

Permanente Quarry Legal Nonconforming Use Analysis Report Meeting Feb. 8, 2011

Cathy Helgerson Comments

February 2, 2011

The Board of Supervisors with all due respect for its citizenry should definitely reconsider issues that arguably address the past. The Quarry stating that the County took final action to determine the nature and extent of its legal nonconforming use decades ago and that the County is prohibited from reconsidering those issues is seriously mistaken and should be held accountable up to criminal charges.

In the case of the Hansen Bros. case the Quarry made a similar arguments that the County was estoppel from determining that part of its property was not part of its legal nonconforming use on the bases that the County had allowed it to continue using the property since the zoning ordinance was adopted and had failed to contest the Quarry's right to continue the use.

The California Supreme Court rejected arguments because they claimed that ignorance of the governing bodies such as in the example of the of the Hansen Brothers case which decided that the County was not stopped from determining that part of the property was not part of its legal nonconforming use. They stated that just because the County had seemed to allow or did nothing to stop the use of the property since the zoning ordinance was adopted and had failed to contest the Quarry's right to continue the use that the County had no right now to impose restrictions. They also mentioned that negligence on the governing body charged with the administration and regulation of vast amounts of land under diverse ownership, cannot be so easily excused in one whose interest is focused on a particular piece of property and moreover, it states that estoppels will not be recognized "to do so would nullify a strong rule of policy adopted for the benefit of the public. It seems that the benefit of the public is a clear indication that this consideration overrides any estoppels or any argument of the Quarry. It also seems that the California courts have long rejected attempts by property owners to prevent local jurisdictions from enforcing their zoning regulations based on the theory of equitable estoppel and that equitable estoppel is not absolutely barred in the land use cases, the courts have severely limited its application. I would like to add one thing here and ask the question that no one has asked and that is where was the Permanente, Hansen, Kaiser, Lehigh and all these entities while all this was going on if there was a question in anyone's mind then why was it not discussed earlier. The implication is that the Quarry did not want to bring any attention down on themselves even if they knew at there was a legal question and hoped no one would notice and no one did until now and so the burden of guilt should be shared by Santa Clara County and all of the companies that looked the other way. Ignorance on any ones part is no excuse and I am sure the courts would agree.

Santa Clara County it seems in the draft that the Quarry would have to prove that the County knew information that the Quarry did not know and induced the Quarry to rely on that information. I do not for one think this is possible and the records show overall that this did not take place.

The Quarry asserts that the County's 1985 approval of the Quarry's reclamation plan amendment implicitly involved a determination that the legal nonconforming use extended to the reclamation boundaries

but there is no evidence of what, if any, analysis was conducted to support this conclusion rather the staff report simply states that, because quarrying began before 1937, there is a legal nonconforming use for quarrying on the property.

The overall conclusion that Santa Clara County staff discussed and showed in the historical documentation shows that the County never made a determination that the legal nonconforming use for quarrying encompassed all of the property owned by the Quarry.

The important information stated in the 1971 analysis states that quarrying could be expanded throughout the entire original parcel of land, but could not be expanded to a second parcel. This is with respect to the EMSA property location. Most of the land was owned by a separate corporation and operated for completely different purposes until at least the 1980's. This land was never considered for the making of the EMSA and until the public even notices what was going on was not even called the EMSA.

The issue of the Permanente Road which was not formally abandoned as a public road and no longer functioned as a public street as defined by the 1937 Zoning Ordinance should be a very important factor. It seems that the Quarry took over this road without any legal jurisdiction or ownership and that no governing body imposed any restrictions even after the board in the 1935 Board asked about it and it is so stated in their minutes. They also asked about the gate and were concerned over the gate that was placed on the road that was keeping the public out. This gate which has been there since 1935 along with probably the guard shack to this day is not legal and someone needs to rectify this error. The most important argument and question that must be asked is where was the elected Board members and the County staff personnel in taking up this matter and determining the legal right of the public over the legal right of the quarry. I see that they were not minding the store and if they knew what was taking place and there is strong indication that they did then it seems favoring the Quarry and the Cement plant was the prime objective overall. I would add that this seems to be an ongoing trait of the governments involved overall and this should stop and should be against the law.

It seems that the Permanente Road is a public road and the Quarry has kept the public from using this public road for decades illegally which has worked to their advantage. The issue of this road being public should be a key to the 1,000 ft. rule and the moving of the EMSA should take place immediately.

The abandonment process of a road involves the Boards adoption of a resolution and the recording of a road abandonment document with the County Recorder this was never done. I would like to know what the board will do about this now to make things legal and permanent can anyone tell me?

The Quarry states that even if the Permanente Road was not abandoned as a public road it no longer functioned as a public street undefined by the 1937 Zoning Ordinance to be not applicable and therefore no use permit was required. The fact that a use permit should be required is necessary and should have been part of the history of the quarry all along and to endanger the public in this was is intolerable and each and every proof or evidence of this pollution and contamination of our communities should be looked at overall. The fact that the EIR is not out yet and we have asked all of the governing organizations to tell us what is in the overburden and what is going on with the NOV's for the Air and Water should be adhered to and is not and we are constantly ignored. It is time to stop the stalling and own up

to the fact that we and the community are being polluted to death that every time something is overlooked, ignored or just plain disregarded to satisfy corporations is unacceptable and crimes are being committed without any justice. There is no real enforceability when a violation is not even considered or if there is a fee or fine to pay the company can afford to pay it and then goes out and sins again no justice. So what is the public to do and the public is every human being no matter who you work for because cancer is now one out of two people suffering and dying. The matter is simple and only a question of time for only time will tell who is to live or die from all this pollution and I will remind you of how I and my family have suffered from cancer and other health problems to the point of my daughters death. Human and animal alike are suffering from this pollution what are we the people supposed to do when even our governments are not going to protect us.

The Quarry and the many companies that have taken on the responsibility of their own monitoring have been allowed to poison us for decades. Santa Clara County and its many divisions have looked the other way and have allowed them to do so without the public being aware of the illegality of their violations and without fees or fines being imposed in order to secure the promotion of the Title V Permit and the next mining pit to be mined. The public must assume that there is no justice and they must take on a grass roots effort as we have to stop the criminals in their tracks.

The Quarry has been and has many violations such as Weed Abatement issues, Environmental pollution violations, Fire Department, Paramedics and Police being called out because of the smell and the polluted air emissions at the expense of the public. The on going complaints made to the Bay Area Air Quality Control Division over 350 complaints with about \$158,000.00 dollars of fees/fines paid to the BAAQMD this has not been noted and has been strongly played down. There was a fire at the Cement Plant in a building that cost \$200,000.00 dollars in damages again no one notes this and is covered up. The lost records that amounted up to \$12,000.00 dollars in fee/fine no one again paid attention to and is was suspected by the advocates the public who are concerned that records were not lost but destroyed. The fact that nothing was even mentioned about these records until the new Title V Permit was being imposed and that is when the records just up and disappeared. I ask you do they think the public is so foolish.

The Petroleum Coke and the location of the holding area for the Coke and Coal is still a mystery and Jim Blaney at SCC is checking on this Petroleum Coke that has radioactivity in it and I am concerned that the dust and the run off of rain is going into the pond on the site which in turn is going into the Permanente Creek and the storm water.

It is very importantly noted that the EMSA as it is now called was not called the EMSA but was property owned by a separate corporation and used for metals manufacturing until the 1980's. In addition, the County Geologist did not find evidence of mining-related disturbance and that the disturbance was due to the construction to and operation of metals manufacturing plant and related facilities. The evidence explicitly indicates that the site was abandoned and should not be considered part of the vested rights argument. The letter from Kaiser's attorney explains that the metals and cement operations were separate and independent. And the property ownership was not reconsolidated until 1995.

Important Point – The Quarry has not provided any objective evidence that the property was simply held in reserve for future quarrying use. Rather, it was extensively developed and used for other purposes by a separate legal entity. The mere intention or hope on the part of the landowner to extend the use over the entire tract is insufficient; the intent must be objectively manifested by the present operations. The public must be allowed to comment and help in the decision making of the EMSA addition and there should be nothing that jeopardizes that legal right.

I complained one day to the Santa Clara County and the State Conservation Agency mentioning that Lehigh – Permanente was tearing down the mountain this is where the EMSA now resides and that I wanted to know what was going on. I also mentioned that I thought they were not aware of what was taking place and asked them to look into it. I was very right in my determination that Lehigh - Permanente had taken it upon themselves to destroy the mountain so that they could put in the EMSA little did I know what this would lead to. The mountain was destroyed and in its place we see levels of towering overburden waste material that no one even wants to acknowledge to the public what is in this waste material that is polluting the air, water and soil all over the valley and the bay. The overburden waste material grows higher and higher each day and it is a wonder that the workers can even get the pile up so high but they do and there could be a very serious safety hazard but no one seems to care about that.

Santa Clara County are now trying to add a Reclamation plan for the EMSA as if there has been no problem but to decide if there is a non conditional vested right only is not the case. The issue is and should be very clear to everyone who is worried about pollution and contamination and that is the EMSA should not even be allowed at all and it is extremely evident that it must be moved. There is no containment of this pollution and it exists not only with the EMSA but with the WMSA the whole quarry and cement plant on going for over 70 years this pollution accumulates in the ground and in our bodies and is causing devastation to us and our planet. The public and the citizens of this valley and the bay have been polluted to the extent of death and this should stop immediately. The contamination from Lehigh – Permanente Cement and Quarry and also the Steven Creek Quarry needs to end.

It is further stated in the records that the Permanente/Hansen quarry or the Lehigh Quarry and surrounding area is the potential for severe ground shaking from a major earth quake event the San Andreas Fault. There are three fault lines surrounding Permanente and the Steven Creek Quarry and they are capable of producing an earth quake equal to the 1906 San Francisco Earthquake. The new mining of the new proposed pit is a surely and endangerment to the public and in all probability could cause the next major earth quake that is predicted in the future. There maybe even an indication that the mining past and present may be causing the earth quakes we are now experiencing and have experienced in the past no one really knows for sure or do they. The promotion of the process of cement at all cost even if the public is in danger is the prime objective and even thou we may know things we did not know decades ago about pollution and earth quakes it does not matter because we must have cement to build our bridges, roads and building but I ask as what cost. The planet earth, California, the United States and our communities here in the Silicone Valley and the Bay have over mined and over polluted our planet and it is time it stopped. I hope that is not to late it just may well be but I am an optimist and hope it is not to late and I hope that Santa Clara County's Board of Directors and Staff will do the right thing.

The Limestone quarried at Permanente/Hansen is considered to be one of the units of the Jurassic-Cretaceous Age Franciscan Complex and the deposit is by far the largest limestone body known to exist in a number of discontinuous masses of limestone that crop up along a northwest-southeast trending zone in the central and southern San Francisco peninsula area of the coast ranges. The destruction that has taken place of the mining of this heritage Limestone formation will never be replaced and this is a terrible pity. Mining the new proposed pit will be an even further shame and this rock formation will be lost to us for ever. The fact of the matter is that this rock will never be replaced and that loosening the Mercury that is in the Limestone has caused a great deal of contamination and pollution and that this rock has extremely high levels of Mercury is a fact. The Limestone that is in the new proposed pit should be left alone so as not to cause future Mercury contamination left alone and solid and enclosed in a cover of trees, shrubs and grasses will protect us from Mercury pollution.

The new pit and its mining will also cause over 10,000 trees to be destroyed trees that have lived for 100 years and have counted on the Limestone rock in order to hold onto which have taken root around this Limestone since the being of time which will now be destroyed. I would assume that the mining of the old pit was very similar to this destruction and I for one want no part of it. The trees create oxygen and this is what is helping to clean the air without them we are in great trouble and these trees have helped our air quality for hundreds of years. This location should be made a park for generations to enjoy but after the destruction of the two pits no one will want the land due to the contamination and pollution and it will be a waste land. The prospect of turning the Permanente Hansen quarry and the Cement plant into a park along with the Steven Creek Quarry next to the Steven Creek Reservoir would be a great thing but from what I know now no one that has anything to do with parks will buy the property or even propose to buy it because they do not want to pay to clean up the mess. There will come a day when there will probably be the necessity of a Super Fund but getting money for that seems impossible and the public and the SCC should be made aware of that so who will pay for the clean up? Even if you could even remotely try and clean this up to who's standards would you clean it up to we have no proof that the clean up will be cleaned up to prevent any harm to the public. There have been many places in the U.S. that were supposed to be cleaned up to a certain standard and they were not and people have gotten cancer and there health problems because of it so who is to assure us that we are safe? Even if there is a standard and they say they are using that standard then who says that is ok? The dream of a beautiful park next to and around the Steven Creek Reservoir that is polluted with Mercury is just that a wonderful dream but not one that can not be considered. The future will tell about the continued pollution in the Steven Creek Reservoir and if they will be allowed to continue and I suspect not because this water goes into the recharge pond and also down the Stevens Creek Creek which eventually ends up in our water shed and our aquifer under the Silicone Valley and the Bay. It should be noted here that Chromium 6 was also found in San Jose drinking water at an alarming level and of course there are people who want to play that down to.

The destruction of the oak woodland trees and vegetation that provide valuable habitat for a variety of birds, reptiles, and mammals, as well as a refuge for larger animals such as deer, and coyote is a crime. Wildlife on the site which include the Mule deer, coyote, raccoon, bobcat, Red tailed hawk, California quail, Western fence lizard, and various snakes and amphibians.

The Quarry has in the past reclamation plan mentioned that they would plant trees, grass and shrubs and would restore the area they destroyed and either is not happening or is minimal. Who makes the determination of the level of accountability of the reclamation as a whole seems this goes unnoticed. The trees will never be what they used to be and the habitat for animals will take decades to bring back what was lost. They mentioned that they would put fences around the quarry to keep the deer out and that they would move the frogs to another location and this never happened so how can we ever give them another pit to mine and another reclamation plan to adhere to. I ask that no new permit for a new pit be allowed and in no way should this land be disturbed.

I ask the Santa Clara County Board of Supervisors not allow the East Material Storage Area violations to continue and that the dumping of over burden should stop immediately. I further ask that the EMSA overburden that is on the site be taken off site in order to stop the pollution to our ground water and the runoff to the Permanente Creek that is polluting our Valley and the Bay. I would also ask that any further work at the quarry and at the cement plant be monitored closely and that inspection by Santa Clara County be done continually to make sure that no further violation will take place.

I would like to finally add that the Oaks Condos are right down the road from the EMSA and the Cement Plant I have a petition that I circulated with over 95 signatures of people who want the Quarry and the Cement Plant closed due to the pollution and the nuisance issues this petition was provided by me to the Santa Clara County. I received no word from SCC to this date about this petition and we were totally ignored.

I ask the SCC and the Staff not to ignore their responsibility now and to make up for past mistakes of all kinds and help us to ride ourselves of the Permanente- Lehigh Quarry and Cement Company once and for all by not allowing them do what ever they like as they have done in the past.

I ask further that you not authorize the EMSA Dumping, not allow a new permit for the new pit and the destruction of the trees and habit for animals of all kinds, to keep us safe from pollution and earth quakes, make them abide by the old reclamation plan, not allow a new reclamation plan for the new pit and last but not least stop the pollution from the cement plant and quarry of the air, water and soil.

The Santa Clara County Board of Directors and the Santa Clara County Staff member of all kind have an obligation to the community to keep us safe and there is no question that this is a part of your job so please do what you have promised to do.

Thanks

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November 17, 2010

Att: Office of the Clerk
RE: Lehigh Southwest Cement

I have lived at the above address for ten years, which is at the base of the hill where Lehigh Cement operates. I understood that the Permanente Quarry had been operating for many, many years before I purchased and the same is true for all the residents of the Oaks neighborhood and most of the surrounding Cupertino and Los Altos area.

Anyone choosing to locate in this area was fully aware of the cement quarry, its operation and emissions when they made a decision to buy. If they were not aware and the cement quarry did not factor into their decision then they were negligent and should adjust their life accordingly. My research found that the plant was in compliance with EPA standards, that it was a good neighbor and provided a valuable product and employment in the surrounding area.

The current attack on the Permanente Quarry by the group "QuarryNo" strikes me as a "feeding frenzy" of people with lots of time on their hands bowing to the gods of environmental righteousness promulgated by their leader Mr. Almon. If they truly have a case then they should pursue it with intelligence and open-mindedness, rather than deciding the outcome and then trying to force it on the population.

Shyamali Singhal, an oncologist, spoke at the Los Altos Council meeting (which excluded Permanente) of "synergistic toxicity". Keep in mind that people are continuously exposed to a wide variety of chemical substances, biological agents, physical agents, and other stressors. Each stressor has the potential to cause a physiological effect. A few examples of stressors are

Automotive exhaust
All pollution Food
Psychological stress
Whole-body vibration

Cleaning products
Insect repellents
Social stress
Airport scanners

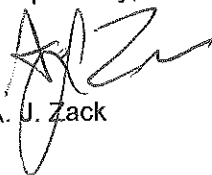
Chemicals in water
Noise
Solvents
Use of alcohol or tobacco

Cosmetics
Prescription drugs
Ultraviolet radiation

These all combine to affect our lives.

I believe that as long as the quarry meets EPA guidelines and remains a good neighbor we should leave them to do their business as they have done for so many years.

Respectfully,


A. J. Zack

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