

DEPARTMENT OF TRANSPORTATION

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

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*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 Permanente 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.

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

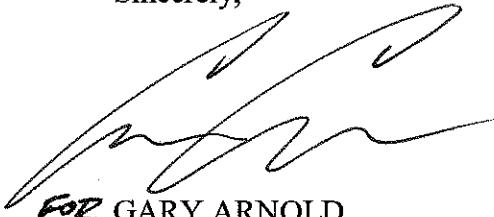
Work that encroaches onto the State right-of-way (ROW) requires an encroachment permit that is issued by the Department. To apply, a completed encroachment permit application, environmental documentation, and five (5) sets of plans clearly indicating State ROW must be submitted to the address below.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

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.



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:

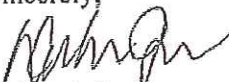
Enclosed for your information is a copy of a Notice of Violation and Finding of Violation ("NOV/FOV") that the United States Environmental Protection Agency ("EPA"), Region IX, issued to the Lehigh Southwest Cement Company ("Lehigh") for violations of the Clean Air Act ("Act") at Lehigh's Portland cement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

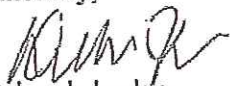
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If you have any questions concerning this NOV/FOV, please contact Charles Aldred of the Region 9 Air Enforcement Office at (415) 972-3986, or aldred.charles@epa.gov.

Sincerely,


Deborah Jordan
Director, Air Division

Enclosure

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

In the Matter of:

LEHIGH SOUTHWEST CEMENT COMPANY

Proceeding under Section 113(a)
of the Clean Air Act,
42 U.S.C. § 9613(a)

)
)
) Docket No. R9-10-02
) NOTICE OF VIOLATION
) AND FINDING OF
) VIOLATION
)
)

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.

NO_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 SO₂, 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.

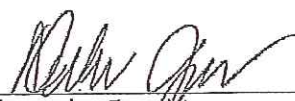
OPPORTUNITY FOR CONFERENCE

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

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](#).

From: Barry Chang <barry.bace@gmail.com>
Date: August 31, 2011 7:04:00 PM PDT
To: Marina Rush <marina.rush@pln.sccgov.org>
Cc: Law Offices of Stuart Flashman <stu@stuflash.com>, jim.pompy@conservation.ca.gov, stephen.testa@conservation.ca.gov, Zimpfer.Amy@epamail.epa.gov, mcdaniel.doug@epa.gov, Jordan.Deborah@epamail.epa.gov, murphy.ann@epamail.epa.gov, dwhyte@waterboards.ca.gov, drice@waterboards.ca.gov, srl@waterboards.ca.gov, CBoschen@waterboards.ca.gov, CCarrigan@waterboards.ca.gov, cepacomm@calepa.ca.gov, Gregory.A.Tenorio@conservation.ca.gov, derek.chernow@conservation.ca.gov, bruce.reeves@conservation.ca.gov, "Weber, Marni" <Marni.Weber@conservation.ca.gov>, watson.diane@dol.gov, jennifer.kaahaaina@deh.sccgov.org, tstevens@dfg.ca.gov
Subject: Re: Letters

Dear Marina,

It was nice meeting you last night at Cupertino Quinlan Community Center.

Yes. I want to submit those two documents as part of my comments. Mr. Reed Zars is the attorney for Sierra Club. He sent the notice of intent to sue letter to Lehigh Southwest Cement Plant/Permanente Quarry (Lehigh) for violation of Federal Clean Water Act. In the letter, it clearly stated that Lehigh has violated the Federal Clean Water Act. Please see attached file.

The EPA's March 10, 2010 Notice and Finding of Violation is for Lehigh Southwest Cement Plant in Cupertino. On page 1 of the Notice of Violation/Finding of Violation, it also clearly spelled out that Lehigh is in violation of Federal Clean Air Act. I also attached EPA's NOV here.

Please correct me if I am wrong. My understanding is: California State Law requires that the facility to be in compliance of the Federal Clean Water Act and Clean Air Act before any mining operation can obtain an approval of the reclamation plan.

Lehigh clearly is not qualified for an approval of its reclamation plan they just submitted to Santa Clara County in July 2011. Shall Santa Clara

County hold off Lehigh's application until Lehigh is in compliance with Federal Law?

Lehigh's plant manager told me in April, 2010 that its current pit mine will run out of limestone deposit in 3 to 5 years. That was why they were applying for a new 200 acres open pit mine. But, in your presentation last night, you said Lehigh proposed a 12 years operation without a new pit mine or expansion. Where does the estimated 12 years operation come from? Please show me the geologist's estimate of the limestone deposit and the annual consumption. And, what is Lehigh's plan after 12 years? Will Lehigh plan to apply for a new pit mine later? If Lehigh applies for a new pit mine later, how Santa Clara County as a lead agency is going to respond? Would that be a violation of California Environmental Quality Act (CEQA)? Santa Clara County residents deserve an answer now. Also, How can Lehigh backfill the current pit mine to stabilize the landslides while continue excavation? This will create a great engineering difficulty with potential dangers. It requires a detail engineering plan. I did not see it in Lehigh's application. Given Lehigh's bad miner's safety record with Mining Safety and Health Agency (MSHA), Department of Labor (see attached files), I am very concerned about Lehigh's rush and harsh application. Should you have any question, please feel free to call me. Thank you.

Barry Chang

On Wed, Aug 31, 2011 at 1:54 PM, Marina Rush

<marina.rush@pln.sccgov.org> wrote:

Hi Barry

You handed me a copy of the letter from Reed. I wanted to let you know that the copy you provided did not include the attachments referenced.

You also provided a copy of an EPA Notice and Finding of Violation, which states that this notice relates to the "Lehigh Portland cement plant."

Please confirm what your intentions are related to these letters. Are you

submitting them as comments for the Notice of Preparation (NOP)?

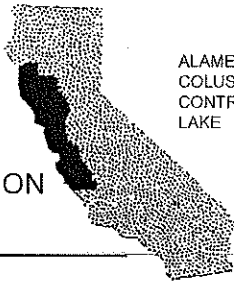
thank you

marina

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](tel:(408)299-5784)
Fax: [\(408\) 288-9198](tel:(408)288-9198)

2011 8-24 Final Lehigh Notice letter[1].pdf →EPA's Notice of Violation to
Lehigh Southwest Cement Plant.pdf →MSHA Announces Results of
November Impact Inspections 2010.doc →

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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

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

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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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11 AUG 17 AM 10:07

- 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



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:

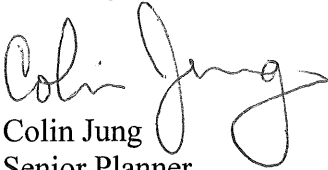
Thank you for the opportunity to comment on the Notice of Preparation (NOP) for the above captioned project. The City of Cupertino has the following comments for the preparation of the environmental impact report (EIR):

- 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,

A handwritten signature in cursive script, appearing to read "Colin Jung".

Colin Jung
Senior Planner
City of Cupertino

Written Comments

If you would also like to provide written comments for the record, please write your comments below:

I would like to know what
pollution is in the overfence with
the EMSA + WMSA.
Why are you not forcing Down
under the EMSA to see what
contamination/pollution was left
from the illuminine ~~for~~ ammunition
plant years back.

Cathy Helgerson, Aug 30, 2011

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

Written Comments

If you would also like to provide written comments for the record, please write your comments below:

WHERE IS PERMANENTE CREEK CHANNEL ?
WHAT RESTORATION OF WETLANDS PLANNED ?
WHAT HAS HAPPENED TO RED-LEGGED FROG
COLONY AND CRITICAL HABITAT ?

Libby Lucas, Aug. 30, 2011

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



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Midpeninsula Regional Open Space District

GENERAL MANAGER
Stephen E. Abbors

BOARD OF DIRECTORS
Pete Siemens
Yoriko Kishimoto
Jed Cyr
Curt Riffle
Nonette Hanko
Larry Hassett
Cecily Harris

September 23, 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 Reclamation Plan Amendment (Consolidated) 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, February 3, 2011, and May 17, 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 remains concerned with the proposed East Materials Storage Area (EMSA) currently referenced as "the main overburden storage site for the mining operation". The waste pile continues to grow in size, outside the approved limits of the 1985 Reclamation Plan (now sunset) 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. We question the determination by the County Board of Supervisor's that the EMSA is a vested portion of the quarry operation, and instead concur with the County staff analysis that instead determined that quarry operations had not existed at this location historically, and that quarry operations were initiated recently without proper approval.

The following environmental concerns should be addressed in the proposed EIR:

Visual Impacts

The East Materials Storage Area would 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 that a continuous air quality monitoring and reporting program be immediately established to acquire baseline data. 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 currently unauthorized East materials storage area. 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 EMSA. 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 EIR must include a detailed analysis of the quarry to establish and present a better understanding of the level impacts associated with the 1985 Reclamation Plan, the existing quarry operation, and the future operation currently proposed. The reclamation plan amendment EIR plan sheets and cross-sections should include in detail what was approved in 1985 (quarry pit depth, storage area heights, and boundaries), existing ground elevations based on current 2011 topography, and proposed quarry pit depth and boundaries. This will better establish the scope of the Reclamation Plan Amendment and provide the framework for environmental review.

The cumulative water resources impacts need to evaluate potential impacts to Permanente Creek and to groundwater given that Permanente Creek has been severely impacted by past quarry practices. Of particular concern is the proposal to deepen the existing quarry pit by an additional 60 feet, below the existing ground water table. It is reasonable to assume that this proposed change may result in a substantial cumulative impact to groundwater and Permanente Creek.

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 proposed waste pile at the EMSA 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, 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 and halt the unprecedented acceleration of visual impacts at the EMSA.

The alternatives analysis should also include an evaluation regarding the proposed vegetated buffer zones. While we agree with the stated goal to maintain these areas as undisturbed buffers we are concerned that including these areas within the Reclamation Plan boundary may actually justify disturbance. The alternatives should include an assessment of the best way to permanently protect these areas including potentially eliminating these buffer zones from the reclamation plan, and/or other alternatives such as dedicated conservation easements.

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,

A handwritten signature in black ink, appearing to read "Matt Baldzikowski". The signature is fluid and cursive, with the first name "Matt" being more prominent.

Matt Baldzikowski, Resource Planner II

cc: District Board of Directors
Stephen E Abbors, District General Manager
Jim Pompy, OMR
Chairman Garner and Members of the State Mining and Geology Board



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Midpeninsula Regional Open Space District

GENERAL MANAGER
Stephen E. Abbors

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Curt Riffle
Nonette Haniko
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



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| 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.

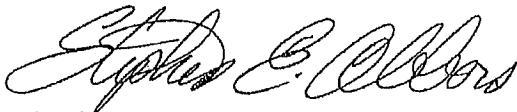
The quarry haul road identified in the far northeast corner of the Morris parcel appears to be Permanente Road, dedicated to the public in 1893, predating any quarry operations. It is entirely inappropriate to identify it as a quarry haul road to justify a vested rights determination. The road is also 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. Abbots

BOARD OF DIRECTORS
Pete Siemens
Mary Dayey
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

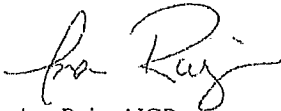
The timeline for waste disposal within the EMSA is also of concern. At the recent April 28th public hearing it was stated that existing quarry sales are 50% of normal. This has the potential to double the projected 5-year timeframe, which already seemed overly optimistic. It is also unclear if the waste 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

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

NATIVE AMERICAN HERITAGE COMMISSION

915 CAPITOL MALL, ROOM 364
SACRAMENTO, CA 95814
(916) 653-4082
(916) 657-5390 - Fax



August 30, 2011

Marina Rush

Santa Clara County
70 W. Hedding Street
7th Floor, East Wing
San Jose, CA 95110

RE: SCH# 2010042063 Reclamation Plan Amendment (Consolidated) for Permanente Quarry (State Mine ID # 91-43-004) Santa Clara County.

Dear Ms. Rush:

The Native American Heritage Commission (NAHC) has reviewed the Notice of Preparation (NOP) referenced above. The California Environmental Quality Act (CEQA) states that any project that causes a substantial adverse change in the significance of an historical resource, which includes archeological resources, is a significant effect requiring the preparation of an EIR (CEQA Guidelines 15064(b)). To comply with this provision the lead agency is required to assess whether the project will have an adverse impact on historical resources within the area of project effect (APE), and if so to mitigate that effect. To adequately assess and mitigate project-related impacts to archaeological resources, the NAHC recommends the following actions:

- ✓ Contact the appropriate regional archaeological Information Center for a record search. The record search will determine:
 - If a part or all of the area of project effect (APE) has been previously surveyed for cultural resources.
 - If any known cultural resources have already been recorded on or adjacent to the APE.
 - If the probability is low, moderate, or high that cultural resources are located in the APE.
 - If a survey is required to determine whether previously unrecorded cultural resources are present.
- ✓ If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
 - The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum, and not be made available for public disclosure.
 - The final written report should be submitted within 3 months after work has been completed to the appropriate regional archaeological Information Center.
- ✓ Contact the Native American Heritage Commission for:
 - A Sacred Lands File Check. USGS 7.5 minute quadrangle name, township, range and section required.
 - A list of appropriate Native American contacts for consultation concerning the project site and to assist in the mitigation measures. Native American Contacts List attached.
- ✓ Lack of surface evidence of archeological resources does not preclude their subsurface existence.
 - Lead agencies should include in their mitigation plan provisions for the identification and evaluation of accidentally discovered archeological resources, per California Environmental Quality Act (CEQA) §15064.5(f). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American, with knowledge in cultural resources, should monitor all ground-disturbing activities.
 - Lead agencies should include in their mitigation plan provisions for the disposition of recovered artifacts, in consultation with culturally affiliated Native Americans.
 - Lead agencies should include provisions for discovery of Native American human remains in their mitigation plan. Health and Safety Code §7050.5, CEQA §15064.5(e), and Public Resources Code §5097.98 mandates the process to be followed in the event of an accidental discovery of any human remains in a location other than a dedicated cemetery.

Sincerely,

Katy Sanchez
Program Analyst
(916) 653-4040

cc: State Clearinghouse

Native American Contact List

Santa Clara County

August 30, 2011

Indian Canyon Mutsun Band of Costanoan
Ann Marie Sayers, Chairperson
P.O. Box 28 Ohlone/Costanoan
Hollister , CA 95024
ams@indiancanyon.org
831-637-4238

Amah Mutsun Tribal Band
Valentin Lopez, Chairperson
PO Box 5272 Ohlone/Costanoan
Galt , CA 95632
vlopez@amahmutsun.org
(916) 481-5785

Jakki Kehl
720 North 2nd Street Ohlone/Costanoan
Patterson , CA 95363
jakki@bigvalley.net
(209) 892-1060

Amah/Mutsun Tribal Band
Irene Zwielerlein, Chairperson
789 Canada Road Ohlone/Costanoan
Woodside , CA 94062
amah_mutsun@yahoo.com
(650) 851-7747 - Home
(650) 851-7489 - Fax

Katherine Erolinda Perez
PO Box 717 Ohlone/Costanoan
Linden , CA 95236
canutes@verizon.net
(209) 887-3415
Northern Valley Yokuts
Bay Miwok

Amah Mutsun Tribal Band
Edward Ketchum
35867 Yosemite Ave Ohlone/Costanoan
Davis , CA 95616
aerieways@aol.com
Northern Valley Yokuts

Trina Marine Ruano Family
Ramona Garibay, Representative
30940 Watkins Street Ohlone/Costanoan
Union City , CA 94587
soaprootmo@msn.com
510-972-0645-home
209-688-4753-cell
Bay Miwok
Plains Miwok
Patwin

Amah/Mutsun Tribal Band
Joseph Mondragon, Tribal Administrator
882 Bay view Avenue Ohlone/Costanoan
Pacific Grove, CA 94062
831-372-9015
831-372-7078 - fax

This list is current only as of the date of this document.

Distribution of this list does not relieve any person of the statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code.

This list is only applicable for contacting local Native Americans with regard to cultural resources for the proposed SCH# 2010042063 Reclamation Plan Amendment (Consolidated) for Permanente Quarry (State Mine ID # 91-42-004): Santa Clara County.

Native American Contact List

Santa Clara County

August 30, 2011

Amah/Mutsun Tribal Band

Melvin Ketchum III, Environmental Coordinator
7273 Rosanna Street Ohlone/Costanoan
Gilroy , CA 95020
408-842-3220

Linda G. Yamane
1585 Mira Mar Ave
Seaside , CA 93955
rumsien123@yahoo.com
831-394-5915

Ohlone/Costanoan

Muwekma Ohlone Indian Tribe of the SF Bay Area

Rosemary Cambra, Chairperson

2574 Seaboard Avenue Ohlone / Costanoan
San Jose , CA 95131
muwekma@muwekma.org
408-205-9714
510-581-5194

Amah/Mutsun Tribal Band

Jean-Marie Feyling
19350 Hunter Court Ohlone/Costanoan
Redding , CA 96003
jmfgmc@sbcglobal.net
530-243-1633

The Ohlone Indian Tribe

Andrew Galvan
PO Box 3152 Ohlone/Costanoan
Fremont , CA 94539 Bay Miwok
chochenyo@AOL.com Plains Miwok
(510) 882-0527 - Cell Patwin
(510) 687-9393 - Fax

This list is current only as of the date of this document.

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This list is only applicable for contacting local Native Americans with regard to cultural resources for the proposed SCH# 2010042063 Reclamation Plan Amendment (Consolidated) for Permanente Quarry (State Mine ID # 91-42-004): Santa Clara County.

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.

Consequently 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.



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

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

EXHIBIT A

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

Michael L. Harrison,
Acting Building Official

Attachment

*Please see other side

EXHIBIT A

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.

**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.

EXHIBIT B

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:

EXHIBIT B

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,



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

EXHIBIT C

State of California

DEPARTMENT OF CONSERVATION

OFFICE OF MINE RECLAMATION

MRR-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	✓				91-43-0014
Revegetation	✓				
Agricultural Land				✓	Weather Code(s):
Stream Protection	✓				CR
Tailings and Mine Waste Management	✓				Duration of Inspection:
Building, Structure, and Equipment Removal				✓	2.0 hr.
Topsoil Salvage, Maintenance, and Redistribution	✓				Approximate Disturbed Acreage:
Backfilling, Regrading, Slope Stability, and Recontouring	✓				200
Drainage, Diversion Structures, Waterways, and Erosion	✓				Status of Operation Code(s):
Other (list or explain below)					A
					Status of Reclamation Code(s):
					R

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. 23, 1997. This inspection report is to cover the calendar years of 1998, 1999, and 2000.

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

DISTRIBUTION: White—Operator Green—State (by Lead Agency) Pink—Lead Agency Goldenrod—State (by Operator) Canary—BLM or USFS (if required)

EXHIBIT D

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:

EXHIBIT D

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

EXHIBIT D

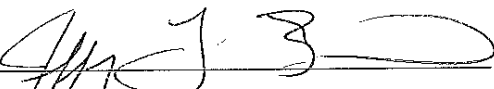
of the County's legal authority, including but not limited to its enforcement authority under SMARA.

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.

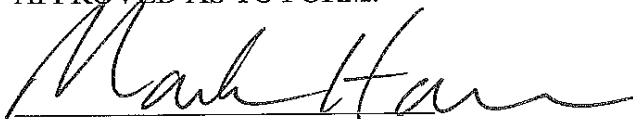
LEHIGH SOUTHWEST CEMENT COMPANY,

By: 

(SEAL)

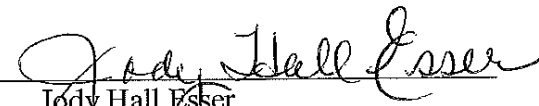
ATTEST: _____

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:

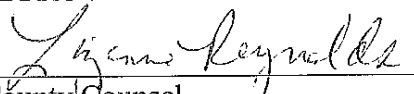

County Counsel

EXHIBIT E

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.

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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.

EXHIBIT E



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.

EXHIBIT E

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).

EXHIBIT E

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

EXHIBIT E

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.

EXHIBIT E

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

EXHIBIT E

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

EXHIBIT E

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.

Attention: 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 Control Board

Re: West Valley Citizens Air Watch (WVCAW) and Bay Area Clean Environment (BACE) Scoping Comments on Lehigh Application for Reclamation Amendment/Mining Plan, dated July 2011

1) West Valley Citizens Air Watch and Bay Area Clean Environment requests that SCC incorporate all our written and oral public comments regarding Lehigh Southwest Reclamation Amendment and/or Proposed New Mining Plans, both oral and written, for the various scoping and other comments on this topic and for the various iterations of these meetings and documents from 2006 to the present for the record of this current scoping comment period, which is scheduled according to Santa Clara County (SCC), to conclude on September 26, 2011.

2) WVCAW and BACE ask that all NOV's and violations issued to Lehigh Southwest Cement Company and its predecessors in the last 26 years (i.e. since the signing of the 1985 reclamation plan by the SCC BOS) be clearly listed in an appendix to the Draft Environmental Impact Report (dEIR) stating the agency, the date of issuance, the type of violation a short description of the violation, duration of the violation and date of required compliance and whether or not full compliance has been achieved, and if so, the date of full compliance. For example NOV's and violations and findings of violations issued by: EPA, and/or EPA Region 9, Regional Water Quality Control Board, Bay Area Air Quality Management District (BAAQMD), Occupational Safety and Health

Administration (OSHA), Mine Safety and Health Administration(MSHA), the Permanente Quarry and Stevens Creek Quarry portions of the 2006 Executive Director of the SMGB Report of SMARA violations in SCC quarries. The public has the right to review this relevant information in order to make their comments on the dEIR and on its Alternatives.

3) The California Environmental Quality Act (CEQA) provides for full and complete disclosure of projects which may cause significant detrimental effects on the environment and for the opportunity for the public to comment upon those disclosures. We ask for a full, true and complete CEQA process and disclosures in the dEIR which SCC will develop and release to the public for their comments. The CEQA process also asks the agency or body designated to review and decide on the EIR to take a fresh look at the proposed project. The EIR process is not intended nor supposed to be undertaken with a predetermined decision. We ask the BOS for true and complete compliance with CEQA.

4) WVCaw & BACE ask that a true, complete and CEQA compliant No Project Alternative be presented in the dEIR so the public can compare it to other alternatives and comment on it.

5) WVCaw & BACE ask that a true, complete and CEQA compliant Environmentally Protective Alternative be presented in the dEIR so the public can compare it to other alternatives and comment on it. This alternative should, for example, include the stabilization of the slopes and restoration of the Scenic Easement height, not include additional mining below the current elevation of approximately 750' above sea level (further discussed below) of the Main Pit (aka "North Pit"), not include additional height above the baseline 2007 sea level height of the East Materials Storage Area (EMSA), not include new mining into the West Materials Storage Area (WMSA), and either include reclamation of the entire footprint of the previous cement plant location and an adequate Financial Assurance (FACE) for its reclamation under SMARA OR this area needs to be removed from any vested interest designation (further discussed below) and subjected to a Permit Application if any mining is planned for any of this area. Perhaps this suggested alternative which removes the vested designation from this area is more appropriate for the Environmentally Protective Alternative.

6) WVCAW & BACE ask that a true, complete and CEQA compliant alternative which contains a SMARA compliant reclamation plan for all the areas currently disturbed by mining and mining operations (from all time periods including the present and ongoing) be presented in the dEIR period. That is, without any additional mining operations or expansion or mining into the WMSA or dumping onto the EMSA so the public can compare it to other alternatives and comment on it. We ask that it include diagrams that clearly identify the pre-dumping EMSA as well as the current condition of the EMSA, using topographical lines and cross sections. We ask for this alternative to include moving the height of the WMSA (if not toxic or hazardous or polluting) and placing it in the bottom of the Main Pit (aka "North Pit") or if toxic, trucking in other non toxic and non hazardous and non polluting materials to dump in the bottom of the main pit. The proposed expansion of the EMSA which both increases the elevation and decreases the distance to the nearby residential area (which is less than 1/2 mile away) is completely unacceptable due to the major view shed impact as well as the noise and dust the neighbors must endure.

7) On March 10, 2010, the EPA issued a NOV to Lehigh. The cover letter from the EPA Region 9 stated, "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."

On page 4 of the NOV, the EPA stated, "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 ."

Does the SCC BOS intend to approve the applicants reclamation/mining plan before this serious matter is resolved with the EPA? If so, what is your justification for doing so? Isn't it premature to put out a scoping period before resolution of this matter?

8) It has come to our attention that the Sierra Club on August 24, 2011 issued a, "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."

We were frankly horrified to see the allegations that, "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 Sub basin aquifer. The Santa Clara Sub basin aquifer is the primary reservoir of drinking water for San Jose and surrounding cities." (p. 2)

"Due to chronically elevated levels of selenium and toxicity immediately downstream from the Permanente facility, EPA recently approved the listing of Permanente Creek as impaired for these pollutants. Exhibit E, EPA Approval Letter, November 12, 2010." (p. 4)

Does the SCC BOS intend to approve the applicants reclamation/mining plan before this serious matter is resolved with the EPA? If so, what is your justification for doing so? Isn't it premature to put out a scoping period before resolution of this matter?

9) We ask for clear disclosure of types and amounts of materials proposed to be extracted including limestone, aggregate, and overburden as required by CEQA. In addition, a comprehensive review of the estimates given in the 1985 Reclamation Plan compared with the actual volume of limestone, aggregate, and overburden extracted during the 20 year duration of the plan from 1985 to 2005. This disclosure will help the public evaluate the new proposals and provide a basis to estimate if they are realistic.

Also, the dEIR should report in detail on how the Lehigh operation has or has not complied with all aspects of the requirements of the 1985 reclamation plan.

To avoid confusion, we herein point out the area referred to as the EMSA in the 1985 plan is in a completely different location (far west of the current EMSA and adjacent to the main pit) and orders of magnitude smaller than the current area referred to as the EMSA. This appears to further strengthen the indication that the current area of the EMSA was not intended to be used as a storage area under the 1985 plan.

10) Although a NOV was issued by SCC to Lehigh regarding their use of the current EMSA area to dump mining materials and otherwise use it in mining operations only after a member of WVCAW had to push SCC to investigate the dumping of materials. Lehigh was neither required to remove the pile or stop dumping. A fine was never issued. This incident illustrates why we in the community lack confidence in SCC as the lead agency for the mining operation and of the adequacy of the oversight of the SCC BOS.

11) We need to see clear baseline topographic lines disclosed of the entire EMSA area from before the dumping of the pile, for which an NOV was issued by SCC on or around 2008 for dumping mining materials in an area without a valid reclamation plan in place. We need to be able to compare pre-dump elevations with the proposed Stages B & C. We ask for illustrations of the view shed from Stevens Creek Blvd, Cristo Rey Drive pullout, from the PG&E trail on the "Power Line Trail" located to the west side of Rancho San Antonio Open Space District, homes and businesses within a 2 mile area so we can see visual impacts and understand potential noise, dust, pollution and other impacts and their implications.

The so-called "current conditions" referring to topographical sea level elevations on the Stage A, B and C cross sections give no clear indications of their date. There are confusing dates on many of the maps which do not give clear indications of the actual date that is being mapped versus the date of either production of the map or of sign-off of the map. Many maps do not have signatures and stamps. "Current conditions" is not the baseline. The baseline needs to be the pre-dump elevations. It is obvious that the "current conditions" at this date of the pile are clearly visible and disturbing and unacceptable and are not the baseline condition.

What is the date of "Current Conditions?" The EMSA elevations before the dumping began need to be delineated on a map.

In addition to including these numbers in a readable and large enough form, that is, on a map with the same size as the Phase A, B and C which we request, we ask that the public be allowed to enter additional scoping comments at a future date after this information is available. The information provided so far simply does not allow the public to evaluate this issue well enough to ask the right questions at this time.

A reclamation to pre-dump elevations needs to be in either the No Project Alternative or in the Environmental Alternative.

12) Show locations on a revised Woodlands Impacts map of each tree 5" \geq DBH proposed to be removed and explain why they need to be removed and the impacts of their removal and the impacts of related habitat and species migration areas, avian for example. How is this a reclamation plan if over two hundred trees of significant size will be removed, further enlarging the already huge dead zone of the mining operations and cement plant footprints? On the WRA Woodlands Impacts map there is no documentation of the trees in the EMSA. Yet other maps show oak woodland areas. Include these trees and their locations.

13) A) The level of the Main Pit according to the maps is now approximately 750' above sea level. However, our understanding is that this level may already be below the water table. What is the level of the water table? Why has the pit been allowed to be blasted deeper than the water table? How much contamination is in the water because of that? How much contamination in Permanente Creek because of that? How much contamination is in our drinking water or may find its way into our drinking water in the future? Why has that been allowed to continue by SCC?

B) The maps propose to allow the pit to be dug down yet further to approximately 400' !!!! How can this possibly be justified? Consider all the issues we raised in 13) A above and respond to them. How can SCC possibly justify allowing additional lowering of the Main Pit (North Pit) farther into the water table? We ask this not be allowed.

14) A) SCC is trying to have it both ways regarding the cement plant. Either the current and former cement plant footprints and operations are and were not part of the mining operation and therefore their areas are NOT vested mining areas, OR they are part of the mining operations and need both a reclamation plan and an adequate FACE. This is completely inadequate oversight by SCC as a lead agency over the mining operations. This plan should not go one step forward until SCC resolves this issue of the cement plants one way or the other.

B) We have repeatedly asked for in written communications with SCC a map by the SCC geologist outlining the location of the former cement plant. This is necessary if this reclamation plan is to continue to go forward. The water tower that is visible in the western section of the EMSA appears to be a clear marker by which an approximation of the location of the former cement plant can be located.

C) The cement plant area is within Cupertino's Urban Service Area as Very Low Density Residential, NOT industrial use. In fact, the City of Cupertino General Plan 2000-2020 proposes a trail extension through the area "when the Railroad (Union Pacific RR that serves Lehigh Cement) goes out of service in 20 years" This area must be appropriately reclaimed for this use to occur.

(pages 2-50, 2-51 City of Cupertino General Plan 2000-2020)

<http://www.cupertino.org/index.aspx?page=709>

15) Core sampling WMSA. Minimal core samples were taken in WMSA. This is completely inadequate. Since sometime in the 1800's all kinds of unknown materials have been dumped into the WMSA. There could be hazardous waste and other pollutants from various operations throughout the years contained therein. Planning to dig into this area for limestone and to truck it and dump it into other areas could be hazardous to the workers as well as nearby residents. Many more samples need to be taken and at various levels. Even then, how can one tell what may be in any one area. This needs to be mitigated with more extensive testing.

16) Mid-Peninsula Slide - The Mid-Pen slide occurred in 2001 during a heavy rain. Are the geological stability studies not supposed to account for heavy rain? This landslide destroyed part of the Mid-Pen Regional Open Space District's Rancho San Antonio Preserve. A land swap was orchestrated by Lehigh and SCC and as far as we are aware, no fines were levied against Lehigh.

As part of the land swap agreement, Lehigh agreed not to sell any product from the exchanged property for mining material. If the proposed grading of Mid-Pen does occur, will anyone be accountable for observing that Lehigh does not try to sell the graded material?

17) The population of SCC was approximately 60,000 when mining commenced. Today the population of Santa Clara County is around 2 million

people. It is now a completely different situation. When the mining was started, few homes and businesses and schools (if any) and probably no health and retirement facilities were located nearby. Now there is a large population of all those. This must be considered in impacts and in whether or not it is acceptable to mine in this location at this present time.

18) Buffer Zones

Figure 1.0.6 "RPA Area" shows virtually no boundary between the EMSA and the City of Cupertino. This is significant because the EMSA is very close to a highly populated area of Cupertino. Why are the buffer zones mostly to protect the rest of Lehigh property and not the citizens living in close proximity?

19) Hydrological Investigation, May 2010: Golder Associates, May 2010

A) p. ES-1, 063-7109 . The statement that Permanente Creek tends to be dry adjacent to the Main Pit ("North Quarry") in dry months. Those of us that hike Rancho San Antonio crossing over Permanente Creek just downstream from Lehigh are of the impression that it generally contains water. Please investigate and respond.

B) p. ES-2. Second bullet states that, simultaneous development of South Quarry and the reclamation of the North Quarry will have no measureable impact on groundwater discharge, stated again on p. 16, to Monte Bello Creek and the upper reaches of Permanente Creek. How do they know this? Water conditions were characterized over a one year period. This does not appear to be representative of for example a 5 year period. Only 4 samplings were collected. We ask that an adequate amount of samples be gathered and analyzed.

C) The application references the active quarry as the "North Quarry", which infers that Lehigh already has plans for a second quarry. In fact they have already included plans for additional quarries in previous applications and the public has good reason to believe that Lehigh intends to submit a second application at some point. If Lehigh already has plans to open a new open pit mine during the term of the proposed reclamation plan then that should be disclosed and included in the dEIR. If their goal is accomplished by splitting the plan into two pieces and using separate approval processes, then Lehigh is attempting to "piece meal" which is specifically prohibited under CEQA.

Furthermore, in the Hydrologic Investigation Report by Golder Figure 1.2 and Figure 1.3 both show a "South Quarry" as part of the current proposed project. This needs to be corrected.

D) p. 10. Precipitation collected 3.3 miles from Quarry at a "comparable elevation" of 2001 feet smal. Why not on the actual property? p. 25 - 26 says, "reasonably representative for this purpose of this water budget." On what basis is this reasonably representative?

E) Table 6.0 Geochemical Data Collection -- did not occur during storm events. It appears that would be when most slope run of would occur? Wall washing was done instead. Is this really giving a reliable measurement. We ask for reliable measurements. Appendix E QA/AC data

F) Table E-3 -- Blank water sample has Hg level detected. We ask that comparisons be done to a blank which does not have detectable Hg levels to be reliable comparisons.

Attachment A -- duplicate analysis results. Attachment B -- blank sample results.

G) Drainage Report. Purpose of report of drainage summary is to perform an evaluation of the changes in surface drainage that will occur as a result of the proposed mining and reclamation activities at the quarry.

Appendix A after p,7 -- Hydrologic Impact Data post implementation. p. 7 conclusions -- will not impact the overall surface flow volumes! Is this supportable?

20) Air Quality Technical Analysis. p. 1 ES. **States that Cupertino is 2 miles from Lehigh. Page 8 of the Reclamation Plan Amendment, Section 2.1 RPA Location also states the project is 2 miles from Cupertino. The nearest homes in Cupertino are approximately 1/2 mile away. The EMSA is only about 100-200' away from the nearest property. How many years will SCC keep stating that Cupertino is 2 miles away? This is in light of the public time and again correcting SCC since 2007! This is frustrating and gives the strong impression that 1. the public is not being listened to and 2. that SCC is not concerned with the accuracy of their data and documents.**

Apparently it is necessary for SCC to include the Cupertino Zoning Map to disclose to themselves as well as the public the boundaries of the City of Cupertino. We ask that this be included in the dEIR

A) Asbestos Testing and Monitoring

There is a reference to testing in the technical analysis, but no documentation is provided. We ask that these document(s) be included. Testing for asbestos is difficult and results are often falsely negative if Transmission Electron Microscopy is not used or sampling is inadequate.

21) The Crushers and rock plant areas need to be reclaimed or could continue to operated. (p 23 of Air Quality Technical Analysis) This is not clear.

22) Scenic Easement p. 1 & 2. Predevelopment Topography, Figure 6.5. Where are the "fixed monuments" Do they still exist? Explain. Our understanding is that the scenic easement is supposed to be 1650', but it appears that this plan only is planned for it to reach 1450'. How does comply with the Scenic Easement Agreement? If there is non-compliance, what fines will be levied against Lehigh by the County? If there is non-compliance with the Scenic Easement and other environmental laws, how can Lehigh be trusted to continue to expand their operations?

23) Aggregate Storage near Entrance Gate

The Title V Permit Statement of Basis (date 1/21/2011) from the Bay Area Air Quality Management District, page 129

<http://baaqmd.gov/Divisions/Engineering/Title-V-Permit-Programs/Title-V-Permits/Santa-Clara/A0017/Lehigh-Southwest-Cement-Company.aspx>

"S-607 the stockpile area # 2 (1", ¼" aggregates and slag) at the entrance's gate is new."

Where exactly is this stockpile area? The current and proposed reclamation plans do not appear to account for aggregate storage near the entrance gate. We again request a formal investigation and report.

24) Geological Studies and Limitations

Golder Associates Slope Stability Evaluation for Compliance with SMARA East Materials Storage Area Section 6.0 states "The analysis and recommendations

contained in this report are based on data obtained from the results of previous subsurface explorations by others as well as the explorations and mapping conducted by Golder. The methods used generally indicate subsurface conditions at the time and locations explored and sampled. Boring logs may not reflect strata variations that may exist between all sampling locations. In addition, groundwater conditions can vary with time." In other words, if they did not sample enough areas or weather conditions are wetter than at the time of sampling none of their calculations will be valid. What if there is a 20 or 50 or even a 100 year flood event? Will the slopes fail under these weather events?

There are various fault lines (Monta Vista Fault Line and Berrocal Fault Zone) running through the quarry and cement plant. The San Andreas Fault is 2 miles away. Geotechnical Evaluation and Design Recommendations Update dated July 2011 by Golder Associates, Inc. page 16 states "potential seismic impacts for the project resulting from an earthquake event associated with a 10 percent probability of exceedance (POE) in a 50 year period." What are the risks of exceedance in 75 years, 100 years, 150 years? Do we not owe it to our children and grandchildren to make these calculations?

25) Weed abatement and Permanente Creek

As per the proposed Amendment weed abatement will be done. Will round-up or any other potentially toxic herbicide be used? If so, please test the levels prior to usage in Permanente Creek before, during and after. Round-up is especially toxic for frogs and tadpoles. Protected species such as the red-legged frog live in Permanente Creek.

26) Operations are 24 hours/day for 365 days per year as per Section 3.11 Business hours should be limited to a reasonable level as to not disturb those living near the quarry and truck routes.

Please include copies, both hard copies and CDs to be held at the Cupertino Library for ease of public viewing for all public documents. The SCC planning department website documents are difficult to download, especially the larger files if the connections is not fast. Access hours to the Planning Department in Santa Clara County are limited to business hours, which makes it difficult for those who work during the workdays. Also in the past, planners have given the public who ask for documents a difficult time.

Based on recent hearings by the BOS regarding Lehigh matters, we do not have confidence that we are being adequately represented nor that the environmental well-being of Santa Clara County is being adequately represented by the BOS in their decision making decisions. We have brought up serious issues regarding the adequacy of the Lehigh Application, of the many violations documented by various regulatory and oversight agencies issued to Lehigh, and the quality of the decision making by the BOS. This Application by Lehigh will determine the fate of the hills above Western Santa Clara County, the watershed, whether or not the ground water and the San Francisco Bay continues to be polluted by this operation, whether or not our drinking water continues to be polluted, the quality of the air, the protection of the ecosystem of large segments of the Western hills of the Santa Cruz Mountains, the air we breathe, the visual impacts, the destruction of hundreds of trees and habitat, etc.

In our comments to SCC in 2006 or 2007 we questioned the apparent assumption that mines are eternal. It appears that this mine may be nearing the end of its time due to the considerations enumerated above and others. We ask the Planning Department staff and the BOS to open their consciousness to this potential and take a fresh look in the dEIR process of these considerations.

Thank You,

Joyce M Eden, Karen Del Compare, Tim Brand, Marylin McCarthy on behalf of
West Valley Citizens Air Watch

Barry Chang, President, Bay Area Clean Environment