

June 21, 2019

Robert Salisbury
Senior Planner
County of Santa Clara
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**Re: Permanente Quarry, Mine ID # 91-43-0004
Response to May 17, 2019 Letter, June 5, 2019 Meeting, and June 14 and
18, 2019 Email**

Dear Rob:

Lehigh submits this letter pursuant to: (1) the County's May 17, 2019 letter, which requests information relating to Lehigh's May 2019 amended reclamation plan application; (2) our June 5, 2019 meeting, which further discussed the County's May 17, 2019 request, as later confirmed in your June 14, 2019 email; and (3) your email dated June 18, 2019, which formally requested a 45-day extension of time to make a completeness determination on Lehigh's application.

Lehigh is willing to cooperate with the County. Lehigh hereby grants a 30-day extension for the County's completeness determination. In granting this extension, Lehigh wishes to clarify a few important points.

First, the application materials that Lehigh submitted are complete as per the County's published guidance. It is quite normal for a county to have questions about an application, and Lehigh is happy to work with the County to answer those questions. But that is a separate matter from the legal concept of "completeness." Processing the application should not be delayed.

Second, in the letter dated May 17, 2019, sent before Lehigh filed the application, and later in the meeting of June 5, 2019, the County asked for additional information, consisting of shape files, a vested rights analysis, and a comparison document. The County asserted that this additional information was needed in order to have a "complete" application. Again, while Lehigh is pleased to cooperate with County staff, none of these items are required in order to have a complete application. While reserving its rights, Lehigh has agreed to provide the County

with the following additional information, which is attached to this letter, or may be accessed from an FTP site:

1. Information regarding Lehigh's vested rights at the Permanente Quarry, attached as **Exhibit 1**.
2. A technical memorandum summarizing the approved reclamation plan components and proposed changes, attached as **Exhibit 2**.
3. Permanente Quarry GIS files, which can be downloaded at the following link:
<https://benchmarkresources.box.com/s/qedwuap8dct034ov715o4m7lmsit5715>

As previously mentioned, Lehigh is providing the attached information solely in an effort to cooperate with the County's request for additional information. The County is not, however, entitled to use its additional information requests as a proxy for "completeness."

Thank you, please call with any questions.

Sincerely,



Erika Guerra
Environmental and Land Management Director
Lehigh Southwest Cement Company

cc: Jacqueline Onciano, Planning Director, Santa Clara County
Rob Eastwood, Principal Planner, Santa Clara County
Elizabeth Pianca, Esq., Lead Deputy County Counsel
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June 21, 2019

VIA ELECTRONIC MAIL ONLY

Rob Eastwood
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70 West Hedding Street,
San Jose, California 95110
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*Re: Permanente Quarry, Mine ID No. 91-43-0004
Response to May 17, 2019 Letter*

Dear Mr. Eastwood:

This law firm represents Lehigh Southwest Cement Company (“Lehigh”), which operates the Permanente Quarry (“Quarry”). This letter responds to the County of Santa Clara’s (“County”) May 17, 2019 letter, which informed Lehigh that its May 2019 application for an amended reclamation plan (“2019 Reclamation Plan Application”) must be accompanied by information allowing the County to determine “whether the proposed surface mining falls within the scope of Lehigh’s recognized vested rights.”¹ The County indicated that it will rule Lehigh’s 2019 Reclamation Plan Application incomplete if this information is not provided.

This request for information suggests that the County intends to challenge its own prior determinations with respect to vested rights. In March 2011, the County Board of Supervisors (“Board”) formally recognized Lehigh’s vested rights after exhaustive and lengthy public hearings.² Following this determination of vested rights, the County in June 2012 approved a reclamation plan for the Quarry’s surface mining operations based on a finding that those operations were consistent with the recognized vested rights.³ The County’s vested rights determination, and reclamation plan approval, were both litigated and upheld through trial court and appellate proceedings.

The County cannot reopen matters that have been administratively and judicially decided. Nonetheless, Lehigh takes this opportunity, without waiving any of its procedural or substantive rights,

¹ The May 17, 2019 letter also raises other issues which Lehigh will address in a separate response.

² See Administrative Record for *No Toxic Air, Inc. v. Santa Clara County et al.*, Case No. 111CV201900 (hereafter “VR AR”) 1:00131-00136.

³ See Administrative Record for *Bay Area Clean Environment, Inc. v. Santa Clara County, et al.*, Case No. 1-12-CV-229236 (hereafter “RP AR”) 1:00004-00023.

to identify information that may be helpful to the County. The information demonstrates that Lehigh's pending 2019 Reclamation Plan Application serves only to continue the existing surface mining operation and does not involve any substantial change in use.

Finality of Prior Determinations

We begin by examining the County's prior determinations to highlight those issues which the County has already resolved through previous determinations and which are no longer subject to challenge.

In February 2011, the County conducted a vested rights determination in a noticed public hearing. The County did this as a prerequisite to approving any reclamation plan amendment to ensure that the surface mining operations encompassed by an amended plan were within the scope of Lehigh's legal nonconforming (i.e., "vested") use.⁴

The County considered an administrative record of over 4,000 pages. The record traced the Quarry's surface mining operations from their inception in 1903 to 2011. The record contained detailed information regarding the Quarry's operational history, its massive growth and expansion over time both in physical size and in production of limestone and aggregate, its assemblage of extensive landholdings, the markets it served, and the County's prior affirmations of vested rights.⁵

The Board held the hearing on February 8, 2011. The hearing was both introduced and agendized as an: "[e]videntiary hearing to determine whether, **and to what extent** there is a legal nonconforming use for surface mining operations on approximately 2,656 acres of property...."⁶ The accompanying staff report and its exhibits were themselves extensive, at nearly 500 pages.

The hearing was distinctly adversarial. The Board received dozens of written and oral comments, mostly arguing against vested rights or attempting to restrict such rights.⁷ County staff also advocated for a vested rights determination that encompassed fewer parcels than claimed to be vested by Lehigh.⁸ Staff did not, however, challenge any other aspect of the surface mining operation as beyond the extent of its vested right.

At the conclusion of the hearing, the Board determined that Lehigh had the vested right to conduct surface mining operations on specific parcels.⁹ As to those parcels, surface mining operations could proceed without a use permit. The Board did not otherwise restrict the "extent" of the vested right, such as by attempting to impose limits on production levels or otherwise.

⁴ VR AR 1:00140 ("This hearing will...frame and guide the process for *future* consideration of certain land use approvals"); see also VR AR 1:00131 ("[T]he County has found it necessary to define the Quarry's vested rights in order to guide the Department of Planning and Development's processing of the Reclamation Plan Amendment.")

⁵ See generally VR AR 1:00001-10:04007.

⁶ VR AR 1:00137 (emphasis added); see also VR AR 1:00012.

⁷ See VR AR 8-9:3151-3696 (public comments on vested rights).

⁸ See, e.g., VR AR 8:03107-03119.

⁹ VR AR 1:00131-00136.

The Board's determination was intended to be a "final determination regarding vested rights at the Permanente Quarry," according to a subsequent report by the County Planning Director to the State Mining and Geology Board. In the report, the Director took pains to explain the comprehensive nature of the County's vested rights evaluation:

The Permanente Quarry has been in operation for more than 100 years. Because of this history and the County's need to determine what, if any, local land use and zoning approvals were needed for the proposed reclamation plan amendments, a determination was necessary regarding whether and to what extent quarrying activities were a legal nonconforming use on the Permanente Quarry property. Having this determination made before finishing the CEQA analysis of [the reclamation plan amendments] was important because it potentially affected the land use approvals required for the mine that must be part of that analysis.

The County staff completed work on extensive data collection, research, and analysis for the legal non-conforming use, or "vested rights" determination. Staff submitted its report, a staff analysis, and 63 exhibits with various documents, reports, graphics, and maps used in the report preparation. Planning Office staff posted all the information on the Planning Office web page. The Board of Supervisors convened a public hearing in the afternoon of February 8, 2011.

After a public hearing that lasted nearly five hours, the Board considered all the evidence presented, deliberated, and declared its intent to make several determinations related to the extent of vested rights that exist at the Permanente Quarry. The determination identified the parcels that are vested, including the East Materials Storage Area

The Board subsequently approved a resolution on March 1, 2011, that formally documented the final determination regarding vested rights at the Permanente Quarry. The resolution prepared by County Counsel and a staff report are posted on the County's website. This milestone completed the vested rights phase of [the reclamation plan amendment] proposals... The research, analysis, and report preparation were very time consuming and staff resource intensive from November 2010 through the end of February 2011. Consequently, much of the CEQA review by County staff was on hold during this time frame.¹⁰

Immediately following the Board's vested rights determination, the County turned to process and approve the current reclamation plan (the "2012 Reclamation Plan").

¹⁰ RP AR 5:02404.

The 2012 Reclamation Plan described the continuation of limestone and aggregate mining operations. The plan stated that the Quarry planned to produce a total of 35-45 million tons of limestone and aggregates.¹¹ The technical appendices accompanying the plan provided further details, explaining that the Quarry would produce a total of 4.7 million tons of cement-grade limestone and aggregates annually.¹²

The County prepared an Environmental Impact Report (“EIR”) for the 2012 Reclamation Plan amendment under the California Environmental Quality Act (“CEQA”). At all times, the EIR analyzed the plan as a valid exercise of the Quarry’s vested rights. The EIR repeated on at least 20 occasions that the Quarry was vested and that planned surface mining operations did not require a use permit.¹³ As one example, the EIR stated:

Because the Applicant has a vested right to extract materials, the only limitation on the Applicant’s right to mine within the vested rights area is the physical extent of the commercially viable mineral deposit that can be extracted safely.¹⁴

During the public hearing process, County staff repeatedly affirmed the Quarry’s vested rights. The Planning Commission and Board together held four hearings and one workshop in 2012.¹⁵ The staff reports for these hearings uniformly identified mining as vested.¹⁶ In oral statements on the record, staff also described mining as vested.¹⁷ In the May 31, 2012 Planning Commission hearing, for instance, staff remarked:

I know staff is starting to sound like a broken record, but, again, for the audience and the Commission, included not in the scope [of this hearing] is mining. The Board of Supervisors last year determined that mining operations on the site are vested....¹⁸

Subsequently, the Board approved the 2012 Reclamation Plan on June 26, 2012. The Board granted this approval based upon an express finding that surface mining operations were vested:

On February 8, 2011, the County Board of Supervisors held a public hearing and made a determination that the mining operations at the Permanente Quarry are a legal nonconforming use (i.e., a vested right) in the area that is subject to the RPA. As such, continued surface mining within the RPA does not require a user [sic] permit.¹⁹

¹¹ RP AR 15:07855.

¹² RP AR 3:01391.

¹³ See, e.g., RP AR 1:00313, 00324, 00346, 00358, 00424; RP AR 2:754; RP AR 4:01587-02140 *passim*.

¹⁴ RP AR 4:01971

¹⁵ RP AR 7:03468-03503; RP AR 7:03504-3679; RP AR 8:03680-03857; RP AR 8:03858-04074; RP AR 8:04075.

¹⁶ See RP AR 5:02473; RP AR 5:02479, 02485.

¹⁷ See RP AR 7:03518; RP AR 8:03688; RP AR 8:04091.

¹⁸ RP AR 8.03688.

¹⁹ RP AR 1:00173.

The Board also adopted a “Statement of Overriding Considerations” which stated that the unavoidable environmental impacts of approving the 2012 Reclamation Plan were outweighed by the Quarry’s importance to the region’s material supplies. The statement explicitly relied upon the Quarry’s high production volume of limestone and aggregates as a basis for approving the project notwithstanding its impacts.²⁰

The Board’s decisions in 2011 and 2012 were both challenged in court. In numerous court filings, both the County and Lehigh defended the 2012 Reclamation Plan as a valid exercise of the Quarry’s vested rights, and successfully defended both decisions at trial court and appellate levels. To the extent that the County or any other person desired to challenge the surface mining operations described in the reclamation plan application as beyond the Quarry’s vested rights, it had that opportunity. These matters are now final and beyond challenge as a matter of *res judicata*, collateral estoppel and administrative finality²¹, as to both matters that were expressly decided and those which could have been raised.²²

The finality of these determinations applies with equal force to the production level or “intensity” of the Quarry’s surface mining operation. Although the vested rights determination did decide the geographic scope of the vested right, the County made no effort to defer other issues for future review. Rather, the County intended the 2011 determination to be the “final determination” of all vested right questions that needed a determination.²³ The County subsequently found that all surface mining operations described in the 2012 Reclamation Plan – including production levels of 4.7 million tons per year – were a valid expression of those rights.²⁴ Questions of “intensity” were necessarily resolved through the County’s determinations.

We recognize, however, that it may assist the County to highlight certain key facts and documents to clarify that Lehigh’s planned surface mining operations are a continuation of the existing use. Reserving all rights, we offer a brief overview of the 2019 Reclamation Plan Application before turning to the County’s specific requests.

Pending 2019 Reclamation Plan Application

On May 22, 2019, Lehigh submitted the 2019 Reclamation Plan Application to the County to amend the 2012 Reclamation Plan. By way of overview, the 2019 Reclamation Plan Application describes the continuation of existing surface mining operations to produce cement-grade limestone and aggregates.²⁵ Such operations will proceed in substantially the same manner as they do now. Where mining would utilize new surfaces – such as the Rock Plant Reserve, and North Highwall Reserve – they are within the geographic boundaries of the recognized vested rights.

²⁰ See RP AR 1:00302-00308.

²¹ *Olive Proration Program Committee for Olive Proration Zone 1 v. Agricultural Prorate Commission* (1941) 17 Cal.2d.204, 209.

²² *Suphin v. Speik* (1940) 15 Cal.2d 195, 202-03; see also *Murphy v. Murphy* (2008) 164 Cal.App.4th 376, 399-402.

²³ RP AR 5:02404.

²⁴ RP AR 1:00173; RP AR 3:01391.

²⁵ The term “aggregate” means, as defined in the 2012 Reclamation Plan, “other limestone grades [other than cement-grade] and greenstone suitable for use in construction aggregate products.” See RP AR 15:07854.

The planned levels of production (or “intensity”) of surface mining operations planned in connection with the 2019 Reclamation Plan Application will be consistent with the production levels planned and recognized under the Quarry’s original reclamation plan (“1985 Reclamation Plan”) and 2012 Reclamation Plan, both of which were approved by the County. The 2019 Reclamation Plan Application estimates that the annual production rate of limestone and aggregate will be 3.8 million tons.²⁶ In comparison, the 1985 Reclamation Plan anticipated 4 million tons and the 2012 Reclamation Plan anticipated the production of 4.7 million tons of these products.²⁷ Actual production fluctuates up or down with market demand and operational constraints. “[T]he business of aggregate mining and sale ... is necessarily seasonal and dependent on fluctuating market demand.”²⁸

County Information Requests

The County’s May 17, 2019 letter states that any application to amend the 2012 Reclamation Plan must be accompanied by certain information relating to Lehigh’s vested rights. As an initial matter, the procedural basis for this request is unclear. Although the County’s letter presents the request as a matter of application “completeness,” state law requires the County to publish information which the County requires to deem an application complete²⁹ and the County’s published application requirements do not provide for a vested right “consistency” determination as a prerequisite to accepting a reclamation plan application.

Accordingly, we provide the following information under a full and complete reservation of rights, and specifically reserve the right to present additional information beyond that presented below in response to the County’s requests. We now turn to these requests.

1. *Are the proposed uses incidental or auxiliary to the Quarry’s surface mining operations as they existed at the 1948 vesting date recognized by the 2011 Vested Rights Determination?*

The proposed land uses at the Quarry remain surface mining operations focused on the production of limestone and aggregate. As such, the proposed land uses are not “incidental or auxiliary” to the Quarry’s surface mining operation but are rather a *continuation* of the existing surface mining operation on vested land.

The reference to “incidental or auxiliary” indicates that the County’s question is based on a passage in the California Supreme Court’s decision in *Hansen Bros. Enterprises v. Board of Supervisors* (1996) 12 Cal.4th 533, 565. The phrasing of the question, however, suggests the County misunderstands this aspect of the decision. *Hansen* discussed “incidental and auxiliary” uses in the context of the court’s rejection of a lead agency’s attempt to compartmentalize various components of a vested surface mining operation and analyze each separately. The court did not adopt the phrase as a general standard for testing whether mining uses are vested. The County and the courts used the correct legal standard in the prior vested rights decision, a legal standard which did not include the “incidental and auxiliary” use language.

²⁶ See *Permanente Quarry Amended Reclamation Plan* (2019), p. 1.

²⁷ RP AR 3:01931, 10:04866.

²⁸ *Hansen Bros. Enterprises v. Bd. of Supervisors* (1996) 12 Cal.4th 533, 571 fn. 30.

²⁹ See Gov. Code., § 65940, subd. (a).

2. *Would the proposed uses substantially change the Quarry's surface mining operations as they existed at the 1948 vesting date?*

No. The record from the 2011 vested rights proceeding demonstrates that, from 1948 through 2011, the Quarry has produced both cement-grade limestone and aggregates from low-grade limestone and greenstone.³⁰ The 2019 Reclamation Plan Application anticipates that the Quarry will remain an integrated surface mining operation that produces limestone and aggregates. Thus, land use under the 2019 Reclamation Plan Application will remain identical.

Also, while extraction will transition in an area that is not yet harvested (the Rock Plant Reserve),³¹ the area is within the geographic boundary of Lehigh's vested rights. Accordingly, the area is already devoted to mining use, and conducting active surface mining operations in this area does not represent an expansion or intensification of use under the principles set forth in *Hansen*.³² To impose such restrictions would amount to an unconstitutional taking.³³

Construction aggregates merit special attention due to questions recently raised regarding Lehigh's sale of this material. Aggregate production has been an integral and continuous part of the surface mining operation since prior to 1948. Aggregates originated as a byproduct of limestone production and is now a valuable and longstanding part of the business, as summarized in a letter written 30 years ago to the County:

The crushing and sale of commercial rock products follow naturally from our quarrying and cement operations because the limestone deposit at Permanente does not contain an abundance of the kind of high-grade stone (i.e., high in the percentage of calcium, carbonate) which is used in the making of cement. Thus, a good deal of quarried rock would otherwise be a waste product which would have to be disposed of in some fashion.³⁴

Numerous public records track the Quarry's historical aggregate production . In 1947, the California Department of Natural Resources reported that "limestone not suitable for manufacturing cement is used to produce high-quality commercial rock for concrete aggregates, railroad ballast, highway paving material and other similar products."³⁵ In 1956, the Planning Commission approved the relocation of crushing equipment to make "road-construction material."³⁶ In 1985, the County, in approving the initial reclamation plan, stated that the Quarry produced "significant quantities of aggregate" and "acts as a significant source in the Bay Area for crushed stone."³⁷ In 2011, the vested

³⁰ In this regard, the 1985 reclamation plan states: "low grade limestone and harder Franciscan rock types are used in the production of crushed rock for aggregate." (RP AR 10:04881.) The current 2012 Reclamation Plan likewise stated that the raw materials were "other [non-cement] limestone grades and greenstone suitable for use in construction aggregate products." (RP AR 15:07854.)

³¹ May 22, 2019 Application Package.

³² See *Hansen*, 12 Cal.4th at pp. 553-54.

³³ *Id.*

³⁴ VR AR 7:02649.

³⁵ VR AR 1:00370.

³⁶ VR AR 7:02554-02555.

³⁷ RP AR 10:04866; VR AR 7:02470.

rights determination itself described the Quarry as “a limestone and aggregate mining operation.”³⁸ The approved 2012 Reclamation Plan, likewise, describes the Quarry as a limestone and aggregate quarry in its opening sentence.³⁹

3. *Would the proposed uses impermissibly intensify the Quarry’s mining operations?*

No. Where a quarry operator submits a reclamation plan for approval, and the lead agency questions whether the production volumes described in the plan would impermissibly intensify mining operations, *Hansen* provides the following test: “[u]nless [the operator] proposes immediate removal of quantities of rock which substantially exceed the amount of aggregate materials extracted in past years, there is no impermissible intensification of use.”⁴⁰ As follows, approval of the 2019 Reclamation Plan Application will not impermissibly intensify the Quarry’s production under this test.

The general parameters of the surface mining operation have been consistent over time, subject to normal market and operational fluctuations, and subject to reasonable growth to serve the growing market.⁴¹ In 1948, the Quarry produced 1.5 million tons of cement-grade limestone annually and additional amounts of construction aggregates.⁴² In the time since, mineral production has continued to expand. The 1985 Reclamation Plan estimated total production to be approximately 4 million tons per year.⁴³ The 2012 Reclamation Plan estimated a total of 4.7 million tons of cement-grade limestone and aggregates produced annually.⁴⁴ Future production estimates will remain consistent with the production parameters previously identified in the 1985 Reclamation Plan and the 2012 Reclamation Plan. Annual production of limestone and aggregate under the 2019 Reclamation Plan Application is projected to be 3.8 million tons. As such, there is no legal or factual basis for the County to conclude that the 2019 Reclamation Plan Application will result in an impermissible intensification.

Reservation of Rights

This letter, and the information it contains, are provided subject to a full and complete reservation of Lehigh’s rights. Lehigh’s vested rights have been developed and preserved through 80 years of investment, and Lehigh places great value on them. Further administrative and judicial review would be contrary to law and could result in constitutional infringement. Lehigh fully reserves its rights to contest further review of its vested rights on all substantive and procedural grounds, and to present

³⁸ VR AR 1:00131.

³⁹ RP AR. 15:07830.

⁴⁰ *Hansen*, *supra* note 24, at p. 575.

⁴¹ See, e.g., RP AR 3:01328; VR AR 7:02649; VR AR 2:00451; see also *Hansen*, *supra* note 24 at 573:

By way of example, we assume a grocery store operating as a lawful, nonconforming use in an area of increasing population would not be restricted to the same number of customers and volume of business conducted when the zoning ordinance was enacted. Neither an increase in the number of patrons or in the volume of goods sold would be considered an enlargement or intensification of the use. And where increased population creates an increased demand for the aggregate used in road construction, an increase in production to meet that demand would not be construed as an enlargement or intensification of the use.

⁴² VR AR 1:00370; see also *No Toxic Air, Inc. v. Santa Clara County* (July 28, 2016, No. H039547) [2016 Cal. App. Unpub. LEXIS 5566, at *16.]

⁴³ RP AR 10:04866.

⁴⁴ RP AR 3:01391.

Mr. Rob Eastwood
Re: Permanente Quarry
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facts or information that is in addition or supplemental to, or different than, the information herein. Lehigh further reserves its right on all substantive and procedural grounds to challenge any determination that Lehigh's 2019 Reclamation Plan Application is incomplete.

Conclusion

We are pleased to present this information to the County and look forward to answering any questions. We trust that the County will, as required by law, accept and process the 2019 Reclamation Plan Application without attempting to revisit Lehigh's established vested rights. If you have any question or concerns, please contact me by telephone at (916) 706-2575 or by email at mharrison@hthjlaw.com.

Best Regards,
HARRISON, TEMBLADOR, HUNGERFORD & JOHNSON



By
Mark D. Harrison, Esq.

cc: Jacqueline Onciano, Planning Director, Santa Clara County
Elizabeth Pianca, Esq., Lead Deputy County Counsel
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Erika Guerra, Lehigh Southwest Cement Company
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TECHNICAL MEMORANDUM

SUMMARY OF APPROVED PERMANENTE QUARRY RECLAMATION PLAN COMPONENTS AND PROPOSED REVISIONS

PERMANENTE QUARRY

On May 22, 2019, Lehigh Southwest Cement Company (Lehigh) submitted an application to amend the currently approved reclamation plan for Permanente Quarry (2012 Reclamation Plan). The proposed amended reclamation plan for Permanente Quarry (Amended Reclamation Plan) incorporates design to better address conditions at the site and provides updated reclamation phasing and refined treatments for resoiling and revelation of the various surfaces. Lehigh's application includes a detailed project description characterizing the primary components of the proposed amendment:

- Western Materials Stockpile Area to be left in place,
- fill import for the North Quarry backfill,
- North Highwall Reserve layback for stabilization and mining of remaining reserves, and
- new Rock Plant Reserve.

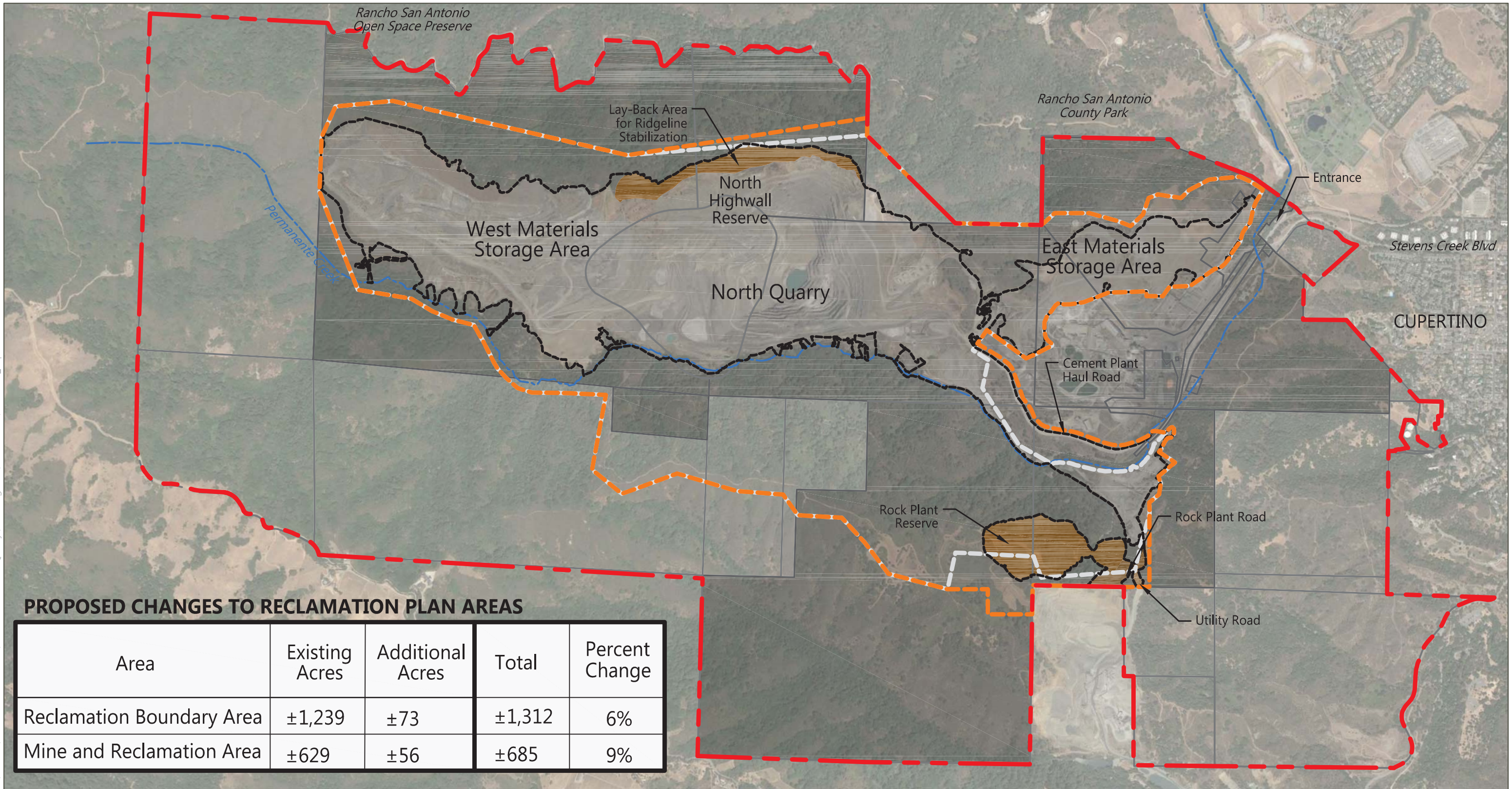
On June 10, 2019, Lehigh met with Santa Clara County Planning Department staff for a 2-hour briefing session on the application materials. The purpose of the meeting was to facilitate staff's understanding of the project and the extensive evaluations submitted and to expedite staff's 30-day review for application completeness. During the presentation, County staff requested additional written description that would explain in simple terms how the proposed 2019 Amended Reclamation Plan is different from the approved 2012 Reclamation Plan.

This technical memorandum provides a comparison of the approved and proposed reclamation plans and how the proposed reclamation plan meets the California Surface Mining and Reclamation Act (SMARA) requirements the same or differently. For additional details of final topography and phasing, please review the project description provided with the application for the Amended Reclamation Plan, which summarizes these features. Please note that the proposed Amended Reclamation Plan provides a comprehensive update and meets all requirements of the County's surface mining ordinance and all requirements of SMARA, including SMARA amendments adopted after approval of the 2012 Reclamation Plan.

MINING AND RECLAMATION AREAS

Figure 1, "Reclamation Expansion Areas," shows proposed additional mining and reclamation areas. The areas are associated with the North Highwall Reserve and Rock Plant Reserve. These components would result in 56 acres of additional disturbance. Figure 1 also illustrates the proposed reclamation boundary adjustments to encompass the proposed additional mining and reclamation areas. The boundary adjustments increase the reclamation plan boundary by 73 acres. Figure 1 also shows that all proposed additional mining and reclamation areas and the proposed reclamation plan boundary modifications would be within areas of Lehigh's vested rights. The total area affected by mining and reclamation activities at Permanente Quarry consists of approximately one-third of the vested acreage where mining is authorized, and totals approximately 20 percent of the entire property under ownership.

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PROPOSED CHANGES TO RECLAMATION PLAN AREAS

Area	Existing Acres	Additional Acres	Total	Percent Change
Reclamation Boundary Area	±1,239	±73	±1,312	6%
Mine and Reclamation Area	±629	±56	±685	9%

SOURCES: AERIAL: Google Earth (2018-08-09); SITE BOUNDARY/RECLAMATION BOUNDARY: Lehigh Southwest Cement Company, generated in 2018; PARCELS: Santa Clara County parcel data accessed in 2018; compiled by Benchmark Resources in 2019

- Property Boundary
- Existing Reclamation Plan Boundary
- Proposed Reclamation Plan Boundary
- Surface Disturbance Area
- Permanente Creek
- Permanente Parcels
- Proposed Additional Mining and Reclamation Activities
- Vested Parcels

COMPARISON AS RELATED TO SMARA REQUIREMENTS

Table 1, “Summary of Approved Permanente Quarry Reclamation Plan Components and Proposed Revisions,” compares the proposed 2019 Amended Reclamation Plan to the approved 2012 Reclamation Plan for various reclamation specifications associated with SMARA requirements. While the reserves and overall schedule for reclamation is updated, many of the actual specifications remain unchanged. Where changes are proposed, these changes reflect improvements to the reclamation plan, incorporating new studies and information developed since approval of the 2012 Reclamation Plan and addressing new regulatory requirements. Slopes are lessened in certain areas for better long-term stability based on updated geotechnical analysis. Resoiling requirements better reflect the actual surfaces to be reclaimed and the limited availability of on-site soils. Revegetation specifications are updated to identify areas for enhanced vegetation establishment where the surfaces can be seen from off-site locations. For additional details of final topography and phasing, please review the project description provided with the application for the Amended Reclamation Plan, which summarizes these features. Please note that Table 1 is provided solely for explanatory purposes. Table 1 shall not be construed as any part of the Amended Reclamation Plan or the project description. In the event of any inconsistency between the application for the Amended Reclamation Plan and Table 1, the application for the Amended Reclamation Plan shall control.

TABLE 1
SUMMARY OF APPROVED PERMANENTE QUARRY RECLAMATION PLAN COMPONENTS AND PROPOSED REVISIONS

SMARA Component	Approved 2012 Reclamation Plan	Proposed 2019 Amended Reclamation Plan
GENERAL INFORMATION		
Permitted Mineral Products	Limestone cement and aggregate	–
Production Amount	45 million tons (MT) total	Average of 3.8 MT annually; over 60 MT of cement-grade limestone, construction aggregates, and overburden under this plan
End Date	December 31, 2030	December 31, 2060
Use Permit	All mining and reclamation areas are within areas of established vested right; no use permit for mining and reclamation is required.	–
End Use	open space	–
BOUNDARIES		
Property Acreage	3,510 acres	–
Permit Acreage	Vested mining parcels encompass 2,040 acres; 1,239 acres within reclamation boundary	Reclamation boundary adjusted to include additional 73 acres, resulting in a total of 1,312 acres with the reclamation boundary.
Property Line Setbacks (minimum)	Cut Slopes: 25 feet from property line	–
SLOPES, GRADING, DRAINAGE		
Cut Slopes:		
Reclaimed	1H:1V overall; interbench slopes up to 70° (.25H:1V)	No change, with exception of North Quarry highwall slopes angles lessened

SMARA Component	Approved 2012 Reclamation Plan	Proposed 2019 Amended Reclamation Plan
Fill Slopes:		
Reclaimed Fill Slopes	<p>North Quarry: 2.5H:1V max. overall, buttress placed against northwest highwall</p> <p>WMSA: 2.5H:1V max. overall</p> <p>EMSA: 2.6H:1V max. overall (2H:1V interbench slopes, 25-foot-wide benches spaced at 40-foot vertical intervals)</p>	<p>North Quarry: No buttress necessary because of extraction of North Highwall Reserve, thus removing unstable materials</p> <p>WMSA: Slopes lessened to 3:1; materials left in place</p> <p>EMSA: –</p> <p>Rock Plant Reserve: No fill slopes</p>
Compaction	Backfill spread in lifts not exceeding 5 feet thick by tracked equipment and compacted by track-walking or wheel-rolling with a minimum of three passes for each lift (consistent with 2012 COA 25).	Compaction is achieved as materials are placed. No additional compaction is required.
Drainage	Per SWPPP and drainage report (2012 RP, Attachment F). Includes sediment basins, drainage channels, swales, downdrains, intrabench ditches, silt fencing, riprap, revegetation, monitoring, and maintenance. Settling ponds designed to exceed 20-year storm event.	No change, with exception of specific drainage design added for the Rock Plant Reserve.
STREAM AND WETLAND PROTECTION		
Buffers (distance to channel)	Includes pre-1976 disturbance around Permanente Creek.	–
Best Management Practices	Specific, reclamation treatments for each PCRA subarea to address the conditions and features that exist in the PCRA. Treatments emphasize erosion control but avoid major earth-moving activities that would be detrimental to the Permanente Creek channel and watershed. Treatments are based on the technical study and analyses performed by Golder Associates (2012 RP, Attachments C and F).	–
Drainage	Basins: Basins sized to meet 20-year standard, and sited to release flows into existing drainages feeding the creek.	–
Grading and Slopes	PCRA road treatment: The existing road will be regraded (in-sloped) to collect drainage on the interior of the road as shown on the engineering plans, then ripped or disced prior to hydroseeding.	–
SENSITIVE WILDLIFE AND PLANT PROTECTION		
Protection Measures	Procedures for nesting birds, roosting bats, San Francisco dusky-footed woodrat (2012 Reclamation Plan, Attachment D)	No change proposed; although existing protection measures may be modified if necessary through County environmental review.

SMARA Component	Approved 2012 Reclamation Plan	Proposed 2019 Amended Reclamation Plan
SOIL/OVERBURDEN STOCKPILE MANAGEMENT		
Topsoil:		
Source	Blended materials as available and necessary to meet revegetation cover specifications.	Lack of soils from preSMARA mining is acknowledged. Imported soils may be used to supplement on-site materials. Topsoil stockpiling to be completed for new areas to be mined..
Storage Location	Moved directly to revegetation location or stockpiled.	Temporary storage areas for new mine areas identified.
Best Management Practices	Topsoil stockpiles clearly marked for identification. Angle of repose. Minimal compaction. Topsoil not moved or handled when wet. Additional methods for storing topsoil to preserve and maximize nutrient values are included in the revegetation plan (2012 Reclamation Plan Attachment B) (2012 Reclamation Plan Appendix F, the drainage plan, and SWPPP)	-
Overburden:		
Location	WMSA temporary before moved to the North Quarry and west wall.	WMSA: Majority of material left in place. EMSA: - Greenstone Slide: Materials on the west wall to be placed in North Quarry with imported soils.
Best Management Practices	Overburden material deposited by end-dumping to the angle of repose in a series of lifts and phases. (2012 Reclamation Plan figures in Section 3.16). Materials keyed into existing slopes and rough-graded to geotechnical recommendations (2012 Reclamation Plan Appendix F [drainage plan] and SWPPP).	-
Topsoil Application:		
Amendments	Soil preparation will occur by mixing salvaged topsoil blended with overburden material and other materials available on-site as detailed in the revegetation plan. The ratio of salvaged topsoil, overburden material, and other materials in the blended growth medium will depend on the area to be revegetated.	No change; however, to the extent necessary to meet revegetation requirements, imported soil may be used to supplement on-site materials.
Depth	Hydroseed: 3 inches min. Oak and Pine Trees: 6 inches min.	Increased to 6 inches for scrub; 12 inches for trees and shrubs.

SMARA Component	Approved 2012 Reclamation Plan	Proposed 2019 Amended Reclamation Plan
Moisture	Compost and mulch used to retain moisture; need for irrigation during initial establishment assessed during the test plot monitoring and adaptive management reclamation efforts. DriWater gel pac irrigation systems tested in the test plots.	-
Application Methods	See Table 4 of the revegetation plan (2012 Reclamation Plan, Attachment B) for proposed topsoil blend application depths and volumes.	-
REVEGETATION		
Test Plots	16 test plots on bare, graded overburden rock at two locations (fall 2008). Plots 1–12 and 16 at flat "Yeager Yard" site; plots 13–15 at a sloped EMSA. Test plots differ by soil composition and soil depth.	-
Vegetation	Self-sustaining native vegetation communities and visual integration of reclaimed lands with surrounding open space areas; interim erosion control planting; hydroseeding of the finished slopes with native grasses, herbaceous plants, and shrubs; tree and shrub planting on contoured benches and riparian drainages.	The types of native vegetation will not change; however, the species mix applied to areas is improved for success by recognizing substrate types and solar exposure.
Timing/Phasing	Phase 1 (through approximately 2020) includes completion of North Quarry mining, final reclamation in the EMSA, and reclamation of the exploration drill pads and roads south of Permanente Creek. Phase 2 (through approximately 2025) includes placing the WMSA material in the North Quarry. Phase 3 (through approximately 2030) includes final reclamation and long-term monitoring and maintenance.	Phase 1 (within 10–20 years) includes North Quarry ridgeline mining and reclamation (within first 18–24 months), placement of fill on the WMSA, and beginning PCRA reclamation. Phase 2 (within 15–30 years) includes backfilling the North Quarry, final EMSA reclamation, and Rock Plant Reserve mining and reclamation. Phase 3 (within 30–40 years) includes completion of the North Quarry backfill, removal of stockpiles, installation of drainage controls, final revegetation, and erosion and vegetation monitoring.
Density (per acre)	Oak Woodland (North- and Northeast-Facing Benches): 470 woody plants Pine Woodland (East-Facing Benches): 345 woody plants Riparian Areas: 470 woody plants	200 to 400 plants per acre, depending on reclamation surface
Percent Cover	40%	20 to 40%, depending on reclamation surface

SMARA Component	Approved 2012 Reclamation Plan	Proposed 2019 Amended Reclamation Plan
Species Richness (per plot, 10m-radius for trees, 5m-radius for shrubs, and 1m-radius for herbs/grasses)	Oak Woodland (North- and Northeast-Facing Benches): 5 woody plants, 3 herbs Pine Woodland (East-Facing Benches): 4 woody plants, 3 herbs Hydroseed Areas (Shrub/Grassland Mix): 3 woody plants, 3 herbs Riparian Areas: 4 woody plants, 3 herbs	–
Protection	Protective cages around most container plantings to reduce damage from deer browsing	–
Success Monitoring	Following installation, each revegetation area monitored at least 3 times during the following 5-year period. Contouring and revegetation conducted in stages; therefore, monitoring of each stage stratified, commencing in a particular revegetation area on completion of installation. Each stage monitored at least 3 times during the following 5-year period after installation, and until the area meets performance standards for 2 consecutive years without intervention. Revegetation sites identified on a map and monitored to assure standards adequately achieved to within min. 80% confidence.	–
Invasive Species Control	If invasive weeds exceed a combined 5% relative cover over all sampled quadrants, weed abatement activities will begin. Species subject to this performance standard: yellow star thistle (<i>Centaurea solstitialis</i> , annual), black mustard (<i>Brassica nigra</i> , annual), stinkwort (<i>Dittrichia graveolens</i> , annual), pampas grass (<i>Cortaderia</i> spp., perennial), and fennel (<i>Foeniculum vulgare</i> , perennial). Weed control methods may include chemical and mechanical removal techniques depending on the species and number of individuals encountered.	–
OTHER		
Structures	To be removed	–
Equipment	To be removed	–
Closure of Adits	During final reclamation, conveyor tunnel (from crusher to cement plant) will be filled and sealed.	–

Notes: – = same or similar compliance criteria; 2012 RP = Reclamation Plan Amendment for Permanente Quarry (Lehigh Southwest Cement Company 2011); BMP = best management practices; COA = condition of approval; PCRA = Permanente Creek Reclamation Area; EMSA = East Materials Storage Area; RWQCB = regional water quality control board; SWPPP = Stormwater Pollution Prevention Plan, Lehigh Southwest Cement Company, Permanente Plant and Quarry (Lehigh Southwest Cement Company and Hanson 2018); WMSA = West Materials Storage Area.

CONCLUSION

Actual changes are limited compared to the 2012 Reclamation Plan. The information in this technical memorandum summarizes information in the application submitted to the County on May 22, 2019. This letter is provided in response to the County's request and to assist the County with its review and processing of the application. Many of the reclamation plan standards and requirements remain unchanged from the 2012 Reclamation Plan. The changes proposed account for ongoing mining within areas of Lehigh's vested rights and incorporate new and current information for on-site planning to achieve improvements in reclaimed conditions.

TRANSMITTAL

Date: June 21, 2019
To: Erika Guerra
From: David Brown
Re: Permanente Quarry GIS Files and Comparison of Reclamation Plan Amendment Changes

Status: Preliminary Final Approved Revised Draft
Sent for Your: Information Use/File Signature Review Submittal
We are sending the following items via: U.S. Mail Federal Express GSO Other

Remarks:

Please find the requested GIS files via the following Box.com link:
<https://benchmarkresources.box.com/s/qedwuap8dct034ov715o4m7lmsit5715>

Included in the link are the following files:

SHAPEFILES ZIP-1-SITE:

1. Property Boundary
2. Surface Disturbance Boundary (from Expansion Areas figure)
3. Approved Reclamation Boundary 2012
4. Proposed Reclamation boundary 2019
5. North High Wall Reclamation Area
6. Reclamation Area – North High Reserve hatch
7. Reclamation Area – North High Reserve outline
8. Reclamation Area – Fill
9. Reclamation Area – Haul & Utility Road
10. Layback Area
11. North Highwall Reclamation
12. Rock Plan Reserve
13. WMSA

SHAPEFILES ZIP-1-BASE

1. Modified Parcels
2. Vested Parcels
3. Permanente Creek

Also please find the attached technical memorandum, which summarizes the changes to the proposed *Permanente Quarry Reclamation Plan Amendment*.

Sincerely,

David E. Brown
Principal