

THE COUNTY OF SANTA CLARA

IN RE:

LEHIGH SOUTHWEST CEMENT COMPANY

DRAFT ENVIRONMENTAL IMPACT REPORT

2250-10P(M1)-10

-----/

SANTA CLARA COUNTY PLANNING COMMISSION HEARING

DATE: February 2, 2012

TIME: 1:45 p.m.

LOCATION: Santa Clara County
Board of Supervisors' Chambers
70 West Hedding Street
First Floor
San Jose, California 95110

REPORTED BY: Diane S. Martin
Certified Shorthand Reporter
License Number C-6464

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S :

SANTA CLARA COUNTY PLANNING COMMISSION:

JOHN VIDOVICH, Vice Chair
MARY ANN RUIZ
DENNIS CHIU
SCOTT LEFAVER, Chair

Nancy Clark
Carolyn Walsh
Elizabeth Pianca
Rob Eastwood
Marina Rush
Gary Rudholm

--oOo--

1 February 2, 2012

2 Santa Clara County Planning Commission Hearing
3 San Jose, California

4 --oOo--

5 MR. LEFAVER: This is item number 7,
6 2250-10P(M1)-10EIR Lehigh Southwest Cement
7 Company. The project staff is Rob Eastwood. This
8 is to accept public comment on the Permanente
9 Quarry Rehabilitation Plan Amendment Draft
10 Environmental Impact Report, and this is for the
11 location at 24001 Stevens Creek Boulevard in
12 Cupertino, and the supervisor district is
13 supervisor district 5.

14 Could we please have a -- do we have a
15 staff report on this?

16 GARY RUDHOLM: Yes, good afternoon. Marina
17 Rush is the project planner on this, and she will
18 provide a brief overall presentation. Of course,
19 the bulk of this item is dedicated to taking public
20 comments. So with that I'll turn it over.

21 MR. LEFAVER: Thank you.

22 Marina.

23 MARINA RUSH: Apologies, Commissioner. The
24 wrong PowerPoint was installed on the computer, but
25 we can go ahead and get started.

1 The purpose of the meeting today is a
2 public meeting to accept the public comments
3 regarding the analysis and findings of the Draft
4 Environmental Impact Report that was prepared for
5 the proposed Lehigh Permanente Quarry Reclamation
6 Plan Amendment.

7 During the Draft Environmental Impact
8 Report process we do take public comments, and we
9 hold a hearing here at Santa Clara County during
10 that public review period, and that's what the
11 purpose of today's meeting is.

12 Under the Surface Mining and Reclamation
13 Act the reclamation plan is required to reclaim
14 mine lands to a beneficial end use. So wherever
15 lands have been mined, they do have to be reclaimed
16 back to a reasonable use as required under the
17 state law.

18 The proposal that's before us from the
19 applicant is to amend a reclamation plan that was
20 adopted in 1985 for the quarry, Permanente Quarry.
21 At that time it was estimated that the reclamation
22 plan would last for approximately 25 years, and
23 since then we've had a series of proposals that
24 have come in from Lehigh with slight
25 modifications.

1 What's before you is the current proposal
2 that came in in the summer, July of 2011, and was
3 amended slightly in December 2011, and that's
4 what's been analyzed in the Draft EIR.

5 The proposed Reclamation Plan Amendment
6 includes approximately 1,239 acres of land out of
7 their 3200 acres of ownership, continuous ownership
8 out there.

9 Of the 1,239, 637 of these acres are
10 existing mine lands that would be reclaimed, and
11 approximately 600 acres would an open space or
12 undisturbed lands.

13 The primary areas to be reclaimed consist
14 of the original quarry pit, which is still a
15 current and active mining pit that's being used.

16 A materials storage area where overburden
17 is deposited to the west of the quarry pit, called
18 the West Materials Storage Area. Second
19 overburdened deposit area to the east, which is an
20 area closest to the Cupertino city limits. And
21 that's called the East Materials Storage Area.

22 A surge pile and rock plant where rocks are
23 broken down to create aggregate that's then sold
24 out in the industry.

25 A crusher and quarry office support area

1 that's up near the main quarry pit. An area that's
2 located south of Permanente Creek where the owners
3 had done some exploration activities, and those
4 areas and that activity needs to be reclaimed as
5 well.

6 And then also disturbed areas that are in
7 and around the Permanente Creek corridor.

8 This is an exhibit that shows those general
9 areas. As you can see, the West Materials Storage
10 Area is to the west, and the East Materials Storage
11 Area is all the way to the east. You can see kind
12 of an outline of some of the residential areas of
13 Cupertino along that area.

14 The Reclamation Plan -- Reclamation Plan
15 has to have a time frame included in it. This
16 Reclamation Plan Amendment is proposed in a 20-year
17 time period. It will be reclaimed in three
18 different phases.

19 In the first phase reclamation will begin
20 immediately on the East Materials Storage Area in
21 yellow. And the areas in blue is where they will
22 continue mining during that first phase.

23 You'll also see, barely, the exploration
24 areas south of the creek are also actively being
25 reclaimed. And some portions along the creek

1 corridor.

2 In phase 2 active reclamation then moves
3 towards the eastern edge of the main quarry, and
4 you can barely see, but there are yellow hash marks
5 in areas where they're going to begin reclaiming
6 during phase 2 where they're going to be taking the
7 overburden from the West Materials Storage Area,
8 and backfilling into the main pit on the western
9 face of the wall.

10 At this point the East Materials Storage
11 Area will be reclaimed along with some other
12 portions along the creek.

13 And then in the third and final phase,
14 areas in green are those that have been reclaimed,
15 and the areas in yellow is where they will be
16 actively reclaiming.

17 What is an Environmental Impact Report? I
18 just wanted to touch base that as we all know, an
19 Environmental Impact Report is an informational
20 document that's used by the public and decision
21 makers when making choices with a project. It's a
22 full disclosure document that identifies any
23 impacts associated with the project. It identifies
24 feasible mitigation measures, if there are any,
25 where you can minimize or avoid damages resulting

1 from the project.

2 The term "significant impact" means
3 substantial, adverse damage to the physical
4 environment.

5 The areas that were addressed in this Draft
6 EIR are those listed there.

7 And the Draft Environmental Impact Report
8 does identify, for example, some areas where
9 mitigation measures can lessen the significant
10 impacts. For example, in noise and health hazards
11 there were mitigation measures that were identified
12 related to equipment; changes to the equipment that
13 would help reduce some of those; or times of
14 operation; as well as water quality impacts
15 following reclamation.

16 The Environmental Impact Report also
17 includes alternatives, and the alternatives
18 included in ours is the no-project alternative
19 that's required by CEQA; an alternative called the
20 Central Material Storage Area, where it would
21 basically stop deposits in the East Materials
22 Storage Area, and then as an alternative location,
23 have any additional overburden put into the Central
24 Material Storage Area, so that the East Material
25 Storage Area would begin reclamation right away.

1 And then the third alternative that was analyzed
2 was a complete backfill of the quarry pit, which
3 would have the West Materials Storage Area
4 overburden backfilled into the pit, as well as the
5 East Material Storage Area backfilled overburden.

6 Significant and unavoidable impacts are
7 impacts that are unavoidable because no mitigation
8 or partial mitigation is feasible. The Draft EIR
9 has identified significant and unavoidable impacts
10 for the following areas.

11 Visual impacts during the reclamation
12 stage. There are adverse impacts to some
13 historical resources on the property.

14 Selenium in Permanente Creek during
15 reclamation would continue.

16 And also alteration of the existing
17 drainage pattern would result in potential for
18 increased flooding.

19 The Draft EIR was released on December 23rd
20 for public review and comment, and the public
21 comment period closes on February 21st, 2012 at end
22 of business day.

23 We've got copies of the EIR that we sent
24 out to all the agencies as well as they're able to
25 be viewed at Cupertino, Los Altos, Saratoga

1 libraries; the County planning office, and then
2 electronic versions on the County's Web site, which
3 is downloadable.

4 We also held a community outreach meeting
5 last week, and there were several hard copies
6 brought to that meeting, and electronic versions
7 that were brought and taken by the public.

8 So today the Planning Commission's role is
9 to take oral comments. We do have a court reporter
10 here that will be transcribing all the comments
11 that are received, as well as this meeting will be
12 videotaped so that we'll have a video of it.

13 If we could have the comments that are
14 written be submitted to the county's office and
15 address that's on the screen above you, or by
16 e-mail or by fax.

17 Next steps after the comment period closes,
18 are that the County will prepare a final EIR.
19 We'll evaluate, prepare written responses to all
20 the comments that are received to be included in
21 this final EIR.

22 If necessary, revisions will be made to the
23 text, and a mitigation, monitoring and reporting
24 program would be proposed.

25 The Planning Commission hearing is targeted

1 for March 22nd for action by the Planning
2 Commission. The Commission at that hearing would
3 certify the EIR as complete, and would take an
4 action on the reclamation plan.

5 MR. LEFAVER: Thank you.

6 Any questions of staff? I'm going to wait
7 until the lights come on. Thank you.

8 Again, thank you, all. This is a hearing
9 before the Planning Commission to receive your oral
10 comments on the Draft Environmental Impact Report
11 dealing specifically with the reclamation plan that
12 is -- that the Draft Environmental Impact Report
13 addresses.

14 Written comments are best, the best way,
15 and we will certainly take your oral comments, and
16 they will be responded, but if you could also write
17 your comments at some point so the staff can make
18 sure to get an understanding of what your items
19 that you want to bring up are, that would be a
20 good, good way to proceed.

21 We as a Planning Commission will be here.
22 We will be listening to your oral comments, and we
23 will not be responding; but only listening.

24 Again, this is strictly to deal with the
25 Environmental Impact Report that's before us that

1 is the reclamation plan. We would appreciate if
2 you would focus on that and deal with that
3 particular item, the reclamation plan.

4 We have a number of people who wish to
5 speak. If you do wish to speak, please put your
6 name on one of these, and it will be brought to me,
7 and I will call them in order as I receive them.

8 The individual speakers will have two
9 minutes to speak. We do have one group that is
10 here, and they will have three minutes to speak.

11 So I will start with the group, and we will
12 hear your comments on the reclamation plan.

13 So starting with the group, Bill Almon, if
14 you could come up here and speak first with us.
15 Give your comments, we would appreciate it.

16 BILL ALMON: Thank you.

17 MR. LEFAVER: Thank you.

18 BILL ALMON: My name is Bill Almon.

19 MR. LEFAVER: I'm going to have you raise
20 the -- there you go.

21 BILL ALMON: My name is Bill Almon. I
22 represent a group called QuarryNo, and we
23 appreciate this opportunity to talk to you. I
24 would like to start by talking and addressing the
25 improvements to the EIR. The original EIR was

1 submitted by Lehigh. The County's action has now
2 improved that from our point of view. It now has
3 47 billion dollar bonding, and it has a requirement
4 that the pit be filled.

5 What we're talking about here though is
6 something kind of unusual. We're talking about
7 cleaning up a toxic spill, a spill that's lasted 27
8 years; will go on to last another 10 to 20 years.
9 We're cleaning up a toxic spill. We are not
10 addressing, because this is the reclamation plan,
11 what causes a toxic spill.

12 The EIR we believe is flawed. We are
13 required by CEQA to address both indirect and
14 direct impacts on the environment. There is
15 100,000 diesel truck trips per year. That impact
16 is not in the EIR.

17 In addition to that, we have a cumulative
18 CEQA issue, which says that anything that is
19 reasonably expected in the future should be
20 considered. A new pit is reasonably expected; has
21 only been withdrawn to speed up this process that's
22 before you. That should be included.

23 The health risk assessment is flawed. It
24 is old. Goes back to data from two years ago. It
25 does not address hexavalent chromium, which has

1 been found now in three different samples over two
2 years in the Lehigh water.

3 The air model used by the air district to
4 compute the emissions and the impact on health, the
5 air district now has concluded -- it's called
6 AERMOD, A-E-R-M-O-D. They've concluded it's
7 flawed, and they've got to come up with a new
8 model. In addition, again, 100,000 trucks are not
9 addressed.

10 This is very significant for the County.
11 The County is out of compliance on particulate
12 2.5. The air quality district, not us, says that
13 the impact in 2010 alone was 3 billion dollars on
14 Santa Clara County. 3 billion dollars.

15 Two contributors to that. The main one is
16 the kiln at Lehigh. That kiln produces the largest
17 amount of nitric oxide in the air quality district,
18 which includes nine counties that has no mitigation
19 capability. That can be corrected with mitigation,
20 but it's not in the plan.

21 In addition, the trucks. We would advise
22 that the trucks should be mitigated by replacing
23 them with trucks from the air quality district.
24 The air quality district this year is supplying 247
25 trucks free to the trucking companies that handle

1 the Port of Oakland.

2 Thank you.

3 MR. LEFAVER: Mr. Almon, thank you for your
4 comments, and thank you for being specific. You
5 were very succinct. I appreciate it. Thank you.

6 BILL ALMON: We will be submitting these in
7 writing. Again, thank you for the opportunity.

8 MR. LEFAVER: Thank you.

9 The next speaker, please. I'm going to
10 call two out. If the second speaker can get ready
11 to come up, we would appreciate it.

12 Cathy, is it Helgerson?

13 CATHY HELGERSON: Yes.

14 MR. LEFAVER: Cathy, can you please? You
15 were up here before. Welcome back.

16 And after her, if I could have Terry Hertel
17 please get ready.

18 Cathy, hi.

19 CATHY HELGERSON: I brought some -- can I
20 give you this?

21 MR. LEFAVER: If you could give that.
22 Thank you. Hi.

23 CATHY HELGERSON: What I'd like to bring up
24 is that there is going to be a Superfund site,
25 okay. I'm working on that with the EPA. The West

1 Materials Storage Area, the East Materials Storage
2 cannot be implemented at this time, as far as I'm
3 concerned. It has to be put off. I don't know how
4 long. I'm going to summarize this because I sent
5 you my letter here.

6 There is a 15-mile radius that they will be
7 looking at, especially because of the water.
8 There's dust everywhere. We're getting it, eating
9 it and breathing it 24/7. There is a cancer
10 epidemic because of this. And also there have been
11 many spare-the-air days.

12 We need to do something about the East
13 Materials Storage Area. We can't wait five or ten
14 years until they empty the old pit. We can't
15 survive with the new pit they want to propose and
16 destroy all these trees that have acted as a
17 buffer.

18 And there is an aluminum plant and an
19 ammunitions factory under the East Materials
20 Storage Area that has been covered up. I have old
21 pictures here of when it first started, and I
22 noticed that they were destroying their little hill
23 that was there. It's now an astronomical mound of
24 pollution, and you can see that in the pictures
25 I've given you. It's extremely ugly from Stevens

1 Creek Boulevard and Snelling. I've got pictures
2 there that you can see how awful it is; that they
3 have ruined our scenic view.

4 The people are upset about this. Santa
5 Clara County overlooks what's happening to us.
6 They will not listen. They will not comply with
7 what's underneath the East Materials Storage Area.
8 The San Andreas Fault line is two miles, according
9 to your report, from the pit, and if there is a new
10 pit dug, it will be even closer. It will be
11 probably causing the next major earthquake in
12 California, and we can't risk this.

13 There are many fault lines around this.

14 Thank you.

15 MR. LEFAVER: Thank you. And your written
16 comments will be part of the record as well.

17 CATHY HELGERSON: And you can keep the
18 pictures.

19 MR. LEFAVER: And the pictures. Thank you.
20 Terry? And after Terry we have Dave
21 Singhal, please.

22 TERRY HERTEL: Good afternoon.

23 MR. LEFAVER: Welcome.

24 TERRY HERTEL: My name is Terry Hertel.

25 Thanks for listening to me. I live at 10015 Byrne

1 Avenue, and I look right at that cement plant. I
2 want to show you some exhibits. This is only about
3 one winter. This is the filter out of my heater.
4 I got filters like this at work in Sunnyvale, and
5 they don't get near as dirty, and that's all
6 cement.

7 In my house where the vents are in the roof
8 I have piles of cement that's been collecting for
9 30 years.

10 So I'd like to address the trucks. I
11 travel to work down Stevens Creek down Foothill and
12 follow your trucks on a regular basis, and the
13 traffic is getting worse and worse and worse. From
14 about 8 o'clock in the morning, or a little earlier
15 all the way down past The Blue Pheasant, you've got
16 a traffic jam, and it's getting worse every month,
17 and part of it is the trucks. And there is a
18 school on Foothill where people are always trying
19 to get out and right at Cristo Rey.

20 If anybody wants to see some of the plant
21 operations at night, take a drive down Cristo Rey
22 back up in there.

23 I've had five heart operations, and pretty
24 well believe that it's because of the dust that I'm
25 inhaling at night. At 4:30 in the morning,

1 actually around 4:20 every day I'm woken up. I'm
2 awakened by the sound of the diesel engines. It
3 sounds like the diesel engines at Donner Summit,
4 and the crushing. And if any of you are around
5 there and you have an iPhone or an iPad, they have
6 a measuring device for sound and vibration, and
7 every day I'm taking those measurements, and you
8 ought to see the vibration going on.

9 I have an artificial tree. The limbs are
10 falling off the artificial tree because of the
11 vibration. I have tables. The tables are coming
12 apart. I have to put them back together.

13 So that's the end of my time. I think what
14 you really need to do is get a vote on this and
15 shut that place down.

16 MR. LEFAVER: Thank you.

17 TERRY HERTEL: I've got some clothes here,
18 too.

19 MR. LEFAVER: Again, if we can focus on the
20 reclamation plan, which is what we're taking
21 information on in your oral comments, we would
22 appreciate it. So talk about the reclamation plan.

23 Thank you. Dave?

24 DAVE SINGHAL: Hi. I'm Dave Singhal.

25 There is a timely matter I should thank you for, as

1 my wife was just recognized as a community leader
2 for her work with cancer connections. She is the
3 director and founder of the cancer center at El
4 Camino Hospital, and she couldn't be here this
5 afternoon because she has a surgery at 1:30, but
6 she wanted me to convey some things. I'm not a
7 scientist so I don't really understand the stuff in
8 detail so just bear with me.

9 What it gets down to is when people look at
10 multiple chemicals and toxins together, there are
11 two ways of looking at the risks. One is you add
12 them up. You know, there is a one in some X
13 percent chance for each of these one by one. You
14 add them up. That's called additive.

15 The other more modern technique is what is
16 called synergistic. And sometimes one toxin
17 actually negates the effect of another toxin, but
18 you don't find that. You don't find the toxins in
19 the cigarette one fighting the other and you're
20 actually better off.

21 Usually what happens is because of the way
22 toxins work, one can actually lower the resistance
23 of your body to the other. That somehow three
24 toxins at very low doses can have the effect of one
25 at a super high dose. Okay, that's called

1 synergistic toxicity.

2 The studies that have been done to date do
3 not reflect a synergistic toxic review of the
4 matter. The document actually says it's been
5 considered, and if you double click into that, it
6 says, sorry, but we are not able to find or produce
7 or work on a study to this effect, but when you
8 have very toxic -- well, certain level of the
9 chemicals are very toxic. They're presented as
10 borderline. They're at the safe level. They're
11 pretty high, but they're at the safe level, and
12 when you add up these safe levels together they're
13 still in the safe level because they're not doing
14 the synergistic study.

15 Please consider her work. Her name, by the
16 way, is Shyamali Singhal, and you'll see in your
17 documentation her letter that she wrote. Thank
18 you.

19 MR. LEFAVER: Thank you. Very, very
20 significant, and tell your wife she did a good job.

21 DAVE SINGHAL: Thank you very much.

22 MR. LEFAVER: Could we have Mr. Barry
23 Chang, please, and after Mr. Chang if we could have
24 Rhoda Fry.

25 Mr. Chang, welcome.

1 BARRY CHANG: Thank you very much. My name
2 is Barry Chang. I'm with the Bay Area for Clean
3 Environment. It's a nonprofit tax exempt public
4 charity organization.

5 This proposal here, there's a couple issues
6 here. Number one, the proposed amendment to
7 reclamation plan, the Draft EIR does not have a
8 scoping meeting. That's obviously it's against the
9 CEQA law. The CEQA requires a scoping meeting for
10 EIR, but this one doesn't have it. And the staff
11 will argue, "Well, it's not much different from the
12 previous proposal." Come on, give me a break. The
13 new proposal is a 20-acre pit mine.

14 This is an amendment to the current one,
15 number one. It's totally different. You should
16 have a scoping meeting for the EIR. That wasn't
17 done. Wasn't followed. Number one.

18 Number two, this report cannot prove it,
19 because it does not pass a clean -- the Federal
20 Clean Water Act. If you go back to SMARA, look at
21 the state Surface Mine and Reclamation Act, it's
22 clearly stated any reclamation plan approval need
23 to pass the Federal Clean Water Act. And this plan
24 does not.

25 When Bill was saying that toxic overspill,

1 it's not overspill. Bill was so nice. It's an
2 illegal dumping from Lehigh purposely dumping into
3 the Permanente Creek for over the past seven years,
4 and those waters gets into the underground aquifer,
5 and we all drink this water, and that's a public
6 health hazard. And the County is not doing
7 anything about it.

8 Number three, County has issued two notices
9 of violation to this cement plant about the quarry
10 operation. Nothing. Nothing has done. No fine,
11 no enforcement. So what are you talking about
12 here? You get another one? You are not going to
13 enforce, why you bother? Just let them have
14 whatever they want.

15 Thank you.

16 MR. LEFAVER: Thank you.

17 Rhoda Fry, please. And after Rhoda it's
18 Marvin Howell.

19 Ms. Fry, hi.

20 RHODA FRY: The Draft EIR ignores NOP
21 comments and communications from previous reports,
22 including documents written by staff.

23 Due to regulation we will pay more for
24 building products which subsidize government jobs,
25 but we're not getting our return on investment.

1 Rather, we're getting the illusion of the effective
2 regulation. This is not okay.

3 According to the OMR, Lehigh has been out
4 of compliance for over a decade for numerous
5 infractions. During this time the mountain of
6 mining waste grew and grew without review for
7 visual or health impacts.

8 Certainly you would not allow 30 acres of
9 skyscrapers to pop up without review. Lehigh has
10 managed to side step this simplest of regulations
11 like getting permits for building structures or
12 getting rid of them. Or inspections for those that
13 did not receive permits. This is particularly
14 troublesome at the emphasis site, the former
15 headquarters of Kaiser Aluminum, which manufactured
16 munitions during World War II, various silicon,
17 phosphate, fertilizer with imported serpentine and
18 pressed aluminum products.

19 The company was fined by the County and got
20 attention from the EPA, among other agencies.

21 Which leads me to the history section of
22 Draft EIR. It ain't history. It's fiction.
23 Failing to mention the toxic history or the
24 historic 50-year-old headquarters and laboratory
25 burned by arson and more is a major oversight. Yet

1 all this data resides in the County coffers.

2 Considering there is a plan to remove a bunch of
3 dirt up there, we have to ask what's in it?

4 There are also unpermitted ponds. What are
5 the cumulative impacts of running more or less
6 water through them? I implore you to set aside
7 this EIR and launch a full investigation so we can
8 understand why the County has not regulated this
9 facility. Do you really want your names on this?
10 Please. Let's get to the bottom of this debacle.

11 I have copies for you. This is four pages
12 of the 111 that were in the NOP comments. I hope
13 you read the NOP comments because there's a lot of
14 good stuff in there, particularly from the
15 Midpeninsula Open Space District and Susan Siefert.

16 MR. LEFAVER: Thank you. Be sure you get
17 your written comments to staff.

18 Mr. Howell, and after Mr. Howell could I
19 have Mr. Henrik Hesseling, please.

20 Mr. Howell, hi.

21 MARVIN HOWELL: Hi, good afternoon. My
22 name is Marvin Howell. I am the director of land
23 use planning permitting for Lehigh western region.
24 I appreciate the opportunity to talk to you today,
25 and maybe point out a couple specific things about

1 the reclamation plan that I'm very proud of.

2 First of all, at this point the EIR and
3 reclamation plan already incorporates many of the
4 comments that the County and Lehigh have received
5 from the public. The plan provides for just over
6 600 acres of reclamation of active mining area, but
7 it also sets aside about 600 acres of buffer, which
8 will not be disturbed.

9 And I want to make it very clear that we
10 own 3,500 acres of land at the site, and this
11 Reclamation Plan Amendment will not provide for new
12 mining anywhere within our ownership.

13 The plan backfills the existing mining area
14 to an elevation of about that of Permanente Creek,
15 so it stabilizes the existing quarry walls, and
16 returns the stormwater function of that area back
17 to what it was naturally. And because the pit
18 utilizes fill from the West Materials Storage Area,
19 it addresses concerns about the view shed to the
20 north of our property. In fact, when our work is
21 completed, the West Materials Storage Area will be
22 returned to the approximate elevations that existed
23 there before mining began late 1800s.

24 I just want to finish by saying that I've
25 been in the mining industry for 30 years now, and

1 I'm very proud of this reclamation plan; proud of
2 the work that our team has done, and the County of
3 Santa Clara has done. I think the planning
4 department is to be commended on the production of
5 the EIR.

6 Thank you.

7 MR. LEFAVER: Thank you, Mr. Howell.

8 Mr. Hesselning. And after Mr. Hesselning,
9 Libby Lucas, please.

10 Did I get your name right?

11 HENRIK WESSELING: Close.

12 Good afternoon, Honorable Planning
13 Commission. My name is Henrik Wesseling. As
14 department manager of the Permanente Quarry I am
15 responsible for the operation.

16 This reclamation plan describes in every
17 detail how we will reclaim our quarry and mining
18 operation; how this will be prepared for its future
19 private open space use. In preparation for this
20 reclamation plan we teamed up with many well-known
21 experts in their field of expertise: geologists,
22 hydrologists, biologists and noise experts. Each
23 of these specialists provided very detailed reports
24 for this reclamation plan.

25 We felt it was our duty to provide as

1 thorough a work product to the County as possible.
2 Not only to meet, but to exceed the high standards
3 of Santa Clara County.

4 We've gone to a great length to make this
5 reclamation plan a model of our company's
6 commitment to environmental stewardship. We
7 installed vegetation test plots back in 2010 to
8 evaluate different seed mix from the local seeds,
9 plants, and to soil compositions, and have
10 carefully analyzed the performance of a variety of
11 native plants.

12 With this reclamation plan we will plant
13 1700 oak trees; 8600 pine trees; and reclaim 637
14 acres and plant shrubs and grasses.

15 The Permanente plant and the quarry is
16 vital to the Bay Area and all of California.

17 The United States is the biggest importer
18 of cement worldwide. No other country has imported
19 as much building materials to build schools and
20 infrastructure. Everyone understands that imported
21 building materials come to the far greater
22 environmental impact, and due to the higher
23 distance -- or the longer distance and the higher
24 emissions.

25 Thank you very much.

1 MR. LEFAVER: Thank you. Thank you for
2 your comments.

3 Ms. Lucas? Libby Lucas. There you are.
4 Sorry. Hi.

5 LIBBY LUCAS: I'm Libby Lucas. I'm a Los
6 Altos resident.

7 I guess just as preliminary, I haven't got
8 my written comments ready for you today. But there
9 are two areas that I feel are still very, very
10 disturbing. One is the coordination of the water
11 district's flood control project. And in the
12 reclamation plan EIR they mention that the yield
13 from this east fork of Permanente Creek is 3.5
14 times more than the west fork, and it really -- the
15 report they're quoting pointed out that under the
16 '86 heavy rain scenario it was 20 times more
17 sediment yield coming from the east fork than the
18 west fork, and in that one year they measured
19 53,000 tons, and you get that as sort of a wave
20 going downstream, and it is really very deadly
21 going through neighborhoods and the downtown
22 Mountain View particularly, where it ends up.

23 And I think that what you need for a buffer
24 is not the buffer they're talking about, but
25 terracing below the entire project area with very

1 thick, thickets of willows, something to catch the
2 sediment if indeed you have an earthquake because
3 you are on two or three earthquake fractures that
4 come out of the San Andreas Fault, and it's a very
5 volatile area if you're going to look at global
6 warming and the intensity of rainstorms that we
7 haven't begun to see materialize like they have
8 elsewhere in the world and in the United States.

9 The second aspect is the fact that the
10 underground groundwater movement has not been
11 accurately assessed for pollutants. Basically
12 there are 17 cow water drinking water wells below
13 this area that the groundwater is feeding into, and
14 the selenium, arsenic, mercury may not be showing
15 up so terribly badly now, but it's cumulative.

16 We've been working on the Moffet Field
17 Superfund cleanup for over 20 years, and they
18 haven't begun to take care of that toxic
19 underground plume.

20 So I would just say that you have to have a
21 really solid barrier for all the contaminants that
22 are coming out of this plant so that it does not
23 further impact that groundwater.

24 Thank you very much.

25 MR. LEFAVER: Thank you.

1 Our last speaker is Tim Brand. Mr. Brand?

2 Mr. Brand, welcome.

3 TIM BRAND: Thank you. I have a very
4 hoarse voice. I apologize.

5 My name is Tim Brand, and I have witnessed
6 the manner in which this cement company operates
7 for the past 26 years. They don't follow the
8 rules. They do what they want, when they want to
9 and deal with the consequences using lawyers and
10 public officials who now work for them after
11 they've left office. Two of them are here tonight,
12 Sandra James, ex-mayor of Cupertino, and Jim
13 Cunneen, ex-state assemblyman, who now work for
14 them. Sandra is sitting with the other
15 professional liars from Lehigh Cement tonight.

16 The appendix of this EIR is much better
17 reading than the body of the EIR. Numerous people
18 and organizations have sent in lists of the past
19 ongoing serious violations of the law that the
20 cement company has committed with little or no
21 repercussions. They decided to building a mountain
22 of mining waste near our homes, for example, called
23 the EMSA in utter violation of their existing
24 reclamation plan. And they will not suffer a
25 single consequence.

1 What is particularly upsetting to this
2 community is that they did it right in front of our
3 face while we protested loudly.

4 The EIR should be a realistic estimate of
5 the impacts of the project; not merely the impact
6 of the intended project because we have ample
7 evidence that Lehigh does not respect the plan.
8 The road to hell is paved with good intentions.

9 To estimate the real impacts of the
10 project, the report should provide a detailed
11 accounting of all the violations this company has
12 committed and how well the corrective action turned
13 out.

14 Bear in mind in the case of the illegal
15 mountain outside our homes, the corrective action
16 is to change the plan to legalize their past action
17 with no penalties using this new Reclamation Plan
18 Amendment as the vehicle.

19 The EIR should also look, for example, at
20 how well the West Material Storage Area has been
21 reclaimed. It hasn't, despite the fact that it was
22 in their plan and required by the 1985 plan.

23 A great deal of public input regarding this
24 subject can be found in the EIR appendix, but
25 little or none in the body of the EIR report

1 itself. Here are some examples.

2 MR. LEFAVER: Excuse me. Thank you,
3 Mr. Brand.

4 TIM BRAND: Okay.

5 MR. LEFAVER: Just to make sure you get
6 your written comments to the staff.

7 TIM BRAND: Okay.

8 MR. LEFAVER: It sounds like you have some
9 more.

10 TIM BRAND: I have a lot more.

11 MR. LEFAVER: Okay. Thank you.

12 We do have one more speaker, and that's
13 Mr. Latshaw. Thank you, Mr. Lachon.

14 GARY LATSHAW: Thank you for the time.

15 I speak to you as a resident of Cupertino
16 and a volunteer with the Sierra Club. So one of
17 the comments is about selenium. Written comments
18 which we'll submit subsequently. There is the word
19 infeasible used in terms of achieving the
20 objectives of five micrograms per liter of selenium
21 content. We think this needs a new look at before
22 the final.

23 The second comment is about milestones.

24 The milestones in the current EIR are many years:
25 nine years, five years. I think it would be very

1 beneficial to put in monthly, or in worst case
2 quarterly milestones. That would go a long way
3 with both the County monitoring what's going on,
4 and establishing some sort of credibility in the
5 community of Cupertino and surrounding cities.

6 Also as discussed in the last public
7 hearing that there is a financial assurance of 47.8
8 million dollars. That's a lot of money. I think
9 it should reveal -- you should reveal the source of
10 that guarantee.

11 Finally is the EIR separates out the cement
12 plant operation, very specifically identified.
13 This is really unrealistic in evaluating the total
14 impact of the environment. This is particularly
15 disturbing since in recent months or days I've
16 learned, over the last few months, Lehigh has been
17 importing other limestone for processing. So we
18 have to look at the combined. That was told to me
19 verbally by the Bay Area Air Quality Management
20 District.

21 So thank you very much for your time.

22 MR. LEFAVER: Thank you very much, and
23 thank you for being very specific and articulate.
24 I appreciate it.

25 I have no more comments filled out at this

1 time. If there is anyone else who wishes to speak
2 and give me, the Commission and the staff your
3 comments, I'd appreciate it.

4 Seeing none, we'll conclude the acceptance
5 of oral comments at this time, and I will close
6 this public meeting dealing with the Draft
7 Environmental Impact Report for the reclamation
8 plan.

9 Just a reminder that written comments can
10 be submitted to staff until February 21. And those
11 comments will certainly be welcome.

12 That does close this public meeting for the
13 draft environmental impact report.

14 (The hearing was adjourned
15 at 2:32 p.m. this date.)

16 --- oOo ---

17

18

19

20

21

22

23

24

25

1 I, DIANE S. MARTIN, duly authorized to
2 administer oaths pursuant to Section 2093(b) of the
3 California Code of Civil Procedure, do hereby certify:
4 That the witness in the foregoing deposition was
5 administered an oath to testify to the whole truth in
6 the within-entitled cause; that said deposition was
7 taken at the time and place therein cited; that the
8 testimony of the said witness was reported by me and
9 was thereafter transcribed under my direction into
10 typewriting; that the foregoing is a complete and
11 accurate record of said testimony; and that the witness
12 was given an opportunity to read and correct said
13 deposition and to subscribe the same.

14 Should the signature of the witness not be
15 affixed to the deposition, the witness shall not have
16 availed himself/herself of the opportunity to sign or
17 the signature has been waived.

18 I further certify that I am not of counsel nor
19 attorney for any of the parties in the foregoing
20 deposition and caption named nor in any way interested
21 in the outcome of the cause named in said caption.

22 Dated: _____, 2012,

23
24 _____
DIANE S. MARTIN, CSR NO. 6464

25