creek Boulevard. Quarry access is via Stevens Creek Boulevard and Foothill Expressway, continuing to the terminus of Permanente Road.



PROJECT DESCRIPTION

The existing operations on the Lehigh property include mining limestone and aggregate, rock crushing, and a cement plant. Lehigh is requesting to amend the 1985 Reclamation Plan for Permanente Quarry to include all areas of existing mining disturbance, including the East Materials Storage Area, and an expansion area for a new limestone quarry pit. Lehigh is also requesting authorization of a Use Permit

that would allow mining activities on the portions of the project area that are not in a vested (legal nonconforming) mined area. The cement plant is a separate use operating under a use permit (No. 173.23), and is not located within the boundary of the existing or proposed reclamation plan area.

The proposed project area is approximately 1,105 acres, and includes 251 acres for the expansion area and 317 acres to remain undisturbed oak woodland. The proposed new limestone pit is located south of the existing mine pit, across Permanente Creek. The project proposes construction of new bridge over the creek and road system for access to the new mining area. The overburden (mining waste) from the new pit (South Quarry) will be deposited into the existing mining pit (North Quarry) and in a new mining waste storage area located east of the North Quarry pit.

The EIR will provide a project-level evaluation of the potential environmental impacts caused by the implementation of project through approval of the proposed Comprehensive Reclamation Plan Amendment and Conditional Use Permit. Practical mitigation measures will be developed and presented for all direct, indirect and cumulative impacts that are found to be potentially significant. The following describes the environmental aspects of the project, and how they are potentially affected.

POTENTIAL ENVIRONMENTAL EFFECTS OF THE PROJECT

The EIR will identify the significant environmental effects anticipated to result from implementation of the proposed project. Specific environmental topics addressed will include:

A. Visual Resources

The project site is located in a Zoning District with a Design Review overlay for the Santa Clara Valley Viewshed (d1). Much of the proposed project area is considered visible from the Santa Clara valley floor. The EIR will describe the anticipated changes to the visual environment as a result of the proposed mining and reclamation activities, including ultimate completion of the landscape and final design of the reclamation area, assessing any potentially significant aesthetic impacts. Visual simulations of the project site will be prepared. The County is requesting public feedback regarding suggested viewpoints to be used in the EIR for the visual impact analysis.

B. Biological Resources

The proposed expansion area, located south of Permanente Creek, is undisturbed and contains contain dense, mature tree cover of Chaparral/Oak Woodlands, and is potential habitat for several special status wildlife and plant species. Permanente Creek runs through the project site. The EIR will describe impacts to biological resources that are anticipated to occur as a result of the proposed project. Mitigation measures will be identified for significant impacts, as warranted.

C. Cultural Resources

The EIR will present findings of a cultural resources evaluation that will identify and describe how the proposed project would impact cultural resources (both historical and prehistorical). Mitigation measures will be identified for significant impacts, as warranted.

D. Geology & Soils

Geologic and slope stability analysis for the project has been submitted by the owner / operator. The EIR will describe geology and soil conditions of the site and potential for the proposed mining and reclamation activities to cause increased slope instability or erosion potential, and include a peer review of the submitted geology reports. Mitigation measures will be identified for significant impacts, as warranted.

E. Surface Hydrology, Drainage & Water Quality

Permanente Creek runs through the project site, and is on the State of California 303d list for

selenium impairment. The EIR will describe hydrology and storm water quality impacts from the mining and reclamation process, and mitigation measures will be identified for significant impacts, as warranted. The EIR will evaluate the potential for the project to result in impacts to water quality, groundwater, and the hydrograph of Permanente creek.

G. Public Services

The EIR will describe the availability of services to serve the project site and identify, at a programmatic level, potential utilities and services impacts from the project. Mitigation measures will be identified for significant impacts, as warranted.

H. Noise and Vibration

The EIR will characterize ambient noise conditions in the vicinity of the project site and evaluate noise and vibration impacts from the proposed mining and reclamation activities with the County General Plan and Noise Ordinance standards. Mitigation measures will be identified for significant impacts, as warranted.

I. Land Use

Proposed mining activities in the new quarry pit and final use, appearance and stability of the reclamation area will be examined to assess whether these activities would conflict with any County General Plan Policies or Zoning Ordinances.

J. Air Quality

Impacts of the proposed project on local air quality and sensitive receptors will be evaluated with emphasis on dust generation and emissions related to mining and reclamation activities. Air Quality analysis will include a health hazards risk assessment to nearby sensitive receptors. The EIR will not evaluate emissions related to existing cement plant operations. Mitigation measures will be identified for significant impacts, as warranted.

K. Greenhouse Gas Emissions

The EIR will address the potential impact of the project on global climate change. It will include the most recent information regarding the current understanding of the mechanisms behind global climate change, greenhouse gas emissions, current conditions and trends, while also incorporating the Bay Area Air Quality Management District CEQA thresholds for greenhouse gas emissions.

L. Alternatives

The EIR will describe a range of reasonable alternatives to the proposed project, including a Reduced Scale Alternative, and No Project Alternative.

M. Growth Inducing Impacts

The EIR will discuss methods by which the proposed project will directly or indirectly induce economic, population, or housing growth.

N. Cumulative Impacts

The EIR will include a Cumulative Impacts section which will address the potential significant or irreversible cumulative impacts of the proposed mining and reclamation activities under the Use Permit and Comprehensive Reclamation Plan Amendment when considered with past, present, and probable future projects producing related or cumulative impacts, or projections contained in applicable land use documents of regional or area-wide conditions contributing to the cumulative impact.

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APPENDIX C

Notice of Preparation for East Materials Storage Area RPA EIR

County of Santa Clara
Department of Planning and Development
 County Government Center, East Wing
 70 West Hedding Street, 7th Floor
 San Jose, California 95110



	Administration	Development Services	Fire Marshal	Planning
Phone:	(408) 299-6740	(408) 299-5700	(408) 299-5760	(408) 299-5770
Fax:	(408) 299-6757	(408) 279-8537	(408) 287-9308	(408) 288-9198

**NOTICE OF PREPARATION OF AN
 ENVIRONMENTAL IMPACT REPORT
 FOR THE RECLAMATION PLAN AMENDMENT FOR
 PERMANENTE QUARRY (STATE MINE ID# 91-43-004)
 EAST MATERIALS STORAGE AREA**

Project Owner/Applicant: Lehigh Hanson, Incorporated
 File Number: 2250-13-66-09EIR
 Assessors Parcel Number: 351-09-011, -012, -013; 351-10-005, -033, -037, -038; 351-11-001.

As the Lead Agency, the County of Santa Clara (County) will prepare an Environmental Impact Report (EIR) for a proposed amendment to an existing reclamation plan for the Permanente Quarry for the overburden storage area (East Materials Storage Area). The East Materials Storage Area (EMSA) is not encompassed in the existing 1985 Reclamation Plan. The County would like your views regarding the scope and content of the environmental information to be included in the EIR. Attached are a brief project description, site boundary, and summary of the potential environmental effects. For more information, please visit the County Planning Department Website at: www.sccplanning.org.

A Public Scoping Session to solicit comments for the Notice of Preparation will be held in the City of Cupertino on **Wednesday, April 28, 2010, 6:30 PM** at the City of Cupertino Community Hall, Council Chambers, 10350 Torre Avenue, Cupertino, California 95014. In accordance with the California Environmental Quality Act (CEQA), comments on the Notice of Preparation are due within 30 days of receipt of this notice. However, an earlier response, if possible, would be appreciated. Please address your comments to:

County of Santa Clara
 Planning Office, Att: Marina Rush
 70 West Hedding , 7th Floor, East Wing
 San Jose CA 95110
 (408) 299-5770 marina.rush@pln.sccgov.org

Prepared by:

Marina Rush

Approved by:

Rob Eastwood, Senior Planner

Signature

Date

INTRODUCTION

The purpose of an Environmental Impact Report (EIR) is to inform decision-makers and the general public of the environmental effects of a proposed project that an agency may implement or approve. The EIR process is intended to provide information sufficient to (a) evaluate a proposed project and its potential for significant impacts on the environment, (b) to examine methods of reducing adverse impacts; and (c) to consider alternatives to the project.

The EIR for the Permanente Quarry Reclamation Plan Amendment for the East Materials Storage Area (EMSA) will be prepared and processed in accordance with the California Environmental Quality Act (CEQA) of 1970, as amended. In accordance with CEQA, the EIR will include the following:

- A summary of the project
- A project description;
- A description of the existing environmental setting, potential environmental impacts, and mitigation measures;
- Cumulative Impacts;
- Alternatives to the proposed project; and
- CEQA required environmental consequences, including (a) any significant environmental effects which cannot be avoided if the project is implemented; (b) any significant irreversible and irretrievable commitments of resources; (c) the growth inducing impacts of the proposed project; and (d) effects found not to be significant.

PROJECT LOCATION

The project site is located in a hillside area in the unincorporated portion of western Santa Clara County, near the City of Cupertino, at 24001 Stevens Creek Boulevard. The Reclamation Plan Amendment area is approximately 89 acres, located on the northeast portion of the Quarry. Quarry access is via Stevens Creek Boulevard and Foothill Expressway, continuing to the terminus of Permanente Road. The Quarry operations are on a portion of approximately 3,600 contiguous acres owned by Lehigh.



PROJECT DESCRIPTION

The Permanente Quarry is a limestone and aggregate mining operation, and operates pursuant to a Reclamation Plan approved by the County in 1985. The proposed project is an amendment to the 1985 Reclamation Plan to include an approximately 89-acre area used for overburden storage, the East Materials Storage Area (EMSA). The EMSA is designed to hold approximately 4,786,000 cubic yards of overburden fill. The material arriving at the EMSA will be keyed into the existing slopes at an overall 2.6:1 (horizontal:vertical). The EMSA will receive material for approximately 6 years, depending on market conditions. This amendment does not involve the mining operations, reclamation in the main mining pit, west materials storage area, nor does it involve operation of the adjacent Lehigh Southwest Cement Plant.

In 1985, the County approved a Reclamation Plan for Permanente Quarry, which did not include the EMSA. In March 2007, Lehigh applied for an amendment to the 1985 Reclamation Plan to include all areas that had been disturbed by mining activities, including a newly proposed mining area (Pit 2). This Reclamation Plan Amendment is currently undergoing additional geological technical studies necessary to process the application. On June 20, 2008, the County issued a Notice of Violation to Lehigh for stockpiling materials in the EMSA, which is outside the 1985 Reclamation Plan limits. Subsequently, the County directed Lehigh to apply for a separate Reclamation Plan Amendment for the EMSA on a more accelerated schedule than could be applied to the 2007 Reclamation Plan Amendment proposal, which will take a larger amount of time to complete. This Reclamation Plan Amendment is being processed separately from the 2007 Reclamation Plan Amendment. However, cumulative effects of the two projects together will be examined in this EIR.

The EIR will provide a project-level evaluation of the potential environmental impacts caused by the implementation of the proposed EMSA Reclamation Plan Amendment. Practical mitigation measures will be developed and presented for all direct, indirect and cumulative impacts that are found to be potentially significant. The following describes the environmental aspects of the project, and how they are potentially affected.

POTENTIAL ENVIRONMENTAL EFFECTS OF THE PROJECT

The EIR will identify the significant environmental effects anticipated to result from implementation of the proposed project. Specific environmental topics addressed will include:

A. Visual Resources

The project site is located in a Zoning District with a Design Review overlay for the Santa Clara Valley Viewshed (d1). Much of the area that would be used for new materials storage is considered visible from the Santa Clara valley floor. The EIR will describe the anticipated changes to the environment as the proposed reclamation activities proceed along with landscape and final design of the reclamation area, assessing any potentially significant aesthetic impacts. Visual simulations of the project site will be prepared.

B. Biological Resources

Portions of the project site contain dense, mature tree cover of Chaparral/Oak Woodlands. Permanente Creek runs near the project site, and includes a riparian corridor along that area. While much of the site is currently disturbed, the EIR will describe impacts to biological resources that are anticipated to occur as a result of the proposed project. Mitigation measures will be identified for significant impacts, as warranted.

C. Cultural Resources

The EIR will present findings of a cultural resources evaluation that will identify and describe how

the proposed project would impact cultural resources (both historical and prehistorical). Mitigation measures will be identified for significant impacts, as warranted.

D. Geology & Soils

A geologic and slope stability analysis will be performed. The EIR will describe geology and soil conditions of the site and potential for the proposed reclamation activities to cause increased slope instability or erosion potential by the reclamation activities. Mitigation measures will be identified for significant impacts, as warranted.

E. Surface Hydrology, Drainage & Water Quality

Permanente Creek runs near the project site, approximately 500 feet to the south. The project site is outside the 100-year floodplain. The EIR will describe hydrology and storm water quality impacts from the reclamation process (increased sediments, erosion, etc). Mitigation measures will be identified for significant impacts, as warranted.

G. Public Services

The EIR will describe the availability of services to serve the project site and identify, at a programmatic level, potential utilities and services impacts from the project. Mitigation measures will be identified for significant impacts, as warranted.

H. Noise

The EIR will characterize ambient noise conditions in the vicinity of the project site and evaluate noise impacts from the proposed reclamation activities with the County General Plan and Noise Ordinance standards. Mitigation measures will be identified for significant impacts, as warranted.

I. Land Use

Final use, appearance and stability of the reclamation area will be examined to assess whether the reclamation area would conflict with any County General Plan Policies or Zoning Ordinances.

J. Air Quality

Impacts of the proposed project on local air quality and sensitive receptors will be evaluated, with emphasis on dust generation from reclamation activities and emissions from heavy equipment. Mitigation measures will be identified for significant impacts, as warranted.

K. Alternatives

The EIR will describe a range of reasonable alternatives to the proposed project, including a Reduced Scale Alternative, and No Project Alternative.

L. Growth Inducing Impacts

The EIR will discuss methods by which the proposed project will directly or indirectly induce economic, population, or housing growth.

M. Cumulative Impacts

The EIR will include a Cumulative Impacts section which will address the potential significant or irreversible cumulative impacts of the proposed Reclamation Plan Amendment when considered with past, present, and probable future projects producing related or cumulative impacts, or projections contained in applicable land use documents of regional or area-wide conditions contributing to the cumulative impact. The potential environmental impacts from the proposed mining and reclamation activities included with the Master Reclamation Plan, submitted in March 2007, will be considered and evaluated as part of the cumulative impact analysis.

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APPENDIX D

Notice of Preparation for 2007 Proposed RPA EIR

**REVISED NOTICE OF PREPARATION OF AN
ENVIRONMENTAL IMPACT REPORT
FOR THE HANSON QUARRY RECLAMATION PLAN
AMENDMENT**

**Note: This Notice of Preparation (NOP) has been revised and recirculated to replace the
NOP circulated on May 25th, 2007**

Project Owner/ Applicant: Hanson Permanente Cement Inc
File Number: 2250-13-66-07P-07EA
Assessors Parcel Number(s): 351-09-011, -012, -013; 351-10-005,033,037,038;
351-11-001.

As the Lead Agency, the County of Santa Clara will prepare an Environmental Impact Report (EIR) for the proposed amendment and expansion to an existing reclamation plan, and would like your views regarding the scope and content of the environmental information to be included in the EIR. The EIR may be used by your agency when considering approvals for the project. For more information, please visit the County of Santa Clara Website at: www.sccplanning.org

According to the California Environmental Quality Act (CEQA) the deadline for your response is 30 days after receipt of this notice. However, an earlier response, if possible, would be appreciated. Please identify a contact person and send your response to:

County of Santa Clara Planning Office
Attention: Mark J. Connolly
County Government Center
70 West Hedding St., 7th Floor, East Wing
San Jose CA 95110

Prepared by:

Mark Connolly, Planner III

Signature

Date

Approved by:

Rob Eastwood, Senior Planner, AICP

Signature

Date

Introduction

The purpose of an Environmental Impact Report (EIR) is to inform decision-makers and the general public of the environmental effects of a proposed project that an agency may implement or approve. The EIR process is intended to provide information sufficient to (a) evaluate a proposed project and its potential for significant impacts on the environment; (b) to examine methods of reducing adverse (significant) impacts; and (c) to consider alternatives to the project.

The EIR for the proposed project will be prepared and processed in accordance with the California Environmental Quality Act (CEQA) of 1970, as amended. In accordance with the requirements of CEQA, the EIR for the Hanson Quarry Reclamation Plan Amendment will include the following:

- A summary of the project description, impacts and mitigation measures, and alternatives;
- A project description;
- A description of the existing environmental setting, environmental impacts, and proposed mitigation measures;
- Cumulative Impacts;
- Alternatives to the proposed project; and
- CEQA required environmental consequences, including (a) any significant environmental effects which cannot be avoided if the project is implemented; (b) any significant irreversible and irretrievable commitments of resources; (c) the growth-inducing impacts of the proposed project; and (d) effects found not to be significant.

Project Location

The overall project site is located in a hillside area in western Santa Clara County, west of the City of Cupertino, at 24001 Steven Creek Blvd.

Mining on the site dates back to the 1880's, the quarry's present location stems from the 1939 purchase of approximately 1300 acres along Permanente Creek by Hanson's predecessor. The site is currently operating under a Reclamation Plan, which was approved by the County of Santa Clara for 25 years and will expire in March 2010. The 1985 Reclamation Plan included an area of approximately 330 acres, representing the main mining area and some material storage areas. The site also contains a rock plant, and aluminum plant, which along with the cement plant are separately permitted and will not be covered in the proposed reclamation plan amendment.

Project Description

The proposed project entails a Reclamation Plan Amendment that will modify the previous 330-acre area covered by the 1985 Reclamation Plan, to include 917 acres of mining and reclamation activity and extend the termination by 25 years.

The Hanson Permanente Quarry site includes four main areas: the main mining pit, the west material storage area, the east material storage area, and the proposed pit 2. The Reclamation Plan Amendment addresses disturbed areas outside of the 1985 Reclamation Plan limits, and about 30 acres of new mining area in the southeast portion of the site (Pit 2), and the buffer areas. The existing and on-going activities involved are drilling, blasting, extraction of blasted rock, processing to size and sort the raw materials, stockpiling of construction aggregate and excess materials, and the transportation of processed materials from the site to customers.

The EIR will provide a project-level evaluation of the potential environmental impacts caused by the implementation of the proposed Reclamation Plan Amendment. Practical mitigation measures will be developed and presented for all direct, indirect and cumulative impacts that are found to be potentially significant. The following describes the environmental aspects of the project, and how they are potentially affected:

Potential Environmental Effects of the Project

The EIR will identify the significant environmental effects anticipated to result from implementation of the proposed project. The primary environmental topics addressed will include:

A. Visual Resources

The project site is located in a Zoning District with a Design Review overlay for the Santa Clara Valley Viewshed (d1). Portions of the areas proposed for new mining or materials storage are considered visible from the Santa Clara valley floor. The EIR will describe the anticipated changes to the environment as the proposed mining operation proceeds along with landscape and final design of the reclamation area, assessing any potentially significant aesthetic impacts. Visual simulations of the project site will be prepared.

B. Biological Resources

Portions of the project site contain dense, mature tree cover of Chaparral / Oak Woodlands. Also, water features such as springs; ponds, drainage swales, and Permanente Creek present on the site. Permanente Creek runs along the lower portion of the proposed Pit 2, and includes a Riparian Corridor along that area. The creek continues along the southern boundary of the project area, generally running west to east. While much of the site is currently disturbed, the EIR will describe impacts to biological resources that are anticipated to occur as a result of the proposed project. Mitigation measures will be identified for significant impacts, as warranted.

C. Cultural Resources

The EIR will present findings of a cultural resources evaluation that will identify and describe how the proposed project would impact cultural resources (both historical and prehistorical). Mitigation measures will be identified for significant impacts, as warranted.

D. Geology & Soils

A geologic and slope stability analysis will be performed. The EIR will describe geology and soil conditions of the site with respect to the proposed reclamation activities causing increased slope instability or erosion potential by the mining and reclamation activities. Mitigation measures will be identified for significant impacts, as warranted.

E. Groundwater

The EIR will examine the potential effects of the proposed mining and reclamation activities on groundwater and any significant long-term water supply impacts.

F. Surface Hydrology, Drainage & Water Quality

Permanente Creek runs along the site's southerly boundary. The project site is outside the 100-year floodplain. The potential for stream capture from the excavation and reclamation of the pits is not probable. The EIR will describe hydrology and storm water quality impacts from the mining and reclamation process. Mitigation measures will be identified for significant impacts, as warranted.

G. Public Services

The EIR will describe the availability of services to serve the project site and identify, at a programmatic level, potential utilities and services impacts from future development. Mitigation measures will be identified for significant impacts, as warranted.

H. Traffic and Noise

The EIR will characterize existing traffic conditions in the vicinity of the project site and evaluate traffic conditions which will change as a result of the proposed Reclamation Plan Amendment. Mitigation measures will be identified for significant impacts, as warranted.

I. Land Use

Final use, appearance and stability of the expanded mining and reclamation area will be examined to assess whether the reclamation area would conflict with any County General Plan Policy or Zoning Ordinances.

J. Air Quality

Impacts of the proposed project on local air quality and sensitive receptors will be evaluated, with emphasis on dust generation from mining activities and emissions from heavy equipment. Mitigation measures will be identified for significant impacts, as warranted.

K. Alternatives

The EIR will describe a range of reasonable alternatives to the proposed project, including a Reduced Scale Alternative.

L. Growth Inducing Impacts

The EIR will discuss methods by which the proposed project will directly or indirectly induce economic, population, or housing growth.

M. Cumulative Impacts

The EIR will include a Cumulative Impacts section which will address the potential significant or irreversible cumulative impacts of the proposed Reclamation Plan Amendment when considered with past, present, and probable future projects producing related or cumulative impacts, or projections contained in applicable land use documents of regional or area-wide conditions contributing to the cumulative impact.

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APPENDIX E

Written and Oral Comments Received During Scoping Periods

**EIR SCOPING MEETING
LEHIGH-HANSON PERMANENTE QUARRY – COMPREHENSIVE RPA
Oral Public Comments
August 31, 2011**

#	Speaker Name	Organization	General Comments
A-1	Cathy Helgerson	Resident	Analyze the soil/water beneath the EMSA, concerned w/possible toxins buried beneath the overburden deposits due to prior magnesium/aluminum plant activities. Confirm if the EMSA and WMSA heights exceed maximum allowed. Current dust emissions are too high. Concerned Lehigh will apply for a new mining pit in the future causing significant tree removal. Include cement plant emissions in EIR. Concerned with current storage of and use of petroleum coke. Would like County to analyze all pollution generated from the facility.
A-2	Karen DelCompare	Resident	Concerned with soils/chemicals buried below the EMSA from prior aluminum plant operations. Dust emissions are too high. Concerned that mining is too close to homes, refer to SMARA. EMSA overburden is a current violation; County should not allow the depositing to continue and should not approve the RPA, it rewards bad behavior. Include all past Scoping Comments related to the project. Concerned with operator's history of violations, operator would not comply with requirements. Cement plant should be included in Reclamation Plan Area, refer to past OMR letter on this issue.
A-3	Gary Lazshaw	Resident	Lehigh should provide an escrow account that is adequate, and not have the public pay for the restoration. Concerned with geological failures or other impacts due to a natural disaster, such as earthquake.

A-52

			Do not seal contaminants in the ground.
A-4	Robert McKibbin	Resident	County ridgeline scenic easement is located in the mining area, please include protections in the EIR.
A-5	John Bartas	Resident	Analyze cancer and autism rates in community, there are spikes in local area. Quarry has violations, quarry should clean up the violations. Pollutants in creek, specific to mine tailings and selenium. Cement plant needs a single stack, too hard to monitor air emissions from cement plant with multiple stacks.
A-6	Henrik Wesseling	Lehigh	Lehigh is working with scientists and biologists to select best plants for reclamation. Lehigh was awarded for past reclamation achievements at their Redding facility. Lehigh has a valid permit for stormwater and authorized non-stormwater discharges and Quarry is in full compliance with them. Facility is meeting new stringent standards for air emissions.
A-7	Marvin Howell	Lehigh	No new mining areas are proposed in the modified application. The RPA proposes to backfill pit to creek level, fill will come from WMSA. This will address viewshed concerns. EMSA will be built up and will screen views from the west.
A-8	Tim Brand	Resident	Concerned there will be a new mine in the future, and this is piecemealing CEQA. Condition the RPA for no new mine. 20 year timeline is unacceptable, wants quicker reclamation. EIR should show how project complies with Clean Water Act. County should compare current RPA with 1985 Rec Plan estimates of limestone to determine credibility of how much mining can occur in pit. Require quarry to comply with laws.
A-9	Paula Wallis	Resident	Is the new excavation area of the mine in a “vested area.” Are there limits to the depth of the mine pit. What happens to bond money posted for reclamation? Can we tie conditions to Rec. Plan? Can we affirm that they will comply with conditions?

A-10	Ginger Summit	Resident	<p>Air quality is being studied by the towns of LA and LAH.</p> <p>Water quality, both surface and groundwater, have impacts to the Bay and drinking water.</p> <p>Debris problems in creek.</p> <p>Concerned Quarry is not disclosing intentions of future new mine pit, segmented review of CEQA.</p>
A-11	Libby Lucas	Resident	<p>Show creek (blue lines) on Reclamation Plan exhibits, including where it goes underground, identify wetlands, and habitat/creek vegetation.</p> <p>California Red Legged frog colony, protect habitat and if possible reroute creek.</p> <p>1985 USGS evaluation concluded there was exposed limestone sedimentation/erosion in to the creek of significant levels. This analysis should be should be updated by USGS.</p> <p>Concerned runoff downstream where creek water is detained (det. Basins are located in parks) will have concentrations of chemicals and sediment (San Antonio, Cuesta, Kelley Park).</p> <p>County should coordinate with the SCVWD Permanente Creek project.</p> <p>Get water quality acceptable level because children play in the creek.</p>
A-12	Anya Kroth	Resident	<p>Movie electric car, GM faced bankruptcy and should have kept the car.</p> <p>California should lead the environmental movement.</p>
A-13	Barry Chang	Resident	<p>Concerned with Lehigh about not needing a new mine, appears as a lie.</p> <p>Concerned with lack of reclamation to date, indication of how it will occur in the future.</p> <p>Concerned with Lehigh lying to public.</p> <p>Operation must comply with Federal Clean Water and Clean Air acts, cannot approve project if it is in violation. Must comply first.</p> <p>Concerned with water quality impacts to drinking water.</p>
A-14	Bill Almon	Resident	<p>RPA has internal inconsistencies regarding dates, data in document and attachments.</p> <p>Baseline should be 1985 Reclamation Plan final level and not from the current</p>

			<p>disturbances, should analyze all the changes beyond the 1985 RPA. Reclamation should have started and is a violation of SMARA. The air quality is bad, should have new Health Risk Assessment. Include cement plant in Reclamation Plan area. For example, Title 5 Permit includes rock crushing equipment, conveyor, quarry blasting are included. Include 100k trucks that enter site annually. No baseline in water quality in new plan, but was in old RPA.</p>
A-15	Emily Kinner	Resident/DeAnza Student	<p>Air plume from moving overburden is toxic. Water quality is impacted, due to leaching from tailings. Air quality impacts should be analyzed.</p>
A-16	Joyce Eden	Resident	<p>Two cement plant areas, current and former. Some portions may overlap, but new area should not be vested because it is “new” plant location. If the cement plant is vested in the quarry lands than it should be included in the RPA for its operations. Either not vested due to cement plant or include in RPA. Wants a map in the EIR showing old cement plant boundary and compare to new location. Consider cement plant emissions in cumulative section of EIR. WMSA is old, County should analyze what is in the overburden materials: hazardous and other waste from WWII productions were on the property, and County should request daily ongoing testing of materials. Concerned with over mining of the pit and slope stability. Concerned Lehigh has not been truthful about life of mine, and future mine.</p>

DEPARTMENT OF TRANSPORTATION

P.O. BOX 23660
 OAKLAND, CA 94623-0660
 PHONE (510) 286-5541
 FAX (510) 286-5559
 TTY 711

RECEIVED
 PLANNING OFFICE
 11 AUG 24 AM 9:43



*Flex your power!
 Be energy efficient!*

August 19, 2011

SCL-280-11.45
 SCL280357

Ms. Marina Rush
 County of Santa Clara
 70 West Hedding Street
 7th Floor, East Wing
 San Jose, CA 95110

Dear Ms. Rush:

Comprehensive Reclamation Plan Amendment and Conditional Use Permit for Permanent Quarry – Modification to Existing May 2010 Permit Application for Mining Reclamation Plan Amendment (Excluding Expansion Area)

Thank you for including the California Department of Transportation (Department) in the environmental review process for the proposed project. We have reviewed the permit application and have the following comments to offer. As stated in your email, dated August 8, 2011, the Department acknowledges this permit application supersedes the prior proposed reclamation plan amendment for which a Notice of Preparation was issued April 20, 2011 (State Clearinghouse number 2010042063).

Traffic Impact Study (TIS)

While the County conducts its traffic studies in accordance with guidelines which conform to the local Congestion Management Program managed by the Santa Clara County Valley Transportation Authority, the Department's thresholds are primarily concerned with potential impacts to the State Highway System. We encourage the County to coordinate preparation of the study with our office to help sharpen the focus of your scope of work and answer any questions you may have. Please see the Department's *Guide for the Preparation of Traffic Impact Studies* at the following website for more information:

<http://www.dot.ca.gov/hq/traffops/developserv/operationalsystems/reports/tisguide.pdf>.

Specifically, a detailed TIS should identify impacts to all affected state facilities with and without the proposed project. The TIS should include, but not be limited to the following:

1. Information on the project's traffic impacts in terms of trip generation, distribution, and assignment. The assumptions and methodologies used in compiling this information should be addressed.

Ms. Marina Rush/County of Santa Clara
 August 19, 2011
 Page 2

2. Average Daily Traffic (ADT), AM and PM peak hour volumes on all significantly affected streets and highways, including crossroads and controlling intersections.
3. Schematic illustration of the traffic conditions for: (1) existing, (2) existing plus project, and (3) cumulative for the intersections in the project area.
4. Calculation of cumulative traffic volumes should consider all traffic-generating developments, both existing and future, that would affect the State Highway facilities being evaluated.
5. Mitigation measures should consider highway and non-highway improvements and services. Special attention should be given to the development of alternate solutions to circulation problems that do not rely on increased highway construction.
6. All mitigation measures proposed should be fully discussed, including financing, scheduling, implementation responsibilities, and lead agency monitoring.
7. Impacts to transit systems, pedestrians and bicyclists. Please develop and apply pedestrian bicycling and transit performance or quality of service measures and model pedestrian, bicycle and transit trips that your project will generate so that impacts and mitigation can be quantified. In addition, analyze secondary impacts on pedestrians and bicyclists that may result from any traffic impact mitigation measures. Describe any pedestrian and bicycle mitigation measures and safety countermeasures that would therefore be needed as a means of maintaining and improving access to transit facilities and reducing vehicle trips and traffic impacts on state highways.

We look forward to reviewing the TIS, *including* Technical Appendices and the environmental document for this project. Please send two copies to:

Brian Brandert
 Office of Transit and Community Planning
 Department of Transportation, District 4
 P.O. Box 23660
 Oakland, CA 94623-0660

Transportation Permit

Project work that requires movement of oversized or excessive load vehicles on State roadways, such as Interstate 280, requires a transportation permit issued by the Department. To apply, a completed transportation permit application with the determined specific route(s) for the shipper to follow from origin to destination must be submitted to the address below.

Office of Transportation Permits
 California DOT Headquarters
 P.O. Box 942874
 Sacramento, CA 94274-0001

Further information is available on the following website:
<http://www.dot.ca.gov/hq/traffops/developserv/permits/applications/index.html>.

Ms. Marina Rush/County of Santa Clara
August 19, 2011
Page 3

Encroachment Permit

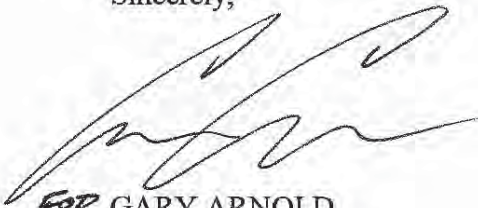
Work that encroaches onto the State right-of-way (ROW) requires an encroachment permit that is issued by the Department. To apply, a completed encroachment permit application, environmental documentation, and five (5) sets of plans clearly indicating State ROW must be submitted to the address below. Traffic-related mitigation measures should be incorporated into the construction plans during the encroachment permit process.

Office of Permits
California DOT, District 4
P.O. Box 23660
Oakland, CA 94623-0660

Further information is available on the following website:
<http://www.dot.ca.gov/hq/traffops/developserv/permits>.

The Department may provide further comments once the Notice of Preparation for this new reclamation plan amendment application is issued by the State Clearinghouse. Please feel free to contact Brian Brandert at (510) 286-5505, if you have any questions regarding this letter.

Sincerely,



FOR GARY ARNOLD
District Branch Chief
Local Development-Intergovernmental Review

From: Barry Chang <barry.bace@gmail.com>
Date: September 26, 2011 11:53:54 PM PDT
To: Marina Rush <marina.rush@pln.sccgov.org>
Cc: jim.pompy@conservation.ca.gov, stephen.testa@conservation.ca.gov, board-bace@googlegroups.com
Subject: Public Comments on Lehigh/Permanente Quarry Application for Reclamation Amendment/Mining Plan, dated July 2011

From: Barry Chang

To: Marina Rush, Santa Clara County Planning Department,
Santa Clara County Board of Supervisors (SCC BOS)

cc: California Office of Mine and Reclamation, Director
State Mining and Geology Board, Executive Director
Office of the Governor of California
Attorney General of the State of California
Region 9 US Environmental Protection Agency
US Environmental Protection Agency
City Of Cupertino
City of Los Altos
City of Los Altos Hills
California Regional Water Quality Control Board

Subject: Public comments for Lehigh Southwest Cement Plant/ Permanente
Quarry

**Application for Reclamation Amendment/Mining plan dated:
July
2011**

Dear Marina,

As I pointed out in your Lehigh/Permanente Quarry EIR scoping meeting, Lehigh/Permanente Quarry has received Notice of Violation from EPA Region 9 on March 10, 2010. On page one of its finding, it clearly stated that Lehigh/Permanente Quarry violates Federal Clean Air Act.

On August 24, Sierra Club sent a 60 days notice of intent to sue Lehigh/Permanente Quarry for violation of Federal Clean Water Act.

My understanding is that the current California State Surface Mining and Reclamation Act requires mining operators to be in compliance with Federal Clean Air Act and Clean Water Act before they can get their reclamation plan approval.

Lehigh/Permanente Quarry obviously is not meeting these requirements. You can not approve Lehigh/Permanente Quarry's reclamation plan now. You need to wait until Lehigh/Permanente Quarry complies with Federal Clean Air Act and Clean Water Act.

Thank you.

Barry Chang



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

MAR 10 2010

CERTIFIED MAIL NO. 7003 3110 0006 2000 8625
RETURN RECEIPT REQUESTED

IN REPLY: AIR-5
REFER TO: Docket No. R9-10-02

David Vickers
President
Lehigh Southwest Cement Company
12667 Alcosta Blvd.
Bishop Ranch 15
San Ramon, CA 94583

Dear Mr. Vickers:

Re: Lehigh Southwest Cement Company Notice and Finding of Violation

Dear Mr. Vickers:

Enclosed is a copy of a Notice of Violation and Finding of Violation ("NOV/FOV") issued pursuant to sections 113(a)(1), 113(a)(3) and 167 of the Clean Air Act, 42 U.S.C. §§ 7401-7671q (the "Act"), notifying you that the United States Environmental Protection Agency ("EPA"), Region IX, finds that Lehigh Southwest Cement Company ("Lehigh") has violated certain sections of the Act's Prevention of Significant Deterioration of Air Quality and Title V Operating Permit Program, at its Portland cement plant located in Cupertino, California (the "Facility").

You should be aware that section 113(a)(1), 113(a)(3) and 167 of the Act authorizes EPA to issue an order requiring compliance with the requirements of the Act, issue an administrative penalty order, or commence a civil action seeking an injunction and/or a civil penalty. Furthermore, section 113(c) of the Act provides for criminal penalties in certain cases.

In addition, section 306 of the Act, 42 U.S.C. 7606, the regulations promulgated thereunder (2 C.F.R. Part 180), and Executive Order 11738 provide that facilities to be utilized in federal contracts, grants and loans must be in full compliance with the Act and all regulations promulgated pursuant to it. A violation of the Act may result in the Cupertino Plant being declared ineligible for participation in any federal contract, grant, or loan.

If you wish to discuss the enclosed NOV/FOV, you may request a conference with EPA within ten (10) working days of receipt of this NOV/FOV. The conference will afford Lehigh an opportunity to present information bearing on the finding of violation, the nature of the violations, and any efforts it may have taken or proposes to take to achieve compliance.

If you have any questions pertaining to this NOV/FOV, please contact Charles Aldred of the Air Enforcement Office at (415) 972-3986, or have your attorney contact Ivan Lieben of the Office of Regional Counsel at (415) 972-3914.

Thank you for your cooperation in this matter.

Sincerely,



Deborah Jordan
Director, Air Division

Enclosure

cc w/enc: BAAQMD
CARB



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION IX
 75 Hawthorne Street
 San Francisco, CA 94105-3901

MAR 10 2010

IN REPLY: AIR-5
 REFER TO: Docket No. R9-10-02

Jack Broadbent
 Air Pollution Control Officer
 Bay Area Air Quality Management District
 939 Ellis St.
 San Francisco, CA 94109

Dear Mr. Broadbent:

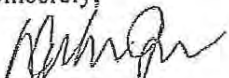
Enclosed for your information is a copy of a Notice of Violation and Finding of Violation ("NOV/FOV") that the United States Environmental Protection Agency ("EPA"), Region IX, issued to the Lehigh Southwest Cement Company ("Lehigh") for violations of the Clean Air Act ("Act") at Lehigh's Portland cement plant in Cupertino, California (the "Facility").

The purpose of the NOV/FOV is to notify Lehigh that EPA finds that it has violated the Prevention of Significant Deterioration and Title V Operating Permit Program requirements of the Act at the Facility. The violations are set forth more specifically in the enclosed NOV/FOV. The NOV/FOV has been issued pursuant to sections 113(a)(1), 113(a)(3) and 167 of the Act, 42 U.S.C. § 7401-7671q.

The Act also provides that after 30 days from the issuance of an NOV, EPA may determine if any action will be taken pursuant to Section 113 of the Act.

If you have any questions concerning this NOV/FOV, please contact Charles Aldred of the Region 9 Air Enforcement Office at (415) 972-3986, or aldred.charles@epa.gov.

Sincerely,


 Deborah Jordan
 Director, Air Division

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION IX
 75 Hawthorne Street
 San Francisco, CA 94105-3901

MAR 10 2010

IN REPLY: AIR-5
 REFER TO: Docket No. R9-10-02

Jim Ryden
 Enforcement Division Chief
 California Air Resources Board
 P.O. Box 2815
 Sacramento, CA 95812

Dear Mr. Ryden:

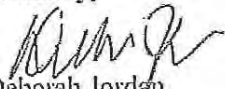
Enclosed for your information is a copy of a Notice of Violation and Finding of Violation ("NOV/FOV") that the United States Environmental Protection Agency ("EPA"), Region IX, issued to the Lehigh Southwest Cement Company ("Lehigh") for violations of the Clean Air Act ("Act") at Lehigh's Portland cement plant in Cupertino, California (the "Facility").

The purpose of the NOV/FOV is to notify Lehigh that EPA finds that it has violated the Prevention of Significant Deterioration and Title V Operating Permit Program requirements of the Act at the Facility. The violations are set forth more specifically in the enclosed NOV/FOV. The NOV/FOV has been issued pursuant to sections 113(a)(1), 113(a)(3) and 167 of the Act, 42 U.S.C. § 7401-7671q.

The Act also provides that after 30 days from the issuance of an NOV, EPA may determine if any action will be taken pursuant to Section 113 of the Act.

If you have any questions concerning this NOV/FOV, please contact Charles Aldred of the Region 9 Air Enforcement Office at (415) 972-3986, or aldred.charles@epa.gov.

Sincerely,


 Deborah Jordan
 Director, Air Division

Enclosure

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

In the Matter of:)	
)	
LEHIGH SOUTHWEST CEMENT COMPANY)	Docket No. R9-10-02
)	NOTICE OF VIOLATION
Proceeding under Section 113(a))	AND FINDING OF
of the Clean Air Act,)	VIOLATION
42 U.S.C. § 9613(a))	
)	

NOTICE OF VIOLATION/FINDING OF VIOLATION

This Notice of Violation and Finding of Violation ("NOV/FOV") is issued to the Lehigh Southwest Cement Company ("Lehigh") for violations of the Clean Air Act ("CAA" or the "Act"), as amended, 42 U.S.C. §§ 7401-7671q, at its Portland cement manufacturing facility located in Cupertino, California (the "Facility"). Lehigh violated the Prevention of Significant Deterioration ("PSD") and Title Operating Permit Program requirements of the Act at the Facility. This NOV/FOV is issued pursuant to Sections 113(a)(1), 113(a)(3) and 167 of the Act. Section 113(a)(1) requires the Administrator of the United States Environment Protection Agency ("EPA") to notify any person she finds in violation of an applicable implementation plan or a permit. The federal PSD regulations also clarify that failure to comply with the PSD provisions renders a source subject to enforcement under Section 113 of the Act. See 40 C.F.R. § 52.23. The authority to issue this NOV has been delegated to the Regional Administrator of EPA Region 9 and further re-delegated to the Director of the Air Division in EPA Region 9.

SUMMARY OF VIOLATIONS

The Facility is a Portland cement manufacturing plant comprised of one kiln, and associated equipment used to produce clinker, including a preheater tower, precalciner, clinker cooler, induced draft ("ID") and other fans, cement finish mills, and extensive sections of ductwork.

This NOV/FOV concerns a series of physical modifications made to the Facility from 1996 through 1999. Lehigh subsequently operated the Facility with the modified equipment which resulted in significant net emission increases. As a result, the projects, either individually or in the aggregate, caused an increase in production of cement and an increase in emissions of air pollutants to the atmosphere from the Facility.

The Facility is located in an area that has at all relevant times been classified as attainment for nitrogen dioxide ("NO₂") and sulfur dioxide ("SO₂"). Accordingly, the PSD provisions of Part C, Title I of the Act apply to operations at the Facility for oxides of nitrogen ("NO_x")¹ and SO₂ emissions. EPA has determined that the physical or operational changes identified in this NOV/FOV, either individually or in the aggregate, were major modifications for PSD purposes since the Facility significantly increased both actual and potential emissions of NO_x and SO₂ as a result of the changes. Moreover, Lehigh failed to apply for one or more PSD permits for the modifications covering NO_x and SO₂.

¹NO_x serves as the regulated pollutant for the NO₂ standard.

emissions. Lehigh's failure to apply for a PSD permit or install and operate additional emissions controls meeting best available control technology ("BACT") covering these pollutants when it constructed and began operating the physical or operational changes was a violation of the PSD requirements of the Act.

Lehigh has also violated the Title V Operating Permit Program requirements of the Act set forth at 42 U.S.C. §§ 7461-7661f, the federal Title V regulations set forth at 40 C.F.R.

Part 70, and the approved Bay Area Air Quality Management District ("BAAQMD") Title V program set forth at Regulation 2 Rule 6. BAAQMD has administered an approved Title V Operating Permit Program since November 29, 1994. Lehigh's failure to identify PSD requirements in its application submitted to BAAQMD for a Title V permit, supplement or correct that application to include PSD requirements, or obtain a Title V permit that contains the PSD requirements after the construction and operation of the physical or operational changes are violations of Title V requirements. See 42 U.S.C. §§ 7661b(a)-(b) and 7661c(a); 40 C.F.R. §§ 70.5(a)(c); BAAQMD Regulation 2 Rule 6. As a result, Lehigh obtained a deficient Title V permit, i.e., one that did not include all applicable requirements, and therefore is operating the Facility without a valid Title V permit in violation of 42 U.S.C. §§ 7661a, 7661b, and 7661c; 40 C.F.R. §§ 70.1, 70.5 and 70.6; and BAAQMD Regulation 2 Rule 6.

STATUTORY & REGULATORY BACKGROUND

National Ambient Air Quality Standards

1. The Administrator of EPA, pursuant to authority under Section 109 of the Act, 42 U.S.C. § 7409, has promulgated National Ambient Air Quality Standards ("NAAQS") for certain criteria pollutants relevant to this NOV/FOV, including NO₂ and SO₂. See 40 C.F.R. §§ 50.4, 50.5, 50.7, 50.8, 50.9, and 50.10.

2. Pursuant to Section 107(d) of the Act, 42 U.S.C. § 7407(d), the Administrator promulgated lists of attainment status designations for each air quality control region ("AQCR") in every state. These lists identify the attainment status of each AQCR for each of the criteria pollutants. The attainment status designations for the California AQCRs are listed at 40 C.F.R. §§ 81.305.

Prevention of Significant Deterioration

3. Section 110 of the Act, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA a plan that provides for the implementation, maintenance and enforcement of primary and secondary NAAQS in the state. Upon approval by EPA, the plan becomes part of the applicable state implementation plan ("SIP") for that state.

4. Section 110(a)(2)(C) of the Act, 42 U.S.C. § 7410(a)(2)(C), requires that each SIP include a PSD permit program as provided in Part C of Title I of the Act, 42 U.S.C. §§ 7470-7491. Part C sets forth requirements for SIPs for attainment areas to ensure maintenance of the NAAQS.

5. On June 19, 1978, pursuant to Sections 160 through 169 of the Act, 42 U.S.C. §§ 7470-7479, EPA promulgated federal PSD regulations at 40 C.F.R. § 52.21. 43 Fed. Reg. 26,402.

6. The federal PSD program was incorporated into all applicable implementation plans nation-wide and contains the applicable PSD program requirements for each plan until EPA approves into an individual SIP a replacement program. See 40 C.F.R. § 52.21(a); 42 U.S.C. § 7410(a)(2)(C).

7. Pursuant to Section 107(d) of the Act, 42 U.S.C. § 7407(d), the Administrator promulgated lists of attainment status designations for each AQCR in every state. These lists identify the attainment status of each AQCR for each of the criteria pollutants. The NO₂ and SO₂ attainment status designations for the California AQCRs are listed at 40 C.F.R. § 81.305.

8. The BAAQMD has primary jurisdiction over major stationary sources of air pollution sources in the San Francisco Bay Area Intrastate AQCR. 40 C.F.R. § 81.21. This jurisdiction includes the Facility.

9. Section 161 of the Act, 42 U.S.C. § 7471, requires that each SIP contains provisions to implement the Act's PSD program for areas of that state which are designated as being in attainment with any NAAQS for a criteria pollutant. The PSD program applies to major new sources of air pollution.

10. The PSD permitting program for the San Francisco Bay Area Intrastate AQCR is the federal PSD program, which is set forth at 40 C.F.R. § 52.21.

11. Subsequent to 1978, the PSD regulations have been periodically revised. As the PSD violations identified in this NOV/FOV first commenced from 1991 through 2003, the 1992 amendments to the PSD regulations contain the applicable provisions pertaining to the alleged violations identified in this NOV/FOV. See 57 Fed. Reg. 32314 (July 21, 1992).

12. 40 C.F.R. § 52.21 (b) (1) (i) (a) (1992) defined a "major stationary source" as any stationary source within one of 28 source categories which emits, or has the potential to emit, 100 tons per year ("tpy") or more of any air pollutant subject to regulation under the Act. Portland cement plants are included among the 28 source categories.

13. The PSD Regulations defined a "major modification" as "any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act." 40 C.F.R. § 52.21(b) (2) (i) (1992).

14. 40 C.F.R. § 52.21(b) (3) (i) (1992) defined "net emissions increase" as the "amount by which the sum of the following exceeds zero:

a. Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

b. Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and otherwise creditable."

15. 40 C.F.R. § 52.21(b) (21) (1992) defined "actual

emissions" as follows: "In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation." The PSD regulations also provide that "[f]or any emissions unit ... which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit on that date." 40 C.F.R. § 52.21(b)(21)(IV) (1992).

16. 40 C.F.R. § 52.21(b)(4) (1992) defined "potential to emit" as the "maximum capacity of a stationary source to emit a pollutant under its physical or operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including the air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable."

17. As such, the PSD regulations utilize an actual-to-potential test to determine whether an emissions increase occurred. Moreover, 40 C.F.R. § 52.21(b)(23)(i) (1992) defined "significant" and states that, in reference to NO_x and SO_2 , significant net emissions increase means an increase that would equal or exceed 40 tons or more per year.

18. An applicant for a PSD permit to modify a stationary source is required to submit all information necessary to allow the permitting authority to perform any analysis or make any

determination required in order to issue the appropriate permit.
40 C.F.R. § 52.21(n) (1992).

19. 40 C.F.R. § 52.21(i) (1992) prohibited commencement of actual construction of a major modification to which the PSD requirements apply unless the source had a permit stating that the requirements of 40 C.F.R. §§ 52.21(j)-(r) had been met.

20. The PSD permitting process required, among other things, that for pollutants emitted in significant amounts, the owner or operation of a major source apply BACT to control emissions, 40 C.F.R. § 52.21(j) (1992); model air quality, 40 C.F.R. § 52.21(l) (1992); and perform a detailed impact analysis regarding both the NAAQS and allowable increments, 40 C.F.R. § 52.21(k) (1992).

21. Any owner or operator of a source or modification subject to 40 C.F.R. § 52.21 who commenced construction after the effective date of the PSD regulations without applying for and receiving a PSD permit is subject to appropriate enforcement action by EPA. 40 C.F.R. § 52.21(r)(1) (1992); Sections 113 and 167 of the Act, 42 U.S.C. §§ 7413 and 7477.

Title V Operating Permit Program

22. Title V of the Act, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program for "major sources," including any source required to have a PSD permit. See Section 502(a) of the Act, 42 U.S.C. § 7661a(a). Regulations implementing the Title V permit program are set forth in 40

C.F.R. Part 70.

23. Pursuant to Title V, it is unlawful for any person to violate any requirement of a permit issued under Title V or to operate a major source except in compliance with a permit issued by a permitting authority under Title V. Section 502(a) of the Act, 42 U.S.C. § 7661a(a).

24. Under Section 502(d)(1) of the Act, states were required to develop and obtain approval to administer Title V programs. 42 U.S.C. § 7661a(d)(1). EPA granted interim approval of BAAQMD's Title V Operating Permit Program effective July 24, 1995, and final full approval was effective November 30, 2001. See 40 C.F.R. Part 70 Appendix A.

25. Sources subject to Title V and falling under BAAQMD's jurisdiction are required to submit to BAAQMD timely and complete Title V applications that identify, among other things, all "applicable requirements," including PSD requirements. See 40 C.F.R. § 70.5(a); BAAQMD Rule 2-6-404 and 2-6-405.

26. Sources subject to Title V and falling under BAAQMD's jurisdiction who have submitted an application are required to supplement or correct the application to include applicable requirements that were not included in the original application. 40 C.F.R. § 70.5(b); BAAQMD Rule 2-6-405.10.

27. Sources subject to Title V and falling under BAAQMD jurisdiction must obtain a Title V permit that: 1) contains such conditions necessary to assure compliance with the applicable

requirements; 2) identifies all applicable requirements the source is subject to; and 3) certifies compliance with all applicable requirements, and 4) where a source is not meeting requirements, contains a plan for coming into compliance. Sections 503 and 504 of the Act, 42 U.S.C. §§ 7661b and 7661c(a); 40 C.F.R. §§ 70.1, 70.5 and 70.6; BAAQMD Rule 2-6-409.

28. Failure of a source subject to Title V to submit a complete application, supplement that application when new requirements become applicable, or to obtain a Title V permit that contains all applicable requirements, such as PSD requirements, are violations of the Act.

FINDINGS OF FACT

29. The Facility is a Portland cement manufacturing facility, which is located at 24001 Stevens Creek Boulevard, Cupertino, Santa Clara County, California.

30. The San Francisco Bay Area Air Basin, which includes Santa Clara County where the Facility is located, was designated as attainment/unclassifiable at all times for NO₂ and SO₂ by operation of law under Sections 107(d)(1)(C) and 186(a) of the Act, 42 U.S.C. §§ 7407(d)(1)(C) and 7486(a). See 56 Fed. Reg. 56694 (Nov. 6, 1991); 40 C.F.R. § 81.305.

31. Lehigh is the current owner and operator of the Facility. The Facility was formerly owned by Hanson Permanente Cement and Kaiser Cement Corporation.

32. The Facility includes one kiln, and associated

equipment used to produce clinker, including a preheater tower, précalciner, clinker cooler, induced draft ("ID") and other fans, cement finish mills, and extensive sections of ductwork.

33. The combustion of coal, petroleum coke, and natural gas at the kiln at the Facility produces emissions of NO_x and SO₂, which are released to the atmosphere through a collection of 32 individual mini-stacks exiting from the baghouse.

34. Between 1996 and 1999, Lehigh commenced construction of various physical and/or operational changes at the Facility, and has continued to operate the Facility with these modifications, including, but not limited to, the following:

- a. Upgrades to the finish mill; and
- b. Various other modifications, upgrades, and operational changes *[Note: The underlying documents identifying these other projects have been claimed by Lehigh as confidential business information, and therefore are not being specifically identified in this NOV/FOV. Regardless, as the NOV/FOV raises allegations relating to all physical or operational changes commencing from 1996 through 1999, these other projects are covered within the scope of the NOV/FOV.]*

35. Lehigh intended that these physical or operational changes, either individually or in the aggregate, would increase the production capacity of the Facility.

36. These physical or operational changes, either

individually or in the aggregate, resulted in an increase in annual clinker production at the Facility.

Prevention of Significant Deterioration

37. The Title V Permit issued by BAAQMD included, among other conditions, the following annual emissions limits for NO_x and SO₂ emissions from the Kiln at the Facility:

	NO _x	SO ₂
Emissions limit (tpy)	5,072	2,106.8

38. As the limits in the Title V Permit for the Facility are federally enforceable, they constitute the Facility's Potential to Emit ("PTE").

39. Based upon a comparison of pre-construction actual emissions to post-construction PTE, the physical or operational changes identified in Paragraph 34, either individually or in the aggregate, resulted in net emissions increases from the Facility of NO_x and SO₂.

40. The net emissions increases of NO_x and SO₂ as a result of the physical or operational changes identified in Paragraph 34, either individually or in the aggregate, constitute a PSD significant net emissions increase since the increases were above 40 tpy for NO_x and SO₂.

41. Each of the physical or operational changes identified in Paragraph 34 constituted, either individually or in the aggregate, a "major modification" to the Facility for PSD purposes, as defined by 40 C.F.R. § 52.21 (b) (2) (i).

42. Lehigh did not apply for a PSD Permit covering NO_x and

SO₂ emissions for any of the physical or operational changes identified in Paragraph 34.

43. Lehigh failed to install and operate BACT-level emission controls for NO_x and SO₂ emissions from the Facility either at the time each of the physical or operational changes identified in Paragraph 34 were commenced or any time since their completion and operation.

Title V Operating Permit Program

44. As alleged in Paragraphs 34 through 43, Lehigh commenced one or more major modifications at its Facility commencing from 1996 through 1999, and the modifications triggered the requirements to obtain a PSD permit, undergo a PSD BACT analysis, and operate in compliance with the PSD permit. Lehigh failed to satisfy these requirements.

45. Lehigh first submitted a Title V application to BAAQMD on June 21, 1996. The final permit was issued by BAAQMD on November 5, 2003.

46. Prior to issuance of the Title V permit, Lehigh failed to supplement and/or correct its Title V permit application to identify all applicable requirements, including PSD requirements for NO_x and SO₂, a plan to come into compliance with those PSD requirements, and an updated certification of compliance that included the PSD requirements.

47. As a result of Lehigh's failure to provide complete information in its application or to supplement and/or correct

Title V Operating Permit Program

51. Notice is also given to Lehigh that it failed to supplement or correct its Title V application submitted to BAAQMD to include PSD requirements or obtain a Title V permit that contained PSD requirements, and therefore is in violation of Title V of the Act.

ENFORCEMENT

52. For any violation of a SIP, such as for PSD violations, Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), provides that at any time after the expiration of 30 days following the date of the issuance of a notice of violation, the Administrator may, without regard to the period of violation, issue an order requiring compliance with the requirements of the SIP, issue an administrative penalty order, or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties of not more than \$25,000 per day for each violation that occurs on or before January 30, 1997, not more than \$27,500 per day for each violation that occurs after January 30, 1997, not more than \$32,500 per day for each violation that occurs after March 14, 2004; and not more than \$37,500 per day for each violation that occurs after January 12, 2009. 42 U.S.C. § 7413(a)(1); Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, as amended; 40 C.F.R. Part 19.

53. Sections 113(a)(3) and 167 of the Act, 42 U.S.C. §§ 7413(a)(3) and 7477, provide additional authority for EPA to enforce against violators of the Act.

54. Section 113(c) of the Act, 42 U.S.C. § 7413(c), provides for criminal penalties, imprisonment, or both for persons who knowingly violate any federal regulation or permit requirement. For violations of the SIP, a criminal action can be brought 30 days after the date of issuance of a Notice of Violation.

55. Section 306 of the Act, 42 U.S.C. § 7606, the regulations promulgated thereunder (2 C.F.R. Part 180), and Executive Order 11738 provide that facilities to be utilized in federal contracts, grants and loans must be in full compliance with the Act and all regulations promulgated pursuant to it. A violation of the Act may result in Lehigh and/or the Facility being declared ineligible for participation in any federal contract, grant, or loan.

PENALTY ASSESSMENT CRITERIA

56. Section 113(e)(1) of the Act, 42 U.S.C. § 9613(e)(1), states that the Administrator or the court shall determine the amount of a penalty to be assessed by taking into consideration such factors as justice may require, including the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violations, the economic benefit of noncompliance, and the seriousness of the violation.

57. Section 113(e)(2) of the Act, 42 U.S.C. § 9613(e)(2),

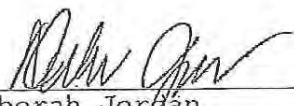
allows the Administrator or the court to assess a penalty for each day of violation. This section further provides that for purposes of determining the number of days of violation, where EPA makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of an NOV, the days of violation shall be presumed to include the date of the NOV and each and every day thereafter until the facility establishes that continuous compliance has been achieved, except to the extent that the facility can prove by the preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

OPPORTUNITY FOR CONFERENCE

58. Lehigh may confer with EPA regarding this NOV/FOV if it so requests. A conference would enable Lehigh to present evidence bearing on the finding of violation, on the nature of violation, and on any efforts it may have taken or proposes to take to achieve compliance. If Lehigh seeks such a conference, it may choose to be represented by counsel. If Lehigh wishes to confer with EPA, it must make a request for a conference within 10 working days of receipt of this NOV/FOV. Any request for a conference or other inquiries concerning the NOV/FOV should be made in writing to:

Ivan Lieben
Office of Regional Counsel
U.S. EPA (ORC-2)
75 Hawthorne Street
San Francisco, CA 94105
(415)972-3914

Dated: 3-9-10



Deborah Jordan
Director, Air Division

Reed Zars

Attorney at Law
 910 Kearney Street, Laramie, WY 82070
 307-745-7979

August 24, 2011

VIA CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Mr. Henrik Wesseling, Plant Manager
 Lehigh Southwest Cement Company
 Hanson Permanente Cement, Inc.
 Permanente Plant
 24001 Stevens Creek Boulevard
 Cupertino, CA 95014

Dr. Bernd Scheifele, Chairman
 HeidelbergCement
 Berliner Strasse 6
 69120 Heidelberg
 Germany

RE: Notice of Intent to Sue for Violations of the Clean Water Act at Lehigh Southwest Cement Company's Permanente Plant in Santa Clara County, California.

Dear Mr. Wesseling and Dr. Scheifele,

We are writing on behalf of Sierra Club to notify you of its intent to file suit against Lehigh Southwest Cement Company, Hanson Permanente Cement, Inc., Lehigh Hanson, Inc., and HeidelbergCement Group ("Lehigh") to enjoin and penalize significant and ongoing violations of the Clean Water Act at your Permanente Quarry and Cement Plant in Santa Clara County, California. Lehigh is liable for the continuous, unpermitted discharge into Permanente Creek of millions of gallons of polluted quarry water, containing elevated levels of selenium and other toxic and conventional pollutants, for at least the last five years. Lehigh is also liable for the continuous, unpermitted discharge of pollutants into Permanente Creek from tons of mine tailings and waste that have been dumped into Permanente Creek. These wastes act similar to coffee grounds, clogging Permanente Creek and continuously discharging a brew of harmful chemicals such as selenium and other toxic and conventional pollutants into its waters.

Both of these types of continuous, unpermitted discharges have caused and/or contributed to significant exceedences of water quality standards for selenium and toxicity in Permanente Creek, have caused and/or contributed to Permanente Creek's state and federal listing as an impaired water body due to the presence of such pollutants, and have substantially diminished the creek's ability to sustain aquatic life including but not limited to steelhead trout and the California red-legged frog, both of which are federally listed as threatened species.

Pollutants illegally discharged by Lehigh into Permanente Creek also enter Santa Clara County's underground drinking water supply as they flow across the unconfined areas of the Santa Clara Subbasin aquifer. The Santa Clara Subbasin aquifer is the primary reservoir of drinking water for San Jose and surrounding cities.

The Clean Water Act at 33 U.S.C. § 1365(a)(1), authorizes citizens to bring suit to enjoin violations of an effluent standard or limitation and to seek civil penalties for such violations. The definition of effluent standard or limitation includes the discharge of pollutants into waters of the United States without a permit. Committee to Save Mokelumne River v. East Bay Utility Dist., 1993 U.S. Dist. LEXIS 8364, 11, n. 7 (E.D. Cal. 1993); *aff'd*, 13 F.3d 305, 309 (9th Cir. 1993), cert. denied, 115 S. Ct. 198 (1994). Violators of the Act are also subject to an assessment of civil penalties of up to \$32,500 per day per violation for all violations occurring through January 12, 2009, and up to \$37,500 per day per violation for all violations occurring after January 12, 2009, for each violation, pursuant to Sections 309(d) and 505(a) of the Act. 33 U.S.C. §§ 1319(d), 1365(a) and 40 C.F.R. §§ 19.1 - 19.4.

To the extent required by the Clean Water Act at 33 U.S.C. § 1365(a)(1), we are writing to notify you that Sierra Club intends to file suit in the applicable federal district court anytime 60 days after the postmark date of this letter to enjoin and penalize the violations described below.

I. Background

Kaiser Cement Company opened the main Permanente quarry and original cement plant in 1939. Hanson Corporation purchased the quarry and cement plant from Kaiser in 1986. Lehigh Southwest Cement Company is the operator of the facility. Today Lehigh claims the quarry and plant provide over 50 percent of the concrete used in the Bay Area.

Permanente Creek runs from its headwaters in the Coast Range east through the middle of the quarry property, then north through the cities of Los Altos and Mountain View before draining into the San Francisco Bay.



From <http://www.lehighpermanente.com/#/virtual-tour/4537662984>.

II. The Violations

A. Unpermitted Quarry Discharges

According to Lehigh's own statements, the company has been discharging without a proper permit, and continues to discharge without a proper permit, pollutants generated by its quarry mining operations directly into Permanente Creek. Permanente Creek is a water of the United States. In particular, Lehigh's quarry mining operations have exposed pollutants to both rain and ground water. As these waters flow over and through Lehigh's disturbed soils and rock, pollutants such as selenium, arsenic, molybdenum, nickel and manganese, residual blasting agent (ANFO), and other toxic elements and compounds, are picked up by the water and are collected at the bottom of the quarry pit. Lehigh then pumps the contaminated pit water on a regular basis from the quarry pit through a pipe into a waste pond (Pond 4) and thence through a pipe into Permanente Creek. Permanente Creek flows into the San Francisco Bay. Lehigh employs no pollution control measures to reduce or eliminate selenium and other toxic substances that are dissolved and suspended in its wastewater. As Lehigh explained to the Regional Water Quality Control Board, San Francisco Bay Region ("Water Board"):

[T]he quarry dewatering process routes water to Pond 4, where it then discharges to Permanente Creek, almost continuously or regularly depending on the time of year, the volume of storm water and groundwater that collects in the quarry bottom. This regular dewatering process is interrupted only when regular maintenance of the pumping system or other aspects of the storm water management system require maintenance.

Lehigh Response to the Water Board, December 13, 2010, at page 6, attached hereto as **Exhibit A**. A map showing the location of the quarry pit, Pond 4, and the pipe that discharges selenium and other toxic pollutants from the pit and Pond 4 is attached hereto as **Exhibit B**.

According to Lehigh in that same response, “[t]he average *daily flow* into Pond 4 can range from 250,000 to 2,500,000 gallons.” **Exhibit A** (emphasis added).

Not only that, Lehigh also admits that the wastewater it has been discharging into Permanente Creek, and that it continues to discharge into Permanente Creek, is contaminated with selenium¹ in concentrations that greatly exceed water quality standards. Again, according to Lehigh:

The results of the metals analyses indicate that water being collected in the quarry may contain concentrations of selenium that exceed water quality standards, and, when discharged through the quarry dewatering system pursuant to the SWPPP [Storm Water Pollution Prevention Plan], could be contributing to exceedances of the water quality standards for selenium in Permanente Creek.

Exhibit C, Report of Potential Exceedance of Water Quality Standards, Geosyntec Consultants, March 17, 2010, p. 8.

Lehigh’s qualification that the water it is discharging into Permanente Creek “could” contain concentrations of selenium above water quality standards is unnecessary. Although not a necessary element to establish liability under the Clean Water Act, Lehigh’s own sampling evidence shows that selenium concentrations in its wastewater *are* in excess of water quality standards.

The water quality standards applicable to Permanente Creek are set forth in the 2007 San Francisco Bay Basin Water Quality Control Plan (“Basin Plan”) and the California Toxics Rule at 40 C.F.R. §131.38. Both the Basin Plan and the California Toxics Rule establish a chronic total selenium standard of 5.0 micrograms per liter in fresh water. **Exhibit D**. Due to chronically elevated levels of selenium and toxicity immediately downstream from the Permanente facility, EPA recently approve the listing of Permanente Creek as impaired for these pollutants. **Exhibit E**, EPA Approval Letter, November 12, 2010.

¹ “[S]elenium is a naturally occurring element, common in the environment. It is problematic only in high concentrations, but at certain levels has toxic effects. Selenium impacts the reproductive cycle of many aquatic species, can impair the development and survival of fish, and can even damage gills or other organs of aquatic organisms subjected to prolonged exposure. It can also be toxic to humans, causing kidney and liver damage, and damage to the nervous and circulatory systems.” *Ohio Valley Env’tl. Coalition, Inc. v. Hobet Mining, LLC*, 723 F. Supp. 2d 886, 900 (S.D. W.Va. 2010).

Water quality testing performed by Lehigh in January of 2010 found that the concentration of dissolved selenium in Pond 4 was 82 micrograms per liter, well over ten times the applicable 5.0 micrograms per liter water quality standard. (Had Lehigh properly analyzed for total selenium rather than just the dissolved component, this value likely would have been higher.) As explained above, Lehigh discharges the contaminated water in Pond 4 directly into Permanente Creek without employing any measures to reduce selenium concentrations. **Exhibit C**, Report of Potential Exceedance, Table 2-1 and Appendix A, page 4 of 16.

Lehigh has an Industrial General Storm Water Permit issued by the Water Board, but that permit, as its name indicates, only applies during specified storm events and not to the on-going, non-storm water discharges from Pond 4 described here. The Water Board emphatically confirmed this fact on February 18, 2011:

Lehigh repeatedly asserts that the Facility's discharges of quarry bottom water, wash-down water, and dust suppression water are in compliance with the Industrial General Storm Water Permit. The Industrial General Storm Water Permit specifically prohibits all three of these self-admitted discharges from the Lehigh facility. *Lehigh is grossly mistaken in its assertion that the Facility is permitted to discharge these three types of non-storm water flows.*

Exhibit F, Water Board staff review and response to Lehigh's letter of December 13, 2010, in response to our "13267" letter of November 29, 2010, p. 1 (emphasis added).

Because Lehigh pumps the water from its quarry pit into Pond 4 on a continuous or regular basis, and because Pond 4 is the functional equivalent of a full bathtub, the continuous pumping of quarry water contaminated with selenium and other toxic substances inexorably results in the continuous discharge of pollutants through a pipe directly into Permanente Creek. Lehigh has no permit authorizing this continuous discharge. Therefore, Lehigh has violated the Act every day, for each pollutant, for at least the last five years when it has actively pumped and discharged water-borne selenium and other toxic substances from its quarry to Pond 4 and thence to Permanente Creek without a permit.

B. Unpermitted Stream Fill Discharges

According to Lehigh's own reports, Permanente Creek has been used, and continues to be used, as a disposal area for quarry mining wastes. Mine tailings, overburden and other wastes have been dumped, and continue to be dumped into Permanente Creek throughout the stream's path within Lehigh's property. Lehigh's March 11, 2011 "Permanente Creek Long-Term Restoration Plan" documents many of these stream disposal sites. An annotated stream profile diagram, taken from Figure 2-5 in Lehigh's Restoration Plan and attached hereto as **Exhibit G**, shows the

location of some of the more notorious mine tailing and overburden waste disposal sites at Lehigh's quarry along the various sections of Permanente Creek.

Mining wastes have been dumped into Permanente Creek by bulldozers, dump trucks and other mining equipment, with the assistance of gravity. The disposal sites in Permanente Creek include, but are not limited to, those shown on **Exhibit G**, attached hereto. The disposal sites continuously discharge, release and otherwise add their toxins into the creek's waters much like coffee grounds in a percolator. As the waters of Permanente Creek flow over and through the mining wastes dumped into the creek, pollutants such as selenium, arsenic, molybdenum, nickel, manganese, residual blasting agent (ANFO), and other toxic elements and compounds, are dissolved into and suspended in the water. These added pollutants flow downstream through Lehigh's property, through public parks and neighborhoods, and finally into San Francisco Bay. The mine tailings and other rock and sediment wastes that physically remain in the creek bed and adjacent wetlands, or that are carried to various downstream locations during higher flow events, are also unpermitted pollutants that exist in the water column, banks and wetlands of Permanente Creek.

According to Lehigh's May 2010 Hydrologic Investigation, appended to its Reclamation Plan Amendment submitted to Santa Clara County on May 21, 2010, the average concentration of dissolved pollutants in Permanente Creek increases significantly as the creek flows through Lehigh's mining wastes. **Exhibit H**. For example, the water in Permanente Creek downstream of most of Lehigh's pollutant discharges at monitoring location SW-2 contains from three to over 100 times the dissolved concentrations of arsenic, selenium, nickel, manganese and molybdenum compared to the water upstream of most of Lehigh's discharges at monitoring location SW-1. See **Exhibit H**, Figure 6.2 (monitoring locations); Table 6.6 (average pollutant values for monitoring locations); and Figures 6.13 and 6.14 (bar charts illustrating significant increase in pollution from SW-1 to SW-2).

Lehigh has no permit authorizing the continuous discharge of dissolved and suspended pollutants from mine wastes dumped into Permanente Creek described above. Lehigh has no permit for the mine wastes that continuously clog the bed, banks and wetlands of Permanente Creek described above. Therefore Lehigh has violated the Act every day at each disposal site for at least the last five years as a result of such unpermitted discharges.

III. Offer to review information.

To the extent you have evidence that shows, contrary to the allegations in this letter, that Lehigh is in full compliance with all applicable requirements we urge you to provide it to us so that we may potentially avoid, or at least limit, litigation on these issues.

IV. Conclusion

Lehigh has been operating, and continues to operate the Permanente facility in violation of the Clean Water Act. We will seek an injunction to end the illegal, unpermitted discharges alleged in this letter, to restore the hydrologic and aquatic integrity of Permanente Creek, and to recover, on behalf of the United States, the maximum civil penalty for Lehigh's Clean Water Act violations for at least the last five years, as allowed by the applicable statute of limitations.

The address of Sierra Club is 85 Second Street, Second Floor, San Francisco, CA 94105. Sierra Club has individual members who have been, and continue to be, injured by the excessive and unlawful discharges from Lehigh's Permanente facility into Permanente Creek described above. Those injuries are fairly traceable to Lehigh's unlawful discharges, and can be redressed, at least in part, through the cessation of such discharges. If you have any questions regarding the allegations in this notice letter, believe any of the foregoing information to be in error, wish to discuss the exchange of information consistent with the suggestion above, or would otherwise like to discuss a settlement of this matter prior to the initiation of litigation, please contact the attorneys below.

Yours sincerely,

REED ZARS

Reed Zars
Attorney at Law
910 Kearney Street
Laramie, WY 82070
307-745-7979

GEORGE HAYS BY RZ

George Hays
Attorney at Law
236 West Portal Avenue, #110
San Francisco, CA 94127
415-566-5414

pc: by certified mail:

Lisa Jackson, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dorothy Rice, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Eric Holder, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Jared Blumenfeld, Regional Administrator
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA 94105

Bruce Wolfe, Executive Officer
San Francisco Bay
Regional Water Quality Control Board
1515 Clay St., Suite 1400
Oakland, CA 94612

Registered Agent
Lehigh Southwest Cement Company
Corporation Service Company
2730 Gateway Oaks Dr., Suite 100
Sacramento, CA 95833

pc: by regular mail

Santa Clara County Board of Supervisors
70 West Hedding Street
San Jose, CA 95110

Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118

Stevens & Permanente Creeks Watershed Council
2353 Venndale Avenue
San Jose, CA 95124

Midpeninsula Regional Open Space District
330 Distel Circle
Los Altos, CA 94022-1404

Department of Conservation
Office of Mine Reclamation
801 K Street, MS 09-06
Sacramento, CA 95814-3529

Exhibits Provided in Enclosed CD

Exhibit A: Lehigh Response to the San Francisco Bay Regional Water Quality Control Board, December 13, 2010, page 6.

Exhibit B: Map showing the location of the quarry pit, Pond 4, and the pipe that discharges selenium and other toxic pollutants from the pit and Pond 4.

Exhibit C: Report of Potential Exceedance of Water Quality Standards, Geosyntec Consultants, March 17, 2010, p. 8.

Exhibit D: 2007 San Francisco Bay Basin Water Quality Control Plan ("Basin Plan") excerpts, and the California Toxics Rule at 40 C.F.R. §131.38.

Exhibit E: EPA approval letter listing Permanente Creek as impaired for selenium and toxicity, November 12, 2010.

Exhibit F: Water Board staff review and response to Lehigh's letter of December 13, 2010, in response to our "13267" letter of November 29, 2010, p. 1.

Exhibit G: Permanente Creek stream profile diagram showing examples of mine waste dump sites that continuously discharge pollutants into the creek.

Exhibit H: Hydrologic Investigation, Attachment F to Lehigh Reclamation Plan Amendment submitted to Santa Clara County on May 21, 2010, excerpts including Figure 6.2, Table 6.6, and Figures 6.13 and 6.14.

MSHA Announces Results of November Impact Inspections

Dec 30, 2010

MSHA recently announced that federal inspectors issued 250 citations, orders, and safeguards during special impact inspections conducted at 12 coal and 10 metal/nonmetal mine operations last month.

These inspections, which began in force during April following the explosion at Upper Big Branch Mine, involve mines that merit increased agency attention and enforcement due to their poor compliance history or particular compliance concerns, including high numbers of violations or closure orders; indications of operator tactics, such as advance notification of inspections that prevent inspectors from observing violations; frequent hazard complaints or hotline calls; plan compliance issues; inadequate workplace examinations; a high number of accidents, injuries or illnesses; fatalities; and adverse conditions such as increased methane liberation, faulty roof conditions and inadequate ventilation.

During November's impact inspections, coal mines were issued 114 citations, 11 orders, and one safeguard. For metal/nonmetal mines, 113 citations and 11 orders were issued. Since April, MSHA has conducted impact inspections at 182 coal and metal/nonmetal mines.

During an inspection conducted during the week of Nov. 15 at Lehigh Permanente Cement Co. Mine in Santa Clara County, Calif., MSHA issued 30 citations and six orders to the company. Five 104(d) orders were issued, including a violation for a supervisor's failure to de-energize electrically powered equipment prior to removing a guard.

Another 104(d) order was issued for unsafe access where inadequately secured steel plates could have fallen on miners or delivery drivers accessing a storage area; this hazard had been reported to mine management two weeks earlier. A 104(b) order was issued for failure-to-abate in a timely manner a fall protection violation, in which miners working at the top of a mill were exposed to an approximately 36-foot drop to the concrete below. Sixty percent of the citations and orders were significant and substantial violations. So far this year, MSHA inspectors have issued 185 citations and 21 orders at this mine.

"MSHA's impact inspection program is helping to reduce the number of mines that consider egregious violation records a cost of doing business," said Joseph A. Main, assistant secretary of labor for mine safety and health. "We will continue using this important enforcement tool to protect the nation's miners."

A spreadsheet containing the entire results of November's impact inspections can be viewed [here](#).

CALIFORNIA
HISTORICAL
RESOURCES
INFORMATION
SYSTEM



ALAMEDA
COLUSA
CONTRA COSTA
LAKE
MARIN
MENDOCINO
MONTEREY
NAPA
SAN BENITO
SAN FRANCISCO
SAN MATEO
SANTA CLARA
SANTA CRUZ
SOLANO
SONOMA
YOLO

Northwest Information Center
Sonoma State University
150 Professional Center Drive, Suite E
Rohnert Park, California 94928-3609
Tel: 707.588.8455
Email: leigh.jordan@sonoma.edu
http://www.sonoma.edu/nwic

August 15, 2011

File No.: 11-014

RECEIVED
PLANNING OFFICE
15 AUG 23 AM 8:41

Marina Rush, Project Planner
Santa Clara County
Environmental Resources Agency, Planning Office
County Government Center, East Wing, 7th Floor
70 West Hedding Street
San Jose, CA 95110-1705

re: 2250-13-66-10P M1/ 24001 Stevens Creek Blvd./ Hanson Permanente Cement, Inc.

Ms. Rush,

Records at this office were reviewed to determine if this project could adversely affect cultural resources. **Please note that use of the term cultural resources includes both archaeological sites and historical buildings and/or structures. The review for possible historic-era building/structures, however, was limited to references currently in our office and should not be considered comprehensive.**

Previous Studies:

XX Studies covering approximately 100% of the proposed project area, identified one or more cultural resources (see below).

Study #	Author: Year	Title
S-10471	Holman 1988:	An Archaeological Inspection of the Kaiser Cement Property, Cupertino, Santa Clara County, California.
S-36633	Jensen: 2009	Archaeological Inventory Survey: Proposed Permanente Quarry Project, c. 1, 105 Acres, Santa Clara County, California.
S-38058	Jensen: 2009	Archaeological Inventory Survey, Proposed Permanente Development Project, c. 1, 105 Acres, Santa Clara County, California.

Archaeological and Native American Resources Recommendations:

XX The proposed project area contains or is adjacent to the archaeological site(s):

- P-43-001867 Kaiser Permanente Quarry District
- P-43-001868 Permanente Creek Road
- P-43-001870 Hanson Permanente Quarry Pumphouse (Remains)
- P-43-001833 Railroad (adjacent to the project area)

XX Due to the nature of the previous surveys, which studied the project area in its entirety, no study is recommended prior to commencement of proposed project activities. However, the following recommendations noted on page 16-17 in Jensen:2009 should be followed in regards to cultural materials:

- 1) Consultation in the event of inadvertent discovery of human remains: In the event that human remains are inadvertently encountered during any ground-disturbing activities or at any time subsequently, State law shall be followed, which includes, but is not limited to, immediately contacting the County Coroner's office upon any discovery of human remains.

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PLANNING OFFICE
11 AUG 17 AM 11:07

- 2) Consultation in the event of inadvertent discovery of cultural material: The present evaluation and recommendations are based on the findings of an inventory-level surface survey only. There is always the possibility that important unidentified cultural materials could be encountered on or below the surface during the course of future construction or other activities. This possibility is particularly relevant considering the constraints generally to archaeological field survey, and particularly where extensive past disturbance has occurred, as in the present case. In the event of inadvertent discovery of previously unidentified cultural material, archaeological consultation should be sought immediately.
-

XX We recommend you contact the local Native American tribe(s) regarding traditional, cultural, and religious heritage values. For a complete listing of tribes in the vicinity of the project, please contact the Native American Heritage Commission at 916/653-4082.

Built Environment Recommendations:

XX The 1961 USGS Cupertino 7.5-minute topographic quadrangle indicated approximately 40 buildings and 11 water tower/tanks within the project area. Since the Office of Historic Preservation has determined that any building or structure 45 years or older may be of historical value, if the project area contains such properties, it is recommended that prior to commencement of project activities, a qualified professional familiar with the architecture and history of Santa Clara County conduct a formal CEQA evaluation.

For your reference, a list of qualified professionals in California that meet the Secretary of the Interior's Standards can be found at <http://www.chrisinfo.org>. If archaeological resources are encountered during the project, work in the immediate vicinity of the finds should be halted until a qualified archaeologist has evaluated the situation. If you have any questions please give us a call (707) 664-0880.

Sincerely,



Jillian Guldenbrein
NWIC Researcher

cc: Lehigh Southwest Cement Company
24001 Stevens Creek Blvd.
Cupertino, CA 95014



CUPERTINO

OFFICE OF COMMUNITY DEVELOPMENT

CITY HALL

10300 TORRE AVENUE • CUPERTINO, CA 95014-3255

(408) 777-3308 • FAX (408) 777-3333 • planning@cupertino.org

September 26, 2011

County of Santa Clara Planning Office
 Attn: Marina Rush
 70 West Hedding, 7th Floor, East Wing
 San Jose, CA 95110

RE: Written Comments on Notice of Preparation of an Environmental Impact Report for a Reclamation Plan Amendment (Consolidated) for Permanente Quarry, County File No. 2250-13-66-10P(M1)-10EIR(M1)

Dear Ms. Rush:

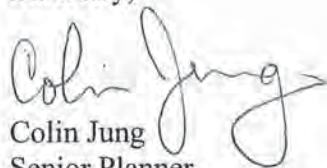
Thank you for the opportunity to comment on the Notice of Preparation (NOP) for the above captioned project. The City of Cupertino has the following comments for the preparation of the environmental impact report (EIR):

- 1) The Introduction of the NOP refers to a Conditional Use Permit that will be addressed as part of the EIR preparation. The remainder of the NOP makes no additional mention of the Use Permit, so the City would like to know what is the purpose of the conditional use permit application. The reclamation plan amendment for the same quarry submitted in 2010 also had a companion conditional use permit application that was needed to authorize mineral extraction in new, undisturbed areas.
- 2) What is the relationship between the 2011 reclamation plan amendment and the other plan amendments submitted in 2009 and 2010? Are the 2009 and 2010 plan amendments still active? Have they been withdrawn? This should be addressed in the context of the project description, as well as, the Cumulative Impacts section of the EIR.
- 3) Public Services – The revegetation of the reclaimed slopes will require a significant amount of water distributed to lands where there is probably no water supply/distribution utilities. The EIR should discuss the infrastructure necessary to implement the revegetation.
- 4) Relevant Plans, Policies & Regulations – Various agencies have regulatory oversight over the quarrying operations. In the interest of our residents' health and safety, those agencies and their responsibilities should be identified, including any that deal with hazardous materials, such as mercury. I understand that the applicant is in violation of some permits.

- 5) Relevant Plans, Policies & Regulations -- Does the state's relatively new water efficiency landscaping law place additional regulations/requirements on the reclamation plan amendment?
- 6) Air Quality – The air quality analysis should include a health hazards risk assessment for asbestos which occurs naturally in local soils.

If you have any questions, feel free to contact me at colinj@cupertino.org

Sincerely,



Colin Jung
Senior Planner
City of Cupertino

From: JLucas1099@aol.com
Date: September 26, 2011 12:01:33 PM PDT
To: Permanentequarry@pln.sccgov.org
Cc: gary.rudholm@pln.sccgov.org, marina.rush@pln.sccgov.org
Subject: Lehigh Permanente Quarry Reclamation Plan Notice of Preparation - comment

Marina Rush, Planner III
2011
County of Santa Clara Planning Office
70 West Hedding Street, East Wing, 7th Floor
San Jose, CA 95110

September 26,

Dear Gary and Marina,

In regards the Notice of Preparation for Lehigh Permanente Quarry Reclamation Plan please ensure that Santa Clara County requires the Lehigh Permanente Quarry operation to restore the physical channel of Permanente Creek within the quarry, to landscape the full length of the quarry with terraces in a manner to control debris flows and retain sediments within the facility, and to provide wetlands, ponds and management plan for the California Red-Legged Frog colony along a restored Permanente Creek channel within the quarry.

In a quick review of Lehigh Permanente Quarry's initial submittal for reclamation of quarry site concerns are:

- ~ the 587.8 acres of revegetated areas of oak woodland and hydro seed, pine woodland and hydro seed, and hydroseeded shrub and grasses are planned to be rooted in backfill placed within the bowl of quarry walls? Shouldn't a detailed profile of quarry as to present and planned future conditions be illustrated in the plan so it can be determined what volume of fill is necessary to support oak and pine woodlands, and how this can be accomplished in grading of site in order to guarantee sufficient stability to re-forestation measures and to make sure slippage cannot occur in critical storm events?
- ~ will plan assure revegetation species and seeds are native to East Fork of Permanente Creek watershed?
- ~ what will be source of soils used to backfill quarry walls?
- ~ what is the volume of soils that will be necessary to accomplish this revegetation in Reclamation Plan?
- ~ what is the timeline for grading and revegetation measures?

- ~ restoration of Permanente Creek riparian corridor and wetlands needs to be detailed in reclamation plan as to orientation of creek channel and continuity of stream flow through entire project site?
- ~ how will reclamation plan guarantee that seeps and springs be preserved with natural wetlands vegetation?
- ~ how precisely can backfill measures be implemented to protect creek and wetlands vegetation habitat?
- ~ what is timeline for implementing test plot sites and can public review revegetation protocols and progress?

~ the hydrology of the East Fork of Permanente Creek is deficient in initial submittal in both its source of base data and in its analysis of critical flows from peak storm events. The Santa Clara Valley Water District has historically used rainfall readings from Maryknoll which is the appropriate watershed and this data needs only to be augmented to rainfall readings increases of a higher position in the watershed. Can it be clarified at what elevation the Los Altos Hills readings referenced in plan are located or in what different watershed?

~ it is a serious deficiency in the initial plan that 'averages' of rainfall and streamflow are used to define levels of hydrologic impacts likely to occur to quarrying operations. Please reference SCVWD Report of Flooding and Flood Related Damages in Santa Clara County, February 2-9, 1998. Note Maryknoll rain gage estimates of 1.93 inches in six hours to be at a 75 year return incidence and at 3.90 inches in 24 hours to be at the 55 year return incidence. Permanente Creek levels of flow in a one percent storm event is estimated to be 2800 cfs and in the ten percent event at 1500 cfs. Global warming will increase intensity of these storm events.

~ This Reclamation Plan will incorporate this increased rainfall and creek flow data in restoring the East Fork Permanente Creek channel, in revegetating its quarry slopes and in implementing sufficiently large sediment basins that will incorporate the design capacity to protect downstream communities?

~ In regards the volume of sediment load that can be anticipated from this watershed, please have the quarry reclamation plan reference and incorporate data from USGS Report 89-4130 Effects of Limestone Quarrying and Cement-Plant Operations on Runoff and Sediment Yields in the Upper Permanente Creek Basin, Santa Clara County, California, that was mandated after an accidental release from quarry ponds generated a wave that flooded Blach School, some distance downstream in Los Altos.

~ This report noted that 53,240 tons of sediment were generated in 1986 at Station 11166575 on the East Fork of Permanente Creek, the northerly terminus of quarry operations at that time. Measured runoff at that station that year was from 17.5 inches of rainfall. USGS had monitoring stations throughout the quarry. Has subsequent monitoring of an equivalent nature been conducted in a process of mandated quarry operations? As quarry operations have become more extensive in the past 25 years what is an estimated sediment load generated by the quarry in similar wet years? Will a quarry reclamation plan address these sediment loads?

~ Downstream in Permanente Creek is a unique element of the Santa Clara Aquifer geology known as the groundwater cascade where water from the foothills percolates rapidly into the deep drinking water aquifers. Will a reclamation plan address impacts that sediment loads and contaminants in Permanente Creek flows, as generated by quarrying operations upstream, have on this unique percolation water resources element?

~ what is the present depth of quarry operations into the Monte Bello Ridge? Will a reclamation plan include the earthquake faults that underly this region of the Monte Bello Ridge? Will a reclamation plan assess all impacts that the depth of excavations in the quarry into this Monte Bello Ridge might effect on neighboring Stevens Creek Reservoir and Dam stability in event of a quake of the magnitude of Loma Prieta earthquake?

~ Please consider extended vegetated terracing and sediment basins at the northerly terminus of quarry operations in a Lehigh Permanente Reclamation Plan as an imperative conservative measure for the health and well being of extensive downstream neighborhoods and of the Santa Clara aquifer water supply.

Thank you for this opportunity to comment on the Notice of Preparation for Lehigh Permanente

Quarry's Reclamation Plan.

Sincerely,

Libby Lucas, Conservation,
CNPS, Santa Clara Valley Chapter
174 Yerba Santa Ave., Los Altos, CA 94022

From: Sanjeev Mahalawat <sanjeevmahalawat@yahoo.com>
Date: August 26, 2011 4:16:57 PM PDT
To: "marina.rush@pln.sccgov.org" <marina.rush@pln.sccgov.org>
**Subject: Notice of Preparation of an Environmental Impact Report
Reclamation Plan Amendment for Permanente Quarry**
Reply-To: Sanjeev Mahalawat <sanjeevmahalawat@yahoo.com>

Hi,

My name is Sanjeev Mahalawat and I live in Cupertino. I'm directly affected by the Lehigh cement plant in Cupertino and its environment and noise pollution. I strongly oppose any approval of Lehigh Cement's new reclamation plan by Santa Clara county supervisor board.

I will be deeply disappointed with the Santa Clara County Supervisors if they go ahead with the approval. Henceforth I request to the Santa Clara County Supervisor Board to listen to the citizens, residents, voters and high tax-payers of Cupertino, Los Altos and neighboring cities and broader Bay Area and do not approve any new reclamation plan of Lehigh Cement and hold Lehigh liable for the ongoing severe environment pollution.

Thank You,
Sanjeev Mahalawat
Resident of City of Cupertino, Ca

WILLIAM J. ALMON
10570 Blandor Way
Los Altos Hills, CA 94024

September 24, 2011

Marina Rush
County of Santa Clara
70 West Hedding Street
San Jose, CA 95110

Dear Marina,

There are major CEQA issues with this revised Reclamation Plan. CEQA requires an Environmental Impact Report (EIR) when a project has a significant impact on the Environment. According to CEQA the baseline for measuring impact is current, not past conditions, particularly when there has been no prior environmental review. Arguing that the 1985 Reclamation Plan was an environmental review would say that 1985 should be the baseline. However the baseline selected is neither, being a ten year period 2000-2010. This baseline must be changed to current conditions.

In addition the review must cover the total project and cannot separate out selective elements. In this case Lehigh has elected to not include the environmental impact of the Cement Plant and the hourly diesel delivery trucks. In its pleading to the County Superintendents on February 8, 2011 Lehigh argued that the Quarry and Cement Plant were totally integrated and a single operational entity and the Superintendents agreed. The environmental impact of the Cement Plant must be included in the EIR to meet CEQA's cumulative impact definition.

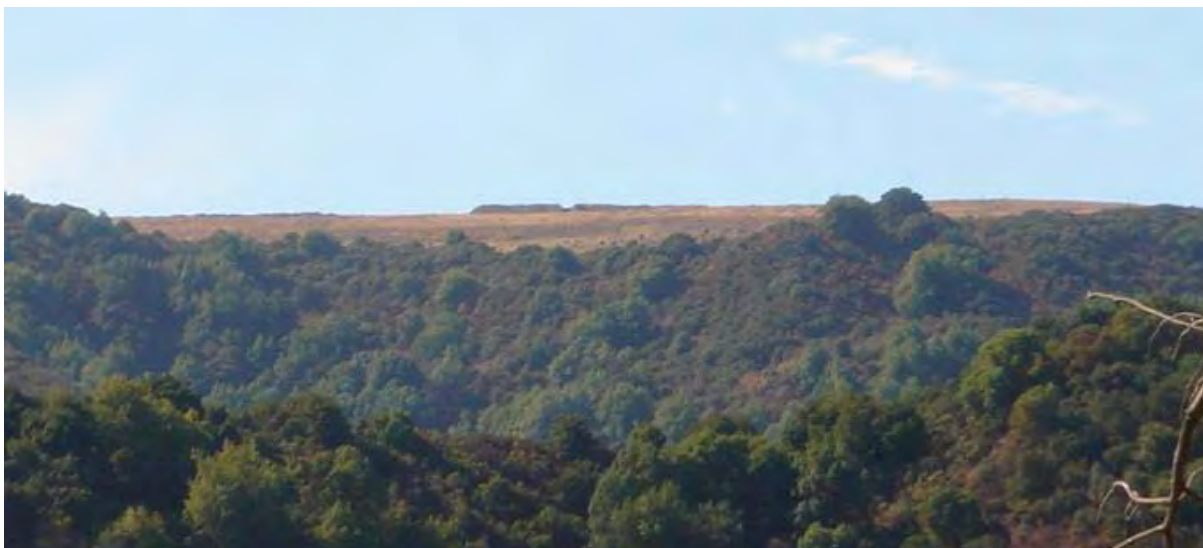
So must be the offsite diesel delivery trucks that according to Lehigh make 100,000 trips per year. Lehigh is meticulous in stating on site truck traffic but it is silent on the offsite traffic required to support the facility. This is justified on the basis these trucks are not owned by Lehigh but from an environmental viewpoint they are only there because of Lehigh. Their impact must be included in the EIR.

However even with that we are still not compliant with CEQA. CEQA states that an EIR cannot be an iterative process conducted piecemeal. It must include the entire project. That is not the case here as the new Quarry Pit has been removed only to accelerate the processing of the Reclamation Plan (Karl Saragusa letter of June 3, 2011). Lehigh was quite clear in 2010 stating that the current Quarry was nearing depletion. They now stand silent hoping for rapid processing of this "streamlined" Reclamation Plan. Consequently this Reclamation Plan must have a binding statement from the parent company, Heidelberg Cement, saying there is no strategic plan in place requiring a new Pit here.

Our continuing comments now follow the order established in your Notice of Preparation.

VISUAL RESOURCES – Kaiser Cement, the original owner, granted a scenic easement (deed dated August 18, 1972) to the County to shield the Quarry from Public view. In addition Condition #8 of the current 1985 Reclamation Plan states that the maximum height of Area A (now designated the West Material Storage Area-WSMA) shall not exceed the top of the ridgeline.

Regretfully Lehigh deliberately violated these restrictions by dumping excessive mine waste there. This will be corrected in the new Plan but not until 2021. It must be corrected immediately as violations of the law are not cured only when convenient to the violator nor are they mitigated in an EIR. We look to the County to enforce the existing scenic deed and restrictions.



Today it is clearly visible (above) as a result of Lehigh deliberately and continuously dumping excessive mine waste there. Lehigh has violated a given property right of the Residents of Santa Clara County while the County Supervisors looked on and directed the Staff to take no effective action. This ridgeline must be restored if the Public is to have any confidence in Lehigh's commitment to be a good neighbor and the Supervisors oath to uphold the law.

Lehigh's disregard for Visual Resources is not a thing of the past but continues today in the Santa Clara County Rancho San Antonio Park where Lehigh has recently dumped mine waste so high as to intrude on Park trails and views. This has been ongoing since 2009 when Lehigh arrogantly but accurately stated in their submitted Reclamation Plan that such dumping will probably be completed prior to any approval.

The purpose of an EIR is to mitigate not just identify environmental impacts. The damage is now irreversible so the request by the County for Public comments on mitigating the impact is disingenuous. The proposed EIR should be expanded to list all irreparable damage that has already occurred, not just the impact on the Park. On the next page is a photo of the view from PG&E trail in Rancho San Antonio Park.



View from PG&E trail in Rancho San Antonio Park

In addition the current Reclamation Plan dated 1985; the one now being amended here, stated that “Planting under the guidance of this Plan is ongoing” The aerial photo below shows that to be totally false.



Lehigh is willing to promise anything but fails to live up to its promises knowing that the County Board of Supervisors will support its inaction. It is unreasonable to expect the Residents to have any confidence in new steps to preserve the visual environment when prior ones are disrespected by their elected officials and Lehigh. The current view from Highway 280 going North of the Quarry can only be labeled “ugly” as viewed from multiple sight lines.

BIOLOGICAL RESOURCES – The entire Biological Resource Assessment (Attachment D) is highly flawed and must be completely redone. It is based on 2-3 year old surveys, studies and field investigations conducted by Lehigh’s consultant WRA in 2008-2009. It alerts one to forthcoming documents in 2010 which are obviously now available.

Worse, it is erroneous since Lehigh withheld from WRA the fact that they discharge hundreds of thousands to millions of gallons per day of industrial process water into Permanente Creek as part of normal operations as described in the California Regional Water Quality Control Board Notice of Violation dated February 18, 2011.

Such continuous high flows are not taken into consideration in the WRA study. Instead WRA makes calming statements such as “Portions of the Creek only convey surface water for a few weeks during annual peak rains” on Page 23. Lehigh obviously cannot be trusted.

The preservation of woodland and wildlife is open to question if Lehigh’s past actions are taken into account. A good example is the East Material Storage Area. Here is a before and after photo showing the destruction of native oaks and wildlife habitat.

BEFORE:



AFTER:



All this destruction occurred over the past 2 years as Lehigh expanded into the East Material Storage area without an EIR in place following their then unapproved Reclamation Plan dated April 2009 and even currently not yet approved. The damage has been done in direct violation of CEQA. The purpose of an EIR is to limit the environmental impact before it occurs, not to justify it after it happens.

Permanente Creek downstream is a breeding area for the California Red Legged Frog which is listed as a Threatened Species under the Endangered Species Act. It gained international fame in Mark Twain’s famous short story *The Celebrated Jumping Frog of Calaveras County*. This Threatened Species is now present in only 10% of its original habitat.

Lehigh has long touted their funded studies by Dr. Mark Jennings, but an independent Biologist must be retained to confirm the dire outcome that is suggested here for the California Red Legged Frog.

CULTURAL RESOURCES -- The Lehigh Quarry and Cement Plant has over 100 years of History in Santa Clara County. Henry Kaiser, an exceptional businessman, at one point lived on the property. During World War II incendiary bombs made of magnesium were produced there. Ownership thereafter changed and with multinational business cycles the Quarry and Cement Plant passed to German ownership.

Regardless of ownership the site was always a source of what we know today to be major pollution. In 2005 it was a top emitter of Mercury, producing 1,284 pounds while claiming 219 pounds. The mine waste, conveniently labeled overburden and strewn over the site, contains toxins that meet Superfund levels. This is the Cultural Resource today.

GEOLOGY & SOILS -- While there is extensive discussion of soil types and factors of safety in the Reclamation Plan there is little confidence provided to the Public that Lehigh will abide by the State Mining and Reclamation Act (SMARA). SMARA is repeatedly quoted with no mention made as to the extensive existing erosion on the site and the high risk of damaging earthquake activity.

Since 1985 there has been no reclamation, but after 26 years we are again promised reclamation starting in 2015. It appears that Reclamation can be continually delayed by simply submitting new amendments to the original Reclamation Plan.

Over the next 20 years there is a reasonable expectation of significant seismic activity. We know that the North side of the current Pit is a slopeless vertical wall as a result of earthquake induced landslides. The Berrocal Fault Line runs through the center of the East Material Storage Area (EMSA) and any landslide there promises to go into Permanente Creek, a Federally Threatened Species Habitat, and onto adjacent private property. However there is little analysis of it.

We are told that “industry standards indicate acceptable performance” by the EMSA in the event of a “design” earthquake which is never quantified or described in detail. We are told “the minimum Factor of Safety is considered acceptable,” while at the same time told there are natural shear lines between the limestone and the greenstone below. Given the recent surprise 9.0 Earthquake in Japan and the 6.0 in Pennsylvania, there must be more analysis and modeling of the EMSA under the latest assumptions or we also will be surprised.

Lehigh has deliberately violated SMARA by expanding beyond its Mining Boundaries. The California Office of Mine Reclamation states that this is a Major SMARA Violation and has given notice that Lehigh will be removed from the list of qualified suppliers to the State of California. This should be front and center in the proposed EIR but there is no mention or even suggestion of it in the documents presented to the Public. Why is this hidden?

The major residue resulting from the Lehigh operation is the extensive mine waste scattered over the site and affectionately called overburden. According to Attachment G of the Reclamation Plan (Table 5) the EMSA overburden contains 2.6mg/kg of Arsenic, well above California Health Screening Levels (CHSL).

The same Table 5 states Mercury to be .11mg/kg, but Lehigh reported 3 times as much (.31mg/kg) in the rigorous sampling done for the Air District and reported December 6, 2010. In total it appears the overburden is toxic. The assumption in the Reclamation Plan is that it is not. This is a major question.

It is very critical in that the overburden mine waste is scattered everywhere and will even be blended into the top soil covering over 700 acres at a depth of only 3 inches. Below that is the toxic mine waste. In addition it will fill the North Pit and be piled high forever contributing toxins into the watershed. After having been blasted out of the ground and crushed it is now much more porous and hence the leeching estimates in the Reclamation Plan are erroneous.

Consequentially there must be extensive testing of the current overburden in the WMSA and the EMSA to determine its true toxicity level and what must be done to remove it. This is a serious issue which is deliberately swept under the Reclamation Plan rug.

HYDROLOGY, DRAINAGE AND WATER QUALITY -- Lehigh was served a Notice of Violation (NOV) by the San Francisco Regional Water Quality Control Board on February 18, 2011 for discharging huge volumes of Quarry Pit water into Permanente Creek. In the NOV the Water Board noted Lehigh's failure to correct past violations and its non-compliance attitude.

This NOV was based on prior inspections as well as Lehigh responses to the Water Board, particularly the Lehigh response of December 13, 2010. In that response Lehigh stated the volume of water dumped into Permanente Creek ranged from a flow of 250,000 gallons per day to 2,500,000 gallons per day.

This amount of water originating primarily in the Pit bottom overwhelms all natural flows into Permanente Creek yet is not reflected in the Reclamation Plan. Equally significant, the content of the water is quite toxic. According to Lehigh this daily discharge is mandatory to the operation of the Quarry.



It suggests that we have a choice between Permanente Creek or a Quarry. However this is not addressed in the EIR nor are Lehigh's violations listed. Without County regulation, Permanente Creek will be nothing more than a waste water sewer pipe in 20 years.

PUBLIC SERVICES-NOISE ABATEMENT -- The noise emanating from the facility particularly at night is a public nuisance. The repeated booms from the blasting is even louder but of shorter duration. While Lehigh pledges in their Reclamation Plan that there will be no blasting on Sundays and at night, such blasting is ongoing today. There must be fines imposed to limit such activity.

LAND USE -- The assumption is made in the Reclamation Plan that the land will eventually be used as Open Space. This is an appealing use as it requires less reclamation cost for Lehigh while at the same time blending into the local landscape. However how this will be assured is unaddressed. Lehigh states that they reserve the right to mine on the land for other materials and even consider other usages so the Open Space designation is questionable. This designation must be certain, or else stated as only an attractive yearning.

AIR QUALITY -- As previously stated, the omission of the impact of the Cement Plant and offsite Diesel Truck traffic must be corrected. Possibly as a result of such emissions, Santa Clara County currently fails to meet the Clean Air Standard for fine Particulate Matter 2.5 (PM 2.5) and is designated a Nonattainment Area by the EPA.

PM 2.5 poses a very significant health risk as it can be lodged deeply into the developing lungs of young children playing in schoolyards or visiting Rancho San Antonio Park. It comes from combustion activity (cars, diesel trucks, cement kilns etc). As a consequence this Lehigh expansion will add, not reduce, PM 2.5 emissions.

Lehigh states the opposite by using a 10 year baseline and assuming dramatic reductions in wind erosion without explanation. This, plus the absence of a current baseline and the exclusion of 100,000 diesel truck trips, must be corrected and a new Air Quality Technical Analysis issued. In addition similar corrections must be made for all toxins, pollutants and Green House Gases not just PM 2.5.

However the current designation of Santa Clara County as a Nonattainment Area means the EMSA expansion can only be approved if it results in a reduction of PM 2.5 emissions. Any new project increasing PM 2.5 emissions cannot be approved, which is why Lehigh cannot afford to include the diesel trucks and the Cement Plant.

In addition, the EIR must include a current Health Risk Assessment (HRA) from the Bay Area Air Quality Management District. The current HRA is old (2008) and out of date. Since 2008, according to the Air District and Lehigh, Lehigh has discharged over a ton of Mercury on the local residents without any warning or alert. Lisa Jackson, the EPA Administrator, continues to warn that Mercury exposure reduces the intelligence of children, but the County and the Air District remain silent.

Multiple counterfeit HRAs from Lehigh have been displayed for the last 2 years on the County website which has been very misleading to the Public. A new HRA was promised by the County in 2010 and by the Air District on multiple occasions in the past 3 years. Could this be a deliberate delay in HRA issuance until one can be issued showing “All Clear”? Hopefully not, but regardless of the reason for the delay the CEQA process requires a current HRA.

GREENHOUSE GAS EMISSION -- Lehigh is the 2nd largest emitter of Greenhouse Gases in Santa Clara County. Cars represent only 36% of the CO₂ emissions here with industry generating 43%. Santa Clara County is unique in this regard. However as SB375 is implemented the County will have to force reduction actions on residents to accommodate Lehigh’s load as Lehigh’s emissions are directly tied to their production.

To stay in production Lehigh must emit CO₂ into the atmosphere as well as Methane and Nitrous Oxide. Methane is 21 times and Nitrous Oxide 310 times in impact as the same amount of Carbon Dioxide. In addition to these emissions, Lehigh has a minimum of 100,000 Diesel truck trips per year transporting product to/from the facility.

Each County will be given a target to meet and Santa Clara County will have to make reductions elsewhere to offset the Greenhouse Gas load generated by Lehigh over the next 20 years. According to the California Air Resources Board (CARB) the main focus will be on creating disincentives to drive. These will include new taxes and fees on cars and gasoline plus congestion pricing tolls and parking fees. If these fail, CARB suggests even incenting residents to leave.

We cannot shut down power plants, but the County Supervisors can limit expansion of Quarries and companion Cement Plants. The EIR must spell out the Greenhouse Gas emissions projected for the next 20 years due to Lehigh operations and detail the impact on residents. Instead the County is looking for residents to make significant sacrifices to save Lehigh.

ALTERNATIVES -- The obvious alternative to this Quarry expansion is not to do it. Lehigh possesses another quarry, with dramatically lower Mercury content limestone, in Redding, California. That limestone can be shipped here by rail economically and the Cement product shipped out on the empty rail cars eliminating Diesel Truck traffic onsite as well as offsite. Obviously there would still be residual onsite truck traffic to move the mine waste from the WMSA to refill the Pit but there still would be a major improvement in Air & Water Quality plus cost savings to Lehigh.

The cost savings could be significant. Last year Burlington Railroad moved each ton of rail freight 500 miles on a single gallon of diesel fuel, three times more fuel efficient than trucking, and dramatically more friendly to the environment. We need that here. Since there is an existing rail line operational today (shown on the next page) this alternative could be implemented quickly. Finally, if adopted it would singularly resolve the major CEQA issues identified in our opening comments. This alternative must be developed in depth so that it can be evaluated against the base plan and pursued in a deliberate manner if selected. It is not a “straw horse”.



Existing rail line, operational today

GROWTH INDUCING IMPACTS -- We must have Cement but it does not have to be produced locally. Cement is only 10% of the concrete poured today. It can be brought by rail economically and is transported today throughout California. Consequently, rather than increasing growth it would appear that Lehigh will reduce growth by making Santa Clara County less appealing to those concerned about their health and the environment. There must be independent studies done at Lehigh's expense to prove the opposite.

One such study should address the safety of the gas pipe line at the facility. It is unclear as to its usage. As a result of the recent gas line eruption in Cupertino and the San Bruno gas line explosion, the threat to public safety is obvious and increasing. As part of the EIR, there should be testing of the current line under variable load conditions.

The actual usage must be spelled out too. If there are no plans to utilize the line it should be removed to completely eliminate the risk to public safety. It is reasonable to assume that if current natural gas prices continue to fall Lehigh will switch from coal to natural gas to power the Kiln. In that case the line may have to be expanded over its entire length with the cost billed to the residents of Cupertino and the County. If Lehigh elects to preserve this gas line option they must commit now to accept all liabilities.

This also again reveals the inadequacy of any EIR that does not also address the Cement Plant. The ceremonial assumption that the two are separable is questioned by a large continuous flowing gas line under County Permit that is not considered in the EIR.

CUMULATIVE IMPACTS -- There are many cumulative impacts. The combined impact of air borne toxins falling from the sky on the ground and leaching into the water supply is obvious, but unaddressed. The combined impact of a Cement Plant coupled to a Quarry is obvious, but unaddressed. More subtle is the cumulative effect of 69 toxins being breathed simultaneously. That is not addressed here either but must be in the draft EIR.

FINANCIAL ASSURANCE -- This is a category not identified in the NOP, but is critical due to the EIR's dependence on completion of the submitted Reclamation Plan. The 20 year plan is massive in nature requiring the reclamation of over 800 acres of land after 4.7 million tons of limestone have been mined every year. The new EMSA, not in the current Reclamation Plan, already is receiving mine waste which will total 6 million tons. In addition 48 million tons of mine waste resting presently in the WSMA will be removed and re-deposited in the existing Quarry Pit. In total, over 60 million tons of mine waste will be dumped and then hidden by being covered over with 3 inches of topsoil mixed with mine waste overburden to restore the area.

The ownership of the quarry could change many times over before this massive Reclamation is accomplished. To insure that the reclamation is completed SMARA requires the owner to provide financial assurance. However this need be only for the area disturbed in a given year and can be in the form of a Letter of Credit or other guarantee from a 3rd party as was the case with Mortgages in the recent financial collapse. They are only as good as the 3rd party issuer is, not Lehigh.

Currently the Financial assurance required is only \$13,438,624 since there is no reclamation underway and the amount of financial assurance is not the final total cost but covers only the cost for areas un-reclaimed to date plus those for the next year. Hence the major costs won't occur until 2015 when the EMSA reclamation starts. We estimate these total costs to be approximately \$200,000,000.

This is based on reclamation costs experienced elsewhere for mines. In June of this year the EPA settled with Hecla Mining Company at a cost of \$263 million to reclaim their Silver Valley Mine. Last December the EPA settled with Chevron for \$500 million to reclaim their Molycorp Mine.

Hopefully this reclamation effort will not reach such heights. But to insure there is an existing owner with the financial capacity to do the reclamation, all Property Deeds for disturbed land must have County Liens placed on them until the Reclamation is completed. This is in addition to the Financial Assurance.

These Liens do not place any additional financial burden on Lehigh. They are similar to the Liens filed in Santa Clara County on residential homes which are removed when the Lien condition is satisfied. They incur no penalties, set no schedules or impede the reclamation process. They only insure that Lehigh or its successor will be there when the heavy reclamation spending starts.

They do not prevent Lehigh from selling the property but spell out to any buyer that they become responsible for the reclamation. They become a silent reminder to Lehigh or its successor that the owner of the land has made a commitment and must honor it.

In summary there are many issues to add to the EIR and many alternatives to consider. Thank you for this opportunity to comment and we hope this submission is taken into consideration in the development of the draft EIR.



Bill Almon

Acting for the Members of QuarryNo

County of Santa Clara

Parks and Recreation Department

298 Garden Hill Drive
 Los Gatos, California 95032-7669
 (408) 355-2200 FAX 355-2290
 Reservations (408) 355-2201
www.parkhere.org



MEMORANDUM

DATE: September 1, 2011

TO: Marina Rush, Planner
 County Planning Office

FROM: Kimberly Brosseau, Park Planner
 County Parks Department

SUBJECT: Notice of Preparation of an Environmental Impact Report for the Mining Reclamation Plan Amendment for Permanente Quarry (File No. 2250-13-66-10P (M1) and 10EIR (M1))

The County Parks Department has reviewed the Notice of Preparation (NOP) of an Environmental Impact Report (EIR) for the Permanente Quarry (modification to the existing May 2010 application) for a Mining Reclamation Plan Amendment for issues related to park use, trails, and implementation of the Countywide Trails Master Plan and submits the following comments.

The Trails Element of the Park and Recreation Chapter of the 1995-2010 County General Plan indicates a trail alignment nearby the subject parcel. Per the General Plan, Countywide Trail Route R1-A (*Juan Bautista de Anza NHT*) is located northeast of the project site. The *Santa Clara County Countywide Trails Master Plan Update*, which is an adopted element of the General Plan, designates the countywide trail as a “trail route within other public lands” for hiking, off-road cycling, and equestrian use. This trail route provides an important connection between the City of Cupertino and Rancho San Antonio County Park. The City of Cupertino’s Final Stevens Creek Trail Feasibility Study also indicates this trail route as an important connection between Rancho San Antonio County Park and the City of Cupertino.

Visual Resources

The quarry is located adjacent to Rancho San Antonio County Park (Diocese Property). Since the County Parks Department is an adjacent property owner, modifications to the Reclamation Plan should take into account the potential aesthetic/visual impacts of the quarry and mitigation of views from these public parklands and trails.

The project is located in a Zoning District with a Design Review overlay for the Santa Clara Valley Viewshed (d1). It is expected that the applicant will construct as per the submitted plans and comply with design guidelines towards screening the project from public views.



Board of Supervisors: Mike Wasserman, George Shirakawa, Dave Cortese, Ken Yeager, Liz Kniss
 County Executive: Jeffrey V. Smith



An adequate vegetated buffer between the degraded hillsides and the adjacent County parkland and trails should be incorporated into the Reclamation Plan for the quarry.

Biological Resources

The EIR for the Reclamation Plan Amendment should discuss whether or not the project would have an impact on Permanente Creek and the California red-legged frog (CRLF) and California tiger salamander. The CRLF has mitigation sites on the adjacent Diocese property.

Surface Hydrology, Drainage and Water Quality

The EIR for the Reclamation Plan Amendment should evaluate potential hydrological impacts resulting from any grading, recontouring and seeding of the site. The EIR should also discuss if there are any proposed modifications to the riparian corridor or Permanente Creek. The Reclamation Plan Amendment should also take into account adequate erosion control measures and proposed grading and the potential impacts it may have to the adjacent County parkland and trails.

The Santa Clara Valley Water District (SCVWD) is currently preparing a Final EIR for the Permanente Creek Flood Protection Project, which includes a proposed flood detention basin facility to be constructed, operated and maintained at Rancho San Antonio County Park Diocese Property as the Project's Recommended Alternative. This Permanente Creek Quarry's Reclamation Plan should evaluate future hydrological modifications that may impact the District's Permanente Creek Flood Protection Project for portions of Permanente Creek through Rancho San Antonio County Park.

Noise Impacts

The EIR for the Reclamation Plan Amendment should evaluate any potential noise impacts to the adjacent Rancho San Antonio County Park and impacts that noise from the quarry may have on park users.

Air Quality

The EIR for the Reclamation Plan Amendment should evaluate any potential air quality impacts as a result of the quarry use and associated truck trips generated to and from the quarry on the adjacent Rancho San Antonio County Park and impacts that may have on park users.

The County Parks and Recreation Department appreciates the opportunity to provide comments on the NOP of an EIR for the Permanente Quarry Reclamation Plan Amendment. We look forward to reviewing the EIR once it becomes available. If you have any questions regarding this letter, please contact me at (408) 355-2230 or by email at: Kimberly.Brosseau@prk.sccgov.org.

Sincerely,



Kimberly Brosseau
Park Planner

cc: Jane Mark, Senior Planner
Don Rocha, Natural Resources Management Program Supervisor
Ana Ruiz, Midpeninsula Regional Open Space District

File: 2985
Permanente Creek

A-25

September 13, 2011

Ms. Marina Rush
County of Santa Clara
Planning Office
70 West Hedding, 7th Floor, East Wing
San Jose, CA 95110

Subject: Notice of Preparation - Comprehensive Reclamation Plan Amendment and
Conditional Use Permit for Permanente Quarry

Dear Ms. Rush:

The Santa Clara Valley Water District is a special district with jurisdiction throughout Santa Clara County. The Water District acts as the county's groundwater management agency, principal water resources manager, flood protection agency and is the steward for its watersheds, streams and creeks, and underground aquifers.

We appreciate the opportunity to comment on the scope for the EIR for the Comprehensive Reclamation Plan Amendment for Permanente Quarry. This letter transmits comments that focus on the areas of interest and expertise of the Water District:

- The Water District is in the design phase for the Permanente Creek Flood Protection Project. The project will address erosion control, maintenance, structural repair, and habitat restoration in the Permanente Creek watershed. The Water District's Board of Directors certified a Final EIR for the project on June 17, 2010. The Draft EIR for the Reclamation Plan Amendment should consider the Water District's project in the consideration of cumulative impacts.
- Under existing conditions, a portion of the quarry lands drain to the quarry pit. The Permanente Creek Flood Protection Project is using this existing condition as a baseline to determine flood levels. As reclamation progresses, these lands may drain to Permanente Creek in the future. This additional runoff to the creek should be studied to determine if it may increase flooding downstream.
- The Draft EIR should analyze discharges to Permanente Creek as the quarry is reclaimed. These discharges may impact water quality, hydrology, and biological resources adjacent to and downstream of the quarry. The Water District is concerned about the long-term impacts to stream maintenance downstream from sediment originating on-site.
- The project should be analyzed to ensure that it is consistent with the Guidelines and Standards for Land Uses Near Streams prepared by the Santa Clara Valley Water Resources Protection Collaborative, which the County was a member of.



Ms. Marina Rush
Page 2
September 13, 2011

- The future reclamation of the site needs to include enforceable provisions with appropriate financial backing to ensure that adequate monitoring and restoration is completed after quarry operations end. Reclamation must ensure that the site does not contribute to water quality or sedimentation problems in Permanente Creek after the operator leaves.
- As part of the Permanente Creek Flood Protection Project, the Water District may consider additional options for providing flood protection in the Permanente Creek Watershed. This could include flood detention facilities in the upper watershed. We encourage the County and the project proponent to work with the Water District in providing flood benefits that are mutually beneficial.

District staff is available to meet and discuss the above areas of concern. Please provide a copy of the Draft EIR to the Water District for review when it becomes available. Please reference District File Number 2985 on further correspondence regarding this project. If you have any questions or need further information, you can reach me at (408) 265-2607, extension 3095.

Sincerely,

for Sue Tuppets
Michael Martin
Environmental Planner
Community Projects Review Unit

cc: S. Tuppets, C. Elias, S. Hosseini, U. Chatwani, File

2985_54469mm09-13

Date: September 26, 2011

To: County of Santa Clara Office of Planning and Development
70 W. Hedding St., East Wing, 7th Floor San Jose, CA 95110
Attn: Marina Rush

Re: NOP Public Comment for the Lehigh Permanente Quarry RPA EIR

A California Environmental Quality Act (CEQA) review 13-years after the illegal expansion of an open pit mining operation is confirmation of a lead agency's failure to lead. Before the Santa Clara County Board of Supervisors (Board) certifies the Lehigh Permanente Quarry (Lehigh/Quarry) Reclamation Plan Amendment (RPA) Environmental Impact Report (EIR) retroactively, they had better figure out whether or not their constituents are being poisoned by the Quarry's past and present illegal activities.

Illegal demolition: According to a public records request, 10 structures on an adjacent parcel formerly owned by Kaiser Metals Corp. and Kaiser Aluminum and Chemical Co. (Kaiser), were demolished without a Final Inspection; their permit status is "incomplete." **(Exhibit A)**



From left: Kaiser's World War II munitions and chemical factory; after the illegal demolitions, leaching mining waste was dumped 250 feet from the Permanente Creek without pollution control measures. Photo source: Google Earth 1948 and 2004

After dodging CEQA and the Surface Mining and Reclamation Act (SMARA), new owner Hanson Cement began illegally grading and covering up the Kaiser parcel, where hazardous materials had been used and stored since World War II, with tons of mining waste. The Quarry's name and operator were changed to Lehigh; the Kaiser address (23333 Stevens Creek Blvd.) was eliminated, and its hazardous materials legacy misleadingly changed to "the Quarry's historic 70-year old East Materials Storage Area (EMSA)." The simple truth is Lehigh's so-called "historic EMSA" wasn't included in the Quarry's 1985 Reclamation Plan because no mining activities were taking place on that parcel to be reclaimed.

Without an honest environmental review baseline, a potential health emergency will continue to be concealed from the public, and possibly a future housing development. Therefore, the current condition of the "EMSA" is an insufficient CEQA baseline. Fortunately, County regulations, when enforced, require "incomplete" demolition permits to be "renewed," which will ensure that the EIR baseline will not be based on a manipulation.

The County has been reckless in their lack of enforcement of CEQA and SMARA **(Exhibit B)**. Was it really just a coincidence that the County failed to perform their required annual SMARA inspection the exact same year 9 structures were illegal demolished in 1998? A full 2 years and 7 months elapsed before the County resumed inspections in 2000, filing what appears to be a fraudulent report with the State Office of Mine Reclamation (OMR): Building, Structure, Equipment Removal = Not Applicable. Number of Violations = Zero. **(Exhibit C)**

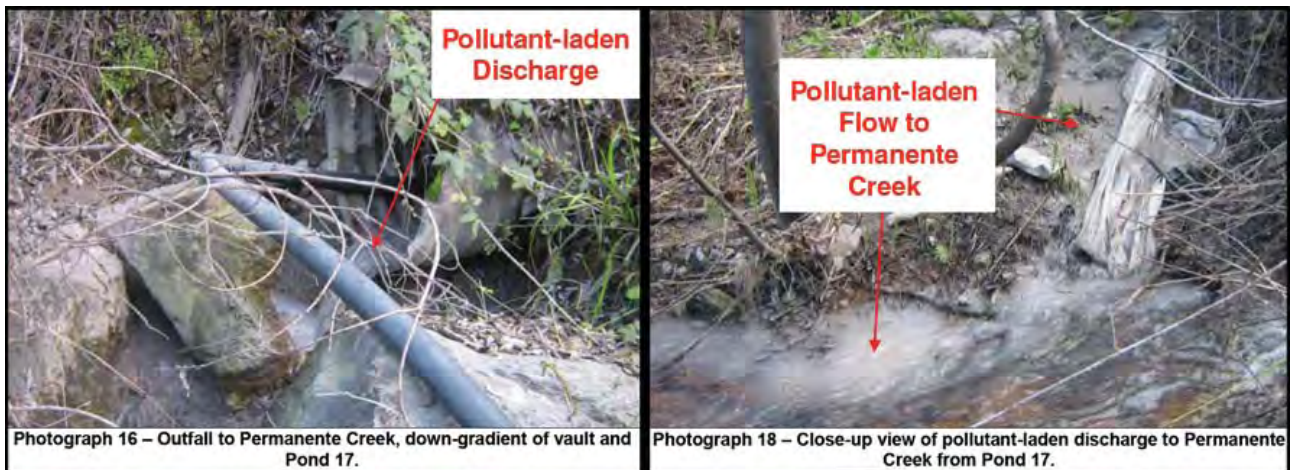
A concerned citizen alerted the County after the illegal hills of mining waste became visible from over a 1.5 miles away, and was completely ignored. But for the citizen’s persistence in contacting the OMR (which led to the first SMARA Notice of Violation in 2006) this parcel’s hazardous materials legacy would have been completely concealed from the public. As a matter of fact, the Quarry expansion continues on unabated and without financial penalty, courtesy of a backdoor “AGREEMENT” made in 2009 between the County and Lehigh (no public hearing). **(Exhibit D)**



“EMSA” mining waste: A view from Rancho San Antonio Park’s PG&E Trail.

This “AGREEMENT” is the epitome of complicit negligence: Immediately adjacent to the mining waste is the Rancho San Antonio County Park and Open Space Preserve, which welcomes upwards of 500,000 visitors annually. In other words, unregulated particulate matter has been blowing into the lungs of unsuspecting hikers, joggers and equestrians for over a decade; the distance from the “EMSA” to the closest public access trail is just 550 ft.

Illegal discharges of pollutants: On August 24, 2011, the Sierra Club issued a Notice of Intent to Sue “Lehigh... for significant and ongoing violations of the Clean Water Act” **(Exhibit E)**: “Due to chronically elevated levels of selenium and toxicity immediately downstream from the Permanente facility, the EPA recently approved the listing of Permanente Creek as impaired for these pollutants... Pollutants illegally discharged by Lehigh into Permanente Creek also enter Santa Clara County’s underground drinking water supply as they flow across the unconfined areas of the Santa Clara Subbasin aquifer. **The Santa Clara Subbasin aquifer is the primary reservoir of drinking water for San Jose and surrounding cities.**” [Emphasis added]



Photograph 16 – Outfall to Permanente Creek, down-gradient of vault and Pond 17.

Photograph 18 – Close-up view of pollutant-laden discharge to Permanente Creek from Pond 17.

Pollutant-laden discharges flow from Lehigh into the Permanente Creek. Source: U.S. Environmental Protection Agency (EPA) Inspection Report, Lehigh Southwest Cement Co., February 10, 2011

Lehigh readily admits they discharge water that contains – by their own measure – harmful levels of pollutants into the Permanente Creek, while also claiming to have a “valid permit” to do so. Not surprisingly, the Regional Water Quality Control Board (RWQCB) disagrees:

“Lehigh repeatedly asserts that the Facility’s discharges of quarry bottom water, wash-down water, and dust suppression water are in compliance... The Industrial General Storm Water Permit specifically prohibits all three of these self-admitted discharges from the Lehigh facility. Lehigh is grossly mistaken in its assertion that the Facility is permitted to discharge these three types of non-storm water flows.”

After the Board’s careless disregard for the Quarry’s past and present illegal activities, yet another “failure to exercise a sense of concern for future generations” (aka Love Canal) would be unthinkable. As required, the “owner or agent” of the illegal demolitions must be ordered by the County to “renew” their “incomplete” demolition permits. This might ensure a legitimate environmental review baseline, one that could determine whether or not the citizens of Santa Clara County are being poisoned by these unconscionable acts.

Questions

Before the Lehigh RPA EIR is certified, will the County:

- 1) Order Lehigh to amend their RPA to reflect the hazardous materials legacy of the “EMSA”?
- 2) Order Lehigh to stop their pollutant-laden discharges into the Permanente Creek?
- 3) Determine if there are poisonous substances (pollutants) contained in the “EMSA” mining waste?
- 4) Produce certified proof that the illegally demolished structures, and their hazardous chemical contents, were disposed of properly off-site rather than buried in the West Materials Storage Area (WMSA) under millions of tons of mining waste?
- 5) Order core sample testing of this entire 3510-acre Quarry to determine whether or not Santa Clara County’s primary drinking water aquifer is being poisoned as a consequence of the documented illegal acts that have taken place since the 1985 Reclamation Plan baseline: illegal demolitions, illegal expansion, and illegal pollution discharges?

Prior to the illegal demolitions:

- 6) Did the owner or agent submit the required certification of filing to the County for the State Water Resources Control Board (SWRCB) Notice of Intent (NOI) to Comply with the Statewide General NPDES Permit for Storm Water Discharges Associated with Construction Activity?
- 7) Did the owner or agent submit to the County’s Building Inspection Office a completed copy of the Bay Area Air Quality Management District’s demolition notification form – including a completed Asbestos Survey Report?
- 8) Did the owner or agent contact PG&E regarding disconnection of utilities, and obtain a plumbing permit clearance signature from the County’s Environmental Health Services for septic tank abandonment?
- 9) For environmental review purposes under the California Environmental Quality Act (CEQA), did the owner or agent obtain the required clearance signature from the County’s Planning Office for the Identification of Structures for Potential Historic Significance prior to demolishing this World War II munitions factory and chemical laboratory?

10) Did the owner or agent complete Part II of the Identification of Structures for Potential Historic Significance form as required for structures older than 50 years, and submit photographs of each elevation of the structures?

Sincerely,

Susan Sievert
A resident of Santa Clara County, California

Cc: Lisa P. Jackson, U.S. EPA Administrator

Exhibit A: Public Records Request for Permanente Quarry Demolition Permits, February 10, 2011

Exhibit B: Office of Mine Reclamation 30-day Pending Removal from the AB 3098 List, Reclamation Plan Non-compliance, Permanente Quarry, Mine ID #91-43-0004, July 20, 2011

Exhibit C: Santa Clara County's Annual Surface Mining and Reclamation Act Inspection Report for the Permanente Quarry, covering the years 1998, 1999, 2000

Exhibit D: 2009 "Agreement" between Santa Clara County and Lehigh Southwest Cement Company

Exhibit E: Sierra Club's Notice of Intent to Sue for Violations of the Clean Water Act at Lehigh Southwest Cement Company's Permanente Plant in Santa Clara County, California, August 24, 2011

County of Santa Clara
Department of Planning and Development
 County Government Center, East Wing
 70 West Hedding Street, 7th Floor
 San Jose, California 95110



	Administration	Development Services	Fire Marshal	Planning
Phone:	(408) 299-6740	(408) 299-5700	(408) 299-5760	(408) 299-5770
Fax:	(408) 299-6757	(408) 279-8537	(408) 287-9308	(408) 288-9198

February 10, 2011

RE: Public records request for demolition permit for:

Site Address: 0 Stevens Creek Blvd./24001 Stevens Creek Blvd., Cupertino

Assessor Parcel No.: 351-10-005

Present Jurisdiction: County

<u>Bldg. Permit #</u>	<u>Date</u>	<u>Description</u>	<u>Status</u>
19658	06/25/74	Demolish	Incomplete
76991	02/27/98	Demolish Storage Bldg.	Incomplete
76992	02/27/98	Demolish Office Bldg.	Incomplete
76993	02/27/98	Demolish Office Bldg.	Incomplete
76994	02/27/98	Demolish Office Bldg.	Incomplete
76995	02/27/98	Demolish Storage Bldg.	Incomplete
76996	02/27/98	Demolish Storage Bldg.	Incomplete
76997	02/27/98	Demolish Office Bldg.	Incomplete
76998	02/27/98	Demolish Office Bldg.	Incomplete
76999	02/27/98	Demolish Office Bldg.	Incomplete

Respectfully,

Michael L. Harrison,
 Acting Building Official

Attachment

*Please see other side

COMPLETED: The project has received a final inspection by office.

INCOMPLETE: The project has not received a final inspection by this office. If the last inspection was made more than six months, ago, the building permit will have to be renewed by the owner or agent.

JURISDICTION: If the parcel was annexed to a city, information regarding construction will have to be obtained from the noted city.

NO PERMIT: A building permit has not been issued by this office, for work at this address. In order to legalize construction, the owner or his agent has to apply for a building permit. For more information, please ask for a building permit information handout.

PRIOR TO:
1947 Buildings constructed prior to 1947 were not required to have a permit.

NATURAL RESOURCES AGENCY

EDMUND G. BROWN, JR., GOVERNOR



DEPARTMENT OF CONSERVATION

Managing California's Working Lands

OFFICE OF MINE RECLAMATION

801 K STREET • MS 09-06 • SACRAMENTO, CALIFORNIA 95814

PHONE 916 / 323-9198 • FAX 916 / 445-6066 • TDD 916 / 324-2555 • WEB SITE conservation.ca.gov

July 20, 2011

Via Email: Scott.Renfrew@LehighHanson.com

Via Certified Mail: 7010 2780 0000 4767 7882

Mr. Scott Renfrew
Designated Agent
Lehigh Southwest Cement Company
24001 Stevens Creek Boulevard
Cupertino, CA 95014

Dear Mr. Renfrew:

30-DAY PENDING REMOVAL FROM THE AB 3098 LIST, RECLAMATION PLAN NON-COMPLIANCE, PERMANENTE QUARRY, MINE ID #91-43-0004

The purpose of this letter is to bring to your attention a matter of AB 3098 list eligibility pursuant to the Surface Mining and Reclamation Act of 1975 (SMARA) Section 2717(b) regarding the Permanente Quarry (Quarry). The Quarry is actively operated by the Lehigh Southwest Cement Company. The County of Santa Clara (County) is the SMARA lead agency for this surface mining operation.

On October 10, 2006, the County issued the Quarry an Order to Comply (OTC)/Notice of Violation (NOV) requiring the operator to prepare an amended reclamation plan and submit it for approval in accordance with a Compliance Schedule. Violations identified in the order included instability of the pit slopes and surface mining operations occurring outside the approved reclamation boundary. Based on that schedule, the Quarry should have come into compliance by December 2007. Subsequently, the schedule was extended for an additional two years to allow for completion of geotechnical investigations.

While still under the October 10, 2006 Order to Comply, the operator expanded operations outside the approved reclamation plan boundary and began dumping materials in the East Materials Storage Area (EMSA). The County issued a NOV on June 20, 2008 to the Quarry operator for the illegal stockpiling material outside the approved reclamation plan boundary.

In a status letter to the State Mining & Geology Board (SMGB), dated June 9, 2011, the County indicated that the CEQA review of the amended reclamation plan is underway.

Mr. Scott Renfrew
July 20, 2011
Page 2

The current target date for achieving full compliance with SMARA at the Quarry is June 2012. The letter states that this is the earliest date in which the Final Environmental Impact Report (FEIR) is expected to be certified, depending on the volume of public comments received by the County. This "best case" schedule is approximately five years longer than the OTC/NOV allowed for achieving compliance, and well after the original violations were brought to the County's attention.

Public Resources Code (PRC) Section 2770(a) provides that no person shall conduct surface mining operations unless a permit is obtained from, and a reclamation plan and financial assurances for reclamation have been submitted to, and approved by, the lead agency for the operation. Surface mining operations must be conducted in accordance with the approved reclamation plan. Except as provided under PRC Section 2714, any surface mining operations conducted without an approved reclamation plan is a violation of SMARA.

We understand that the County is reviewing two reclamation plans for the Quarry, one for the EMSA, and a more comprehensive reclamation plan. These plans cover two parts of the same operation. However, pursuant to California Code of Regulations (CCR) Section 3502(d) a surface mining operation as defined in PRC Section 2735 and Title 14 CCR Section 3501, shall have no more than one approved reclamation plan applicable to the operation.

Further, CCR Section 3502(g) provides that, should an expansion of an operation into an area not covered by an approved reclamation plan be determined by the lead agency to be a substantial deviation, an amended reclamation plan shall be prepared that ensures adequate reclamation for the surface mining operation. The EMSA should not be treated as a separate reclamation amendment, but included in a single amended reclamation plan which includes all areas disturbed by surface mining operations.

The Department of Conservation's Office of Mine Reclamation (OMR) periodically publishes a list of mining operations that meet the requirements of PRC Section 2717(b). This list is generally referred to as the AB 3098 list, in reference to the 1992 legislation that established it. The Public Contract Code prohibits state agency purchases of mined materials produced by mining operations that are not included on the AB 3098 list. Sections 10295.5 and 20676 of these statutes also prohibit the sale of such materials to local government agencies. The requirements for inclusion on the AB 3098 list include compliance with the financial assurance requirements developed pursuant to PRC Section 2773.1.

This letter serves as official notice that, if the violations noted in the OTC extend beyond 30 days after the date of this notice, the Quarry will be removed from the AB 3098 List. The appropriate steps that the Lehigh Southwest Cement Company must take to resolve this violation is to:

Mr. Scott Renfrew
July 20, 2011
Page 3

1. Prepare and submit to the lead agency for approval, a reclamation plan amendment that encompasses all the area disturbed by surface mining operations, including those areas conducted outside the approved reclamation plan boundary. The Quarry will not be list eligible until the proposed reclamation plan amendment has been approved by the County.
2. Submit to the lead agency for approval, a revised financial assurance cost estimate (FACE) that includes the cost of reclaiming all the area disturbed by surface mining operations conducted outside the reclamation plan boundary. The Quarry will not be list eligible until the revised financial assurance has been approved by the County.

Proof of the adequacy of the FACE must be submitted to OMR by the lead agency, not by the mine operator. The submission must be in accordance with the SMGB financial assurance guidelines.

Reinstatement to the AB 3098 list requires an approved reclamation plan and financial assurances that cover the affected surface mining operation pursuant to PRC section 10295.5 (a). Prior to reinstatement, the Department will need to verify that the surface mining operations being conducted at the Quarry are covered by an approved reclamation plan and adequate financial assurances.

In summary, the Permanente Quarry, CA Mine ID #91-43-0004, is scheduled to be removed from AB 3098 list 30 days after the date of this notice unless the OTC violations are corrected.

If you have any questions regarding this letter, please contact Bret Koehler at (916) 323-9198.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kenneth E. Trott". The signature is fluid and cursive, with a long horizontal stroke at the end.

Kenneth E. Trott, Manager
Reporting and Compliance Unit

cc: Marvin Howell, Lehigh Southwest Cement Company
Gary Rudholm, County of Santa Clara
Stephen Testa, State Mining & Geology Board

State of California
DEPARTMENT OF CONSERVATION
OFFICE OF MINE RECLAMATION
 MRRC-1 Page 2 of 2 (Rev. 04/97)

SURFACE MINING INSPECTION REPORT

VI. Is the operation in compliance with provisions of the approved Reclamation Plan and Mining Permit with respect to:	OK	VN	NI	NA	CA Mine ID #
Wildlife Habitat	✓				91-43-0004
Revegetation	✓				
Agricultural Land				✓	Weather Code(s): CR
Stream Protection	✓				Duration of Inspection: 2.0 hr.
Tailings and Mine Waste Management	✓				Approximate Disturbed Acreage: 200
Building, Structure, and Equipment Removal				✓	Status of Operation Code(s): A
Topsoil Salvage, Maintenance, and Redistribution	✓				Status of Reclamation Code(s): R
Backfilling, Regrading, Slope Stability, and Recontouring	✓				
Drainage, Diversion Structures, Waterways, and Erosion	✓				
Other (list or explain below)					

VII. Comments/Description of Violation(s) and Corrective Measure(s) Required (NOTE: please indicate if you have attached notice(s) of violation(s) and correction order(s), in lieu of description on this form):

The previous inspection of the site took place on Nov. 20, 1997. This inspection report is to cover the calendar years of 1998, 1999 and 2000.

VIII. Number of Violations: 2	Inspector's Signature: Harry Rudholm	Date Signed: 7-27-2000
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AGREEMENT

THIS AGREEMENT is made this 14th day of April, 2009, by and between the County of Santa Clara, a political subdivision of the State of California (hereinafter referred to as the "County") and the undersigned duly authorized representatives of Lehigh Southwest Cement Company and Hanson Permanente Cement, Inc. (hereinafter referred to as "Company") regarding the Permanente Quarry.

RECITALS

- A. The Company owns and operates the Permanente Quarry ("Quarry"), which is located within the jurisdiction of the County.
- B. In March 1985, the County approved a Reclamation Plan for the Quarry ("Reclamation Plan").
- C. In October 2006, the County issued an Order to Comply/Notice of Violation ("2006 Order") pursuant to the Surface Mining and Reclamation Act of 1975 ("SMARA"), Pub. Res. Code § 2710 *et seq.*, to the Quarry owner/operator requiring the processing of an amendment to the Reclamation Plan to encompass mining-related disturbance outside of the approved reclamation plan (except for the cement plant), and set forth a compliance schedule for the amendment. A copy of the 2006 Order is attached as Exhibit A to this Agreement.
- D. In May 2008, the County issued a modification to the compliance schedule included in the 2006 Order ("2008 Schedule Modification"). A copy of the 2008 Schedule Modification is attached as Exhibit B to this Agreement. The 2008 Schedule Modification called for the Company to file a reclamation plan amendment by February 2010, with final County action on the amendment to take place in 2011.
- E. In June 2008, the County issued a Notice of Violation ("2008 NOV") related to the placement of overburden material in an area known as the East Materials Storage Area ("EMSA"). A copy of the 2008 NOV is attached as Exhibit C to this Agreement. Among other things, the 2008 NOV instructed the Company to cease depositing material in the EMSA.
- F. Due to operational needs at the Quarry, the Company desires to continue using the EMSA. The County is amenable to allowing the Company to use the EMSA pending final action on a reclamation plan amendment, provided the Company files and diligently pursues a reclamation plan amendment for the EMSA. Accordingly, the County and the Company agree as follows:

AGREEMENT

1. With respect to the Reclamation Plan amendment for the EMSA ("EMSA Amendment"), the parties agree as follows:

A. Not later than April 20, 2009, the Company shall submit to the County an application for the EMSA Amendment. Upon a timely request by Company to meet with County staff prior to April 20, 2009 to discuss the requirements for the application, County representatives will make themselves available for such a meeting.

B. Within thirty (30) days of the Company's submittal, the County shall make a completeness/incompleteness determination specifying in writing the information, if any, needed to make the application complete. The Parties intend to meet during the first week of May to facilitate the County's completeness review.

C. If the County deems the application incomplete, the Company shall respond to the County's incompleteness determination by providing a resubmittal within thirty (30) days after the incompleteness determination.

D. Within thirty (30) days of the Company's resubmittal, the County shall review the Company's resubmittal and determine the completeness/incompleteness of the application.

E. In the event the County still deems the application incomplete, the Company shall be required to continue working in good faith with the County to provide the additional material within thirty (30) day resubmittal/review cycles as outlined above. However, if the County determines that the Company has not produced a complete application by July 20, 2009, the County shall assess, starting as of June 20, 2009, a penalty of \$250/day, which daily penalty shall be doubled every thirty days thereafter, until such time as a complete application is submitted to the County and deemed complete by the County. The penalty shall cease when the County deems the application complete.

2. Upon execution of this Agreement, the Company may recommence use of the EMSA as depicted on Exhibits D and E, subject to the stipulations and understandings set forth in this Agreement, pending final action by the County on the EMSA Amendment, and the language in the 2008 NOV instructing the Company to cease depositing material in the EMSA is modified to conform to this Agreement.

3. Nothing in this Agreement shall be interpreted in a manner that indicates that the County will approve the EMSA Amendment or will allow the Company to continue using the EMSA if the EMSA Amendment application is denied or if the Company withdraws the EMSA Amendment application prior to the County taking final action on the application. Nor shall anything in this Agreement be interpreted as a waiver

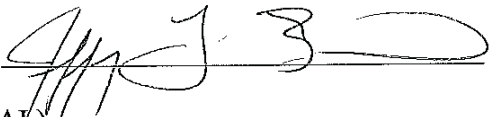
of the County's legal authority, including but not limited to its enforcement authority under SMARA.

4. Due to timing requirements for geotechnical studies, the County agrees to amend and reissue the compliance schedule issued with the 2006 Order and revised pursuant to the 2008 Schedule Modification to extend the date for submission of the Quarry's overall Reclamation Plan amendment application from February 2010 to May 2010.

5. This Agreement is binding on the Company's successors in interest with respect to the Quarry property and operations.

IN WITNESS WHEREOF, the parties have executed this Agreement, in counterpart, on the day and year first hereinabove written.

LEHIGH SOUTHWEST CEMENT COMPANY,


By: 
(SEAL)

ATTEST: _____

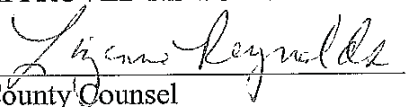
APPROVED AS TO FORM:


Mark D. Harrison
Counsel for Company

COUNTY OF SANTA CLARA,
A political subdivision of the State of California

By: 
Jody Hall Esser
Director, Department of Planning & Development

APPROVED AS TO FORM AND LEGALITY:


County Counsel

Reed Zars

Attorney at Law
 910 Kearney Street, Laramie, WY 82070
 307-745-7979

August 24, 2011

VIA CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Mr. Henrik Wesseling, Plant Manager
 Lehigh Southwest Cement Company
 Hanson Permanente Cement, Inc.
 Permanente Plant
 24001 Stevens Creek Boulevard
 Cupertino, CA 95014

Dr. Bernd Scheifele, Chairman
 HeidelbergCement
 Berliner Strasse 6
 69120 Heidelberg
 Germany

RE: Notice of Intent to Sue for Violations of the Clean Water Act at Lehigh Southwest Cement Company's Permanente Plant in Santa Clara County, California.

Dear Mr. Wesseling and Dr. Scheifele,

We are writing on behalf of Sierra Club to notify you of its intent to file suit against Lehigh Southwest Cement Company, Hanson Permanente Cement, Inc., Lehigh Hanson, Inc., and HeidelbergCement Group ("Lehigh") to enjoin and penalize significant and ongoing violations of the Clean Water Act at your Permanente Quarry and Cement Plant in Santa Clara County, California. Lehigh is liable for the continuous, unpermitted discharge into Permanente Creek of millions of gallons of polluted quarry water, containing elevated levels of selenium and other toxic and conventional pollutants, for at least the last five years. Lehigh is also liable for the continuous, unpermitted discharge of pollutants into Permanente Creek from tons of mine tailings and waste that have been dumped into Permanente Creek. These wastes act similar to coffee grounds, clogging Permanente Creek and continuously discharging a brew of harmful chemicals such as selenium and other toxic and conventional pollutants into its waters.

Both of these types of continuous, unpermitted discharges have caused and/or contributed to significant exceedences of water quality standards for selenium and toxicity in Permanente Creek, have caused and/or contributed to Permanente Creek's state and federal listing as an impaired water body due to the presence of such pollutants, and have substantially diminished the creek's ability to sustain aquatic life including but not limited to steelhead trout and the California red-legged frog, both of which are federally listed as threatened species.

Pollutants illegally discharged by Lehigh into Permanente Creek also enter Santa Clara County's underground drinking water supply as they flow across the unconfined areas of the Santa Clara Subbasin aquifer. The Santa Clara Subbasin aquifer is the primary reservoir of drinking water for San Jose and surrounding cities.

The Clean Water Act at 33 U.S.C. § 1365(a)(1), authorizes citizens to bring suit to enjoin violations of an effluent standard or limitation and to seek civil penalties for such violations. The definition of effluent standard or limitation includes the discharge of pollutants into waters of the United States without a permit. Committee to Save Mokelumne River v. East Bay Utility Dist., 1993 U.S. Dist. LEXIS 8364, 11, n. 7 (E.D. Cal. 1993); aff'd, 13 F.3d 305, 309 (9th Cir. 1993), cert. denied, 115 S. Ct. 198 (1994). Violators of the Act are also subject to an assessment of civil penalties of up to \$32,500 per day per violation for all violations occurring through January 12, 2009, and up to \$37,500 per day per violation for all violations occurring after January 12, 2009, for each violation, pursuant to Sections 309(d) and 505(a) of the Act. 33 U.S.C. §§ 1319(d), 1365(a) and 40 C.F.R. §§ 19.1 - 19.4.

To the extent required by the Clean Water Act at 33 U.S.C. § 1365(a)(1), we are writing to notify you that Sierra Club intends to file suit in the applicable federal district court anytime 60 days after the postmark date of this letter to enjoin and penalize the violations described below.

I. Background

Kaiser Cement Company opened the main Permanente quarry and original cement plant in 1939. Hanson Corporation purchased the quarry and cement plant from Kaiser in 1986. Lehigh Southwest Cement Company is the operator of the facility. Today Lehigh claims the quarry and plant provide over 50 percent of the concrete used in the Bay Area.

Permanente Creek runs from its headwaters in the Coast Range east through the middle of the quarry property, then north through the cities of Los Altos and Mountain View before draining into the San Francisco Bay.



From <http://www.lehighpermanente.com/#/virtual-tour/4537662984>.

II. The Violations

A. Unpermitted Quarry Discharges

According to Lehigh's own statements, the company has been discharging without a proper permit, and continues to discharge without a proper permit, pollutants generated by its quarry mining operations directly into Permanente Creek. Permanente Creek is a water of the United States. In particular, Lehigh's quarry mining operations have exposed pollutants to both rain and ground water. As these waters flow over and through Lehigh's disturbed soils and rock, pollutants such as selenium, arsenic, molybdenum, nickel and manganese, residual blasting agent (ANFO), and other toxic elements and compounds, are picked up by the water and are collected at the bottom of the quarry pit. Lehigh then pumps the contaminated pit water on a regular basis from the quarry pit through a pipe into a waste pond (Pond 4) and thence through a pipe into Permanente Creek. Permanente Creek flows into the San Francisco Bay. Lehigh employs no pollution control measures to reduce or eliminate selenium and other toxic substances that are dissolved and suspended in its wastewater. As Lehigh explained to the Regional Water Quality Control Board, San Francisco Bay Region ("Water Board"):

[T]he quarry dewatering process routes water to Pond 4, where it then discharges to Permanente Creek, almost continuously or regularly depending on the time of year, the volume of storm water and groundwater that collects in the quarry bottom. This regular dewatering process is interrupted only when regular maintenance of the pumping system or other aspects of the storm water management system require maintenance.

Lehigh Response to the Water Board, December 13, 2010, at page 6, attached hereto as **Exhibit A**. A map showing the location of the quarry pit, Pond 4, and the pipe that discharges selenium and other toxic pollutants from the pit and Pond 4 is attached hereto as **Exhibit B**.

According to Lehigh in that same response, “[t]he average *daily flow* into Pond 4 can range from 250,000 to 2,500,000 gallons.” **Exhibit A** (emphasis added).

Not only that, Lehigh also admits that the wastewater it has been discharging into Permanente Creek, and that it continues to discharge into Permanente Creek, is contaminated with selenium¹ in concentrations that greatly exceed water quality standards. Again, according to Lehigh:

The results of the metals analyses indicate that water being collected in the quarry may contain concentrations of selenium that exceed water quality standards, and, when discharged through the quarry dewatering system pursuant to the SWPPP [Storm Water Pollution Prevention Plan], could be contributing to exceedances of the water quality standards for selenium in Permanente Creek.

Exhibit C, Report of Potential Exceedance of Water Quality Standards, Geosyntec Consultants, March 17, 2010, p. 8.

Lehigh’s qualification that the water it is discharging into Permanente Creek “could” contain concentrations of selenium above water quality standards is unnecessary. Although not a necessary element to establish liability under the Clean Water Act, Lehigh’s own sampling evidence shows that selenium concentrations in its wastewater *are* in excess of water quality standards.

The water quality standards applicable to Permanente Creek are set forth in the 2007 San Francisco Bay Basin Water Quality Control Plan (“Basin Plan”) and the California Toxics Rule at 40 C.F.R. §131.38. Both the Basin Plan and the California Toxics Rule establish a chronic total selenium standard of 5.0 micrograms per liter in fresh water. **Exhibit D**. Due to chronically elevated levels of selenium and toxicity immediately downstream from the Permanente facility, EPA recently approve the listing of Permanente Creek as impaired for these pollutants. **Exhibit E**, EPA Approval Letter, November 12, 2010.

¹ “[S]elenium is a naturally occurring element, common in the environment. It is problematic only in high concentrations, but at certain levels has toxic effects. Selenium impacts the reproductive cycle of many aquatic species, can impair the development and survival of fish, and can even damage gills or other organs of aquatic organisms subjected to prolonged exposure. It can also be toxic to humans, causing kidney and liver damage, and damage to the nervous and circulatory systems.” *Ohio Valley Env'tl. Coalition, Inc. v. Hobet Mining, LLC*, 723 F. Supp. 2d 886, 900 (S.D. W.Va. 2010).

Water quality testing performed by Lehigh in January of 2010 found that the concentration of dissolved selenium in Pond 4 was 82 micrograms per liter, well over ten times the applicable 5.0 micrograms per liter water quality standard. (Had Lehigh properly analyzed for total selenium rather than just the dissolved component, this value likely would have been higher.) As explained above, Lehigh discharges the contaminated water in Pond 4 directly into Permanente Creek without employing any measures to reduce selenium concentrations. **Exhibit C**, Report of Potential Exceedance, Table 2-1 and Appendix A, page 4 of 16.

Lehigh has an Industrial General Storm Water Permit issued by the Water Board, but that permit, as its name indicates, only applies during specified storm events and not to the on-going, non-storm water discharges from Pond 4 described here. The Water Board emphatically confirmed this fact on February 18, 2011:

Lehigh repeatedly asserts that the Facility's discharges of quarry bottom water, wash-down water, and dust suppression water are in compliance with the Industrial General Storm Water Permit. The Industrial General Storm Water Permit specifically prohibits all three of these self-admitted discharges from the Lehigh facility. *Lehigh is grossly mistaken in its assertion that the Facility is permitted to discharge these three types of non-storm water flows.*

Exhibit F, Water Board staff review and response to Lehigh's letter of December 13, 2010, in response to our "13267" letter of November 29, 2010, p. 1 (emphasis added).

Because Lehigh pumps the water from its quarry pit into Pond 4 on a continuous or regular basis, and because Pond 4 is the functional equivalent of a full bathtub, the continuous pumping of quarry water contaminated with selenium and other toxic substances inexorably results in the continuous discharge of pollutants through a pipe directly into Permanente Creek. Lehigh has no permit authorizing this continuous discharge. Therefore, Lehigh has violated the Act every day, for each pollutant, for at least the last five years when it has actively pumped and discharged water-borne selenium and other toxic substances from its quarry to Pond 4 and thence to Permanente Creek without a permit.

B. Unpermitted Stream Fill Discharges

According to Lehigh's own reports, Permanente Creek has been used, and continues to be used, as a disposal area for quarry mining wastes. Mine tailings, overburden and other wastes have been dumped, and continue to be dumped into Permanente Creek throughout the stream's path within Lehigh's property. Lehigh's March 11, 2011 "Permanente Creek Long-Term Restoration Plan" documents many of these stream disposal sites. An annotated stream profile diagram, taken from Figure 2-5 in Lehigh's Restoration Plan and attached hereto as **Exhibit G**, shows the

location of some of the more notorious mine tailing and overburden waste disposal sites at Lehigh's quarry along the various sections of Permanente Creek.

Mining wastes have been dumped into Permanente Creek by bulldozers, dump trucks and other mining equipment, with the assistance of gravity. The disposal sites in Permanente Creek include, but are not limited to, those shown on **Exhibit G**, attached hereto. The disposal sites continuously discharge, release and otherwise add their toxins into the creek's waters much like coffee grounds in a percolator. As the waters of Permanente Creek flow over and through the mining wastes dumped into the creek, pollutants such as selenium, arsenic, molybdenum, nickel, manganese, residual blasting agent (ANFO), and other toxic elements and compounds, are dissolved into and suspended in the water. These added pollutants flow downstream through Lehigh's property, through public parks and neighborhoods, and finally into San Francisco Bay. The mine tailings and other rock and sediment wastes that physically remain in the creek bed and adjacent wetlands, or that are carried to various downstream locations during higher flow events, are also unpermitted pollutants that exist in the water column, banks and wetlands of Permanente Creek.

According to Lehigh's May 2010 Hydrologic Investigation, appended to its Reclamation Plan Amendment submitted to Santa Clara County on May 21, 2010, the average concentration of dissolved pollutants in Permanente Creek increases significantly as the creek flows through Lehigh's mining wastes. **Exhibit H**. For example, the water in Permanente Creek downstream of most of Lehigh's pollutant discharges at monitoring location SW-2 contains from three to over 100 times the dissolved concentrations of arsenic, selenium, nickel, manganese and molybdenum compared to the water upstream of most of Lehigh's discharges at monitoring location SW-1. See **Exhibit H**, Figure 6.2 (monitoring locations); Table 6.6 (average pollutant values for monitoring locations); and Figures 6.13 and 6.14 (bar charts illustrating significant increase in pollution from SW-1 to SW-2).

Lehigh has no permit authorizing the continuous discharge of dissolved and suspended pollutants from mine wastes dumped into Permanente Creek described above. Lehigh has no permit for the mine wastes that continuously clog the bed, banks and wetlands of Permanente Creek described above. Therefore Lehigh has violated the Act every day at each disposal site for at least the last five years as a result of such unpermitted discharges.

III. Offer to review information.

To the extent you have evidence that shows, contrary to the allegations in this letter, that Lehigh is in full compliance with all applicable requirements we urge you to provide it to us so that we may potentially avoid, or at least limit, litigation on these issues.

IV. Conclusion

Lehigh has been operating, and continues to operate the Permanente facility in violation of the Clean Water Act. We will seek an injunction to end the illegal, unpermitted discharges alleged in this letter, to restore the hydrologic and aquatic integrity of Permanente Creek, and to recover, on behalf of the United States, the maximum civil penalty for Lehigh's Clean Water Act violations for at least the last five years, as allowed by the applicable statute of limitations.

The address of Sierra Club is 85 Second Street, Second Floor, San Francisco, CA 94105. Sierra Club has individual members who have been, and continue to be, injured by the excessive and unlawful discharges from Lehigh's Permanente facility into Permanente Creek described above. Those injuries are fairly traceable to Lehigh's unlawful discharges, and can be redressed, at least in part, through the cessation of such discharges. If you have any questions regarding the allegations in this notice letter, believe any of the foregoing information to be in error, wish to discuss the exchange of information consistent with the suggestion above, or would otherwise like to discuss a settlement of this matter prior to the initiation of litigation, please contact the attorneys below.

Yours sincerely,

REED ZARS

Reed Zars
Attorney at Law
910 Kearney Street
Laramie, WY 82070
307-745-7979

GEORGE HAYS BY RZ

George Hays
Attorney at Law
236 West Portal Avenue, #110
San Francisco, CA 94127
415-566-5414

pc: by certified mail:

Lisa Jackson, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dorothy Rice, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Eric Holder, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Jared Blumenfeld, Regional Administrator
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA 94105

Bruce Wolfe, Executive Officer
San Francisco Bay
Regional Water Quality Control Board
1515 Clay St., Suite 1400
Oakland, CA 94612

Registered Agent
Lehigh Southwest Cement Company
Corporation Service Company
2730 Gateway Oaks Dr., Suite 100
Sacramento, CA 95833

pc: by regular mail

Santa Clara County Board of Supervisors
70 West Hedding Street
San Jose, CA 95110

Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118

Stevens & Permanente Creeks Watershed Council
2353 Venndale Avenue
San Jose, CA 95124

Midpeninsula Regional Open Space District
330 Distel Circle
Los Altos, CA 94022-1404

Department of Conservation
Office of Mine Reclamation
801 K Street, MS 09-06
Sacramento, CA 95814-3529

Exhibits Provided in Enclosed CD

Exhibit A: Lehigh Response to the San Francisco Bay Regional Water Quality Control Board, December 13, 2010, page 6.

Exhibit B: Map showing the location of the quarry pit, Pond 4, and the pipe that discharges selenium and other toxic pollutants from the pit and Pond 4.

Exhibit C: Report of Potential Exceedance of Water Quality Standards, Geosyntec Consultants, March 17, 2010, p. 8.

Exhibit D: 2007 San Francisco Bay Basin Water Quality Control Plan (“Basin Plan”) excerpts, and the California Toxics Rule at 40 C.F.R. §131.38.

Exhibit E: EPA approval letter listing Permanente Creek as impaired for selenium and toxicity, November 12, 2010.

Exhibit F: Water Board staff review and response to Lehigh’s letter of December 13, 2010, in response to our “13267” letter of November 29, 2010, p. 1.

Exhibit G: Permanente Creek stream profile diagram showing examples of mine waste dump sites that continuously discharge pollutants into the creek.

Exhibit H: Hydrologic Investigation, Attachment F to Lehigh Reclamation Plan Amendment submitted to Santa Clara County on May 21, 2010, excerpts including Figure 6.2, Table 6.6, and Figures 6.13 and 6.14.

**EIR SCOPING MEETING
LEHIGH-HANSON PERMANENTE QUARRY – COMPREHENSIVE RPA
Public Comments Summary
March 30, 2011**

#	Speaker Name	Organization	Comments	
1	Karen Del Compare	Resident	Offsite truck traffic – intersection of Stevens Creek/Foothill Expwy. Noise impacts – trucks, quarry operations Alternative studied should include “no project” and “no new quarry” project Mercury pollution due to limestone rich in mercury. Creek impacts due to bridge. Mine safety, concerned with history of various violations Please see letter from OMR that says cement plant should be part of mine.	B-1
2	David Cook	SCV Audobon Soc	Project description should include description of existing environmental setting and should include description or list of pollutants and list of violations.	B-2
3	Anne Pflager	Resident	Current truck traffic and air quality is not reflective of peak periods. Need to project and analyze future peak volume and production rate increases. Water quality impacts and discharges in to Permanente Creek. Concerned with holding ponds, which discharge in to creek, and mercury levels in water. Visual impacts resulting from new quarry project. Blasting impacts.	B-3
4	Phil Pflager	Resident	Visual impacts concerned with current and future views. Noise impacts. Air quality impacts. Pollution from mine waste (overburden). Water impacts from discharging in to the creek from ponds. If economy comes back and demand for cement increases, impacts from project will be greater. Project for future peak.	B-4
5	Cathy Helgerson	Resident Citizens Against Pollution	Pollution from aluminum plant should be studied, buried materials in soils, site should be a superfund site. No project alternative should include no quarry expansion. Fault lines on site.	B-5

A-136

			Concerned with tree removal and vegetation after reclamation is inadequate. Concerned with mercury pollution. Concerned project will pollute wells in vicinity of project.	B-5 cont.
6	Bill Almon	Resident Quarry No	Visual impacts – West Materials Storage Area not planted and should be considered a violation. Biological resources and impacts to wildlife (native plants, kite, CRLF, etc.) Geology – faults and slope instability, mining activity that causes erosion Pit water is dumped into holding ponds that discharge in to Permanente Creek Noise and vibration impacts from quarry activity, especially blasting. Air quality – need to update health risk assessment, and greenhouse gases.	B-6
7	Marvin Howell	Lehigh/Hanson	Comments on history of site and local supplier of cement. Stated once site is reclaimed creek will be restored to historic condition and flows. Quarry production levels are determined by cement plant production.	B-7
8	Henrik Wessling	Lehigh/Hanson	Commented on air quality and mercury, new standards must be achieved by September 2013. Reduction efforts by Lehigh.	B-8
9	Tim Mats	Lehigh/Hanson	Company representative for environmental affairs. Commented on emission reductions, reclamation achievements for Redding plant.	B-9
10	Frank Geefay	Resident	Slope terracing impacts, benches visible. Financial assurances should be available to reclaim site.	B-10
11	Barry Chang	Resident No Toxic Air Councilmember	Violating SMARA and should be taken off AB3098 list. Geological study of fault lines and earthquake, slide. Soil from new quarry will create toxic materials, impacts to environment including Air Quality, Water Quality. Manage toxic materials /mining tailings.	B-11
12	Artur Plonowski	Resident No Toxic Air	Concerned with current health impacts from cement plant and should be considered. Mercury content in materials is high on this site and should be analyzed in health risk analysis.	B-12
13	Rod Sinks	Resident	Vested rights. Asked why the County can accept an application when the	B-13

			<p>Reclamation Plan is out of compliance. West Material Storage Area is not being reclaimed. East Material Storage Area should not be allowed to receive materials since the current Reclamation Plan is out of compliance. Cumulative impacts from mercury, and water quality impacts from project. Alternatives should include - No new quarry project alternative.</p>	B-13 cont.
14	Marylin McCarthy	Resident West Valley Citizens Air Watch	<p>Recommends alternatives to cement for construction. Mining expansion will create new pollution.</p>	B-14
15	Joyce Eden	Resident West Valley Citizens Air Watch	<p>Wants high quality EIR, thorough analysis. Mixing two is confusion, and wants expansion quarry separated from existing out of compliance area for the analysis. Suggests two EIRs. Alternatives should include No New Quarry expansion alternative. Protections should be included for habitat. Visual impacts, protect views. Mercury impacts from quarry operations.</p>	B-15
16	John Bartas	Resident AO-HOC	<p>Lehigh/Hanson has record of violations, should be considered. Have not complied with 1985 requirements. SMARA violations Air quality and dust concerns.</p>	B-16
17	Tim Brand	Resident WVCAW	<p>Concerned with: dust, visual impacts, mercury (see info on EPA and CKD website regarding removal as solid waste) Wants violations listed in EIR. Concerned regarding County oversight.</p>	B-17
18	Paula Wallis	Resident	<p>Alternatives – wants No Quarry included in analysis. What percent of Lehigh cement is actually used in Bay area? There are impacts of cement being imported, how does that compare to impacts of new quarry. Mercury content in overburden should be analyzed. How much limestone is in the expansion area and is it worth it?</p>	B-18
19	Libby Lucas	Resident	<p>Would like to know if anyone and who is monitoring water quality/mercury in Stevens Creek reservoir.</p>	B-19

			Should be air monitoring in San Antonio Park, and downstream of creek. If creek overflows, it goes to school and park fields which leaves mercury at those sites. What is residual fallout of mercury on surrounding habitat areas? Look at cumulative impacts.	B-19 cont.
20	Tung Sun Tung	Resident	Concerned with existing violations and how can expansion be considered because of history. Applicant has not shown success in reclaiming WMSA. No track record. Dust control. Air quality.	B-20
21	Yun Ning Chen	Resident	Health risk should be included. Mercury impacts. Financial impacts due to increased health risks.	B-21
22	Arvind Rao	Resident / Student	Truck traffic is unsafe, rocks coming from trucks. Mercury impacts to students in close proximity. Mercury emission data provided to EPA is erroneously low. Cement plant should be located far away from urban area. Supports reclamation, should find balance.	B-22
23	Ken Smythe	Quarry No	Alternatives should include Lehigh Redding Plant and no quarry expansion. Concerned with mercury emissions. Standards and data from EPA regarding mercury should be included in EIR.	B-23
24	Homer Tong	Fremont Union High School District	Concerned with health risk on students. Health risk analysis should be included. Control mercury on site. Timing of project, include what this means. Full disclosure.	B-24
25	Anya Kroth	Resident	Students at Montebello have high autism rates. Mercury causes autism. Close the cement plant and clean site. Project will impact air, noise, and water. Consider "green" alternatives to cement.	B-25
26	Leslie Fowler	Resident	Odor and air impacts from site. Truck impacts to odor, dust, rocks, trips is too high at 700 per night. ADHD is high in area, is it because of facility operations?	B-26
27	Alice Hampton	Resident	Asphalt was dumped or recycling center at Lehigh. Said they would close site in 1980's, but didn't.	B-27
28	Don Staub	Resident	Dust as far as Foothill/280 comes from site. Trucks should be covered, dust	B-28

		No Toxic Air	and rocks, but they are not. Need to follow rules in place. Foothill and Stevens Creek, dust in area is high.	B-28 cont.
	Written comments only:			
29	Fran Grinels	Resident	Impacts to health risk to residents in area, not concerned with viewshed.	B-29

Figure 3.4-6 Mining and Reclamation Phase 5

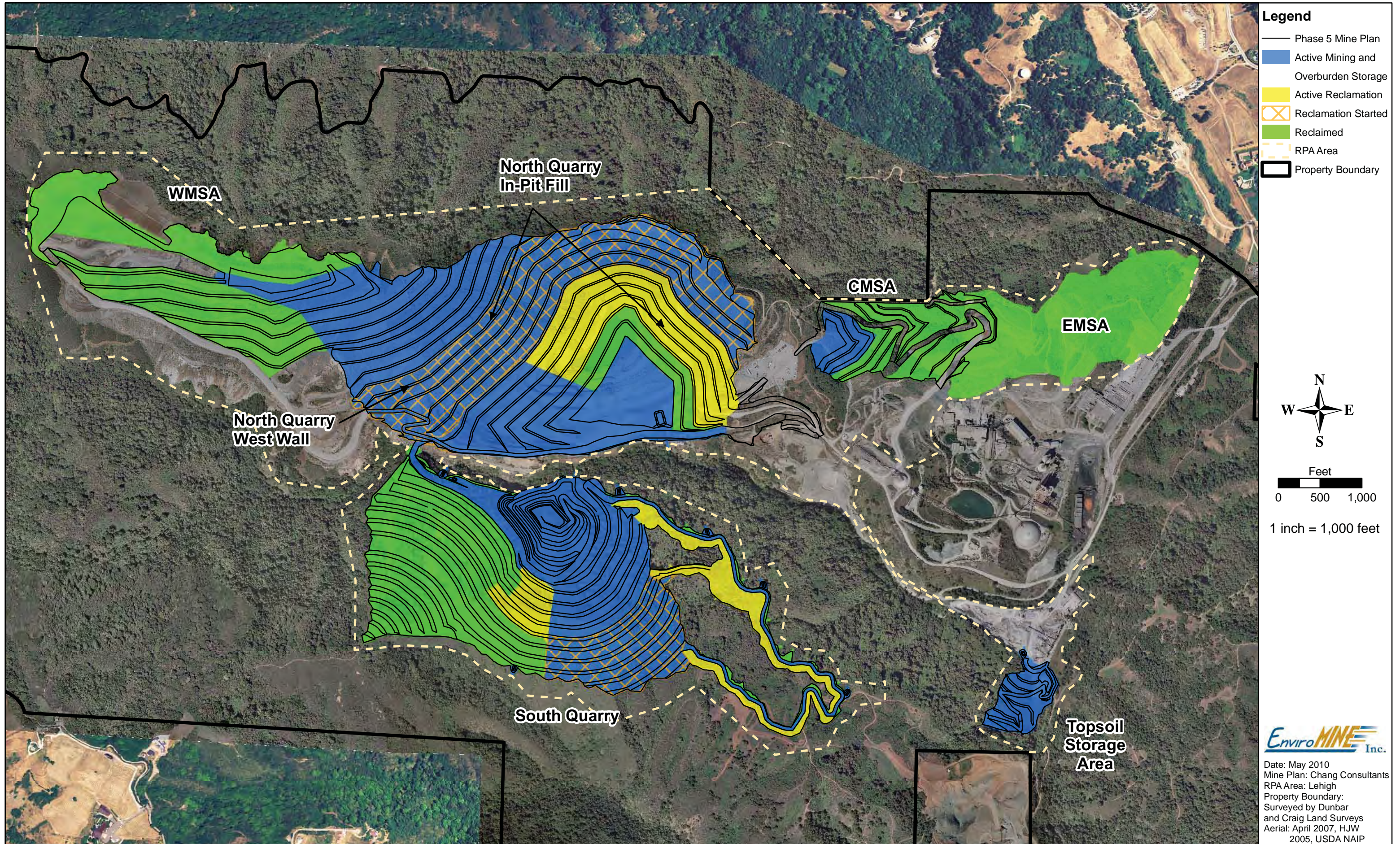
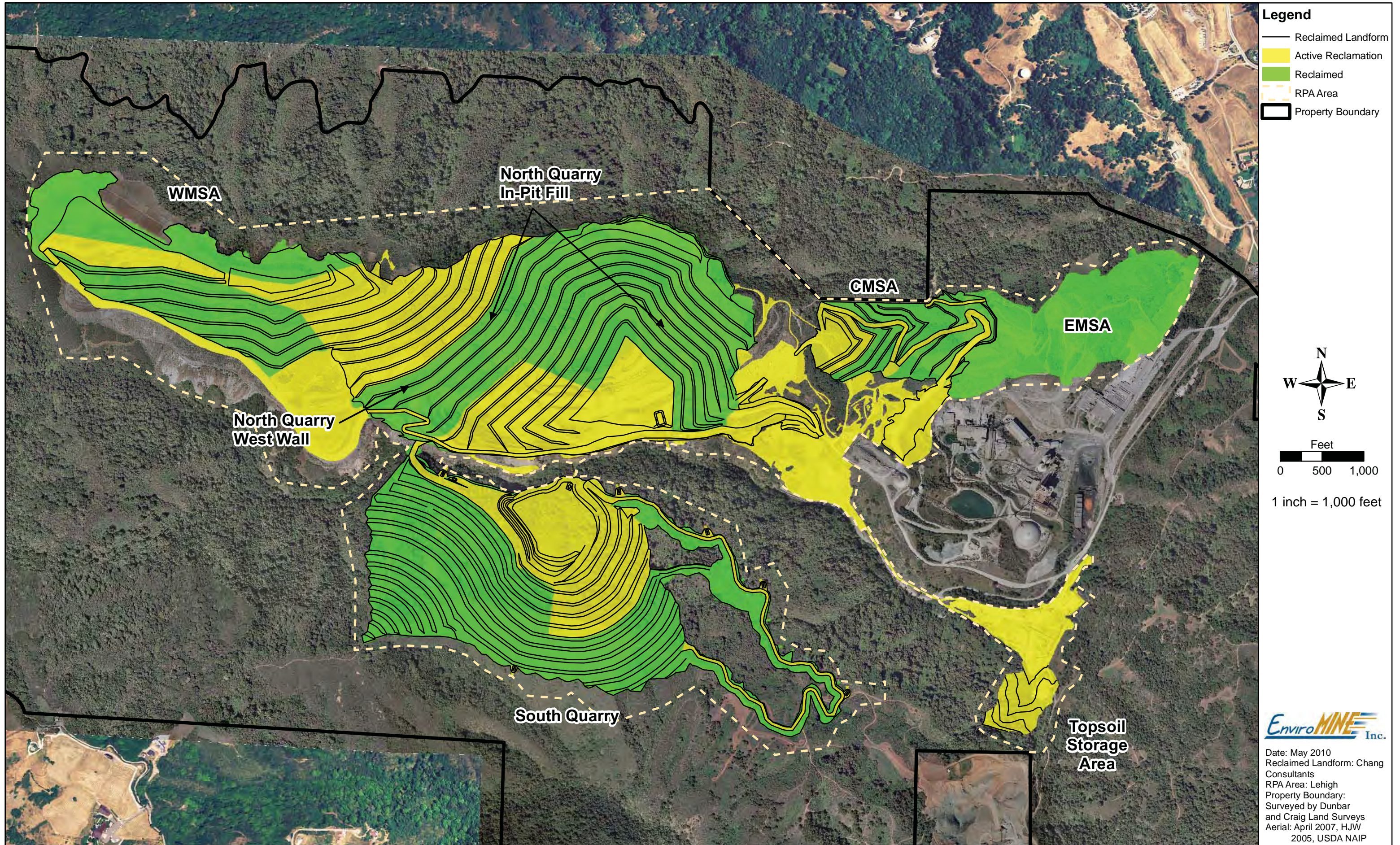


Figure 3.4-7 Final Reclamation



From: "Bill Almon" <balmon@pacbell.net>
Date: April 11, 2011 12:43:28 PM PDT
To: "Marina Rush" <marina.rush@pln.sccgov.org>
Subject: Comments on NOP

Marina, Here are our comments due today. Thanks for all you do.

Bill

SCC NOP Comments 4-11-11_with_signature.pdf ↪

WILLIAM J. ALMON

April 11, 2011

Marina Rush
County of Santa Clara
70 West Hedding Street
San Jose, CA 95110

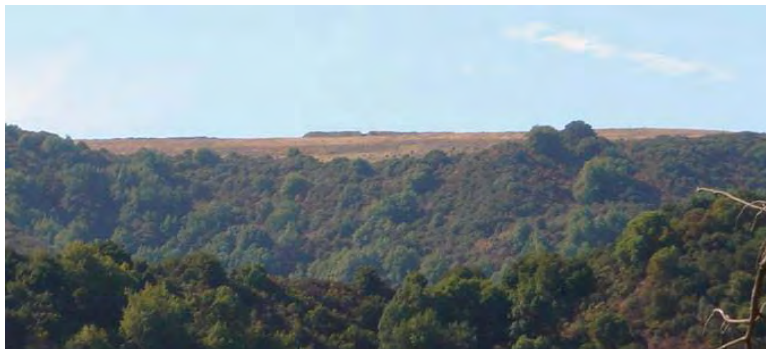
Dear Marina,

QuarryNo hereby responds to the Santa Clara County request for Public comments on the possible environmental issues for the proposed Comprehensive Reclamation Plan Amendment and Conditional Use Permit for Lehigh Permanente Quarry. It should be noted that although we are amending a Reclamation Plan from 1985 there has been no reclamation to date. We repeat there has been no reclamation to date. This is very troubling and brings into question the entire process and regulatory focus.

Our comments below follow in order the Environmental Topics listing in the County Notice of Preparation dated March 10, 2011.

VISUAL RESOURCES – The County solicited comments on public scenic view site lines in addition to those shown in the Reclamation Plan. Our concern goes much farther as this is not a new issue.

Kaiser Cement, the original owner, granted a permanent scenic easement (deed dated August 18, 1972) to the County to shield the Quarry from Public view. In addition Condition #8 of the current 1985 Reclamation Plan states that the maximum height of Area A (now designated the West Material Storage Area) shall not exceed the top of the ridgeline.



Today it is clearly visible as a result of Lehigh deliberately and continuously dumping excessive mine waste there. Lehigh has violated a given property right of the Residents of Santa Clara County while the County Supervisors looked on and directed the Staff to take no effective action.

This ridgeline must be restored if the Public is to have any confidence in Lehigh's commitment to be a good neighbor and the Supervisors oath to uphold the law.

Lehigh's disregard for Visual Resources is not a thing of the past but continues today in the Santa Clara County Rancho San Antonio Park where Lehigh has recently dumped mine waste so high as to intrude on Park trails and views. This has been ongoing since 2009 when Lehigh arrogantly but accurately stated in their submitted Reclamation Plan that such dumping will probably be completed prior to any approval.

The purpose of an EIR is to mitigate not just identify environmental impacts. The damage is now irreversible so the request by the County for Public comments on mitigating the impact is disingenuous. The proposed EIR should be expanded to list all irreparable damage that has already occurred not just the impact on the Park. Here is a photo of the view from the PG&E trail in Rancho San Antonio Park.



In addition the current Reclamation Plan dated 1985; the one now being amended here, stated that "Planting under the guidance of this Plan is ongoing" The aerial photo here shows that to be totally false.



Lehigh is willing to promise anything but fails to live up to its promises knowing that the County Board of Supervisors will support its inaction. It is unreasonable to expect the Residents to have any confidence in new steps to preserve the visual environment when prior ones are disrespected by their elected officials and Lehigh... The current view from Highway 280 going North of the Quarry can only be labeled “ugly” as viewed from multiple sight lines.

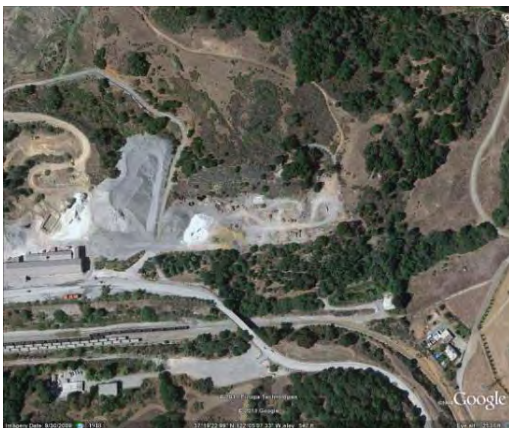
BIOLOGICAL RESOURCES – The entire Biological Resource Assessment (Attachment E) is highly flawed and must be completely redone. It is based on 2-3 year old surveys, studies and field investigations conducted by Lehigh’s consultant WRA in 2008-2009. It alerts one to forthcoming documents in 2010 which are obviously now available.

Worse it is erroneous since Lehigh withheld from WRA the fact that they discharge hundreds of thousands to millions of gallons per day of industrial process water into Permanente Creek as part of normal operations as described in the California Regional Water Quality Control Board Notice of Violation dated February 18, 2011.

Such continuous high flows are not taken into consideration in the WRA study. Instead WRA makes calming statements such as “Portions of the Creek only convey surface water for a few weeks during annual peak rains” on Page 23. Lehigh obviously cannot be trusted.

The preservation of woodland and wildlife is open to question if Lehigh’s past actions are taken into account. A good example is the East Material Storage Area. Here is a before and after photo showing the destruction of native oaks and wildlife habitat.

BEFORE:



AFTER:



All this destruction occurred over the past 2 years as Lehigh expanded into the East Material Storage area without an EIR in place following their then unapproved Reclamation Plan dated April 2009 and even currently not yet approved. The damage has been done in direct violation of CEQA.

Permanente Creek will bisect the area designated by Lehigh for expansion as it will flow directly between the current North Pit and the new South Pit. It will be bridged by a 4 lane road requiring a massive bridge to carry the traffic over it.

The endless lines of trucks bringing limestone out of the Quarry as well other trucks bringing mine waste out to fill the old Pit and the Central Material Storage Area will devastate the surrounding area and certainly Permanente Creek. However nowhere in the submitted Reclamation Plan are there estimates of the bridge traffic. No where is there an analysis of the impact of the traffic on the wildlife there. While the Reclamation Plan addresses Off Site Traffic there is nothing provided for On site traffic. This is a major omission.

We do know that the mine waste trucked over the bridge to the East Material Storage Area alone will total 6.5 million tons. After adding the associated limestone and the Central Storage Area mine waste the amount needed to be trucked over the bridge is staggering. The continuous road dust and rocks falling into Permanent Creek as a result of the bridge traffic has not been identified making the comment “The proposed bridge will span the creek and channel will remain as it currently exists with natural substrate.” on page 56 ludicrous.

Permanente Creek downstream is a breeding area for the California Red Legged Frog and the construction of a massive bridge across it sized to carry truck traffic continuously will surely be a final death knell for the “protected” Red Legged Frog living below it. We say protected in quotes as it is obviously not protected here.

The California Red Legged Frog is listed as a Threatened Species under the Endangered Species Act. It gained international fame in Mark Twain’s famous short story “The Celebrated Jumping Frog of Calaveras County”. They are now present in only 10% of their original habitat.

Lehigh currently has a request in for draining their ponds along the Creek but the Bridge will surely be their final solution for what they regard as the frog problem. Lehigh has long touted their funded studies by Dr. Mark Jennings but an independent Biologist must be retained to confirm the dire outcome that is suggested here for the California Red Legged Frog.

CULTURAL RESOURCES -- The Lehigh Quarry and Cement Plant has over 100 years of History in Santa Clara County. Henry Kaiser, an exceptional businessman, at one point lived on the property. During World War II incendiary bombs made of magnesium were produced there. Ownership thereafter changed and with multinational business cycles the Quarry and Cement Plant passed to German ownership.

Regardless of ownership the site was always a source of what we know to be today major pollution. In 2005 it was a top emitter of Mercury producing 1,284 pound while claiming 219 pounds. The mine waste conveniently labeled overburden strewn over the site contains toxins that meet Superfund levels.

Regretfully it can only become a lasting monument to Man’s insensitivity to his environment.

GEOLOGY & SOILS -- While there is extensive discussion of soil types and factors of safety in the Reclamation Plan there is little confidence provided to the Public that Lehigh will abide by the State Mining and Reclamation Act (SMARA). SMARA is repeatedly quoted with no mention made as to the extensive existing erosion on the site and the high risk of damaging earthquake activity.

SMARA does not allow for an acceptable level of erosion. Any erosion is a violation of SMARA. However the County has failed to inspect and force Lehigh to abide. While the Public sees erosion everyday the County sees nothing. Erosion washes away topsoil, it inhibits revegetation and leads to sediment buildup in streams. There must be a firm plan in the EIR with budgeted resources to demonstrate that the County can properly manage the Lehigh Quarry operation per SMARA.

This is particularly critical as the County is now accepting responsibility to regulate a Conditional Use Permit as well as the current Reclamation Plan. Since 1985 there has been no reclamation. After 26 years we are again promised reclamation. There is no Public confidence it will happen now.

The Lehigh plan is to dig a new 1,000 foot deep Pit in a residential neighborhood which is close to the San Andreas Fault line. We know that the North side of the current Pit is a slopeless vertical wall as a result of earthquake induced landslides. The Berrocal Fault Line runs through the center of the East Material Storage Area (EMSA) and any landslide there promises to go into Permanente Creek, a Federally Threatened Species Habitat, and onto adjacent private property.

Over the next 20 years there is a reasonable expectation of significant seismic activity. Golder Associates, Lehigh's consultant, says there are natural shear lines between the limestone and the greenstone below. Further they say that in some places the final slopes for the South Pit may not be sufficient to preclude instability.

Consequently for these stated risks Lehigh must be accountable for any financial losses that their mining disturbance causes. The Public does not want to inherit the financial exposure after Lehigh has left the scene or sold the operation.

A bond will not suffice and consequently the existing Hanson Permanente Cement Title to the property must include a first lien to the County limited up to the full value of the property for proper remuneration. The public does not want to deal with a far away Bond issuer arguing over the wording of the bond covenants.

Lehigh has deliberately violated SMARA by expanding beyond its Mining Boundaries. The California Office of Mine Reclamation states that this is a Major SMARA Violation. This should be front and center in the proposed EIR but there is no mention or even suggestion of that in the documents presented to the Public. Why is this hidden?

The major residue resulting from the Lehigh operation is the extensive mine waste scattered over the site and affectionately called overburden. According to Attachment H of the Reclamation

Plan (Table 5) the EMSA overburden contains 2.6mg/kg of Arsenic, well above California Health Screening Levels (CHSL).

The same Table 5 states Mercury to be .11mg/kg but Lehigh reported 3 times as much (.31mg/kg) in the rigorous sampling done for the Air District and reported December 6, 2010. In total it appears the overburden is toxic. The assumption in the Reclamation Plan is that it is not. This is a major cover up.

It is very critical in that the overburden mine waste is scattered everywhere and will even be blended into the top soil covering over 700 acres at a depth of only 3 inches. Below that is the toxic mine waste. In addition it will fill the North Pit and be piled high forever contributing toxins into the watershed. After having been blasted out of the ground and crushed it is now much more porous and hence the leaching estimates in the Reclamation Plan are erroneous.

Consequentially there must be extensive testing of the current overburden in the WMSA and the EMSA to determine its true toxicity level and what must be done to remove it. This is a serious issue which is swept under the Reclamation Plan rug.

Hydrology, Drainage and Water Quality -- Lehigh was served a Notice of Violation (NOV) by the San Francisco Regional Water Quality Control Board on February 18, 2011 for discharging huge volumes of Quarry Pit water into Permanente Creek. In the NOV the Water Board noted Lehigh's failure to correct past violations and its non-compliance attitude.

This NOV was based on prior inspections as well as Lehigh responses to the Water Board particularly the Lehigh response of December 13, 2010. In that response Lehigh stated the volume of water dumped into Permanente Creek ranged from a flow of 250,000 gallons per day to 2,500,000 gallons per day.

This amount of water originating primarily in the Pit bottom overwhelms all natural flows into Permanente Creek yet is not reflected in the Reclamation Plan. Equally significant the content of the water is quite toxic. According to Lehigh this daily discharge is mandatory to operation of the Quarry.



It suggests that we have to make a trade off between Permanente Creek or a new Quarry for the next 20 years. However this is not addressed in the EIR nor are Lehigh's violations listed.

Without County regulation Permanente Creek will be nothing more than a waste water sewer pipe in 20 years.

The Reclamation Plan focuses only on Hydrology and Water Quality when mining stops. The Conditional Use Permit is not addressed but it will govern 117 acres of the operation. The County must delineate in the EIR the terms of the Conditional Use Permit including controls and penalties that will be imposed to prevent the demise of Permanente Creek.

PUBLIC SERVICES-NOISE ABATEMENT -- The noise emanating from the facility particularly at night is a public nuisance. The repeated booms from the blasting is even louder but of shorter duration. While Lehigh pledges in their reclamation Plan that there will be no blasting on weekends and at night such blasting is ongoing today. There must be daily fines in the Conditional Use Permit if it continues to occur in the future.

LAND USE -- The assumption is made in the Reclamation Plan that the land will eventually be used as Open Space. This is an appealing use as it requires less reclamation cost for Lehigh while at the same time blending into the local landscape. However how this will be assured is unaddressed. Lehigh states that they reserve the right to mine on the land for other materials and even consider other usages so the Open Space designation is questionable. This designation must be certain or else stated as only an attractive yearning.

AIR QUALITY -- The omission of the adjoining Cement Plant impact on Air Quality is not acceptable. The two operate as one integrated operation and hence cannot be separated when it comes to Public Health. This will be part of the cumulative impact of concern.

GREENHOUSE GAS EMISSION -- Lehigh is the 2nd largest emitter of Greenhouse Gases in Santa Clara County. Cars represent only 36% of the CO₂ emissions here with industry generating 43%. Santa Clara County is unique in this regard. However as SB375 is implemented the County will have to force reduction actions on residents to accommodate Lehigh's load as Lehigh's emissions are directly tied to their production.

To stay in production Lehigh must emit CO₂ into the atmosphere as well as Methane and Nitrous Oxide. Methane is 21 times and Nitrous Oxide 310 times in impact as the same amount of Carbon Dioxide. In addition to these emissions Lehigh has a minimum of 100,000 Diesel truck trips per year transporting product to/from the facility.

Each County will be given a target to meet and Santa Clara County will have to make reductions elsewhere to offset the Greenhouse Gas load generated by Lehigh over the next 20 years. According to the California Air Resources Board (CARB) the main focus will be on creating disincentives to drive. These will include new taxes and fees on cars and gasoline plus congestion pricing tolls and parking fees. If these fail CARB suggests even incenting residents to leave.

We cannot shut down power plants but the County Supervisors can limit expansion of Quarries and companion Cement Plants. The EIR must spell out the Greenhouse Gas emissions projected for the next 20 years due to Lehigh operations and detail the impact on residents. Not granting a

Use Permit for a new Quarry is not a choice shown in the Santa Clara County Climate Action Plan. Instead the County is looking for residents to make significant sacrifices to save Lehigh.

ALTERNATIVES -- The alternative to digging a new Quarry Pit in a residential area is not to do it. Lehigh possesses another Quarry with dramatically lower Mercury content in Redding California. That limestone can be shipped here by rail at the same cost both in greenhouse gas emissions as well as direct transportation costs. An independent analysis must be done and included in the EIR.

GROWTH INDUCING IMPACTS -- We must have Cement but it does not have to be produced locally. Cement is only 10% of the concrete poured today. It can be brought by rail economically and is transported today throughout California. Consequently rather than increasing growth it would appear that Lehigh will reduce growth by making Santa Clara County less appealing to those concerned about their health and the environment. There must be independent studies done at Lehigh's expense to prove the opposite.

CUMULATIVE IMPACTS -- There are many cumulative impacts. The combined impact of air borne toxins falling from the sky onto the ground and leaching into the water supply is obvious but unaddressed. The combined impact of a Cement Plant coupled to a Quarry is obvious but unaddressed. More subtle is the cumulative effect of 69 toxins being breathed simultaneously. That is not addressed here either but must be in the draft EIR.

USE PERMITS -- This is a topic unaddressed in the NOP but of paramount concern. Use permits are key to the County's ability to regulate the Lehigh Quarry. The elements to be regulated must be identified along with how they will be measured and penalties assessed if they are not met. Their absence here is disquieting.

Thank you for this opportunity to comment and we hope this submission is taken into consideration in the development of the draft EIR.



Bill Almon
Acting for the Members of QuarryNo

From: Shani Kleinhaus <shani@scvas.org>
Date: April 10, 2011 10:48:39 PM PDT
To: Marina Rush <marina.rush@pln.sccgov.org>
Cc: Bob Power <bob@scvas.org>
Subject: **Lehigh Permanente Quarry- scoping comments**

Dear Ms. Rush,
Please find attached Santa Clara Valley Audubon Society's scoping comments for the Lehigh Permanente Quarry Project EIR.
Thank you,
Shani Kleinhaus

SCVAS-Lehigh-Scoping-April11.pdf ↪

Shani Kleinhaus
Environmental Advocate
Santa Clara Valley Audubon Society
shani@scvas.org
(650) 868 2114



Santa Clara Valley Audubon Society
Founded 1926

April 10, 2011

Marina Rush, Project Manager,
County of Santa Clara Planning Office

Dear Ms. Rush,

Santa Clara Valley Audubon Society (SCVAS) is pleased to provide Environmental Impact report (EIR) scoping comments for the Lehigh Comprehensive Reclamation Plan Amendment and Conditional Use Permit for Permanente Quarry (State Mine ID #91-43-004), (Project). The Project would expand the mining area, excavate a new mining pit, and approve the currently unauthorized use of existing material storage areas. In addition, the Project would construct new roads in the Permanente Creek watershed, and a new bridge across Permanente Creek. The overburden from the new pit would be deposited in the existing pit and additional storage areas. The Project would allow mining activities in areas that possess no vested mining rights. The Project proposes that the cement plant operates under a separate permit outside the boundary of the proposed reclamation area. **It is not clear from the NOP whether or not the EIR would include environmental impacts from operations of the cement plant or from traffic associated with the quarry and the Cement Plant in the analysis.**

The California Environmental Quality Act (CEQA) requires that Environmental Impact Report analyze all direct environmental impacts - both direct and indirect.

1. Direct or primary effects that are caused by a project and occur at the same time and place.
2. **Indirect or secondary effects that are reasonably foreseeable and caused by a project, but occur at a different time or place.**

Since mining activities provide the materials for the Lehigh Cement Plant. It is reasonable to assume that approval of the project would increase the scope of operations at the Lehigh Cement Plant and would enable the cement plant to continue operating longer into the future. Thus, **indirect impacts must include any and all reasonably foreseeable environmental effects associated with cement production and transportation.**

We ask that the EIR analyze impacts of the Project AND of cement production at the Lehigh Cement Plant, and transportation/traffic associated with the Project and the Cement Plant. Please include in this analysis: Visual/Aesthetic Resources, Biological Resources, Geology and Soils, Mineral Resources, Surface Hydrology, Hazards and Hazardous Materials, Drainage and Water Quality, Public Services/Utilities and Service Systems, Noise and Vibrations, Air Quality, Greenhouse gas emissions, Transportation/Traffic, Recreation, and Public Health.

p. 1 of 3

22221 McClellan Road, Cupertino, CA 95014 Phone: (408) 252-3748 * Fax: (408) 252-2850
email: scvas@scvas.org * www.scvas.org

In addition:

Please discuss all current and historical environmental law violations by the Lehigh Quarry and Cement Plant, including but not limited to the Federal Clean Water Act (CWA), the California Water Code (Water Code), and the Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) and compliance (or non-compliance) with s current permits, including Order No. 97-03-DWQ (the Industrial Storm Water General Permit), and the Clean Air Act.

Please identify heavy metals and toxic materials that may be released into the Permanente Creek and Stevens Creek Watersheds or into the air as a direct or indirect effect of the Project. Please analyze the impacts of Selenium, Mercury, and other toxic substances released from mining associated activities (including storage of overburden), road and other construction, cement manufacturing processes, and transportation of materials and products.

The EIR should analyze the link between the quarry and the 303(d) listing of Permanente Creek water for toxicity and Selenium by the San Francisco Bay Regional Water Quality Control Board, and explain how the project may impact the development of Total Maximum Daily Loads for the creek.

The Project has the potential to impact two watersheds: Permanente Creek and Stevens Creek (due to the diversion of water from Permanente to Stevens Creek). The EIR should reveal and analyze the potential for toxic compounds, including but not limited to selenium and mercury, to be released into these watersheds as well as potential impacts on Bay ecosystems.

The bioaccumulation of Selenium in aquatic ecosystems and its impact on fish, birds, amphibians and other wildlife must be considered as an ongoing impact, and not limited to storm events.

The levels of Selenium found in Lehigh operation effluents and storm runoff, and consequently in Permanente creek water are of great concern to Santa Clara Valley Audubon Society, and the full environmental impacts of continued and expanded mining and fill operations at the quarry on water quality and on fish, wildlife and riparian ecosystems along Permanente Creek (including both tributaries - Ohlone Creek and West Branch Permanente Creek) and Stevens Creek watersheds and the San Francisco Bay must be properly analyzed in a comprehensive, all inclusive way.

Impacts on federally- threatened Central California Coast Steelhead trout should be evaluated for both Permanente and Stevens Creeks.

Please analyze potential impact on beneficial uses of Permanente Creek and its tributaries Ohlone Creek and West Branch Permanente Creek.

Please analyze a no-project alternative, and include in the analysis import of limestone from sources that are not as rich in Mercury as the material on the Lehigh property.

Please include the SCVWD Permanente Flood Control Project in the Cumulative Impact Analysis. Please evaluate the impacts of selenium and other toxic compounds on the public parks and schools included in the Santa Clara Valley Water District Permanente Creek Flood protection Project.

p. 2 of 3

22221 McClellan Road, Cupertino, CA 95014 Phone: (408) 252-3748 * Fax: (408) 252-2850
email: scvas@scvas.org * www.scvas.org

Monitoring

Given a history of violations of environmental regulations by the Lehigh Quarry and Cement Plant, we ask for a detailed and comprehensive monitoring and enforcement program for all proposed mitigations, reclamation activities, and for air and water pollutants on site and in the Permanente Creek tributaries and watershed. Mercury, Selenium and general toxicity should be monitored for the duration of activities at the Quarry and Cement Plant and through reclamation activities and restoration. We ask that frequent surprise inspections be incorporated into the monitoring program. Lehigh should not be allowed to self-monitor. Instead, the monitoring program should be paid for by the applicant and implemented by the County and the regulatory agencies. The Leading Agency must show that it has the financial capacity and expertise to provide proper monitoring and enforcement for this project.

Summary

Thank you for the opportunity to provide comments for this project. It is our hope that Santa Clara County withhold permitting of the expansion of the Lehigh Quarry and Cement Plant operations until all of the current violations are clearly corrected, monitoring shows consistent compliance with all environmental regulations, and both air and water agencies permit current and future operations at the Lehigh Quarry and Cement Plant.

Please keep us informed as to the progress of this, and any other, projects on the Lehigh Quarry and Cement Plant property and its vicinity.

Respectfully,



Shani Kleinhaus
Environmental Advocate
Santa Clara Valley Audubon Society
22221 McClellan Rd.
Cupertino, CA 95014
shani@scvas.org

From: "John Buenz" <jbuenz0835@att.net>
Date: March 18, 2011 9:43:57 AM PDT
To: <marina.rush@pln.sccgov.org>
Cc: "Robert George" <rob_w_george@yahoo.com>, "Jim Rehbein" <jarehbein@us.ibm.com>, "Frank Chen" <frankbchen@yahoo.com>
Subject: quarry use permit

Planning Office, County of Santa Clara 03/189/2011
Copies to the Board of Directors of the Meadows of Cupertino
HOA:

Robert George, Jim Rehbein, Frank Chen

Thank you for the opportunity to comment on application for this use permit. While I understand that the quarry in question has been in operation for many years, much has changed since the original use permit was granted. Homes now surround the quarry, both above and around the quarry site. The road in and out of the quarry, Foothill Blvd, is lined with homes through which quarry trucks come and go rendering much traffic, dust and noise. The excavation scar is visible for many miles around the valley (personally, had to work to get a minor grading permit for a parcel on Shannon Rd in the country area around Los Gatos). Most serious is the discharge plume emitted from the plant, straight into homes built above and around the plant.

In the current time of growing concern for the environment, it's hard to believe that this use permit for the "expansion of the mining area, including a new mining pit" for the quarry should even be considered. Such expansion was not part of the original scope of the quarry. If we must honor the original agreement, then what obligation does the county have for enlarging this agreement in such changed circumstances? I, and many of my neighbors, do not support this expansion. In fact we actively oppose it.

John Buenz

----- jbuenz0835@att.net

From: Barry Chang <councilbarry@gmail.com>
Date: April 11, 2011 1:52:23 PM PDT
To: Marina Rush <Marina.Rush@pln.sccgov.org>
**Subject: Comments for Lehigh's EXPANSION NEW
OPEN PIT MINE**

Hi Marina,

It was nice meeting you at your office this morning.

Thank you for the opportunity to comment on the Lehigh
Permanente Quarry Reclamation Plan Amendment.

Please add the following for view shed analysis: Lindy Lane, Regnart Road, Regnart Canyon Road, Prospect Road, Rainbow Drive, San Juan Raod, McClellan Road, Homestead Road, Highway 280 (between Foothill Blvd. to Lawrence Expressway), Highway 85 (between Highway 280 and Winchester Blvd., Los Gatos), Avenida Ave., Merriman Road, Bollinger Road, Santa Lucia Lane, Alcalde, Santa Paula Dr., Palm Ave., Terrace Dr., Columbus Ave., In Saratoga, Please include the following street: Saratoga Ave., Saratoga-Sunnyvale Rd. (between Prospect and Big Basin Rd.,), Parker Ranch Road, , Continental Circle, , Star Ridge Ct., Beauchamps Lane, Farr Ranch Road, Crayside Lane, Blue Hills Lane.

Also the noise factors shall include the midnight blast, the earth moving in the night and the old Diesel fuels trucks, etc.

The New Expansion quarry is so close to Permanente Creek with steep slope. The soil stability, the potential land slides and the potential collapses of the new open pit mine can alter or destroy the Permanente Creek. The geological study has to be very thorough and complete. Please DO NOT RUSH. I may have some more comments later. Thanks.

Barry

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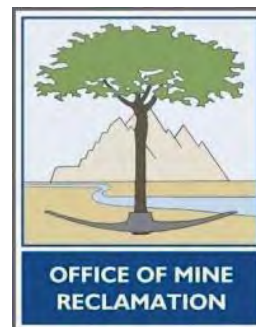
Barry Chang
Cupertino City Council Member
[408-688-6398](tel:408-688-6398)

Permanente Quarry

CA Mine ID 91-43-0004



A-160



Managing California's Working Lands



Permanente Quarry
CA Mine ID 91-43-0004

A-161

Reclamation Plan #2250-13-66-84P

- Approved in 1985 for Kaiser Cement
- Covered 330 acres
- Reclamation plan life 25 years
- Reclamation Amendment required for final reclamation

Hanson Permanente Quarry

Reclamation Plan
Boundaries



A-163

Landslides 1987-2001

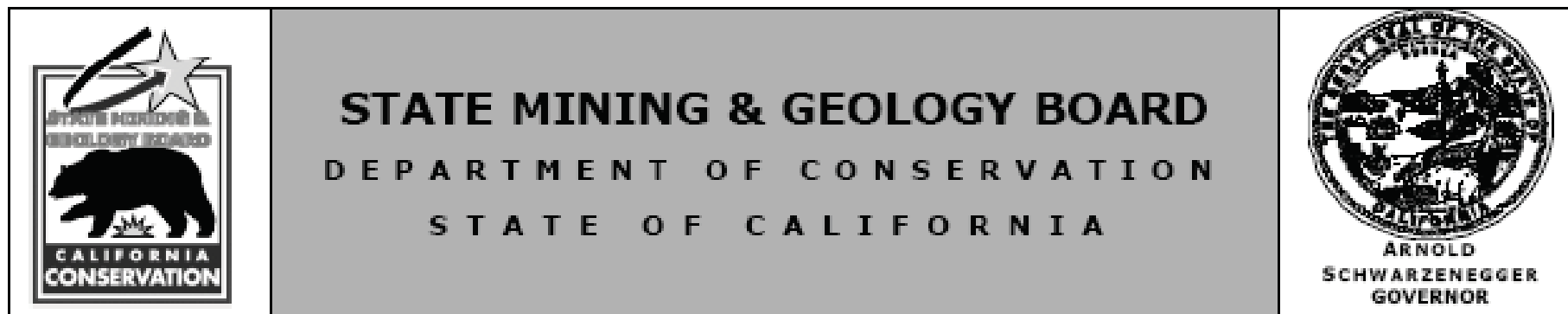


Emergency Repair Proposal

- Reviewed by OMR on November 19, 2002
- Slide affected Midpeninsula Regional Open Space District Property
- County decided that a reclamation plan amendment was required

OMR Inspection – 2005/2006





Publication Date: April 3, 2006:

RESULTS OF PUBLIC MEETING/HEARING

THE STATE MINING AND GEOLOGY BOARD

Conducted a Regular Business Meeting on:

Thursday, April 13, 2006

9:00 A.M.

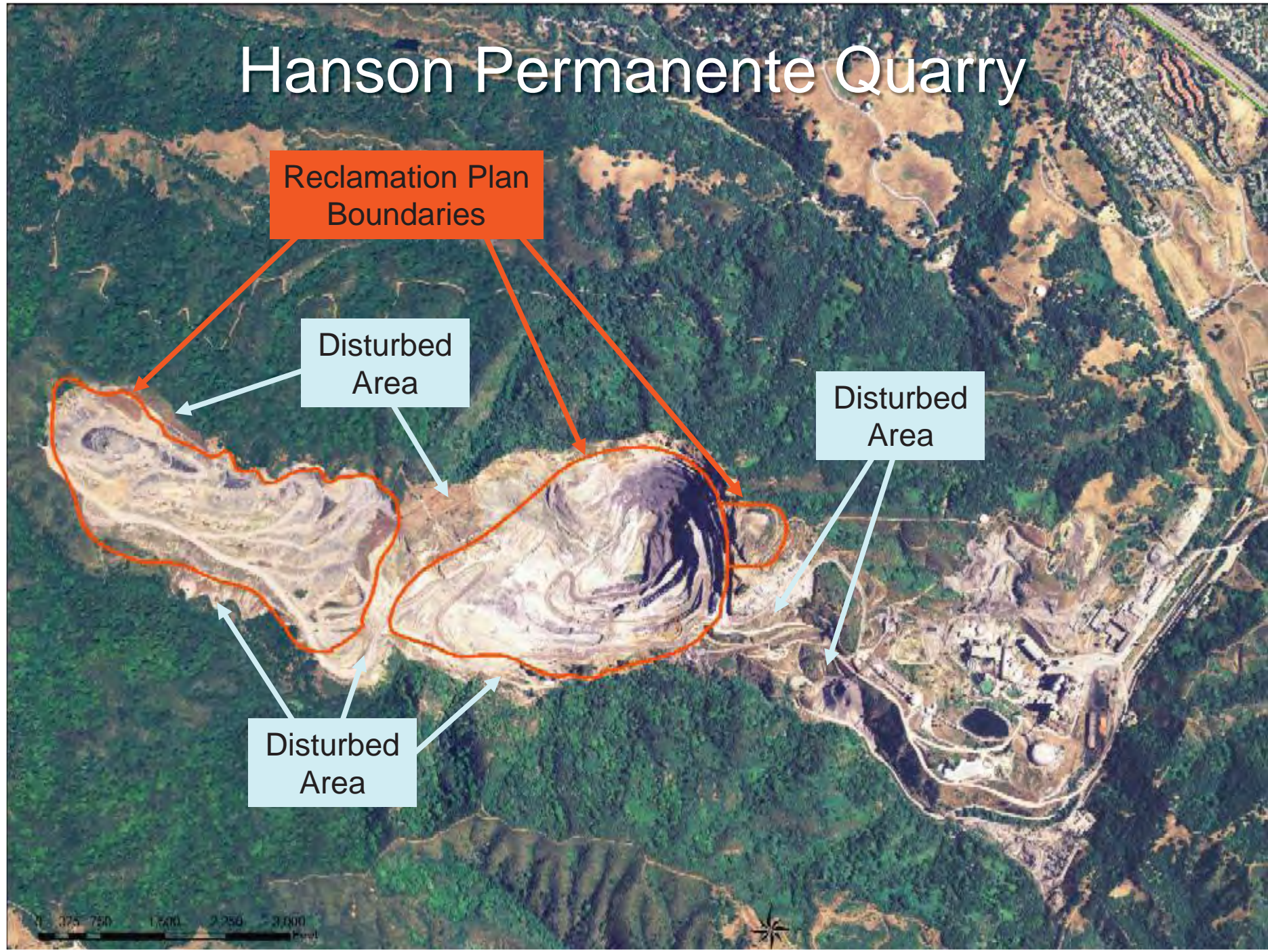
State Capitol
10th & L Streets
Assembly Hearing Room # 126
Sacramento, California

45-Day Notice Issued

Notice of Violation/Order to Comply (Order)

- In response to 15 Day notice issued by OMR on September 22, 2006
- Issued by Santa Clara County on October 10, 2006
- Required:
 - Amended reclamation plan
 - Adjusted financial assurance
- Compliance achieved by December 30, 2007

Hanson Permanente Quarry



A-169

Crusher Relocation

- Proposed reclamation plan amendment
- Did not resolve outstanding compliance issues
- OMR commented on March 6, 2007
- Amended reclamation plan must address all areas disturbed by mining

Amended Reclamation Plan Application

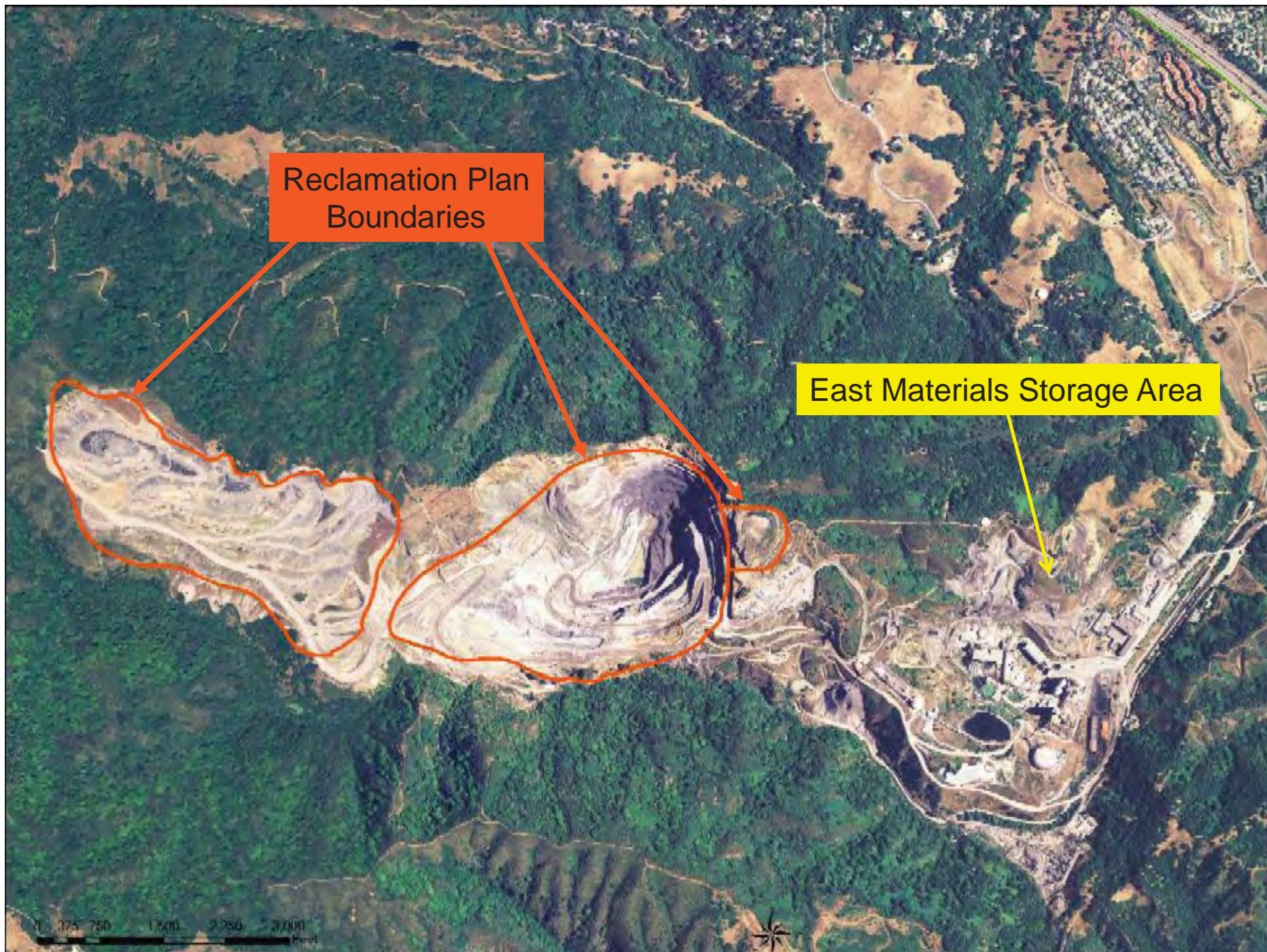
- Submitted to Santa Clara County in January 2007
- Comprehensive geotechnical investigation not included
- OMR's review on May 18, 2007 recommended resubmittal of amended plan with comprehensive geotechnical investigation

Revised 45 Day Notice

- 45 Day notice issued on April 13, 2006, was rescinded on September 13, 2007
- Revised 45 Day notice – October 2, 2007
- Revised 45 Day notice was rescinded on July 10, 2008
- When the notice was rescinded, the Permanente Quarry had not fully achieved compliance with SMARA

24 month extension

- County letter dated May 21, 2008
- Phased submittal & approval
- Geotechnical evaluation due in December 2009
- Submit revised amendment application February 1, 2010
- Environmental impact report completed in September 2011



Reclamation Plan Boundaries

East Materials Storage Area

A-174

East Materials Storage Yard

- County issued Notice of Violation on June 20, 2008
- Separate reclamation plan amendment for EMSA
- Amended reclamation plan must address all areas disturbed by mining
- Application submittal date extended to May 2010

Comprehensive Amendment

- Comprehensive amendment was submitted to OMR on May 28, 2010
- Additional material was submitted on August 28, 2010 and October 19, 2010
- OMR sent comments on December 15, 2010
- County is reviewing comments

Compliance

- 523.4 acres are disturbed per County inspection report
- Compliance to be achieved by 2012 per most recent inspection report
- Compliance projection is approximately 5 years longer than allowed by 2006 Order
- Compliance projection is 10 years after violations were brought to County's attention
- Does not qualify to be included on AB3098 List

Questions?





April 8, 2011

VIA CERTIFIED MAIL

County of Santa Clara
Planning Office
70 West Hedding, 7th Floor, East Wing
San Jose, CA 95110
Attn: Marina Rush

Re: Comments on EIR Scoping for the Lehigh Southwest Cement Company's Pending Comprehensive Reclamation Plan Amendment and Conditional Use Permit for Permanente Quarry (County File No. 2250-13-66-10P-10EIR; State Mine ID No. 91-43-004)

Dear Ms. Rush:

It is my understanding that the County of Santa Clara (the "County") will prepare an Environmental Impact Report ("EIR") for both (1) a Comprehensive Reclamation Plan Amendment application and (2) a Conditional Use Permit application, which have been (or will be) filed by the Lehigh Southwest Cement Company in connection with its operations at the Permanente Quarry (the "Quarry"). At the March 8, 2011 City Council meeting for the City of Los Altos, California (the "City"), the City Council directed me, as the Mayor, to submit the following comments for review by the County in connection with its anticipated scoping of the environmental information to be included in the proposed EIR for the Quarry.

I. Air Quality Concerns.

The City is concerned about the Quarry's air emissions and the potential detrimental effects of such emissions on both the City's residents and the City's surrounding environment. Consequently, the proposed EIR for the Quarry should address the effect of the Quarry's air emissions and the City's concerns. The City's specific concerns include, but are not limited to the following:

1. In a March 1, 2011 meeting between myself and the Bay Area Air Quality Management District (the "District") regarding the pending United States Environmental Protection Agency Title V permit renewal application for the Quarry, the District indicated that a sampling station to test the Quarry's air emissions was set up in September of 2010 and was sited in Cupertino's Monte Vista Park, the Quarry's estimated location of the greatest impact of its air emissions. The District further indicated that testing at the sampling station for a full year is needed to account for seasonal variations. In line with this requirement, the City is concerned that until a full year of testing has been completed at the Monte Vista Park sampling station (i.e. until September of 2011), there will be insufficient data about the Quarry's emissions from which to thoroughly prepare and certify an EIR for the Quarry's pending applications with the County. Accordingly, the

County of Santa Clara
Planning Office
Ms. Marina Rush
April 8, 2011

City requests that the proposed EIR for the Quarry include a review and analysis of a full year of emissions data from the Monte Vista Park sampling station (i.e. through September of 2011).

2. At the March 1, 2011 meeting with the District, the District also indicated that it does not have the funding to create (or even cost share) in a second sampling station within the City's territorial limits. The existence of only one air emissions sampling station in the geographic region surrounding the Quarry, and specifically the absence of an additional air emissions sampling station in the Los Altos area, is rather concerning to the City. Thus, the City requests that the proposed EIR for the Quarry include a review and analysis of a full year of emissions data from at least one additional sampling station which is located within the City's territorial limits. If necessary, the City is willing to work with the County on both obtaining funding to set up this second sampling station and in identifying test configurations and selecting the specific site for its location.

3. During the above-mentioned March 1, 2011 meeting, the District also informed me that the Quarry's estimated emissions increased significantly in the past few years, primarily due to a change in the estimation method. Previously, estimates were based only on measurements of smoke stack emissions. To be more conservative, the District now requires measurements to be based on the Quarry's "material balance" of air emissions (i.e. the total amount of materials that go into the process must therefore also be considered to go out of the Quarry's smoke stacks). The City is now concerned that the Quarry's estimated (and actual) emissions will increase yet again, due to the fact that the Quarry has indicated in its recent comprehensive reclamation plan application to the County that it is seeking to add an expansion area to the Quarry's operations with a new mine pit. A new mine pit and expanded operations at the Quarry suggest that the Quarry's estimated (and actual) emissions will increase. Thus, the City requests that the proposed EIR for the Quarry evaluate the anticipated effects of the additional air emissions which will result from such expanded operations at the Quarry.

4. Lastly, the City is concerned as to the accuracy of the air emissions data for the Quarry which the County will rely upon in preparing the proposed EIR. To the extent that an independent, third party review of the air emissions data for the Quarry has not yet been conducted by the appropriate experts, the City respectfully requests that the County order such a review to take place as an integral part of the preparation of the proposed EIR for the Quarry.

II. Water Quality Concerns.

The City is concerned about the Quarry's recent unpermitted water discharges into Permanente Creek and the potential detrimental effects of such discharges on both the City's residents and the City's surrounding environment. Consequently, the proposed EIR for the Quarry should address the effect of the Quarry's water discharges and the City's concerns. The City's specific concerns include, but are not limited to the following:

1. In a March 1, 2011 meeting between myself and the San Francisco Bay Regional Water Quality Control Board (the "Board") regarding its evaluation of the Quarry's unpermitted water discharges and its anticipated review of the Quarry's proposed NPDES permit application to cover such discharges, the Board indicated that it is concerned that the Quarry's currently unpermitted water discharges result in damage to Permanente Creek, damage to animal species, ground water contamination, and damage to the bay, and the Board is also concerned that such

County of Santa Clara
Planning Office
Ms. Marina Rush
April 8, 2011

discharges may result in contamination of the lower levels of ground water, which is pumped for subsequent treatment and human use. The Board also noted that water turbidity and sediments in the stream may kill fish species and endanger the protected red legged frog habitat. The City is also concerned about these consequences of the Quarry's water discharges. Accordingly, the City requests that the proposed EIR for the Quarry thoroughly evaluate the nature and extent of these consequences and any resulting harms which they may cause.

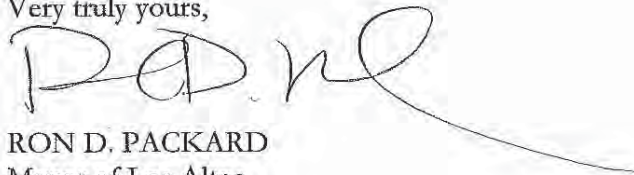
2. In my March 1, 2011 meeting with the Board, the Board commented that the Quarry's current water discharges could have several negative impacts on the City, including: (1) extra maintenance or repairs of storm drain lines and (2) requiring the Board to periodically remove sediment from the Permanente Creek bed, all of which adds to the cost of water in the City. The City is concerned about these additional impacts, and accordingly, the City also requests that the proposed EIR for the Quarry thoroughly evaluate the nature and extent of these impacts on the City. To the extent possible, the City requests that the County impose any and all applicable mitigation measures upon the Quarry to both redress any past impacts of the Quarry's unpermitted water discharges into Permanente Creek on the City and address any and all future impacts of such discharges on the City.

3. The City is additionally concerned that the above-mentioned environmental impacts of the Quarry's unpermitted water discharges into Permanente Creek will multiply and intensify, due to the increased operations associated with the Quarry's new mine pit. A new mine pit and expanded operations at the Quarry suggest that the Quarry's water discharges into Permanente Creek will increase. Consequently, the City requests that the proposed EIR for the Quarry evaluate the anticipated effects of the additional water discharges which will result from such expanded operations at the Quarry.

4. Lastly, the City is concerned as to the accuracy of the water quality measurements which the County will rely upon in preparing the proposed EIR for the Quarry. To the extent that an independent, third party review of the water quality measurements for the Quarry has not yet been conducted by the appropriate experts, the City respectfully requests that the County order such a review to take place as an integral part of the preparation of the proposed EIR for the Quarry.

The City appreciates your time and attention to the foregoing comments. Please keep the City informed of all developments relating to the County's scoping and preparation of the proposed EIR for the Quarry, and please do not hesitate to contact me should you have any questions in regard to the City's comments.

Very truly yours,



RON D. PACKARD
Mayor of Los Altos

cc: Los Altos City Council
Gary Waldek, Los Altos Hills Town Council

From: Joyce M Eden <comment@sonic.net>
Date: April 11, 2011 2:28:02 PM PDT
To: Marina Rush <marina.rush@pln.sccgov.org>
Cc: Stephen Testa
<Stephen.Testa@conservation.ca.gov>,
derek.chernow@conservation.ca.gov, Jim Pompy
<Jim.Pompy@conservation.ca.gov>, Barry Chang
<councilbarry@gmail.com>
**Subject: Revised: Scoping comments on Lehigh dEIR
reclamation & new pit proposal, WVCAW & No Toxic
Air, April 11, 2011**

*West Valley Citizens Air Watch
Cupertino, CA 95014*

*comment@sonic.net
408 973 1085*

April 11, 2011

County of Santa Clara
Planning Office, Att: Marina Rush
70 West Hedding, 7th Floor, East Wing
San Jose CA 95110

marina.rush@pln.sccgov.org

cc: Executive Director, State Mining and Geology Board; Acting Director,
California Department of Conservation; Chief, Office of Mine and
Reclamation

Marina Rush, Planner, Santa Clara County:

Re: Revised Scoping Comments for West Valley Citizens Air Watch and No Toxic Air for an Environmental Impact Report on a Comprehensive Reclamation Plan Amendment and Conditional Use Permit for Permanente Quarry (State Mine ID# 91-43-004)

Please use this revised version.

CEMENT PLANT LOCATIONS AND REQUIREMENT FOR CONDITIONAL USE PERMIT FOR MINING OPERATIONS IN THOSE AREAS

1) Since the site boundary, as shown on the map on page 2 of the Notice of Preparation of an Environmental Impact Report Comprehensive Reclamation Plan Amendment and Conditional Use Permit for Permanente Quarry (State Mine ID# 91-43-004), dated March 10, 2011, does not include the location of the current cement plant and kiln as a part of the reclamation plan, the parcel which includes the location of the former cement plant and kiln requires a Use Permit and is not Vested. Lehigh Southwest Cement Company (operator), collectively Lehigh, and Santa Clara County (SCC) cannot have it both ways. Either the current and former cement plant and kiln locations are separate operations from mining and do not require a reclamation plan, as per the scoping announcement map, or the former cement plant and kiln location does not require a reclamation plan, but does require a Use Permit to be used for mining operations.

The location of the former cement plant and kiln is therefore NOT vested and requires a Use Permit to change to a mining operation location. (see comments by Lehigh and OMR, 2007)

In our Vested Rights written comments, January, 2011, WVCAW asked that the location of the former cement plant and kiln be delineated by the SCC Geologist as a part of the Vested Rights report. That was not done. However, now delineation of the location of the former cement plant and kiln, including a location map, needs to be part of the Draft EIR so the public can understand and review its location in relationship to the reclamation plan and to the proposed Central Materials Storage Area and the East Materials Storage Area, as well as any confluence with the

location of the current cement plant operation and kiln locations and any other areas of the Lehigh property.

TWO SEPARATE DRAFT EIRS ARE NECESSARY

2) As WVCAW has stated in public and written comments to SCC from the time a new pit and an amended reclamation plan were proposed by SCC in 2007, **the necessity of an adequate, State Mining And Reclamation Act (SMARA) compliant, reclamation plan for the disturbed areas of the Lehigh property needs to be presented as a separate plan from a proposal for a new open pit mine and its own reclamation plan for that proposed new open pit mine and mining areas.**

Of course an amended and adequate and State Mining And Reclamation Act (SMARA) compliant reclamation plan is needed for the areas of the Lehigh property already disturbed and destroyed by mining operations. The public cannot clearly understand and therefore cannot adequately comment on a reclamation plan for the currently disturbed areas that is mixed in with an entirely new proposal for a new open pit mine and new mining storage, overburden and other new mining operation areas.

We are talking here of hundreds of acres of already disturbed land, including a 200+ acre open pit mine, at least a hundred acres of an overburden area, West Materials Storage Area (WMSA), many other old and current mining areas, crusher areas, storage areas of various kinds and dimensions and locations, materials transportation methods within the operation, loading areas for receiving and transporting materials into and out of the operation, mixing areas, various domes, etc.

ADEQUATE TIME NEEDED FOR SCC PLANNING STAFF TO DEVELOP THIS/THESE COMPLICATED Draft Environmental Impact Report(s) (dEIR)

3) We commend the SCC Planning Staff for their high quality professional, thorough, clear and well documented Vested Rights report on Lehigh. As the dEIR or dEIRs are being developed, we want assurance that the staff will be given adequate time to develop the dEIRs for these highly complicated, large ranging and potentially hugely impactful projects on Santa Clara County and be given adequate time to put out a high quality professional, thorough, clear and well documented dEIR for the public to review.

REQUIREMENT FOR A TRUE NO PROJECT ALTERNATIVE

4) A true No Project Alternative needs to be presented to the public as a part of the Draft EIR. This true No Project Alternative needs to present NO NEW QUARRY and NO NEW MINING AREAS, all the environmental implications (benefits) of that compared to a new 200+ acre quarry with additional hundreds of acres of new storage areas and mining disturbances. A true No Project Alternative of no new mine, would be an actual mitigation to a proposed destructive project/mine: e.g. preservation rather than blasting a 200+ acre dead zone in a nearly undisturbed habitat, no new bridge over Permanente Creek carrying mining materials, no additional run off and degradation of Permanente Creek and by direct implication San Francisco Bay, as the Creek runs to the Bay, no disturbance of red legged frog habitat, no new disturbance to the existing oak woodland areas, no new disturbance to the Bay Laurel habitat, no new disturbance to the chaparral habitat, no new degradations of the views of the Santa Clara Mountains, no new aesthetically degrading and disturbing artificially flattened hill or mountain tops, etc.

One hundred years ago mining was begun when the population of Santa Clara County was only around 60,000 people and this was a rural area. The current population of Santa Clara County is now approximately 1.7 million residents. The County of Santa Clara is a densely populated suburban/urban area. The setting has greatly changed. It was one thing to begin a mine 100 years ago, it is another to begin a new mine now in this highly populated area. It is no longer appropriate. That is clear.

ALTERNATIVE for dEIR

5) Since Lehigh has two other cement plants and quarries in California, one in Redding and one in Southern California, neither of which has high levels of mercury in their lime stone such as the Santa Clara County location, a viable Alternative to present to the public in the dEIR is moving their operations from the high mercury limestone location in Santa Clara County, to their Redding and/or Southern California plant(s). This is a logical alternative which needs to be examined in the dEIR.

ADDITIONAL ALTERNATIVE for dEIR

6) At the top of the California PRC reduction/recycling hierarchy is reducing the amount of new materials needing to be manufactured. New cement contains huge amounts of embodied energy, due to the high amount of fossil and other fuels needed to bake the limestone to a high heat -- approximately 2700 degrees F. The Lehigh Southwest kiln uses 20 TONS

of fossil fuel per HOUR. The Lehigh Southwest kiln cranks out huge amounts of dangerous and toxic pollutants in addition to the aforementioned high levels of mercury due to the local mercury laden limestone. The amount of cement needing to be produced in California can and should be reduced by utilization of alternative materials where possible. For now, bridges continue to need to utilize high specification cement (in the form of concrete). However, there are many other uses of cement which can and by following the PRC reduction hierarchy can be replaced with materials less harmful to the environment.

For example, using Rubberized Asphalt Concrete Roads (RAC), such as was used to repave Foothill Expressway in Santa Clara County and on Highway 880 (located partially in Santa Clara County), reduces the amount of concrete needed for the road bed by around 1/2 (see CIWMB). Santa Clara County can require the use of RAC in all its two lane roads, thus significantly reducing the amount of cement needed to be utilized in the County. This will be in compliance with CA PRC which sets the reduction/recycling hierarchy for the State.

Cement is a material containing high embodied energy. The mining and manufacturing of cement is a producer par excellence of toxins, pollutants and green house gases (GHG). It is estimated that cement kilns produce a significant percentage of GHG in California and worldwide (see NYT articles). For every 1 million metric tons of clinker produced to make cement, approximately 1 million metric tons of CO₂ are put into the atmosphere.

NO ASSUMPTION THAT MITIGATION MEASURES WILL BE SUCCESSFUL

7) The assumption should be that mitigation measures will probably or undoubtedly fail. That is the usual actual outcome of, "mitigation" in the real world, despite all the stacks of paper in EIRs to the contrary. And in this case, even many of the basics of SMARA and of the County's rules and regulations are not followed, on top of poor to failing monitoring of the operation, so what confidence could the public have in any proposed, "mitigation" measures. Especially any "mitigation" measure that would be in the EIR in order to facilitate the project of either the new proposed open pit mine, new mining bridge over Permanente Creek, new storage areas. And in the case of a "reclamation" plan, any proposals in the dEIR for a final "use" being facilitated by the "reclamation" plan has already little to no

credibility due to the record of poor compliance and inadequate monitoring and rarely if ever any consequences for SMARA violations. Certainly we have not seen mining operations being halted due to any of the many violations. The pile in the EMSA stays in place and grows.

In 2007, we saw how well the "replanting" worked. A few scrawny struggling sticks masquerading as revegetation. Really, its a sad joke, except that is all that we can realistically expect, protestations to the contrary of how well it would work this time. Oh sure.

And what of the financial assurance (FACE) requirements? Inadequate. When the company is done mining, what motivation will there be to follow through? What motivation will the county have to follow through? Nothing in the recent record gives any confidence. In fact, just the opposite.

As it is, we have to look at artificially flattened hill tops every time we drive in our neighborhoods. Does the county really think we would accept more of that in our neighborhoods?

The additional dust from the operations and the storage areas, as they would be closer to our neighborhoods are disturbing to us. We have numerous organic gardeners in our neighborhoods, how do you think we feel about that dust falling on our organic plants and soil that we so carefully tend? We are concerned and disturbed about the dust and now we face additional dust with toxic elements and compounds in it due to the proximity of the storage areas to many of our neighborhoods. This is a significant impact on us, our children, our schools, on our homes, our quality of live, our food and our values.

We have been asking for years for a State Certified Geologist to identify areas of the current open pit mine for rocks to test, to collect samples him or herself and bring them him or herself to a State Certified lab to be tested for potential asbestos or asbestos like particules. We know from County documents that the pit contains serpentine or serpentanite soils. This soil tends to contain asbestos or asbestos like particules. This soil has never been tested in this manner and the results released to the public. We ask for this for the current quarry, for all the areas of current disturbance, for the EMSA area for the CMSA and for the proposed South Pit area including the area proposed to be mined beneath the surface. We ask for the results (the actual data dump) to be released to the public and to be published in

the dEIR.

CUMULATIVE IMPACTS

8)

A. Cumulative impacts needs to consider the absolute dead zone of hundreds of acres created by the current open pit mine, the multiple storage areas, the WMSA. Just look at the google view of the mining operations and the plant and kiln. Nothing but dirt, dirt, dirt. NOT soil. All the habitat wiped out completely. The current pit will NOT be filled in by mining a new pit and dumping its "overburden" there. Limestone would be used in the kiln to make cement. Aggregate would be mined and sent off for construction projects of various kinds and to make concrete. And we were told by a company official in 2007, that when the company runs out of good limestone, they would start mining back into the WMSA for useable materials. Obviously, if that would be done in the WMSA, it would also be done with the "overburden" materials which might be deposited in the current pit. There is no "reclamation". This "reclamation" plan would be a bad joke on the residents, and eventually Santa Clara County and all of us taxpayers. who will pay in the end for whatever is able to be "reclaimed" at some unspecified time in the future. The company will take their profits and -- bye-bye. So before yet another 50 year mining operation scarring and destroying hundreds of acres of our beautiful Santa Cruz Mountains and habitat and watershed, consider all this in any potential action alternative. The action will be destruction. Little if any "reclamation" will any of us or the next generation probably see. We'll be witness to more of the hills being destroyed.

B. Do we really want more paving of paradise? More runoff into the Creeks and into the Bay. More pollution in our groundwater, which is also our drinking water? Less red shouldered hawks? Less red legged frogs? Less tiger salamanders? Less legacy for our children and grandchildren? Do we have a responsibility to answer to them now? Why is it ok to continue to pollute and destroy at this late date? Is that what we choose? No it is not!

C. The mercury is now sequestered in the limestone in the ground. Once it is mined, it is no longer sequestered. Lehigh's plan to inject some of mercury into the finished cement product puts do-it-yourselfers and the working poor at great risk for exposure to mercury laden dust. The cement bags will then need disclosure of mercury content. The ultimate destination

of the mercury removed from the pit must be evaluated considering both the immediate concrete structures which will temporarily contain the mercury and how this concrete will be recycled or broken down in the future. Mercury is widely recognized as a potent neurotoxin in tiny amounts. Mercury is an element and once released from the limestone, remains in the land, water and air. Mercury in the atmosphere and in bodies of water is accumulating locally and world wide. Once it is no longer sequestered it adds to the earth's toxic burden of mercury and affects the health of humans and other animals.

D. In our local area we have been subjected to the deposition of the released mercury from the cement kiln for 70 years. Any additional mercury is a significant cumulative impact.

E. The same goes for many of the heavy metals and other pollutants that have been released into the air, water and soils from both the mining operations and the cement kiln emissions and operations. Many of these are persistent. Some locally, some region wide, some world wide. The contribution of this operation, including the cement plant and kiln, needs to be considered in cumulative impacts, but from the already existing impacts and from impacts from the proposed new mine and mining operations projects.

F. Increased dust from blasting the new mine, from setting up the new mining processes and building the proposed bridge over Permanente Creek, could only result in increased dust falling into the Creek from all the initial and then ongoing disturbances, bringing with it new sedimentation and pollutants into the Creek and Bay.

G. The dust from the mine, the mining operations have been accumulating for one hundred years. The the small particulates, toxins and other pollutants from the kiln have been accumulating since 1939. All this existing pollution and degradation are cumulative impacts which need to be disclosed and considered. A new mine and mining operations would increase this toxic dump on us all on top of the already polluted air, water and soil. The new mine will be closer to other areas. The storage areas will be and the EMSA is much, much closer to our homes and neighborhoods and schools.

H. There are highly sensitive receptors (what a way to characterize children

and elderly and ill people) close to the Lehigh operations. Stevens Creek Elementary School, Monarch Christian Day School, Lincoln Elementary School, West Valley Elementary School, Monte Vista Park, Kennedy Junior High, Cupertino Junior High, Monte Vista High, Homestead High, Sunnyvale Retirement Center, The Forum (assisted living), Pleasant View Convalescent Home.

I. It is highly documented that human beings are already carrying a dangerous body burden of toxins that impact their health. It would be unacceptable to increase this by opening a new mine and storage areas and thus also continuing the toxic and deleterious emissions from the cement kiln.

9) The Notice of Preparation (NOP) states, the proposed project area is approximately 1,105 acres, and includes 251 acres for the expansion area and 317 acres to remain undisturbed oak woodland." This statement does not fully disclose the area of disturbance. It appears to include little more than the proposed south quarry but not the new and currently expanding storage and mining operations areas. And how does the county or Lehigh decide that 317 acres will remain undisturbed.

The Lehigh operation has already irreparably destroyed a portion of the Mid Penninsula Regional Open Space District Land, through encroaching upon it with mining operations. Many of our members hike and enjoy the wildlife and native plants and view of and within the Mid Penninsula Regional Open Space District. This is a rare treasure that is located in Santa Clara County. We take destruction of its lands seriously. There are very few open spaces that are preserved, such as Mid Penn. We hold them dear and precious.

The areas of identified limestone go east of the south quarry. Perhaps that is the reason for the road that is in the plan which cuts east. The previous proposal for the "Pit 2" was east of the proposed South Quarry. So we can guess that that area east of the proposed South Quarry will be next on the blasting block.

10) In addition, adding a new mine and storage areas with increased visibility would detrimentally harm property values of the neighboring communities. This is a significant impact.

NOISE and VIBRATION

11) The mining operations go on day and night. The trucks are allowed to travel day and night. Neighbors complaints about noise and vibrations from the current mining operations, blasting and diesel trucks go on and on with no help or relief from SCC. These noises and vibrations occur day and night. Neighbors state that it is so unbearable to be woken up in the middle of the night on a regular basis.

The proposed new storage areas, EMSA and CMSA, are significantly and much, much closer to Cupertino and other neighborhoods. We can unfortunately project that this would bring significantly more disturbing noise and vibration into our neighborhoods both day and night.

What about the proposed new bridge over Permanente Creek and the truck noise? The noise from the trucks going over the Creek would probably be amplified by being over water. Would mining trucks be moving over the bridge? Taking into consideration their size and the size of their tires alone, this could potentially be an additional significant increase in even more noise and vibrations issue. Will the bridge be concrete? Steel? How will that affect the noise and vibration? We are guessing it will be amplified even more. We cringe considering this additional impact on the quality of our lives and the stress levels. Stress is a major factor in illness.

The proposed new mine and bridge would be closer to homes on Montebello road, bringing more disturbing noise and vibration to that residential area.

The location of the hills and mountains in relationship to the mining operations, the blasting, the mining trucks, the bridge, the diesel trucks could also create more noise and vibration from reverberations off of their surfaces.

12) VISUAL RESOURCES

A. There will be many roads, streets and homes that will have a very nice view of the destruction -- mine and mining operations. The proposed pit would be visible to many more homes, roads and businesses. The dEIR must show line of site maps from every area, street and home that will be able to view the proposed open pit mine and the proposed storage areas and any other areas of disturbance. Three dimensional maps must show clearly to the public these areas so the public can determine from what viewpoints they will be able to see the areas of disturbance. And for each stage. Since the areas of disturbance now look tan, the maps should show the areas as they will appear, not some mythical green.

B. Some of the nearby areas we have already identified from which the proposed South Quarry and/or EMSA and/or CMSA would be visible are Hyannisport and Bubba road intersection, Stelling and Stevens Creek Blvd. intersection, Stevens Creek Blvd. in front of the Post Office, from Voss Avenue near Monte Vista Park, from Stevens Creek Blvd. just East of Janice Ave, from Alpine Road in Cupertino, from both sides of the Road and from homes looking towards the location of the proposed new mine, storage areas, as well as from Cristo Rey Drive which is practically on top of the new proposed mine.

C. We are asking for clear disclosure in the dEIR of all the roads, streets, homes, businesses and areas that would be able to see the new proposed mine, new storage areas or other new mining operations. This should be done in concentric circles, for example from 1 mile away, 2 miles, 3 miles, 4 miles 5 miles, 10, 20, and 30 miles away. This new proposed project would affect the aesthetic and visual experience of the entire South Bay Area and be a major unmitigatable degradation and scarring of our beautiful visual resources.

D. There are also areas not as nearby which would be negatively impacted by seeing the hills and slopes of the Santa Cruz Mountains denuded and/or destroyed by the proposed new mine, new storage areas and other new mining operations. For example, many areas -- homes, businesses, streets -- in the City of Sunnyvale which look towards the hills, slopes and mountains, such as have a line of sight past the parking lots of Homestead High School.

E. As people drive Highway 85 and Highway 280 going towards or seeing in the direction of the Santa Cruz Mountains where the new mine, or

storage areas or other new mining operations would be, they would be able to see new and disturbing large scars and degradations of the hills, slopes and mountains. West Virginia anyone?

F. The application gives an incorrect description of the South Quarry -- that is, the proposed open pit mine -- as, "South Quarry Road." It gives an incorrect impression that an open pit mine which is scraped clear of any vegetation, is merely a "road" that cuts through woodland or green areas. The South Quarry open pit mine would be a clear cut dead zone, actually worse than a clear cut, as a pit would be blasted deep into the earth. The dEIR needs to be clear both descriptively and visually about this. It is tan, not green. It is dirt not living soil. It is a dead zone.

G. (Also see the discussion following in 14) regarding visual impacts).

13) GEOLOGY & SOILS and SURFACE HYDROLOGY, DRAINAGE & WATER QUALITY

Three dimensional geologic and hydrologic image maps need to be developed and disclosed to the public and included in the Draft EIR of the areas proposed for a South Quarry, for the CMSA, EMSA and all other proposed areas of new and continuing disturbance as well as for the entire reclamation plan area. These maps need to be generated and disclosed to the public for each "stage" of the proposed mining and reclamation plan.

Would the selenium impact the water quality, groundwater, hydrograph of Permanente Creek. What about the mining wastes and their other components such as the high level of mercury? The mercury is now sequestered in the limestone. Once it is mined, it is no longer sequestered. The overburden storage in the WMSA, in the EMSA, and the CMSA?

EARTHQUAKE FAULTS

14) Three dimensional geologic image maps need to be developed and disclosed to the public in the Draft EIR showing all the known and suspected earthquake faults in the proposed pit and new mining areas as well as in the rest of the reclamation plan. In addition Three dimensional geologic image maps need to be developed and disclosed to the public in the Draft EIR showing all the known and suspected earthquake faults located in a five mile vicinity of the proposed pit and new mining areas as well as in the rest of the reclamation plan.

How would the geology and the earthquake faults known and suspected interact with a new mine, with the old mine and its unstable slopes, with the near-by Stevens Creek Quarry and with the Stevens Creek Reservoir.

NO NEW DISTURBANCES, NO NEW MINE

15) The public can rightfully ask why Lehigh should be granted the opportunity to ask for a new mine and mining operation areas in light of the numerous violations of their recent and current operation. Before any new consideration takes place, the old and current violations need to be rectified. And the public has the right to be concerned at the failure of the county to adequately monitor the Lehigh operations and their failure to adequately require rectification of violations. The County allows Lehigh to continue many of its violations and says it will use this EIR process as a way to mitigate the violations; eg, in the case of the storage pile in the EMSA, the county not only continues to allow the pile to remain where it is without a reclamation plan in place, but it allows Lehigh to continue to enlarge the pile.

This pile is highly visible from many locations in Cupertino. This pile is highly visible from the Rancho San Antonia/County Park trail that begins at the Horse Parking Lot. Many of our members hike this trail. It was disturbing to see the initiation of this blight on our enjoyment of the Park. It is even more disturbing to see its continued growth and blight. Many people hike and run the trail to de-stress. Yet this pile is causing stress. Stress is well known to be a major factor in initiation of and exasperation of disease. It is known that stress negatively impacts the immune system(s). This pile was found by a member of WVCAW who reported it to SCC. It took numerous phone calls to get the County to come out and investigate and to determine whether or not the pile was in an area with a reclamation plan in place. It was NOT.

A. It is our understanding that a California Environmental Quality Act (CEQA) document, such as this EIR process, should take a fresh look at an issue or plan or project. It should not be a rubber stamp of a predetermined decision by an agency or decision makers, such as the SCC BOS in this case, of acceptance of a permittee's application for a new project (in this case a new huge open pit mine and storage areas). We fear that this could be the case in this situation -- the default of the County Supervisors even before the EIR review being approval of a new mine, and just get through

the annoying, time consuming public process. We want this to be a real process, in compliance with CEQA. We are doing our part.

B. What confidence should the public have in either Lehigh or SCC BOS? Why would a new huge, 200+ acre mine plus hundreds of acres of new storage areas be acceptable in 2011 in our hills and neighborhoods with it's creation of hundreds of acres of new dead zone, with all its attendant nuisances, visual degradations, impacts on the current population of 1.7 million residents, it's further impacts on the health of residents and worldwide, with alternatives as explained in part above, etc?

C. The public needs disclosure of Lehigh violations in order to evaluate their application for a new open pit mine and additional mining and storage areas.

D. The dEIR should list and describe the numerous violations and failures to comply with SMARA that were identified by the SMGB in 2006 and identify the ones that are still outstanding.

E. The dEIR should list and describe the numerous violations and failures to comply with other county rules and regulations and the action, if any, that the county took.

F. Disclose if and when the county took no action and for which violations. Disclose fines levied or no fines levied for which specific violations.

G. The EPA's NOV to Lehigh regarding significant emissions of NOx and SO2 over a decade should be disclosed for the public to evaluate in this context.

H. The Water District's NOVs to Lehigh regarding violations of their water permit should also be disclosed for the public to evaluate in this context.

I. In addition, we bring to your attention what appears to be yet another SMARA violation of a failure to have a reclamation plan in place before mining operations take place on the Lehigh property.

Our item number 14) in our comments to BAAQMD regarding the Lehigh Title V permit renewal on March 25, 2011, comments as follows:

In addition, we are disturbed to read about and object to , "S-607 the stockpile area #2 (1", 1/4" aggregates and slag) at the entrance's gate is new." The operation continues to be accommodated by the BAAQMD to add additional pollution. We were told last year by BAAQMD that the operation does not use, "steel slag". What is this slag being used for? Is it steel slag? If so, that was the source of this slag? What are its components? Does it contain hexavalent chromium? Is it being used in the kiln? This concerns us greatly. (page 129 Statement of Basis)

. . .

Also, the Statement of Basis page 126 states that S-607 Storage Piles Area #2 contains aggregate.

This is a quarry product, not part of the cement plant. This storage should not be permitted in this area. There is no map of this area, as such the borders are not defined and can move into other areas as we have seen many times before. . . . **Does any regulation mean anything in reality?**

Also, petroleum coke is being stored and there is potential runoff containing these pollutants.

Storage areas are mentioned, but not where and what, 3.9 acres.

<http://www.baaqmd.gov/Divisions/Engineering/Title-V-Permit-Programs/Title-V-Permits/Santa-Clara/A0017/Lehigh-Southwest-Cement-Company.aspx>

The point here for SCC is that BAAQMD refers to a "new" stockpile area, "at the entrance gate". Is there are reclamation plan for this new stockpile area? We want to hear from SCC on this.

We want to know from SCC where are these 3.9 acres where petroleum coke is being stored? We ask for a map of this area and its location. Is there a reclamation plan for this area?

Lehigh's continuing violations of SMARA, failure to have a reclamation plan in place while performing certain mining operations, and now what appears to be one or more new mining operation areas without a reclamation plan in place violation (stock pile storage areas) again calls for their immediate

deletion from the AB 3098 list and calls into question their application for a new open pit mine and new storage and mining operation areas and SCC's ability to adequately monitor their operations.

Please investigate the S-607 stockpile area #2, as referred to by the BAAQMD as per above, and the 3.9 acres of storage areas.

Please inform us of your investigation into this new additional potential violation(s).

J. In addition, while many members of the public read the SCC staff's clear, extensive and well documented vested rights report, it was hard to glean from the discussion by the County Supervisors that any of them actually read the staff report, due to their questions and discussion. From their questions, they did not even appear to have the basic underlying understanding of the difference between vested rights and a Use Permit -- basic to understanding of vested rights. Yet they voted that night on vested rights. Shockingly they even over road their own, in place, zoning code!

How can the public have confidence in the SCC BOS reading and evaluation of the EIR(s) and Conditional Use Permits regarding their vote on the final EIR and Conditional Use Permits?

No new mine.

Thank you,

Joyce M Eden, Karen Del Compare, Tim Brand and Marylin McCarthy for
West Valley Citizens Air Watch

Barry Chang, President, No Toxic Air and Board of Directors No Toxic Air
on behalf of No Toxic Air

From: Joyce M Eden <comment@sonic.net>
Subject: Fwd: Revised: Scoping comments on Lehigh dEIR
reclamation & new pit proposal, WVCAW & No Toxic Air,
April 11, 2011
Date: April 13, 2011 5:40:44 PM PDT
To: Marina Rush <marina.rush@pln.sccgov.org>
Cc: Ken Yew <ken_yew@yahoo.com>, Barry Chang
<councilbarry@gmail.com>

Marina Rush:

Errata: Please see number 15) I. below for page reference correction, corrected in red and a correction from "are" to "a" also indicated in red.

Please confirm that you received these corrections by email.

Thank You,

Joyce M Eden

Begin forwarded message:

From: Joyce M Eden <comment@sonic.net>
Date: April 11, 2011 2:28:02 PM PDT
To: Marina Rush <marina.rush@pln.sccgov.org>
Cc: Stephen Testa <Stephen.Testa@conservation.ca.gov>, derek.chernow@conservation.ca.gov, Jim Pompy <Jim.Pompy@conservation.ca.gov>, Barry Chang <councilbarry@gmail.com>
Subject: Revised: Scoping comments on Lehigh dEIR reclamation & new pit proposal, WVCAW & No Toxic Air, April 11, 2011

Lehigh property.

Our item number 14) in our comments to BAAQMD regarding the Lehigh Title V permit renewal on March 25, 2011, comments as follows:

In addition, we are disturbed to read about and object to , "S-607 the stockpile area #2 (1", 1/4" aggregates and slag) at the entrance's gate is new." The operation continues to be accommodated by the BAAQMD to add additional pollution. We were told last year by BAAQMD that the operation does not use, "steel slag". What is this slag being used for? Is it steel slag? If so, that was the source of this slag? What are its components? Does it contain hexavalent chromium? Is it being used in the kiln? This concerns us greatly. (page 129 Statement of Basis)

Also, the Statement of Basis ~~page 126~~ (see pages 129 & 130) states that S-607 Storage Piles Area #2 contains aggregate. states that S-607 Storage Piles Area #2 contains aggregate.

This is a quarry product, not part of the cement plant. This storage should not be permitted in this area. There is no map of this area, as such the borders are not defined and can move into other areas as we have seen many times before. . . . **Does any regulation mean anything in reality?**

Also, petroleum coke is being stored and there is potential runoff containing these pollutants.

Storage areas are mentioned, but not where and what, 3.9 acres.

<http://www.baaqmd.gov/Divisions/Engineering/Title-V-Permit-Programs/Title-V-Permits/Santa-Clara/A0017/Lehigh-Southwest-Cement-Company.aspx>

The point here for SCC is that BAAQMD refers to a "new" stockpile area, "at the entrance gate". Is there **are a** reclamation plan for this new stockpile area? We want to hear from SCC on this.

From: "Rhoda Fry " <fryhouse@earthlink.net>
Date: April 11, 2011 12:38:04 PM PDT
To: <marina.rush@pln.sccgov.org>
Subject: comments for EIR - Lehigh Hanson

Dear Marina –

Comments for EIR - Lehigh Hanson

I wish they'd just clean up their act before asking to do new things and start keeping some bare minimum promises.

They've been out of compliance with SMARA for 10 years and should have been denied participation in lucrative government contracts. How did the county allow this to happen?

I don't even understand why they'd bother to do an EIR anyway because it looks like they'd do whatever they want anyway.

The new HRA – Health Risk Assessment has come out and it is all very bad news. The agencies have been lying to us for years about the relative safety of this plant. I am so upset that I was not able to make an INFORMED DECISION as to where I should live because the data was just plain wrong.

All the NOV's should be taken into account as well. The recent water issues are horrific. Well, I suppose with an EIR, you don't have to do better than you've done in the past, so perhaps it is to their advantage that they've been an egregious violator. But that does us no good.

I'd be happy to pay more for cement than to deal with the short and long-term health and environmental problems caused by the cement plant and quarry and rock operations.

At a minimum, they should burn natural gas.

I am worried that if they cut down trees, that we will lose what little buffer that we have for noise, dust, etc...

Any time you start looking into the details on this plant you see problems. What will be done to keep them compliant? We can't wait for years and years and years for nothing to happen. I know so many parents with kids who have learning disabilities and it is heartbreaking – or with allergies that are compounded by PM10. What are they going to do about the water pollution? We cannot allow this operation to continue in this manner.

It seems that the county is looking at short term revenue – however, with the HRA listing acute exposure for CANCER, that will for sure affect home values and health costs, and the cancer victims and their families to contribute to the economic engine in the Bay Area.

I realized the deadline is today and just don't have the time to put my brain on this. I know that many others care about this issue deeply and are also strapped for time. I hope the county wakes up and starts taking care of the citizens, for once.

Regards,

Rhoda Fry
Cupertino

From: Janet Geiger <janet@foxcove.com>
Date: April 11, 2011 2:51:46 PM PDT
To: Marina Rush <marina.rush@pln.sccgov.org>
Subject: NOP Lehigh

Hi Marina,

Although it sounds like you are preparing a comprehensive EIR for the proposed new quarry for Lehigh, I would like to reiterate my concerns with the following:

- 1) Destruction of the foothill viewshed protected by the General Plan and Zoning Ordinance that will forever affect the identity of Cupertino in a bad way. Where is Cupertino? It will be that place between Saratoga and Los Altos beside the open pit mine easily seen from everywhere.
- 2) Property values will be decreased by this notorious eyesore and obvious pollution generator
- 3) Noise issues especially at night
- 4) Dust and noise issues associated with blasting and excavation
- 5) Light pollution at night
- 6) Possible destruction of unique limestone cave formations evident on Stevens Creek Road

7) Pollution of Permanente Creek with toxic run-off and deliberate pumping

8) Polluted air especially with particulates and mercury, Nox and Sox and other poisons

9) They may endanger unique species of plants and animals or destroy anthropologic artifacts associated with that kind of limestone as well. There are some endangered species downstream on Permanente Creek I read about in some of me research I don't have time to flag today.

Please do not hesitate to contact me if I may be of further assistance on these issues.

Thank you,

Janet Geiger

From: Cathy Helgerson <sharpset1@aol.com>
Date: April 4, 2011 11:06:52 AM PDT
To: marina.rush@pln.sccgov.org
Subject: Lehigh Southwest Cement & Quarry

Hi,

My comments for the EIR

1) Site should be setup as a Super Fund site and the EPA Super Fund Region 9 folks have decided to do a Preliminary Assessment

Due to my submitted Petition this is very good news.

2) There has not been a working Reclamation plan in effect in 10 years and I do not think this will every happen growing trees, grass and

shrubs in the location of the WMSA and the EMSA is impossible because you would have to put in sprinklers to keep the plants from

dying. The water that would be washed into our water shed is a big problem and I am sure there is no way to stop the pollution. Once

the Limestone is mined and disturbed the Mercury is released and it is washed into the Permanente Creek and the Stevens Creek

Creek and in turn released into our water shed and aquifer where it is pulled up from the wells in the community. These wells are

being used by the Water Companies and the Santa Clara Water District and we are drinking this water. There are many pollutants

in our water and Vanadium is one of them which is not

regulated by the EPA this pollutant is now at 7.0 ppb as stated by California

Water Company. The Santa Clara Water District plays down the pollution levels in our water and they are allowing the Mercury in the Steven Creek Reservoir to be sustained doing absolutely nothing about cleaning up the Reservoir. People are fishing in the

Reservoir and taking the fish home to have their families eat the fish on their dinner table that is polluted with high levels of Mercury

Pollution and no one seems to care.

3) The displacement of the ecosystem animals wildlife and water wildlife of all kinds would be devastating there is no way to save them

except to close the Lehigh Southwest Cement and Quarry and the Steven Creek Quarry down once and for all and turn it into a Super Fund Site for clean up. I would also like to see the land turned into a Park and Historical site for the Limestone and the beauty

of the trees and land for generations to come. The Limestone can never be replaced once it is mined and turned into cement there

will never be more. We must stop this destruction before it is to late for many lives are at stake.

4) The destruction of 10,000 trees some of them 100 years old in order to put this new mine in would be a major catastrophe there is no

way they would ever be replaced. The trees have thrived due to the limestone rock under them holding on to this rock for security and

protection. The water from the rain is stored in the ground and rock and the roots thrive on this storing of water which will be destroyed for ever.

5) The Limestone dates back to the Jurassic period when the land was under water and it holds many fossils of all kinds this can never

be replaced and once it is mined it will be lost for ever. This site should be a major Historical Site and it should not be destroyed there is no Limestone like this any place else in the country. Leaving the Limestone in the ground will keep the Mercury from escaping and

harming the public this must be done to protect us all.

6) The Lehigh Southwest Cement and Quarry and the Steven Creek Quarry are right in the middle of 3 fault lines and it is suspected that

the next major earth quake will be caused by mining the next 215 acres of the new mine at Lehigh. I would even go as far as to say

the mining of the first pit decades ago was responsible for the last major earth quake in San Francisco. I also believe that the mining

that has taken place since then is responsible for the other earth quakes that have taken place over the years. This new pit is not

acceptable and the pollution and danger to the areas animals and human life alike needs to be considered.

7) Pollution and Dust the Cement Plant and the Quarries need to be shut down due to the ongoing pollution they are causing to the public. There have been many Notice of Violations against Lehigh and I suspect if anyone took the time the same violations would

be found at the Stevens Creek Quarry as well and I suspect this will happen in the future. The pollution can not be stopped because

there is no real enforcement conducted and the public

demands that there is.

8) There is Selenium dust and pollution all over the Quarries and the Cement plant and the Water Board has yet to enforce original Notice of Violation and the additional letter that was sent out for the pollution from the Quarry water that is being released into the

Permanente Creek and the public would like to know why. The cease and desist order submitted to Lehigh from the State Water

Board does not seem to make an impression on them so who will do the enforcement?

9) The EMSA and the WMSA is a violation and the overburden is polluted with who knows what I have asked SCC to test the soil continuously in the overburden and also to test the soil under the piles due to the pollution and nothing has been done. The fact is

that there was factories that manufactured and processed aluminum this site was never cleaned up and it has been allowed to pollute

the Permanente Creek, Stevens Creek Creek, Steven Creek Reservoir, the Water Shed and Aquifer below the ground. There needs to

a Super Fund set up to clean up the pollution so as to not endanger the public and further.

10) The Santa Clara County can and could be held responsible for this ongoing allowance of pollution from the Lehigh Southwest Cement

and Quarry that would also include the Stevens Creek Quarry to the extent that they would have to also pay for this clean up. There

can be even more serious consequences to anyone that is responsible for these crimes against the citizens and there should

be.

SCC has over looked their own staff report for the vested rights at Lehigh and the Board stated that farm land use is the same as mine

land use that is ridiculous.

11) The Cement plant processes should not be looked at separately but included especially because it is causing pollution all over the

Quarry Site and the Cement Plant Site. This pollution is spread all over the Silicone Valley and there is dust and pollution every

where. The Mercury released is at devastating levels and Lehigh has not proved they have reduced the amount 25% I for one

have not seen a lab report or any real proof that they have reduced it at all. The fact that the EPA is imposing new rules on them is

not enough it could take years for the EPA to work out the law suites that have been imposed against them we can not wait. The

public is in danger now and has been there needs to be an end to this continued pollution. The cumulative effect of pollution in our

bodies and the chemical cocktails effect due to the combining of all of the pollution is killing us the cancer rate is now one out of two

people that has cancer.

12) The Lehigh Southwest Cement Plant has been drying the Petroleum Coke at the facility with the NOX and the SO2 emissions from

the Kiln in order to burn it and that is what I suspect has been keeping the levels down. There are two pipes releasing Pentrolium

Coke emissions and this is combined with the NOX and SO2 emissions and there is no monitor on the pipes. The levels of NOX and

SO2 from the Kiln has a monitor on it and the levels have been below the high max levels set by the BAAQMD and I have always

wondered how that could be and now I know. The levels were low because they were funneling the NOX and SO2 gases over to the

Petroleum coke piles which has no monitors and we the public have been over exposed to these emissions. I wrote the EPA Region

9 and the EPA Federal Dept. in Washinton, DC nothing has been done about this so far. The EPA Region 9 sent my paperwork to

BAAQMD and I have not heard from them either. What Lehigh has done is totally illegal and against the law they are corrupt and this

matter should be investigated but I have yet to hear from anyone. If you are wondering how I found out about the two piles well I can tell you it was from the BAAQMD's investigator he told me what was coming out of the two pipes and the rest is evident.

He also suggested that if I felt the two pipes should be monitored that I should put it in the Title V Permit comments so that they

could put monitors on the pipes. I think that is real funny I am sure that is the last thing that Lehigh or the BAAQMD wants to do

because if they really wanted to they would have done it by now. I feel that this is a major cover up and I wanted the EPA to get up

to Lehigh and catch them doing this crime but who knows now what is going on.

13) The trucks from the Quarry and the Cement plant are totalled

to 70,000 truck trips per year I think this amount is very conservative.

We must also consider the truck trips from the Stevens Creek Quarry as well back and forth causing noise and dust pollution all

over our roads. This dust is spreading all over the community especially into the homes of the people that live very close to the

Stevens Creek Rd. and the Foot Hill expressway it is absolutely devastating and this must stop. The noise coming from the trucks

and the cement plant and quarry is a nuisance this must stop. The danger from the rocks being thrown from the wheels of the

trucks onto pedestrians is life threatening. The rocks are also breaking car windows which could cause car accidents and this of

course should stop.

14) Every city in the valley should be involved with this matter and they should be working to look out for the population that lives

in their community which is in terrible danger.

15) We can not concern ourselves with a few jobs of the people that work in these facilities or drive the truck that haul the cement around

what should be looked at is the benefit of the majority of individuals that are being polluted to death. The workers are also at risk and

so they maybe more concerned about their jobs when they should be more concerned about their health and their families health.

Sometimes society needs to protect those that are too blind to see what is really going on.

16) The EIR should include anything that would make a difference to the report and that includes the Health Risk Assessment that is so poorly done there needs to be a truly real report done. This would have to include all of the pollutants gases, metals and chemicals that would harm the public in any way and the levels should be subject to a real investigation.

17) Santa Clara County should do their own air, water and soil tests not depending on Lehigh or the Steven Creek Quarry to do their own tests that can be flawed or tampered with in any way lets not let the fox watch the chicken coop. The self policing of these companies has caused many problems and yet we have them do their own testing this should not be allowed.

18) The new mine will cause more dust and more pollution we the public will not be able to live in our homes any longer. The law suites that Lehigh and the Stevens Creek Quarry will have to be subjected to will cause them bankruptcy. This pollution will be worse than any major catastrophe. The 10,000 trees that have been some what of a buffer will be gone and the dust will fly and cumulate on ground wash into the water ways and suffocate us to death this paints a very devastating picture and it should. We can not let this happen it is a crime a sin a destruction of humanity and we as citizens have a right to life, liberty and the pursuit of happiness so how can anyone let this continue.

I stated that I will not stop my endeavors no matter how long it takes I will persiver and never give up the fight so I hope you will look at all of the issues and make amends the Lehigh Southwest Cement and Quarry and the Stevens Creek Quarry must be closed down once and for all. The lands must become a major Super Fund site and the cleanup must begin immediately in order to protect the public from any further polluiton and contamination.

Please do the right thing and help us let me know via e-mail if you have received this e-mail message. I would also like to know when the comments will be printed on the web for my review.
Thanks

Cathy Helgerson

From: Vicky Ho <vickyueho@yahoo.com>
Date: March 30, 2011 9:18:34 PM PDT
To: Marina Rush <marina.rush@pln.sccgov.org>
Subject: Re: Lehigh Permanente Quarry- comment

Thank you for your notice.

I am submitting my comment in writing.

I heard the Lehigh plant manager once admitted that the mercury level of the rocks at

Lehigh here is very high, much higher than the quarry that they had in their plant in

Germany, where they managed to control the mercury emission to a very low level.

In other words, the rocks here is naturally not suitable for the process, because of its high content of mercury. So why are we letting them open another pit, knowing already that the rocks here is not suitable ? Too much mercury is not good for the health of people, and according to their past record, they will only hide and lie their way through as many

violations as they can get away with.

In addition, they are polluting our creeks and do not want to admit it.

Vicky Ho

22600 Alpine Drive, Cupertino, CA

--- On Fri, 3/11/11, Marina Rush <marina.rush@pln.sccgov.org> wrote:

From: Marina Rush <marina.rush@pln.sccgov.org>
Subject: Lehigh Permanente Quarry- Public Meeting Notice
To: "Marina Rush" <marina.rush@pln.sccgov.org>
Cc: "Rob Eastwood" <Rob.Eastwood@pln.sccgov.org>, "Gary Rudholm" <Gary.Rudholm@pln.sccgov.org>, "mike.lopez@pln.sccgov.org Lopez" <mike.lopez@pln.sccgov.org>, "Jody Hall Esser" <Jody.HallEsser@pln.sccgov.org>, "Lizanne Reynolds" <Lizanne.Reynolds@cco.sccgov.org>
Date: Friday, March 11, 2011, 8:21 AM

Good morning,

There will be a public meeting/scoping session regarding the Notice of Preparation (NOP) of an Environmental Impact Report (EIR) for the proposed

Comprehensive Reclamation Plan Amendment and Conditional Use Permit for Lehigh/Permanente Quarry. Lehigh has applied to amend the current reclamation plan, and includes an expansion area with a new mine pit.

The purpose of the meeting is to obtain comments from the public on possible environmental issues related to the proposal. County staff and our consultant will provide a short presentation on the project proposal and open the meeting to public comments. You may submit your comments either verbally or in writing.

The public comment period for this NOP will close on April 11, 2011, 5:00 PM. Following the NOP comment period, the County will begin work on the environmental studies and analysis for the EIR. We anticipate the public Draft EIR will be available Fall 2011.

NOP Public Scoping Meeting:

Wednesday, March 30, 2011, 7:00-9:00 PM

City of Cupertino, Quinlan Center (Cupertino Room)

10185 N. Stelling Road, Cupertino, CA 95014

Attached to this email is a summarized project description and list of environmental topics that will be addressed in the EIR. The complete project proposal can be viewed on the County's website at: www.sccplanning.org. If you cannot view the attachment or have questions, please contact me at (408)299-5784.

Best Regards,

Marina Rush

Marina Rush, Planner III
County of Santa Clara Planning Office
70 West Hedding Street, East Wing, 7th Floor
San Jose, CA 95110
email: Marina.Rush@pln.sccgov.org

Phone: (408) 299-5784
Fax: (408) 288-9198

From: JLucas1099@aol.com
Date: March 16, 2011 9:59:58 AM PDT
To: marina.rush@pln.sccgov.org
Subject: Lehigh Quarry air/water monitoring

Marina,

Have not received a notification from you as yet in regards NOP meeting on Lehigh Quarry Reclamation Plan in Cupertino at end of month. As per our last week's phone conversation, I would appreciate particulars.

In checking with Air Board was informed of air monitoring gage for mercury deposition in Monte Vista Park in Cupertino, which is in Stevens Creek watershed but have been unable to ascertain who is monitoring amount of mercury deposition from Lehigh Quarry in Stevens Creek Reservoir. Can you advise on this?

Then, San Francisco Water Quality Control Board reports monitoring pollutant runoff into Permanente Creek within Lehigh Quarry operations but say they are not to test below quarry as Permanente Creek runs through neighborhoods. Also they are not checking for mercury deposition within Permanente Creek watershed and in Santa Clara County's Ranch San Antonio parklands.

Is the Santa Clara County Planning Department's consultants conducting such tests for mercury deposition? This would appear to be an important element of environmental assessment for the reclamation plan and not to have such data would make it deficient to a serious degree. Was any such gaging of mercury deposition conducted by the previous reclamation plan consultant in 2008?

Am sorry to bring up these concerns at this time, in what is probably a busy week for you, but better now than in a NOP public hearing. I was surprised that the Santa Clara Valley Water District was not monitoring mercury deposition in the Stevens Creek Reservoir but they said that they had not been requested to do so.

Any direction you can give me in regards researching regulatory review of these concerns is appreciated.

Libby Lucas, Conservation, CNPS

From: JLucas1099@aol.com
Date: April 9, 2011 3:50:50 PM PDT
To: marina.rush@pln.sccgov.org
**Subject: Permanente Quarry NOP EIR Comprehens
Reclam Plan Amend. & Conditional Use Permit**

County of Santa Clara Planning
Office April 9, 2011
70 West Hedding, 7th Floor, East Wing
San Jose, CA 95110

Attention: Marina Rush, Planner III

RE: Notice of Preparation of an Environmental Impact Report
Comprehensive Reclamation Plan Amendment and Conditional
Use Permit for Permanente Quarry (State Mine ID# 91-43-004)

Dear Marina Rush,

In regards your Santa Clara County Notice of Preparation for the Permanente Quarry EIR for a reclamation plan and expansion into 200 acres south of present operations, there are sufficient critical concerns with implementation of the reclamation plan for past and present quarrying activities that need to be addressed. Don't these need to be finalized with the quarry's existing reclamation plan to comply with state reclamation law? Considerable revegetation of disposal sites was mandated and implementation of the success of this program should be assessed. Permanente Creek sediment loads and water quality are undergoing regulatory review at this time and illegal and non-compliant discharges to the creek need to be resolved.

It would seem that the EIR to study the proposal for quarry expansion to 200 acres to south, in what appears to be another

hydrologic unit, must mandate a separate reclamation plan and EIR to adequately address all environmental concerns impacting the Stevens Creek Reservoir and watershed? Is this new 200 acre site actually in the Permanente Creek watershed or the Stevens Creek watershed? Can quarrying activity be managed in such a manner as to lower the ridge line between watersheds gradually so that drainage will continue to flow to Permanente Creek? Where will ridge underflow drainage go? A field trip to this Monte Bello Ridge area would be helpful.

There are two plant species of special concern that may be anticipated to be found at this elevation of Monte Bello Ridge, *Clarkia concinna* ssp *automixa* and *Piperia michaelii*. Surveying for these plants would best be handled in the present month of April and the Santa Clara Valley Chapter of California Native Plant Society would welcome the opportunity to have one or two of their botanists review the quarry reclamation sites. The EIR should include plant surveys of duration of at least one, hopefully, rainfall-representative year and inclusive of all seasons, as some plants are challenging to identify when dormant.

The general vegetation on the 200 acres that presently buffer Stevens Creek Reservoir is said to consist of a mix of broadleaf hardwoods like oaks, bays, and madrones with shrubs such as manzanita, ceanothus, chamise and mountain mahogany, but the opportunity to get an overview of this terrain would be appreciated.

After the flooding of Blach School in the winter of 1981-2 when a Permanente quarry sediment basin weir failed, a mitigation study was contracted for with USGS that should be referenced in some detail as it gaged the high levels of sediment that comes out of this Permanente watershed, especially in peak storm events.

The study is "U.S. Geological Survey Water-Resources

Investigation Report 89-4130 Effects of Limestone Quarrying and Cement-Plant Operations on Runoff and Sediment Yields in Upper Permanente Creek Basin, Santa Clara County, California, Prepared in cooperation with the Santa Clara Valley Water District, 1989."

On page 41 this report notes that the Permanente Creek East Fork yielded on February 14, 1986, 1560 tons of sediment per square mile, followed by 2,430 tons, 598 tons, 2,095 tons, 1,873 tons, 2,520 tons and 387 tons in the rest of the week, resulting in a total of 11,463 tons of sediment per square mile for the week. In that same week the West Fork of Permanente Creek yielded 83.58 tons of sediment per square mile.

In consideration of the exceptional level of sediment yield of the East Fork of Permanente Creek it might be a valid mitigation measure to implement vegetated terraces within and downstream of quarry into the present on-going reclamation plan. The capacity of Permanente Creek as it runs through residential neighborhoods downstream is historically constrained and when such high sediment loads overwhelm and plug the channel, overbank flows will inundate residences, schools and El Camino Hospital. Retention measures are needed.

Another avoidance of impact alternative might be to assess routing upper Upper Permanente Creek flows around quarry activities. This is a very iffy consideration but a recommended forestry hydrologist consultant with the experience to professionally analyze such an option would be Dave Rosgen who conducted Northern California creek geomorphology classes for the Guadalupe Coyote Resource Conservation District.

As the quarry is reported to have been overexcavated it now must of necessity pump quarry bottom water into Permanente Creek which seemingly continually assures degraded water quality

conditions in the creek. Permanente Creek runs through or adjacent to six parks, two regional, one City of Los Altos, and three of the City of Mountain View, while stormwater in lowest reaches flows into Coast Casey retention basin and is pumped into Palo Alto Baylands. Children often have environmental stream study in the parks and sensitive wildlife species need protected habitat in upper watershed and baylands so water quality is a critical factor.

It seems evident that optimum pollutant control is best handled at the source, high in watershed, and that vegetation native to the watershed be used for swales and terraces at every possible opportunity. Substantial stands of trees should be retained for air quality buffers as air flow is modeled to assess impact to reservoirs.

In a brief review of background data that has been generated to date to assess this quarry's impacts on air and water quality of region, scientific data collection did not appear to be of sufficient duration or consistency to provide the proposed EIR with appropriate critical parameters. I will cite a couple of instances.

The SFEI Atmospheric Environment 44 (2010) 1263-1273 abstract related to Lehigh Hanson Permanente Cement Plant emissions, "Evidence for short-range transport of atmospheric mercury to a rural, inland site" uses Calero Reservoir as the rural sampling site, which air data might be seriously impacted by its proximity to Metcalf Power Plant. Evidently the study wanted to distance this sampling site from other significant Hg emission sources, five refineries located 75 km north of the cement plant in San Francisco Bay Area's air basin, but it isn't clear that Calero Reservoir's sampling site isn't in Coyote Valley's air basin? Does this sampling site's proximity to the Metcalf Power Plant make it an inappropriate rural comparison?

The SFEI Atmospheric Environment 44 (2010) 1255-1262 abstract of "Wet deposition of mercury within the vicinity of a cement plant before and during cement plant maintenance", does record one peak reading of 700 Hgr deposition during the week of February 21 through 28, 2008 in Stevens Creek Santa Clara County Park, in dense vegetation, but was only one of two weeks monitored. Another peak deposition reading was made at Permanente Cement plant of 1100 Hgr wet deposition, January 24 through 31, but the storm of a few weeks earlier was so severe it only recorded one peak day of 470 Hgr before the gage was incapacitated. That week's reading might have shown an exceptional spike in mercury deposition in Permanente Creek.

These readings do not seem to be of sufficient duration to provide representative mercury deposition levels for the cement plant. Also, mercury deposition levels could have been monitored in Santa Clara County Rancho San Antonio Park which would have provided comparative levels of mercury deposition closer to quarry and in landscape of meadow grass and Permanente Creek wetlands. It was also inconvenient that a Los Altos wind monitoring gage was dysfunctional and that La Honda facility (to north?) had to be used for air flow modeling.

In regards water quality monitoring the Regional Water Quality Control Board did a fish sampling for mercury in Stevens Creek Reservoir a number of years ago and perhaps that could be repeated every two years? The most recent violation in "Lehigh's substantial and ongoing non-storm water discharges are unpermitted and prohibited by the Industrial Storm Water General Permit" and "Muddy water flowing into Permanente Creek from the Facility; Sedimentation ponds and sediment traps overwhelmed with sediment in the middle of what was a normal-to-low rainfall year; and Over-reliance on sediment

management practices and insufficient use of erosion control.." needs to be addressed in the existing ongoing Reclamation Plan rather than projected or recycled into the new proposed and expanded reclamation plan and conditional use permit. Is this possible?

It is of particular importance that Santa Clara County's Planning Department address all mercury related impacts that quarrying activity at Permanente is having in the Permanente Creek watershed, and in parks and in neighborhoods downstream. The potential for methylmercury contamination to evolve in the created wetlands of Santa Clara Valley Water District's flood control detention basins in Rancho San Antonio (base for a colony of red-legged frogs which also reside in Permanente Creek wetlands in and above the quarry) in Cuesta Park and in McKelvey Park for Permanente Creek sediment flows is an almost guaranteed scenario.

Mercury is a toxic legacy issue that will cost taxpayers millions of dollars to address, not just in watersheds and parks but ultimately in San Francisco Bay. Spikes of mercury that USGS recorded in Guadalupe River stream gages in the 1980's from Almaden Mines tailings may be replicated in Permanente Creek's sediment laden stormflows from the highly erodible and quarried watershed? Please ensure that the EIR has a realistic timeline for obtaining critical scientific base data necessary in mandating a credible reclamation plan and for serious evaluation of the conditional use permit for this quarry and its proposed 200-acre expansion.

Thank you for the opportunity to comment on this Notice of Preparation for the Permanente Quarry EIR.

Sincerely,

Libby Lucas, Conservation SCV CNPS

From: Marilyn McCarthy <m4@earthlink.net>
Date: April 4, 2011 11:12:35 PM PDT
To: marina.rush@pln.sccgov.org
Subject: EIR comments regarding Lehigh reclamation
Reply-To: Marilyn McCarthy <m4@earthlink.net>

April 4, 2011

Hello Marina,

Thank you for the opportunity to make public comments regarding the Lehigh Reclamation Plan currently under consideration.

Over the past few decades, the Santa Clara County Board of Supervisors and the City of Cupertino have allowed an increasing amount of housing to be built near the Permanente/Lehigh plant.

One can almost “forgive” those who built the plant who due to lack of understanding of toxins and air pollution were not able to recognize how detrimental to public health the emissions and dust were coming from the plant operations.

Yet there can be no mistake now with our current level of air quality testing technology and global studies of fossil fuel burning emissions that the tons of particulates and mercury coming from the Lehigh cement plant and quarry are not good for anyone except Lehigh.

With new EPA guidelines soon to be implemented, those that govern and serve to protect the residents of Santa Clara County can no longer turn a blind eye to what is happening up in the hills.

It is time to protect the residents of this County and the cities, which surround the Lehigh operation.

The EIR will need to document the residents exposure to mercury, it's health impact and any long-term effects. Over 1.6 million people live in Santa Clara County and all are to be protected by the actions of the SCC Planning Board and Board of Supervisors. Since the Board of Supervisor has chosen to put business first, it is now up to the Planning Department to protect us.

With so many people now living near the plant, it seems the only logical recommendation is not to allow any new operations on the Lehigh site that will generate any form of pollution.

Lehigh may lose a small amount of profit if they are not allowed to go forward with the new South quarry, yet the residents of Santa Clara County will gain a better quality of life with less exposure to pollution that no dollar amount could ever compensate.

Sincerely,
Marylin McCarthy

From: "Matt" <mpamukcu@comcast.net>
Date: March 16, 2011 8:35:25 AM PDT
To: <marina.rush@pln.sccgov.org>
Cc: <mpamukcu@comcast.net>
Subject: Comments regarding "Notice of Preparation of an Environmental Impact... (State Mine ID No.91-43-004)"
Reply-To: <mpamukcu@comcast.net>

Dear Ms. Rush,

I understand Lehigh cement plant has changed its fuel from coal to petroleum coke. Further, the plant has multiple short-stacks rather than the traditional long-stacks.

Recent scientific literature and various studies have clearly shown that the emissions from coal-burning produce significantly high levels of hexavalent chromium. Further, flyash produced as the waste material has many deadly toxins and various pollutants. I have studied the existing documents and have not found one scientifically-sound and well-thought study to assess environmental damage to plants, animals and people, especially to children. Evidence developing in the scientific literature points out to harmful emissions from coal-burning plants as one of the potential triggers that may cause onset and progression of many childhood diseases, including asthma, allergies and autism. The silicon valley is one of the regions in the US where autism, for example, is among the highest in the nation.

Although reliably measuring speciated compounds of elemental toxins (such as hexavalent chromium, methylmercury, inorganic mercury, etc.) have been a challenge, today there are proven and reliable analytical measurement tools and methods that can measure many of these toxins with unprecedented levels of accuracy. RCRA EPA Method 6800, codified in 2008, is the gold standard in these types of measurements. Using Method 6800, it is possible to identify sources of specific toxins and prove what is anthropogenic and what is not. I

encourage you to explore the possibility of a retrospective study of the perimeter around the Lehigh plant that might have been affected by Lehigh's prior use of coal and the impact of emissions of petroleum coke.

The current fuel, petroleum coke, contains less harmful toxins than coal and therefore harmful emissions might be lower but emissions might still pose health risks. There are many types of petroleum coke. I recommend requiring the company to disclose what type of petroleum coke it is using, so it can be analyzed for its isotopic signature. Once the isotopic signature of the fuel material is known, it would be relatively simple to monitor the environmental impact of the plant's current operation because it will be possible to accurately measure and tell whether a particular speciated toxin in the environment is produced by the plant. THIS TYPE OF ANALYSIS is now possible using the RCRA EPA Method 6800 and an analytical tool called Inductively Coupled Plasma Mass Spectrometer.

I have not been able to find a document that provides the rationale behind the utility of multiple short-stacks in the plant, rather than the traditional long-stacks. It is clear to me that multiple short-stacks only heighten the health risks to the workers of the plant and the local habitants within a shorter diameter of the plant.

I can provide scientific evidence on new, advanced metrology mentioned above and additional information about EPA Method 6800.

Regards,

Mehmet Pamukcu

From: "Brosseau, Kimberly"
<Kimberly.Brosseau@PRK.SCCGOV.ORG>
Date: March 23, 2011 3:33:15 PM PDT
To: "Marina Rush" <Marina.Rush@pln.sccgov.org>
Cc: "Mark, Jane" <Jane.Mark@PRK.SCCGOV.ORG>, "Rocha, Don" <Don.Rocha@PRK.SCCGOV.ORG>
Subject: File No 2250-13-66-01EIR - Lehigh Quarry

March 23, 2011

Hi Marina,

Attached please find a copy of the Parks Department comment letter regarding the Notice of Preparation of an EIR for the Reclamation Plan Amendment for the Lehigh Quarry. Please let me know if you have any questions. A hard copy will follow.

Thanks,
Kim

Kimberly Brosseau Park Planner III Santa Clara County Parks & Recreation
Department 298 Garden Hill Drive Los Gatos, CA 95032 (408) 355-2230
kimberly.brosseau@prk.sccgov.org

CommentLtr_NOPforEIR_PermanenteQuarry_3_23_11.pdf
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County of Santa Clara

Parks and Recreation Department

298 Garden Hill Drive
Los Gatos, California 95032-7669
(408) 355-2200 FAX 355-2290
Reservations (408) 355-2201
www.parkhere.org



MEMORANDUM

DATE: March 23, 2011

TO: Marina Rush, Planner
County Planning Office

FROM: Kimberly Brosseau, Park Planner
County Parks Department

SUBJECT: Notice of Preparation of an Environmental Impact Report for the Reclamation Plan Amendment and Conditional Use Permit for Permanente Quarry (File No. 2250-13-66-10EIR)

The County Parks Department has reviewed the Notice of Preparation (NOP) of an Environmental Impact Report (EIR) for the Permanente Quarry Reclamation Plan Amendment and Conditional Use Permit for issues related to park use, trails, and implementation of the Countywide Trails Master Plan and submits the following comments.

The Trails Element of the Park and Recreation Chapter of the 1995-2010 County General Plan indicates a trail alignment nearby the subject parcel. Per the General Plan, Countywide Trail Route R1-A (*Juan Bautista de Anza NHT*) is located northeast of the project site. The *Santa Clara County Countywide Trails Master Plan Update*, which is an adopted element of the General Plan, designates the countywide trail as a “trail route within other public lands” for hiking, off-road cycling, and equestrian use. This trail route provides an important connection between the City of Cupertino and Rancho San Antonio County Park. The City of Cupertino’s approved Final Stevens Creek Trail Feasibility Study also indicates this trail route as an important connection between Rancho San Antonio County Park and the City of Cupertino.

Visual Resources

The quarry is located adjacent to Rancho San Antonio County Park (Diocese Property). Since the County Parks Department is an adjacent property owner, modifications to the Reclamation Plan should take into account the potential aesthetic/visual impacts of the quarry and mitigation of views from these public parklands and trails.

The project is located in a Zoning District with a Design Review overlay for the Santa Clara Valley Viewshed (d1). It is expected that the applicant will construct as per the submitted plans and comply with design guidelines towards screening the project from public views.



An adequate vegetated buffer between the degraded hillsides and the adjacent County parkland and trails should be incorporated into the Reclamation Plan for the quarry.

Biological Resources

The EIR for the Reclamation Plan Amendment should discuss whether or not the project would have an impact on Permanente Creek and endangered species such as the California red-legged frog (CRLF) and California tiger salamander. The CRLF currently exist in mitigation sites on the adjacent Diocese property.

Surface Hydrology, Drainage and Water Quality

The EIR for the Reclamation Plan Amendment should evaluate potential hydrological impacts resulting from any grading, recontouring and seeding of the site. The EIR should also discuss if there are any proposed modifications to the riparian corridor or Permanente Creek. The Reclamation Plan Amendment should also take into account adequate erosion control measures and proposed grading and the potential impacts it may have to the adjacent County parkland and trails.

The Santa Clara Valley Water District (SCVWD) certified a Final EIR for the Permanente Creek Flood Protection Project in November 2010, which includes a proposed flood detention basin facility to be constructed, operated and maintained at Rancho San Antonio County Park Diocese Property as the Project's Recommended Alternative. This Permanente Creek Quarry's Reclamation Plan should evaluate future hydrological modifications that may impact the District's Permanente Creek Flood Protection Project for portions of Permanente Creek through Rancho San Antonio County Park.

Noise Impacts

The EIR for the Reclamation Plan Amendment should evaluate any potential noise impacts to the adjacent Rancho San Antonio County Park and impacts that noise from the quarry may have on park users.

Air Quality

The EIR for the Reclamation Plan Amendment should evaluate any potential air quality impacts as a result of the quarry operations and associated truck trips generated to and from the quarry on the adjacent Rancho San Antonio County Park and impacts that may occur on park users.

The County Parks and Recreation Department appreciates the opportunity to provide comments on the NOP of an EIR for the Permanente Quarry Reclamation Plan Amendment and Conditional Use Permit. We look forward to reviewing the EIR once it becomes available. If you have any questions regarding this letter, please contact me at (408) 355-2230 or by email at: Kimberly.Brosseau@prk.sccgov.org.

Sincerely,



Kimberly Brosseau
Park Planner

cc: Jane Mark, Senior Planner
Don Rocha, Natural Resources Management Program Supervisor

From: "Debbie Pedro" <dpedro@losaltoshills.ca.gov>
Date: April 11, 2011 8:46:58 AM PDT
To: "Marina Rush" <marina.rush@pln.sccgov.org>
Subject: RE: Lehigh Permanente Quarry- Public Comment

Hi Marina,

For the Lehigh Permanente Quarry EIR, can you please include a "view point location" in Los Altos Hills for modeling for aesthetics? I would suggest a location at or near Bill Almon's residence at 10570 Blandor Way. Residents living in the southeastern part of Los Altos Hills have a direct view of the quarry, specifically the WMSA.

If you have any questions or need further clarification, please feel free to call me at 650-947-2517. Thank you.

Debbie

Debbie Pedro, AICP, LEED AP
Planning Director
Town of Los Altos Hills
Phone: (650) 947-2517
dpedro@losaltoshills.ca.gov

From: Marina Rush [mailto:marina.rush@pln.sccgov.org] **Sent:** Friday, March 11, 2011 8:21 AM **To:** Marina Rush **Cc:** Rob Eastwood; Gary Rudholm; mike.lopez@pln.sccgov.org Lopez; Jody Hall Esser; Lizanne Reynolds **Subject:** Lehigh Permanente Quarry- Public Meeting Notice

Good morning,

There will be a public meeting/scoping session regarding the Notice of Preparation (NOP) of an Environmental Impact Report (EIR) for the

proposed Comprehensive Reclamation Plan Amendment and Conditional Use Permit for Lehigh/Permanente Quarry. Lehigh has applied to amend the current reclamation plan, and includes an expansion area with a new mine pit.

The purpose of the meeting is to obtain comments from the public on possible environmental issues related to the proposal. County staff and our consultant will provide a short presentation on the project proposal and open the meeting to public comments. You may submit your comments either verbally or in writing. **The public comment period for this NOP will close on April 11, 2011, 5:00 PM.** Following the NOP comment period, the County will begin work on the environmental studies and analysis for the EIR. We anticipate the public Draft EIR will be available Fall 2011.

NOP Public Scoping Meeting:

Wednesday, March 30, 2011, 7:00-9:00 PM

City of Cupertino, Quinlan Center (Cupertino Room)

10185 N. Stelling Road, Cupertino, CA 95014

Attached to this email is a summarized project description and list of environmental topics that will be addressed in the EIR. The complete project proposal can be viewed on the County's website at: www.sccplanning.org. If you cannot view the attachment or have questions, please contact me at (408)299-5784.

Phillip P. Pflager
Anne E. Pflager

County of Santa Clara Planning Office
Attn: Marina Rush
70 West Hedding, 7th Floor East Wing
San Jose, CA 95110

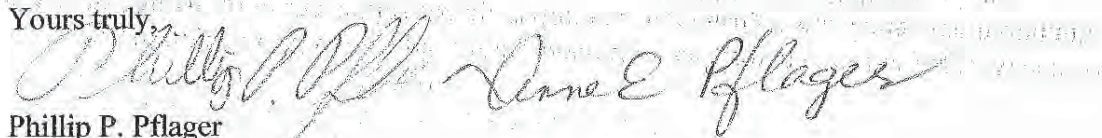
RE: Notice of Preparation of an Environmental Impact Report Comprehensive Reclamation Plan Amendment and Conditional Use Permit for Permanente Quarry (State Mine ID# 91-43-004)

Dear Ms. Rush;

When the Environmental Impact Report is prepared we would like the County of Santa Clara to consider and investigate the following points:

1. The visual impact of the open pit mining operation has grown over the years. When we moved to Cupertino in the sixties the operation was not easily seen. Today the mountain removal operation is clearly visible and will be more so if the new 200 acre pit is approved.
2. Permanente Creek flows to the bay. It is important to define what is flowing from the mining operation into the creek. It is important to test the creek water above and below the mining operation to determine the level of contaminants added by the mining operation.
3. Currently the noise from the plant is minimal but when the economy improves and the new 200 acre open pit mine is in operation it is reasonable to expect an increase in noise level. We live roughly one mile from the operation and are presently disturbed by noise from the operation on nights we leave our windows open to cool the house. In the past the noise has been worse and we expect with the expanded operation it will be worse in the future.
4. We would like the mining operation to conform to current standards, not standards that were in place sixty to one-hundred years ago. Please evaluate the counties ability to enforce current standards on the operation.

Yours truly,



Phillip P. Pflager
Anne E. Pflager

From: "Frank Rittiman" <its4u@comcast.net>
Date: March 15, 2011 11:12:08 AM PDT
To: <tbui@baaqmd.gov>
Cc: <marina.rush@pln.sccgov.org>
Subject: Permanente Quarry

Hi Thu and Marina;

We have lived **VERY CLOSE**
to the quarry for 36 years.

The air quality (dust pollution) has been a major issue for us, for that whole time period. The ongoing aggravation (noise, dust, traffic) from the quarry trucks, and associated CHP activity to control them never ends.

I had a representative of the air resources board visit, based on my requests in the past, to complain about this. No resolution. He even suggested that I couldn't count the visual dust plume from Stevens Creek Blvd., especially when the sun is behind the quarry (too obvious). Even worse on weekends, when Permanente Cement seems to make things even worse.

Our air quality (dust) inside the house is very bad, let alone outside. Cars need to be washed nearly every other day-we gave up....

I have attended a couple of meetings at Cupertino City Hall, in the past. Everyone seemed to have the same issues, but after all this time, nothing has improved. In fact, it has gotten worse.....

I scanned the FAQ. Etc. Lots of discussion. Our conclusion... Follow the money.... Tax dollars trump environmental concerns.

Now it seems it's REALLY going to get WORSE....Hard to believe.

I can't tell from the map, exactly how much closer and worse this is

going to become.

Is it worth our time to attend the 3/30/2011 Meeting, or is it hopeless?...

Sincerely

Frank & Joan Rittiman Its4u@comcast.net

File: 2985
Permanente Creek

April 1, 2011

Ms. Marina Rush
County of Santa Clara
Planning Office
70 West Hedding, 7th Floor, East Wing
San Jose, CA 95110

Subject: Notice of Preparation - Comprehensive Reclamation Plan Amendment and
Conditional Use Permit for Permanente Quarry

Dear Ms. Rush:

The Santa Clara Valley Water District is a special district with jurisdiction throughout Santa Clara County. The Water District acts as the county's groundwater management agency, principal water resources manager, flood protection agency and is the steward for its watersheds, streams and creeks, and underground aquifers.

We appreciate the opportunity to comment on the scope for the EIR for the Comprehensive Reclamation Plan Amendment and Conditional Use Permit for Permanente Quarry. This letter transmits comments that focus on the areas of interest and expertise of the Water District:

- The Draft EIR should analyze discharges to Permanente Creek from quarry operations. These discharges may impact water quality, hydrology and flood potential, and biological resources adjacent to and downstream of the quarry. The Water District is concerned about the long-term impacts to stream maintenance downstream from sediment originating on-site.
- The project should be analyzed to ensure that it is consistent with the Guidelines and Standards for Land Uses Near Streams prepared by the Santa Clara Valley Water Resources Protection Collaborative, which the County was a member of.
- The future reclamation of the site needs to include enforceable provisions with appropriate financial backing to ensure that adequate monitoring and restoration is completed after quarry operations end. Reclamation must ensure that the site does not contribute to water quality or sedimentation problems in Permanente Creek after the operator leaves.
- The Water District is in the design phase for the Permanente Creek Flood Protection Project. The project will address erosion control, maintenance, structural repair, and habitat restoration in the Permanente Creek watershed. The Water District's Board of



Ms. Marina Rush
Page 2
April 1, 2011

Directors certified a Final EIR for the project on June 17, 2010. The Draft EIR for the Reclamation Plan Amendment should consider the Water District's project in the consideration of cumulative impacts.

- As part of the Permanente Creek Flood Protection Project, the Water District may consider additional options for providing flood protection in the Permanente Creek Watershed. This could include flood detention facilities in the upper watershed. We encourage the County and the project proponent to work with the Water District in providing flood benefits that are mutually beneficial.

District staff is available to meet and discuss the above areas of concern. Please provide a copy of the Draft EIR to the Water District for review when it becomes available. Please reference District File Number 2985 on further correspondence regarding this project. If you have any questions or need further information, you can reach me at (408) 265-2607, extension 3095.

Sincerely,



Michael Martin
Environmental Planner
Community Projects Review Unit

cc: S. Tippets, C. Elias, S. Hosseini, U. Chatwani, File

2985_54010mm04-01



Loma Prieta Chapter

♦ San Mateo ♦ Santa Clara ♦ San Benito Counties

County of Santa Clara
 Planning Office, Attn: Marina Rush
 County Government Center, 7th Floor
 70 West Hedding Street, 7th Floor
 San Jose, California, 95110

April 7, 2011

Re: Comments on Scoping of the EIR for the Comprehensive Reclamation Plan Amendment and Conditional Use Permit for Permanente Quarry (State Mine ID # 91-43-004)

Dear Ms. Rush:

Writing on behalf of the Sierra Club's Loma Prieta Chapter's Air Quality Committee we wish to provide the following comments:

1. The method of supervision of Lehigh's operation must be a subject of the EIR. The subsequent items simply reflect our desire that Lehigh operate and maintain the facility in accordance with the existing environmental regulations. However, there is considerable local sentiment that the history of the current management is to delay conforming to the prevailing regulations. Since the pollution emitted depends on a wide variety of operational parameters, it is essential that Lehigh conduct themselves in a manner consistent with an acute sensitivity to the health of the community.
2. Air Quality. Lehigh's emissions should conform to the current NESHAP and NSPS standards (see Federal Register September 9, 2010). Since the Portland Cement Association (PCA) has filed a lawsuit challenging the U.S. Environmental Protection Agency's decision to cut toxic air pollution from cement kilns, and these regulations are critical to the safety of the population of the South Bay, we believe Lehigh must commit unequivocally to conform to the specific regulations as they stand today. Lehigh must continue to conform even if the regulations are diluted by either time delays or emission-level criteria.
3. Health Risk Assessment. Lehigh must be responsive to a professionally conducted Health Risk Assessment (HRA). The HRA mentioned in the recent permit renewal was, in our opinion, inadequate. In particular, a sensitivity analysis to the various input parameters for the air dispersal codes should be performed. No data should be summarily disregarded, as was done in the December 6, 2010 letter to Mr. Scott Lutz of BAAQMD (see Table 1 entries for 3/26 and 3/27/2009). Additionally, and very importantly, the HRA prepared on November 2008 by the BAAQMD used an unsubstantiated analytic technique of presuming one-seventh of the chromium emitted was in the poisonous form of chromium

- VI. Any future assumptions must be thoroughly justified. In the absence of a detailed, quantitative understanding, all chromium emitted should be assumed to be chromium VI.
4. Greenhouse Gas Emissions. In evaluating alternative fuels, the complete production cycle of the fuels must be considered. Biofuels, in particular, are often not genuinely effective reducers of greenhouse gases. The Sierra Club is resolutely opposed to the combustive use of coal products generally and we are awestruck that such usage is contemplated in what is otherwise considered to be an environmentally aware community of political and regulatory entities. From the information available to us, it appears that natural gas would be the least harmful fuel and therefore should be seriously examined in the EIR. Train transportation should also be evaluated relative to truck transportation, as train transportation is more efficient.
 5. Air Quality Impacts to Water Quality. The facility is located next to the Stevens Creek Reservoir so that potentially air pollution could precipitate out of the exhaust gases and fall into the lake. The EIR should thoroughly examine for this possibility as well as for direct material intrusion into the reservoir.

Thank you for the opportunity to contribute to the EIR process at this early stage. Although the cement products produced by this facility are of value to the community, we believe it is essential that those products be produced in a fashion that does not cumulatively degrade our community health, nor leave it in public doubt.

Sincerely,



Gary Latshaw, Ph.D.
Chairman of the Air Quality Committee
Loma Prieta Chapter of the Sierra Club
Contact: glatshaw@gmail.com; 408-499-3006

From: Ken Smyth <kend_smyth@yahoo.com>
Date: April 8, 2011 12:07:13 AM PDT
To: marina.rush@pln.sccgov.org
Subject: Lehigh EIR Input

Hi Marina,

Thank you for the opportunity to speak at the recent public meeting in Cupertino regarding the Lehigh EIR for their request to expand their quarry operations. I am opposed to the Lehigh expansion and I'm writing you to submit my input on why and I'm submitting the enclosed presentation.

I feel the Santa Clara Board of Supervisors is naive about the dangerous toxicity of mercury and have included the following video about how mercury, a neurotoxin, that causes brain neuron degeneration, especially in humans and animals with developing fetuses, <http://movies.commonscalgary.ca/mercury/>

I have included this link in my presentation and wanted to make sure it was included in my submission.

Also enclosed is the University of Texas Medical Center (San Antonio) study that was conducted over several years confirming that the rate of autism increases relative to the proximity to cement kilns, quarries, and power plants.

Thank you for the opportunity to submit input on this important matter. Contact me for questions you may have. Enjoy the weekend.

Regards,

Ken Smyth
Cupertino Resident

SCC EIR Input_UT Mercury Std Deviations_Cupertino
Schools.pdf ↪Palmer_UT_et al_Proximity to Point
Sources_proofs.pdf ↪



Proximity to point sources of environmental mercury release as a predictor of autism prevalence

Raymond F. Palmer^{a,*}, Stephen Blanchard^b, Robert Wood^a

^aUniversity of Texas Health Science Center, San Antonio Department of Family and Community Medicine, 7703 Floyd Curl Drive, San Antonio Texas, Mail Code 7794, TX 78229-3900, USA

^bDepartment of Sociology, Our Lady of the Lake University, San Antonio Texas, TX, USA

Received 2 October 2006; received in revised form 16 January 2008; accepted 4 February 2008

Abstract

The objective of this study was to determine if proximity to sources of mercury pollution in 1998 were related to autism prevalence in 2002. Autism count data from the Texas Educational Agency and environmental mercury release data from the Environmental Protection Agency were used. We found that for every 1000 pounds of industrial release, there was a corresponding 2.6% increase in autism rates ($p < .05$) and a 3.7% increase associated with power plant emissions ($P < .05$). Distances to these sources were independent predictors after adjustment for relevant covariates. For every 10 miles from industrial or power plant sources, there was an associated decreased autism Incident Risk of 2.0% and 1.4%, respectively ($p < .05$). While design limitations preclude interpretation of individual risk, further investigations of environmental risks to child development issues are warranted.

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Keywords: Mercury; Autism; Environment; Distance; Industry

Introduction

Mercury is a heavy metal found naturally in trace amounts in the earth's atmosphere in differing forms—as elemental vapor, reactive gaseous compounds, or particulate matter. Studies show that background levels of environmental mercury deposition have steadily increased several fold since the pre-industrial era (Schuster et al., 2002), with the largest source of potentially adverse exposures coming primarily from coal-fired utility plants (33%), municipal/medical waste incinerators (29%) and commercial/industrial boilers (18%)—estimated to be responsible for 158 tons of environmental mercury released per year in the US (Environmental Protection Agency, Report to Congress, 1997). Other sources include hazardous waste sites, cement factories, and chlorine production plants. According to the Agency for Toxic Substances and Disease Registry (ATSDR), next to arsenic and lead,

mercury is the third most frequently found toxic substance in waste facilities in the United States (ATSDR, 2001).

Mercury is now widespread in the environment (EPA, 1997; ATSDR, 2001). The long-range atmospheric transport of mercury (Ebinghaus et al., 2001), and its conversion to organic forms through bio-accumulation in the aquatic food chain has been known for some time (MacGregor, 1975; Mahaffey, 1999). Notwithstanding, there are emerging concerns over the potential adverse effects of ambient levels of environmental mercury during early childhood development. There is sufficient evidence that children and other developing organisms are particularly susceptible to the adverse neurological effects of mercury (Landrigan and Garg, 2002; Grandjean et al., 1995; Ramirez et al., 2003; Rice and Barone, 2000).

Evidence from animal studies suggests that neonates lack the ability to efficiently excrete both methylmercury (Rowland et al., 1983) and inorganic mercury (Thomas and Smith, 1979), and that there is a higher lactational transfer of inorganic mercury than methylmercury (Sundberg et al., 1991a, b). Correspondingly, it has been shown that infants exposed via milk from mothers who were

*Corresponding author. Tel.: +1 210 827 7681.

E-mail address: palmerr@uthscsa.edu (R.F. Palmer).

- 1 accidentally poisoned by methylmercury-contaminated
2 bread in Iraq accumulated higher mercury concentrations
3 in their blood than did their mothers (Amin-Zaki et al.,
4 1988) and the Faroe Island studies show that hair mercury
5 concentrations in infants increased with the duration of the
6 nursing period (Grandjean et al., 1994). It has also been
7 shown that maternal dental amalgams have been linked to
8 Q6 higher body burdens in infants (Oskarsson et al., 1996).
- 9 A 10-year longitudinal cohort monitoring study in
10 Finland demonstrated that median hair total mercury
11 concentrations increased in individuals who lived 2 km
12 from a mercury polluting power plant compared to
13 unexposed reference groups living further away (Kurtio
14 et al., 1998). A study performed in China demonstrated
15 that higher mercury concentrations are present in soil
16 sediments and rice fields that are in close proximity to
17 mercury emitting industrial plants and mining operations
18 compared to areas that are more distant (Wang et al.,
19 2003). A variety of similar investigations involving human,
20 plant, and animal studies performed in different global
21 locations consistently demonstrate that mercury concen-
22 trations are inversely associated with distance to the
23 environmental source (Ordonez et al., 2003; Fernandez et
24 al., 2000; Hardaway et al., 2002; Navarro et al., 1993;
25 Kalac et al., 1991; Moore and Sutherland, 1981).
- 26 A 2000 report by the National Academy of Sciences'
27 National Research Council estimates that approximately
28 60,000 children per year may be born in the US with
29 neurological problems due to in utero exposure to
30 methylmercury (NAS, 2000). The neurotoxicity of low-
31 level mercury exposure has only recently been documented
32 (NAS, 2000; EPA, 1997) and little is known about
33 persistent low-dose ambient exposures coming from
34 environmental sources or its influence on childhood
35 developmental disorders such as autism—a condition
36 affecting impairments in social, communicative, and
37 behavior development typically present before age 3 years
38 manifested by abnormalities in cognitive functioning,
39 learning, attention, and sensory processing (Yeargin-
40 Q7 Allsopp et al., 2003; CDC, 2007).
- 41 One hypothesis, which has been advanced to explain the
42 recently observed increases in autism in the US and
43 Europe, is that biological damage from neurotoxic
44 substances such as mercury may play a causal role
45 Q8 (Bernard et al., 2002). Holmes et al. (2003) found that
46 mercury levels in the hair of autistic children were
47 significantly lower than non-autistic controls indicating,
48 according to the authors, that autistic children retain
49 mercury in their body due to impairments in detoxification
50 pathways. After the administration of a heavy metal
51 chelating agent, Bradstreet et al. (2003) demonstrated that
52 autistic children, relative to controls excreted more
53 mercury in urine than non-autistic controls. Two recent
54 studies have shown that body burden of mercury, as
55 indicated by increased levels of urinary porphyrins specific
56 to mercury exposure, are significantly higher in autistic
57 children than in non-autistic children (Nataf et al., 2006;
58 Geier and Geier, 2006). 59
- 60 While the association between autism and thimerisol (a
61 mercury-based preservative formerly used in the childhood
62 vaccination schedule during the 1990s) has not been
63 scientifically established (Freed et al., 2002; Schechter and
64 Grether, 2008), two studies have demonstrated an associa-
65 tion with environmental sources of mercury and autism.
66 Windham et al. (2006) demonstrated that ambient air
67 mercury was associated with elevated autism risk in a
68 case-control study in California, and Palmer et al. (2006)
69 demonstrated that environmental mercury pollution was
70 associated with point prevalence estimates of autism using
71 EPA reported mercury release data from 254 counties in
72 Texas. A major limitation to this study was that the cross-
73 sectional design precluded any causal inferences. In
74 addition, exposure was inferred from total pounds of
75 environmentally released mercury aggregated at the county
76 level at a specific point in time. Using distance to potential
77 exposure sources may be a more reasonable proxy for
78 exposure than one defined by total amount contained
79 within artificial county boundaries. Given the literature on
80 the relevance of proximity to the source of mercury and
81 body burden, we suspect that distance to the source of
82 mercury exposure may actually explain, at least in part, the
83 association between increased autism rates and environ-
84 mental mercury pollution found in both the Palmer et al.
85 (2006) and Windham et al. (2006) studies. 85
- 86 The objective of the current study is to determine if
87 proximity to major sources of mercury pollution is related
88 to autism prevalence rates. 87
- 89 **Methods** 89
- 90 *Data source and sample* 91
- 92 Data for environmentally released mercury were ob-
93 tained from the *United State Environmental Protection*
94 *Agency Toxics Release Inventory* (TRI) (USEPA-TRI,
95 2006). TRI collects information about chemical releases
96 and waste management reported by major industrial
97 facilities in the US. The TRI database was established by
98 Section 313 of the Emergency Planning and Community
99 Right-To-Know Act of 1986 (EPCRA). Under EPCRA, 101
100 industrial facilities in specific sectors are required to report
101 their environmental releases and waste management
102 practices annually to the EPA. Facilities covered by this
103 act must disclose their releases to air, water, and land of
104 approximately 650 toxic chemicals, as well as the quantities
105 of chemicals they recycle, treat, burn, or otherwise dispose
106 of on-site and off-site. The current analysis used the 1998
107 county pollution report that industrial facilities provided to
108 TRI. Data for environmentally released mercury by coal-
109 fired power plants were obtained from TRI and from the
110 Texas Commission for Environmental Quality. In all, 39
111 coal-fired power plants and 56 industrial facilities in Texas
112 were used in the analysis. 113

1 *Measure of distance from mercury sources*

3 The address location of coal-fired power plants and
 5 industrial facilities were entered into Arc-view V 9.0
 7 Geographic Information Systems software along with
 9 polygonal shapes or boundaries of the school districts of
 11 Texas. GIS was then used to assign the *XY* location
 13 coordinates (latitude and longitude) of each plant and
 15 facility as well as to locate the centroid or *XY* geographical
 17 center of each school district. The amount of mercury
 19 emitted by each plant and by each facility was weighted on
 21 the *XY* coordinate of each plant's and facility's location.
 23 Using SPSS version 14 software, the distances between the
 25 *XY* coordinate of each source of emission and the *XY*
 27 coordinate of each school district centroid were calculated.
 29 As a result, each school district received a distance-in-miles
 31 measurement calculated separately for power plants and
 33 industrial facilities.

35 *School district data*

37 Administrative data from the Texas Education Agency
 39 (TEA) were analyzed. In compliance with the Texas
 41 Education Code, the Public Education Information Man-
 43 agement System (PEIMS) contains data necessary for the
 45 legislature and the TEA to perform their legally authorized
 47 functions in overseeing public education. The database
 49 consists of student demographic, personnel, financial, and
 51 organizational information. Data descriptions are available
 53 at the TEA website <http://www.tea.state.tx.us/data.html>.
 55 Autism counts per school district were obtained by special
 57 request from the TEA. Data were from 1040 school
 districts in 254 counties in Texas. Diagnoses of autistic
 disorder are abstracted from the school records and are
 made by qualified special education psychologists em-
 ployed by the TEA or from psychologists or medical
 doctors outside the TEA system. While diagnoses were not
 standardized, there is considerable evidence that diagnoses
 of autistic disorder are made with good reliability and
 specificity in the field (Eisenmajer et al., 1996; Hill et al.,
 2001; Mahoney et al., 1998). Autism prevalence rates from
 2002 were used as the outcome and 1997 rates were used as
 a covariate in multivariate regression models.

99 We have identified the key covariates from prior work
 101 (Palmer et al., 2005, 2006), which were used in this study to
 103 adjust for potential confounding. *Urbanicity* and *School*
 105 *District Resources* have been demonstrated to be important
 107 covariates as they relate to greater identification of autism
 109 spectrum disorders. We also include a measure of ethnicity
 111 (percent white in school district).

113 *Urbanicity*

115 Eight separate demographically defined school district
 117 regions were used in the analysis as defined by the TEA:
 119 major urban districts and other central cities (1) major
 121 suburban districts and other central city suburbs (2) non-
 123 metropolitan and rural school districts (5).

In the current analysis, dummy variables were included
 in the analysis coding urban (dummy variable 1, and
 suburban (dummy variable2), contrasted with non-metro
 and rural districts which were the referent group. Details
 and specific definitions of urbanicity categories can be
 obtained at the TEA website <http://www.tea.state.tx.us/data.html>.

Racial composition was accounted for by the proportion
 of White children enrolled in schools within each district.

Total number of students reflects all enrolled students in
 the districts 2002 school year and was used as the
 denominator in calculating autism rates.

District population wealth was calculated as the district's
 total taxable property value in 1998 as determined by the
 Comptroller's Property Tax Division (CPTD), divided by the
 total number of students in the district in 1998.
 Property value was determined by the CPTD as part of its
 annual study, which attempts to present uniformly
 appraised property valuations statewide. The CPTD value
 is calculated by applying ratios created from uniform
 independent appraisals to the district's assessed valuations.

125 *Statistical methods*

127 District autism data in 2002 were treated as event counts
 129 and used as the outcome in a Poisson regression model
 131 predicted by pounds of environmental mercury release
 133 1998, distance to sources of the release, and the relevant
 135 covariates. Total number of students enrolled in each
 137 district for 2002 defined the rates for each district. An over
 139 dispersion correction was applied due to the mean and
 141 variance not being equal. Due to the hierarchical structure
 143 of the data (e.g. districts nested within counties), the
 145 Poisson model was fit using MIWin multilevel modeling
 147 software (Rasbash et al., 1999) to obtain unbiased standard
 149 errors. Polynomials were added to the model to determine
 151 if a non-linear association was present between pounds of
 153 mercury, distance and autism rates. Regression coefficients
 155 of the models are reported as incident rate ratios by
 157 exponentiating the Poisson model coefficients.

161 *Modeling strategy*

163 *Pounds of mercury* release were first entered into the
 165 model followed by polynomial functions to access non-
 167 linear associations with autism rates. Next, *distance* was
 169 entered into the model to determine if it decreased the
 171 effect of *pounds*. Finally all covariates were entered:
 173 baseline *autism rates in 1997*, *urbanicity*, *racial composition*,
 175 *proportion of economically disadvantaged students*, and
 177 *district population wealth*. Note that mercury release data
 179 from 1998 are used to predict autism rates in 2002; it is
 181 plausible to postulate that releases during 1998 would have
 183 exposure potential for a cohort who was in utero in 1997. If
 185 an effect was present, this would be reflected in the 2002
 187 school district records—the age (5 years old) this cohort
 189 would be entering the system.

Results

Table 1 shows the descriptive statistics of the study variables. Note that there is considerable variation in each variable. Table 2 shows the Poisson regression coefficients and the corresponding Incident Risk Ratio (IRR) for the models exploring the linear and non-linear association between 1998 mercury release from industrial sources, distance, and 2002 autism rates. Model 1a shows that environmentally released mercury in 1998 is significantly associated with autism rates in 2002. We multiplied the coefficient by 1000 to reflect increases in autism rates per 1000 pounds. The coefficient yields an IRR of 1.026,

indicating that for every 1000 pounds of release in 1998, there is a corresponding 2.6% increase in 2002 autism rates. In model 1b, the squared term for pounds was entered into the model. Note that the linear coefficient is no longer significant and the polynomial term is. This indicates that the association between industrial sources of mercury release is non-linear—e.g. for every 1000 pounds there is an associated 1.1% accelerated risk. Adding distance to the equation in model 1c shows that for every 10 miles away from the source there is a decreased autism Incident Risk of 1.4%. Adding non-linear terms for distance (distance squared and the square root of distance) (not depicted) was not significant and therefore not utilized

Table 1
Descriptive statistics of study variables

	Mean or percent	Standard deviation	Range
<i>Predictor variables</i>			
Total number pounds of mercury per year for power plants	1225 lb	946	8–2516
Total number pounds of mercury per year for industrial facilities	1526 lb	1909	3–6685
Minimum distance to industrial facilities	39.7 miles	29.3	0.34–170.4
Minimum distance to power plants	71.7 miles	53.2	0.74–305.8
<i>Relevant demographic covariates</i>			
Value of taxable property	\$265,148	\$328,631	0–\$3,481,369
Percent urban	4%	–	–
Percent suburban	15%	–	–
Percent White	61.5%	–	0–100%
Proportion autism 1997 (rate per 1000)	0.85	2.1	0–26.3
<i>Outcome variable</i>			
Proportion autism 2002 (rate per 1000)	2.0	3.2	0–39.5

Table 2
2002 Autism rates as a function of industrial release of mercury

Model	Amount of Hg (per 1000lb)	Amount of Hg (per 1000lb) ²	Distance to industrial sources per 10 miles	1997 autism rates	District Wealth (per \$100,000)	Urban vs. rural	Suburban vs. rural	Percent White
<i>Model 1a</i>								
Regression coefficient (standard error)	.026(.010)*	–	–	–	–	–	–	–
Incident Risk Ratio	1.026	–	–	–	–	–	–	–
<i>Model 1b</i>								
Regression coefficient (standard error)	–.007 (.014) ^{ns}	.018(.006)**	–	–	–	–	–	–
Incident Risk Ratio	–	1.018	–	–	–	–	–	–
<i>Model 1c</i>								
Regression coefficient (standard error)	.021 (.015) ^{ns}	.02(.006)**	–.014 (.006)*	–	–	–	–	–
Incident Risk Ratio	–	1.020	0.986	–	–	–	–	–
<i>Model 1d</i>								
Regression coefficient (standard error)	.003 (.011) ^{ns}	.018 (.005)**	–.02 (.008)*	.16 (.01)***	.047 (.01)**	.29 (.04)***	.33 (.04)***	.004 (.001)**
Incident Risk Ratio	–	1.018	.980	1.170	1.048	1.33	1.39	1.004

Note: Second column reflects the amount of mercury squared, the non-linear polynomial term.

*p < .05.

**p < .01.

***p < .001.

Table 3
2002 Autism rates as a function of power plant release of mercury

Model 2: 2002 autism rates as function of 1998 pounds of mercury emission from power plant sources	Pounds of Hg per 1000	Non-linear term (Pounds of Hg per 1000) ²	Distance to industrial sources per 10 miles	1997 autism rates	District Wealth (per \$100,000)	Urban vs. rural	Suburban vs. rural	Percent White
<i>Model 2a</i>								
Regression coefficient (standard error)	.037 (.018)*							
Incident Risk Ratio	1.037							
<i>Model 2b</i>								
Regression coefficient (standard error)	.044 (.020)*	.050(.030) ^{ns}						
Incident Risk Ratio	1.044							
<i>Model 2c</i>								
Regression coefficient (standard error)	.017 (.022) ^{ns}		.011 (.040)*					
Incident Risk Ratio			.989					
<i>Model 2d</i>								
Regression coefficient (standard error)	.003 (.011) ^{ns}		.014 (.045)*	.161 (.01)***	.045 (.01)**	.290 (.04)***	.330 (.04)***	.005 (.001)**
Incident Risk Ratio			.986	1.170	1.056	1.33	1.39	1.005

Note: Second column reflects the amount of mercury squared, the non-linear polynomial term.

*p < .05.
**p < .01.
***p < .001.

in other models. Model 1d is the fully adjusted model depicting that the positive non-linear term for pounds, and the inverse association for distance, remain independently associated with 2002 autism rates after adjustment for 1997 autism rates, urbanicity, racial composition, and district wealth. Urbanicity and 1997 autism rates demonstrate to be the strongest predictors of 2002 autism rates in the final model.

Table 3 shows the Poisson regression coefficients and the corresponding IRR for the models exploring the linear and non-linear association between 1998 mercury release from power plant sources, distance to these sources, and 2002 autism rates.

Model 2a shows that environmentally released mercury from power plants in 1998 is significantly associated with autism rates in 2002. For every 1000 pounds of release there is a corresponding 3.7% increase in autism rates. In model 2b, the squared term for pounds was entered into the model and was not significant and therefore, not used in the subsequent models. Adding distance to the equation in model 2c shows that for every 10 miles away from the source, there is a significant 1% decrease in the autism Incident Risk. A 20-mile distance would yield a 2.2% decreased risk. Adding non-linear distance terms (distance squared and the square root of distance) (not depicted) was not significant and therefore not utilized in the next model. Most importantly however, in model 2c, the coefficient for pounds is no longer significant. This suggests that the direct effect between pounds of release in 1998 and 2002 autism rates are fully explained by distance to the source of release. The fully adjusted model 2d shows that this effect remains independent after adjustment for the covariates.

Discussion

These results build upon two prior studies demonstrating an association between environmental mercury release and autism rates (Palmer et al., 2006; Windham et al., 2006). The current study shows that environmental mercury in 1998 is associated with autism rates in 2002 after adjusting for other relevant sociodemographic covariates including autism rates in 1997. This is consistent with the prior reports. The novel findings in this study are that distance to the sources of mercury release was independently related to autism rates. In the separate analysis of power plant emissions, distance to the source fully explained the association between total pounds of mercury release and autism rates.

We also found that the association between releases from industrial rather than power plant sources was non-linear—e.g. increases in pounds from industrial sites were associated with an accelerated risk function. This difference in the shapes of the exposure-response curve for industrial release (exponential increase) versus release from power plants (linear) might be explained by the fact that pollution from industrial sources are relatively more localized and not as far spreading as pollution from power plants. It is

1 reasonably to suspect that greater local release could cause
2 exponential effects as compared to more widely distributed
3 releases.

4 On the other hand, the non-linear functions for distance
5 were not significantly related to the outcome. It is plausible
6 to suspect that exposure mediated by distance from the
7 source depends more on other factors such as character-
8 istics of the physical environment and predominant wind
9 or rain patterns rather than simply distance alone.
10 Exposure from power plants can potentially span thou-
11 sands of miles and modeling the kinds of factors that affect
12 exposure over time would require data that are not readily
13 available. Notwithstanding, the results demonstrate an
14 overall inverse association between distance to the source
15 of release and subsequent autism rates. While these effects
16 are relatively small, they are significant and demonstrate
17 potential public health risks.

18 Although a major limitation to this study is that we
19 cannot verify exposure at the individual level, a host of
20 other plant, animal and human studies have demonstrated
21 that distance to sources of environmental mercury expo-
22 sure are related to increased body burdens of mercury
23 (Ordonez et al., 2003; Fernandez et al., 2000; Hardaway et
24 al., 2002; Navarro et al., 1993; Kalac et al., 1991; Moore
25 and Sutherland, 1981). However, the effects of duration
26 and dose amounts of environmental exposures are not
27 currently known—and we do not know that body burden
28 of mercury is in fact related to the potential exposure
29 measures used in these analyses.

30 Mercury is a known immune modulator (Moszczynski,
31 1997). These effects include the production of autoanti-
32 bodies to myelin basic protein (El-Fawal et al., 1999) and
33 effects on the ratio of Th1/Th2 immunity factors (Kroemer
34 et al., 1996). This is consistent with the literature
35 demonstrating similar types of altered immune function
36 in autistic children (Singh et al., 1997; Singh and Rivas,
37 2004; Krause et al., 2002; Cohly and Panja, 2005; Vojdani
38 et al., 2003). However, unlike the specific vector known
39 about exposure through fish consumption, very little is
40 known about exposure routes from seemingly randomly
41 distributed ambient exposures in the environment—partic-
42 ularly in air.

43 Even if ambient air, ground exposure routes, and low-
44 level toxic thresholds can be identified by researchers,
45 differential genetic susceptibilities in the ability to meta-
46 bolize heavy metals and other pollutants would still need to
47 be considered in future research (Herbert et al., 2006).
48 While inconclusive to date, the existing studies warrant the
49 need for further investigation on environmental mercury
50 pollution and the developmental health of children.

51 There are some important limitations to this manuscript
52 that should be addressed. First, these data do not reflect
53 the true community prevalence rates of autism, largely
54 because children who are not of school age are not counted
55 in the TEA data system. This is reflected in the $\frac{1}{500}$ autism
56 rates for 2002 present in Table 1—which are lower than the
57 current CDC reports of $\frac{1}{150}$ (CDC, 2007).

Further, individual risk cannot be inferred from
population-based ecological studies such as this. Further,
conclusions about exposure are limited, because distance
was not calculated from individual homes to the pollution
source, but from school district centroids of varying sizes.
Rural school districts are usually larger in size than urban
school districts and are one good reason to include
urbanicity as covariates in these models.

This study should be viewed as hypothesis generating—a
first step in examining the potential role of environmental
mercury and childhood developmental disorders. Nothing
is known about specific exposure routes, dosage, timing,
and individual susceptibility. We suspect that persistent
low-dose exposures to various environmental toxicants,
including mercury, that occur during critical windows of
neural development among genetically susceptible children
(with a diminished capacity for metabolizing accumulated
toxicants) may increase the risk for developmental
disorders such as autism. Successfully identifying the
specific combination of environmental exposures and
genetic susceptibilities can inform the development of
targeted prevention intervention strategies.

Uncited references

Baron and Kenny, 1986; MacKinnon et al., 2002.

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R.F. Palmer et al. / Health & Place ■ (■■■■) ■■■-■■■

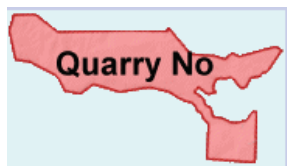
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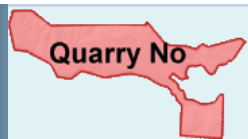
Santa Clara County EIR Input

**No Expansion of Lehigh Mining Operations
due to
Excessive Toxic Emissions**

**Ken Smyth
Cupertino Resident**



**West Valley Citizens Air Watch
(WVCAW)**

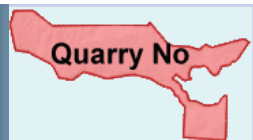


Position Statement

WVCAW

Lehigh should not be granted expansion of mining operations because:

- Excessive release of dozens of toxins to the region
 - Lehigh facility is the #1 polluter in the Bay Area
- Levels of mercury are especially high: 500+ lbs in 2010
 - Mercury is the #2 most toxic element on earth
- Mercury is a neurotoxin and causes brain neuron degeneration. View this video, <http://movies.commonscalgary.ca/mercury>
 - The Santa Clara County Supervisors are naïve about mercury and need to be educated on this highly toxic material
- Medical Center study correlates the rate of autism to the proximity of cement kilns and quarries.



Medical Center Mercury Research

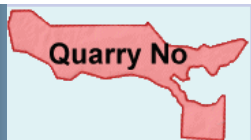
WVCAW

Study Links the Autism Risk to the proximity of Mercury emitting sources

October 2, 2006
January 15, 2008 (revised)

**University of Texas (UT) Health Science Center
San Antonio**

**Dr. Raymond Palmer, Dr. Steve Blanchard, and
Robert Wood**



Autism Epidemic in the U.S.

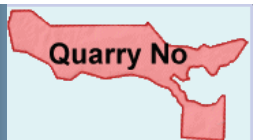
WVCAW

40,000 children diagnosed in 2009

12/09 – CDC confirms autism rate is 1-in-91 children; 1-in-57 for boys

1% of children in US are now diagnosed with autism

The costs for special education and adult services for autism is becoming an increasingly serious cost burden to local, state, and federal budgets.



UT Study Sources of Data

WVCAW

Sources of data used in the study

Data for environmentally released mercury were from the "United States Environmental Protection Agency Toxics Release Inventory." Data for releases by coal-fired power plants came from the same inventory and from the Texas Commission for Environmental Quality.

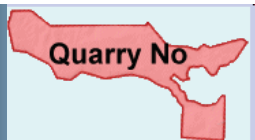
Data for school district autism rates came from the Texas Education Agency



UT Study Highlights

WVCAW

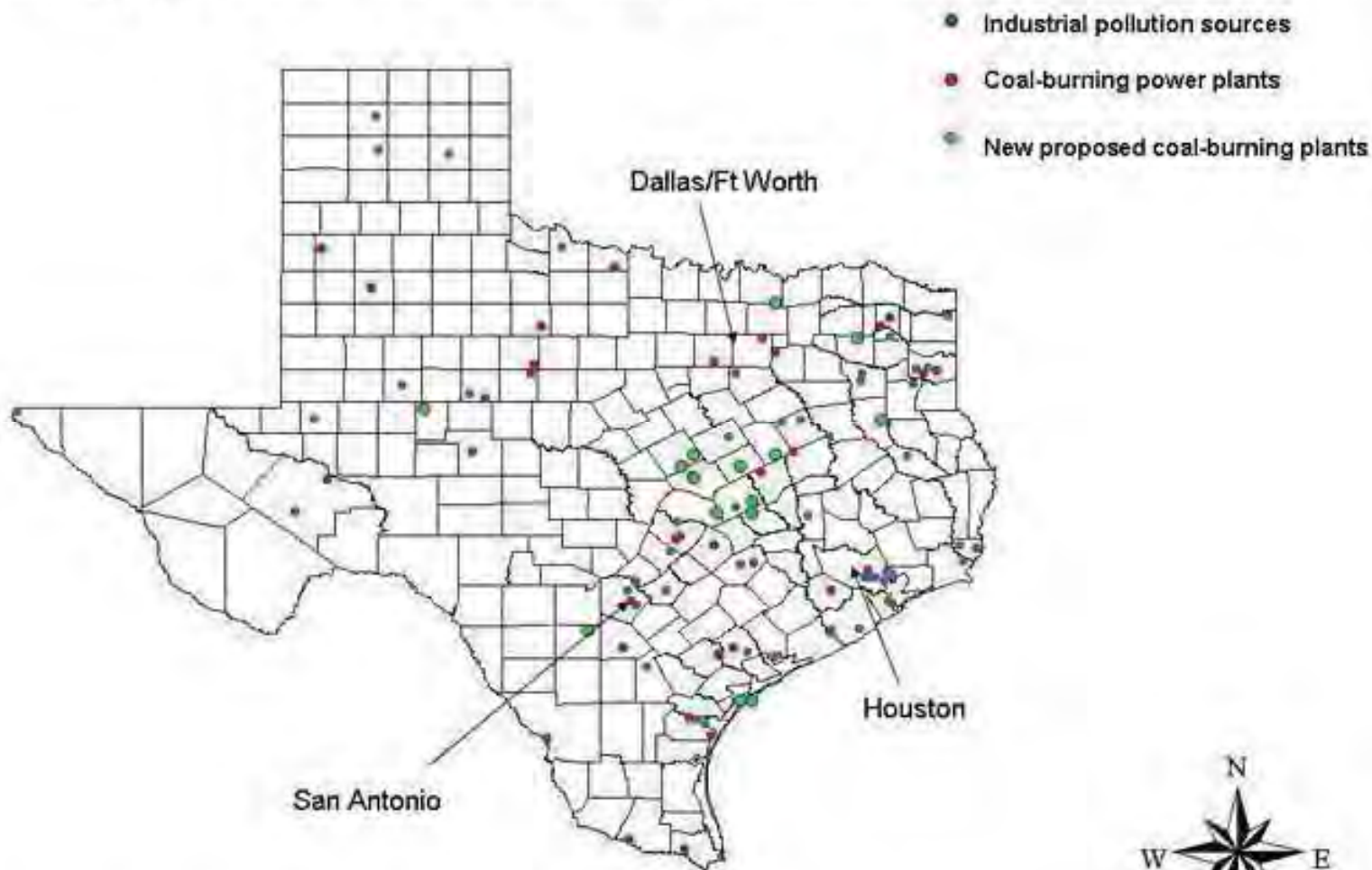
- Mercury-release data examined were from 95 facilities in Texas (39 coal-fired power plants, and 56 industrial facilities)
- Autism rates examined were from 1,040 Texas school districts.
- For every 1,000 pounds of mercury released by all industrial sources in Texas into the environment in 1998, there was a corresponding 2.6 percent increase in autism rates in the Texas school districts in 2002.
- For every 1,000 pounds of mercury released by Texas power plants in 1998, there was a corresponding 3.7 percent increase in autism rates in Texas school districts in 2002.
- Autism prevalence diminished 1% to 2% for every 10 miles from the source.
- Mercury exposure through fish consumption is well documented, but very little is known about exposure routes through air and ground water.
- There is evidence that children and other developing organisms are more susceptible to neurobiological effects of mercury.



Texas Mercury Pollution Sources

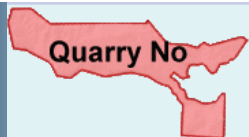
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Geographic Location of Mercury Pollution Sources



Pollution sites used by Palmer, Blanchard and Wood, in *Health and Place*, 2008



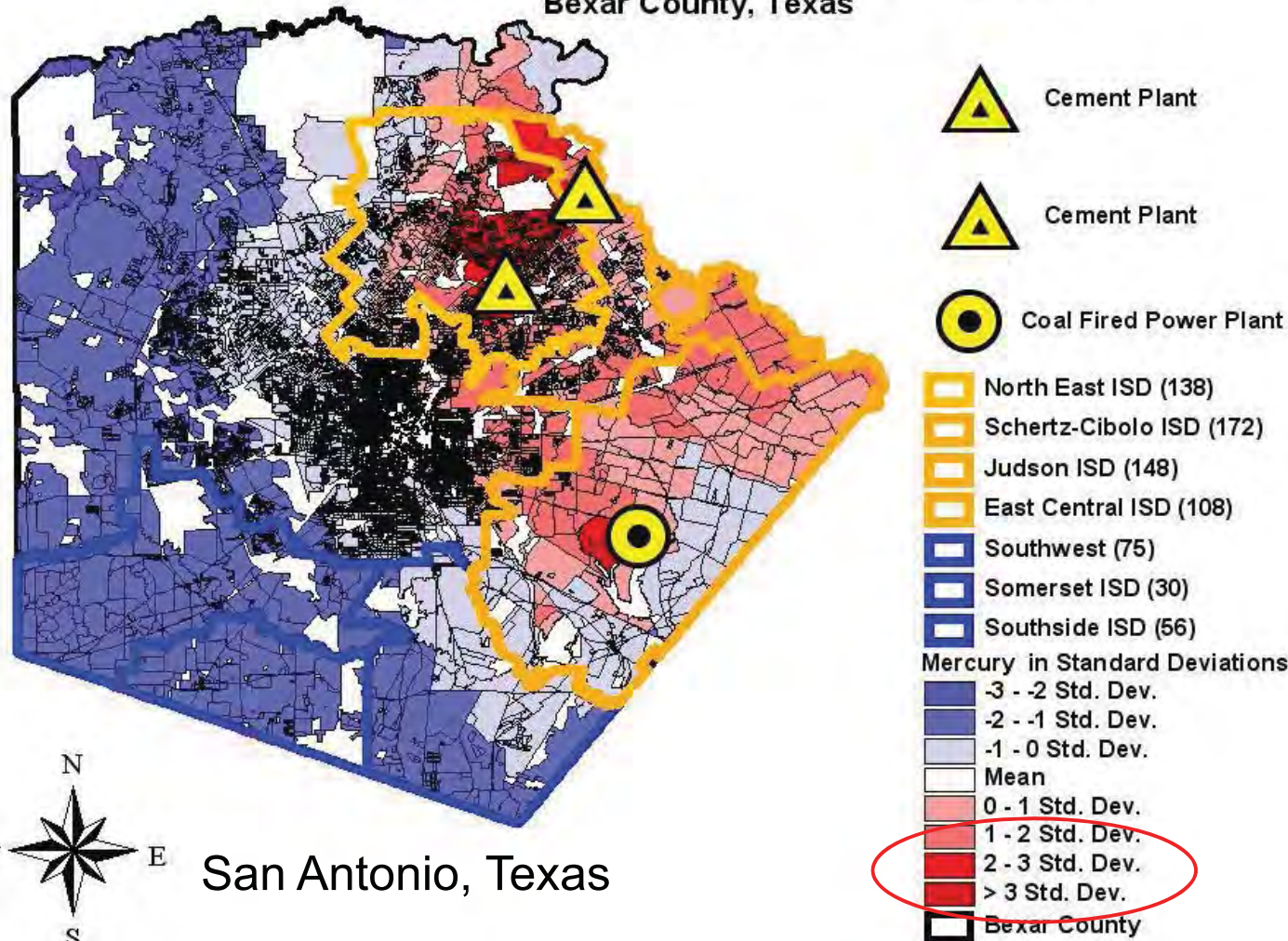


Mercury Estimates – Std. Deviations

EPA 2002 Mercury Estimates at the City Block Level (Census 2000)
in Standard Deviations

With Unified School Districts with Highest Relative Risk (>1)
and Lowest Relative Risk (<1) for 2004

And With Three Point Sources of Mercury Emission
Bexar County, Texas



San Antonio, Texas

A-256



UT Study Impact

WVCAW

After review of University of Texas Medical Center and the direct negative health impact on communities across the state, the Texas State legislature reduced the number of future coal-burning power plants to be built in the state from 15 to 3.



UT Future Studies

WVCAW

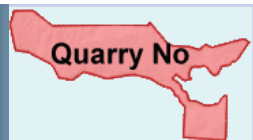
“We suspect low-dose exposures to various environmental toxicants, including mercury, that occur during critical windows of neural development among genetically susceptible children may increase the risk for developmental disorders such as autism”

- Dr. Robert Palmer

University of Texas, Medical Center, San Antonio

“...mercury ends up in cord blood, enters the placenta and into a developing fetus. A future study of blood samples in areas where conception occurred (down the street level) would be helpful in determining a hypothesis of high levels of ambient mercury in a region could be linked to genetic susceptibilities being triggered. Thus, there are potential consequences living in such an area, especially for pregnant women.”

Dr. Steve Blanchard (UT research team member)



EPA Estimate of Mercury Releases

WVCAW

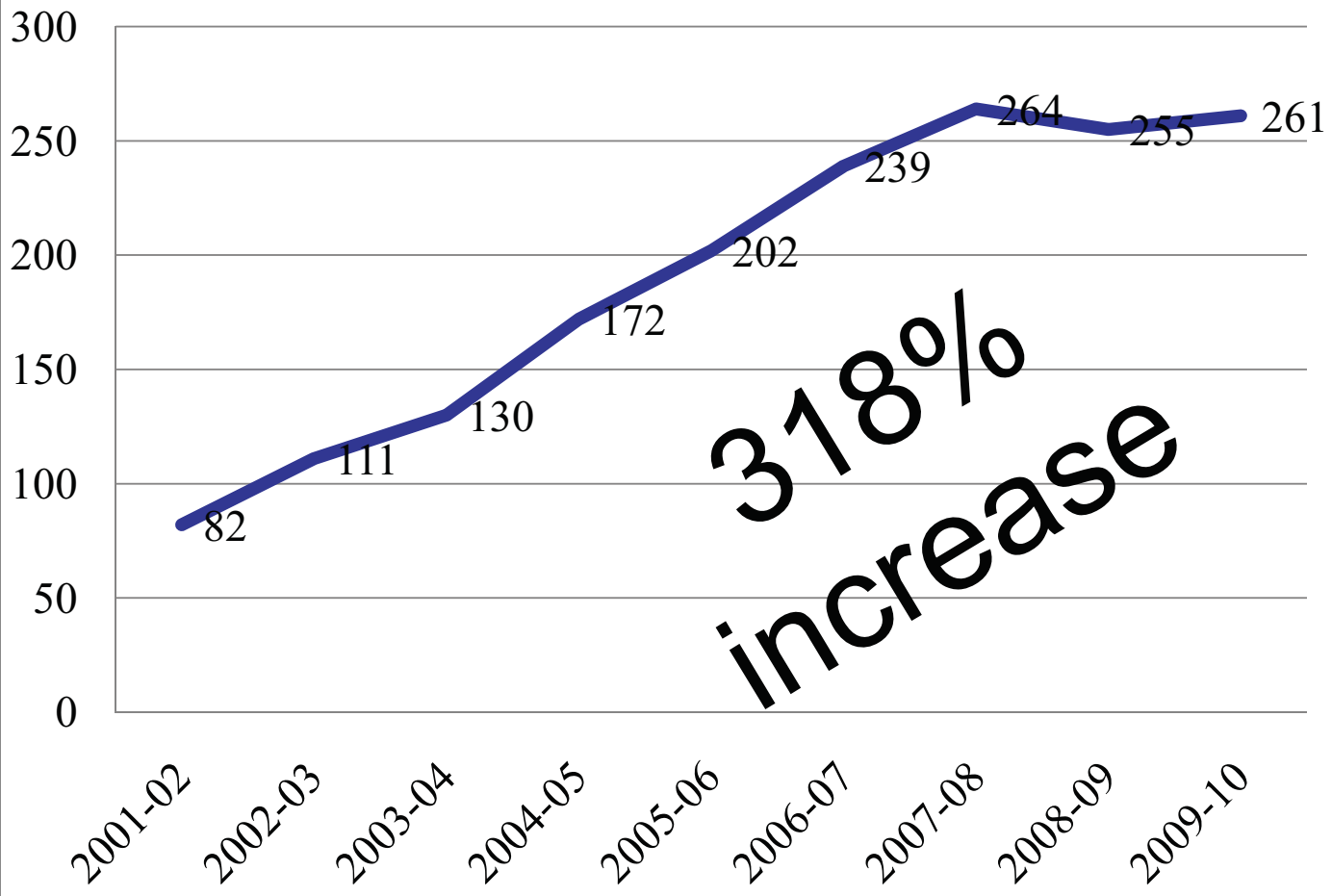
The U.S. Environmental Protection Agency (EPA) estimated environmental mercury releases at 158 million tons annually nationwide in the late 1990s

According to the Centers for Disease Control and Prevention, eight percent (8%) of American women of childbearing age have mercury in their bodies at levels high enough to put their babies at risk of birth defects, loss of IQ, learning disabilities and developmental problems.

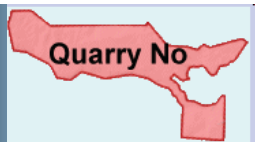


Autism Rate in Cupertino School District WVCAW

2001-2009

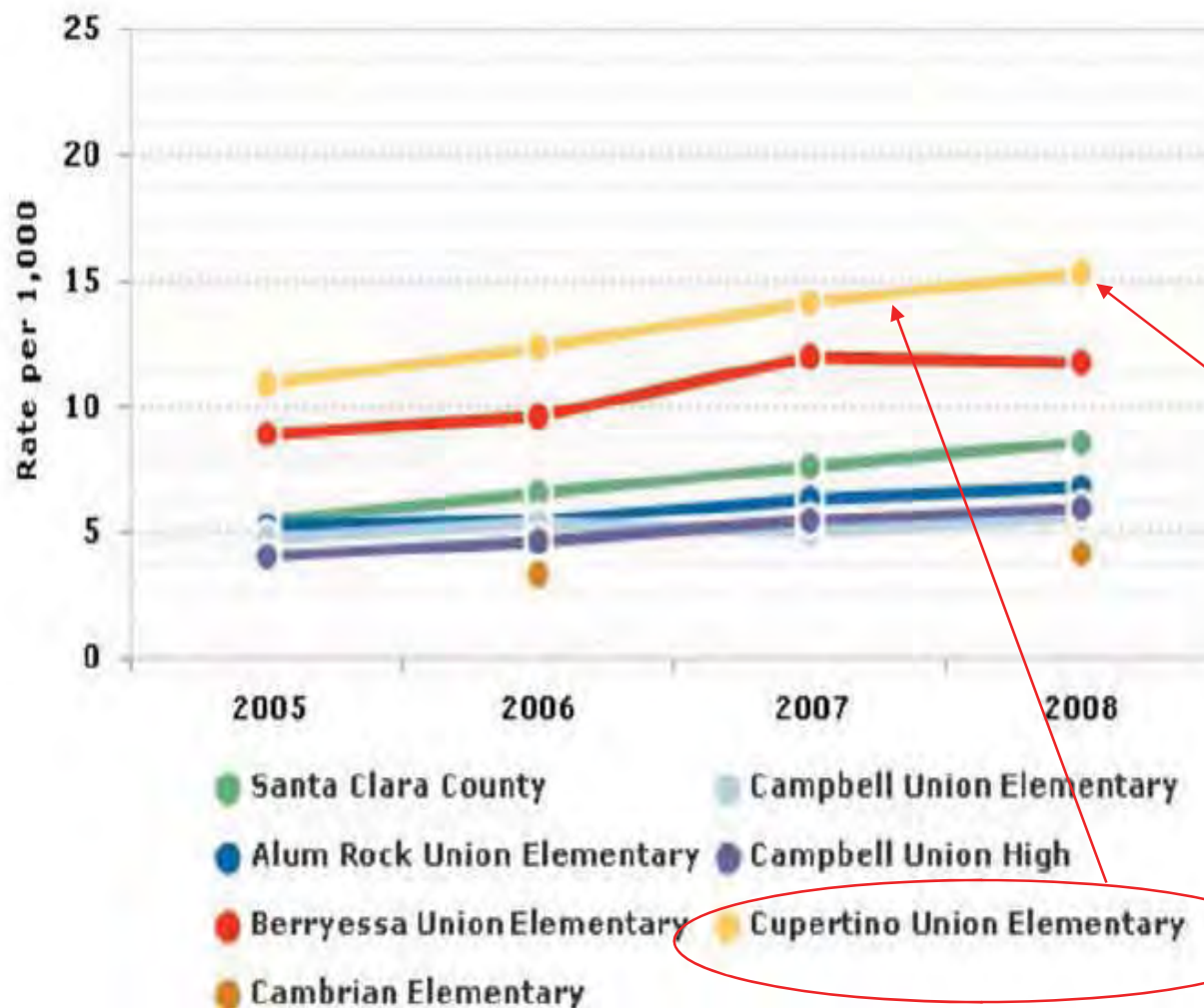


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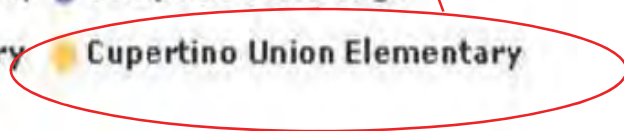
Autism Trend in Cupertino

WVCAW

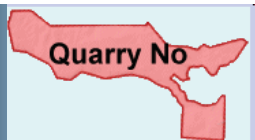


~ 30% increase in 3 years

~300% higher Than Alum Rock & Campbell



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Autism Rate in Cupertino - 2008

WVCAW

Students with Autism: 2008

Region	Rate per 1,000	Range: 0 - 25.0
Santa Clara County	8.6	
Alum Rock Union Elementary	6.8	
Berrysae Union Elementary	11.8	
Cambridge Elementary	4.2	
Campbell Union Elementary	5.6	
Campbell Union High	5.9	
Cupertino Union Elementary	15.4	
East Side Union High	5.6	
Evergreen Elementary	12.3	
Foothill-Mt View Elementary	7.9	
Fremont Union High	6.9	
Hilkey Unified	6.7	
Lakeview Joint Elementary	LNE	
Loma Prieta Joint Union Elementary	LNE	
Los Altos Elementary	6.2	
Los Gatos Union Elementary	5.9	
Los Gatos-Saratoga Joint Union	6.8	
Luther Burbank Elementary	LNE	
Milpitas Unified	9.4	
Montebello Elementary	N/A	
Moreland Elementary	11.2	
Morgan Hill Unified	6.8	
Mountain View-Los Altos Union	5.6	
Mountain View-Whisman Elementary	12.9	
Mt. Pleasant Elementary	10.6	
Oak Grove Elementary	9.4	

Region	Rate per 1,000	Range: 0 - 25.0
Orchard Elementary	15.7	
Palo Alto Unified	9.3	
San Jose Unified	7.4	
Santa Clara Unified	9.6	
Saratoga Union Elementary	12.1	
Sunnyvale Elementary	12.9	
Union Elementary	11.3	

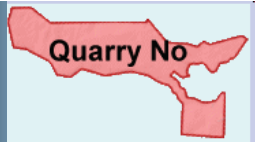
Definition: Number of public school students with autism who are enrolled in special education per 1,000 students. District level data show district of residence; that is, the district in which students live. Some students with disabilities attend school outside their district of residence.

Data Source: State of California Department of Education, DataQuest. <http://data1.cde.ca.gov/dataquest/> Retrieved 10/01/08.

Footnote: Years presented are the final year of a school year, e.g., 2006-2007 is shown as 2007. LNE (Low Number Event) means that the number of cases was less than 10, too small to calculate a rate.

- Orchard Elementary ranks #1
- Cupertino Union ranks #2 (almost double the autism rate of Santa Clara County)

Source: State of California Dept of Education



Autism Rate

WVCAW

Youth disorders

The latest figures on autism show the average rate is nearly one in 150, higher than previously thought.

Rate is now 1-in-91
For children and
1-in-57 for boys!!

Prevalence of developmental disorders among 8-year-old children, per 1,000

Mental retardation



Autism



Cerebral palsy



Hearing loss



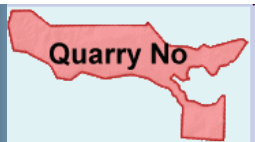
Vision impairment



NOTE:
Figures from a 2000 study in Atlanta, except autism rate, which is from a 2002 study in 14 states

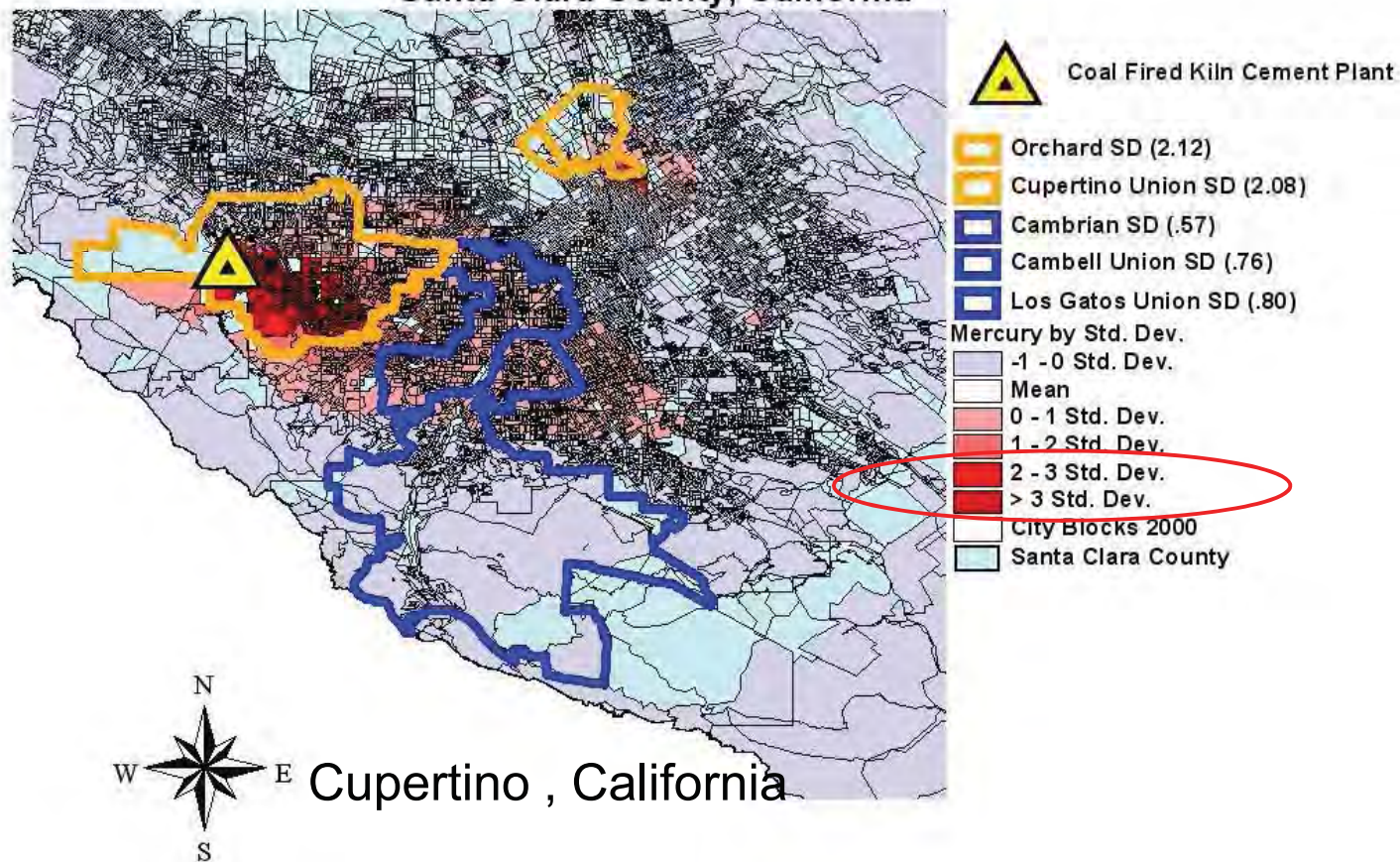
SOURCE: Centers for Disease Control and Prevention AP

A-263



Mercury Estimates – Std. Deviations

Elementary School Districts with **Highest Relative Risk > 1** of Autism
 and Lowest Relative Risk < 1 (EDP2008)
 by Standard Deviations of Ambient Mercury Estimates (EPA 2002)
 with Point Source of Mercury Emission
 Santa Clara County, California

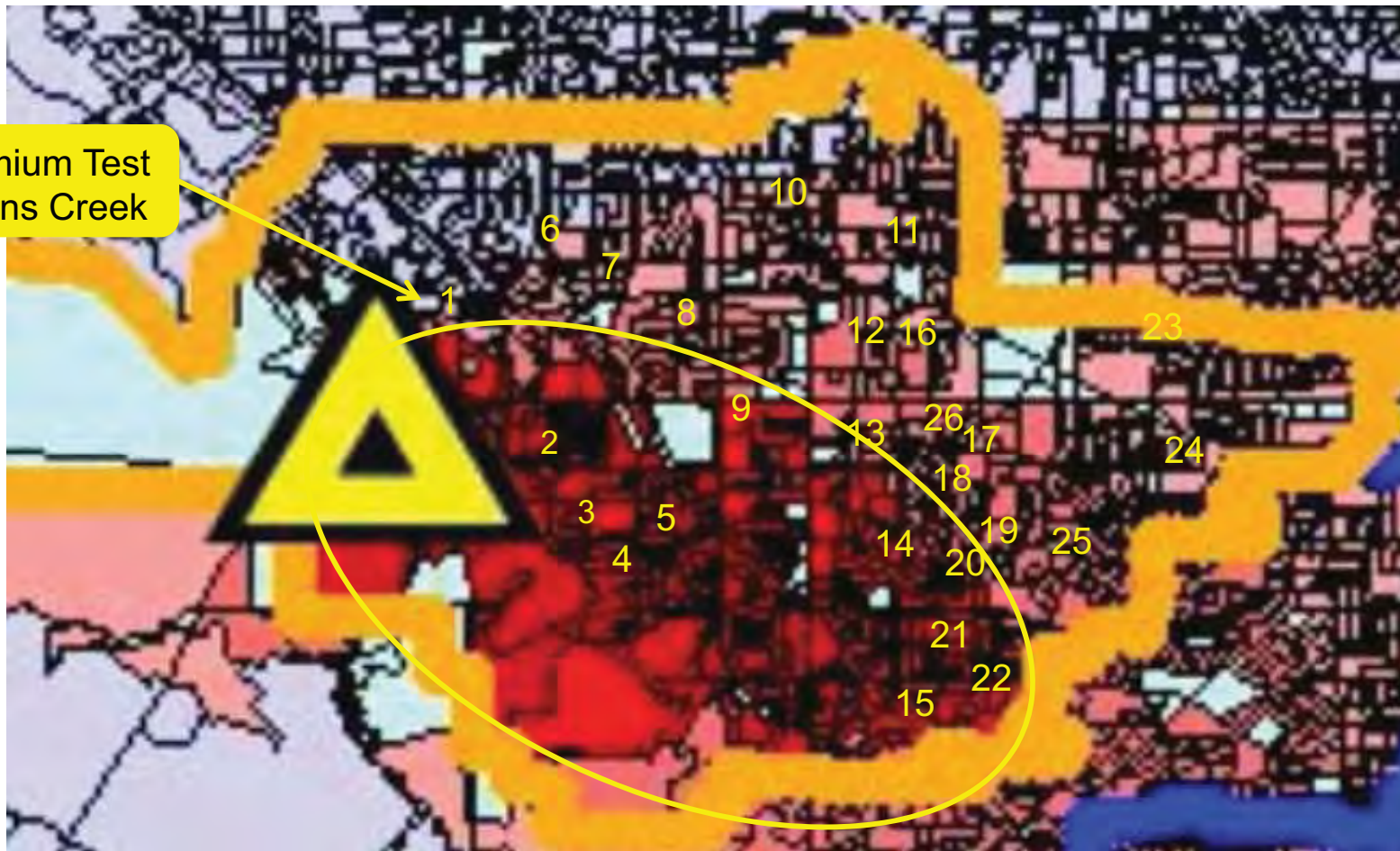


A-264

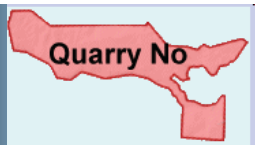
Cupertino Schools in 'Mercury Alley'

Quarry No

Chromium Test
Stevens Creek



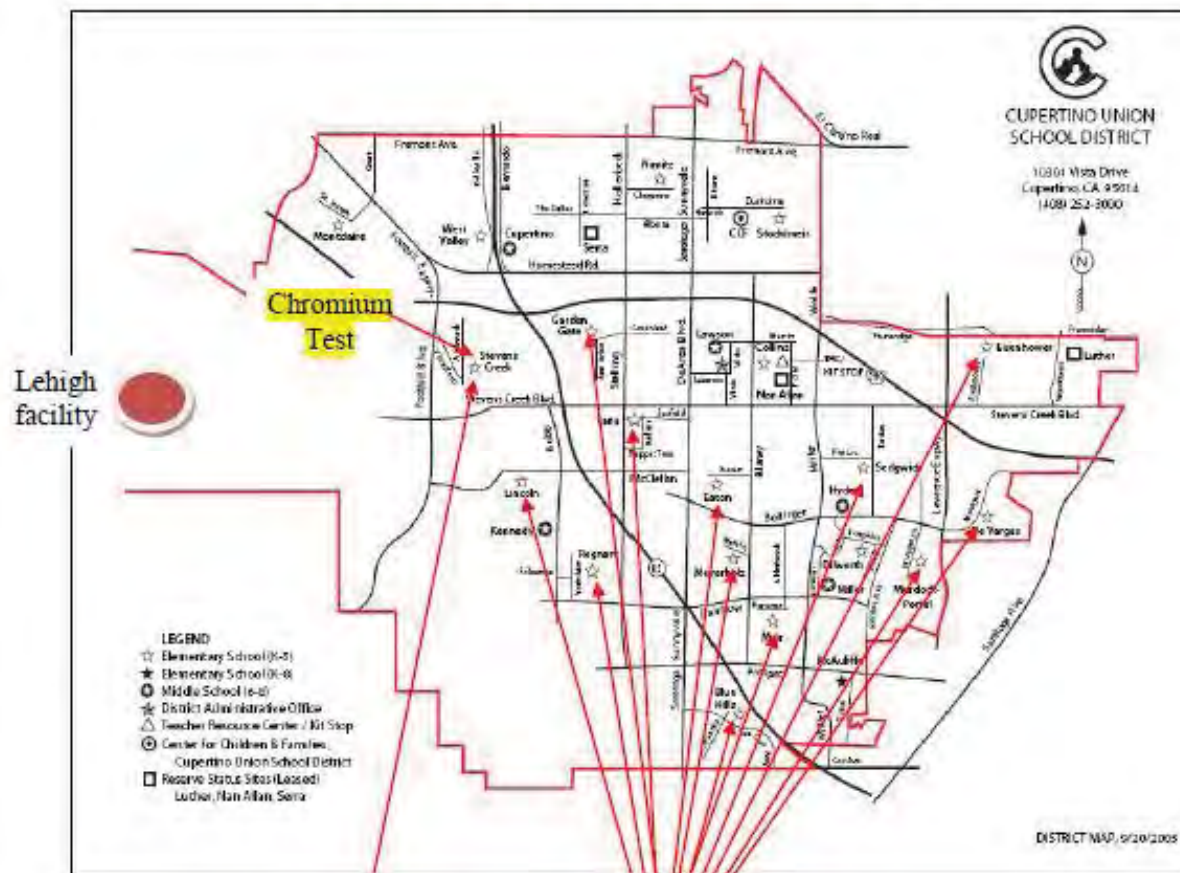
1 – Steven Creek 2 - Lincoln 3 – Kennedy 4 - Regnart 5 – Monte Vista 6 – Cupertino Middle 7 –
Homestead High 8 - Garden Gate 9 – Faria – 10 – Nimitz 11 – Stocklmeir 12 - Lawson 13 – Eaton 14
– Meyerholz 15 - Blue Hills 16 – Collins 17 Sedgwich 18 – Hyde 19 – Dilworth 20 – Miller 21 - Muir
22 – McAuliffee 23 – Eisenhower 24 – De Vargas 25 – Murdock Portal 26 – Cupertino High



Quarry No

Chromium Testing

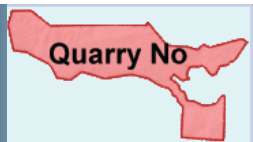
Cupertino Union School District Map



Stevens Creek Elementary school located here

11 other elementary schools only located to the southeast of where the Chromium test was conducted. Wind pattern is more southeastern than northwest.

A-266



USA Today Study - Cupertino

WVCAW

Stevens Creek Elementary
School District: [Cupertino Union](#)



National Rank: **28th percentile**

35,316 of 127,809 schools have worse air

Exposure to cancer-causing toxics: Ranked 4 of 10

Note: Rankings are based on modeled concentrations and severity of chemicals known or believed to cause cancer.

Exposure to other toxic chemicals: Ranked 3 of 10

Note: Rankings are based on modeled concentrations of chemicals that cause health problems other than cancer.

Chemicals most responsible for the toxicity outside this school

Hydrochloric acid **43%** of overall toxicity

Mercury and mercury compounds **37%** of overall toxicity

Nickel and nickel compounds **12%** of overall toxicity

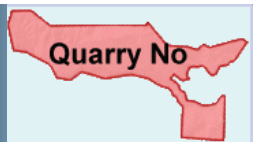
Chromium and chromium compounds **4%** of overall toxicity

Manganese and manganese compounds **1%** of overall toxicity

Polluters most responsible for toxics outside this school

[Lehigh Cement](#) Cupertino, California

[United States Pipe & Foundry Co Llc](#) Union City, California



Teacher & Aide Ratio: District \$Cost

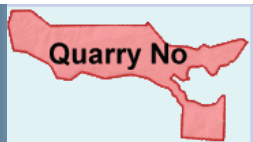
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1st grade Special Needs classroom

- 8-12 students
- 1 teacher
- 3 aides
- 1-2 additional specialists (speech, physical therapist, etc.) attend class weekly for 1 or more students for an hour or more

4th grade mainstream (normal) classroom

- 32 students
- 1 teacher

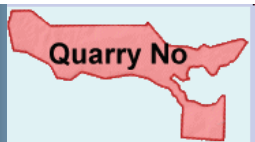


What is Autism?

WVCAW

Autism is a [brain development disorder](#) characterized by impaired [social interaction](#) and [communication](#), and by restricted and repetitive behavior, and difficulties with play and leisure activities. These signs all begin before a child is three years old.[\[1\]](#) Autism involves many parts of the [brain](#); how this occurs is not well understood.[\[2\]](#) Autism is one of five disorders diagnosed under a group of developmental disorders called "Autism Spectrum Disorders" (ASD's). The other ASD's are Asperger Syndrome, Rett Syndrome, childhood disintegrative disorder, and Pervasive developmental disorder not otherwise specified (PDD-NOS).

Autism has a strong genetic basis, although the [genetics of autism](#) are complex and it is unclear whether ASD is explained more by rare [mutations](#), or by rare combinations of common genetic variants.[\[3\]](#)



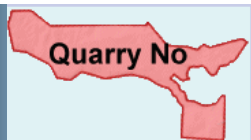
Cement Kilns in US – 127

Lehigh has 13 cement kilns in the US = 10.2% of the capacity

<http://maps.google.com/maps/ms?hl=en&ie=UTF8&msa=0&msid=100120143528261920895.00044f685a5cea9739225&ll=36.597889,-95.449219&spn=29.173596,56.051945&source=embed>



A-270



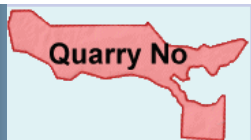
Lehigh Cement Kilns in US

WVCAW

Lehigh has 13 cement kilns in US or 10.2%

<http://maps.google.com/maps/ms?hl=en&ie=UTF8&msa=0&msid=100120143528261920895.00044f685a5cea9739225&ll=36.597889,-95.449219&spn=29.173596,56.051945&source=embed>

Location	Lbs of Mercury 2010	Comments
Tehachapi, CA		1748 (was #1 in 2008)
Union Bridge, MD		1539 in 2008
Evansville, PA		
Glen Falls, NY		
Leeds, AL		
Mitchell, IN		
Redding, CA		
York, PA		
Waco, TX		
Cupertino, CA	500+	
Catskill, NY		
Blandon, PA		
Buda, TX		



No Lehigh Expansion Summary

WVCAW

- **No expansion plans recommended for Lehigh**
- **Toxic emission releases to the community, especially mercury, are causing numerous health problems and the rate of autism increase is linked to cement kiln and quarry operations based on University of Texas multi-year research**
- **Lehigh should provide regional materials requirements from their other California facilities to provide raw materials for the Bay Area supply chain.**
- **47% of the US cement materials is imported from China; import a small amount more to offset the Lehigh output.**
 - **US produces only 3% of the cement production worldwide. Lehigh output is minuscule**

From: Paula Wallis <wallis.notoxicair@gmail.com>
Date: April 11, 2011 3:20:38 PM PDT
To: Marina Rush <Marina.Rush@pln.sccgov.org>
Subject: Lehigh scoping for EIR

Hi Marina,

I would like the EIR on Lehigh's permit for a new quarry to include information on whether Lehigh will be able to conduct mining operations in both the current and the new pit mine at the same time. So in essence, will they be allowed to increase the number of earth movers and blasting etc., to quarry in both the current pit, until it's exhausted, and also the new pit mine, if its approved? If so, can you please assess the increased impact to the community in the EIR.

I understand the the cement plant determines the quarry production rates, but can the quarry stock pile raw limestone, and if so, where, and how much can it stock pile and will this aspect of their operation be included in the EIR. I would like it to be if it is not already.

Thank you.
Paula Wallis
650 722 0644

Barbara West
10670 Cordova Road
Cupertino, CA 95014
WestB@me.com
March 30, 2011

Marina Rush, Planner III
Rob Eastwood, Senior Planner
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

Via First Class Mail and email

Re: Comments on the Notice of Preparation (NOP) of an Environmental Impact Report (EIR) for the proposed Comprehensive Reclamation Plan Amendment and Conditional Use Permit for Lehigh/Permanente Quarry

Dear Ms. Rush and Mr. Eastwood:

Simply Stated: Expanded mining and related activities should not increase fugitive dust, toxics, or noise currently experienced in adjacent neighborhoods.

Specifically Stated: In accordance with the California Environmental Quality Act (CEQA), comments on the subject NOP/EIR are submitted below for your consideration before the 11 April 2011 deadline.

AIR QUALITY (This Is A Comment On The Permanente Quarry Expansion, Not On The Cement Plant)

The top soil and overburden mining waste to be stored at various new project locations is not benign. This material has been exposed to decades of numerous contaminants (including arsenic and hexavalent chromium) from the nearby cement manufacturing facility and these contaminants accumulate in soil over time. Further, mercury and other contaminants are a naturally occurring part of the mined ore and overburden.

This top soil and overburden mining waste should not be the source of wind-driven toxic fugitive dust contaminating nearby residential neighborhoods.

The Bay Area Air Quality Management District (BAAQMD) is recording ambient toxic air contaminants and particulates in a nearby neighborhood park (Monta Vista Park, Cupertino). See project description at: <http://www.baaqmd.gov/Divisions/Technical-Services/Special-Projects/Cupertino.aspx>. See an example of the type of data collected at: http://www.baaqmd.gov/sitecore-s/~~/media/Files/Technical%20Services/Cupertino_toxics.ashx See PM 2.5 collected in Cupertino by BAAQMD at: <http://gate1.baaqmd.gov/aqmet/aq.aspx>. Data collected by the BAAQMD in Cupertino

and at Monta Vista Park should be used as the baseline measurement for air quality pre-quarry expansion.

Potential increases in toxic air contaminants and particulates from the expanded quarry operations beyond the baseline recorded by the BAAQMD should be considered a significant impact, and reasonable mitigation measures such as daily wetting of the disturbed area during the dry months to prevent fugitive dust followed by yearly hydro-seeding with nitrogen-fixing legumes or other suitable plants should be required mitigation measures.

NOISE AND VIBRATION (This Is A Comment On The Permanente Quarry Expansion, Not On The Cement Plant)

Santa Clara County residents that are near the proposed expanded quarry live mainly in quiet rural neighborhoods. In fact, the lack of noise was, in many cases, a reason for selecting our current locations.

Expanded quarry and mining operations should not be permitted to exceed the Santa Clara County General Plan Noise Ordinance Standards based on careful characterization of pre-quarry expansion ambient noise.

More specifically, since the Santa Clara County General Plan and Noise Ordinance Standards for maximum permissible exterior sound levels by receiving land can be based on the maximum ambient noise level at the receiving land (see General Plan, Sec. B11-192 (1)(c)), ambient noise should be characterized before quarry operations are expanded and for all the times provided in Table B11-192 and in all neighborhoods and streets near the proposed expanded quarry operations.

The EIR should evaluate noise and vibration impacts from the proposed mining and reclamation activities. Any potential noise impacts in excess of the the County Noise Ordinance Standards (using the pre-expansion ambient noise) should be considered significant impacts and be mitigated.

The above comments are made after considerable review, and with the intent of providing specific, helpful, and realistic comments with respect to the NOP/EIR

Respectfully submitted,

Barbara West
On Behalf Of West Cupertino Residents

cc (via email): Sandra James
Public Relations and Community Affairs Manager
Lehigh Southwest Cement/Permanente Quarry
24001 Stevens Creek Boulevard
Cupertino, CA 95014-5659

From: Ken Yew <ken_yew@yahoo.com>
Date: April 11, 2011 10:55:46 AM PDT
To: marina.rush@pln.sccgov.org
Subject: Comments for Lehigh Permanente Quarry Scoping

Dear Ms. Rush:

Thank you for the opportunity to comment on the Lehigh Permanente Quarry Reclamation Plan Amendment.

Please add the following for view shed analysis -
Hyannisport and Bubb
Stevens Creek just East of Janice (at top of small incline)
Voss Ave, just West of Foothill
Stevens Creek near Cupertino Post Office
Stevens Creek at intersection with Stelling

Also include the cement plan in the reclamation plan amendment as it meets the definition of "Mined Lands" according to SMARA.

Please do noise analysis of trucks braking at intersection of Stevens Creek and Foothill. The noise in the middle of the night is intolerable and must stop. What are the health dangers of this noise and noise from the trucks operating in the quarry? What effects are there on loss of productivity? Please include an assessment in the draft EIR.

Do an analysis of dust fallout. There has been an increase in dust in the neighborhood recently. It is unclear if it is from the increased use of East Material Storage Area or other factors. Based on document reviews from Santa Clara County and BAAQMD neighbors have been complaining for decades without any real response from regulating authorities, yet it continues and even worsens. Attached is a picture of an orange picked off of a tree from my yard, it did not fall on the ground or any other dirty surface. It is covered in dust that is difficult to wash off, especially the little pits of the orange skin. This dust covers our cars, homes and also enters our lungs. Why have the regulating authorities ignored this for so long? Why is the dust situation getting worse? Include an analysis of the dust, especially for hazardous materials such as asbestos.

Please include an analysis of the health benefits of not allowing this quarry to expand into more mercury laden limestone. Include the health benefits of no

cement plant in the "no project" option. Include decreases in autism, cancer, respiratory function, cardiac function, etc and corresponding decreases in economic damages and death that occur with the "no project" option. Complete a detailed analysis of the decreased exposure to particulate matter, heavy metals, benzene and other carcinogens. Include a separate evaluation of the health dangers of allowing so many trucks to pass on roads with sensitive receptors (Sunnyview Retirement and Monarch Christian Preschool) and highly densely populated areas in general and also include economic damages from loss of life, decreased productivity and associated health care costs.

Include all the raw data and calculations in the Draft EIR and post it online so that concerned citizens and other groups have easy access to review them. There have been many "errors" in these calculations in the past that always seem in favor of Lehigh and documents have sometimes been difficult to access via public record requests.

Include economic and health damages of not being able to consume fish in Steven Creek Reservoir and San Francisco Bay due to mercury and other pollutants.

Evaluate the improvement/ no loss of value for the real estate in the area for the "no project" option. Look at the benefits of increased tourism/recreation that would occur if the "no project" option is selected.

Do a detailed traffic analysis of Stevens Creek and Foothill Ave. as there are many traffic jams, especially during the early morning rush hours.

Sincerely,

Karen Del Compare and Ken Yew

10136 Camino Vista Dr
Cupertino, CA 95014
(Please do not post my address online)



Chris Vongsarath
Editor
Cupertino Courier-Sunnyvale Sun

B-55

1095 The Alameda
San Jose, CA 95126
408.200.1039

LETTER RE: LEHIGH CEMENT PLANT
PRINTED IN CUPERTINO
COURIER
2-18-2011

-----Original Message-----

From: HARRELL BELL [mailto:halsbels@pacbell.net]
Sent: Thursday, February 10, 2011 1:55 AM
To: Vongsarath, Chris
Cc: Thu Bui
Subject: Lehigh Permanente Cement Plant & Quarry

How can Lehigh Permanente Plant and Quarry have had a "long history of elevated mercury emissions" as stated by two members of NoToxicAir when mercury has not been recognized as a toxic pollutant for all that long?

I'm also not inclined to put much faith in their claim of 24 BAAQMD violations in four years with 11 still pending when a Courier article dated September 23, 2009 stated that Lehigh had no ongoing violations or pattern of violations according to District officials.

My husband and I moved to Cupertino in 1959 when Lehigh was Kaiser Permanente Cement Plant. We have always been in favor of allowing it to continue as it has since 1939 when there were very few residents living here. Over the years, as people intermittently complained about dust, gravel, trucks and trains associated with production of cement, we have often wondered why city fathers allowed housing to be built close to the plant. Even more have we wondered why people failed to check out the environment before buying homes there. It reminds one of those who buy near airports and then complain about the noise.

Current complaints about the plant started with ostensible concern about the effect mercury emissions might have on schoolchildren, but it turns out that only one school in all of Northern California is in the supposed "danger zone". It has been monitored constantly for air pollution and has been essentially cleared. Furthermore, mercury emissions from cement plants account for only about 3.2% of the worldwide amount. We are all no doubt in greater danger from broken fluorescent light bulbs that we are urged to use in our homes than from mercury in the air.

Rowena Bell

Rowena Bell

DEPARTMENT OF TRANSPORTATION

P.O. BOX 23660
 OAKLAND, CA 94623-0660
 PHONE (510) 622-5491
 FAX (510) 286-5559
 TTY 711



*Flex your power!
 Be energy efficient!*

May 20, 2011

SCL-280-11.45
 SCL280357
 SCH2010042063

Ms. Marina Rush
 County of Santa Clara
 70 West Hedding Street
 7th Floor, East Wing
 San Jose, CA 95110

Dear Ms. Rush:

**Comprehensive Reclamation ~~Plan~~ Amendment and Conditional Use Permit for
 Permanente Quarry – Notice of Preparation (NOP)**

Thank you for including the California Department of Transportation (Department) in the environmental review process for the proposed project. We have reviewed the NOP and have the following comments to offer.

As lead agency, the County of Santa Clara is responsible for all project mitigation, including any needed improvements to state highways. The project's fair share contribution, financing, scheduling, implementation responsibilities and lead agency monitoring should be fully discussed for all proposed mitigation measures. The project's traffic mitigation fees should be specifically identified in the environmental document. Any required roadway improvements should be completed prior to issuance of project occupancy permits. While an encroachment permit is only required when the project involves work in the State Right of Way (ROW), the Department will not issue an encroachment permit until our concerns are adequately addressed. Therefore, we strongly recommend that the lead agency ensure resolution of the Department's California Environmental Quality Act (CEQA) concerns prior to submittal of the encroachment permit application. Further comments will be provided during the encroachment permit process if required; see the end of this letter for more information regarding the encroachment permit process.

While the County of Santa Clara conducts its traffic studies in accordance with guidelines, which conform to the local Congestion Management Program managed by the Santa Clara County Valley Transportation Authority, the Department's thresholds are primarily concerned with potential impacts to the State Highway System. We encourage the County of Santa Clara to coordinate preparation of the study with our office to help sharpen the focus of your scope of work and answer any questions you may have. Please see the Departments' "Guide for the Preparation of Traffic Impact Studies" at the following website for more information:
<http://www.dot.ca.gov/hq/traffops/developserv/operationalsystems/reports/tisguide.pdf>

Specifically, a detailed Traffic Impact Analysis (TIA) should identify impacts to all affected state facilities with and without the proposed project. The TIA should include, but not be limited to the following:

"Caltrans improves mobility across California"

Ms. Marina Rush/County of Santa Clara
May 20, 2011
Page 2

1. Information on the project's traffic impacts in terms of trip generation, distribution, and assignment. The assumptions and methodologies used in compiling this information should be addressed.
2. Average Daily Traffic (ADT), AM and PM peak hour volumes on all significantly affected streets and highways, including crossroads and controlling intersections.
3. Schematic illustration of the traffic conditions for: 1) existing, 2) existing plus project, and 3) cumulative for the intersections in the project area.
4. Calculation of cumulative traffic volumes should consider all traffic-generating developments, both existing and future, that would affect the State Highway facilities being evaluated.
5. Mitigation measures should consider highway and non-highway improvements and services. Special attention should be given to the development of alternate solutions to circulation problems that do not rely on increased highway construction.
6. All mitigation measures proposed should be fully discussed, including financing, scheduling, implementation responsibilities, and lead agency monitoring.
7. Impacts to transit systems, pedestrians and bicyclists. Please develop and apply pedestrian bicycling and transit performance or quality of service measures and model pedestrian, bicycle and transit trips that your project will generate so that impacts and mitigation can be quantified. In addition, analyze secondary impacts on pedestrians and bicyclists that may result from any traffic impact mitigation measures. Describe any pedestrian and bicycle mitigation measures and safety countermeasures that would therefore be needed as a means of maintaining and improving access to transit facilities and reducing vehicle trips and traffic impacts on state highways.

We look forward to reviewing the TIA, *including* Technical Appendices and the environmental document for this project. Please send two copies to:

Brian Brandert
Office of Transit and Community Planning
Department of Transportation, District 4
P.O. Box 23660
Oakland, CA 94623-0660

"Caltrans improves mobility across California"

Ms. Marina Rush/County of Santa Clara
May 20, 2011
Page 3

Encroachment Permit

Work that encroaches onto the State ROW requires an encroachment permit that is issued by the Department. To apply, a completed encroachment permit application, environmental documentation, and five (5) sets of plans clearly indicating State ROW must be submitted to the address below. Traffic-related mitigation measures should be incorporated into the construction plans during the encroachment permit process.

Office of Permits
California DOT, District 4
P.O. Box 23660
Oakland, CA 94623-0660

See the website link below for more information.
<http://www.dot.ca.gov/hq/traffops/developserv/permits/>

Should you have any questions regarding this letter, please contact my staff member Brian Brandert, Transportation Planner, at (510) 286-5505 or brian_brandert@dot.ca.gov.

Sincerely,



LISA CARBONI
District Branch Chief
Local Development – Intergovernmental Review

c: Scott Morgan (State Clearinghouse)



May 23, 2011

Marina Rush
County of Santa Clara Planning Office
70 West Hedding, 7th Floor
San Jose, CA 95110

RE: Environmental Impact Report for the Comprehensive Reclamation Plan Amendment and Conditional Use Permit for Permanente Quarry

Dear Ms. Rush,

No Toxic Air believes that the California Environmental Quality Act (CEQA) and CEQA guidelines require Santa Clara County to consider the following issues within the Environmental Impact Report (EIR) for the Comprehensive Reclamation Plan Amendment and Conditional Use Permit for Permanente Quarry (the Permanente Quarry expansion project):

1. A quantitative assessment of air quality impacts caused by industrial uses of quarry materials, including air pollutant emissions from the Lehigh Southwest Cement Plant

Section 15126.2 of the CEQA Guidelines state:

“An EIR shall identify and focus on the significant environmental effects of the proposed project. In assessing the impact of a proposed project on the environment, the lead agency should normally limit its examination to changes in the existing physical conditions in the affected area as they exist at the time the notice of preparation is published, or where no notice of preparation is published, at the time environmental analysis is commenced. Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects.”

Section 15358 of the CEQA Guidelines further state:

“(a) Effects include:

(2) Indirect or secondary effects which are caused by the project and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect or secondary



effects may include growth-inducing effects and other effects related to induced changes in the pattern of land use, population density, or growth rate, and related effects on air and water and other natural systems, including ecosystems.”

Section 15064(d) of the CEQA Guidelines further clarifies:

“(d) In evaluating the significance of the environmental effect of a project, the lead agency shall consider direct physical changes in the environment which may be caused by the project and reasonably foreseeable indirect physical changes in the environment which may be caused by the project.

(2) An indirect physical change in the environment is a physical change in the environment which is not immediately related to the project, but which is caused indirectly by the project. If a direct physical change in the environment in turn causes another change in the environment, then the other change is an indirect physical change in the environment. For example, the construction of a new sewage treatment plant may facilitate population growth in the service area due to the increase in sewage treatment capacity and may lead to an increase in air pollution.”

Air quality impacts caused by industrial uses of quarry materials, including air pollutant emissions from the Lehigh Southwest Cement Plant, are clearly “indirect impacts” of the proposed Permanente Quarry expansion project that the CEQA guidelines will require Santa Clara to assess within the EIR for the project. These air quality impacts are not only “reasonably foreseeable indirect physical changes in the environment which may be caused by the project,” these impacts will result because of the intended design of the project to supply limestone for the Lehigh Southwest Cement Plant.

Failure of Santa Clara County to assess the air quality impacts caused by industrial uses of quarry materials, including air pollutant emissions from the Lehigh Southwest Cement Plant will prevent a required comparison of the proposed project to the ‘no project’ alternative.

Section 15126.6(e) of the CEQA Guidelines states:

(e) "No project" alternative.

(1) The specific alternative of "no project" shall also be evaluated along with its impact. The purpose of describing and analyzing a no project alternative is to allow decision makers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project.



It is reasonably foreseeable that under the no project alternative, operations at the Lehigh Southwest Cement Plant will cease because of the lack of an affordable supply of raw materials. Under this reasonably foreseeable scenario, air pollutant emissions from the Lehigh Southwest Cement Plant cease and air quality in the vicinity of the plant will improve, including air quality in the City of Cupertino. An assessment of the no project alternative will therefore include the extent to which air quality would improve if operations at the Lehigh Southwest Cement Plant cease, an indirect impact of the no project alternative. If Santa Clara County does not assess the air quality impacts caused by industrial uses of quarry materials, including air pollutant emissions from the Lehigh Southwest Cement Plant, then this would deprive decision-makers, including citizens of Cupertino and adjoining communities of Santa Clara County, of essential information decision-makers need” to compare the impacts of approving the proposed project with the impacts of not approving the proposed project.”

Indirect impacts of the project on air quality is also required because of the relatively uncommon proximity of the Lehigh Southwest Cement Plant to a densely-populated residential area.

The Notice that Santa Clara County issued on March 10, 2011 states:

“The EIR will not evaluate emissions related to existing plant operations.”

For the reasons elaborated above, if this means that the EIR will not assess the air quality impacts caused by industrial uses of quarry materials, including air pollutant emissions from the Lehigh Southwest Cement Plant, then the EIR will be in violation of CEQA and CEQA Guidelines and, therefore, the EIR would not be a permissible basis for clearance of the proposed project.

2. A quantitative assessment of the mercury content of the limestone that would be excavated from the proposed South Quarry and other possible locations where the applicant may obtain raw materials and aggregates

Section 15125(a) of the CEQA Guidelines states:

“An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an



impact is significant. The description of the environmental setting shall be no longer than is necessary to an understanding of the significant effects of the proposed project and its alternatives.”

Mercury is a toxic air contaminant. The amount of mercury emissions from a cement plant depend entirely on the mercury content of the raw materials it uses, of which limestone is the dominant raw material. The mercury content of the limestone the applicant is currently extracting from the North Quarry has some of the highest mercury content in the nation – 0.36 parts per million (ppm). In a 30-day survey conducted in March-April of 2009, the mercury content of limestone at the existing quarry was highly variable, with some samples containing mercury at a level of 1.4 ppm.

In September 2010, the U.S. Environmental Protection Agency (U.S. EPA) adopted new National Emission Standards for Hazardous Air Pollutants (NESHAP) that will require existing cement plants, such as the Lehigh Southwest Cement Plant to reduce mercury emissions to no more than 55 pounds of mercury per million tons of clinker produced. U.S. EPA (September 9, 2010) “National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants,” 75 FR 54970. At the rate at which Lehigh Southwest Cement Plant uses limestone, it will be required to remove at least 94% of mercury emissions in order to comply with the new U.S. EPA NESHAP for cement plants. This will require operators of the cement plant to employ multiple control measures for capturing mercury, as no one technology alone, including activated carbon injection, removes more than 90% of mercury emissions. Ibid. No combination of control technologies is capable of removing more than 98% of mercury emissions. Ibid.

Because of the heterogeneous and variable nature of the occurrence of mercury in limestone, it is reasonably foreseeable that the mercury content of limestone from the proposed South Quarry may be even higher than the mercury content of limestone from the North Quarry. If this were the case, then it might render the limestone unusable as a raw material for the production of cement because no combination of control technologies is capable of removing more than 98% of mercury emissions, and the operators of the Lehigh Southwest Cement Plant would be unable to use such limestone and comply with the U.S. EPA NESHAP for cement plants.

A quantitative assessment of the mercury content of the limestone that would be excavated from the new quarry areas is needed as part of the EIR to understand the significant effects of the proposed project and its alternatives. If it is found that the mercury content of the limestone from the proposed South Quarry is too high, then operators of the Lehigh Southwest Cement



Plant may not use limestone from this source. If this fact is discovered before the Permanente Quarry expansion project commences, then the applicant may choose to abandon the project and the adverse environmental impacts of the proposed project might be avoided. If this fact is discovered after the Permanente Quarry expansion project commences, then the applicant may choose to abandon the project, but too late to avoid the adverse environmental impacts of the proposed project.

3. An assessment of the alternative of sourcing raw materials for the Lehigh Southwest Cement Plant more sustainably by using ash, demolished concrete, and other cementitious materials

Section 21002 of CEQA states:

“The Legislature finds and declares that it is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects, and that the procedures required by this division are intended to assist public agencies in systematically identifying both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects.”

Section 15126.6(a) of the CEQA Guidelines states:

“(a) Alternatives to the Proposed Project. An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.”

The applicant’s stated basic objective of the project is to supply raw material, chiefly limestone, for the continued operation of the Lehigh Southwest Cement Plant because the supply of such materials in the existing North Quarry is nearly exhausted.

Because of the unsustainability of relying on local supplies of limestone for cement plants, and because of the inherent greenhouse gas emissions associated with the calcination of limestone, increasing attention is turning to the use of alternative materials. A recent publication of a scientist from the University of Wisconsin-Milwaukee states:



“Concrete is one of the most widely used construction materials in the world. However, the production of Portland cement, an essential constituent of concrete, leads to the release of significant amounts of CO₂, a greenhouse gas (GHG); production of one ton of Portland cement produces about one ton of CO₂ and other GHGs. The environmental issues associated with GHGs, in addition to natural resources issues, will play a leading role in the sustainable development of the cement and concrete industry during this century. For example, as the supply of good-quality limestone to produce cement decreases, producing adequate amounts of Portland cement for construction will become more difficult. There is a possibility that when there is no more good-quality limestone in, say, a geographical region, and thus no Portland cement, all the employment associated with the concrete industry, as well as new construction projects, will be terminated. Because of limited natural resources, concern over GHGs, or, both, cement production is being curtailed, or at least cannot be increased to keep up with the population increase, in some regions of the world. It is therefore necessary to look for sustainable solutions for future concrete construction. A sustainable concrete structure is constructed to ensure that the total environmental impact during its life cycle, including its use, will be minimal. Sustainable concrete should have a very low inherent energy requirement, be produced with little waste, be made from some of the most plentiful resources on earth, produce durable structures, have a very high thermal mass, and be made with recycled materials. Sustainable constructions have a small impact on the environment. They use “green” materials, which have low energy costs, high durability, low maintenance requirements, and contain a large proportion of recycled or recyclable materials. Green materials also use less energy and resources and can lead to high-performance cements and concrete. Concrete must keep evolving to satisfy the increasing demands of all its users. Designing for sustainability means accounting for the short-term and long-term environmental consequences in the design.” Naik, T.R. (2008) Sustainability of Concrete Construction," Practice Periodical on Structural Design and Construction, Vol. 13, No. 2, May 2008, pp. 98-103.

A recent publication of a scientist from the Columbia University states:

“The concrete industry is known to leave an enormous environmental footprint on Planet Earth. First, there are the sheer volumes of material needed to produce the billions of tons of concrete worldwide each year. Then there are the CO₂ emissions caused during the production of Portland cement. Together with the energy requirements, water consumption and generation of construction and demolition waste, these factors



contribute to the general appearance that concrete is not particularly environmentally friendly or compatible with the demands of sustainable development.

“This paper summarizes recent developments to improve the situation. Foremost is the increasing use of cementitious materials that can serve as partial substitutes for Portland cement, in particular those materials that are by-products of industrial processes, such as fly ash and ground granulated blast furnace slag. But also the substitution of various recycled materials for aggregate has made significant progress worldwide, thereby reducing the need to quarry virgin aggregates. The most important ones among these are recycled concrete aggregate, post-consumer glass, scrap tires, plastics, and by-products of the paper and other industries.” Meyer, C. (2009) "The greening of the concrete industry," *Cement and Concrete Composites*, 31(8):601-605.

Materials that the applicant has submitted to Santa Clara County assume that quarrying virgin aggregates is the only alternative available to supply raw material, chiefly limestone, for the continued operation of the Lehigh Southwest Cement Plant. Clearly, this assumption is erroneous. Therefore, the EIR for the proposed project must also assess the alternative of sourcing raw materials for the Lehigh Southwest Cement Plant more sustainably by using ash, demolished concrete, and other cementitious materials.

4. In assessing impacts of the proposed action on water quality, the EIR must evaluate a scenario under which the applicant continuous to discharge wastewater to Permanente Creek in violation of the Clean Water Act

Section 15144 of the CEQA regulations state:

“Drafting an EIR or preparing a Negative Declaration necessarily involves some degree of forecasting. While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can.”

On February 10, 2010, the U.S. EPA conducted an industrial storm water inspection of the quarry that the applicant wishes to expand. The inspection recorded numerous violations by the applicant resulting in adverse water quality impacts to Permanente Creek and included these photos of the applicant’s impact on water quality in Permanente Creek:



Photograph 18 – Close-up view of pollutant-laden discharge to Permanente Creek from Pond 17.



Photograph 19 – View downstream along Permanente Creek.



In a letter dated February 18, 2011, the California Regional Water Quality Control Board reviewed the applicant's discharge of polluted water:

“Lehigh’s substantial and ongoing non-storm water discharges are unpermitted and prohibited by the Industrial Storm Water General Permit.

“Lehigh is in violation of the Industrial Storm Water General Permit Effluent Limitation 3 due to inadequate erosion and sediment controls.”

These violations demonstrate that the applicant has forfeited the presumption that in the future it will comply with the Clean Water Act. Considering the applicant’s “substantial” and “ongoing” unpermitted and prohibited discharges that have impacted water quality in Permanente Creek, Santa Clara County must take into account that the applicant might operate the Permanente Quarry expansion project in a manner comparable to its existing quarry operations. Therefore, the EIR must quantitatively predict how water quality in Permanente Creek might change as a result of the Permanente Quarry expansion project under two scenarios: 1) operation of the proposed project in compliance with the Clean Water Act; and 2) operation of the project in no better compliance with the Clean Water Act than how the applicant managed its existing quarry operations in 2010.

Sincerely,

Barry Chang, Chair
No Toxic Air, Inc.

Hi Marina

Thanks for following up with me and me not getting around to comment. I am actually in the gold country with 4 th graders and not only learning about the old rush but also the serious consequences if all the mercury that was used and the impact it is still having on the environment locally but as far away as the bay area.

Being impacted today by activity 160 years ago it is mind boggling that the county it even still considering to allow Lehigh to expand allowing them to continue spewing nasty chemicals into the air and having them monitor how much they are polluting our air, water, environment, animals and humans

Knowing that there are serious water quality violations I am wondering what it would take to have the county district attorney look how it is possible to look at enforcing these water quality violations and probable air quality violations. I'm wondering just how much mercury LeHigh could spew into our air before the County would take some action. Is that limit 500 lbs a year or more for our community? Should I as a mother be concerned about my children breathing this air? There are longterm health consequences to the decisions County staff and our Board of Supervisors are making that are not properly understood. We know these chemicals are bad and should apply some level of reasonable to protect our community .

Secondly, as a citizen and parent living in Cupertino I am very concerned with the fact that the county doesn't seem to represent me and my neighbors interests in providing a safe environment for us to live in. It rather seems that personal interest and relationships are being honored and maintained on behalf of unsafe, unhealthy and for the future really bad decisions that will impact our area and environment for a really long time. I am sure the county officials are aware of these relationships and the impact they have on the county's residents.

I would like to know how the county is judging that the data the agencies measuring the impact of Lehigh's pollution is based??? I would like to suggest that an independent agency be contacted to do some research as to the severity of the environmental impact.

The amount and efforts put in place and spent on this case from the county and other agencies should hopefully soon be put to an end. It doesn't seem from any of the publicly available research on mercury that all this work and research should at all take place. Why do we have to pretend that there is a good reason for them to do business when it is so clear that what they do is not legal, it is dangerous and has ever lasting damaging impact on our environment. Common sense is enough to make a decision to completely stop what they are doing until there are no impact to the environment and for them not to be allowed to expand.

Looking forward to some serious right decisions from the county to take place in the near future.

Best regards,

Mette Christensen

Planning Commission:

I want to voice my support of the expansion of the Lehigh Facility west of Cupertino. As a civil engineer, I am well aware of the rising cost of construction materials. Curtailing the operations of the Lehigh Plant will only increase the cost of construction in the Bay Area and stall the recovery of an ailing economy. I am also a 33 year resident of Cupertino and I am frustrated by people who bought houses near the plant with full knowledge that the plant was there and now complain about it. Before it was the noise and dust, now it is toxic air. You have to wonder why they bought or built a house where there was a cement plant if they are so concerned about the noise, dust and air. Attached is a letter to the Cupertino Courier in response to comments from a group representing NoToxicAir.com. This group as well as others who want to stop the Lehigh Plant from operating refer to studies that have been selected for their bias and misuse of the scientific method. If you look into these studies, you will find that their assumptions are based on

extraordinary
circumstances that have no basis in fact. Like so much of
the
environmental movement these days, their study is based
on the improper
use of the statistical method, improper modeling and
erroneous
interpretation of the data.

Respectfully submitted
Mark Fantozzi
Cupertino, CA

----- End of Forwarded Message

NoToxicAir.com is a website with an agenda. Curtail or stop the operation of any industry that uses fossil fuels or produces refined products from fossil fuels through draconian regulation. NoToxicAir refers to studies that have been selected for their bias and misuse of the scientific method. Sinks and Wallis site a study by Windham and Palmer about the incidence of autism with respect to hazardous air pollutants and they go so far as to say that for each 1000 pounds of mercury released there is a significant increase in special education services and autism. We have not seen that here or anywhere in Santa Clara County even though the plant has been in operation since 1939. What is the basis of their study, how did they come to these conclusions? If you look into the report, you will find that their assumptions are based on extraordinary circumstances that have no basis in fact. Like so much of the environmental movement these days, their study is based on the improper use of the statistical method, improper modeling and erroneous interpretation of the data. For an unbiased report on mercury in the environment, visit: www.junkscience.com/feb05/MercuryinPerspectiveReport.pdf

The EPA has proposed rules that would require the Lehigh Southwest Cement plant in Cupertino to cut mercury emissions by up to 93% from current levels. The rules and regulations governing emission standards for cement plants and similar industries are wrought with errors which make it difficult if not impossible to comply. An example of the abuses of regulatory authority, people should refer to www.killcarb.org. The 100 pounds per year emissions level is a number based on improper modeling of mercury emissions. Many of the existing programs for modeling mercury emissions make worst case assumptions regarding the form of the mercury as it is emitted as well as the transformation path that the mercury takes once it is released to the environment. It is therefore critical that any modeling take into account the actual molecular form and valence state of any mercury that is emitted and make realistic assumptions regarding transformation of mercury emitted to the environment.

As we have seen with the global warming (now called climate change) and the banning of DDT, the environmental movement demonstrates a defined bias and a concerted effort to block any scrutiny of their data or analysis methods. There was no statistical correlation between the use of DDT and bird deaths or any other claims made by Rachael Carson. Go to www.junkscience.com and search DDT in their archives and you will find numerous studies, by highly reputable scientists, that debunk the DDT claim but did not get the attention they deserved. The UN estimates that over 1 million children have died from malaria as a result of the ban. If environmentalism is so concerned about the children, why didn't they secure a suitable alternative to DDT before an outright ban? Also remember that these are the same people that are making it necessary to replace all of the incandescent light bulbs in your home with CFL light bulbs despite the fact that the each CFL bulb contains enough mercury to contaminate 6000 gallons of water. If you break a CFL, it releases 300 times the EPA limit of mercury vapor. With CFL's, the average home will contain more mercury than you will ever be exposed to from the Lehigh Cement Plant in your lifetime.

Mark Fantozzi
33 year resident of Cupertino

From: "Rhoda Fry " <fryhouse@earthlink.net>
Date: May 23, 2011 11:38:24 AM PDT
To: <marina.rush@pln.sccgov.org>
Subject: Request for inclusion in EIR scoping . . .

Dear Marina –

Over the years, your office has received many comments regarding Lehigh Southwest and I hope you will use them as inspiration for EIR scoping. There were a number that came in during the vested rights process.

Here is one from 2007 from the State of California Attorney General's office which is equally applicable today (it is enclosed as an attachment as well): http://ag.ca.gov/globalwarming/pdf/comments_Hanson_Quarry.pdf

As others have pointed out, under CEQA, the quarry cannot be looked at as an independent project. In addition to examining the adjacent cement plant, the **effects on the adjacent aggregate facility must be taken into account as well.**

There should also be a comprehensive history of land use because this project proposed as significant change in land-use. The EIR should include a comprehensive list of historical structures, their content, removal, and associated impacts.

I was fascinated by the vested rights hearing process, where vested rights were granted to a parcel that for 50+ years had been used for manufacturing by a different company even though as far as I could tell, any mining rights had actually been abandoned. Anyway, what I learned is that there were a number of products manufactured on the hill that involved toxic materials – in fact the county fined the operator and the EPA did an extensive study of the property as did the department of environmental health etc...

There were many structures on the property above and below ground, some still stand many don't. We need to understand the history of these structures and how the change of use will affect them. Although the county did show demolition permits for some of these structures, there was no record online of final inspection – this worries me. We need to understand the inspection history on these and others on the property. **Net net a complete audit of current and past structures on the entire property must be conducted.**

Regards,

Rhoda Fry, Cupertino
comments_Hanson_Quarry.pdf ↪



EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE

1515 CLAY STREET, 20TH FLOOR
P.O. BOX 70550
OAKLAND, CA 94612-0550

Public: 510-622-2100
Telephone: 510-622-2145
Facsimile: 510-622-2270
E-Mail: sandra.goldberg@doj.ca.gov

November 20, 2007

By Electronic Mail and Telecopy

Mark J. Connolly
County of Santa Clara Planning Office
70 West Hedding St., 7th Floor, East Wing
San Jose, CA 95110

RE: Hanson Quarry Reclamation Plan -- File Number: 2250-13-66-07P-07EIR

Dear Mr. Connolly:

The Attorney General submits these comments on the Notice of Preparation of an environmental impact report ("EIR") for the Hanson Permanente Reclamation Plan Amendment ("the project"). Although the deadline for filing comments on the Notice of Preparation has passed, we request that you consider these comments in preparing the draft EIR.

The Hanson Quarry, located west of the City of Cupertino, consists of a limestone mine and cement plant, including a 250 foot cement kiln heated primarily with coal. The current Reclamation Plan for the Hanson Quarry was approved in 1985 and will expire in March 2010. The proposed project would expand the 330-acre area covered by the 1985 Reclamation Plan, to authorize 917 acres of mining and reclamation activity and extend operations for 25 years, until 2035. The project would authorize about 30 acres of new mining area, plus additional buffer areas, and reclamation of already disturbed areas that extend beyond the areas covered in the 1985 Plan.

The Notice of Preparation identifies the primary environmental issues that the EIR will address, but greenhouse gas ("GHG") emissions and/or impacts on climate change are not included. The effect of this project would be to authorize cement mining and manufacturing that has significant emissions of carbon dioxide, the leading GHG, for another 25 years. Therefore, California Environmental Quality Act requires the County to evaluate and mitigate the GHG emissions and climate change impacts from the project.

Climate Change Background

Emissions of GHG on the Earth's surface accumulate in the atmosphere: the increased atmospheric concentration of these same gases in turn adversely affects the climate.^{1/} The

1. (Intergovernmental Panel on Climate Change, Fourth Assessment Report (IPCC 4th) (2007), Working Group (WG) I, Frequently Asked Question 2.1, *How do Human Activities Contribute to Climate Change and How do They Compare with Natural Influences?*)

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atmospheric concentration of carbon dioxide (CO₂), the leading GHG, is now 379 parts per million (ppm), higher than any time in the preceding 650,000 years.^{2/} According to some experts, an atmospheric concentration of CO₂ “exceeding 450 ppm is almost surely dangerous” because of the climate changes it will effect, “and the ceiling may be even lower.”^{3/}

Currently, atmospheric GHG concentrations are far from stable. “The recent rate of change is dramatic and unprecedented[.]”^{4/} Over just the last 17 years, atmospheric concentrations of CO₂ have risen 30 ppm, a rate of change that, in pre-industrial times, would have taken 1,000 years.^{5/} Experts are clear that if we continue our “business as usual” emissions trend, atmospheric concentrations of CO₂ will likely exceed 650 ppm by the end of the century.^{6/}

In short, our past and current GHG emissions have pushed us to a climatic “tipping point.” If we continue our business-as-usual emissions trajectory, dangerous climate change will become unavoidable. According to NASA’s James Hansen, proceeding at the emissions rate of the past decade will result in “disastrous effects, including increasingly rapid sea level rise, increased frequency of droughts and floods, and increased stress on wildlife and plants due to rapidly shifting climate zones.”^{7/} And, the experts tell us, we have less than a decade to take decisive action.^{8/}

The need to make substantial cuts in emissions drives the global targets embodied in the Kyoto Protocol and the State’s targets established by the Governor’s Executive Order S-3-05, and AB 32, the CA Global Warming Solution Act of 2006. In California, by these authorities,

http://ipcc-wg1.ucar.edu/wg1/Report/AR4WG1_Pub_FAQs.pdf.)

2. (IPCC 4th, WG I, Frequently Asked Question 7.1, *Are the Increases in Atmospheric Carbon Dioxide and Other Greenhouse Gases During the Industrial Era Caused by Human Activities?* http://ipcc-wg1.ucar.edu/wg1/Report/AR4WG1_Pub_FAQs.pdf.)

3. (http://www.nasa.gov/centers/goddard/news/topstory/2007/danger_point.html.)

4. (IPCC 4th, WG I, Frequently Asked Question 7.1, *Are the Increases in Atmospheric Carbon Dioxide and Other Greenhouse Gases During the Industrial Era Caused by Human Activities?* http://ipcc-wg1.ucar.edu/wg1/Report/AR4WG1_Pub_FAQs.pdf.)

5. (*Id.*)

6. (<http://www.epa.gov/climatechange/science/futureac.html>.)

7. (<http://www.giss.nasa.gov/research/news/20070530/>; see also *Hansen et al., Dangerous Human-Made Interference with Climate* (2007) 7 *Atmos. Chem. Phys.* 2287–2312 http://pubs.giss.nasa.gov/docs/2007/2007_Hansen_etal_1.pdf.)

8. (*Id.*) For further discussion of dangerous climate change, see IPCC 4th, WG III, Ch. 1 at pp. 6-7 http://www.mnp.nl/ipcc/pages_media/FAR4docs/chapters/CH1_Introduction.pdf.

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we are committed to reducing emissions to 1990 levels by 2020, and 80% below 1990 levels by 2050. To achieve the 2020 target, California must reduce its current emissions by 25%.^{9/}

CEQA Requirements

As the legislature recently recognized, global warming is an "effect on the environment" as defined by the California Environmental Quality Act ("CEQA"), and a project's contribution to global warming can be significant.^{10/} CEQA was enacted to ensure that public agencies do not approve projects unless they include feasible alternatives or mitigation measures that substantially reduce the significant environmental effects of the project.^{11/} CEQA requires that "[e]ach public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so."^{12/} This requirement is extremely important and is recognized as "[t]he core of an EIR"^{13/} Therefore, the EIR for the Hanson project must evaluate mitigation measures and examine alternatives that would reduce the project's emissions of GHG that contribute to global warming.^{14/}

Project Impacts and Potential Mitigation Measures

The Hanson Quarry is one of 11 cement facilities in California. California produces approximately 11.4 million tons of cement per year, out of 101 tons produced in the entire United States. These 11 cement facilities use large amounts of energy, including 2.3 million tons of coal per year.^{15/} This accounts for most of the coal used in all industrial and commercial

9. (Office of the Governor, *Gov. Schwarzenegger Signs Landmark Legislation to Reduce Greenhouse Gas Emissions*, Press Release (Sept. 27, 2006) <http://gov.ca.gov/index.php?/press-release/4111/>.)

10. See Pub. Res. Code section 21083.05, subd. (a); see also Sen. Rules Com., Off. of Sen. Floor Analyses, Analysis of Sen. Bill No. 97 (2007-2008 Reg. Sess.) Aug. 22, 2007.

11. Public Resources Code § 21002.

12. Public Resources Code §§ 21002.1(b) and 21081; see also, *Mountain Lion Foundation v. Fish and Game Commission*, 16 Cal.4th 105, 134 (1997).

13. *Citizens of Goleta Valley v. Board of Supervisors of Santa Barbara County* (1990) 52 Cal.3d 553, 564-65.

14. Public Resources Code § 21002.1(a); Cal. Code Regs., tit. 14, § 15130, subd. (b)(5).

15. Draft Expanded List of Early Action Measures to Reduce GHG Emissions in CA Recommended For Board Consideration, Cal/EPA, Air Resources Board, October 2007, at C-27.

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operations in California, which is approximately 2.6 million tons (2004 data).^{16/} Coal is a high-carbon intensity fuel, emitting over 210 pounds of CO₂ per million Btu compared to only 117 pounds of CO₂ per million Btu for natural gas. The Air Board estimates that the total CO₂ equivalent emissions from cement manufacturing in California are 10.8 million metric tons per year. (See fn. 15).

According to the Bay Area Air Quality Management District (“BAAQMD”), the Hanson Quarry emitted 1,115,075 metric tons CO₂ equivalent in 2002. Approximately 60% of this is attributed to direct emissions from the manufacturing process (the “calcination” process that transforms limestone into clinker), and about 40% is from burning fuel (primarily coal). A third, but smaller, source of GHG emissions from the facility is electricity use. Thus, it is clear that the project will result in significant future GHG emissions.

Increasing the energy efficiency of cement facilities is recognized as a potential way to reduce GHG emissions in California. It is one of the proposed “early actions” for climate change mitigation that the Air Board is evaluating pursuant to AB 32. (See fn. 15 at p.16). The strategy involves “reducing CO₂ emissions from fuel combustion, calcination, and electricity use by converting to a low-carbon fuel-based production, decreasing fuel consumption, and improving energy efficiency practices and technologies in cement production.” (Id.) The Air Board does not plan to consider this measure formally until the 4th quarter of 2010. (Id. at C-27). However, there are feasible opportunities to reduce energy use and carbon emissions from cement manufacturing that can be implemented now; therefore, this is an appropriate mitigation measure to evaluate in the EIR.

Using biofuels as a supplemental fuel for the cement kiln is a potential way to reduce GHG emissions. A BAAQMD report on large stationary sources lists biofuel combustion for cement manufacturing on a “prioritized short list of mitigation technologies” that provide a favorable reduction to cost relative ratio.^{17/} A cement facility in Redding (Shasta County) owned by Lehigh Southwest Cement Company (“Lehigh”) recently began using sawdust as a supplemental fuel.^{18/} This should significantly reduce the facility’s use of coal and therefore reduce its GHG emissions. (We are informed that the same company, Lehigh, recently purchased the Hanson Quarry). In addition, the BAAQMD indicates that the Hanson Quarry is evaluating the use of solid biofuels, such as nut shells, as a supplemental fuel. (See fn. 17, at p. 6-3). Other types of wood waste (from orchards or construction, for example) and sewage

16. Inventory of California GHG Emissions and Sinks: 1990 to 2004 (CEC, December 2006) and information provided by Webster Tasat, California Energy Commission.

17. See “Opportunities for Further Greenhouse Gas Emission Reductions for the BAAQMD Stationary Sources” Final Report (March 2007) prepared for the Bay Area Air Quality Management District, Table 4-2.

18. Shasta County Air Quality Management District issued an “Authority to Construct, Secondary/Supplemental Fuel System; Approval of Medium Density Fiberboard Sawdust as Auxiliary Fuel” on 5/16/06 and revised Permit to Operate (#85-PO-14) on 9/27/07.

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sludge are other potential biofuels. A facility is under construction in Rialto, California to convert sewage sludge into fuel for cement kilns.^{19/} Increasing the use of natural gas as a fuel would also reduce carbon emissions. (See fn. 15 at C-28).

Other mitigation measures that could be evaluated include the feasibility of co-generation (which is currently used at one California cement plant); to identify and remedy any areas of heat loss from the kiln; to evaluate, maintain and repair the kiln seals; and to identify opportunities to reduce electricity use. The Cemex facility in Victorville, California completed an Energy Savings Assessment in May 2007 through a DOE program and identified feasible, cost-effective actions to reduce its electricity use of 5.2 million kWh/year by 1.9 million kWh/year.^{20/} An audit could be conducted of the Hanson facility prior to issuance of the draft EIR to identify any opportunities to reduce energy use and heat loss, and the identified actions could be evaluated in the EIR and adopted as mitigation measures if they are feasible. The EIR could also evaluate reducing the project's emissions of GHG (and criteria pollutants as well) from vehicle trips by using alternative fuel vehicles and/or vehicles with lower emitting engines and other measures.

Accordingly, it appears there may be several feasible mitigation measures that the County could evaluate and adopt in the EIR for the Hanson Quarry project. In addition, offsite mitigation may be an appropriate measure to address the facility's remaining climate change impacts. We urge the County, in this EIR and Reclamation Plan Amendment, to take the opportunity to show leadership in the state's efforts to avoid catastrophic climate change.

Thank you for your consideration of these comments. We would appreciate the opportunity to meet with you to discuss these issues, at your convenience.

Sincerely,

/S/

SANDRA GOLDBERG
 Deputy Attorney General

For EDMUND G. BROWN JR.
 Attorney General

cc: Supervisor Liz Kniss

19. See "EnerTech and HDR Begin Construction of the First Full-Scale SlurryCarb Facility in Rialto, CA (4/19/07) at <http://www.californiagreensolutions.com/cgi-bin/gt/tpl.h,content=343>

20. ESA-021-2 CEMEX Inc. - Victorville Facility, Final Public Report, available at: www.eere.energy.gov/industry/saveenergynow/partners/pdfs/esa-021-2.pdf

From: Frank Geefay <fgeefay@yahoo.com>
Date: May 23, 2011 4:01:11 PM PDT
To: Marina Rush <marina.rush@pln.sccgov.org>
Cc: Frank Geefay <fgeefay@yahoo.com>
Subject: Public Comments for EIR & Use Permit for Lehigh Cement's Proposed Mine

It occurs to me that the primary objection to the new 210 acre open pit mine is its unsightly visibility to the general public. To this I add my objection. The present quarry has largely been hidden behind ridges of foothills for over 70 years, only slightly visible to a few nearby residents and to those hiking some of the nearby ridge trails. Lehigh Permanente Cement and Quarry's current proposal for a new open pit mine will make the upper southern exposure of the mine (about one third) clearly visible to residents and visitors of the Cupertino-Saratoga area because it is higher than the ridgelines which hide the present quarry. This white color blight would make Lehigh Permanente Quarry very prominent and broadcast Lehigh's unsightly presence to the general public. The upper portion of the quarry would be visible for many decades before the limestone is mined out and the pit returned to its natural state, assuming Lehigh honors the proposed reclamation plan. Lehigh would likely feel the wrath of local residents and increasing opposition as mining operations become progressively more prominent.

It is also my understanding that explosives are used to assist in the excavation of the limestone. The present mine is surrounded by hills that block or greatly muffle these explosive events. That would not be the case once the proposed new mining operation progresses beyond the blocking ridgelines. Many more residents would be exposed to loud explosions disturbing their peace. Noise created by heavy machinery use to excavate and transport the mined limestone would also become much more prominent as the mine progresses beyond the ridgelines. This noise would be noticeable 24 hr. a day all year round

for many decades as mining operations progress disrupting the peace and quiet, especially at night time, of nearby residents.

The issue for a new open pit mine does not have to be a matter of approval for the proposal by Lehigh Permanente Cement or of denial for the new mine as suggested by many residents. Perhaps there is a compromise that would satisfy both Lehigh's need for more limestone and resident's object to the sight and sounds posed by the new mining operation. I propose that the southern most portion of the proposed open pit mine that is widely visible above the foreground ridgeline be excluded from the current proposal and that mining rights be granted for only those areas that is not visible. If at some time in the distant future Lehigh Permanente Cement desires to extend their mining operations they can submit another proposal at that time for an extension of the mine or perhaps fine another area that is less visible and troublesome to residents. The limestone below the ridgeline will probably satisfy the cement plant's needs for limestone for several decades and give them more time to plan for the more distant future. New technology may then be available to make it feasibly to extract limestone in less limestone rich areas allowing them to mine in less visible areas. This will satisfy the cement plant's immediate needs for more limestone for decades and leave the beautiful foothills undisturbed for all to enjoy in relative peace.

Frank Geefay

From: "Peter Hargreaves \ (PHearth\)"
<peterharg@earthlink.net>
Date: May 18, 2011 12:22:01 PM PDT
To: <Marina.Rush@pln.sccgov.org>
**Subject: Objection to Lehigh Quarry Expansion in
Cupertino**

Hi Marina,

I write as a resident on the Cupertino/Sunnyvale border and a frequent amenity user of the foothills for running and walking and appreciating nature.

Please record my strong objection to any expansion by Lehigh Southwest Cement or any other company of its quarry operations in the beautiful Cupertino foothills. The Santa Clara County representatives should reject this planning application on many grounds including :

- 1) irreparable damage to the countryside, both in the immediate proposed quarry area and by destroying views from many angles,
- 2) risks to human health of industrial byproducts released into the air related to the quarrying,
- 3) impact in a residential area of heavy freight vehicles.

Thank you,

Peter Hargreaves

From: Vicky Ho <vickyueho@yahoo.com>
Date: May 23, 2011 12:00:45 PM PDT
To: Marina Rush <marina.rush@pln.sccgov.org>
Subject: Re: Lehigh - NOP Extending Comment Period for NOP

With the high content of mercury in the rocks being mined in the hills emission of toxic air is a foregone conclusion.

The bottom line is: the site is not suitable for mining and cement mal I do not understand how the county council could overwhelmingly ap use of not only what they asked for and then some more, inspite of t their staff to do otherwise and the loud protests of the citizens.

If this EIR is not a farce, they should really consdier for the health of Santa Clara is a now a densly populated area and the huge amount is poisonous to everyone. If for no one elsee, think of your grand kid breathe in the toxic air, day in and day out.

Thanks,
Vicky Ho

--- On **Wed, 4/20/11**, Marina Rush <marina.rush@pln.sccgov.org

From: Marina Rush <marina.rush@pln.sccgov.org>
Subject: Lehigh - NOP Extending Comment Period for NOP
To:
Cc: "Rob Eastwood" <Rob.Eastwood@pln.sccgov.org>, "Terry Mars <tmarshall@lehighcement.com>, "Marvin E. Howell" <Marvin.Howel
Date: Wednesday, April 20, 2011, 4:03 PM

Everyone,

Please note, the County of Santa Clara is extending the public comment period of Preparation of an Environmental Impact Report for the Lehigh/Petaluma Comprehensive Reclamation Plan Amendment and Use Permit project. The public comment period, which started March 11, 2011, will close on **MAY 23, 2011**,

Attached is the Notice of Preparation, including a brief project description and potential effects of the project proposal. For your reference, the complete application and plans can be viewed on the County website at: www.sccplanning.org

Thank you in advance, and please submit written comments regarding the EIR to the following:

Marina Rush, Planner III
County of Santa Clara Planning Office
70 West Hedding Street, East Wing, 7th Floor
San Jose, CA 95110

email: Marina.Rush@pln.sccgov.org

Phone: (408) 299-5784

Fax: (408) 288-9198

Sincerely,

Marina Rush

From: Nancy Mautino <nancy@mautino.com>

Date: May 18, 2011 4:07:30 PM PDT

To: Marina.Rush@pln.sccgov.org

Subject: Lehigh Quarry Expansion

Hi Marina Rush,

I live in Saratoga and I'd like to put a vote down for being against expansion for Lehigh Quarry. I believe that the quarry has already affected the health of one of my children and I feel that expansion would only put more of us at risk for health issues. Thank you.

Nancy Mautino



Midpeninsula Regional Open Space District

GENERAL MANAGER
Stephen E. Abbors

BOARD OF DIRECTORS
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Yoriko Kishimoto
Jed Cyr
Curt Riffle
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Larry Hassett
Cecily Harris

May 17, 2011

Marina Rush, Planner III
County of Santa Clara Planning Office
70 West Hedding Street, East Wing, 7th Floor
San Jose, CA 95110

RE: Notice of Preparation of an EIR Comprehensive Reclamation Plan Amendment and Conditional Use Permit for Permanente Quarry (State Mine ID# 91-43-004)

On behalf of Midpeninsula Regional Open Space District (District), I would like to provide the following comments on the scoping of the Environmental Impact Report (EIR) for the Lehigh Permanente Quarry Comprehensive Reclamation Plan Amendment and Conditional Use Permit (State Mine ID # 91-43-004). The District has previously commented on prior notices of preparation for Permanente Quarry Reclamation Plan Amendments dated June 20, 2007, May 20, 2010, and February 3, 2011. These comments remain valid due in part to the fact that the most current Comprehensive Reclamation Plan Amendment encompasses the same geographic areas. Prior written comments are therefore included as attachments to this comment letter.

The District is deeply troubled that the intent of the 2007 Comprehensive Reclamation Plan Amendment has expanded from an attempt to bring into compliance a grossly out-of-compliance quarry operation, to an Amendment that includes a new 250-acre quarry pit with a new 20-30 year life span. Since the 2007 Amendment, the East Materials Storage Area, referenced as “the main overburden storage site for the mining operation” was activated. The waste pile continues to grow in size even without having completed an adequate visual impact or human health analysis to understand the magnitude of the environmental and cumulative impacts or the mitigation measures that can be put in place to address these issues. In fact, an environmentally superior alternative exists, as is discussed at the end of this letter. The District urges the County to consider this permit review as an opportunity to relocate the waste material into the existing North Quarry rather than increase the existing waste storage area to avoid compounding the visual impacts and scenic easement issues associated with this project.

The following environmental concerns should be addressed in the proposed EIR:

Visual Impacts

The East Materials Storage Area is proposed to transition into the Central Materials Storage Area and result in a new terraced, unnatural ridge composed of dumped quarry waste that would ultimately lie at a considerable height above the natural existing ground surface. If permitted, this proposed new landform would be grossly out of compliance with Santa Clara County’s scenic hillside protection policies. The District requests that the visual impact analysis in the proposed EIR include views from Cristo Rey Drive, at the entrance to Rancho San Antonio County Park and Open Space Preserve, and from the PG&E Trail, which lies adjacent to the proposed storage areas. Additionally, the analysis should include vantage points from the nearby scenic Monte Bello Road.

Dust Impacts

Dust impacts to sensitive resources and the recreating public at the adjacent County Park and Open Space Preserve must be analyzed in the proposed EIR. Given the past decades of ongoing quarry operations at this location, cumulative long-term impacts due to dust are of great concern. As such, the District strongly recommends including a continuous air quality monitoring and reporting program as mitigation and as a condition of approval for any future quarry expansion or permit revision. This monitoring and reporting

program should continue through the life of the operation and include monitoring stations within 100 feet of the adjacent PG&E Trail, which passes near the proposed and current materials storage areas. Monitoring parameters should include particulate matter and the suite of potentially toxic substances known to occur in the quarry waste.

Noise Impacts

Noise impacts associated with the proposed and ongoing waste materials storage areas should also be evaluated at the Quarry/Open Space boundary to assess compliance with County noise regulations. To note, according to the Santa Clara County General Plan, the maximum level of noise a new land use (in this case, it is an expanded land use) may impose on neighboring parks, open space reserves, and wildlife refuges, shall be the upper limit of the "Satisfactory Noise Level" (currently at 55 decibels).

Cumulative Impacts

The District is concerned that the currently full West Materials Storage Area has the potential to be re-mined for construction aggregate. This same concern exists for the new proposed storage areas. This concern, and real possibility, highlights the need to evaluate the extended length of use of these sites to then identify, analyze, and mitigate potential cumulative long-term impacts. For example, the cumulative visual impacts associated with the existing and proposed material storage areas need to be thoroughly evaluated against current County hillside protection policies, the existing scenic ridge easement language, and County General Plan goals for park and open space. This analysis should include a historic visual analysis since the visual impact has dramatically increased over time. The cumulative water resources impacts need to evaluate potential impacts to Permanente Creek given that Permanente Creek has been severely impacted by past quarry practices. It is reasonable to assume that an increase in quarry operations consisting of a new 250 acre South Quarry pit within the relatively pristine half of the watershed will result in a substantial cumulative impact.

Alternatives Analysis

Lastly, the EIR should identify and evaluate a range of reasonable alternatives. As previously stated in prior comment letters, feasible alternatives exist for the waste pile that would avoid creating an artificial, ridge-like mound adjacent to public recreation land and within full view of surrounding communities and the valley floor. An alternative that suspends fill placement in the East Materials Storage Area, eliminates the Central Materials Storage Area, and instead immediately begins backfilling the existing North Quarry Pit for reclamation should be evaluated as a potentially superior environmental alternative. This alternative may serve to balance long-standing quarry deficiencies, halt the unprecedented acceleration of visual impacts, and provide the quarry with future raw materials. The no project alternative, and alternatives that allow quarry expansion only on vested property, should also be evaluated as feasible alternatives.

The County's review of the proposed use permit amendment presents an opportunity for the County to reevaluate the current and proposed quarry practices and to identify any changes that would allow the County to more closely and effectively manage quarry operations. The District urges the County to consider this permit review as an opportunity to relocate the waste material into the existing North Quarry rather than increase the existing waste storage area to avoid compounding the visual impacts and scenic easement issues. The District also asks that any mitigation measure identified through the environmental process also be added as a condition of approval of the use permit.

Thank you for the opportunity to provide comments for the scoping of the subject EIR. Please feel free to contact me by email at mbaldzikowski@openspace.org or by phone at 650 691-1200 if you have any questions regarding this or any prior comment letters.

Sincerely,



Matt Baldzikowski, Resource Planner II

cc: District Board of Directors
Stephen E Abbors, District General Manager



Midpeninsula Regional Open Space District

February 3, 2011

County of Santa Clara
Board of Supervisors
County Government Center
70 West Hedding St.
10th Floor, East Wing
San Jose, CA 95110

Re: Public Hearing Regarding Permanente Quarry/ Lehigh Southwest Cement Company Legal Non-Conforming Use Determination

Members of the Board:

The Midpeninsula Regional Open Space District (District) manages over 59,000 acres of Open Space Preserves (OSP) within Santa Clara, San Mateo, and Santa Cruz Counties, including the Monte Bello and Rancho San Antonio OSPs which share common parcel boundaries with Lehigh's Permanente Quarry owned properties. The District supports and applauds the Board of Supervisors (Board) decision to deliberate the issue of vested rights on the Quarry properties. From the District's perspective, this review is long overdue given the 2010 sunset of the 1984 Reclamation Plan.

The District remains extremely concerned with the numerous Reclamation Plan Amendments and ongoing operations of Lehigh Southwest Cement Company's Permanente Quarry (Permanente Quarry). We have previously submitted comments related to the Reclamation Plan Amendments proposed for the Permanente Quarry dated June 20, 2007 and May 21, 2010. Copies of these letters are attached for your convenience.

The remainder of this letter summarizes our concerns related to the Permanente Quarry Legal Non-conforming Use Analysis completed by the County, as well as documents prepared by Diepenbrock- Harrison on behalf of the Permanente Quarry.

Proposed East Materials Storage Area

We concur with the County Analysis that the proposed East Materials Storage Area (EMSA) is not a vested portion of the Permanente Quarry. Documents

provided by the Quarry and County clearly show that the proposed EMSA parcel was a part of the manufacturing or "Plant" operations that began in 1939 when former owner Kaiser applied for a use permit for the adjacent cement plant. The subsequent wartime construction of the magnesium plant, and conversion to an aluminum plant confirm the use as manufacturing or "plant" facilities that are not quarry related. Therefore the EMSA is not a vested portion of the quarry operations.

Viewshed impacts have always been prominent issues related to the Permanente Quarry. The 1979 dedication of the Permanente Ridge scenic easement to the County by Kaiser, 1985 Reclamation Plan visual impacts discussion, and the County General Plan designation of Hillside Resource Conservation Areas are examples of the importance of this issue. The EMSA proposal is particularly troubling with regard to visual resources and is inconsistent with viewshed protection values that have long been recognized. Santa Clara County Parks, together with the District, jointly manage Rancho San Antonio Park/OSP. We continue to field complaints on a regular basis from park users and District staff from our onsite Field Office related to ongoing visual impacts and dust impacts from quarry use of the EMSA. The massive and growing quarry tailings piles are clearly visible to a large portion of public who visit Rancho San Antonio Park/OSP. A survey, recently completed by the District, shows that Rancho San Antonio Park/OSP receives more than 500,000 visits by the public each year.

The Permanente Quarry does not have a vested right for quarry operations in the proposed EMSA location. The existing placement of quarry overburden has already been identified by the County as a violation and there are significant visual impacts ongoing as noted above. The District requests that the County enforce its Notice of Violation and prohibit any additional placement of material at this location and that the County require Lehigh Southwest Cement Company to implement all measures necessary to completely mitigate the visual impacts of the subject quarry overburden.

Original Quarry Parcel

Regarding the vesting of quarry operations, the 1971 analysis completed by County Counsel at the time noted that quarry operations could expand throughout the entire original parcel. The current analysis states that it is unclear which "original parcel" County Counsel was referring to. Parcel 351-09-013 is a very uniquely shaped parcel that appears to be shaped like a quarry pit. It is quite possible that this is the "original parcel" referenced. The July 14, 1977 Mineral Property and/or Mill and Processing Plant Report prepared by the California Division of Mines and Geology appears to map the Kaiser Permanente Quarry within the above mentioned parcel.

Regardless of how this original quarry parcel issue is resolved by the County, the expansion of quarry operations to new areas should not be allowed.

New Proposed South Quarry

In addition to correcting past and present violations, Permanente Quarry has added a new (South) quarry pit to their Reclamation Plan Amendment proposal. This addition is extremely troubling in light of Permanente Quarry's representatives attempt to make the case that they have vested rights on the former Morris parcel proposed as a portion of the new South Pit (Morris 351-11-001). The arguments made by Permanente Quarry representatives for vested rights on this parcel do not stand up to an analysis of the facts.

The quarry haul road identified in the far northeast corner of the Morris parcel appears to be Permanente Road, dedicated to the public in 1893, predating any quarry operations. It is entirely inappropriate to identify it as a quarry haul road to justify a vested rights determination. The road is also separated from the rest of the parcel by Permanente Creek and steep topography. Lehigh has not demonstrated unequivocal evidence of prior intent to mine this property.

Conclusion

While it is troubling that the County did not recognize that the Permanente Quarry had disturbed an area nearly three times the size allowed in the 1985 Reclamation Plan, all parties knew that the 1985 Reclamation Plan would sunset in 2010. We are now past that time and the existing quarry pit appears to be completely mined and the storage areas full. The County has required Permanente Quarry to submit Reclamation Plan Amendments to address existing violations, but the fact is that the Quarry needed a Reclamation Plan Amendment anyway to continue to operate. We are concerned that the County not be pressured by Lehigh to make hasty decisions or further compound the substantial existing deficiencies.

We ask that dumping in the EMSA be suspended immediately, and that the County take the steps needed to regain control of its quarry oversight responsibilities.

Sincerely,



Stephen E. Abbors
General Manager
Midpeninsula Regional Open Space District

cc: MROSD Board of Directors
Paul Fong, California State Assemblymember
Marina Rush, County Planning
Brian Schmidt, Committee For Green Foothills



Midpeninsula Regional Open Space District

GENERAL MANAGER
Stephen E. Abbors

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May 21, 2010

County of Santa Clara Planning Office
Attn: Marina Rush
County Government Center
70 West Hedding St., 7th floor, East Wing
San Jose, CA 95110

RE: Lehigh Hanson Permanente Quarry 2010 Reclamation Plan Amendment for the East Materials Storage Area, File # 2250-13-66-09EIR

Ms. Rush,

On behalf of Midpeninsula Regional Open Space District (MROSD), I would like to provide the following comments on the scoping for the Environmental Impact Report (EIR) that will assess the Lehigh Hanson Permanente Quarry 2010 Reclamation Plan Amendment proposed for the East Materials Storage Area.

Prior Comments and Review

MROSD staff commented on a previous Reclamation Plan Amendment proposed for the Permanente Quarry in a letter dated June 20, 2007. The original Reclamation Plan was approved in 1985. The 2007 Reclamation Plan Amendment included the proposed East Materials Storage Area (EMSA). It is our understanding that the County is now proposing to divide the Reclamation Plan Amendment area into a smaller area and evaluate the environmental impacts of this smaller area separately to address the quarry's active placement of waste material outside of the permitted area. The County issued a violation notice in 2008 and required that the quarry owner apply for a Reclamation Plan Amendment to rectify the violation.

Importance of Anticipating Future Issues

The EMSA was previously analyzed under a prior EIR process that was scoped in 2007, appropriately within the context of the entire quarry operation. MROSD understands that there are substantial new issues that need to be addressed and will take some time to evaluate, and that the 2007 Reclamation Plan Amendment had a sunset date of March 2010. Unfortunately, these issues were not previously anticipated years ago by the parties involved. The current EIR intends to address these unanticipated issues and expedite a resolution of the violation. In light of the current need to reevaluate the quarry's operations to address the violation, we urge the County to take an aggressive approach to consider and assess all potential issues that may emerge as a result of ongoing quarry activities and the proposed Reclamation Plan Amendment to ensure that these are reviewed in a timely manner to preempt a future violation.

Significant Adverse Visual Impacts

The quarry appears to have a waste material disposal problem. The West Materials Storage Area (WMSA) appears to be full. In fact based on the 1985 Reclamation Plan Staff Report and Environmental Assessment, the WMSA appears to also be in violation. Specifically, Condition of Approval #8 states that the maximum height of deposition in Area "A" (WMSA) shall not exceed the top of the ridgeline bordering to the north. The upper limit of the WMSA is clearly visible from the valley floor when viewed from the north and therefore, does not meet the requirement of this condition. This condition was deemed necessary to mitigate a significant potential adverse visual impact that was a prominent issue in the 1985 Reclamation Plan and County environmental review.

The proposed EMSA would dramatically expand the area of disturbance visible from surrounding communities and Public Open Space. It appears that the top elevation of the EMSA proposed in the 2010 Reclamation Plan Amendment is substantially higher in elevation than the ridgeline to the north (known as Kaiser or Permanente Ridge). This would create a new, prominent, unnaturally benched and stepped ridgeline behind the existing "protected" scenic ridgeline when viewed from Rancho San Antonio Open Space Preserve, County Park, and surrounding communities. This would be a significant visual impact that could be avoided if the waste material was instead disposed of within a portion of the quarry pit or other suitable location.

The County General Plan Scenic Resources policy includes the strategy to minimize development impacts on significant scenic resources, including prominent areas such as ridgelines. The Kaiser/Permanente Ridge is unquestionably of scenic significance. Additionally, all of the ridge areas surrounding the proposed EMSA have the General Plan designation of Hillside Resource Conservation Area. While the EMSA itself appears outside of the designated Hillside Resource Conservation Area, building an artificial new ridgeline in the middle of and at a higher elevation than the protected ridgelines, would fail to minimize development impacts on these significant scenic resources.

The scenic importance of the Kaiser/Permanente Ridge has long been recognized by the nearby communities, County, and the Quarry, resulting in the dedication of a permanent scenic easement granted by then owner Kaiser Cement Company to the County years before the 1985 Reclamation Plan. All parties clearly recognized the visual significance of the ridgeline. The proposed EMSA as an unnatural, massive fill site that competes with the ridgeline is counter to the scenic protection benefit that was widely recognized years ago. The benefit of the County's scenic easement will either be lost or impaired unless the scenic value of the Kaiser/Permanent Ridge is protected.

Additional Waste Disposal Issues and Potential Solutions

It appears that both material storage areas may be in violation. The 2007 Reclamation Plan Amendment was previously required to address existing quarry disturbance areas of approximately 900 acres, exceeding the 330 acre area covered by the 1985 approved Reclamation Plan. It may not be appropriate to separate 89 acres to allow additional waste disposal given these conditions.

It also appears that the quarry waste disposal problem is somewhat self-inflicted. A possible solution to this dilemma is to dispose of waste material within the existing quarry pit. A thorough evaluation of the existing quarry pit area and depth should be undertaken to determine if opportunities exist within the pit for waste material disposal. The remaining areas to be quarried that would generate the waste material proposed for placement within the EMSA should also be identified and quantified. Waste material may be advantageous to buttress landslide areas or stabilize over-steepened quarry benches. A number of landslides have already encroached into the dedicated scenic ridge easement over the past decade unabated, and the 1987 "main landslide" has yet to be addressed. The material proposed for placement in the EMSA could be utilized to stabilize these landslides, and the 2007 Amendment includes this

possibility. This again illustrates the need for a comprehensive evaluation of the quarry operations to anticipate potential future issues and remedies.

Lack of Reclamation

The visible quarry area continues to grow. The Surface Mining and Reclamation Act (SMARA) requires that reclamation occur concurrently with quarry disturbance activity, yet very little final reclamation has occurred over the substantial period of mining. Waste disposal within the quarry pit together with concurrent reclamation would actually meet the reclamation requirements of SMARA.

Waste Disposal Timeline

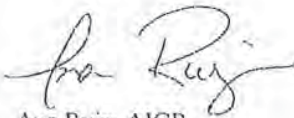
The timeline for waste disposal within the EMSA is also of concern. At the recent April 28th public hearing it was stated that existing quarry sales are 50% of normal. This has the potential to double the projected 5-year timeframe, which already seemed overly optimistic. It is also unclear if the waste material could be re-mined for construction aggregate as is the case for the material placed in the WMSA. This again could dramatically lengthen the timeline of operation and disturbance.

Determination of Vested Rights

Lastly, we remain concerned with the issue of vested rights at the Permanente Quarry. The EIR proposes only to evaluate the environmental impacts associated with the reclamation of the quarry, based on the conclusion that the environmental baseline for the project is the post-mining site condition that includes ongoing mining and processing operations (vested quarry operation). The significant new acreage that has been disturbed by quarry activities, including the EMSA, is of concern. Our concern is whether this expansion really is vested, and if not, that the potential environmental impacts associated with the quarry expansion necessitate a thorough analysis. We urge the County to complete a determination of what is actually vested at the Permanente Quarry. This determination is necessary for any new proposal related to quarry operations at the site, and should include references, maps, deeds, and other exhibits that support the conclusion.

We appreciate the opportunity to comment on the EMSA proposal for the Lehigh Hanson Permanente Quarry. If you have any questions regarding this letter, please contact Matt Baldzikowski, Resource Planner II, at (650) 691-1200.

Sincerely,



Ana Ruiz, AICP
Planning Manager
Midpeninsula Regional Open Space District

cc: Stephen E. Abbors, MROSD General Manager
Matt Baldzikowski, MROSD Resource Planner II

Regional Open Space



MIDPENINSULA REGIONAL OPEN SPACE DISTRICT

June 20, 2007

County of Santa Clara Planning Office
 Attn: Mark J. Connolly
 County Government Center
 70 West Hedding St., 7th floor, East Wing
 San Jose, CA 95110

RE: Hanson Permanente Quarry Reclamation Plan Amendment EIR

Mr. Connolly,

On behalf of the Midpeninsula Regional Open Space District's (District), I'd like to provide the following comments on the scoping of the Environmental Impact Report (EIR) for the Hanson Permanente Quarry Reclamation Plan Amendment (Hanson Quarry).

The EIR proposes only to evaluate the environmental impacts associated with the reclamation of the Hanson Quarry, based on the conclusion that the environmental baseline for the project is the post-mining site condition that includes ongoing mining and processing operations (vested quarry operation). The significant new acreage that has been disturbed by quarry activities, and is the subject of the proposed EIR is of concern. Our concern is whether this expansion really is vested, and if not, that the potential environmental impacts associated with the quarry expansion have never been analyzed. Please provide a discussion within the EIR on how the determination regarding the vested operation was made and include references to maps, deeds, or other exhibits that support this conclusion.

Visual resources are an obvious concern to the surrounding Monte Bello and Ranch San Antonio Open Space Preserves operated by the District. The visual appearance of the reclaimed quarry landform, and the reclamation revegetation are of particular interest. The reclaimed landform should blend with the surrounding un-mined landform as much as possible. The District remains concerned with the relatively recent appearance of a portion of the west materials storage area that is visible above Permanente Ridge when viewed from the north. An evaluation and discussion of this storage area should be included in the EIR. The short-term erosion control species and long-term reclamation species should be compatible with the surrounding landscape, and should utilize locally collected and propagated native species wherever possible. The control of invasive species is also a significant concern, and should be included in the EIR and Financial Assurance.

Geology and slope stability issues associated with the ongoing operations at the Hanson Permanente Quarry remain a serious concern to the District, particularly the slopes and landslide

Regional Open Space



MIDPENINSULA REGIONAL OPEN SPACE DISTRICT

in the northeast corner of the quarry pit. These have been identified along with a landslide on the northern wall of the quarry as "caused in part if not in whole, by the mining operation" in the Executive Officer's Report for July 13, 2006 meeting of the State Mining and Geology Board.

The landslide in the northeast corner of the quarry pit has the potential to continue to fail, and impact the significant scenic easement along Permanente Ridge. A failure at this location could daylight through the top existing ridge and into the scenic easement. This area was the subject of a Request for Emergency Grading Authorization (#2002-4) from the County of Santa Clara, and to our knowledge this work was never completed. The District is unclear on how and when remedial grading will occur to alleviate the slope stability and scenic easement concerns. This area was the subject of a land exchange between the District and Hanson, for the purpose of implementing remedial grading to stabilize the slopes. The property recently transferred to Hanson doesn't appear to qualify as a "vested" portion of the quarry. Therefore the remedial grading to rectify the slope instability caused at least in part by the quarry operation appears to require either a grading permit or a mining amendment. We are particularly concerned that the remedial grading for slope stability and scenic concerns be completed as soon as possible, and not be subject to delays associated with a potentially long EIR process. This issue may determine the condition of the post-mining site at this location, and therefore identify what the reclamation plan should address.

Drainage and quarry waste materials from the West Materials Storage Area have impacted District road infrastructure down slope to the north in the past. Future drainage from the active and reclaimed materials storage area should be designed to avoid future impacts.

We appreciate the opportunity to comment on the scope of the EIR for the Hanson Permanente Quarry, and request that the District be kept informed about the status of the EIR process, and that a copy of the DEIR is sent to the District for review upon completion.

Sincerely,



Matt Baldzikowski
Resource Planner
Midpeninsula Regional Open Space District
330 Distel Circle
Los Altos CA 94022-1404
Phone (650) 625-6537, Fax (650) 691-0485

From: Wanda Ross <wanda1ross@gmail.com>

Date: May 21, 2011 3:04:12 PM PDT

To: Marina Ruch - Santa Clara Planning Office
<Marina.Rush@pln.sccgov.org>

Subject: Comment regarding the EIR for the Quarry Reclamation Plan and proposed New South Quarry Pit (Lehigh Quarry)

Hello Marina,

We live on San Juan Road near the Lehigh Quarry and very highly encourage you NOT to allow any expansion of the quarry. Allowing them to expand will increase health risks to those of us living in the area. I already have been treated for excess mercury in my body; please do not expose us to even more.

In addition, our housing values will be substantially negatively impacted as green space we so value would be replaced by an ugly open quarry. We already have an ugly open quarry right off Stevens Canyon Road. This area enjoys high housing prices because of the great schools. Don't you want to support the high housing values rather than diminish them?

I wonder why you would consider expanding the quarry. It would seem you'd want to improve the city and close down both quarries.

Thank you for considering my view,
Wanda Ross

From: randy shingai <randyshingai@gmail.com>
Date: May 20, 2011 11:09:44 AM PDT
To: Marina.Rush@pln.sccgov.org
Cc: "ken.yeager" <ken.yeager@bos.sccgov.org>
**Subject: Comment on the proposed South Quarry Pit
in the Cupertino foothills**

Dear Ms. Rush,

Please do not allow the expansion. We visit Rancho San Antonio Park several times a week, and can see what is happening at the Lehigh complex. We do not want that company to expand their operations.

I also spoke at the vested rights hearing earlier this year, so we have strong feelings on this issue.

thank you,

Randall Shingai
Naomi Makihara
residents and registered voters of District 4

From: "Janet Warrington" <janet@jestech.net>

Date: May 18, 2011 4:51:21 PM PDT

To: <Marina.Rush@pln.sccgov.org>

Cc: <jon@jestech.net>

Subject: NO expansion of the open pit mine by Lehigh

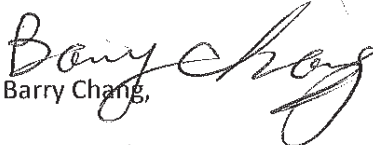
Dear Marina,

As concerned residents, property owning tax payers and parents of two young children, we urge you to not allow expansion of the open pit mine by Lehigh. We are deeply troubled by the potential health risks posed by increased exposure to metals, mercury etc., as well as the environmental impact of the expansion.

Sincerely,

Janet A. Warrington, Ph.D. and Jonathan E. Saunders

1. Is there a complete Geological study on the impact of an Earthquake? This mine is sitting on the world famous San Andres fault.
2. How are they going to protect the endanger species?
3. What would be the alternatives? Can Lehigh close its operation here and expand the operations in Redding or Southern California?
4. How Lehigh is going to cross Permenante Creek? build a big bridge? What is the impact to Permenante Creek?
5. Is there a fully study on the impact of the cumulative mercury emission to the air, water and ground in the area?.
6. We want to ask about transport of materials and risk of upset.
7. Please tell us your plan regarding storage, handling, transport, and disposal of toxic materials, both those Lehigh might be using in mining or processing and those (e.g., mercury) contained in the minerals they're mining.
8. What would be the Traffic impacts?
9. What are the impacts of our air and water quality?
10. Lehigh is the number 2 Greenhouse Gas producer in Santa Clara county? How are you going to deal or reduce it? What is Lehigh's energy use & what they're doing to reduce CO2 production?
11. What plan they have to reduce or at least monitor the massive air pollution caused by the hundreds of aging diesel trucks going through the residential neighborhood each day. Majority of these trucks are not conforming with the state laws and refuse to take the state incentive grant to upgrade their engines. The diesel traffic is a well known primary mobile source of severe air pollution contributing nearly 50% of the dirty air to our environment on daily basis and 24x7 all year around.


Barry Chang,

No Toxic Air, Inc.

**EIR SCOPING MEETING
LEHIGH-HANSON PERMANENTE QUARRY – EMSA
Public Comments Summary
April 28, 2010**

###	Name	Organization	Written Comments	Oral Comments	Address	
1	Henrik Wessling	Lehigh		General overview of site and plant history.		C-1
2	Marvin Howell	Lehigh		General background of the project site.		C-2
3	Cathy Helgersen	CAP Citizen		Questioned the material content of the EMSA overburden. Concerned with views and vegetation over long term. Concerned mercury is in water and air. Request County to do independent tests.	SharpsetI@aol.com	C-3
4	Ashley Cushman	Breathe CA		EIR should cover health hazards. Air quality and emission concerns. Use native materials and larger specimens to improve views quicker.		C-4
5	Bill Almon	Quarry No		Notice of Violation, concerned resident reported the violation and not County staff. Concerned quarry is allowed to use EMSA before the Rec Plan Amend and EIR is approved. Concerned with processing 2 Rec Plan Amendments. Wants Rec Plan that fills the main pit	balmon@pacbell.net	C-5

A-324

Lehigh-Hanson Permanente Quarry Reclamation Plan Amendment
East Materials Storage Area
Scoping Meeting – April 28, 2010 (Cupertino Community Hall)

				and limits use of the EMSA.		↑ C-5 cont.
6	Paul Drapper	Ridge Vineyard		Air pollution concerns, concerned with vegetation plan and ensuring the success criteria is met. Concerned with County NOV allowed continued disposal.		C-6
7	Councilman Barry Chang	City of Cupertino	Do you have any penalty when violation occurs? For example issued the notice of violation. They mentioned the possible penalty, please see attached notice of violation from GPA dated 3/10/2010 , also Ca. Regional Water Quality Control Board (Attachment 1).	Suggested County have a financial penalty for (the) violation. Suggested cement plant is in a too populated area. Wants more vigilant enforcement and oversight from County staff. Stated cement plant is the only one in USA that doesn't have a central stack. Suggested a scenic easement in adjoining jurisdictions (e.g. Cupertino).		C-7
8	Tim Brand	WVCAW		Would like to have the Main Pit filled. Would like Rec Plan Amendment to address filling the pit.		C-8
9	Christine Chot	Self		Would like EIR to address biological impacts. Concerned project will lower property values.		C-9
10	Ignatius Ding	WVCAW		Property owned next to quarry. Stated state law requires reclamation law requires land	Ignatius@sbcglobal.net	C-10 ↓

Lehigh-Hanson Permanente Quarry Reclamation Plan Amendment
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				be restored as original state. Wants main pit filled. 1985 Rec Plan is not adequate. There are landslides, please address. Concerned that two Rec Plans is piece-mealing process. Should have one that addresses whole site.		<p>C-10 cont.</p> <p>C-11</p> <p>C-12</p>
11	Barbara West	Cordova	See enclosed letter dated 4/28/10 to county of Santa Clara from Barbara West (Attachment 2)	Concerned that owner and operator are two separate entities, but financial assurances has one entity. Stated it should be both. The Rec Plan should bind all future successors to requirements of Rec Plan.	Barbara West 10670 Cordova Rd Cupertino, CA 95014 Barbara4444@me.com	
12	Karen Del Compare			Concerned violation has no penalty. EMSA is closer to Cupertino, concerned about additional (low grade) dust impacts. Allowing use of EMSA binds County into approving this site, unlikely to dig up EMSA. Concerned with finished slopes not usable. Concerned with 2 Rec Plan Amendments. Concerned with asbestos and diesel emissions. Wants a vested rights hearing, where are they vested on the site?	10136 Camino Vista Dr Cupertino, CA 95014	

13	Jane Alvarado	Lehigh		30 yr employee, provided some historical background.		C-13
14	Heather Zagar	Lehigh		Employee, historical background of local area. Stated EMSA has benefit of open space.		C-14
15	Ken Smyth	Resident		Concerned with health hazards, specifically autism. Wants County to look at data, specifically high std deviation data, and publize it so people can be informed.		C-15
16	Rajg Krishnan	Self		Did not speak or leave written comments.	rajgkrishnan@gmail.com	
17	Eva Kashkooli		The EIR should address the health threat to all neighbors of the plant, not just the environmental issues. The plant should be closed. It is poisoning all of US. I have lived here 35 years & raised a family here.		evarieber@yahoo.com	C-16
18					mlmspks@hotmail.com	
19	Prem Mohan				mp_1983@yahoo.com	
20	Winston Shiah		1. The EIR report should include slope stability study for the open pit for land slide danger. 2. Dust fall-out increases very much, that is		wshiah@yahoo.com	C-17

Lehigh-Hanson Permanente Quarry Reclamation Plan Amendment
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			measurable and source can be identified, this need to be done in addition to invisible mercury, gas, heavy metal problems.			C-17 cont.
21	Vicky Ho		The county should explain how come they are changing the rule to accommodate the violation. Who should be held responsible and is the county working for the people or for Lehigh?		Vickyvueho@yahoo.com	C-18
22	Neela Srinivasan	De Anza College	Could you please explain why no EIRs were required for the expansion in 1980's and 1990's? What criteria did county use to determine that this project did not cause a significant impact on the environment?		Neela-nandu@yahoo.com	C-19
23	Randy Hylkema		Please consider impact of trucks noise, dust, diesel pollution, traffic etc. The other quarry (Stevens Creek) has accepted restrictions on operations hours. Why not Lehigh?		hylk@att.net	C-20
24	Jack Shabel	Cupertino Resident	Hope truck traffic and pollution it has on the		jennieshabel@juno.com	C-21

			neighborhood environment.			↑ C-21 cont.
25	Elias & Ruth Zabor	Homeowner, Cupertino			rezall@sbcglobal.net	
26	Gail Bourp	None	<ul style="list-style-type: none"> • Noise pollution – too much noise! Consider in EIR. • It Lehigh violates rules they must have consequences-not a county who “fixes” things and not make them pay the violation. • Viewshed is huge concern & already terrible damage has been done-make them plant now. • Air pollution-on going-join 21st century & clean it up-central stack, real plantings & on-going air quality monitoring. • I do not trust the county at all. We need stand up people too make Lehigh do it right. 			C-22

Lehigh-Hanson Permanente Quarry Reclamation Plan Amendment
 East Materials Storage Area
 Scoping Meeting – April 28, 2010 (Cupertino Community Hall)



Santa Clara Valley Audubon Society
Founded 1926

June 4th, 2010

Marina Rush, Project Manager,
County of Santa Clara Planning Office

Dear Ms. Rush,

Thank you for your willingness to consider Santa Clara Valley Audubon Society's (SCVAS) scoping comments on the proposed amendment to an existing reclamation plan for the Permanente Quarry for the overburden storage area (East Materials Storage Area, EMSA), which is not encompassed in the existing 1985 Reclamation Plan (File Number: 2250-13-66-09EIR Assessors Parcel Number: 351-09-022, 351-10-005, 351-10-037 and 351-10-038).

We understand that part of the site has, and continues to be, used for overburden fill storage with no environmental review in place and in violation of the California Environmental Protection Act (CEQA), the State Mining and Reclamation Act (SMARA) requirements, and the Clean Water Act, and that the currently proposed amendment is aimed to belatedly rectify this problem.

We argue that the repeated violations of CEQA, SMARA and the Clean Water Act by Lehigh Hanson at the quarry necessitate a drastic measure, and that dumping of fill at the site must be curtailed until all a new, comprehensive EIR is produced for the entire cement factory and mining operation on site. The areas that were disturbed with no environmental review should be restored immediately (or the quarry must be required to pay maximum fines for each day that it continues to violate the law). As proposed, the amendment would simply allow violations to continue unhampered while environmental degradation continues.

The NOP states "This amendment does not involve mining operations, reclamation in the main mining pit, west materials storage area, or the operations of the adjacent Lehigh Southwest Cement" and that "This Reclamation Plan Amendment is being processed separately from the 2007 Reclamation Plan Amendment. However, cumulative effects of the two projects together will be examined in this EIR." We believe that this is not in adherence to California environmental law. CEQA prohibits piece

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email: scvas@scvas.org * www.scvas.org

mealings of environmental review by segmenting a large project into several smaller projects, each with a minimal potential impact on the environment, which cumulatively may have disastrous consequences. We believe that the county must consider "the whole of the action" meaning that a complete reclamation plan must be prepared for the entire quarry site and operations, and that CEQA review must also include the cement plant and all of its impacts. We expect integrity in the planning and permitting process, and insist that no new or unpermitted activities or disturbances should be allowed, until a comprehensive, all inclusive, SMARA compliant reclamation plan is put out for public scoping, a dEIR produced and put out for public comment and a final and compliant EIR is approved and published.

Potential Environmental Effects

SCVAS believes that the impacts of selenium, mercury, and other toxic substances released from mining associated activities, including storage, must be included in Sections:

B) Biological Resources: this section should include impacts on fish in the upper reaches of Permanente Creek that are designated for Cold Freshwater Habitat

D) Geology and Soils; This section should reveal the toxic metals that are released into Santa Clara County watersheds.

E) Surface Hydrology, Drainage and Water Quality. The East Materials Storage Area has the potential to impact two watersheds: Permanente Creek and Stevens Creek (due to the diversion of water from Permanente to Stevens Creek). Both should be included in the analysis. The bioaccumulation of Selenium in aquatic ecosystems and its impact on fish, birds, fish and wildlife must be considered as an ongoing impact, and not limited to storm events. Impacts on federally- threatened Central California Coast steelhead should be evaluated.

AND - In addition, an Environmental Justice segment is needed to evaluate the impacts of selenium and other toxic elements on the public parks and schools included in the Permanente Creek Flood protection Project (specifically, impacts on off-stream flood detention facilities at Rancho San Antonio County Park, Blach Intermediate School, Cuesta Park Annex, and McKelvey Park) should be considered).

Toxicity and Selenium in Permanente Creek

In February 2009 the San Francisco Bay Regional Water Quality Control Board approved the 303(d) listing for Permanente Creek for toxicity and Selenium in creek water. Section 303(d) of the federal Clean Water Act requires the State to identify waters within the State for which water quality standards are not attained.

The listing resulted from consistent water toxicity and consistent exceedences for Selenium in two monitoring sites along Permanente creek. One site is located at the

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email: scvas@scvas.org * www.scvas.org

mouth of the creek. The other site (PER070) is at Rancho San Antonio Regional Park, downstream from the Lehigh quarry and cement plant. The upper reaches of Permanente creek are designated by the San Francisco Bay Regional Water Quality Control Board for the beneficial use of Cold Freshwater Habitat and thus are designated to support an ecologically healthy creek habitat.

1. General Toxicity

Water samples in 2002 from Stevens and Permanente Creeks had by far the most numerous incidences of observed toxicity of any watershed in the nine Bay Area stream study. In Permanente creek, significant toxicity to fish and to invertebrates was found at site (PER070) at Rancho San Antonio Regional Park

The current Basin Plan of the San Francisco Bay Regional Water Quality Control Board has the following objectives: "All waters shall be maintained free of toxic substances that are lethal to or that produce other detrimental responses in aquatic organisms" and "There shall be no chronic toxicity in ambient waters. Chronic toxicity is a detrimental biological effect on growth rate, reproduction, fertilization success, larval development, population abundance, community composition, or any other relevant measure of the health of an organism, population, or community." These objectives were not met, thus Permanente creek is listed for toxicity.

2. Selenium

Selenium-induced fish kills in Belews Lake, North Carolina in the late-1970s resulted in a substantial amount of research on selenium effects to aquatic life. Similarly, selenium-induced teratogenesis in aquatic birds at Kesterson Reservoir, California in the mid-1980s resulted in extensive research on selenium effects to aquatic birds. **Unlike many other contaminants for which water exposure is the critical pathway for environmental effects, selenium ecotoxicology is driven by bioaccumulation in invertebrates and exposure to fish and birds via the diet. At sufficiently high levels, these exposures result in embryo teratogenesis and reduced survival of larval fish and bird chicks.**

Water samples collected in the upper Permanente Creek (site PER070, Ranch San Antonio) in 2002/2003 and again in 2006/2007 consistently exceeded the National Toxics Rule (NTR) of continuous total Selenium concentration objective of 5.0µg/L (California Toxics Rule Criterion for Continuous Concentration of Selenium is the same). This objective is applicable in streams with waters that support coldwater ecosystems, including preservation or enhancement of aquatic habitats, vegetation, fish, or wildlife, including invertebrates. The upper reaches of Permanente creek are designated for the beneficial use of Cold Freshwater Habitat, and yet Selenium concentration consistently

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exceeded the criterion, and one water sample from site PER070 tested Selenium concentration of over 12 µg/L. When a creek is listed for a pollutant, the authorities must develop a TMDL (Total Maximum Daily Load) for the pollutant. TMDLs for Selenium and toxicity at Permanente Creek are expected to be developed by 2021.

On March 26, 2010, Lehigh Southwest was issued "NOTICE OF VIOLATION and required corrective actions for failure to protect stormwater at industrial facility" by the California Regional Water Quality Control Board, San Francisco Bay Region. The Water board noted numerous water quality violations (RWQCB) including the National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges of Storm Water associated with Industrial Activities Excluding Construction Activities, Order No. 97-03-DWQ (Permit1) and the San Francisco Bay Water Quality Control Plan (Basin Plan2). Inspection by RWQCB revealed discharges that are in violation of, at a minimum, Basin Plan Prohibition 7 that prohibits solid wastes into surface waters or at any place where they would contact or where they would be eventually transported to surface waters, including flood plain areas.

On April 1st, 2010, Sandra James of Lehigh Hanson reported to Council Member Barry Chang of the Cupertino City Council that Lehigh's "voluntary analysis of stormwater runoff samples revealed levels of selenium that have triggered further evaluation of on-site sources of the element". Lehigh explained that they are "proactively working with the Regional Water Quality Control Board to ensure the most effective and efficient management of the presence of this naturally occurring element". In addition, "Lehigh has submitted a report to the RWQCB that describes the Best Management Practices currently being used and the process for developing additional protection measures if needed."

As suggested by Lehigh's Ms. James, Selenium is indeed a naturally occurring element that is commonly found in the soil and rock found in the Cupertino area. However, Lehigh explanation that "Selenium levels in the soil and rock at the Permanente site are consistent with naturally occurring levels in Santa Clara County" is misleading, given that no other creek in Santa Clara County have ever been listed for Selenium. The implication of Ms. James' statement should be that Santa Clara County is the wrong place to mine, and that the county be cautious and avoid the release of hazardous metals into our watersheds.

The levels of Selenium found in Lehigh storm runoff and consequently in Permanente creek water are of great concern to Santa Clara Valley Audubon Society, and the full environmental impacts of continued mining and fill operations at the quarry on fish and wildlife along Permanente and Stevens Creek watersheds and the San Francisco Bay must be properly analyzed in a comprehensive, all inclusive way.

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Conclusion:

SCVAS expect that CEQA processes should be followed with integrity. By rushing a Reclamation plan amendment for the EMSA alone, the County is indicating approval of the overburden pile dumped by Lehigh Southwest Cement Company outside of their permitted boundary and of repeated violations of CEQA, SMARA and the Clean Water Act. Instead, the maximum fine should be imposed, the pile should be required to be moved to a permitted area, and the area impacted should be restored. The risks of releasing Selenium into our watersheds and the San Francisco Bay must be adequately addressed in a comprehensive analysis of the Lehigh Hanson Company operations and associated activities.

Since other plans and permits for the Lehigh Hansen site are currently in process at various agencies including Santa Clara County, SCVAS argues that separating the EMSA amendment from a full environmental review of the Lehigh site and all its operations (quarry, storage, cement plant and traffic) is piecemealing of the project. We argue that a new reclamation plan and an inclusive, comprehensive CEQA analysis must be prepared instead of the attempt to patch a 1985 outdated plan. Approval of the current proposal may limit future CEQA analysis of reclamation and industrial projects on the site, and thereby may contravene the intent and perhaps the law of CEQA.

Please keep us informed as to the progress of this, and any other, projects on the Lehigh Hanson site.

Respectfully,



Shani Kleinhaus
Environmental Advocate
Santa Clara Valley Audubon Society
22221 McClellan Rd.
Cupertino, CA 95014
shani@scvas.org

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22221 McClellan Road, Cupertino, CA 95014 Phone: (408) 252-3748 * Fax: (408) 252-2850
email: scvas@scvas.org * www.scvas.org



OFFICE OF COMMUNITY DEVELOPMENT

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
(408) 777-3308 • FAX (408) 777-3333 • planning@cupertino.org

May 24, 2010 VIA EMAIL

County of Santa Clara
Planning Office, Attn: Marina Rush
70 West Hedding St, 7th Floor, East Wing
San Jose, CA 95110

RE: NOP of EIR for the Reclamation Plan Amendment for Permanente Quarry,
East Materials Storage Area (EMSA)

Dear Marina:

Thank you for the opportunity to respond to this Notice of Preparation for the above captioned project. The future reclamation of the EMSA will have a significant impact on this visually-sensitive area. It is imperative that the overburden fill be mixed and topped with the appropriate topsoil that will successfully support a succession of native vegetative communities that mitigates erosion, facilitates the wildlife communities and restores the visual quality of the area.

If you have any questions, feel free to contact me at colinj@cupertino.org

Sincerely,


Colin Jung
Senior Planner

From: Joyce M Eden <comment@sonic.net>
Subject: **Scoping Lehigh Southwest EMSA, comments from WVCAW**
Date: May 21, 2010 4:45:36 PM PDT
To: marina.rush@pln.sccgov.org
Cc: lizanne.reynolds@cco.sccgov.org,
daisy.chu@bos.sccgov.org

County of Santa Clara Planning Office
Attn: Marina Rush
70 West Hedding St., 7th Floor, East Wing
San Jose CA 95110
marina.rush@pln.sccgov.org

May 21, 2010

Marina Rush, Planning Dept., Santa Clara County (SCC)

Re: West Valley Citizens Air Watch (WVCAW) Scoping comments: Lehigh Hanson (Lehigh Southwest), Incorporated, File Number: 2250-13-66-09EIR Assessors Parcel Number: 351-09-022, 351-10-005, 351-10-037 and 351-10-038.

WVCAW objects to the proposed EIR for the East Materials Storage Area (EMSA). The process for and scope of this proposed EIR is fatally flawed.

We ask that it be withdrawn from consideration.

SOME REASONS THIS PROCESS AND PROPOSED RECLAMATION PLAN AMENDMENT NEEDS TO BE HALTED AND REDONE.

A. Santa Clara County proposed to partially amend the current, inadequate 1985 "reclamation" plan.

To date, 31 years after the adoption of SMARA, no adequate reclamation plan under SMARA exists for the current Lehigh Southwest Cement Company quarry (Pit #1) nor for the other mining and related activities.

The 1985 "Reclamation" Plan, Attachment L to the application, is seriously inadequate and completely lacking in numerous criteria to fulfill State Mining and Reclamation Act (SMARA) requirements. For example, SMARA requires a reclamation plan to determine the approved end use so that appropriate reclamation plans can be built towards this end, SMARA Section 3700. Nor does it include reclamation planning to fulfill Section 2712, p 1, "mined lands are reclaimed to a usable condition which is readily adaptable for alternative land uses."

In addition, the Office of Mine Reclamation (OMR) stated that the cement operation should be included in the reclamation plan. (Attachment A of 3/6/2007, revised 6/21/2007 from a document obtained from the SCC Planning Department.) . SCC Planning Department has ignored the request of OMR as well as repeated oral and written requests from local citizens to include it. In fact, at the first Scoping Meeting for the DEIR in June, 2007, and again after that, SCC Planning Department representatives stated specifically that the cement plant would not be included in the DEIR. That is not acceptable. (1)

Due to the many and serious inadequacies of the 1985 "reclamation" plan, no new disturbances or mining should be proposed, let alone allowed, until a comprehensive, all inclusive, SMARA compliant reclamation plan is put out for public scoping, a dEIR produced and put out for public comment and a final and compliant EIR is put out to the public.

A new comprehensive overall and all-inclusive Reclamation Plan, including all the areas of disturbance from mining operations and which complies with SMARA needs to be put out for scoping to the public when the detailed geology analysis is completed. This geological analysis needs to be adequate and released to the public for review when it is completed.

B. Santa Clara County proposes to put out an EIR process for the EMSA alone, separated from an overall, and way overdue, comprehensive reclamation plan for the mining and quarrying operations. If SCC does not see this as a classic case of piecemeal planning, then it appears that once again their CEQA processes need to be rectified. The public has the right to review the EMSA together with the rest of the mining and quarrying areas for reclamation. Piecemeal planning is not allowed under the California Environmental Quality Act (CEQA).

C. By rushing a separate "Reclamation" plan amendment for the EMSA, the County is making the overburden pile dumped by Lehigh Southwest Cement Company outside of their permitted boundary (see SCC's findings) a fait accompli. Instead, the maximum fine should be imposed and the pile should be required to be moved to a permitted area. Not only was it a resident and member of WVCAW; not SCC which discovered the aforementioned pile ; **but she had to repeatedly call SCC and BAAQMD to try to get someone from one of the agencies to inspect the situation.**

D. Is the County assuming that parts or the whole of the EMSA has vested rights? If so, a public hearing is necessary which will present whatever proof there might be to determine its validity, if any.

In fact, in the summer of 2007, WVCAW asked for proof of vested rights for the proposed Pit #2 area which the county planner said we would get in one month. We never received any information regarding that, so it appears that there are no vested rights for that area.

ADDITIONAL COMMENTS AND OBJECTIONS

"The Reclamation Plan Amendment area is approximately 89 acres, located on the northeast portion of the Quarry." (p2, NOP, signed Ap 13 and 14, 2010)

One can see comparing the areas in yellow in the East Materials Storage Area from the 2007 Reclamation Plan Amendment, designated in the key as, Mining and Overburden Storage Progression Under Amended Reclamation Plan," to the Reclamation Plan Amendment (RPA) Area, Figure 2.3-1, that a huge portion appears undisturbed habitat. This could be 40% of the area. It could be around 30 to 40 acres of new degradation and destruction.

The NOP states on p. 3, "This Reclamation Plan Amendment is being processed separately from the 2007 Reclamation Plan Amendment. However, cumulative effects of the two projects together will be examined in this EIR." Is the County kidding? The public has the right to review an entire Reclamation Plan and to determine for themselves the cumulative effects. Since the other document is not out for public review, how can the public properly evaluate the cumulative impacts? ESP? Could this be an inappropriate attempt to overcome piecemeal planning?

The Notice of Preparation (NOP) does not include that a viable no project alternative should be included for the public to review, if new mining impacts are, inappropriately, included in a RPA.

On p. 3 of the NOP, Section B. claims much of the site is currently disturbed. However, we are doubtful of that evaluation. See the map. "Much" is too vague a description. What percentage is being claimed to be disturbed? What is the proof of that? At what date did it start to be "disturbed" as there has been a lot of new activity in the EMSA in the last 3 years. What is the

has seen a lot of new activity in the EMSA in the last 8 years. What is the baseline from 2000, from 2006, from 2007, 2008, 2009, 2020?

No new disturbances should take place until: 1. a new SMARA compliant reclamation plan is in place, and 2. a new CEQA document is put out for public scoping for any new areas of mining and mining operations.

The EMSA is in our neighborhoods. Lehigh Southwest Cement Plant has moved their operations into our neighborhoods by SCC allowing the new impacts that are going on their every day. This is not ok and needs to stop. The existing quarry, Pit #1, and the West Materials Storage Area is much further from our neighborhoods. We object to the new and serious disturbances of sediment into Permanente Creek which flows to the San Francisco Bay.

The RWQCB has recently issued a serious NOV for violations. We have NO confidence that the EMSA will comply with storm water, hazardous waste, sediment control and other compliance requirements. The RWQCB's photos of the hazardous materials sloshing around the Lehigh Plant are disgusting. Apparently the environmental oversight by Leigh leaves much to be desired. They are dirtying and polluting our land, water and air.

The Leigh Southwest Cement Company operations have taken our clean air, our views, our land, violated boundaries, slope requirements, safety requirements, polluted Permanente Creek, put noise and dust and spewed significant, cumulative and ongoing toxic air contaminants into our environment; they now propose to add injury to injury by proposing to expand their already harmful operation into our backyards and decrease our quality of life as well as our property values -- and all this without even the minimum required SMARA compliant reclamation plan for the lands they have already used.

The Leigh Southwest Cement Company has been allowed by Santa Clara County and other agencies to violate their permits. Santa Clara County proposes to reward Lehigh Southwest Cement Co. by redrawing the permitted boundary. Instead, the Company should be fined and made to move the pile and, when the geological studies are completed, be required to put out an overall reclamation plan compliant with SMARA and rigorously overseen by the County with the help of OMR, with all inspections and the raw data made available to the public on the SCC Planning Department web site, in real time or within weeks of the inspections.

The job of Santa Clara County is not to fulfill the wishes of Lehigh Southwest Cement Company.

The job of Santa Clara County is to ensure that an overall reclamation plan that complies with SMARA is produced AND is required and ensured to be fulfilled with adequate Financial Assurance (FACE) in the account of SCC for reclamation. Otherwise, it will be the taxpayers of Santa Clara County who will end up paying for the majority of the mess left, meanwhile Lehigh Southwest Cement Company will have left with its profits taken from our health, our land and our coffers.

The county has a poor record of monitoring the Lehigh operation and of CEQA compliance. It's time for the county to set this straight and not continue on this path, as evidenced by this fatally flawed "scoping" period to amend the current, 1985, so-called "reclamation" plan.

WVCAW herein incorporates our previous written and aural comments from the 2007 scoping period(s) for a new EIR reclamation plan.

Please keep us informed on a timely basis of the ongoing processes.

Thank You,

Joyce M Eden, for West Valley Citizens Air Watch
408 973 1085
<comment@sonic.net>

(1)
“Mined Lands’ include 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 apartments 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.” (SMARA Section 2729, p 5)



May 21, 2010

Bay Area Air Quality Management District
 Attn: Board Members
 939 Ellis Street
 San Francisco, CA 94109

RECEIVED MAY 24 2010 *mtt*

County of Santa Clara, Board of Supervisors
 County Govt. Center, E. Wing
 70 W. Hedding St., 10th Fl.
 San Jose, Calif. 95110

Brian Thompson, CEG, CHG
 San Francisco Bay Regional Water Quality Control Board
 1515 Clay St., Suite 1400
 Oakland, CA 94612

Re: Request to the Agencies with Regulatory Authority over the Lehigh Hanson Quarry

Dear Members of the Bay Area Air Quality Management Board, Santa Clara County Supervisors, and the San Francisco Bay Regional Water Quality Control Board:

The Town of Los Altos Hills ("Town") appreciates this opportunity to comment on the current operation and possible permitting of the Lehigh Quarry and Cement Plant ("Lehigh"). The Town submits these comments on behalf of the Town's citizens to ensure that the Bay Area Air Quality Management District ("BAAQMD"), the County of Santa Clara Board of Supervisors ("County") and the San Francisco Regional Water Quality Control Board ("SFRWQCB") (collectively referred to as the "Regulatory Agencies") diligently exercise their regulatory authority and responsibility over Lehigh. The Town recognizes the need for aggregate production in the San Francisco Bay Area, however we urge the Regulatory Agencies to ensure that the health and welfare of the citizens of the region are fully taken into consideration when contemplating any future permitting of operations for Lehigh.

On March 10, 2010, The United States Environmental Protection Agency ("EPA") issued Lehigh a Notice of Violation ("NOV") regarding its current Title V operating permit. The NOV identifies increases in nitrous oxide and sulfur dioxide air emissions and production capacity resulting from its plant modifications. In addition, on March 26, 2010, the SFRWQCB issued Lehigh a Notice of Violation for failure to comply with stormwater protection requirements. Also, residents have recently presented the Town with lab results from independent monitoring of airborne dust generated from Lehigh's quarry pit. Those test results indicated that the dust contains levels of arsenic and lead that exceed established State health standards. Taken together, these developments are particularly concerning, as portions of the Town sit just over a mile from the quarry pit, and Lehigh is seeking extension of its operating permits.

26379 Fremont Road
 Los Altos Hills
 California 94022
 650/941-7222
 Fax 650/941-3160

BAAQMD; Santa Clara County Supervisors; SFRWQCB
Re: Request to the Agencies with Regulatory Authority over the Lehigh Hanson Quarry
May 21, 2010
Page 2

The Town's primary concern is that the Regulatory Agencies may not be using their regulatory authority in a manner that effectively monitors Lehigh's operations. Lehigh is now requesting a new Reclamation Plan and a new Title V permit to continue operations for the next twenty-five years. Through this letter, the Town is formally asking the Regulatory Agencies to fully consider the potential impacts that continued operation of Lehigh may have on the environment and the health of area residents. Further, the instances of violations suggest that attention and monitoring of Lehigh should be a priority of any regulatory actions. The Town requests the BAAQMD install a temporary monitoring station at Foothill College. Lastly, the Town requests formal notice of all further proceedings involving Lehigh.

Thank you for your consideration of the Town's comments.

Sincerely,



Breene Kerr
Mayor, Town of Los Altos Hills

cc: Jeffrey V. Smith, County Executive, County of Santa Clara

Jody Hall Essser, Director, Department of Planning and Development, County of Santa Clara

Jack Broadbent, Executive Officer/APCO, Bay Area Air Quality Management District



Midpeninsula Regional Open Space District

GENERAL MANAGER
Stephen E. Abbots

BOARD OF DIRECTORS
Pete Siemens
Mary Davey
Jed Cyr
Curt Riffle
Nonette Hanko
Larry Hassett
Cecily Harris

May 21, 2010

County of Santa Clara Planning Office
Attn: Marina Rush
County Government Center
70 West Hedding St., 7th floor, East Wing
San Jose, CA 95110

RE: Lehigh Hanson Permanente Quarry 2010 Reclamation Plan Amendment for the East Materials Storage Area, File # 2250-13-66-09EIR

Ms. Rush,

On behalf of Midpeninsula Regional Open Space District (MROSD), I would like to provide the following comments on the scoping for the Environmental Impact Report (EIR) that will assess the Lehigh Hanson Permanente Quarry 2010 Reclamation Plan Amendment proposed for the East Materials Storage Area.

Prior Comments and Review

MROSD staff commented on a previous Reclamation Plan Amendment proposed for the Permanente Quarry in a letter dated June 20, 2007. The original Reclamation Plan was approved in 1985. The 2007 Reclamation Plan Amendment included the proposed East Materials Storage Area (EMSA). It is our understanding that the County is now proposing to divide the Reclamation Plan Amendment area into a smaller area and evaluate the environmental impacts of this smaller area separately to address the quarry's active placement of waste material outside of the permitted area. The County issued a violation notice in 2008 and required that the quarry owner apply for a Reclamation Plan Amendment to rectify the violation.

Importance of Anticipating Future Issues

The EMSA was previously analyzed under a prior EIR process that was scoped in 2007, appropriately within the context of the entire quarry operation. MROSD understands that there are substantial new issues that need to be addressed and will take some time to evaluate, and that the 2007 Reclamation Plan Amendment had a sunset date of March 2010. Unfortunately, these issues were not previously anticipated years ago by the parties involved. The current EIR intends to address these unanticipated issues and expedite a resolution of the violation. In light of the current need to reevaluate the quarry's operations to address the violation, we urge the County to take an aggressive approach to consider and assess all potential issues that may emerge as a result of ongoing quarry activities and the proposed Reclamation Plan Amendment to ensure that these are reviewed in a timely manner to preempt a future violation.

Significant Adverse Visual Impacts

The quarry appears to have a waste material disposal problem. The West Materials Storage Area (WMSA) appears to be full. In fact based on the 1985 Reclamation Plan Staff Report and Environmental Assessment, the WMSA appears to also be in violation. Specifically, Condition of Approval #8 states that the maximum height of deposition in Area "A" (WMSA) shall not exceed the top of the ridgeline bordering to the north. The upper limit of the WMSA is clearly visible from the valley floor when viewed from the north and therefore, does not meet the requirement of this condition. This condition was deemed necessary to mitigate a significant potential adverse visual impact that was a prominent issue in the 1985 Reclamation Plan and County environmental review.

The proposed EMSA would dramatically expand the area of disturbance visible from surrounding communities and Public Open Space. It appears that the top elevation of the EMSA proposed in the 2010 Reclamation Plan Amendment is substantially higher in elevation than the ridgeline to the north (known as Kaiser or Permanente Ridge). This would create a new, prominent, unnaturally benched and stepped ridgeline behind the existing "protected" scenic ridgeline when viewed from Rancho San Antonio Open Space Preserve, County Park, and surrounding communities. This would be a significant visual impact that could be avoided if the waste material was instead disposed of within a portion of the quarry pit or other suitable location.

The County General Plan Scenic Resources policy includes the strategy to minimize development impacts on significant scenic resources, including prominent areas such as ridgelines. The Kaiser/Permanente Ridge is unquestionably of scenic significance. Additionally, all of the ridge areas surrounding the proposed EMSA have the General Plan designation of Hillside Resource Conservation Area. While the EMSA itself appears outside of the designated Hillside Resource Conservation Area, building an artificial new ridgeline in the middle of and at a higher elevation than the protected ridgelines, would fail to minimize development impacts on these significant scenic resources.

The scenic importance of the Kaiser/Permanente Ridge has long been recognized by the nearby communities, County, and the Quarry, resulting in the dedication of a permanent scenic easement granted by then owner Kaiser Cement Company to the County years before the 1985 Reclamation Plan. All parties clearly recognized the visual significance of the ridgeline. The proposed EMSA as an unnatural, massive fill site that competes with the ridgeline is counter to the scenic protection benefit that was widely recognized years ago. The benefit of the County's scenic easement will either be lost or impaired unless the scenic value of the Kaiser/Permanent Ridge is protected.

Additional Waste Disposal Issues and Potential Solutions

It appears that both material storage areas may be in violation. The 2007 Reclamation Plan Amendment was previously required to address existing quarry disturbance areas of approximately 900 acres, exceeding the 330 acre area covered by the 1985 approved Reclamation Plan. It may not be appropriate to separate 89 acres to allow additional waste disposal given these conditions.

It also appears that the quarry waste disposal problem is somewhat self-inflicted. A possible solution to this dilemma is to dispose of waste material within the existing quarry pit. A thorough evaluation of the existing quarry pit area and depth should be undertaken to determine if opportunities exist within the pit for waste material disposal. The remaining areas to be quarried that would generate the waste material proposed for placement within the EMSA should also be identified and quantified. Waste material may be advantageous to buttress landslide areas or stabilize over-steepened quarry benches. A number of landslides have already encroached into the dedicated scenic ridge easement over the past decade unabated, and the 1987 "main landslide" has yet to be addressed. The material proposed for placement in the EMSA could be utilized to stabilize these landslides, and the 2007 Amendment includes this

possibility. This again illustrates the need for a comprehensive evaluation of the quarry operations to anticipate potential future issues and remedies.

Lack of Reclamation

The visible quarry area continues to grow. The Surface Mining and Reclamation Act (SMARA) requires that reclamation occur concurrently with quarry disturbance activity, yet very little final reclamation has occurred over the substantial period of mining. Waste disposal within the quarry pit together with concurrent reclamation would actually meet the reclamation requirements of SMARA.

Waste Disposal Timeline

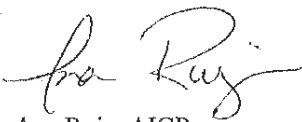
The timeline for waste disposal within the EMSA is also of concern. At the recent April 28th public hearing it was stated that existing quarry sales are 50% of normal. This has the potential to double the projected 5-year timeframe, which already seemed overly optimistic. It is also unclear if the waste material could be re-mined for construction aggregate as is the case for the material placed in the WMSA. This again could dramatically lengthen the timeline of operation and disturbance.

Determination of Vested Rights

Lastly, we remain concerned with the issue of vested rights at the Permanente Quarry. The EIR proposes only to evaluate the environmental impacts associated with the reclamation of the quarry, based on the conclusion that the environmental baseline for the project is the post-mining site condition that includes ongoing mining and processing operations (vested quarry operation). The significant new acreage that has been disturbed by quarry activities, including the EMSA, is of concern. Our concern is whether this expansion really is vested, and if not, that the potential environmental impacts associated with the quarry expansion necessitate a thorough analysis. We urge the County to complete a determination of what is actually vested at the Permanente Quarry. This determination is necessary for any new proposal related to quarry operations at the site, and should include references, maps, deeds, and other exhibits that support the conclusion.

We appreciate the opportunity to comment on the EMSA proposal for the Lehigh Hanson Permanente Quarry. If you have any questions regarding this letter, please contact Matt Baldzikowski, Resource Planner II, at (650) 691-1200.

Sincerely,



Ana Ruiz, AICP
Planning Manager
Midpeninsula Regional Open Space District

cc: Stephen E. Abbors, MROSD General Manager
Matt Baldzikowski, MROSD Resource Planner II

County of Santa Clara

Parks and Recreation Department

298 Garden Hill Drive
 Los Gatos, California 95032-7669
 (408) 355-2200 FAX 355-2200
 Reservations (408) 355-2201
www.parkhere.org



MEMORANDUM

DATE: May 13, 2010

TO: Marina Rush, Planner
 County Planning Office

FROM: Kimberly Brosseau, Park Planner
 County Parks Department

SUBJECT: Notice of Preparation of an Environmental Impact Report for the Reclamation Plan Amendment for Permanente Quarry East Materials Storage Area (File No. 2250-13-66-09EIR)

The County Parks Department has reviewed the Notice of Preparation (NOP) of an Environmental Impact Report (EIR) for the Permanente Quarry Reclamation Plan Amendment for the East Materials Storage Area for issues related to park use, trails, and implementation of the Countywide Trails Master Plan and submits the following comments.

The Trails Element of the Park and Recreation Chapter of the 1995-2010 County General Plan indicates a trail alignment nearby the subject parcel. Per the General Plan, Countywide Trail Route R1-A (*Juan Bautista de Anza NHT*) is located northeast of the project site. The *Santa Clara County Countywide Trails Master Plan Update*, which is an adopted element of the General Plan, designates the countywide trail as a "trail route within other public lands" for hiking, off-road cycling, and equestrian use. This trail route provides an important connection between the City of Cupertino and Rancho San Antonio County Park. The City of Cupertino's Final Stevens Creek Trail Feasibility Study also indicates this trail route as an important connection between Rancho San Antonio County Park and the City of Cupertino.

Visual Resources

The quarry is located adjacent to Rancho San Antonio County Park (Diocese Property). Since the County Parks Department is an adjacent property owner, modifications to the Reclamation Plan should take into account the potential aesthetic/visual impacts of the quarry and mitigation of views from these public parklands and trails.

The project is located in a Zoning District with a Design Review overlay for the Santa Clara Valley



Board of Supervisors: Donald E. Gage, George Shimakawa, Dave Cortese, Ken Yeager, Liz Klüss
 County Executive: Jeffrey V. Smith



Viewshed (d1). It is expected that the applicant will construct as per the submitted plans and comply with design guidelines towards screening the project from public views.

An adequate vegetated buffer between the degraded hillsides and the adjacent County parkland and trails should be incorporated into the Reclamation Plan for the quarry.

Noise Impacts

The EIR for the Reclamation Plan Amendment should evaluate any potential noise impacts to the adjacent Rancho San Antonio County Park and impacts that noise from the quarry may have on park users.

Biological Resources

The EIR for the Reclamation Plan Amendment should discuss whether or not the project would have an impact on Permanente Creek and the California red-legged frog (CRLF) and California tiger salamander. The CRLF has mitigation sites on the adjacent Diocese property.

Surface Hydrology, Drainage and Water Quality

The EIR for the Reclamation Plan Amendment should evaluate potential hydrological impacts resulting from any grading, recontouring and seeding of the site. The EIR should also discuss if there are any proposed modifications to the riparian corridor or Permanente Creek. The Reclamation Plan Amendment should also take into account adequate erosion control measures and proposed grading and the potential impacts it may have to the adjacent County parkland and trails.

The Santa Clara Valley Water District (SCVWD) is currently preparing a Final EIR for the Permanente Creek Flood Protection Project, which includes a proposed flood detention basin facility to be constructed, operated and maintained at Rancho San Antonio County Park Diocese Property as the Project's Recommended Alternative. This Permanente Creek Quarry's Reclamation Plan should evaluate future hydrological modifications that may impact the District's Permanente Creek Flood Protection Project for portions of Permanente Creek through Rancho San Antonio County Park.

The County Parks and Recreation Department appreciates the opportunity to provide comments on the NOP of an EIR for the Permanente Quarry Reclamation Plan Amendment for the East Materials Storage Area. We look forward to reviewing the EIR once it becomes available. If you have any questions regarding this letter, please contact me at (408) 355-2230 or by email at: Kimberly.Brosseau@prk.sccgov.org.

Sincerely,



Kimberly Brosseau
Park Planner

cc: Jane Mark, Senior Planner
Don Rocha, Natural Resources Management Program Supervisor
CEQA responses to County Planning file

QUARRYNO.COM
10570 Blandor Way
Los Altos Hills, CA 94024

May 12, 2010

Ms. Marina Rush
County of Santa Clara
Planning Office
70 West Hedding
7th Floor, East Wing
San Jose, CA 95110

Dear Ms. Rush,

I hereby submit our written comments regarding the Environmental Impact Statement for the proposed amendment to the existing Permanente Quarry (State Mine ID#91-43-004) 1985 Reclamation Plan incorporating the new East Materials Storage Area.

We submit these comments under protest as the County has already acquiesced to the Quarry expansion in a flawed process and the expansion has been underway for the past year. The public has been asked to comment apparently only to satisfy procedural rules and not the substance of Quarry operation and Expansion.

We regard the simultaneous processing of two amendments to an expired Reclamation plan that is 25 years old to border on the absurd. There must be a totally new Reclamation Plan incorporating all proposed changes and not continuous amendment of an expired Plan.

This multi faceted process is justified on the basis of saving time but that is not believable after the County has sat on the EMSA Amendment Plan for over a year. Consequently it appears the entire flawed process is simply to provide a way for Lehigh (Permanente) to escape violating the 1985 Plan, as described in the NOP, by expanding without County Approval.

A new Reclamation Plan must be prepared incorporating all proposed changes and expansion rather than this piecemeal approach. It must include restoration "so that mined lands are reclaimed to a usable condition which is readily adaptable for alternate land uses and create no danger to public health or safety" per SMARA.

A mine pit 700 feet deep and a half mile across is a definite threat to alternate usage and public safety. This means the Pit must be filled in as has occurred elsewhere in California. In that case the East and West Materials Areas become truly storage

areas and are exhausted as they are used for fill and not treated as permanent scars on the hillsides as they currently are. It should be noted that the original 1985 Plan treated them as transition elements and stated “ultimate reclamation of the pit area will be addressed in a revised reclamation plan to be submitted around the year 2005”.

This further suggests that the EMSA should be located elsewhere closer to the Pit and hence further from residential housing. While the proposed EMSA is only 2,000 feet away from residences it is even closer (1500 feet) to other occupied facilities such as the Gate of Heaven Cemetery offices.

In addition we remain very concerned over the Geological risks. We have as yet no data available to the public on the Geological Testing recently completed by Lehigh. However the testing was significant enough to delay the processing of the 2007 Reclamation Plan Amendment until now.

We also see only limited mention of the Berrocal Fault that adjoins the San Andreas Fault. This Fault adjoins Permanente Creek and actually bisects the new proposed EMSA area but it is dismissed as insignificant based on the 2008 Golder Analysis even though Golder was not able to test every soil type and based its conclusions mainly on earlier work done on the WMSA.

If this 850 foot high slope of mine waste goes all that will impede it from falling into Permanente Creek is the rickety Silt Fence that is the last line of defense. This is probably the lowest cost solution but not one inspiring great confidence.

Given that the final slopes of the EMSA are the most critical condition for stability and its proximity to homes and the creek we feel a much more rigorous analysis must be conducted including integration of the recent Geological Pit tests and positive determination of the Berrocal Fault Line. An alternative would be to move the EMSA away from Permanente Creek and the residential area as mentioned earlier.

Related to our Seismic concerns is our concern over the material to be dumped on the EMSA. It is labeled “overburden” but is more commonly called mine waste. It is treated here as benign but limestone when crushed releases arsenic and other toxins and this “overburden” must be extensively tested prior to any final EIR. The WMSA today is a strong reminder that seeding and nature won’t restore the EMSA.

Lastly we are very concerned over the endangered species presently on the EMSA. The Dusky-footed Woodrat and White-tailed kite are identified as present in the EMSA but the California Red Leg Frog, while identified, is stated to be not impacted by the EMSA. This is incorrect. The Red Legged Frog is presently in abundance along Permanente Creek which will receive significant run off from the EMSA.

Far more dramatic all endangered species here will be wiped out and their habitat completely destroyed as mine waste up to 120 feet deep is dumped on their homes. Over 10 acres of Native Oak Woodland will go as well.

Consequently the ongoing grading must be stopped and a new and more detailed endangered species inventory must be immediately accomplished. It would appear from recent aerial photos that at least half of the Wood Rat nests are already plowed under.

In summary this EMSA expansion without an EIR in place should have never happened. A new complete Reclamation Plan must be prepared, not the multiple amendments of the 1985 expired Plan. The land must be restored to useable condition which means restoration of the Pit. Geological Fault lines must be verified and not just projected. The Overburden must be rigorously analyzed to prove it is not toxic. The Endangered Species must be protected per current law.

**Bill Almon
Acting for the Members**

NOP Comment

DEPARTMENT OF TRANSPORTATION

P. O. BOX 23660
 OAKLAND, CA 94623-0660
 PHONE (510) 622-5491
 FAX (510) 286-5559
 TTY 711



Flex your power!
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April 30, 2010

SCL280357
 SCH2010042063

Ms. Marina Rush
 County of Santa Clara
 70 West Hedding Street
 7th Floor, East Wing
 San Jose, CA. 95110

Dear Ms. Rush:

Permanente Quarry Reclamation Plan Amendment— Notice of Preparation (NOP)

Thank you for including the California Department of Transportation (Department) in the environmental review process for the proposed project. We have reviewed the NOP and have the following comments to offer.

As lead agency, the County of Santa Clara is responsible for all project mitigation, including any needed improvements to state highways. The project's fair share contribution, financing, scheduling, implementation responsibilities and lead agency monitoring should be fully discussed for all proposed mitigation measures. The project's traffic mitigation fees should be specifically identified in the environmental document. Any required roadway improvements should be completed prior to issuance of project occupancy permits. While an encroachment permit is only required when the project involves work in the State Right of Way (ROW), the Department will not issue an encroachment permit until our concerns are adequately addressed. Therefore, we strongly recommend that the lead agency ensure resolution of the Department's California Environmental Quality Act (CEQA) concerns prior to submittal of the encroachment permit application. Further comments will be provided during the encroachment permit process if required; see the end of this letter for more information regarding the encroachment permit process.

While the County of Santa Clara conducts its traffic studies in accordance with guidelines, which conform to the local Congestion Management Program managed by the Santa Clara County Valley Transportation Authority, the Department's thresholds are primarily concerned with potential impacts to the State Highway System. We encourage the County of Santa Clara to coordinate preparation of the study with our office to help sharpen the focus of your scope of work and answer any questions you may have. Please see the Departments' "Guide for the Preparation of Traffic Impact Studies" at the following website for more information:

<http://www.dot.ca.gov/hq/traffops/developserv/operationalsystems/reports/tisguide.pdf>

"Caltrans improves mobility across California"

2250-09 EA

Ms. Marina Rush
 April 30, 2010
 Page 2

Specifically, a detailed Traffic Impact Analysis (TIA) should identify impacts to all affected state facilities with and without the proposed project. The TIA should include, but not be limited to the following:

1. Information on the project's traffic impacts in terms of trip generation, distribution, and assignment. The assumptions and methodologies used in compiling this information should be addressed.
2. Average Daily Traffic (ADT), AM and PM peak hour volumes on all significantly affected streets and highways, including crossroads and controlling intersections.
3. Schematic illustration of the traffic conditions for: 1) existing, 2) existing plus project, and 3) cumulative for the intersections in the project area.
4. Calculation of cumulative traffic volumes should consider all traffic-generating developments, both existing and future, that would affect the State Highway facilities being evaluated.
5. Mitigation measures should consider highway and non-highway improvements and services. Special attention should be given to the development of alternate solutions to circulation problems that do not rely on increased highway construction.
6. All mitigation measures proposed should be fully discussed, including financing, scheduling, implementation responsibilities, and lead agency monitoring.

We look forward to reviewing the TIA, *including* Technical Appendices and the environmental document for this project. Please send two copies to:

Jay Vega
 Office of Transit and Community Planning
 Department of Transportation, District 4
 P.O. Box 23660
 Oakland, CA 94623-0660

Encroachment Permit

Work that encroaches onto the State ROW requires an encroachment permit that is issued by the Department. To apply, a completed encroachment permit application, environmental documentation, and five (5) sets of plans clearly indicating State ROW must be submitted to the address below. Traffic-related mitigation measures should be incorporated into the construction plans during the encroachment permit process.

Office of Permits
 California DOT, District 4
 P.O. Box 23660
 Oakland, CA 94623-0660

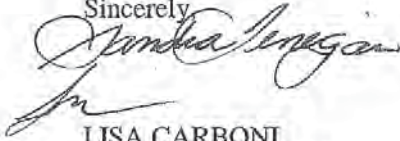
See the website link below for more information.
<http://www.dot.ca.gov/hq/traffops/developserv/permits/>

"Caltrans improves mobility across California"

Ms. Marina Rush
April 30, 2010
Page 3

Should you have any questions regarding this letter, please call Jay Vega of my staff at (510) 286-0585.

Sincerely



LISA CARBONI
District Branch Chief
Local Development – Intergovernmental Review

c: Scott Morgan (State Clearinghouse)

From: Vicky Ho <vickyueho@yahoo.com>
Subject: **More comments: EIR for EMSA at Lehigh Cement Plant**
Date: April 29, 2010 12:31:06 PM PDT
To: marina.rush@pln.sccgov.org

- 1) An EIR should not be put out BEFORE a scoping period. It appears that decisions have already been made by the county before the public gets to comment.
- 2) The current "reclamation" plan is not following many of the important reclamation standards in the State Mining Law, SMARA. Therefore it should not be amended. Instead a new "reclamation" plan which follows the law should have a scoping period.
- 3) A new reclamation plan which includes all the disturbed areas from the mining operations including the quarry and the East Material Storage Area should be put out for scoping. All the impacts need to be taken into consideration in ONE document.
- 4) The county should not be rewarding Lehigh for their violation of placing a huge pile of materials in an unpermitted area. Instead the county should fine Lehigh for this blatant violation of their permit and levy meaningful fines. (It was a citizen, NOT the county who discovered the pile and had to push and push scc to get them to investigate.)
- 5) The county has a poor record of monitoring the Lehigh operation and of CEQA and SMARA compliance. It's time for the county to set this straight and not continue on this path, as evidenced by this "scoping" period to amend the current so-called "reclamation" plan. And penalty terms should be specified and carried out.

Vicky Ho

Barbara West

April 28, 2010

Marina Rush
Rob Eastwood
County of Santa Clara
Planning Office
70 West Hedding, 7th Floor, East Wing
San Jose, CA 95110

Hand Delivery At The Public Scoping Session On April 28, 2010 on April 28, 2010 and via email to Marina.Rush@pln.sccgov.org

Re: Comments on the Notice of Preparation Of An Environmental Impact Report For The Reclamation Plan Amendment For Permanente Quarry (State Mine ID# 91-43-004) East Material Storage Area (EMSA)

POTENTIAL ENVIRONMENTAL EFFECTS, ITEM M. "CUMULATIVE IMPACTS"

It is critically important that both the quarry Owner (Hanson Permanente Cement, Inc.) and the quarry Operator (Lehigh Southwest Cement Company) as well as their assigns and successors in interest assume full financial responsibility for the EMSA Reclamation Amendment consistent with Section 3702 of the Surface Mining and Reclamation Act and Section 2773.1 of the Public Resources Code.

The concern is that a successor in interest may not live up to the terms of the EMSA Reclamation Agreement or provide adequate financial assurances or resources. To assure any potential successor in interest of the Quarry Owner or Operator is also bound to the terms of this EMSA Reclamation Agreement, it is suggested that Section 3.11 of the Reclamation Agreement be changed to read as follows:

Section 3.11 "Statement of Responsibility"

"Hanson Permanente Cement, Inc. and Lehigh Southwest Cement Company have authorized their legally authorized representative(s) to execute this Amendment.

Hanson Permanente Cement, Inc. and Lehigh Southwest Cement Company collectively and individually accept responsibility for reclamation as set forth in this Amendment and further will require any assign or successor in interest whether by way of merger, consolidation, or acquisition to assume all responsibilities, obligations, and liabilities under this Amendment."

Respectfully submitted,

Barbara West

Barbara West

April 28, 2010

Marina Rush
Rob Eastwood
County of Santa Clara
Planning Office
70 West Hedding, 7th Floor, East Wing
San Jose, CA 95110

Hand Delivery At The Public Scoping Session On April 28, 2010 and via email to
Marina.Rush@pln.sccgov.org

Re: Comments on the Notice of Preparation Of An Environmental Impact Report For The Reclamation Plan Amendment For Permanente Quarry (State Mine ID# 91-43-004) East Material Storage Area (EMSA)

POTENTIAL ENVIRONMENTAL EFFECTS. ITEM M. "CUMULATIVE IMPACTS"

It makes absolutely no sense to develop an Environmental Impact Report based on a Reclamation Plan Amendment that, by its own terms, can be completely undone.

Specifically, Section 3.9, "Effect of Reclamation on Future Recovery of Mineral Resources" states "(t)his Amendment does not preclude future extraction or overburden placement activities within the RPA Area, other areas of the site or on surrounding lands".

To have a meaningful Environmental Impact Report, the Reclamation Plan Amendment must be amended so that the RPA Area is not subject to future extraction or overburden activities once the reclamation activities are complete.

Accordingly, it is recommended that Section 3.9 "Effect of Reclamation on Future Recovery of Mineral Resources" be modified to read:

"This Amendment does not preclude future extraction or overburden placement activities in areas other than the RPA area."

Respectfully submitted,

Barbara West

April 23, 2010

To: County of Santa Clara

Attn: Marina Rush

Phone: 408-299-5770

From: Cathy Helgerson

Regarding: East Material Storage Area at the Lehigh Southwest Cement and Quarry location is not part of the existing 1985 Reclamation Plan and so Santa Clara County is holding a scoping meeting that is being held at the City of Cupertino's City Hall Wednesday, April 28, 2010 at 6:30 P. M.

The problem with this is that SCC gave Lehigh permission to use the east end area over a year ago and never gave the public a chance to object or approve the storage area addition. I called the SCC and told them about the fact that Lehigh was destroying the mountain and that I felt no one at SCC really knew or understood the magnitude of the destruction and that they needed to get up to Lehigh right away and see what was going on. I do not think that the SCC ever expected Lehigh to destroy the mountain and I also believe that Lehigh has definitely gone over and above what SCC was giving them permission to do. I also called the State Conservation Department who would not take charge of the responsibility to do anything about what was going on.

The storage area contains waste products and probably Petroleum coke that contains radio active material along with the coal that they have been piling up over many months. I was there Wed. 21st and noticed that the piles are higher and there are more of them and also that they have rock and a black product being dumped on top that I suspect maybe coal but I am not sure.

I have complaints in to the SCC Hazardous Environmental Dept. who have also sited them in the past for the Petroleum coke storage violations. I have called the BAAQMD and reported them because of the dust and pollution they are causing and they are investigating that. I also called your office and left you a message the other day suggesting that you get yourself or someone to view what is happening at the site first hand and I would also suggest now that you will be taking pictures for your records.

I suspect that they are in violation of the EPA Clean Air Act – BAAQMD and also SCC Hazardous Environmental regulations on storage with added violations to maintain a certain level of moisture in the piles to control the dust that is going everywhere. We need to know what is in the piles and why they are not completely contained in containment silos or boxed compartment of some kind.

The runoff from these piles is going into the groundwater, watershed and the Permanente Creek and it is very much suspected it is also going into the Stevens Creek Creek, the Wells that are inoperative and operative and the eventually all this is going into the Aquifer. The water companies California Water and San Jose water are pulling water up through the wells and we are drinking and using this water that is contaminated by Lehigh Southwest Cement and Quarry, Steven Creek Quarry, Stevens Creek Reservoir and probable Apple Computer's R & D Manufacturing Facility. Apple has a manufacturing facility that makes resin mold prototypes and they are using resin to make the molds that are heated up in their thermotron ovens that is being released next to an operating well that feeds 58,000 people. This well is next to my home and so is Apple Computer not even 100 feet away.

My husband and I have both had cancer and I also had a daughter born with brain damage who died when she was 3 ½ years old all this and more from what I believe to be the pollution from

the Companies above. I have a great deal more to share about my health problem and my family health problems if you care and want to help.

The situation is desperate and this pollution needs to stop and I have written the SCC and phoned many times trying to get the personnel and people responsible for this problem to help but have had no luck. I am continually ignored. I have been told by SCC representatives that I need to prove that Lehigh Southwest Cement and Quarry are a public health hazard and a danger to the community well I think I have done that and am continuing to do so. There will be a major report from me to follow and a copy will be going to SCC.

In conclusion the public citizens of Cupertino and the Valley are tired of being polluted to death and we want Lehigh Southwest Cement and Quarry closed down immediately with out delay to insure that the public is protected from this blight on the community. Lehigh can not contain their polluted emissions and because of a cumulative effect from the pollution in our bodies over time which is causing cancer and other health problems it must be shut down once and for all and a Super Fund established to clean this mess up.

Lehigh Southwest Company needs to pay for the disaster they have caused and we as citizens need to make sure they do.

I have a lot of information, records, reports and pictures I could share but it would take to much of your time right now so maybe we could meet sometime later let me know.

Thanks,

Cathy Helgerson

From: Darwin <darwinlisa@yahoo.com>
Subject: Zero Emissions Schedule
Date: April 19, 2010 3:45:06 PM PDT
To: marina.rush@pln.sccgov.org

Hi Marina,

Thank you for the opportunity and interest to consider zero emissions with regards to Lehigh Hanson, Inc (Permanente Quarry).

Heat, dust, noise, powder, cement, mercury, vibration, etc. are all "emissions" that can and should be measured and reported in real-time. These results should be posted on the Internet in real-time as a requirement for operation.

The longer term goal should not necessarily be to close a business but rather to make a business transparent and responsible. Factories are no different than automobiles and should strive to achieve zero emissions. The technology is all readily available and inexpensive.

Beyond the health and environmental benefits, mandating a path to zero emissions will also create a platform for new jobs, innovation and corresponding tax basis. Surprisingly, this will also make intelligent businesses including Lehigh more viable, competitive and profitable. An aggressive schedule will yield quicker returns.

Californians with the support of the EPA are and can be proud to lead the rest of the country and the world in measuring and openly reporting zero factory emissions.

Regards, Darwin

Darwin Chang

darwinlisa@yahoo.com

From: Peter Coglianese <PeterC@Cupertino.org>
Subject: Public Scoping Video Online
Date: April 28, 2010 9:36:23 PM PDT
To: Marina Rush <marina.rush@pln.sccgov.org>

Hi Marina,

The online video of the April 28th Public Scoping meeting is now available at the following links...

<http://www.cupertino.org/index.aspx?page=973> (Flash Video Normal - 320 x 240)

<http://www.cupertino.org/index.aspx?page=792> (Flash Video Large - 640 x 480)

http://cupertino.granicus.com/MediaPlayer.php?publish_id=128 (Windows Media Normal - 320 x 240)

Thanks!

Pete Coglianese
Media Coordinator
City of Cupertino
(408) 777-1358

-----Original Message-----

From: Marina Rush [<mailto:marina.rush@pln.sccgov.org>]