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Michele Napier

Thu, May 24, 2012 8:15 AM

**Subject: CEQA EIR and RPA: MROSD and Water Boards Comments**

**Date:** Wednesday, May 23, 2012 7:32 PM

**From:** Rhoda Fry <fryhouse@earthlink.net>

**To:** <JTVidovich@aol.com>, <jackbohan@hughes.net>, <planning.commission@pln.sccgov.org>

**Conversation:** CEQA EIR and RPA: MROSD and Water Boards Comments

Dear Planning Commissioners:

Please find attached MROSD and Water Boards comments, which supplement my previous email.

I hope you make time to read ALL the comments.

Because these pages are from objective government agencies, they are credible (much of the citizen input and other agency input is credible as well).

Thanks,

Rhoda

PS - here I am with the governor last week ☺



5/24/2012  
Supplemental Packet  
Item # 3



Regional  
OpenSpace

Midpeninsula Regional Open Space District

GENERAL MANAGER  
Stephen E. Abbors

BOARD OF DIRECTORS  
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Mr. Rob Eastwood  
Santa Clara County Planning Office  
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San Jose, CA 95110

February 17, 2011

RE: The Lehigh Permanente Quarry Reclamation Plan Amendment Draft Environmental Impact Report (SCH#2010042063)

On behalf of Midpeninsula Regional Open Space District (District), I would like to provide the following comments on the Draft Environmental Impact Report (DEIR) for the Lehigh Permanente Quarry Reclamation Plan Amendment. The District has previously submitted numerous comment letters on various recent proposals related to the Permanente Quarry, as referenced in our May 17<sup>th</sup>, 2011 letter regarding the scoping of the subject DEIR.

#### **East Materials Storage Area (EMSA)**

The proposed EMSA remains extremely problematic. The District does not believe that Lehigh or the County have shown that this area is in fact a pre-existing use area associated with the quarry. We concur with the County Geologist's conclusion, as presented to the Board of Supervisor's for the public hearing related to existing non-conforming use (vested right), that the area proposed for mine waste at the EMSA was never a part of the quarry operations. It instead was developed and used for industrial manufacturing related to Kaiser's magnesium and aluminum plant operations. Many maps identify this location with the name "Permanente Metals" given to the magnesium and aluminum plant operations. In fact one natural gas source was shared by the metals manufacturing plants and the cement plant, as noted in the historic resources section of the DEIR, again testament to this location being a manufacturing plant facility, subject to a use permit, as opposed to an existing non-conforming quarry operation.

Quarry related overburden and waste dumped at the EMSA are in fact a very recent phenomenon, beginning in 2006, that correctly resulted in the County's 2008 Notice of Violation that this was not an allowed use. We believe that the record shows that the EMSA, until very recently, was never a part of quarry operations, and therefore cannot be "vested". Instead, development of the proposed EMSA area is clearly subject to a County use permit.

The addition of the EMSA as a "quarry operation" and inclusion in the Reclamation Plan Amendment is characterized in the DEIR as a "significant and unavoidable" visual impact. The proposed visual impacts related to the EMSA are simply staggering. The huge stepped waste pile proposed is vastly out of character with the surrounding topography, the hillside protection zone district, the County scenic ridge easement, valley view shed protection policies, and park protection policies. Within the historic context, the value of the visual resources at stake is well documented and recognized. This new unnatural waste pile will form the new background to the County scenic easement granted by Kaiser long ago in recognition of the visual importance of Permanente Ridge, and the strong community and County support behind its protection.

The 1985 Reclamation Plan stressed the importance of reclaiming a small pile of quarry waste at the time known as the east materials area (Area C). The scale of this pile is dwarfed by the proposed EMSA, but at the time was recognized as a visual impact to be immediately remedied. This allowed for quarrying to the west of this old waste pile, "while maintaining a knoll as a visual buffer between the quarried area and the Santa Clara Valley area". The 1985 Mitigated Negative Declaration (MND) for the 1985 Reclamation Plan states that "The existing ridgeline will be maintained by means of the (scenic) easement agreement and conditions of this reclamation plan to insure neither the quarry pit nor materials storage area will be visible towards the north and east." It further states that "The Permanente ridgeline and its easement dedication will insure no exposure of the quarry or its material area towards the north and northeast." One has to ask why the existing visual impact of the quarry is so much greater than the County initially envisioned. One also has to question the construction of the proposed EMSA which dwarfs this prior area of concern and also moves the huge pile of proposed quarry waste up to 5000' closer to the valley floor!

The DEIR project baseline is established as 2007, the year following Lehigh's initiation of dumping in the EMSA and one year prior to the County's Notice of Violation to Lehigh for unauthorized use of this area. Since Lehigh had initiated quarry waste disposal by 2007, the DEIR assumes the entire 6,500,000 tons of waste have been already piled in the proposed EMSA. This is clearly problematic, and inappropriate. The EMSA is in fact a new project, initiated in a new area, subject to a County Use Permit.

The DEIR concludes that alternatives which would not construct the EMSA (no project alternative), or the removal of the EMSA at final reclamation (Alternative 1) are "least preferred", since the lack of or lower height of the reclaimed EMSA would not provide visual screening for the existing Cement Plant site. This assumes the EMSA is built, it is not. The cement plant operates under a use permit issued and regulated by the County. This issue illuminates the overlap of the historic manufacturing plant facilities area (part of which is proposed to be buried by the EMSA waste) and the "quarry operations" proposed.

If the construction of a quarry waste dump is being done to screen the cement plant operations, isn't that more appropriately completed under a use permit amendment for the existing cement plant? It is also clear from a review of the cement plant site and the DEIR's supporting documents that substantial waste material is also being placed outside of the footprint of the proposed EMSA, in other areas around the cement plant. While also highly visible from the surrounding area, we assume that this ongoing operation is also intended to visually screen existing cement plant structures and features. Are these new fills a part of a use permit amendment for the plant? It is appropriate that all new fills proposed to visually screen the permitted cement plant, be reviewed and regulated under the cement plant use permit.

It is absurd for the DEIR to conclude that not building the new unprecedented visual impact associated with the proposed EMSA would result in a greater visual impact because the public will be able to then see the cement plant facility which already exists, and has been highly visible for decades. The County has had a history of failures with regard to scenic protection associated with the quarry and cement plant. This is an opportunity to finally get it right. The County should not be misled to use this Reclamation Plan Amendment process to mitigate past visual protection failures with a new much larger impact, the EMSA.

The visual analysis that is included in the DEIR also clearly shows that the proposed EMSA is far larger in extent and much higher than that necessary to visually screen a portion of the existing cement plant operations from the surrounding communities. The EMSA is proposed as a quarry waste dump to accommodate the substantial deepening of the existing quarry proposed under the Reclamation Plan Amendment. Any other characterization is simply disingenuous. The incredibly significant visual impact associated with the proposed EMSA cannot be understated.

Regarding the visual impacts associated with the proposed project, the no project alternative is clearly preferred since the EMSA would not be constructed. The DEIR is incorrect in the assumption that reclamation of the EMSA would have to wait 25 years to occur. The County could order this immediately to resolve the existing violation.

The visual simulation presented in the DEIR also appears to be overly optimistic, and paints a prettier, greener picture than what would actually likely exist. The proposed EMSA is a waste rock dump. Waste rock is a very difficult material to revegetate, the time involved in revegetation will likely be much longer than presented. The greening of the site as depicted is also misleading. Much of the initial growth will be grass. As is evident from the top of the WMSA visible from the valley floor, the grass is brown for over half of the year, a significant contrast to the surrounding evergreen hillsides and ridges. It would also likely have erosion rills and surficial slippage, exposing bare patches of ground. The look will be more like the look of any nearby garbage landfill, unnaturally stepped and brown for most of the year, with sparse woody vegetation, not exactly compatible with scenic hillside protection.

In addition to the visual impacts discussed above, the proposed EMSA is also a source of significant impact, related to air quality, requiring mitigation. As an immediate neighboring property, in public trust, we are opposed to the ongoing and proposed dust impacts associated with the EMSA construction. The air quality assessment presented in the DEIR attempts to characterize dust and associated known toxic substances related to the quarry waste disposal by assessing the existing operations in the EMSA. The existing operation is occurring further away from the park/open space properties, and at a smaller scale than the proposed full EMSA. This is not a fair representation or analysis. A detailed analysis for air quality impacts should be conducted at the shared property line to characterize potential impact to the recreating public and our nearby Foothill Field Office facility. Additionally, a long-term continuous air quality monitoring station should be established at this location. The PG&E Trail located within the Rancho San Antonio Open Space Preserve is often heavily impacted by dust generated by the quarry and cement plant operations, that leaves a layer of dust on vegetation. The quantification and analysis of air quality impact to the Open Space Preserve, including the Field Office located within is not well studied or characterized in the DEIR.

The EMSA is identified in the DEIR as a new source area for selenium, adding to the existing quarry related water quality impacts to Permanente Creek. Water quality and biological resources per the DEIR would incur significant and unavoidable environmental impacts associated with the proposed project. The DEIR discusses project alternatives and concludes the extended time frame to reclamation of the EMSA would increase water quality impacts.

An additional alternative should be analyzed in the DEIR, an alternative that allows no further placement of waste within the EMSA and the immediate removal of all material that has been recently placed there, and immediate site restoration. Further, the alternative overburden disposal should have been included in the DEIR. These alternatives would avoid the significant and "unavoidable" impacts identified in the DEIR related to the EMSA. The alternatives presented in the DEIR, including the Preferred Project, attempt to address the Project's significant impacts when Lehigh is finished making them, as opposed to avoidance of impacts or immediate mitigation of existing impacts. Per CEQA and the stated DEIR objectives, alternatives considered must be capable of eliminating or reducing significant environmental effects. The removal of the EMSA would eliminate and/or reduce the significant and unavoidable impacts identified in the DEIR. Per CEQA this alternative is also feasible, capable of being accomplished in a successful manner.

In fact, the County agreement with Lehigh to continue dumping in the EMSA, following the County's notice of violation states that there is no assurance that the quarry waste will remain if the quarry continues to place it under the agreement. In other words, Lehigh can continue dumping quarry waste at their own risk, knowing they may need to remove it. The alternatives noted above appear superior to the alternative presented in the DEIR since they would remove/ stop an additional source of water quality impact from an operation that is already out of compliance for water quality impacts, would not create additional dust impacts, and would not further substantially degrade visual resources.

### **Toxics/ Hazardous Materials**

Section 4.9 of the DEIR states that "in some cases, past industrial or commercial activities on a site could have resulted in spills or leaks of hazardous materials to the ground, resulting in soil and/or groundwater contamination." It further states that "at sites where contamination is suspected or known to have occurred, the site owner is required to perform a site investigation and perform site remediation, if necessary."

The proposed EMSA is a significant concern regarding potential toxic substances associated with the old magnesium and aluminum plant locations. These obvious potential toxic concerns do not appear to have been investigated or evaluated in the DEIR. The quarry waste dumping proposed, particularly around the old graded metals manufacturing building pads and the down-slope edge of proposed EMSA waste is of most concern. Geotechnical fill placement details show that the former metals manufacturing area is proposed to have keyways excavated for the foundation support of the proposed EMSA waste pile. Given the magnesium and aluminum plants that existed in this location from 1941 through the 1990, it is necessary to investigate potential toxics within the existing soil. The potential health risk to mine workers, the surrounding community (including adjacent parkland), surface water, groundwater, and wildlife must be evaluated if toxics are encountered. We are surprised that quarry related disturbance has been allowed to take place, and continues to take place in this location, given the history of the site, without such an investigation. This issue was also raised by others during the DEIR scoping process.

### **EIR scope/ Baseline**

We propose that the DEIR not use the artificial date (2007) to begin its analysis, but instead utilize the prior Reclamation Plan and associated maps and plans as the benchmark starting point. This may help explain why Lehigh at this late date has taken the exceptionally desperate and aggressive approach of beginning to place waste material right out in front of the surrounding communities and adjacent park/open space preserve land. It's possible that Lehigh and their predecessors may have excavated a larger area than previously identified on the mining plans associated with the prior reclamation plan. Another possible indicator of this is that the WMSA, the only dumpsite identified in 1985, has also grown larger and taller than initially envisioned/proposed. The proposed EMSA appears to be the only convenient spot left to dump without filling the existing quarry pit, or hauling the waste material generated offsite. This bold desperate move by the Quarry has unfortunately been aided by past poor County oversight, as documented by the State Division of Mines and Geology, and the recent unsupported Board of Supervisor's "vested" determination.

The baseline utilized in the DEIR certainly should not grandfather the new use of the EMSA just because Lehigh chose to initiate dumping there, knowing full well that the Reclamation Plan Amendment was required. This simply doesn't pass the straight face test.

We have submitted numerous letters on the various iterations of reclamation plan amendments that have spun out of Lehigh and the County recently in an attempt to address quarry non-compliance issues. These issues are not uncommon for a quarry which has been operated intensively for 80 years. There are limitations on available resources and accessible product, and places to dump the waste generated. In fact, the DEIR states that "continued mining in the quarry is becoming infeasible from a geotechnical standpoint" and that regarding the status of the mineral designation, given 100 years of mining, "the reserves of limestone that feasibly can be extracted are approaching their limits." The recent proposal for a new south quarry pit also seems to substantiate this concern.

We have previously asked for an analysis of where quarry operations actually are in comparison with where the quarry operation was envisioned to be under the prior reclamation plan. This is essential at the quarry pit location, as well as for the proposed EMSA, and is necessary to understand existing conditions, cumulative, and future likely conditions/ impacts. It is particularly important with regard to the depth and area of the existing quarry pit versus the dimensions of record from the 1985 Reclamation Plan. This should clearly be shown.

The EMSA is also very confusing. The DEIR assumes its built, and even states in section 4.7 that "much of the stockpiling activity has already occurred," yet the visual analysis regarding the visual impact from the PG&E trail at Rancho San Antonio OSP states that that "although the existing overburden deposits are not a dominant feature in the landscape, the substantial increase in the height of the overburden deposit during construction could block views of the scenic mountains behind the EMSA." It appears through on-site review using the visual analysis presented in the DEIR that much more quarry waste is proposed to be dumped at the EMSA than currently exists. This needs to be rectified for an adequate environmental assessment of potential impacts. The DEIR should clearly detail what is on the ground now at the EMSA to give reviewers a better understanding of the levels of potential impacts being discussed.

This should include all contours and cross-sections at the quarry pit and EMSA as they currently exist, the 1985 reclamation plan final topography and cross-sections, and any proposed new changes in topography. While some contours and cross sections are presented in the DEIR they are often of differing, past dates (2007, 2009 etc.) and the original Reclamation Plan contours and cross-sections are not presented at all. It also appears that the quarry has undergone some substantial changes in the intervening years. The DEIR should have an analysis of actual existing conditions compared with the conditions proposed under the former Reclamation Plan and proposed future conditions.

#### **Water quality/ Biological Resource Impacts**

The existing selenium-related impacts to Permanente Creek water quality are of serious concern. Permanente Creek exits the Lehigh property and flows through Rancho San Antonio County Park/ Open Space Preserve. The existing selenium related water quality impacts are thus transferred from their

origin on the Lehigh property, to these public recreation facilities, then downstream through residential areas, and finally to the San Francisco Bay. Selenium levels that exceed water quality standards have been noted at both the Lehigh property and also in samples taken from downstream park/open space land.

Lehigh's proposal contained in the Reclamation Plan Amendment is to substantially deepen the existing quarry pit. There are significant problems associated with this related to water quality, particularly selenium. The main source of selenium identified in the Reclamation Water Quality assessment by SES is through groundwater inflow. The deepening of the quarry will substantially increase the volume of groundwater inflow into the quarry pit per the DEIR. To deepen the quarry groundwater will need to be pumped out, as currently occurs. The quarry currently does not have permits or regulatory approval to discharge the groundwater that is currently being intercepted, pumped, and discharged into Permanente Creek, with pollutants in excess of water quality standards. The DEIR proposes not only to allow the existing pollution to continue for another 20-plus years, but proposes to add additional volume, stating that water treatment costs would be too high, and treatment is therefore infeasible.

The quarry pit is a vested part of quarry operations and the operator has the right to quarry there. Fortunately, there is no vested right to pollute water, particularly when that water flows downstream to public resources. The quarry simply needs to stop polluting water as the cost of doing business. We question and strongly disagree with the DEIR assertion that water treatment is infeasible and that the significant and unavoidable water quality pollution impacts would instead simply be allowed to continue, and likely worsen, well into the future.

The two other main sources of selenium pollution identified in the DEIR are runoff from the quarry walls, and runoff from the WMSA. As proposed, the deepening of the quarry pit would extend and increase the quarry wall source, again increasing the source area for selenium. The WMSA is also identified as a significant source of selenium. One has to question the rationale of not only waiting to address the WMSA source of selenium pollution until phase III of the project, while at the same time proposing to build a new substantial source, the EMSA, during phase I. There is a significant ongoing impact that these proposed new changes will add to. This must be addressed within the cumulative impacts analysis in the DEIR.

While the long-term water quality mitigation proposed appears promising, as stated in the DEIR, it must be viewed as speculative until actual implementation and monitoring determine success or not. Avoiding new or expanded sources seems prudent, particularly when water quality standards are already being exceeded. There is no clear understanding of the existing level of impact since the water pollution findings have only recently been discovered. The trend of the selenium pollution is unclear (rising, stable, decreasing). Given the substantial area of recent disturbance, and assumed increase in groundwater pumping due to the quarry floor lowering, it is perhaps best to assume that it could get worse, even if everything were to stop today. There is no need to wait and see while pollution is occurring. Immediate water treatment, avoidance of new practices that could add to the ongoing pollution, and immediate reclamation/ mitigation of existing sources appears necessary. The Project as proposed in the DEIR does not meet the stated project objective of protecting water quality, and does not avoid or eliminate residual hazards to the environment.



### **Vegetated Buffer**

We are in favor of the concept of maintaining a vegetated buffer as proposed within the DEIR. We are however, nervous with including this in the reclamation plan amendment. Our concern is that this reclamation plan amendment is necessary to account for disturbance areas that Lehigh and their predecessors have routinely disturbed well outside of the area approved. We want to be sure that this buffer area is somehow formally dedicated for no disturbance. Inclusion of the buffer into a reclamation plan could also be viewed as an approval to disturb (and then reclaim) consistent with the rest of the quarry operations. The County should be certain that this is not the case. Given the quarry history of disturbance out of bounds, there needs to be some formal assurance that this buffer area is actually an area where no disturbance will occur.

### **Recreation**

We believe that impacts to recreation are substantially greater than identified in the DEIR, in particular the impact of the EMSA. The visual impact of the proposed project is determined to be significant and unavoidable, since it assumes the presence of the EMSA. The 2006 dawning of the EMSA began a significant period of recreational impact. Quarry operations that had until then been separated by a ridgeline from the main public recreation areas of the Rancho San Antonio County Park and adjacent Open Space Preserve, were compromised by new noise, dust, and visual impact. Ranch San Antonio is our most heavily utilized Preserve, with an annual visitation of approximately 500,000 recreationalists. The District has fielded many complaints from our visitors regarding the new quarry operations that have been undertaken immediately adjacent to the Park/Preserve. The EMSA quarry waste pile is immediately evident to visitors, as a new backdrop, upon entry into the Park/Preserve. The view from the PG&E Trail has been compromised by dumped quarry waste, and is projected to grow in height obscuring the scenic ridgeline views beyond. The current view from the scenic Anza Knoll within the County Park is simply staggering given the new quarry waste dump that has leapt up over the past few years. It is not possible to separate the recreational impact from the visual impact. The recreational impact of the Project has to also be characterized as significant and unavoidable. Again, as with many comments before, the EMSA is the reason for the significant impact. The Project rationale that since the EMSA was begun the year before the DEIR established baseline, it is assumed built, attempting to grandfather the impacts as "existing" and are therefore determined to be unavoidable. In reality the EMSA is not constructed, and the impacts or possible alternatives associated with its construction have never been reviewed or addressed under CEQA, by the County, or by the public. The potential impacts are in fact avoidable, if not built.

### **Flooding/ Hydrology**

This section is simply unacceptable as presented in the DEIR. The Santa Clara Valley Water District has estimated that a 100-year flood on Permanente Creek would potentially inundate 3,170 parcels including homes, businesses, schools, public institutions, and road/ highway infrastructure, with an

estimated \$48,000,000 in damages for a single event. This is a huge potential impact if adequate detention through the Project is not feasible. The Lehigh property is quite large when compared to the detention facilities currently being investigated by the Water District. The Project must identify adequate flood water detention built into the reclamation plan.

Thank you for the opportunity to provide comments on the subject DEIR. Please feel free to contact me by email at [mbaldzikowski@openspace.org](mailto: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 III

Cc: District Board of Directors  
Stephen E Abbors, District General Manager  
Erin Garner, Chair, State Mining and Geology Board  
Jim Pompy, Director, Office of Mine Reclamation  
George Shirakawa, President, County of Santa Clara Board of Supervisors



Matthew Rodriguez  
Secretary for  
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## California Regional Water Quality Control Board San Francisco Bay Region

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Edmund G. Brown Jr.  
Governor

February 21, 2012

Sent via electronic email: No hardcopy to follow

Santa Clara County Planning Office, County Government Center  
70 W. Hedding Street, 7<sup>th</sup> Floor, East Wing  
San Jose, CA 95110  
[Rob.Eastwood@pln.sccgov.org](mailto:Rob.Eastwood@pln.sccgov.org)

Attention: Rob Eastwood

### **Re: Comments on the Draft Environmental Impact Report for the Lehigh Permanent Quarry Reclamation Plan Amendment**

San Francisco Bay Regional Water Quality Control Board ("Water Board") staff appreciate the opportunity to review the Draft Environmental Impact Report for the Lehigh Permanent Quarry Reclamation Plan Amendment December 2011 ("dEIR") and submit comments for consideration. The dEIR assesses anticipated environmental impacts resulting from the proposed reclamation activities, which are of serious concern to Water Board staff. In general, the Water Board's comments are:

- The environmental impacts have been significantly underestimated and under-identified.
- The standards of work required under the dEIR are not consistent with level required by the Surface Mining and Reclamation Act ("SMARA"), Title 27 of the California Code of Regulations ("CCR27"), the Federal Clean Water Act and the Porter-Cologne Water Quality Control Act, (at Water Code Sections 13000 et seq.).
- The analysis is based on data not capable of statistical analysis to support the conclusions drawn.
- It is premature to approve the dEIR as it is currently written. To do so would ignore the better practical alternatives and the reclamation activities' real threats to water quality or human health.

We structure our detailed comments to provide guidance as to how to resolve inconsistencies and how to collect critical information before the County proceeds with approving the Reclamation Plan Amendment.

### **Introduction**

The Lehigh Permanente Quarry Reclamation Plan Amendment ("Project") proposes to reclaim approximately 637 acres of existing and planned surface mining disturbance area. The Project components include the reclamation of the East Materials Storage Area (EMSA, 75 acres), Quarry Pit (265 acres), West Materials Storage Area (WMSA, 173 acres), Crusher/Quarry Office Support Area (53 acres), Surge Pile (8.8 acres), Rock Plant (19 acres), an area adjacent to and within the Permanente Creek corridor (Permanente Creek Restoration Area or PCRA, 49 acres), and an area south of Permanente Creek that has been disturbed by prior surface mining-related exploratory activities (Exploration Area, 20 acres). The purpose of the reclamation is to make the Project area suitable for future open space use.

The Project would be implemented in three phases over an approximately 20-year period and completed by 2030. During Phase I, mining activities will continue at the Quarry Pit, which has been mined for over 80 years, until 2025. Overburden materials generated from future mining will be disposed against the west wall of the Quarry Pit, namely the WMSA, while reclamation of the EMSA starts immediately after the Project approval. The restoration of EMSA will be completed in Phase I.

After mining is completed in Phase II, overburden materials currently stored at WMSA will be excavated and used to backfill the Quarry Pit. During Phase III, WMSA and Quarry Pit will be graded and revegetated and final reclamation is achieved. Reclamation of other components of the Project will occur during the three phases of the Project.

As an agency charged with water quality and beneficial uses protection, the following are our main concerns of the dEIR:

- The significant water quality impacts, including from the discharge of selenium and sediment-laden water to Permanente Creek during and after reclamation (Impacts 4.4-5, 4.10-1, and 4.10-2).
- The significant impacts on changes to drainage patterns that may cause increased storm water ponding, accumulation of selenium concentrations, on-site, off-site, and downstream flooding (Impacts 4.10-4, 4.10-6, and 6.2).
- Analysis of surface water flow changes in Permanente Creek (groundwater extraction from the creek during continued mining and groundwater recharge back to the creek after reclamation), and asserts the impact to be insignificant (Page 4.4-44 and Impact 4.4-5).
- Mitigation measure proposals for the significant impacts. Among the impacts, the water quality impacts from discharging selenium and sediment-laden water during the reclamation period cannot be mitigated to less than significant levels.

### **Interaction of CEQA Selection of Baseline and Enforcement**

The baseline chosen by the County is June 2007. Water Board policy is typically to choose the current environmental setting. However, the Water Board recognizes the County has significant discretion in selecting the baseline if there is substantial evidence to support the selected baseline. While there is a single comment *infra* regarding baseline and instability, the comments submitted by the Water Board are for the purposes of commenting on the sufficiency and propriety of the dEIR and not for pursuing direct enforcement of Lehigh. Such enforcement,

whether through the administrative or legal process, is separate and distinct from the CEQA process, consistent with *Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270, 1280; *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428, 1453. However, it is the Water Board's position that comments submitted by staff about the potential for environmental harm gathered through whatever means, whether it be review of the dEIR, interaction with Lehigh personnel, or personal observations at the site, are all appropriate.

#### List of Water Quality/Hydrology Related Impacts Analysis (Section 4.10)

This chart is excerpted from the dEIR Table ES-3, Summary of Impacts and Mitigation Measures for the Permanente Quarry Reclamation Plan Amendment, Hydrology and Water Quality Section. Water Board Staff does not agree in all regards with the dEIR's assessment of viability compiled from the Executive Summary and Table ES-3. The Water Board often disagrees with the dEIR's assessment of viability of mitigation measures and the significance of impact after mitigation. Our comments, presented below, explain our concerns and how our conclusions differ with the dEIR's.

Environmental Impact	Significance before Mitigation	Mitigation Measures	Significance after Mitigation
<b>4.4-5:</b> Project activities could result in selenium burdened runoff reaching aquatic habitats and, thereby, in deleterious effects to aquatic organisms and their prey base.	Significant	<b>4.4-5:</b> Selenium-related Impacts to Aquatic Habitat (to implement <b>4.10-2a</b> and <b>4.10-2b</b> ).	Significant and unavoidable
<b>4.10-1:</b> Post-reclamation conditions in the EMSA, WMSA, and Quarry pit would increase selenium concentrations in Permanente Creek to levels exceeding baseline conditions and RWQCB Basin Plan objectives.	Significant	<b>4.10-1a:</b> Professional geologist Verification of Non-Limestone-Containing Material Use.  <b>4.10-1b:</b> Verification Water Quality Monitoring.	Less than significant
<b>4.10-2:</b> Interim reclamation activities within the Project Area would contribute concentrations of selenium, Total Dissolved Solids (TDS), and sediment in Permanente Creek.	Significant	<b>4.10-2a:</b> Interim Stormwater Control and Sediment Management.  <b>4.10-2b:</b> EMSA Interim Stormwater Monitoring Plan.	Significant and unavoidable
<b>4.10-3:</b> The Permanente Creek Reclamation Area (PCRA) reclamation activities would contribute concentrations of selenium, Total Dissolved Solids (TDS), and sediment in Permanente Creek.	Less than significant	None required	Less than significant
<b>4.10-4:</b> The Project would alter the existing drainage pattern of the site, which could result increased storm water runoff rates and on- or offsite flooding.	Significant	<b>4.10-4:</b> Construction of Onsite Detention Facility.	Significant and unavoidable

<p><b>4.10-5:</b> Groundwater discharge from the Quarry pit after backfilling and reclamation is complete would adversely alter surface water flows to Permanente Creek.</p>	<p>Less than significant</p>	<p>None required</p>	<p>Less than significant</p>
<p><b>4.10-6:</b> The Project would alter the existing drainage pattern of the site, which could result in increased stormwater ponding, accumulation of selenium, and flooding.</p>	<p>Significant</p>	<p><b>4.10-6:</b> Stormwater Control to Avoid Poned Water and Selenium Accumulation.</p>	<p>Less than significant</p>
<p><b>Impact 6-2:</b> Incremental Project-specific activities could contribute to downstream flooding.</p>	<p>Significant</p>	<p><b>6-2:</b> Construction of Onsite Detention Facility.</p>	<p>Significant and unavoidable</p>

**I. WATER BOARD STAFF COMMENTS RELATED TO WATER QUALITY STANDARDS AND REGULATIONS**

A. California Code of Regulations – Title 27

**Comment #1: The dEIR is Inconsistent with the Standards Set Forth in SMARA**

As described throughout this letter, the Water Board’s comments articulate the deficiencies in the dEIR, in the analysis done prior to issuing the dEIR, in the planned 20 years of reclamation activities, and the inadequate mitigation. The Water Board’s initial concern is that the dEIR must hold Lehigh to the performance standards in the governing regulation, SMARA. Most notably, the following SMARA provisions, in the Water Board’s opinion, are not met:

3704.1 Performance Standards for Backfilling Excavations and Recontouring Lands Disturbed by Open Pit Surface Mining Operations for Metallic Minerals.

...  
 (b) Backfilling shall be engineered, and backfilled materials shall be treated, if necessary, to meet all of the provisions of **Title 27, California Code of Regulations**, Division 2, Chapter 7, Subchapter 1, Mining Waste Management, commencing with Section 22740, and the applicable Regional Water Quality Control Board’s Water Quality Control Plan. (emphasis added)

...  
 (d) ... All fills and slopes shall be designed to protect groundwater quality, to prevent surface water ponding, to facilitate revegetation, to convey runoff in a non-erosive manner, and to account for long term settlement.

3706. Performance Standards for Drainage, Diversion Structures, Waterways, and Erosion Control.

(a) Surface mining and reclamation activities shall be conducted to protect on-site and downstream beneficial uses of water in accordance with the Porter-Cologne

Water Quality Control Act, Water Code section 13000, et seq., and the Federal Clean Water Act, 33 U.S.C. section 1251, et seq.

(b) The quality of water, recharge potential, and storage capacity of ground water aquifers which are the source of water for domestic, agricultural, or other uses dependent on water, shall not be diminished, except as allowed in the approved reclamation plan.

(c) Erosion and sedimentation shall be controlled during all phases of construction, operation, reclamation, and closure of a surface mining operation to minimize siltation of lakes and watercourses, as required by the Regional Water Quality Control Board or the State Water Resources Control Board.

3710. Performance Standards for Stream Protection, Including Surface and Groundwater.

(a) Surface and groundwater shall be protected from siltation and pollutants which may diminish water quality as required by the Federal Clean Water Act, sections 301 et seq. (33 U.S.C. section 1311), 404 et seq. (33 U.S.C. section 1344), the Porter-Cologne Act, section 13000 et seq., County anti-siltation ordinances, the Regional Water Quality Control Board or the State Water Resources Control Board.

3712. Performance Standards for Tailing and Mine Waste Management. State Water Resources Control Board mine waste disposal regulations in Article 1, Subchapter 1, Chapter 7 of Title 27, California Code of Regulations, shall govern mine waste and tailings, and mine waste disposal units shall be reclaimed in conformance with this article.

Comments throughout this letter relate to these performance standards.

**Comment #2: The dEIR is Incomplete Due to No Data or Insufficient Data**

Water Board staff have been informed that the County is in a severe time crunch, with little room for maneuvering. The Water Board does not find an onerous schedule a valid reason for minimizing impacts to the environment. Specifically, Terry Seward of the Water Board provided information to the County **on November 21, 2011**, along with a pdf of the Title 27 regulations and the statement that the “[Water Board] will need to evaluate your proposed plan to make sure it is consistent with the closure requirement for mine sites contained in Title 27 (section 22510).” The dEIR refers to Title 27 on 4.10-22 as part of the Regulatory Setting.<sup>1</sup> The dEIR concludes that the materials in the waste piles would likely be characterized as Group B mining waste as defined in Title 27, but can offer no support for such a conclusion, because adequate testing has never been completed. Nor has a Report of Waste Discharge for either the WMSA or the EMSA been submitted to the Water Board. The dEIR states, correctly, that under Title 27, Lehigh “would be required to implement certain siting and construction standards,

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<sup>1</sup> The dEIR also refers to Title 27 on 2-50, noting that it requires that threats to water quality be addressed during mine closure and reclamation. The comment on page 2-50 addresses sediment transport, which is raised in Comments 27 and 28.

including peak stream flow protection, precipitation and drainage controls, and a leachate collection and removal system (LCRS).” Yet none of these items are included as required mitigation in the dEIR, even though the SMARA regulations require the Project to conform to Title 27 standards.

**Comment #3: The dEIR Has Not Conclusively Determined that Hazardous Materials Are Not Present in the Waste Piles**

The dEIR has presented no evidence to supports the conclusion that there are not hazardous materials in either waste pile, yet Water Board staff have observed the disposal of such materials to the waste piles.

Title 27 governs the disposal of non-hazardous, but potentially deleterious waste to land. This includes solid and liquid; municipal, construction, industrial, and mining waste. Section 20164 of CCR 27 defines “mining waste” as: all waste materials (solid, semi-solid, and liquid) from the mining and processing of ores and minerals including soil, waste rock, and other forms of overburden as well as tailings, slag, and other processed mining wastes. The known potential wastes generated by Lehigh that could be regulated pursuant to CCR 27 include mining waste (overburden mine material; waste rock mine material; liquids, solids, and sludges produced from the processing of mined ores, including contact groundwater and surface water from the Quarry Pit) and industrial waste (cement kiln bricks --which have been observed in the EMSA and photographed by Water Board staff--and dust used in the industrial processing of mined material; chemical waste materials; waste liquids, solids, and sludges produced in manufacturing industrial products such as aluminum, cement and sand and gravel).

Furthermore, while this EIR creates a distinction between the mining activities and the cement plant activities, the presence of kiln bricks in the EMSA and rock plant mud cake indicates that waste materials from all three operations are being deposited into one or both the EMSA and WMSA. So, not only must the EIR fully characterize the mining waste deposited in the storage areas, it must characterize ALL waste deposited in the storage areas. The Water Board has information that hazardous waste from the decommissioning of the Kaiser Aluminum facility has also been deposited in the vicinity of the EMSA.

**Notwithstanding** Title 27 and its predecessor regulations, Lehigh and/or the County should have characterized the WMSA and EMSA **for the purposes of the dEIR**. Instead, there has been a complete lack of characterization of the waste piles and the effect of the reclamation activities on the chemical constituents within the piles. While buried, rocks in the piles are in reducing conditions and are not labile (reactive), do not readily leach (dissolve) into surrounding water, and are relatively immobile in the ground. Once exposed to oxygen or oxygenated water, the surface of the rocks become oxidized. Selenium and metals also become oxidized into a labile form, such that they readily leach into surrounding water.

Characterization of waste is required to implement the appropriate level of protective measures to ensure adequate isolation of waste from groundwater and surface water.



Because the EMSA and WMSA have not been adequately characterized, and given historic records from the facility and knowledge of the geology of the area, mining waste (solid and liquid) from the site is likely to contain elevated levels of metals and metalloids such as mercury, chromium, and selenium, which can be harmful to humans and wildlife. Mercury and selenium are bioaccumulative (concentrations increase exponentially up the food chain). Water Board records indicate very limited sampling has been done of the mine related materials and wastes for these contaminants.

**Comment #4: Insufficient Search To Draw Conclusions (Hazards and Hazardous Materials (4.9))**

The dEIR designates impacts as less than significant based on existing use of hazardous chemicals, based on a search of regulatory databases. It is insufficient to use regulatory databases to identify known spills; historical site records must be used. Information in regulatory databases is primarily sourced from Reports of Waste Discharge, which Lehigh failed to submit with respect to mining waste. As noted above, the Water Board has personally observed hazardous materials in the waste piles.

**Comment #5: Like Mining Waste, Industrial Waste Has not Been Properly Characterized**

Industrial waste has not been characterized at the site. The following is a list of wastes likely present:

- a) Industrial process water from crushing rock, washing rock and washing equipment may contain metals and metalloids, acrolein and acrylonitrile, and petroleum products.
- b) Chemicals used to maintain equipment (fuel oils, lubricants, solvents, paints, etc.).
- c) Sludges, dust, and other solid waste materials produced during the processing or manufacturing of industrial products, including waste generated at the co-located cement factory.

The petroleum and solvent chemicals contain volatile and semi-volatile organic compounds (e.g., benzene, toluene, TCE), which can be carcinogenic, mutagenic, teratogenic, or otherwise harmful to humans and wildlife. The dEIR lacks the characterization of the waste piles and of these potential harms to human health. Furthermore, the waste piles represent a real and continued threat to groundwater that, even if the dEIR were approved and the Project were to proceed, the waste piles would remain on site for at least seven additional years. Furthermore, the ultimate goal of the proposed Project is to store the same waste in the current Quarry Pit into perpetuity. Without testing, no agency or entity, including the County of Santa Clara or Lehigh, can confidently state that there are not hazardous materials in the waste piles and that the WMSA and EMSA pose no threat to groundwater.

**Comment #6: The Reclamation Activities Do Not Comply with Title 27's Siting, Design, and Construction Requirements (Chapter 3, Subchapter 2)**

While the reclamation plan ultimately – over the next 20 years – sorts, reuses, and relocates the EMSA and WMSA (summarized at 2-14 and 2-16), because the dEIR did not fully address Title 27, the Project is subject to the water quality risks that Title 27 is aimed at preventing. For example, Title 27 Chapter 3, Subchapter 2 requires proper siting and design, which is intended to ensure adequate isolation of waste from groundwater and surface water. Such protections may include liners separating waste from the ground surface to prohibit migration of waste and leachate to soil, groundwater, or surface water or a cap to minimize percolation of liquids through the waste, and thus leachate production.

By the term “cap” (interchangeable with the term “cover”), what is understood in the context of Title 27 compliance is an impermeable layer such as clay - not the loose, unconsolidated waste material referred to in the dEIR as “cover.” Failure to comply with these requirements can result in a failure to isolate wastes from groundwater and surface water. Instead, the “cap” proposed in the dEIR is insufficient to function as intended (to minimize percolation of rain through the waste pile), and does not meet Title 27 regulations.

For example, the WMSA and EMSA have no such protections, and the dEIR proposes none **for at least the next 7 years.**<sup>2</sup> Staff have personally observed dry kiln bricks in the EMSA, which are hazardous. Neither of the waste piles is covered, exposing them to stormwater. The EMSA and WMSA are not small waste piles; they are vast waste impoundments: approximately 75 acres for the EMSA and approximately 175 acres for the WMSA. Neither of the waste piles is believed to be on a concrete liner. Lehigh has not submitted a Report of Waste Discharge pursuant to Water Code 13260 for either of the waste piles. The groundwater samples contained in the dEIR were collected from the wrong locations for determining if there is any contamination.

Because of Lehigh's failure to submit information under existing regulatory structures, the County may have little information about the characterization of the waste piles. However, it should have required it as part of completing the dEIR. Staff inspections indicate little to no containment structures are employed at the Project site. It is possible leachate has migrated to groundwater and surface water, and therefore possible contaminants from the waste have discharged to groundwater and Permanente Creek.

**Comment #7: Inadequate Monitoring Plan Pursuant to Title 27, Subchapter 3, Article 1**

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<sup>2</sup> As is discussed *infra*, the Water Board feels the ultimate resolution – proposed mitigation – is insufficient, and the dEIR sets forth no schedule for establishing mitigation measures during Phase I, which lasts for seven years. Refer to Comment #25.

Because the dEIR is inconsistent with the requirements of Title 27, both retrospectively and prospectively, it also fails to describe or require a water quality monitoring plan during the removal and re-location of the waste piles. The purpose of this requirement is to detect, at the earliest possible time, any release from a Waste Management Unit ("WMU"), such as the EMSA or WMSA, as well as to monitor remediation of known releases. A release of leachate or waste from a WMU to groundwater, surface water, or soil where it might reach groundwater or surface water, constitutes an unauthorized discharge to waters of the state. CCR 27 requires a groundwater monitoring program for WMUs to ensure they are not leaking. Pursuant to CCR27, a hydrogeologic investigation is performed to develop a monitoring program, and typically groundwater upgradient and downgradient of the WMU are compared, or analysis of trends is used to identify a potential release. Monitoring of receiving waters, in this case at least Permanente Creek, is also required to identify impacts. The above described investigations need to be performed, fully and accurately described in this dEIR, and form the basis for project alternatives analyses and impact considerations.

It is unknown if any WMU at Lehigh is leaking, (i.e., if waste or leachate from waste piles, landfills, surface impoundments, etc., is in contact with groundwater at the site). Given historic records, Staff's knowledge of the geology and hydrogeology of the area, and evidence that the WMUs are unconfined and unlined; it is likely that waste and leachate are in contact with or have impacted groundwater quality. The geology of the area consists of fractured bedrock (fault brecciated Franciscan) and alluvium and colluvium, both of which are permeable deposits that could allow migration of leachate to groundwater. Therefore, groundwater and surface water could be impacted by pollutants from WMUs.

#### **Comment #8: Closure and Post-Closure Maintenance Plans, Title 27, Subchapter 5**

The purpose of this requirement is to ensure plans are in place to properly close WMUs to ensure continued isolation from waters of the state. It includes criteria for cover, maintenance, drainage controls, erosion controls, and financial assurances. Failure to comply means the State cannot be assured Lehigh has the plans in place, and the financial ability, to adequately close and maintain the facility during the 20-year reclamation plan to protect human and environmental health.

The Project defined in the dEIR, and all proposed alternatives, fail to address requirements of CCR27 for mining waste, and industrial waste (if disposed of onsite). These requirements include:

1. Waste and leachate characterization in the WMSA, EMSA, backfilled quarry, and surface impoundments.
2. Structural standards. Specifically, the Project and alternatives proposes to leave in place the EMSA, or move it to CMSA; however there is no proposal to meet the structural standards required by CCR 27. In addition, the Project and alternatives propose to backfill the Quarry pit with mining waste (overburden and waste rock), which has not been characterized. This waste would be in contact with groundwater (approximately **18 million gallons of groundwater** was pumped out of the pit in 2010), and may leach

contaminants from the waste and **migrate offsite, potentially discharging to Permanente Creek or downgradient drinking water aquifers.**

3. Submittal of Report of Waste Discharge and subsequent coverage under a permit (Waste Discharge Requirements) for discharge of mining waste to land will be required, which was not included in the list of required permits.
4. Proposed final contours of the Quarry do not meet CCR 27 requirements. The proposal is to backfill the pit partially, to create a swale with a lowest elevation in the quarry pit. Surface water runoff would therefore be directed to the Quarry Pit. CCR 27 requires drainage away from waste to minimize percolation and production of leachate.

#### B. Selenium

#### **Comment #9: Conclusions in dEIR regarding Selenium are Not Supported by Data Presented in dEIR; Overall, dEIR Lacks Pertinent and Correct Sampling and Evaluation**

Monitoring conducted by the Water Board's Surface Water Ambient Monitoring Program (SWAMP) in 2002 and by Santa Clara Valley Urban Runoff Pollution Prevention or SCVURPPP during 2005-2007 indicated selenium WQOs were exceeded at the downstream reach of the Creek (at a location near the Rancho San Antonio Park). The applicable water quality objectives (WQOs) for selenium are from the National Toxics Rule (NTR), which are 5 µg/L for chronic aquatic life protection and 20 µg/L for acute protection, expressed in total recoverable metal.

The dEIR used additional water quality data collected in 2009, 2010, and 2011 at five new locations in the Creek (Table 4.10-2). Among which, two locations, SW-1 (upstream of quarry dewatering discharge point) and SW-2 (downstream of quarry dewatering discharge) are located within the Project area, the other three are next to the Project area. These locations are further upstream of the site used in the SWAMP/SCVURPPP monitoring programs; therefore, these data more closely reflect the impacts from the mining activities.

However, selenium concentrations cited in the dEIR appeared to be all in the dissolved form, and the dEIR compared these dissolved concentrations with the selenium total recoverable WQOs (Table 4.10-2). In fact, total selenium concentrations may be more relevant to evaluate the severity of the problem. Dissolved selenium determines the phase transformation (from dissolved to particulate), but particulate selenium is the bioavailable form of toxicology importance (*Metal Contamination in Aquatic Environments, Science and Lateral Management, Samuel N. Luoma and Philip S. Rainbow, Cambridge University Press, 2008*). The dEIR at Page 4.10-6 states that selenium in the discharges are mostly in dissolved form, however, this statement needs to be supported by the data. Therefore, the analysis needs to be based on total selenium concentrations.

Even with the dissolved concentrations, all five locations in the Creek had selenium concentrations well above the WQOs, with the maximum concentration observed immediately downstream of the Quarry Pit dewatering point (81 µg/L as dissolved selenium versus the chronic objective of 5 µg/L). The Creek at this location is dominated by the Quarry dewatering

discharged from Pond 4A during dry season. Pond 4A had a sample with a selenium concentration of 100 µg/L. Besides, monitoring of the storm water runoff of the two waste materials storage areas (EMSA and WMSA) also indicated elevated selenium concentrations (ranging from 7.1 – 36 µg/L). Monitoring data of the groundwater in the Project area (0.27 to 3.9 µg/L) and in an adjacent reference creek, Monte Bello Creek (from non-detect to 0.71 µg/L), on the other hand, showed very low selenium concentrations. It is important to note that the groundwater samples were taken from the exploratory borings on the other side of Permanente Creek in an area that has not been disturbed by mining. Also, the dEIR needs to confirm that the Monte Bello Creek sampling location is eligible to be a “background” sample location.<sup>3</sup> Our comment here assumes that it is an appropriate background location.

#### **Comment #10; Limestone as Potential Source of Selenium**

The dEIR also identified limestone to be the rock that leaches the most selenium into the groundwater and surface runoff that has been in contact with the limestone. Groundwater that seeps into the Quarry Pit and storm water runoff that flows into the Quarry Pit, which is high in selenium, are constantly pumped to the Creek. Both WMSA and EMSA contain wasted limestone, portions of the WMSA contain dense quality limestone and aggregates; the Project proposes to separate these limestone during the reclamation (while excavating and backfilling the Quarry Pit using materials from WMSA) for subsequent processing. In the dEIR, it is noted that the EMSA also contains a fine-grade byproduct from limestone washing at the Rock Plant wash plant. Water Board staff have personally observed this same material, referred to by Lehigh staff as “mud cake”, deposited in large quantities in the WMSA as well. Lehigh further documented that Rock Plant “mud cake” is deposited in the WMSA in its application materials for coverage under the Sand and Gravel Permit.

This mud cake material may contain high-grade limestone and is considered potential sources of selenium if exposed to storm water and remobilized by runoff (pg. 4.10-32). Surface runoff in contact with these waste materials will bring high concentrations and mass loading of selenium into the discharge. It is unclear how Lehigh deals with the wash water that may be very high in selenium.

Therefore, the Water Board finds that the Quarry Pit dewatering and surface runoff from the waste material areas are significant sources of selenium. Furthermore, the crusher operation area and the surge pile contain significant quantities of fines as has been personally observed by Water Board staff.

The dEIR does not mention the full range of pollutants present in mud cake: as personally observed by Water Board staff, petroleum-based lubricants are used in large quantities in the rock crushing operations, and that waste accumulates in the crusher basin area and must be removed to either the WMSA or the EMSA. The Rock Plant uses chemical agents for flocculation, and those chemicals are also present in the “mud cake” that is deposited in the WMSA and EMSA. When the Water Board required Lehigh (per June 2011 13267 order) to propose which chemicals to sample for that would indicate presence of the proprietary chemicals

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<sup>3</sup> Refer to Comment #33, *infra*.

used at the Rock Plant, they answered, "acrylonitrile and acrolein," both of which are regulated priority pollutants in the California Toxics Rule. The dEIR needs to contain sampling data for all priority pollutants in all waste streams on site.

**Comment #11: The Water Board Is Not Confident, Based on Current Analysis, that Selenium will not be Mobilized by Project Activities**

The impact of selenium and metals contained in the WMSA, EMSA, and Quarry Pit has not been evaluated sufficiently to assume a less than significant impact with mitigation. The Quarry, and materials stored/disposed of in the waste piles (WMSA and EMSA) contain limestone, known to contain selenium. The overburden and waste rock is known to contain metals such as mercury, nickel, cobalt, manganese, and chromium. In elevated concentrations, these elements pose a risk to human and environmental health. While buried, these rocks are in reducing conditions and are not labile (reactive), such that metals on the surface do not readily leach (dissolve) into surrounding water, and are relatively immobile in the ground. Once exposed to oxygen or oxygenated water, as during the mining process, the surface of the rocks become oxidized. Selenium and metals also become oxidized into a labile form, such that they readily leach into surrounding water.

In the WMSA and EMSA, this Project's process of moving waste materials to the final storage location increases the concentration of selenium and metals in surface water and likely groundwater. The materials in these waste piles contain rocks, including fines (small particle size), with selenium and metals whose surfaces are oxidized, and therefore labile. Rain water will percolate through the proposed "cap" (which consists of a foot of permeable, coarse grained, non-limestone rock; under a six-inch layer of top soil) and into the material, dissolving selenium and metals. This water can seep from the waste piles contaminating stormwater, or percolate to the water table, contaminating groundwater. We note that the use of the word "cap" is misleading in the dEIR because the proposed layer of waste rock will not act as a cap as that term is used by geologists and others in the field.

Furthermore, the dEIR does not have sufficient information to demonstrate that mercury concentrations are similar to background. Furthermore, staff disagree with the assumption that the mercury concentrations above water quality objectives are necessarily attributable to atmospheric deposition. The contribution of atmospheric mercury to soil is likely negligible as it is primarily present in the atmosphere in the non-reactive elemental form.

An oxidation process similar to that described for the WMSA and EMSA has occurred in the rocks from the WMSA that will be used to backfill the Quarry Pit during reclamation, thereby further contaminating groundwater with selenium and metals if it is backfilled with mining waste. The dEIR does not adequately demonstrate that the mitigation efforts Lehigh proposes (amending the top 25 to 50 feet with organic matter) will adequately immobilize contaminants for the following reasons:

The Water Board staff disagree with the water quality projections for subsurface flow out of the Quarry (Table 4.10-7). The leachable concentrations of selenium and metals used for this projection were taken from the quarried samples rather than samples from the backfill source, the

WMSA. The rocks in the WMSA are presumably smaller sized, and therefore have greater leachable surface area than the quarried rocks. Furthermore, they have been exposed to oxygen longer and are further oxidized.

Staff concurs that the backfilled Quarry Pit will equilibrate to reducing conditions, and that amending the backfill with organic matter will enhance this process. However, the dEIR County has not sufficiently demonstrated that selenium and metals will be immobilized. Furthermore, the dEIR does not propose verification monitoring of groundwater to ensure groundwater is or remains uncontaminated. Specifically:

We cannot accept the assertion on page 4.10-39 that “case histories at other mines in the United States and Canada indicate that backfilling a mine pit and saturating the material causes chemically reducing (i.e., anoxic or anaerobic) conditions that result in very low mobility of selenium.”

The references to support this statement are not appropriate. The single case history provided (BLM 2007) was a study creating reducing conditions to precipitate selenium in a quarry pit lake, not a backfilled pit. The water was treated directly, which is not analogous to the dEIR’s proposal. The remainder of the “case histories” listed in the citation are proposals or plans, without a demonstration of results.

While we agree that reducing conditions reduce the lability of selenium and mercury, we cannot concur that this will necessarily result in sufficient sequestration of selenium and mercury (immobility) in the backfilled pit. Abiotic removal of selenate [Se (VI)] from solution is slow, and biotic anaerobic reduction typically results in selenite or elemental selenium, but further reduction to selenide is necessary to strongly bind selenium. Selenite reduction can result in colloids (very small particles) that remain mobile in groundwater. Mercury can be reduced to its elemental form, which though not reactive can be dissolved in groundwater, and is therefore also mobile. The potential therefore exists that selenium and mercury may continue to contaminate groundwater within and downgradient of the Quarry Pit.

The dEIR must demonstrate that mobility of selenium and metals is sufficiently retarded in order to demonstrate that the proposed Project can go forward. Furthermore, pursuant to Title 27, we will require Lehigh to monitor groundwater to ensure it is not impacted by mining or reclamation activities.

Finally, staff disagree with the analysis performed and conclusion that groundwater has not been impacted. Insufficient samples were taken (five) to make this determination. Moreover, the few samples that were taken were collected across Permanente Creek, which acts as a groundwater divide, and therefore are not representative of site groundwater (Figure 4.10-2). In sum, samples were taken in an inappropriate location and, even if they had been taken in an appropriate location, the number of samples taken is too low to provide statistical assurance of data quality.

**Comment #12: Selenium Discharge to the Creek Causing Further Degradation is Likely to be Prohibited and Concerns with Effectiveness of Mitigation Measures**

During the 20-year reclamation period, there would be lots of disturbances of the waste materials in the Project area, including excavating, hauling, grading, backfilling that may expose new limestone materials in the waste material storage areas to air and rain; this would exacerbate selenium discharge to the Creek during the interim reclamation period and cause a significant adverse impact to water quality and aquatic habitat. Although the dEIR proposed mitigation measures 4.10-2a: Interim Storm water Control and Sediment Management, and 4.10-2b: EMSA Interim Storm water Monitoring Plan; the dEIR states that “these measures would reduce the potential for storm water runoff to deliver sediment and selenium to Permanente Creek during the Project activities, but would not be sufficient to fully eliminate the possibility”; therefore, the dEIR categorizes the water quality impact from selenium discharge as “significant and unavoidable” after mitigation.

Federal and state Antidegradation Policies prohibit further degradation of impaired water bodies and groundwater. The discharge of elevated selenium or even worse, with potentially higher selenium concentrations associated with reclamation activities, will likely be prohibited. 40 CFR 131.12 states:

Where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the State finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the State's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the State shall assure water quality adequate to protect existing uses fully. Further, the State shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.

Therefore, in order to continue to discharge selenium-laden water into the Creek, either associated with future mining activities or reclamation activities, the dEIR must address the Antidegradation Policy requirements.

The dEIR also must include additional data, including, but not limited to, pollutants in sediment, aquatic plant, fish tissue, bird eggs, toxicity and cause of toxicity, to evaluate whether beneficial uses are being achieved or whether the discharge is the cause of the impairment.

For Impact 4.10-1, “Post-reclamation conditions in the EMSA, WMSA, and Quarry Pit would increase selenium concentrations in Permanente Creek to levels exceeding baseline conditions and Water Board Basin Plan objectives”, the dEIR’s proposed mitigation strategies to reduce selenium concentrations in the surface runoff from WMSA, EMSA, and Quarry Pit, after the reclamation is complete. These include the use of 1-foot non-limestone cover, 6-inch topsoil, and water monitoring to verify selenium concentrations in the runoff being below WQOs. Additional measures to lower selenium discharge in the groundwater that will recharge back to the Creek from the Quarry Pit include backfilling with organic material (to a 25-50 feet depth). The dEIR claims that this conditioning may produce an anaerobic condition in the backfilled



materials that will help transform dissolved selenium to solid forms of selenium. We are concerned about: (1) whether the 1-foot non-limestone cover will be enough to prevent storm water infiltrating into the materials underneath it; (2) how well the 1-foot non-limestone cover is implemented; (3) what else will be done if water quality monitoring indicates exceedance of water quality objectives in the surface runoff besides improving best management practices (BMPs).

**Comment #13: No Mention of Federal or State Antidegradation Policies in Regulatory Setting (4.10-17-4.10-26)**

Permanente Creek is listed as impaired for selenium on the federal Clean Water Act Section 303(d) List for Impaired Waters. The dEIR identifies that mining activities contribute significant loads of selenium to Permanente Creek via surface runoff and Quarry Pit dewatering. The proposed reclamation activities (the Project) could exacerbate selenium discharge during the 20-year reclamation period. The dEIR does not provide effective mitigation measures to reduce selenium discharges to Permanente Creek during the reclamation period. The federal Antidegradation Policy at 40 CFR 131.12 and the California policy embodied in State Water Resources Control Board Resolution 68-16, prohibit further degradation of the water quality in impaired water bodies and groundwater; therefore the discharge of potentially higher selenium concentrations associated with reclamation activities **may be prohibited**.

**Comment #14: Wastewater Discharge NPDES Permit Requirements**

Some of the constituents in the discharge from the Quarry are currently covered under the Water Board's General permit for Aggregate Mining and Sand Washing Facilities (Order No. R2-2008-0011). The Water Board staff is in the process of drafting an individual permit for this discharge due to the complexity of the operations at the site. Future discharges associated with mining and reclamation activities will be covered under the new NPDES permit. The future individual permit may include water quality-based effluent limits for selenium, and effluent limits for other pollutants with reasonable potential to cause WQO exceedance. Since the discharge is into an impaired water body, relaxed effluent limits might not be available for the discharge, as prohibited by the Clean Water Act and the Porter Cologne Water Quality Control Act. There is high risk that the discharge will require significant treatment to prevent WQO exceedances. The EIR does not address how the discharge will comply with expected NPDES permit requirements, especially since, as discussed *infra*, the dEIR concludes without much analysis that no selenium treatment is feasible while the reclamation activities cause significant yet unavoidable environmental impacts.

C. Other Issues

**Comment #15: Consistency/Comparability between WQOs and dEIR**

The applicable Water Quality Objectives (WQOs) for selenium in the National Toxics Rule (NTR) and mercury in the Water Quality Control Plan for San Francisco Bay (Basin Plan) are reported in the total recoverable form. The dEIR analysis mistakenly compares dissolved concentrations with the total objectives.

#### **Comment #16: Beneficial Uses Include Groundwater Recharge**

The beneficial uses of groundwater in the area (Santa Clara Valley Groundwater Basin, Santa Clara Sub-basin) include: (a) Municipal and domestic water supply; (b) Industrial process supply; (c) Industrial service supply; and (d) Agricultural supply. Groundwater in this area is used for recharge of aquifers used for drinking water, by the Santa Clara Valley Water District. See the Basin Plan Amendment at

([http://www.waterboards.ca.gov/sanfranciscobay/board\\_info/agendas/2010/July/6/Appx\\_A.pdf](http://www.waterboards.ca.gov/sanfranciscobay/board_info/agendas/2010/July/6/Appx_A.pdf))

Given the geology outlined in the dEIR, it is expected that groundwater flow would follow topography (flow from high to low points, the lowest being the creeks). Therefore, it is likely that potentially contaminated groundwater at the site discharges to Permanente and other creeks. The beneficial uses of Permanente Creek are (a) Cold freshwater habitat; (b) Fish spawning; (c) Wildlife habitat; (d) Water contact recreation; and (e) Noncontact water recreation. It should be noted that Permanente Creek is listed as impaired by selenium and toxicity on Clean Water Act Section 303(d) List (in addition to trash and diazinon).

The hydrology section of the dEIR states that there is insufficient data to understand the hydraulic connection between groundwater and surface water, or to compare background to site groundwater (for TDS and sulfate). There is almost no data provided on site hydrogeochemistry, which is imperative to understanding whether groundwater is contaminated, and can in turn contaminate surface water and drinking water aquifers.

The dEIR suggests that groundwater quality will not be impacted by reclamation; however there is inadequate analysis to make such a conclusion. Furthermore, given the Water Board staff's experience and knowledge of the geology of the area, we are concerned that groundwater is currently contaminated with selenium, and possibly metals.

#### **Comment #17: Contradictory Analysis Related to Mercury and Nickel**

The data used in the dEIR suggest that mercury and nickel WQOs are exceeded in Permanente Creek. However, the dEIR asserts that concentrations of these pollutants are either below the WQOs or at natural background levels. This statement appears to contradict the data and needs to be modified.

#### **Comment #18: Other Water Quality Concerns – Nickel**

Table 4.10-2 summarizes monitoring results for other metals, including mercury and nickel. These monitoring data are either for total or dissolved metals, while the objectives used to compare with are total for mercury and dissolved for nickel. The dEIR needs to be consistent and clear in using either the total or dissolved, when comparing with the same form of WQOs. This comment also applies to other metals like iron, manganese, and molybdenum.

The dEIR claims that nickel concentrations in the Creek and in surface runoff were mostly below the WQO calculated using a hardness value of 100 mg/L as CaCO<sub>3</sub>. However, concentrations in EMSA surface runoff, Pond 4A water, and in the Creek below the Quarry Pit discharge point mostly exceeded this WQO value. Observed concentrations were also much higher than those of the background (groundwater and reference creek). If the dEIR wishes to use a different WQO value based on actual observed hardness (the higher the hardness, the higher the objective), it needs to provide all hardness data, and uses the minimum observed hardness value for WQO calculation. It is also important to have hardness data collected during rainy season when the Creek is not dominated by Quarry Pit dewatering discharge and when hardness is lower. Such data collection may not be possible this winter as we have had an abnormally dry year.

Since the dEIR does not identify nickel as a problematic pollutant, there is no impact analysis to address the high levels of nickel in surface runoff (maximum average of 115 µg/L in one of the runoffs) and in the Quarry Pit water (100 µg/L). The projected nickel in runoff from reclaimed Quarry area, as provided in Table 4.10-8, is 2-3 µg/L. It is not clear how this low concentration is achieved without any measures to address nickel release from rocks. From the leachability test (Table 4.10-4), greenstone seems to leach the highest nickel. This is a different source than selenium (from limestone). It is also one of the rock types proposed to be used as "cover", which would create a higher risk for leaching of nickel into storm water runoff. Therefore, mitigation measures regarding selenium will not work for nickel.

#### **Comment #19: Other Water Quality Concerns – Mercury**

Mercury concentrations in four of the five creek monitoring locations were above the applicable WQO, surface water runoff concentrations were also higher than WQOs. The reference site at Monte Bello Creek has lower mercury concentrations than WQOs. Therefore, it appears that mercury might be a concern in the discharge as well in the Creek within and near the Project area. The dEIR asserts that mercury measured in runoff and in the Creek cannot be reliably distinguished from background. However, it is not clear how the conclusions were drawn. If available data are limited, more monitoring data is necessary to provide data for a robust statistical analysis.

#### **Comment #20: Stabilization – Affected by Choice of Baseline**

Geology, Soils, and Seismicity: Staff disagrees with the choice the baseline of June 2007. 4.7.1 and 2 Seismic impacts to structures and ground - It is true that the Reclamation Plan will stabilize slopes in the Quarry Pit and waste storage areas, but they are sliding and slumping due to disturbance resulting in a factor of safety around 1 according to the 2011 Terraphase Engineering Report cited in the dEIR (pg. 4.7-18), not due to inherent instability, as suggested in

the dEIR. This disturbance occurred prior to June 2007; therefore that data is an unacceptable baseline.

## II. WATER BOARD STAFF COMMENTS RELATED TO SELENIUM TREATMENT, PROPOSED MITIGATION, AND BEST MANAGEMENT PRACTICES

### Comment # 21: Selenium treatment – Inadequate Alternative Analysis (Flow)

While the Water Board expects the County of Santa Clara to have prepared the dEIR independently and reviewed the conclusions of its consultants, geologists and engineers with objectivity, the lack of discussion of alternative treatments makes it difficult for the Water Board to review and comment. By simply stating the largest possible flow and therefore assuming the highest possible cost for any treatment, the County has determined selenium treatment to be infeasible (4.10-47). Based on our cursory analysis, more work needs to be done before a conclusion on selenium treatment feasibility can be drawn. For example:

- The dEIR at footnote 14 (4.10-47) concludes that flow is approximately 8 cubic feet per second (cfs), which is based on a maximum pumping rate. There is no discussion, at least in the analysis of the cost of treatment, of Lehigh's reported flows at different outfalls.
- If Lehigh were to treat Quarry Pit water before combining it with other sources of water for discharge via 001, then the amount of water to treat for selenium would be about half of what the County used in the treatment cost estimate.
- No analysis of the economic benefit to Lehigh is conducted, despite regulatory mandates for such economic benefit to be assessed. The dEIR concludes that "approximately \$86 million," plus "approximately \$2.8 million per year to operate and maintain" is infeasible, and therefore the significant and unavoidable impacts are acceptable, subject to the mitigation proposed in the dEIR. However, such impacts come with consequences. Those selenium discharges are byproducts of Lehigh's operations, and by not being required to pay for treatment, Lehigh is receiving a significant economic benefit.
- Furthermore, **the County contacted the Water Board almost a year ago**, and had a meeting about various selenium treatment options. None of the information exchanged or discussed at the meeting is reflected in the dEIR.

### Comment #22: Selenium treatment – Inadequate Alternative Analysis (Cost)

The dEIR provided the Water Board with a single study supporting the estimate of \$86 million for selenium treatment, with little discussion of alternative current available technologies. While not directly applicable (analysis was in coal mining rather than mineral mining), a quick search revealed other data readily available, including the following study: *Evaluation of Treatment Options to Reduce Water-Borne Selenium at Coal Mines in West-Central Alberta*, located at <http://environment.gov.ab.ca/info/library/7766.pdf>. In that study, eleven technologies were reviewed

in detail. These include physically-based technologies (reverse osmosis, nanofiltration, and ion exchange), chemically-based technologies (iron precipitation and catalyzed cementation), and biologically-based technologies (algal volatilization, biological treatment plant, in-situ treatment, Biopass and other passive treatment systems, treatment wetlands, and evaporation ponds). Several of these technologies have been tested at a pilot-scale or implemented as treatment facilities.

The above technologies varied considerably with regards to their ability to remove selenate from solution cost-effectively. Several of them could not meet a treatment objective of 5 µg/L. Treatment costs ranged from less than USD \$1.00/1,000 gallons for in-situ treatment to over \$10.00/1,000 gallons for reverse osmosis and iron precipitation. Some technologies employ very straightforward processes, with simple process flowsheets (e.g., in-situ treatment or constructed wetlands), whereas others rely on more complex processes (e.g., iron precipitation). The County presented none of the benefits or drawbacks, or resulting increase in costs, when discussing selenium treatment.

*See also Comment 14, supra.*

#### **Comment # 23: Selenium treatment – Inadequate Alternative Analysis (Regulatory Guidelines)**

In water quality regulations, there are specific steps that must be taken in order for a cost of a particular treatment to merit a change in effluent limitations. The dEIR must at least include two alternatives on the opposite side of the spectrum: a costly treatment on the one hand and significant environmental harm on the other. Determining the treatment to be infeasible, the County essentially deemed the harm acceptable, despite the need for a more rigorous analysis whenever such decisions are made by a permitting authority. For example, the federal and state Antidegradation Policies require an analysis of whether the economic and social benefits for discharging selenium into an impaired water body outweigh environmental costs. If not, the discharge will be prohibited. This necessarily requires a calculation of the environmental cost. The dEIR provided no such analysis. EPA has defined the “best conventional pollutant control technology” and “best available economically achievable technology” (“BCT”; “BAT”), both of which take cost-effectiveness into account.

#### **Comment #24: BMPs – General Understanding of Term (4.10-44-45)**

For the Water Board’s purposes, a BMP (Best Management Practice) is an erosion control, a sediment control, a self-monitoring schedule and program, and an iterative repair and maintenance program for erosion and sediment controls, followed by permanent vegetative stabilization.

The appropriate level of BMP implementation is a formal “bar”--Best Available Technology (BAT)--driven by the Clean Water Act and the Water Board’s Basin Plan. The Water Board will spell out the requirements for BMP implementation in the individual NPDES permit in conjunction with numeric effluent limits (both technology and water quality based). The BAT

bar for Lehigh in the above categories (erosion, sediment, self-monitoring, and repair and maintenance, permanent vegetative stabilization) is set, at a minimum, by the permits issued to Lehigh.

A BMP is **not** an effective method of treating dissolved pollutants, such as selenium.

**Comment #25: BMPs – No Schedule for Implementing (4.10-44-45)**

The Water Board does not generally proscribe manner and method of BMPs; instead, the discharger or permittee submits a proposed BMP plan for the project at issue. In addition to the comments made throughout this letter, this comment address three major caveats regarding the BMPs suggested by the dEIR. One, the dEIR does not address bringing the Project site into compliance with the current permitting structure, both BMPs for stormwater and effluent limits for process wastewater. As noted throughout these comments, the Project site poses a number of regulatory challenges that the dEIR did not address: the EMSA and WMSA being unlined and uncovered; the placement of in-stream sediment ponds as alleged sediment-reduction BMPs; etc.

The Water Board did not object to the County's selection of the baseline date; however, the County must recognize what must occur for Lehigh to be brought into compliance. Second, there is no schedule for implementing the list of BMPs set forth in the dEIR. Although Phase I of the Project is scheduled to take place over **7 years**, the Water Board would propose such a time period by which to implement BMPs is not protective of water quality. Lastly, BMPs are preventative in nature, and dischargers/permittees can be held responsible for not selecting, installing, replacing, or maintaining proper BMPs. However, dischargers/permittees can also be held responsible for discharges that occur **notwithstanding** the installation of BMPs.

**Comment #26: BMPs – No Discussion of Interaction with Lehigh and Discussion of Current Conditions and Plan for Correction**

While the Water Board, through consultation on Storm Water Pollution Prevention Plans and other related documents and enforcement of Water Code violations, may be involved more directly on a going forward basis with the development of BMPs on the Lehigh site, **for the purposes of the dEIR**, more analysis and stronger mitigation should have been done with regard to the status of the BMPs currently in place and their inadequacy and potential for environmental harm. For example, there is a lack of large scale erosion control BMPs; inadequately sized and inadequately maintained sediment control BMPs; there have been discharges of industrial process water, which is prohibited under the Industrial Storm Water Permit (publicly noticed and subject of current enforcement) as a result of current business practices.

**Comment #27: Erosion vs. Sediment**

Best Available Technology BMPs for keeping sediment out of the Creek must be predominantly erosion control and secondarily sediment control. Sediment BMPs are likely to increase the level of dissolved pollutants; erosion control BMPs keep sediment in place and are the most effective and important in keeping sediment out of the Creek. Erosion control BMPs include

covering disturbed areas with cover such as erosion blankets, bonded fiber matrix, spread and tackified straw, and vegetative cover. Erosion control BMPs are not "one size fits all"--they must be selected based on parameters such as slope, length of time they will be left in place, the particle size distribution of the material being covered, weather, and other factors. A Best Available Technology approach to keeping sediment out of the Creek relies predominantly on erosion control and uses sediment control as a redundant protection.

At Lehigh currently, there are no erosion control BMPs being used, and the only BMPs being used to keep sediment out of the creek are sediment controls: check dams on Quarry roads and detention basins. In the dEIR, the majority of BMPs mentioned are sediment controls, such as silt fences, straw wattles and silt removal from the toe of slopes.

#### **Comment #28: More Specificity Related to Sediment Control Needed**

The dEIR needs more specificity in the suite of erosion control practices, techniques, materials, schedules, and operation and maintenance procedures. As currently described, the Project will not be in compliance with the BAT standard for BMPs that keep sediment from the Creek.

Sediment controls remove solids but they increase concentration of dissolved pollutants in discharges to the Creek. The basic concept in sediment control is to create barriers to flowing water so it loses its energy and therefore drops the sediments suspended in it. The sediments remain behind (or in) the BMP feature and the water continues on its way to the Creek. The finer the suspended sediment (along the continuum of gravel, sand, silt, clay), the longer the time required for the water to be slowed down in order to drop the suspended sediments. In the case of silts and clays, the water must be completely ponded still for hours up to days in order to remove the sediments. The "residence time" of a sediment treatment pond is maximized in order to maximize sediment removal.

The problem with maximization of residence time is that it increases the time in which solid pollutants are able to dissolve into the water. So, while the solid load going to the Creek decreases, the dissolved pollutant load to the creek increases. At Lehigh, where (with the limited characterization available) we know that dissolved pollutants are an issue, sediment controls are insufficient and actually increasing the pollutant load unless combined in sequence with other pollutant removal technologies.

#### **Comment #29: Mitigation Measure of Professional Geologist; Undefinable amounts of limestone still acceptable under the dEIR**

The mitigation measure of a professional geologist to verify the use of non-limestone material being used in the cover is insufficient (refer to mitigation measure 4.10-1a). First, the geologist mainly relies on visual observations for large-scale operations and random spot sampling. Keep in mind that the areas to be reclaimed are vast – tens if not hundreds of acres each. A halt to operations is called for only when "significant" amounts of limestone are "intermixed with the supposed non-limestone cover material." Because "significant" is not a defined term, it is

unclear how much limestone material is acceptable to the professional geologist or the County. As described herein, limestone will be exposed to rain and oxidation, and the runoff that comes in contact with these materials will continuously risk discharging to the Creek. These discharges are violations of existing permits, federal and state antidegradation policies, and no in-depth analysis has been performed to justify the economic issues that outweigh the known environmental and potential health impacts.

**Comment #30: The “cap” does not provide sufficient erosion control**

The end goal of the reclamation activities is to reclaim the EMSA and WMSA and end up with a covered area that has a covered area that can be re-vegetated. When the Water Board uses the word "cover," it typically refers to an area that provides adequate erosion control. What the dEIR proposes as "cover," using run of the mine non-limestone materials, does not rise to the level of being a management practice for the following reasons: (1) it does not provide erosion control; it is, itself, loose, unconsolidated material that is subject to erosion; (2) it does not prevent surface water from picking up dissolved or suspended pollutants. The "run of mine" rock may itself be a source of such pollutants; the waste piles have not been adequately characterized to determine what the full range of potential pollutants are; (3) the current state of waste materials in the WMSA and EMSA (as personally observed on multiple inspection dates by Water Board staff) is not organized and segregated into different types of rock; the dEIR has not described a procedure for sorting and verifying material placement that the Water Board finds to be feasible or reasonable to expect to be carried out. Such protections may include liners separating waste from the ground surface to prohibit migration of waste and leachate to soil, groundwater, or surface water or a cap or cover to minimize percolation of liquids through the waste, and thus leachate production. By “cap” or “cover,” what is understood in the context of Title 27 compliance is an impermeable layer such as clay—not the loose, unconsolidated waste material referred to in the dEIR as “cover.” Failure to comply with these requirements can result in a failure to isolate wastes from groundwater and surface water.

**Comment #31: Other “cap” issues**

The proposed 6 inches of soil on top of rock is not likely to support revegetation. This is further exacerbated by fact that most of site is sloped (and will be, even after “reclamation”). Furthermore, the proposed mitigation revegetation period is much shorter than what is considered necessary and standard. Without revegetation, erosion is inevitable.

**Comment #32: Sedimentation Basins In Pond Are Not Proper BMPs and Are in Fact Improper**

Existing improperly created instream ponds cannot be used for sediment control now or for the proposed Project. It is improper to use a water of the state to treat discharges to waters of the state. However, this process is in effect at the Lehigh facility. It is not acceptable for the dEIR to propose the continued use of these instream ponds as sediment reduction BMPs.



### **III. WATER BOARD STAFF COMMENTS RELATED TO THE WATER BOARD'S JURISDICTION, FUTURE PERMITS REQUIRED AND SPECIFIC COMMENTS**

#### **Comment #33: Monte Bello Has not Been Established as a Proper Background Source**

Lehigh has not established an approved "background" sample location for comparison to the impacts of the facility to Permanente Creek. Prior to review of the draft EIR, Water Board staff had not been informed of the "Monte Bello" creek sample as a surrogate background sample for Permanente Creek. In order for a background sample to be legitimate, it must be outside of the zone of influence of pollutant sources (in this case, quarrying activities), and it must flow over the same geologic formation as the Creek. Lehigh has proposed background sample locations to the Water Board that are on Permanente Creek but still downstream of the WMSA. Lehigh and Water Board staff hiked up to the confluence of a tributary entering Permanente Creek and Lehigh sampled there. That location has not been confirmed as acceptable because the Water Board has not reviewed the geology and the access is not safe. A background sample location needs to be proposed with full documentation of surrounding land uses and geologic formation through which it flows.

#### **Comment #34: Key water quality concepts and requirements are misrepresented in the dEIR**

The term "benchmarks" when referring to the Basin Plan is used in the dEIR. The correct term is Basin Plan Water Quality Objectives. A benchmark is a value that indicates a protective level and to which test results can be compared to get an idea of whether BMP changes need to be made. A water quality objective is a standard, which, if not attained, the designated beneficial uses are adversely affected. A benchmark implies a goal; the Basin Plan sets forth enforceable standards. From Chapter 3 of the Basin Plan:

Together, the narrative and numerical objectives define the level of water quality that shall be maintained within the region.

The Regional Board establishes and enforces waste discharge requirements for point and nonpoint source of pollutants at levels necessary to meet numerical and narrative water quality objectives. In setting waste discharge requirements, the Regional Board will consider, among other things, the potential impact on beneficial uses within the area of influence of the discharge, the existing quality of receiving waters, and the appropriate water quality objectives.

#### **Comment #35: Species Issues #1 Section 2.7.11.5, Utilities, Stormwater and Erosion Control.**

Text in this section proposes to use the three existing in-channel ponds, Ponds 13, 14, and 22, to accommodate some Project-related stormwater flows. Ponds 14 and 22 provide breeding habitat for the endangered California red-legged frog (CRLF), and CRLF were identified in Pond 13 in 2006 (2006 *California Red-Legged Frog (Rana draytonii) Surveys at the Hanson Permanente*

*Cement Facility, Cupertino California*, Mark R. Jennings, Rana Resources, December 30, 2006). Because of the potential for impacts (i.e., take) to CRLF, these in-channel ponds should not be relied upon to provide sediment management for closure activities.

#### **Comment #36, Species Issues #2 (4.4-44 )**

4.4-44 mentions that Pond 17 supports California Red Legged Frog (CRLF). This is significant information that Pond 17, an off-stream sediment BMP that receives flow from the Rock Plant area, supports Red Legged Frog habitat. While inspecting in May 2010, the Water Board staff observed tadpoles in Pond 17 and were verbally assured that they were "Pacific Tree Frog, absolutely not California Red Legged Frog" by Lehigh staff Scott Renfrew. Pond 17 is actively dredged, as it should be to perform as a sediment BMP. However, the presence of CRLF in Pond 17 suggests that ANY retention pond on site would be vulnerable to inhabitation by CRLF and therefore cannot be dredged and therefore cannot be functional as a sediment BMP. This further supports the concern that detention basins should not be considered as tools for water quality treatment.

#### **Comment #37: Species Issues #3**

##### **Section 4.4.2.1, Biological Communities and Wildlife Habitat Types, Aquatic Habitat, Streams and Ponds.**

Text in this section states that "CRLF had been found to inhabit four off-stream sediment ponds, including Pond 13, and portions of the Permanente Creek." Pond 13 is actually an in-channel pond, in which CRLF were identified in 2006 (2006 *California Red-Legged Frog (Rana draytonii) Surveys at the Hanson Permanente Cement Facility, Cupertino California*, Mark R. Jennings, Rana Resources, December 30, 2006).

The text in this section concludes that, "the creek does not support aquatic or upland dispersal habitat for CRLF in this region." Since CRLF have been found in four ponds in the Project area, including one in-channel pond, some level of habitat for CRLF appears to be present in the Project area.

#### **Comment #38: Species Issues #4**

##### **Section 4.4.1.3, Regulatory Setting, Wetlands and Jurisdictional Waters, San Francisco Bay Regional Water Quality Control Board.**

The discussion of RWQCB regulatory activity should be expanded to clarify the way in which permits are issued for projects that include impacts to both federal jurisdictional waters, which are always subject to state jurisdiction, and waters that are only subject to state jurisdiction. When a project will impact waters of the State that are outside of federal jurisdiction, it is the Water Boards' practice to cover all impacts to the waters of the state (including those impacts not subject to federal jurisdiction) in a single permit that includes both CWA Section 401 certification and WDRs issued pursuant to the State's Porter-Cologne Act authority. Water Board staff evaluate the extent of impacts to federal and non-federal State waters in the context of reviewing the application for certification and/or WDRs and set the appropriate level of mitigation on the basis of impacts to all waters of the State.

**Comment #39: Species Issues #5****Chapter 4, Environmental Analysis.****Section 4.4.1.2, Local Setting, Special Status Species.**

The discussion of special status species does not include Water Board jurisdiction over activities that may affect special status species. The *Water Quality Control Plan for the San Francisco Bay Region (Basin Plan)* is the Water Board's master water quality control planning document. It designates beneficial uses and water quality objectives for waters of the State, including surface waters and groundwater. The beneficial uses that have been identified for Permanente Creek in the *Basin Plan* include: preservation of rare and endangered species; fish spawning; and wildlife habitat. Any activities in Permanente Creek and its tributaries that could impact these beneficial uses are subject to Water Board jurisdiction.

**Comment #40: Water Board Permits****Chapter 1, Introduction.****Table 1.1, Expected Permits, Approvals and Consultations.**

In the row with "San Francisco Bay Regional Water Quality Control Board (RWQCB)" in the 'agency column', there is no discussion of the need to obtain Waste Discharge Requirements (WDRs) in the "permit/approval required" column. The table should be revised to include the Water Board's Porter-Cologne Act Authority, including the need to obtain Water Board permits for actions that are not regulated under Clean Water Act (CWA) authority, such as dredging in waters subject to federal jurisdiction, or actions that occur in areas outside of federal jurisdiction, such as isolated wetlands or creek banks above the ordinary high water mark (OHW).

The State has jurisdiction over streams above the ordinary high water mark (OHW) and over isolated wetlands, as well as over seasonal, intermittent, and ephemeral streams that lack a hydrologic nexus to navigable waters. When a project that is applying for water quality certification will impact waters of the State that are outside of federal jurisdiction, it is the Water Board's practice to cover all impacts to the waters of the state (including those impacts not subject to federal jurisdiction) in a single permit that includes both CWA Section 401 certification and WDRs issued pursuant to the State's Porter-Cologne Act authority. Water Board staff evaluate the extent of impacts to federal and non-federal State waters in the context of reviewing the application for certification and set the appropriate level of mitigation on the basis of impacts to all waters of the State.

**Comment #41: Workplan Information****Chapter 2, Project Description.****Section 2.3.1, Existing Land Use in the Project Area.**

The fourth paragraph of this section discusses a "test plot program" that was initiated at the facility in 2007. In Provision C.7 of Cleanup and Abatement Order No. 99-018, the Water Board required that the facility prepare a technical report containing a work plan for slope stabilization and re-vegetation of the former overburden stockpile area. In response to this provision the

*Hanson Permanente Cement Former Overburden Stockpile Work Plan and Implementation Schedule (Response to RWQCB CAO No. 99-018, Item C.7)* was submitted to the Water Board on December 15, 1999. Water Board staff would like to know if the implementation of this workplan provided any information that was used in the development of the *Revegetation Plan, Permanente Quarry, Santa Clara County, California (Revegetation Plan)* (WRA Environmental Consultants, December 2011).

#### **Comment #42: Restoration Plan Cross-Referencing**

##### **Section 2.7.8, Permanente Creek Reclamation Area.**

The facility is in the process of finalizing the *Permanente Creek Long-Term Restoration Plan* (URS Corporation, March 11, 2011), which divides Permanente Creek into 21 reaches in the assessment of restoration opportunities. The *Revegetation Plan* for the Quarry proposes restoration measures for the Permanente Creek Reclamation Area in terms of seven subareas. It would be useful to cross-reference the 7 subareas in the *Revegetation Plan* with the reaches in the *Permanente Creek Long-Term Restoration Plan*. Water Board staff can provide County staff with a copy of the most recent version of the *Permanente Creek Long-Term Restoration Plan*. Even if some details of the plan are revised, the reach numbering system is not anticipated to change.

#### **Comment #43: Sloping/Runoff**

##### **Table 2-3, PCRA Subarea 1 Reclamation Treatments**

For road treatment, the proposed reclamation treatment is to regrade the roads to inslope them and collect runoff on the inboard edge of the road. It is not clear from the description how water collected along the inboard side of the road would be conveyed to Permanente Creek. Concentrating flow along the inboard side of roads can create more focused, erosive flows at the eventual discharge point. In some cases, it is preferable to outslope roads to prevent concentrating runoff on the inboard edge. The closure plan should provide a more detailed discussion of optimum sloping for post-closure road surfaces.

#### **Comment #44: Grouted Riprap Inappropriate**

##### **Table 2-4, PCRA Subarea 2 Reclamation Treatments**

The description of basin outlets and flow controls includes new outfalls from sedimentation basins at the southern edge of the WMSA to tributaries to Permanente Creek. Water Board staff would like to clarify that these tributaries are regulated as waters of the State and permits will be required from the Water Board for the construction of these outfalls. Grouted riprap pads are proposed as energy dissipaters at the outlets to the tributary channels. Grouted riprap is incapable of adjusting to changes in channel morphology that occur naturally over time. Grout should be removed from the proposed design. UngROUTED riprap, which can adjust to changes in channel morphology, should be used to construct energy dissipaters.

**Comment #45: Armoring/Possible Permit Needed**

**Section 2.7.8.6, PCRA Subarea 6 and Table 2-8.**

Proposed actions in PCRA 6 include, “one ravine would be armored during Phase 2 to accept flows from RPA Basin 40A.” More detail is needed for this proposed armoring, which may include the placement of armoring in a jurisdictional tributary to Permanente Creek. Any armoring placed in a tributary channel will require a permit from the Water Board and mitigation for the placement of fill in a jurisdictional water. Basin outlets should be designed to minimize the need for extensive armoring at outfalls to tributary channels.

**Comment #46: Armoring/Possible Permit Needed**

**Section 2.7.8.7, PCRA Subarea 7.**

Proposed actions in PCRA 7 also include armoring a ravine to accept flows from the reclaimed Quarry Pit. More detail is needed for this proposed armoring, which may include the placement of armoring in a jurisdictional tributary to Permanente Creek. Any armoring placed in a tributary channel will require a permit from the Water Board and mitigation for the placement of fill in a jurisdictional water.

**Comment #47: State Jurisdiction**

**Chapter 4, Environmental Analysis.**

**Section 4.4.1.2, Local Setting, Jurisdictional Waters and Wetlands.**

The discussion of jurisdictional waters and wetlands is limited to waters subject to federal jurisdiction. This section should be expanded to include state jurisdiction under the Porter-Cologne Act.

As was noted in the comment on Table 1.1, *Expected Permits, Approvals and Consultations*, the State has jurisdiction over streams above the ordinary high water mark (OHW) and over isolated wetlands, as well as over seasonal, intermittent, and ephemeral streams that lack a hydrologic nexus to navigable waters.

**Comment #48: Wetlands**

**Section 4.4.3, Significance Criteria.**

Criteria (c) should be revised to replace “adverse effect on any federally protected wetlands” with “adverse effect on any state or federally protected wetlands.” The CEQA Guidelines were developed prior to the Supreme Court decisions that limited the extent of federal jurisdiction over wetlands.

**Comment#49: Wetlands/Other Waters**

**Impact 4.4-8: Project activities could result in substantial adverse effects on wetlands and jurisdictional waters associated with Permanente Creek through direct removal, filing, hydrological interruption, or other means.**

This discussion of potential impacts to jurisdictional waters at the Basin Outlets and Flow Controls in PCRA 2 and the discussions of Mitigation Measures 4.4-8a and 4.4-8b are somewhat confusing. In some paragraphs, impacts are described for impacts to both wetlands and other waters. In other paragraphs, only impacts to wetlands are addressed. For clarity, all impacts to state jurisdictional wetlands and other waters should be described and mitigation should be proposed for all impacts to jurisdictional wetlands and other waters.

Mitigation Measure 4.4-8a should be revised to include identification of all wetlands and other waters subject to state jurisdiction.

Mitigation Measure 4.4-8b should be revised to include mitigation plans for impacts to other waters (e.g., stream channels that are impacted by the placement of new armoring or energy dissipaters). Proposed mitigation plans should include performance criteria that would be used to evaluate the success of the proposed creation and/or enhancement of other waters. The discussion of potential mitigation measures for impacts to wetlands and other waters should also evaluate onsite locations at which the creation or enhancement of wetlands and other waters are hydrologically feasible.

**Comment #50: Beneficial Uses**

**Section 4.10.1.4, Regulatory Setting, Table 4.10-5, Designated Beneficial Uses of Water Bodies in the Project Area.**

The footnote to the table should note that on July 14, 2010, the Water Board adopted Resolution No. R2-2010-0100, which amended the designated beneficial uses in the Basin Plan. This resolution added the beneficial uses of groundwater recharge, the preservation of rare and endangered species, and warm freshwater habitat to Permanente Creek. The resolution has been submitted to the Office of Administrative Law and the U.S. EPA for review and approval. It is likely that the additional beneficial uses designated for Permanente Creek will be approved before the Project is implemented.

**Comment#51: Incomplete Jurisdictional Description**

**Section 4.10.1.4, Regulatory Setting, Waste Discharge Requirements**

In the first paragraph of this section, the text, "discharges to waters of the State (such as isolated wetlands)," should be replaced with "discharges to waters of the State (such as isolated wetlands, creek banks above OHW, or seasonal, intermittent, and ephemeral streams that lack a hydrologic nexus to navigable waters).

### Summary of Comments and Conclusion

Water Board staff met with both County of Santa Clara staff and Lehigh consultants prior to submitting these public comments. Additional documentation was submitted by Lehigh and the County immediately prior to the public comment deadline that was not included in the dEIR or the Appendices. However, none of that information changes the conclusions drawn by the Water Board staff about the overall lack of data regarding the waste piles which are the subject of the reclamation plan.

Instead, the Water Board recommends additional sampling, characterization and analysis prior to approval of a final EIR. At a minimum, the dEIR should be re-circulated. Preferably, adequate characterization should be done so as to satisfy the Water Board, the public, and the County as the approving agency that there are no hazardous materials in the waste piles and there have been no groundwater impacts by the waste piles.

Water Board staff would be willing to meet with Lehigh and Santa Clara further to discuss the improvement of the dEIR and permit applications described in the Water Board's comments. Lehigh is the subject of active enforcement actions and permit development with Water Board staff.

The dEIR has been reviewed by staff in several of the Water Board's program areas because the impacts are broad ranging. If you have any questions, please direct them to Project Manager Christine Boschen of my staff at (510) 622-2346, or via email at <cboschen@waterboards.ca.gov> , who will disseminate them to the appropriate staff.

Sincerely,

Shin-Roei Lee, Chief  
Watershed Management Division



OpenSpace

Midpeninsula Regional Open Space District

5/24/2012  
Supplemental Packet  
Item # 3

Free

GENERAL MANAGER  
Stephen E. Abbots

BOARD OF DIRECTORS  
Pete Siemens  
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Mr. Rob Eastwood  
Santa Clara County Planning Office  
County Government Center  
70 W. Hedding Street, 7<sup>th</sup> Floor, East Wing  
San Jose, CA 95110

February 17, 2011

RE: The Lehigh Permanente Quarry Reclamation Plan Amendment Draft Environmental Impact Report (SCH#2010042063)

On behalf of Midpeninsula Regional Open Space District (District), I would like to provide the following comments on the Draft Environmental Impact Report (DEIR) for the Lehigh Permanente Quarry Reclamation Plan Amendment. The District has previously submitted numerous comment letters on various recent proposals related to the Permanente Quarry, as referenced in our May 17<sup>th</sup>, 2011 letter regarding the scoping of the subject DEIR.

**East Materials Storage Area (EMSA)**

The proposed EMSA remains extremely problematic. The District does not believe that Lehigh or the County have shown that this area is in fact a pre-existing use area associated with the quarry. We concur with the County Geologist's conclusion, as presented to the Board of Supervisor's for the public hearing related to existing non-conforming use (vested right), that the area proposed for mine waste at the EMSA was never a part of the quarry operations. It instead was developed and used for industrial manufacturing related to Kaiser's magnesium and aluminum plant operations. Many maps identify this location with the name "Permanente Metals" given to the magnesium and aluminum plant operations. In fact one natural gas source was shared by the metals manufacturing plants and the cement plant, as noted in the historic resources section of the DEIR, again testament to this location being a manufacturing plant facility, subject to a use permit, as opposed to an existing non-conforming quarry operation.



Quarry related overburden and waste dumped at the EMSA are in fact a very recent phenomenon, beginning in 2006, that correctly resulted in the County's 2008 Notice of Violation that this was not an allowed use. We believe that the record shows that the EMSA, until very recently, was never a part of quarry operations, and therefore cannot be "vested". Instead, development of the proposed EMSA area is clearly subject to a County use permit.

The addition of the EMSA as a "quarry operation" and inclusion in the Reclamation Plan Amendment is characterized in the DEIR as a "significant and unavoidable" visual impact. The proposed visual impacts related to the EMSA are simply staggering. The huge stepped waste pile proposed is vastly out of character with the surrounding topography, the hillside protection zone district, the County scenic ridge easement, valley view shed protection policies, and park protection policies. Within the historic context, the value of the visual resources at stake is well documented and recognized. This new unnatural waste pile will form the new background to the County scenic easement granted by Kaiser long ago in recognition of the visual importance of Permanente Ridge, and the strong community and County support behind its protection.

The 1985 Reclamation Plan stressed the importance of reclaiming a small pile of quarry waste at the time known as the east materials area (Area C). The scale of this pile is dwarfed by the proposed EMSA, but at the time was recognized as a visual impact to be immediately remedied. This allowed for quarrying to the west of this old waste pile, "while maintaining a knoll as a visual buffer between the quarried area and the Santa Clara Valley area". The 1985 Mitigated Negative Declaration (MND) for the 1985 Reclamation Plan states that "The existing ridgeline will be maintained by means of the (scenic) easement agreement and conditions of this reclamation plan to insure neither the quarry pit nor materials storage area will be visible towards the north and east." It further states that "The Permanente ridgeline and its easement dedication will insure no exposure of the quarry or its material area towards the north and northeast." One has to ask why the existing visual impact of the quarry is so much greater than the County initially envisioned. One also has to question the construction of the proposed EMSA which dwarfs this prior area of concern and also moves the huge pile of proposed quarry waste up to 5000' closer to the valley floor!

The DEIR project baseline is established as 2007, the year following Lehigh's initiation of dumping in the EMSA and one year prior to the County's Notice of Violation to Lehigh for unauthorized use of this area. Since Lehigh had initiated quarry waste disposal by 2007, the DEIR assumes the entire 6,500,000 tons of waste have been already piled in the proposed EMSA. This is clearly problematic, and inappropriate. The EMSA is in fact a new project, initiated in a new area, subject to a County Use Permit.

The DEIR concludes that alternatives which would not construct the EMSA (no project alternative), or the removal of the EMSA at final reclamation (Alternative 1) are "least preferred", since the lack of or lower height of the reclaimed EMSA would not provide visual screening for the existing Cement Plant site. This assumes the EMSA is built, it is not. The cement plant operates under a use permit issued and regulated by the County. This issue illuminates the overlap of the historic manufacturing plant facilities area (part of which is proposed to be buried by the EMSA waste) and the "quarry operations" proposed.

If the construction of a quarry waste dump is being done to screen the cement plant operations, isn't that more appropriately completed under a use permit amendment for the existing cement plant? It is also clear from a review of the cement plant site and the DEIR's supporting documents that substantial waste material is also being placed outside of the footprint of the proposed EMSA, in other areas around the cement plant. While also highly visible from the surrounding area, we assume that this ongoing operation is also intended to visually screen existing cement plant structures and features. Are these new fills a part of a use permit amendment for the plant? It is appropriate that all new fills proposed to visually screen the permitted cement plant, be reviewed and regulated under the cement plant use permit.

It is absurd for the DEIR to conclude that not building the new unprecedented visual impact associated with the proposed EMSA would result in a greater visual impact because the public will be able to then see the cement plant facility which already exists, and has been highly visible for decades. The County has had a history of failures with regard to scenic protection associated with the quarry and cement plant. This is an opportunity to finally get it right. The County should not be misled to use this Reclamation Plan Amendment process to mitigate past visual protection failures with a new much larger impact, the EMSA.

The visual analysis that is included in the DEIR also clearly shows that the proposed EMSA is far larger in extent and much higher than that necessary to visually screen a portion of the existing cement plant operations from the surrounding communities. The EMSA is proposed as a quarry waste dump to accommodate the substantial deepening of the existing quarry proposed under the Reclamation Plan Amendment. Any other characterization is simply disingenuous. The incredibly significant visual impact associated with the proposed EMSA cannot be understated.

Regarding the visual impacts associated with the proposed project, the no project alternative is clearly preferred since the EMSA would not be constructed. The DEIR is incorrect in the assumption that reclamation of the EMSA would have to wait 25 years to occur. The County could order this immediately to resolve the existing violation.

The visual simulation presented in the DEIR also appears to be overly optimistic, and paints a prettier, greener picture than what would actually likely exist. The proposed EMSA is a waste rock dump. Waste rock is a very difficult material to revegetate, the time involved in revegetation will likely be much longer than presented. The greening of the site as depicted is also misleading. Much of the initial growth will be grass. As is evident from the top of the WMSA visible from the valley floor, the grass is brown for over half of the year, a significant contrast to the surrounding evergreen hillsides and ridges. It would also likely have erosion rills and surficial slippage, exposing bare patches of ground. The look will be more like the look of any nearby garbage landfill, unnaturally stepped and brown for most of the year, with sparse woody vegetation, not exactly compatible with scenic hillside protection.

In addition to the visual impacts discussed above, the proposed EMSA is also a source of significant impact, related to air quality, requiring mitigation. As an immediate neighboring property, in public trust, we are opposed to the ongoing and proposed dust impacts associated with the EMSA construction. The air quality assessment presented in the DEIR attempts to characterize dust and associated known toxic substances related to the quarry waste disposal by assessing the existing operations in the EMSA. The existing operation is occurring further away from the park/open space properties, and at a smaller scale than the proposed full EMSA. This is not a fair representation or analysis. A detailed analysis for air quality impacts should be conducted at the shared property line to characterize potential impact to the recreating public and our nearby Foothill Field Office facility. Additionally, a long-term continuous air quality monitoring station should be established at this location. The PG&E Trail located within the Rancho San Antonio Open Space Preserve is often heavily impacted by dust generated by the quarry and cement plant operations, that leaves a layer of dust on vegetation. The quantification and analysis of air quality impact to the Open Space Preserve, including the Field Office located within is not well studied or characterized in the DEIR.

The EMSA is identified in the DEIR as a new source area for selenium, adding to the existing quarry related water quality impacts to Permanente Creek. Water quality and biological resources per the DEIR would incur significant and unavoidable environmental impacts associated with the proposed project. The DEIR discusses project alternatives and concludes the extended time frame to reclamation of the EMSA would increase water quality impacts.

An additional alternative should be analyzed in the DEIR, an alternative that allows no further placement of waste within the EMSA and the immediate removal of all material that has been recently placed there, and immediate site restoration. Further, the alternative overburden disposal should have been included in the DEIR. These alternatives would avoid the significant and "unavoidable" impacts identified in the DEIR related to the EMSA. The alternatives presented in the DEIR, including the Preferred Project, attempt to address the Project's significant impacts when Lehigh is finished making them, as opposed to avoidance of impacts or immediate mitigation of existing impacts. Per CEQA and the stated DEIR objectives, alternatives considered must be capable of eliminating or reducing significant environmental effects. The removal of the EMSA would eliminate and/or reduce the significant and unavoidable impacts identified in the DEIR. Per CEQA this alternative is also feasible, capable of being accomplished in a successful manner.

In fact, the County agreement with Lehigh to continue dumping in the EMSA, following the County's notice of violation states that there is no assurance that the quarry waste will remain if the quarry continues to place it under the agreement. In other words, Lehigh can continue dumping quarry waste at their own risk, knowing they may need to remove it. The alternatives noted above appear superior to the alternative presented in the DEIR since they would remove/ stop an additional source of water quality impact from an operation that is already out of compliance for water quality impacts, would not create additional dust impacts, and would not further substantially degrade visual resources.

### **Toxics/ Hazardous Materials**

Section 4.9 of the DEIR states that "in some cases, past industrial or commercial activities on a site could have resulted in spills or leaks of hazardous materials to the ground, resulting in soil and/or groundwater contamination." It further states that "at sites where contamination is suspected or known to have occurred, the site owner is required to perform a site investigation and perform site remediation, if necessary."

The proposed EMSA is a significant concern regarding potential toxic substances associated with the old magnesium and aluminum plant locations. These obvious potential toxic concerns do not appear to have been investigated or evaluated in the DEIR. The quarry waste dumping proposed, particularly around the old graded metals manufacturing building pads and the down-slope edge of proposed EMSA waste is of most concern. Geotechnical fill placement details show that the former metals manufacturing area is proposed to have keyways excavated for the foundation support of the proposed EMSA waste pile. Given the magnesium and aluminum plants that existed in this location from 1941 through the 1990, it is necessary to investigate potential toxics within the existing soil. The potential health risk to mine workers, the surrounding community (including adjacent parkland), surface water, groundwater, and wildlife must be evaluated if toxics are encountered. We are surprised that quarry related disturbance has been allowed to take place, and continues to take place in this location, given the history of the site, without such an investigation. This issue was also raised by others during the DEIR scoping process.

### **EIR scope/ Baseline**

We propose that the DEIR not use the artificial date (2007) to begin its analysis, but instead utilize the prior Reclamation Plan and associated maps and plans as the benchmark starting point. This may help explain why Lehigh at this late date has taken the exceptionally desperate and aggressive approach of beginning to place waste material right out in front of the surrounding communities and adjacent park/open space preserve land. It's possible that Lehigh and their predecessors may have excavated a larger area than previously identified on the mining plans associated with the prior reclamation plan. Another possible indicator of this is that the WMSA, the only dumpsite identified in 1985, has also grown larger and taller than initially envisioned/proposed. The proposed EMSA appears to be the only convenient spot left to dump without filling the existing quarry pit, or hauling the waste material generated offsite. This bold desperate move by the Quarry has unfortunately been aided by past poor County oversight, as documented by the State Division of Mines and Geology, and the recent unsupported Board of Supervisor's "vested" determination.

The baseline utilized in the DEIR certainly should not grandfather the new use of the EMSA just because Lehigh chose to initiate dumping there, knowing full well that the Reclamation Plan Amendment was required. This simply doesn't pass the straight face test.

We have submitted numerous letters on the various iterations of reclamation plan amendments that have spun out of Lehigh and the County recently in an attempt to address quarry non-compliance issues. These issues are not uncommon for a quarry which has been operated intensively for 80 years. There are limitations on available resources and accessible product, and places to dump the waste generated. In fact, the DEIR states that "continued mining in the quarry is becoming infeasible from a geotechnical standpoint" and that regarding the status of the mineral designation, given 100 years of mining, "the reserves of limestone that feasibly can be extracted are approaching their limits." The recent proposal for a new south quarry pit also seems to substantiate this concern.

We have previously asked for an analysis of where quarry operations actually are in comparison with where the quarry operation was envisioned to be under the prior reclamation plan. This is essential at the quarry pit location, as well as for the proposed EMSA, and is necessary to understand existing conditions, cumulative, and future likely conditions/ impacts. It is particularly important with regard to the depth and area of the existing quarry pit versus the dimensions of record from the 1985 Reclamation Plan. This should clearly be shown.

The EMSA is also very confusing. The DEIR assumes its built, and even states in section 4.7 that "much of the stockpiling activity has already occurred," yet the visual analysis regarding the visual impact from the PG&E trail at Rancho San Antonio OSP states that that "although the existing overburden deposits are not a dominant feature in the landscape, the substantial increase in the height of the overburden deposit during construction could block views of the scenic mountains behind the EMSA." It appears through on-site review using the visual analysis presented in the DEIR that much more quarry waste is proposed to be dumped at the EMSA than currently exists. This needs to be rectified for an adequate environmental assessment of potential impacts. The DEIR should clearly detail what is on the ground now at the EMSA to give reviewers a better understanding of the levels of potential impacts being discussed.

This should include all contours and cross-sections at the quarry pit and EMSA as they currently exist, the 1985 reclamation plan final topography and cross-sections, and any proposed new changes in topography. While some contours and cross sections are presented in the DEIR they are often of differing, past dates (2007, 2009 etc.) and the original Reclamation Plan contours and cross-sections are not presented at all. It also appears that the quarry has undergone some substantial changes in the intervening years. The DEIR should have an analysis of actual existing conditions compared with the conditions proposed under the former Reclamation Plan and proposed future conditions.

#### **Water quality/ Biological Resource Impacts**

The existing selenium-related impacts to Permanente Creek water quality are of serious concern. Permanente Creek exits the Lehigh property and flows through Rancho San Antonio County Park/ Open Space Preserve. The existing selenium related water quality impacts are thus transferred from their

origin on the Lehigh property, to these public recreation facilities, then downstream through residential areas, and finally to the San Francisco Bay. Selenium levels that exceed water quality standards have been noted at both the Lehigh property and also in samples taken from downstream park/open space land.

Lehigh's proposal contained in the Reclamation Plan Amendment is to substantially deepen the existing quarry pit. There are significant problems associated with this related to water quality, particularly selenium. The main source of selenium identified in the Reclamation Water Quality assessment by SES is through groundwater inflow. The deepening of the quarry will substantially increase the volume of groundwater inflow into the quarry pit per the DEIR. To deepen the quarry groundwater will need to be pumped out, as currently occurs. The quarry currently does not have permits or regulatory approval to discharge the groundwater that is currently being intercepted, pumped, and discharged into Permanente Creek, with pollutants in excess of water quality standards. The DEIR proposes not only to allow the existing pollution to continue for another 20-plus years, but proposes to add additional volume, stating that water treatment costs would be too high, and treatment is therefore infeasible.

The quarry pit is a vested part of quarry operations and the operator has the right to quarry there. Fortunately, there is no vested right to pollute water, particularly when that water flows downstream to public resources. The quarry simply needs to stop polluting water as the cost of doing business. We question and strongly disagree with the DEIR assertion that water treatment is infeasible and that the significant and unavoidable water quality pollution impacts would instead simply be allowed to continue, and likely worsen, well into the future.

The two other main sources of selenium pollution identified in the DEIR are runoff from the quarry walls, and runoff from the WMSA. As proposed, the deepening of the quarry pit would extend and increase the quarry wall source, again increasing the source area for selenium. The WMSA is also identified as a significant source of selenium. One has to question the rationale of not only waiting to address the WMSA source of selenium pollution until phase III of the project, while at the same time proposing to build a new substantial source, the EMSA, during phase I. There is a significant ongoing impact that these proposed new changes will add to. This must be addressed within the cumulative impacts analysis in the DEIR.

While the long-term water quality mitigation proposed appears promising, as stated in the DEIR, it must be viewed as speculative until actual implementation and monitoring determine success or not. Avoiding new or expanded sources seems prudent, particularly when water quality standards are already being exceeded. There is no clear understanding of the existing level of impact since the water pollution findings have only recently been discovered. The trend of the selenium pollution is unclear (rising, stable, decreasing). Given the substantial area of recent disturbance, and assumed increase in groundwater pumping due to the quarry floor lowering, it is perhaps best to assume that it could get worse, even if everything were to stop today. There is no need to wait and see while pollution is occurring. Immediate water treatment, avoidance of new practices that could add to the ongoing pollution, and immediate reclamation/ mitigation of existing sources appears necessary. The Project as proposed in the DEIR does not meet the stated project objective of protecting water quality, and does not avoid or eliminate residual hazards to the environment.

### **Vegetated Buffer**

We are in favor of the concept of maintaining a vegetated buffer as proposed within the DEIR. We are however, nervous with including this in the reclamation plan amendment. Our concern is that this reclamation plan amendment is necessary to account for disturbance areas that Lehigh and their predecessors have routinely disturbed well outside of the area approved. We want to be sure that this buffer area is somehow formally dedicated for no disturbance. Inclusion of the buffer into a reclamation plan could also be viewed as an approval to disturb (and then reclaim) consistent with the rest of the quarry operations. The County should be certain that this is not the case. Given the quarry history of disturbance out of bounds, there needs to be some formal assurance that this buffer area is actually an area where no disturbance will occur.

### **Recreation**

We believe that impacts to recreation are substantially greater than identified in the DEIR, in particular the impact of the EMSA. The visual impact of the proposed project is determined to be significant and unavoidable, since it assumes the presence of the EMSA. The 2006 dawning of the EMSA began a significant period of recreational impact. Quarry operations that had until then been separated by a ridgeline from the main public recreation areas of the Rancho San Antonio County Park and adjacent Open Space Preserve, were compromised by new noise, dust, and visual impact. Ranch San Antonio is our most heavily utilized Preserve, with an annual visitation of approximately 500,000 recreationalists. The District has fielded many complaints from our visitors regarding the new quarry operations that have been undertaken immediately adjacent to the Park/Preserve. The EMSA quarry waste pile is immediately evident to visitors, as a new backdrop, upon entry into the Park/Preserve. The view from the PG&E Trail has been compromised by dumped quarry waste, and is projected to grow in height obscuring the scenic ridgeline views beyond. The current view from the scenic Anza Knoll within the County Park is simply staggering given the new quarry waste dump that has leapt up over the past few years. It is not possible to separate the recreational impact from the visual impact. The recreational impact of the Project has to also be characterized as significant and unavoidable. Again, as with many comments before, the EMSA is the reason for the significant impact. The Project rationale that since the EMSA was begun the year before the DEIR established baseline, it is assumed built, attempting to grandfather the impacts as "existing" and are therefore determined to be unavoidable. In reality the EMSA is not constructed, and the impacts or possible alternatives associated with its construction have never been reviewed or addressed under CEQA, by the County, or by the public. The potential impacts are in fact avoidable, if not built.

### **Flooding/ Hydrology**

This section is simply unacceptable as presented in the DEIR. The Santa Clara Valley Water District has estimated that a 100-year flood on Permanente Creek would potentially inundate 3,170 parcels including homes, businesses, schools, public institutions, and road/ highway infrastructure, with an

estimated \$48,000,000 in damages for a single event. This is a huge potential impact if adequate detention through the Project is not feasible. The Lehigh property is quite large when compared to the detention facilities currently being investigated by the Water District. The Project must identify adequate flood water detention built into the reclamation plan.

Thank you for the opportunity to provide comments on the subject DEIR. Please feel free to contact me by email at [mbaldzikowski@openspace.org](mailto: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 III

Cc: District Board of Directors  
Stephen E Abbors, District General Manager  
Erin Garner, Chair, State Mining and Geology Board  
Jim Pompy, Director, Office of Mine Reclamation  
George Shirakawa, President, County of Santa Clara Board of Supervisors



# County of Santa Clara

Parks and Recreation Department

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## 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](mailto: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



OpenSpace

Midpeninsula Regional Open Space District

GENERAL MANAGER  
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May 17, 2011

Marina Rush, Planner III  
County of Santa Clara Planning Office  
70 West Hedding Street, East Wing, 7<sup>th</sup> 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](mailto:mbaldzikowski@openspace.org) or by phone at 650 691-1200 if you have any questions regarding this or any prior comment letters.

Sincerely,



Matt Baldzikoski, Resource Planner II

cc: District Board of Directors  
Stephen E Abbors, District General Manager



Regional  
OpenSpace | Midpeninsula Regional Open Space District

February 3, 2011

County of Santa Clara  
Board of Supervisors  
County Government Center  
70 West Hedding St.  
10<sup>th</sup> 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 Davey  
Jed Cyr  
Curt Riffle  
Nonette Hanko  
Larry Hassett  
Cecily Harris

May 21, 2010

County of Santa Clara Planning Office  
Attn: Marina Rush  
County Government Center  
70 West Hedding St., 7<sup>th</sup> 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*

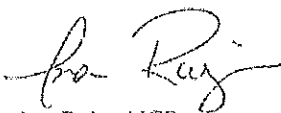
The timeline for waste disposal within the EMSA is also of concern. At the recent April 28<sup>th</sup> public hearing it was stated that existing quarry sales are 50% of normal. This has the potential to double the projected 5-year timeframe, which already seemed overly optimistic. It is also unclear 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 Permanent 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 Permanent 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 Permanent 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., 7<sup>th</sup> 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

**Subject: CEQA EIR and the RPA****Date:** Wednesday, May 23, 2012 7:25 PM**From:** Rhoda Fry <fryhouse@earthlink.net>**To:** <JTVidovich@aol.com>, <jackbohan@hughes.net>, <planning.commission@pln.sccgov.org>**Cc:** <ombudsman@da.sccgov.org>, <maria.marinosa@cob.sccgov.org>**Conversation:** CEQA EIR and the RPA

5/24/2012  
Supplemental Packet  
Item # 3

Dear Planning Commissioners:

Please vote no tomorrow on the CEQA EIR and the RPA. A NO vote could mean many things (but it doesn't necessarily mean you think it is a bad project). It could mean:

- a) The county must recirculate the EIR because significant new information (water) has been added to the EIR after public notice is given of the availability of the draft EIR (CEQA 15088.5)
- b) The response comments are not reasoned and are conclusory such as the dismissal of comments from objective government agencies and concerned citizens (CEQA 15088)
- c) You do not think that it is appropriate to wait at least 38 years for the operator to clean up selenium pollution that it created.
- d) Please read the comments and you'll find many more reasons, including intent to piece-meal CEQA.

It is disturbing that county staff has buckled under political pressure and ignored comments by citizens and most notably **objective government agencies** such as the Water Boards (water issues - 29 pages) and MROSD (health issues and scenic easement - 21 pages including past letters). I will send these pages to you in a separate attachment.

For by far too long Lehigh Southwest has been given a regulatory free ride across numerous agencies. The Office of Mine Reclamation says they've been out of compliance for over a decade. The county failed to do SMARA inspections for several years, failed to conduct building and demolition inspections (see attached), and approved the most recent SMARA report without the compulsory operator biannual report. According to the Mining Safety and Health Administration, this is a company that relies on an egregious violation record as a cost of doing business.

The company has claimed that the quarry is vital to the Bay Area economy. It has also declared that the cement plant will continue to operate when the local

**DIEPENBROCK HARRISON**

Val Alexeeff  
August 10, 2006  
Page 2

\*\*\* Excerpt: Applicant Attorney Correspondence, dated 01/04/2011 Appendix D, pages 285-286 \*\*\*

**BACKGROUND**

**The Permanente Quarry**

As you know, Hanson's Permanente Quarry is a limestone and aggregate materials quarry within the Los Altos hills. Approximately 411 acres are disturbed by mining operations, representing both pre- and post-1975 disturbances. The quarry lies entirely within Hanson's 3500 acre property.

While early limestone extraction at the site is recorded as early as 1899, the quarry's present location stems from the 1939 purchase of approximately 1300 acres along Permanente Creek by Hanson's predecessor, The Permanente Corporation. The Permanente Corporation, later renamed Kaiser Cement Corporation, over time acquired several surrounding parcels to expand its ownership to over 3500 acres. Hanson purchased the entire property from Kaiser Cement in 1997.

The quarry has been repeatedly acknowledged by the County as a legal, non-conforming use, and lies within an area designated by the State Geologist as regionally significant.<sup>1</sup>

**Cement Plant / Industrial Facilities**

On May 8, 1939, the Permanente Corporation obtained a use permit from the County for the "erection, construction and operation of a cement mill and the storage of cement..." (Exh. A.) The permit is for an unlimited term, and has no termination date. The permit is consistent with the 1937 zoning of the property, which allowed commercial and manufacturing uses. The cement plant was built to the east of the quarry and has operated continuously since. It now accounts for an estimated one-third of Northern California's cement production.

The cement plant permit has since been revisited by the County on three occasions. On July 17, 1950, the County amended the permit to allow an additional kiln and auxiliary facilities to be installed. On July 6, 1955, the County amended the permit to allow construction of a rotary kiln. Finally, on December 19, 1977, the County Board of Supervisors approved a proposal to modernize the cement plant by transitioning from a "wet" to a "dry" production process (involving an over \$50 million investment).

The cement plant is a stand-alone facility that is operationally distinct from the quarry. The cement plant processes limestone not only from the quarry, but also from

<sup>1</sup> See Code of Regulations, tit. 14, § 3560.10 [Sector 99].

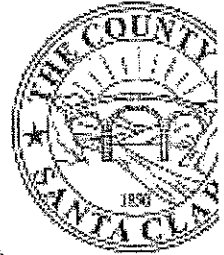
**DIEPENBROCK HARRISON**

Val Alexeeff  
August 10, 2006  
Page 3

other sites. Indeed, when the Permanente limestone is exhausted, the cement plant will continue to operate by processing material from other sources.

EXHIBIT A

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



	<b>Administration</b>	<b>Development Services</b>	<b>Fire Marshal</b>	<b>Planning</b>
Phone:	(408) 299-8740	(408) 299-5760	(408) 299-5760	(408) 299-3770
Fax:	(408) 299-6757	(408) 279-8537	(408) 287-9368	(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*

## 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:** Buildings constructed prior to 1947 were  
1947 not required to have a permit.





# Santa Clara & San Benito Counties Building & Construction Trades Council

2102 Almaden Road Suite 101, San Jose, CA 95125-2190 • Phone 408.265.7643 • Fax 408.265.2080

Neil M. Struthers  
Chief Executive Officer  
Josué García  
Deputy Executive Officer  
Robert Baldini  
President

May 23, 2012

5/24/2012  
Supplemental Packet  
Item # 3

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- Plumbers & Steamfitters 393
- Roofers & Waterproofers 95
- Sheet Metal Workers 104
- Sign, Display 510
- Sprinkler Fitters 483
- Teamsters 287

Scott Lefaver, Chair  
Santa Clara County Planning Commission  
70 W. Hedding Street, 7th Floor  
San Jose, CA 95110

Dear Chairperson Lefaver,

I'm writing to urge your approval of Lehigh Southwest Cement Company's Reclamation Plan for the Permanente Quarry and certify the Environmental Impact Report prepared by planning staff.

By way of background, the Building Trades Council represents 24 unions, and 25,000 workers in our region. Currently, Lehigh's workforce is represented by seven of our union locals.

Approval will allow for the continued operations at an existing limestone quarry that is uniquely situated to provide for regional needs. Cement from this site has helped build the Bay Bridge and Shasta Dam, as well as local transportation projects such as Highway 85, Highway 87 and the cement required for light rail lines in the County - as well as the new San Jose City Hall and many other significant public infrastructure projects. In all, more than 70% of the cement used in Santa Clara County - and more than 50% of the cement used in the Bay Area comes from this facility.

With the impending extension of BART, strongly supported by unions and businesses alike, and other projects, the Lehigh cement plant and quarry become even more vital to our future infrastructure needs.

Benefits that derive from a local cement source include being able to monitor and minimize environmental impacts. In other parts of the globe, cement plants operate without the same stringent regulation we have in California. Imported Cement adds more emissions just to transport the product - to say nothing of the jobs lost and the impact it would have on our local economy.

Finally, the Company employs some of the last permanent blue collar jobs in our community. Its continued operation benefits the economy here and throughout California. They pay more than five million dollars in taxes each year - much of which benefits city and county public services. The Company alone purchases more than \$38 million dollars of goods locally from Bay Area businesses.



**Subject: Please vote NO on the EIR and RPA**

**Date:** Wednesday, May 23, 2012 11:34 PM

**From:** rich larsen <findrichlarsen@gmail.com>

**To:** <lefaver@sbcglobal.net>, <jtvidovich@aol.com>, <jackbohan@hughes.net>, <planning.commission@pln.sccgov.org>

**Conversation:** Please vote NO on the EIR and RPA

Hello Commissioners - at your Reclamation Plan hearing for Lehigh Quarry this Friday, we urgently request that you please reject their EIR and RPA applications until these essential conditions that affect the health and well being of the surrounding community, including Los Altos Hills, is met:

- 1) The Cement plan must be included in the EIR
- 2) The Cement and Aggregate trucks must be counted
- 3) The WMSA must be reclaimed
- 4) The Ridgeline must be restored
- 5) The Creek must be cleaned up now.

Thank you,

Rich Larsen  
Mayor, Los Altos Hills

5/24/12  
**Supplemental Packet**  
Item # 3



Midpeninsula Regional Open Space District

5/24/2012  
Supplemental Packet

Item # 3

GENERAL MANAGER  
Stephen E. Abbots

BOARD OF DIRECTORS  
Pete Siemens  
Yoriko Kishimoto  
Jed Cyr  
Curt Riffie  
Nonette Hanko  
Larry Hasselt  
Cecily Harris

County Planning Commission  
c/o Ms. Marina Rush  
Santa Clara County Planning Office  
County Government Center  
70 W. Hedding Street, 7<sup>th</sup> Floor, East Wing  
San Jose, CA 95110

May 23, 2012

RE: Planning Commission Hearing Concerning Lehigh Permanente Quarry Reclamation Plan Amendment  
Final Environmental Impact Report (SCH No. 2010042063, Project File # 2250-13-66-10P)

On behalf of the Midpeninsula Regional Open Space District (District) I would like to provide the following comments on the Final Environmental Impact Report for the Lehigh Permanente Quarry Reclamation Plan Amendment. This letter is intended to address County responses to comments raised in our Draft EIR comment letter dated February 17, 2011. We have also previously submitted numerous comment letters regarding recent Reclamation Plan Amendments and the Legal Non-Conforming Use determination for the Permanente Quarry. These comment letters are on file at the Planning Office, are referenced in the FEIR, and are referenced as exhibits to this letter.

We are concerned with the short time frame afforded concerned agencies and members of the public to comment on the Final EIR, but will attempt to comment within this hurried schedule.

**A6-1** The District remains opposed to the use of the East Materials Storage Area (EMSA) for quarry waste disposal. We disagree with the conclusion of the Board of Supervisor's that the EMSA parcel is an existing non-conforming quarry use. Instead, we came to a shared independent conclusion with the County Geologist (January 26, 2011 Memorandum), and the analysis by Shute, Mihaly, & Weinberger (February 4, 2011) that the subject parcel did not show evidence of quarry related activities prior to 1948, the vesting date as determined by the County. The FEIR incorrectly concludes that the parcel now being utilized as the EMSA quarry waste dump was in 1948 an existing parcel used for quarry operations. The record clearly shows that the substantial grading evident in exhibits from the time were related to the construction of the manufacturing plant facilities, not quarry related grading as purported by the project proponent. Therefore, the EMSA is in fact a new quarry use of the parcel.

The County response comment states that the former aluminum plant and incendiary materials manufacturing facility site are not within the project area. This is misleading. The main aluminum foil plant and magnesium plant buildings are located just outside of the EMSA footprint. However, the DEIR and County fails to recognize numerous other related facilities buildings which formerly existed within the project footprint. These other buildings are shown on County Exhibit 21 (1944 Record of Survey) and

Exhibit 48 (Metals Facility Site Plan) to the Non-conforming Use Analysis presented to the Board of Supervisor's. The DEIR project area (EMSA) is located within the "Lands of the Permanente Metals Corporation" on the 1944 Record of Survey, and depicts numerous plant-related structures that are also within the project area. The Metals Facility Site Plan shows a conveyer connecting facility structures located both inside and outside of the FEIR project area.

**A6-2, A6-3.** The County response states that the EIR does not analyze issues related to conformity of existing conditions or proposed reclamation with the Permanente Ridge Scenic Easement because the easement is an existing legal agreement between the applicant and the County. This response is somewhat baffling. The 1985 County Staff Report to the Planning Commission and 1985 Mitigated Negative Declaration in support of the original Reclamation Plan for the quarry, addresses the Permanente Ridge Scenic Easement. This easement was an important scenic "protection" dedicated to the public, related to the quarry development and visual impacts/ protection important at the time for the County and surrounding cities. In fact, the 1985 Environmental Assessment (Mitigated Negative Declaration) discusses the scenic easement as mitigation for an otherwise significant impact under Section 2 (Resources and Parks), and Section 5 (Aesthetic).

Mapping by Cotton, Shires and Associates (March 2003) show four landslides which have impacted the scenic easement. The current FEIR Reclamation Plan Amendment appears to defer implementing substantial beneficial stability measures to protect the scenic easement until late Phase 2 (2021-2025), but primarily during Phase 3 (2026-2030). The proposed quarry pit infill still does not appear to buttress the upper portion of the excavated quarry slope, which may still be subject to slope failure into the scenic easement, even after the proposed reclamation.

The geologic analysis by Golder and Associates characterizes the existing quarry slopes abutting the scenic easement as marginally stable, at best, in their current configuration. This conclusion has also been challenged by Cotton, Shires and Associates in their Preliminary Geotechnical Peer Review of the current Reclamation Plan Amendment, dated February 20, 2012, and quarry slope/ landslides could actually be less stable than presented in the FEIR.

An Emergency Grading Authorization was requested by the quarry in 2002 for a repair of a landslide that had failed removing a substantial portion of District land. In a letter to then owner Hanson Permanente Cement, the County responded that *"one major concern is how this work and the continuing slope instability problems at the quarry are affecting the County's ridgeline easement. In order for this office to give further consideration to the emergency grading authorization proposal, additional information must be submitted to more specifically define the proposed emergency grading project. This office is cognizant that the rainy season is imminent, but also takes note that it has been 10 months since the slope stability problems were identified, and that any areas that are identified as unsafe due to slope instability should be cordoned off and closed to workers for a safe distance. Hanson Permanente can and should suspend work in the area of the hazard until the area is made safe."*

To date this "emergency" work has not been enacted to our knowledge, but clearly the County recognized the scenic easement issue needed to be addressed for this permit request at the time. Not only does the proposed reclamation plan amendment prolong instability issues within the County scenic easement that have already been deferred for 10-25 years prior, but the existing quarry slope conditions also pose potential safety concerns as well.

In 2006, The Executive Officer's Report to the State Mining and Geology Board (Meeting of July 13, 2006) states that "The landslides along the rim of the mine pit were caused in part, if not in whole, by the mining operation, and thus the County had a responsibility and obligation to request that the operator amend its reclamation plan. The report also states that the County claims that the repair process (as of 2006) "has taken longer than anticipated due to potential adverse impacts to a ridgeline easement and slope stability issues."

The District disagrees with the omission of an analysis regarding the County scenic easement within the FEIR. Further prolonging action to protect the easement, granted to the County (public) in 1972 in recognition of the important scenic resource protected, will likely result in additional impacts to the scenic easement, and immitigable visual impacts incurred by the public.

**A6-4** We note the correction regarding the baseline condition of 2007 related to the EMSA. It is difficult to maintain perspective related to the EMSA given the mountain of quarry waste that continues to grow, under County agreement with Lehigh in response to a County Notice of Violation, yet we are reviewing it as a "proposed" part of the reclamation plan amendment. The EIR assumes that the EMSA is constructed. The level of construction just varies from the 2007 baseline (no project alternative) which has not been fully characterized or quantified, to the assumption of all the other "alternatives" that 6,500,000 tons of quarry waste have been dumped. We strongly agree with the EIR conclusion that the visual impact associated with the EMSA is significant, and unfortunately at present, unavoidable. We refer back to our DEIR comment letter regarding our characterization of the EMSA and the extent of visual impact "proposed."

We also disagree with response A6-3 that the "completion of the proposed reclamation of the EMSA, including revegetation, would improve views of the EMSA relative to baseline conditions" since the quarry waste dumped by 2007 was substantially less than what exists now, or what is envisioned under the preferred alternative.

**A6-5** The County response to our prior comment states "the historic manufacturing plant uses of the site are located near, but not within the project Area. These historic facilities would not be 'buried' by the EMSA as suggested in the comment." As with comment A6-1 above, the response comment is misleading. The main aluminum foil plant and magnesium plant buildings are located just outside of the EMSA footprint. However, the EIR fails to recognize numerous other related facilities buildings which formerly existed within the project footprint. These other buildings are shown on County Exhibit 21 (1944 Record of Survey) and Exhibit 48 (Metals Facility Site Plan) to the Non-conforming Use Analysis presented to the Board of Supervisor's. The DEIR project area (EMSA) is located within the "Lands of the Permanente Metals Corporation" on the 1944 Record of Survey, and depicts numerous plant-related structures that are also within the project area. Historic facilities shown on The Metals Facility Site Plan and on the 1944 record of survey will in fact be buried by the project. A review of recent aerial imagery appears to show that some of these locations have already been heavily disturbed, and portions buried.

**A6-6,7,8,9** We remain vehemently opposed to the extensive new visual impact associated with the "proposed" EMSA. Not only do we believe that the EMSA is a new use located on a parcel without evidence of quarry activity prior to the 1948 date established by the County, but the EMSA is also incompatible with County scenic policies C-CR 57, 58, 59, 60, 61, Land Use Compatibility and Minimizing Environmental Impacts sections of the Mineral Resources section of the Resource Conservation policies, and policy C-RC 47, and the Permanente Ridge Scenic Easement.

**A6-10** The EIR has not adequately address cumulative air quality impacts of the quarry operation and the cement plant facility. There has been no collection (and related analysis) of air quality parameters at the District's shared property line with the quarry. We again request that a continuous air monitoring station be established near the District property line, adjacent to the EMSA.

**A6-11,12** The County response provided does not address the concerns that we raised. Please refer to our prior comments for the DEIR. We agree with the comment that "Removal of mining overburden from the EMSA would abate the notice of violation related to mining related use of this area, remove an existing source of selenium and thereby preclude its mobilization into downstream waterways, and return views from the valley floor and beyond to a pre-mining condition." We however believe that the EMSA is a new source as opposed to an existing one, grandfathered by the 2007 baseline date established in the EIR.

The County response offers a comment that "CEQA does not give lead agencies the discretion to require alternatives to or mitigation of existing significant environmental effects for which the Project now under consideration is not the source of the existing problem." The Reclamation Plan Amendment evaluated in the EIR is the first Project under consideration by the County to propose the EMSA waste dump, and thus should not be characterized as an existing problem.

**A6-13** We stated the concern that reclamation activities associated with the EMSA may be constructed in soils that may have been contaminated from past activities related to the metals manufacturing that occurred on the site. As with comment A6-1 and A6-5 above, the response comment is misleading, and dismisses this significant concern. The main aluminum foil plant and magnesium plant buildings are located just outside of the EMSA footprint. However, the EIR fails to recognize numerous other related facilities buildings which formerly existed within the project footprint. These other buildings are shown on County Exhibit 21 (1944 Record of Survey) and Exhibit 48 (Metals Facility Site Plan) to the Non-conforming Use Analysis presented to the Board of Supervisor's. The DEIR project area (EMSA) is located within the "Lands of the Permanente Metals Corporation" as shown on the 1944 Record of Survey, and depicts numerous plant-related structures that are also within the project area. Historic facilities locations shown on The Metals Facility Site Plan and on the 1944 record of survey will in fact be disturbed and buried by the project. A review of recent aerial imagery appears to show that some of these locations have already been heavily disturbed, and portions buried.

Building facilities that existed within the "proposed" EMSA project area are identified on the Metals Facility Site Plan and include: the Main Laboratory, Foundry-converted to the research machine shop in 1955, compressor building-transformers, electrical building, switch house-substation, hydrogen building, nitrogen building, batter building, briquette building, electrical storage building, and an undefined storage building.

The EMSA quarry waste dump portion of the project area has not been evaluated for potential hazardous materials. As stated in our prior comments, the grading keyways, proposed per the geotechnical fill placement details in the DEIR, will excavate into these areas to buttress the EMSA waste fill. Given the long industrial history on the site and within the project area, we believe that a thorough investigation should be completed.

Relying on other regulatory agency records alone to identify hazardous sites, particularly when there is no record of this site ever being tested, and given the site history, is clearly problematic. Attempting to dismiss this concern because the main aluminum and magnesium plant buildings are located just outside of the project area is also problematic. The geologic map of the east materials storage area (Figure 4, Golder Associates) shows the EMSA footprint as close as 50 feet from the edge of these main plant buildings. Regardless of the presence of the other Metals Facility buildings noted, 50 to even hundreds of feet distance from the main plant buildings is still plenty close for potential toxic hazards to exist. This is particularly true with the level of grading that has occurred within the immediate area which could spread toxic material, not to mention the potential for groundwater contamination which is well known to have the potential to spread for miles.

With regard to potential hazardous materials within the project site (EMSA), the EIR has failed to investigate this potentially significant environmental impact.

**A6-14** Please refer to our original comment for the DEIR. We respectfully disagree with the baseline date established in the DEIR.

**A6-15,16,17** Regarding disagreement with the baseline date noted above, we believe that a baseline that uses the approved original reclamation plan is a more appropriate place to establish what the reclamation plan amendment is actually amending. This should include a comparison of the former reclamation plan and the proposed amendment, including area and cross-sections of the two. Simply showing the footprint, while impressive in the area that the quarry has disturbed in excess of the original reclamation plan, does not provide for the appropriate level of analysis.

The County response states that this detail and analysis was not provided in the DEIR because the "DEIR evaluates the significance of Project-related changes relative to actual physical conditions in the environment, not to physical limits established by prior approvals." The quarry clearly has an excess of overburden that was not envisioned at the time of the original reclamation plan. This is evidenced by the WMSA which is out of compliance, and the EMSA which was initiated by the quarry, and received a notice of violation from the County. The waste generated is a result of quarrying methods and conditions. These are clearly changes to the physical environment appropriate for analysis.

**A6-18** The District remains extremely concerned with existing water quality impacts and biological resource impacts and the project potential to increase and or prolong these impacts. Please refer to our DEIR comment letter for discussion.

A point of clarification to the County response. We acknowledge that the quarry has obtained a permit from the Regional Water Quality Control Board- San Francisco Bay Region (RWQCB), following their order from the RWQCB. The RWQCB has noted that this is essentially a stop-gap until the required individual permit is completed and approved. Clearly, the limestone quarry is not an aggregate mining, sand washing, and sand offloading facility, as referenced in the FEIR.

**A6-19** The District stands by our DEIR comments related to water quality impacts.

**A6-20** We support the inclusion of vegetated buffer areas with the conditions discussed in our DEIR comment letter.

**A6-21** We appreciate the response and clarifying discussion, but defer to our DEIR comment . . .

In closing, the District believes that the FEIR is deficient in many critical areas as noted in these comments and our prior comments that we have submitted throughout the process. We respectfully request that the County Planning Commission deny the Permanent Quarry Reclamation Plan Amendment FEIR.

Sincerely,

Matt Baldzikowski  
Resource Planner III

Cc: District Board of Directors  
Stephen E. Abbors, District General Manager  
Erin Garner, Chair, State Mining and Geology Board  
Jim Pompy, Director, Office of Mine Reclamation  
George Shirakawa, President, County of Santa Clara Board of Supervisors

