

Attn:

Board of Supervisors:

Dave Cortese, Mike Wasserman, George Shirakawa, Ken Yeager, Liz Kniss

Santa Clara County Planning Department:

Jody Hall-Esser, Lizanne Reynolds, James Baker, Michael M. Lopez, Marina Rush

**Re: WVCAW Comments on Permanente Quarry Legal Nonconforming Use Analysis (County Analysis),
Final Draft 1-18-11**

West Valley Citizens Air Watch (WVCAW) is grateful to the staff of Santa Clara County who worked on this document for the professionalism, quality, depth, clarity, extensive research and documentation in this Analysis.

This County Analysis clearly demonstrates and documents with its numerous and pertinent attachments, as well as the clear and helpful maps, that the majority of the Lehigh quarrying operations were not and are not vested/legal non-conforming. Therefore those areas require a Use Permit public process.

The report also documents some small areas of vested rights/legal non-conforming use for the Lehigh Southwest quarrying operation (Lehigh). However, some questions may still remain pertaining to those.

WVCAW also thanks the staff for its assertion in the report to not allow past omissions by the County to be incorrectly built upon; but rather, to do and define what was and is warranted by the the zoning and other codes that existed at the relevant times past and current, and under the Surface Mining and Geology Act (SMARA), to determine whether or not vested interest/legal nonconforming use existed or exists, to what specific extent and when. We agree.

WVCAW is concerned over the staff's decision to make no recommendations to the Board of Supervisors with the exception of apparently proposing to give away the County's Road to Lehigh. (see below)

"East Materials Storage Area" and "Central Materials Storage Area"

While Lehigh Southwest Cement Company has designated a certain area on the north eastern portion of their property in which they have dumped and stored materials in recent years and are dumping and storing mining materials currently as the, "East Materials Storage Area (EMSA)," this is a completely arbitrary designation. Some of this area formerly contained buildings not related to surface mining, much of the area was undisturbed until recent years, and some remains undisturbed. (see County Analysis)

A portion, a growing portion, of this area was used for storage and dumping without a user permit. In the County's Final Draft 1-18-11, "Permanente Quarry Legal Nonconforming Use Analysis" (County Analysis), a clear and uncontrovertible case has been documented by the County that this area and surrounding areas were not and are not vested/legal non-conforming areas.

A user permit was never applied for until a member of WVCAW questioned the growing pile that was visible from Stevens Creek Blvd.

All of a sudden, the area had a name, "EMSA". The County then decided to offer a Conditional Use Permit with no public notice and no public process.

In addition, we question the validity of the agreement that Santa Clara County made with Lehigh in private meetings with no public notice nor process indicating that

- a. the resolution of the NOV for dumping in unvested areas without a user permit could and would be rectified through the process of a draft EIR and a after-the-fact permit for this arbitrary area only, and
 - b. allowing Lehigh to continue to use this area without a user permit and
 - c. separating out this arbitrary area from a necessary overall reclamation plan for all areas of mining disturbance, to all appearances piece meal the CEQA process by not allowing the public to review and comment on the entire project in one document and
 - d. not fining Lehigh for this serious violation and
 - e. not enforcing the County's own NOV of June 20, 2008 which called for Lehigh to stop dumping
 - f. not requiring Lehigh to remove the materials.

Please note that in the 1985 Reclamation Plan, there was a small area called the, "East Materials Storage Area." However, that area was a small somewhat circular shaped area directly contiguous with the current quarry (called, "North Quarry" on proposed reclamation plans) and directly east, but connected to the boundary of the aforementioned quarry. It was in no way connected to the area now claimed as the "EMSA".

Please note that the outline of the so-called, "EMSA," has changed from the 2007 reclamation plan and changed in various other recent proposed documents.

In addition, the current zoning code requires a User Permit for , "Commercial excavating of natural materials within a distance of one thousand (1,000) feet from any public street . . ." (County Analysis, p. 8) . Exhibit xx, clearly shows a large portion of the eastern portion of the, "EMSA," is within the 1,000 foot buffer of the portion of Stevens Creek Boulevard located outside the gate of Lehigh, in addition to the rest of the road as discussed below. (As stated elsewhere herein and documented in the County Analysis, however, the entire EMSA and areas around it are not vested and require a Use Permit in any case).

The area called the, "Central Materials Storage Area" is also an arbitrarily named and designated area. It currently appears to be mostly undisturbed and therefore probably mainly oak or bay woodland. It does not appear to contain any vested areas. In addition, any areas therein that may have been part of the former cement plant are not vested.

Some items for the County Geologist to consider:

Please examine the areas in the "CMSA" and in the "EMSA", for any areas that are encompassed by the outline of the former cement plant that operated until the early 1980's. Since the County has determined that the cement plant(s) and aluminum plant and other areas which were used for uses other than mining operations are not surface mining operations, those areas should definitely not be considered vested. The former cement plant that was closed in the early 1980s was in a different location from the current cement plant. It was roughly north and somewhat west of the current cement plant.

If not already considered, please redraw any lines necessary to ensure that neither any of the areas of the current nor of the former cement plant are included in any vested areas. It appears that this

was considered and implemented on the maps for the current cement plant; but possibly not for the former cement plant. If not, we request a close look to ensure this.

**Re: County Analysis, Decision Point One:
The 1893 - present Permanente/Stevens Creek Boulevard Road**

Despite the gate that Lehigh and at least some of their predecessors have erected on Stevens Creek Boulevard, the County's report has documented that that Road, Permanente/Stevens Creek Boulevard (Road), "was dedicated to the public in 1893." There is no documentation in County records that the road was ever sold to Lehigh Southwest Cement Company, or any of their predecessors, including Kaiser. (County Analysis, p. 4)

It has not been proven otherwise. (County Analysis, p. 4)

However, the County Analysis, in its one recommendation states, ". . . that the Board direct the Quarry to pursue a formal abandonment of the Road with the County, at the Quarry's expense." (County Analysis, p. 23) If by this the County is recommending that Lehigh merely pay the normal costs of abandonment, we disagree with this. If Lehigh applies to the County to turn over the road to Lehigh, then in addition to those costs, the current market value of that land needs to be determined by the County and the true value charged. We do not doubt that Lehigh would do the same if the situation were reversed.

As citizens of the County, we do not agree to give away that land without at least just compensation of its value to the County.

The County's Analysis documents that the Road is under the aegis of the 1937 Zoning Code and requires a use permit, "3. Commercial excavating of natural materials within a distance of one thousand (1000) feet from any public street . . ." (County Analysis, p. 8)

**Re: County Analysis, Decision Point Two:
When did County zoning first require a use permit for quarrying on the Quarry property?**

All parcels purchased at the time of a Zoning Code being in effect, required and require a Use Permit to quarry under the Zoning Code which was in effect at that time. It is decisively documented by the County Geologist that this means the vast majority of the Lehigh property required and requires a Use Permit to quarry. (County Analysis, Exhibit One, Exhibit 58, and various other exhibits)

"To establish a legal nonconforming use, quarrying had to have begun on the property before the date(s) upon which the County Zoning Ordinance first required a use permit for quarrying in the relevant zoning district." (County Analysis, p. 8)

**Re: County Analysis, Decision Point Three:
Geographic extent of vested rights?**

The dates of acquisition for each parcel of land are pertinent and valid. Those dates, require Use Permits as per the County Zoning Code for quarrying.

**Re: County Analysis, Decision Point Four:
Relevance of 1985 reclamation plan approval?**

This is an obvious overreaching assertion by the Quarry and is refuted decisively by the County's Analysis and the documentation contained therein. We would wonder what was going on with the Board of Supervisors if they were to adopt the unsupported assertions of the Quarry rather the documentation in the staff report.

Because the quarry kept mining and disturbing without the required quarrying use permit, does not by some wave of a wand change the disturbed areas into vested areas.

WVCAW has commented previously in 2007 to the County on the inadequacies of the 1985 reclamation plan regarding SMARA and now zoning code.

Note: We will be turning in additional comments on the County Analysis; however, we want you to have these basic comments before you to consider now, as the time is short until the February 8, 2011 hearing. We hope you will read these comments now.

We encourage each Member of the Santa Clara County Board of Supervisors to read the 24 page staff report which clearly lays out the documentation by the County staff.

Thank you,

Joyce M Eden, Karen Del-Compare, Timothy Brand and Marylin McCarthy, for West Valley Citizens Air Watch

cc. Clerk of Board - [unclear]
Ticket
Maria R
George
Paul
Lehigh
to me
ONE



Lehigh Southwest Cement Company

12667 Alcosta Blvd., Suite #400
San Ramon, California 94583
Phone (925) 244-6501
Fax (925) 244-6565
www.lehighcement.com

January 31, 2011

The Honorable Dave Cortese
President
Santa Clara County Board of Supervisors
70 West Hedding Street
San Jose, CA 95110

B/S Chair _____
BD of Supv. */*
Clerk _____

BD. SUP. 2/2/FEB 3PM 12:18

Dear Supervisor Cortese,

My name is Kari Saragusa. I am the President of Lehigh Southwest Cement Company and ultimately responsible for our Permanente cement plant. Our company operates over 70 facilities throughout California. I can assure you that none are more important than our Permanente cement plant and quarry. I am writing you for two reasons: 1) to respectfully ask that you affirm the decision that our Permanente quarry is vested; and 2) to directly refute the negative and false claims of various organizations and individuals.

Vested Rights

Lehigh produced a 36-page report that was presented to County planning staff earlier this month. In this report, we provided numerous, legally supported examples of why you should deem our quarry "vested". The report was accompanied by dozens of photos dating back more than seven decades. In our opinion, the information was conclusive. The photos "speak for themselves". Shortly following our presentation of the report to County staff, the staff provided their own analysis of our property and its "vested" status. At present, County staff identifies two primary issues that I'd like to address: Compelling evidence of consistent mining-related activity in the East Material Storage Area (ESMA) and the proximity of the EMSA to a purported "public road".

If you review the appropriate photographs, you will see that there was indeed mining-related activity in the EMSA since 1948. Our company records prove that a road to our Permanente plant was closed to public access in 1935. It has remained that way for the last 75 years. We look forward to presenting further evidence to you on February 8th. We appreciate the opportunity and are confident you will agree that the Permanente Cement Plant and Quarry is legally "vested".

Facts not Fear

Lehigh Permanente is a victim of persistent and untrue attacks by a small number of little known organizations and individuals based on fear rather than fact. They make numerous assertions, but never present both sides of any issue. You should know that Lehigh Cement has met with many opponents to discuss any reasonable questions or concerns they have had. When presented with facts provided by the Company and federal, state and local government regulators, they choose to continue to assert falsehoods or, at best, half-truths. Lehigh Cement has also attempted to attend public meetings organized by opponents, but has been prevented from participating. These organizations are not receptive to any viewpoint other than those posted on their websites. Facts below refute their assertions.

Several individuals have been diligent in speaking to numerous municipalities throughout the county urging them to petition Santa Clara County Supervisors to take negative action against Lehigh Cement. One organization recently sued Lehigh Cement, claiming violations of Proposition 65. They assert that Lehigh violated a law regulated by the California Attorney General and the Office of Environmental Health Hazard Assessment (OEHHA). Lehigh Cement interfaces with government agencies on a regular basis as a normal course of business. At no time has any county, state or federal agency mentioned any potential violations of Proposition 65.

The lawsuit implies that many organizations are not doing their job. Opponents also imply the same with regards to Santa Clara County as they continue to petition municipalities such as Los Altos, Los Altos Hills and Cupertino to force Santa Clara County to act in a punitive and unmerited manner towards Lehigh Cement. Again, fear as opposed to fact. The facts below refute the negative and untrue information generated about Lehigh Cement.

Facts about the Lehigh Cement Company's Permanente Cement Plant and Quarry:

- FACT:** Lehigh Cement has an active and valid Title V Permit.
- FACT:** Lehigh Cement will continue to comply with ALL EPA requirements.
- FACT:** Lehigh Cement is not emitting mercury at a rate 10-times that of EPA limits. Lehigh Cement mercury emissions today are fully within the EPA and BAAQMD regulations. On its own volition, Lehigh is actively working right now to install state-of-the-art equipment to lower emissions to the lowest level possible.
- FACT:** In 2013, EPA limits will be reduced for hundreds of airborne particulates, including mercury. Lehigh Cement will voluntarily reduce these airborne emissions to comply with the EPA NESHAP limits prior to the September 2013 implementation. Lehigh Cement will operate at levels below those required by the EPA. Period.
- FACT:** Because it complies with the toughest environmental regulations in the world, Lehigh's Permanente plant poses NO dangerous health threats to employees or neighboring communities.
- FACT:** Lehigh Cement is an active partner with the US Mine Safety and Health Administration (MSHA) to ensure that the Permanente plant is among the safest facilities in the US. Lehigh welcomes MSHA oversight and actively remedies any citations issued by MSHA.
- FACT:** Lehigh Cement is working with the EPA to resolve a Notice of Violation. This notice is related to mechanical projects completed approximately 15 years ago. It is unrelated to current plant emissions. A Notice of Violation is just that – a notice that a violation may have occurred. As with every industrial facility in America, our Company is compelled to investigate and take corrective action, if required after the investigation.
- FACT:** Lehigh Cement is in compliance with ALL regulatory agencies that govern the Permanente cement plant and quarry. This includes the US EPA, BAAQMD, MSHA, OMR, SMGB and Santa Clara County.
- FACT:** Lehigh Cement has complied with all orders issued by Santa Clara County, a responsible Lead Agency. Lehigh Cement is committed to a continued safe and responsible partnership with Santa Clara County and its residents.
- FACT:** Lehigh Cement's Permanente cement plant and quarry is a critical employer and manufacturer for Santa Clara County. Its role is vital to the success of the County and its residents.
- FACT:** Lehigh Cement supplies 65% of the cement consumed in Santa Clara County and 55% of the cement consumed in the greater Bay Area. The Permanente Cement plant has provided cement for numerous important construction projects, such as Shasta Dam, The Bay Bridge as well as San Jose City Hall.

These facts are self-evident to all fair minded individuals. I am proud to lead our Company in its effort to be a responsible operator and a contributing member of this community. It is without hesitation that I make myself personally available to you for any questions or comments about our Permanente facility. Thank you for your time and consideration.

Sincerely,



Kari D. Saragusa
President

Lehigh Southwest Cement Company

Cc: The Honorable Liz Kniss
The Honorable George Shirakawa
The Honorable Ken Yeager
The Honorable Mike Wasserman
Dr. Jeff Smith
Jody Hall Esser
Liz Anne Reynolds
Mark Harrison
Henrik Wesseling



Regional
OpenSpace

| Midpeninsula Regional Open Space District

February 3, 2011

County of Santa Clara
Board of Supervisors
County Government Center
70 West Hedding St.
10th Floor, East Wing
San Jose, CA 95110

Re: Public Hearing Regarding Permanente Quarry/ Lehigh Southwest Cement Company Legal Non-Conforming Use Determination

Members of the Board:

The Midpeninsula Regional Open Space District (District) manages over 59,000 acres of Open Space Preserves (OSP) within Santa Clara, San Mateo, and Santa Cruz Counties, including the Monte Bello and Rancho San Antonio OSPs which share common parcel boundaries with Lehigh's Permanente Quarry owned properties. The District supports and applauds the Board of Supervisors (Board) decision to deliberate the issue of vested rights on the Quarry properties. From the District's perspective, this review is long overdue given the 2010 sunset of the 1984 Reclamation Plan.

The District remains extremely concerned with the numerous Reclamation Plan Amendments and ongoing operations of Lehigh Southwest Cement Company's Permanente Quarry (Permanente Quarry). We have previously submitted comments related to the Reclamation Plan Amendments proposed for the Permanente Quarry dated June 20, 2007 and May 21, 2010. Copies of these letters are attached for your convenience.

The remainder of this letter summarizes our concerns related to the Permanente Quarry Legal Non-conforming Use Analysis completed by the County, as well as documents prepared by Diepenbrock- Harrison on behalf of the Permanente Quarry.

Proposed East Materials Storage Area

We concur with the County Analysis that the proposed East Materials Storage Area (EMSA) is not a vested portion of the Permanente Quarry. Documents

provided by the Quarry and County clearly show that the proposed EMSA parcel was a part of the manufacturing or "Plant" operations that began in 1939 when former owner Kaiser applied for a use permit for the adjacent cement plant. The subsequent wartime construction of the magnesium plant, and conversion to an aluminum plant confirm the use as manufacturing or "plant" facilities that are not quarry related. Therefore the EMSA is not a vested portion of the quarry operations.

Viewshed impacts have always been prominent issues related to the Permanente Quarry. The 1979 dedication of the Permanente Ridge scenic easement to the County by Kaiser, 1985 Reclamation Plan visual impacts discussion, and the County General Plan designation of Hillside Resource Conservation Areas are examples of the importance of this issue. The EMSA proposal is particularly troubling with regard to visual resources and is inconsistent with viewshed protection values that have long been recognized. Santa Clara County Parks, together with the District, jointly manage Rancho San Antonio Park/OSP. We continue to field complaints on a regular basis from park users and District staff from our onsite Field Office related to ongoing visual impacts and dust impacts from quarry use of the EMSA. The massive and growing quarry tailings piles are clearly visible to a large portion of public who visit Rancho San Antonio Park/OSP. A survey, recently completed by the District, shows that Rancho San Antonio Park/OSP receives more than 500,000 visits by the public each year.

The Permanente Quarry does not have a vested right for quarry operations in the proposed EMSA location. The existing placement of quarry overburden has already been identified by the County as a violation and there are significant visual impacts ongoing as noted above. The District requests that the County enforce its Notice of Violation and prohibit any additional placement of material at this location and that the County require Lehigh Southwest Cement Company to implement all measures necessary to completely mitigate the visual impacts of the subject quarry overburden.

Original Quarry Parcel

Regarding the vesting of quarry operations, the 1971 analysis completed by County Counsel at the time noted that quarry operations could expand throughout the entire original parcel. The current analysis states that it is unclear which "original parcel" County Counsel was referring to. Parcel 351-09-013 is a very uniquely shaped parcel that appears to be shaped like a quarry pit. It is quite possible that this is the "original parcel" referenced. The July 14, 1977 Mineral Property and/or Mill and Processing Plant Report prepared by the California Division of Mines and Geology appears to map the Kaiser Permanente Quarry within the above mentioned parcel.

Regardless of how this original quarry parcel issue is resolved by the County, the expansion of quarry operations to new areas should not be allowed.

New Proposed South Quarry

In addition to correcting past and present violations, Permanente Quarry has added a new (South) quarry pit to their Reclamation Plan Amendment proposal. This addition is extremely troubling in light of Permanente Quarry's representatives attempt to make the case that they have vested rights on the former Morris parcel proposed as a portion of the new South Pit (Morris 351-11-001). The arguments made by Permanente Quarry representatives for vested rights on this parcel do not stand up to an analysis of the facts.

The quarry haul road identified in the far northeast corner of the Morris parcel appears to be Permanente Road, dedicated to the public in 1893, predating any quarry operations. It is entirely inappropriate to identify it as a quarry haul road to justify a vested rights determination. The road is also separated from the rest of the parcel by Permanente Creek and steep topography. Lehigh has not demonstrated unequivocal evidence of prior intent to mine this property.

Conclusion

While it is troubling that the County did not recognize that the Permanente Quarry had disturbed an area nearly three times the size allowed in the 1985 Reclamation Plan, all parties knew that the 1985 Reclamation Plan would sunset in 2010. We are now past that time and the existing quarry pit appears to be completely mined and the storage areas full. The County has required Permanente Quarry to submit Reclamation Plan Amendments to address existing violations, but the fact is that the Quarry needed a Reclamation Plan Amendment anyway to continue to operate. We are concerned that the County not be pressured by Lehigh to make hasty decisions or further compound the substantial existing deficiencies.

We ask that dumping in the EMSA be suspended immediately, and that the County take the steps needed to regain control of its quarry oversight responsibilities.

Sincerely,



Stephen E. Abbors
General Manager
Midpeninsula Regional Open Space District

cc: MROSD Board of Directors
Paul Fong, California State Assemblymember
Marina Rush, County Planning
Brian Schmidt, Committee For Green Foothills



Midpeninsula Regional Open Space District

GENERAL MANAGER
Stephen E. Abbors

BOARD OF DIRECTORS
Pete Siemens
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Curt Riffle
Nonette Hanko
Larry Hassett
Cecily Harris

May 21, 2010

County of Santa Clara Planning Office
Attn: Marina Rush
County Government Center
70 West Hedding St., 7th floor, East Wing
San Jose, CA 95110

RE: Lehigh Hanson Permanente Quarry 2010 Reclamation Plan Amendment for the East Materials Storage Area, File # 2250-13-66-09EIR

Ms. Rush,

On behalf of Midpeninsula Regional Open Space District (MROSD), I would like to provide the following comments on the scoping for the Environmental Impact Report (EIR) that will assess the Lehigh Hanson Permanente Quarry 2010 Reclamation Plan Amendment proposed for the East Materials Storage Area.

Prior Comments and Review

MROSD staff commented on a previous Reclamation Plan Amendment proposed for the Permanente Quarry in a letter dated June 20, 2007. The original Reclamation Plan was approved in 1985. The 2007 Reclamation Plan Amendment included the proposed East Materials Storage Area (EMSA). It is our understanding that the County is now proposing to divide the Reclamation Plan Amendment area into a smaller area and evaluate the environmental impacts of this smaller area separately to address the quarry's active placement of waste material outside of the permitted area. The County issued a violation notice in 2008 and required that the quarry owner apply for a Reclamation Plan Amendment to rectify the violation.

Importance of Anticipating Future Issues

The EMSA was previously analyzed under a prior EIR process that was scoped in 2007, appropriately within the context of the entire quarry operation. MROSD understands that there are substantial new issues that need to be addressed and will take some time to evaluate, and that the 2007 Reclamation Plan Amendment had a sunset date of March 2010. Unfortunately, these issues were not previously anticipated years ago by the parties involved. The current EIR intends to address these unanticipated issues and expedite a resolution of the violation. In light of the current need to reevaluate the quarry's operations to address the violation, we urge the County to take an aggressive approach to consider and assess all potential issues that may emerge as a result of ongoing quarry activities and the proposed Reclamation Plan Amendment to ensure that these are reviewed in a timely manner to preempt a future violation.

Significant Adverse Visual Impacts

The quarry appears to have a waste material disposal problem. The West Materials Storage Area (WMSA) appears to be full. In fact based on the 1985 Reclamation Plan Staff Report and Environmental Assessment, the WMSA appears to also be in violation. Specifically, Condition of Approval #8 states that the maximum height of deposition in Area "A" (WMSA) shall not exceed the top of the ridgeline bordering to the north. The upper limit of the WMSA is clearly visible from the valley floor when viewed from the north and therefore, does not meet the requirement of this condition. This condition was deemed necessary to mitigate a significant potential adverse visual impact that was a prominent issue in the 1985 Reclamation Plan and County environmental review.

The proposed EMSA would dramatically expand the area of disturbance visible from surrounding communities and Public Open Space. It appears that the top elevation of the EMSA proposed in the 2010 Reclamation Plan Amendment is substantially higher in elevation than the ridgeline to the north (known as Kaiser or Permanente Ridge). This would create a new, prominent, unnaturally benched and stepped ridgeline behind the existing "protected" scenic ridgeline when viewed from Rancho San Antonio Open Space Preserve, County Park, and surrounding communities. This would be a significant visual impact that could be avoided if the waste material was instead disposed of within a portion of the quarry pit or other suitable location.

The County General Plan Scenic Resources policy includes the strategy to minimize development impacts on significant scenic resources, including prominent areas such as ridgelines. The Kaiser/Permanente Ridge is unquestionably of scenic significance. Additionally, all of the ridge areas surrounding the proposed EMSA have the General Plan designation of Hillside Resource Conservation Area. While the EMSA itself appears outside of the designated Hillside Resource Conservation Area, building an artificial new ridgeline in the middle of and at a higher elevation than the protected ridgelines, would fail to minimize development impacts on these significant scenic resources.

The scenic importance of the Kaiser/Permanente Ridge has long been recognized by the nearby communities, County, and the Quarry, resulting in the dedication of a permanent scenic easement granted by then owner Kaiser Cement Company to the County years before the 1985 Reclamation Plan. All parties clearly recognized the visual significance of the ridgeline. The proposed EMSA as an unnatural, massive fill site that competes with the ridgeline is counter to the scenic protection benefit that was widely recognized years ago. The benefit of the County's scenic easement will either be lost or impaired unless the scenic value of the Kaiser/Permanent Ridge is protected.

Additional Waste Disposal Issues and Potential Solutions

It appears that both material storage areas may be in violation. The 2007 Reclamation Plan Amendment was previously required to address existing quarry disturbance areas of approximately 900 acres, exceeding the 330 acre area covered by the 1985 approved Reclamation Plan. It may not be appropriate to separate 89 acres to allow additional waste disposal given these conditions.

It also appears that the quarry waste disposal problem is somewhat self-inflicted. A possible solution to this dilemma is to dispose of waste material within the existing quarry pit. A thorough evaluation of the existing quarry pit area and depth should be undertaken to determine if opportunities exist within the pit for waste material disposal. The remaining areas to be quarried that would generate the waste material proposed for placement within the EMSA should also be identified and quantified. Waste material may be advantageous to buttress landslide areas or stabilize over-steepened quarry benches. A number of landslides have already encroached into the dedicated scenic ridge easement over the past decade unabated, and the 1987 "main landslide" has yet to be addressed. The material proposed for placement in the EMSA could be utilized to stabilize these landslides, and the 2007 Amendment includes this

possibility. This again illustrates the need for a comprehensive evaluation of the quarry operations to anticipate potential future issues and remedies.

Lack of Reclamation

The visible quarry area continues to grow. The Surface Mining and Reclamation Act (SMARA) requires that reclamation occur concurrently with quarry disturbance activity, yet very little final reclamation has occurred over the substantial period of mining. Waste disposal within the quarry pit together with concurrent reclamation would actually meet the reclamation requirements of SMARA.

Waste Disposal Timeline

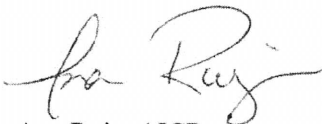
The timeline for waste disposal within the EMSA is also of concern. At the recent April 28th public hearing it was stated that existing quarry sales are 50% of normal. This has the potential to double the projected 5-year timeframe, which already seemed overly optimistic. It is also unclear if the waste material could be re-mined for construction aggregate as is the case for the material placed in the WMSA. This again could dramatically lengthen the timeline of operation and disturbance.

Determination of Vested Rights

Lastly, we remain concerned with the issue of vested rights at the Permanente Quarry. The EIR proposes only to evaluate the environmental impacts associated with the reclamation of the quarry, based on the conclusion that the environmental baseline for the project is the post-mining site condition that includes ongoing mining and processing operations (vested quarry operation). The significant new acreage that has been disturbed by quarry activities, including the EMSA, is of concern. Our concern is whether this expansion really is vested, and if not, that the potential environmental impacts associated with the quarry expansion necessitate a thorough analysis. We urge the County to complete a determination of what is actually vested at the Permanente Quarry. This determination is necessary for any new proposal related to quarry operations at the site, and should include references, maps, deeds, and other exhibits that support the conclusion.

We appreciate the opportunity to comment on the EMSA proposal for the Lehigh Hanson Permanente Quarry. If you have any questions regarding this letter, please contact Matt Baldzikowski, Resource Planner II, at (650) 691-1200.

Sincerely,



Ana Ruiz, AICP
Planning Manager
Midpeninsula Regional Open Space District

cc: Stephen E. Abbors, MROSD General Manager
Matt Baldzikowski, MROSD Resource Planner II

Regional Open Space



MIDPENINSULA REGIONAL OPEN SPACE DISTRICT

June 20, 2007

County of Santa Clara Planning Office
Attn: Mark J. Connolly
County Government Center
70 West Hedding St., 7th floor, East Wing
San Jose, CA 95110

RE: Hanson Permanente Quarry Reclamation Plan Amendment EIR

Mr. Connolly,

On behalf of the Midpeninsula Regional Open Space District's (District), I'd like to provide the following comments on the scoping of the Environmental Impact Report (EIR) for the Hanson Permanente Quarry Reclamation Plan Amendment (Hanson Quarry).

The EIR proposes only to evaluate the environmental impacts associated with the reclamation of the Hanson Quarry, based on the conclusion that the environmental baseline for the project is the post-mining site condition that includes ongoing mining and processing operations (vested quarry operation). The significant new acreage that has been disturbed by quarry activities, and is the subject of the proposed EIR is of concern. Our concern is whether this expansion really is vested, and if not, that the potential environmental impacts associated with the quarry expansion have never been analyzed. Please provide a discussion within the EIR on how the determination regarding the vested operation was made and include references to maps, deeds, or other exhibits that support this conclusion.

Visual resources are an obvious concern to the surrounding Monte Bello and Ranch San Antonio Open Space Preserves operated by the District. The visual appearance of the reclaimed quarry landform, and the reclamation revegetation are of particular interest. The reclaimed landform should blend with the surrounding un-mined landform as much as possible. The District remains concerned with the relatively recent appearance of a portion of the west materials storage area that is visible above Permanente Ridge when viewed from the north. An evaluation and discussion of this storage area should be included in the EIR. The short-term erosion control species and long-term reclamation species should be compatible with the surrounding landscape, and should utilize locally collected and propagated native species wherever possible. The control of invasive species is also a significant concern, and should be included in the EIR and Financial Assurance.

Geology and slope stability issues associated with the ongoing operations at the Hanson Permanente Quarry remain a serious concern to the District, particularly the slopes and landslide

Regional Open Space



MIDPENINSULA REGIONAL OPEN SPACE DISTRICT

in the northeast corner of the quarry pit. These have been identified along with a landslide on the northern wall of the quarry as “caused in part if not in whole, by the mining operation” in the Executive Officer’s Report for July 13, 2006 meeting of the State Mining and Geology Board.

The landslide in the northeast corner of the quarry pit has the potential to continue to fail, and impact the significant scenic easement along Permanente Ridge. A failure at this location could daylight through the top existing ridge and into the scenic easement. This area was the subject of a Request for Emergency Grading Authorization (#2002-4) from the County of Santa Clara, and to our knowledge this work was never completed. The District is unclear on how and when remedial grading will occur to alleviate the slope stability and scenic easement concerns. This area was the subject of a land exchange between the District and Hanson, for the purpose of implementing remedial grading to stabilize the slopes. The property recently transferred to Hanson doesn’t appear to qualify as a “vested” portion of the quarry. Therefore the remedial grading to rectify the slope instability caused at least in part by the quarry operation appears to require either a grading permit or a mining amendment. We are particularly concerned that the remedial grading for slope stability and scenic concerns be completed as soon as possible, and not be subject to delays associated with a potentially long EIR process. This issue may determine the condition of the post-mining site at this location, and therefore identify what the reclamation plan should address.

Drainage and quarry waste materials from the West Materials Storage Area have impacted District road infrastructure down slope to the north in the past. Future drainage from the active and reclaimed materials storage area should be designed to avoid future impacts.

We appreciate the opportunity to comment on the scope of the EIR for the Hanson Permanente Quarry, and request that the District be kept informed about the status of the EIR process, and that a copy of the DEIR is sent to the District for review upon completion.

Sincerely,



Matt Baldzikowski
Resource Planner
Midpeninsula Regional Open Space District
330 Distel Circle
Los Altos CA 94022-1404
Phone (650) 625-6537, Fax (650) 691-0485



**BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT**

February 04, 2011

Supervisor Dave Cortese, President
Santa Clara County Board of Supervisors
10th Floor, East Wing
70 West Hedding St.
San Jose, CA 95110

ALAMEDA COUNTY
Tom Bates
(Chairperson)
Scott Haggerty
Jennifer Hosterman
Nate Miley

CONTRA COSTA COUNTY
John Gioia
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David Hudson
Mark Ross
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Susan Garner
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(Secretary)
Liz Kniss
Ken Yeager

SOLANO COUNTY
James Spering

SONOMA COUNTY
Shirlee Zane

Jack P. Broadbent
EXECUTIVE OFFICER/APCO

Dear Supervisor Cortese:

I am writing to provide an update on the status of the Bay Area Air Quality Management District's (the District) review of the Lehigh Southwest Cement Plant's application to renew its federal Title V permit.

Title V permits are issued to cement plants and other large industrial facilities, and contain detailed listings of the air emissions standards that apply to each source of emissions at the facility, and the associated monitoring, recordkeeping, and reporting provisions by which compliance with these standards must be demonstrated. These permits are renewed on a five-year cycle, and the existing permit remains in effect until a renewal is issued.

On January 21, 2011, the District issued for public review a revised draft Title V permit renewal for the Lehigh facility that incorporates newly adopted EPA requirements applicable to cement plants. During the comment period, which will extend through March 25, 2011, interested members of the public may review the revised draft permit and provide written comments on it to the District.

The recent issuance of the revised draft permit is the next step of a process that began in 2009, at which time the District issued an initial draft Title V permit renewal for the Lehigh facility. A large number of public comments were received on the 2009 draft permit, and many of these comments expressed concerns regarding air emissions from the facility including mercury, other toxic air contaminants, and dust.

On January 5, 2010, the District withdrew the initial draft permit renewal for the Lehigh facility. This was done so that significantly more stringent requirements for mercury and other toxic air contaminants could be added to the permit based on anticipated upcoming EPA rule amendments. The EPA rule amendments were delayed several times, but were eventually finalized on September 9, 2010, with additional clarifications published on January 18, 2011.

The EPA rule amendments contain very stringent new emission standards that will require mercury emissions from the Lehigh facility to be reduced by approximately

95 percent. More stringent emission standards have also been established for a variety of other toxic air contaminants. District engineers have been working closely with Lehigh on the upgraded air pollution control systems that will be needed to comply with these new standards. The first phase of these upgrades, which reduce mercury emissions by about 25 percent, are already in place, and a permit application has recently been submitted for the second phase of the project which will achieve significant additional reductions well in advance of the EPA compliance deadline of September 9, 2013.

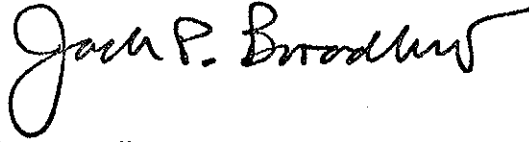
The District has taken additional measures to address concerns expressed regarding air emissions from the Lehigh facility, including:

1. New emission controls will be designed to significantly reduce emissions of gases that sometimes condense to form a plume that is visible from the cement kiln exhaust. The kiln will also be equipped with a single emission stack, to replace the multiple existing stacks, to enhance the continuous monitoring of emissions.
2. A new Dust Mitigation Plan has been developed to reduce the emissions of dust from various operations at the facility. The elements of the plan will be included as an enforceable condition in the facility's permit.
3. The District has established a comprehensive air monitoring station at the Monta Vista Community Center in Cupertino. Data collected at this site to date show no concerns in terms of unhealthy levels of air pollutants related to the Lehigh facility.
4. The District has begun developing a rule that will require additional control of air pollutants not addressed by the recent EPA rule amendments (in particular, emissions of nitrogen oxides, which contribute to regional levels of smog and fine particulate matter). This District rule will be considered for adoption later this year, and Lehigh's Title V permit will subsequently be revised to incorporate these requirements.

I would also like to provide clarification to an issue that has been raised regarding whether Lehigh's existing Title V permit is valid. Lehigh's existing Title V permit has not been appealed or otherwise legally challenged, and the District knows of no reason why the permit should not be considered valid. The District is aware that EPA has issued a Notice of Violation (NOV) alleging that the facility failed to comply with federal Prevention of Significant Deterioration (PSD) regulations in the 1996 to 1999 timeframe. This NOV was part of an investigation by EPA that, as far as the District is aware, has not yet concluded. If it is decided that additional PSD requirements apply, there would likely be an opportunity for Lehigh to attain compliance and update its Title V permit while still operating.

We look forward to continuing the process of seeking public input on the draft Title V permit renewal for the Lehigh facility. If you have any questions regarding this letter, or would like to discuss, please contact me at (415) 749-5052.

Sincerely,

A handwritten signature in black ink that reads "Jack P. Broadbent". The signature is written in a cursive style with a large, looping initial "J".

Jack P. Broadbent
Executive Officer/Air Pollution Control Officer

JB:BFB:bb

Please include with the public record for:

The Permanente Vested Rights Public Hearing, February 8, 2011 – Total pages: 31

DATE: February 4, 2011

TO: Honorable President Cortese, and County of Santa Clara Board of Supervisors

FROM: Susan Sievert, Monta Vista/Cupertino

“Get your facts straight first, and then you can distort them as much as you please.” –*Samuel Clemens*

The common conditions of Conditional Use Permits (CUP)¹ placed on mining operations make it all too clear why Lehigh Hanson Permanente² circumvented regulatory laws³ leading up to their fraudulent vested rights claim for their so-called historic East Materials Storage Area (“EMSA”). In a letter to the Santa Clara County Board of Supervisors, Leigh Hanson states, “Office buildings, parking areas and laboratories serving the Facility were built on this area and then removed for other activities as the needs of the business required.”⁴

What they fail to disclose is before some of the buildings were “removed” – they were destroyed by fire. However, Lehigh Hanson does disclose the fire in a historic background report produced in 2009 for their “EMSA Reclamation Plan Amendment” application: “Finally, around 1980, the facility’s primary office, previously abandoned for a number of years, was vandalized and destroyed by arson. Following the fire, the structure, and several associated buildings and features were razed.”⁵ **(Exhibits: page 9)**

That’s not true; the destructive fire did not happen “around 1980” – it happened a good thirteen years later in 1993. Certainly, the current owner at the time, Hanson, is fully aware of the date because it happened seven years after they purchased the cement company in 1986 from their predecessor in interest, the Henry J. Kaiser Companies.

There were a series of ill-fated mishaps associated with the fire: the phone lines went out, and firefighters were hampered by an inadequate water supply. Fortuitously for Hanson, they had moved all their engineering and administrative offices prior to the great calamity. **(Exhibits: page 10)**

After the fire⁶ and building razing, Hanson illegally manifested their intent to stockpile mining

¹ Limitations on the length of the CUP; the hours of operation; limitations on truck trips; production caps; toxic waste fallout control (aka “dust”); and noise mitigation. Failure to comply with an express condition provides grounds to either modify or revoke the permit.

² Hanson Permanente Cement Company, and Lehigh Southwest Cement Company are divisions of HeidelbergCement global, Germany. (“Lehigh Hanson”)

³ California Environmental Quality Act (“CEQA”); Surface Mining and Reclamation Act (“SMARA”); County of Santa Clara Zoning ordinances.

⁴ Lehigh Hanson’s Attorney Correspondence, November 5, 2010, page 8.

⁵ Archaeological Inventory Survey, Proposed East Materials Storage Area (EMSA Project). County of Santa Clara “planning public access binder”: File 2250-13-66-09P, page 126.

⁶ County Fire Department arson records have not been located. First request: December 27, 2010.

waste on the former Permanente Metals/Kaiser Aluminum and Chemical Corp. landholding acquired in 1995. With the construction of a brand new haul road around 2002, Lehigh Hanson's "70-year old historic EMSA" was complete. **(Exhibits: pages 11-18)**

Corresponding evidence of this illegal expansion is contained in a U.S. Environmental Protection Agency (EPA) Notice of Violation that states Hanson violated the Clean Air Act when it altered the facility from 1996 to 1999 to increase cement production. Since Hanson did not have the proper permits to make the facility alterations, the EPA concluded Lehigh Hanson "is operating the Facility without a valid Title V permit."⁷

Courts in many jurisdictions have held, "...the natural and reasonable expansion of a quarry business to meet increased demand is not an impermissible enlargement or change in the use of the property."⁸ Clearly, an arson fire does not qualify as *a natural and reasonable expansion of a quarry business*, and a judicious individual might wonder why the incident was omitted from Lehigh Hanson's 2010/11 evidentiary "FACTS."

Impeached

Lehigh Hanson "bears the burden of proof with respect to establishing the nature and extent of its legal nonconforming use."⁹ Therefore, if the fire fabrication is a part of the historical background they produced in 2009, yet omitted from the "FACTS" they submitted to the County in 2010/11, how can the powers that be take them at their word for any of the uncertified evidence they have produced? As an example, "In 1943, Kaiser began extensive mineral exploration in areas south of Permanente Creek. (C3, p.9.) Lehigh has been unable to locate Mr. Grimm's original reports but nonetheless has records of the results, as described in a May 1982 study report by later Kaiser geologists. (C3.)"¹⁰

Put differently, extensive mineral exploration was conducted before the restrictive ordinance went into effect¹¹, and that demonstrates intent to mine their proposed 200-acre South Pit? Lehigh Hanson can't locate the extensive reports, so instead they've submitted a report produced by and for Kaiser Cement after they had time to fully digest the restrictive implications of the Surface Mining and Reclamation Act of 1975 (SMARA)?

Moreover, Lehigh Hanson's recollection of the intent for their diminishing asset is much different now than it was just 20-years ago. In 1992, Hanson Trust PLC, a British holding company, proposed a mind-boggling high-tech "city of the 21st and 22nd century" with up to 3,200 homes, office parks, and golf courses on 3600-acres; "...the quarry has about 20 more years of material," reported Hanson to our community. **(Exhibits: page 19)**

Hide something when you have something to hide: "Aerial photographs from 1991, 2005 and 2009 show that the EMSA stockpile continued to grow during this period to achieve the EMSA's

⁷ U.S. Environmental Protection Agency Region IX. March 10, 2010, In the Matter of: Lehigh Southwest Cement Company. Notice of Violation and Finding of Violation: Docket No. R9-10-02.

⁸ Hansen Brothers Enterprises v. Board of Supervisors, 12 Cal. 4th 533 (1996) (*Hansen*)

⁹ County of Santa Clara Permanente Quarry Legal Nonconforming Use Analysis, 01-27-11, page 2.

¹⁰ Lehigh Hanson's Attorney Correspondence, 01/04/2011, page 12.

¹¹ County of Santa Clara Permanente Quarry Legal Nonconforming Use Analysis, 01-27-11: page 4.

present configuration and size. (A30, A31, A32.)”¹²

Isn't it astonishing that the buildings Lehigh Hanson claims were razed and destroyed by arson in "1980" are still visible in their 1991 exhibits? Also, it is misleading for them to isolate a singular "stockpile" as if still referring to the legitimate EMSA stockpile adjacent to the quarry pit in the 1985 Quarry Reclamation Plan. In reality, multiple buildings and features have disappeared¹³, and *multiple* stockpiles of mining waste have taken their place – a significant and intense change in use, and therefore a remarkable omission by Lehigh Hanson.

“The presence of material storage is first evident in the 1948 photograph.”¹⁴ However, Lehigh Hanson has failed to include the month, or source of the aerial image. The fact is, the local U.S. Geological Survey aeriels were shot in September 1948 – *after* the September 24, 1937, and January 28, 1948 restrictive ordinances went into effect. In other words, an overwhelming amount of Lehigh Hanson's photographic evidence is irrelevant. Moreover, “material storage” is common in all walks of life, be it boxes of days gone by toxic waste records, barrels of asbestos, or acorns. However, the “EMSA” issue is about surface mining, specifically the illegal expansion, and stockpiling of uncovered mining waste, which, unlike the storing of acorns, has an intense impact on both the public, and environmental health.

Manifesting intent

The Courts have also established that a miner must have “objectively manifested” the intent to mine the entire tract at the time the use first became nonconforming.¹⁵

- In September 2010, Lehigh Hanson referred to Permanente Metals as a “sister *mining* company” in their Historical Uses / Vested Rights presentation to the County by their attorney, “Mark Harrison,” “Brummert” and “Howell.”¹⁶ [Emphasis added to mining]
- Marvin Howell asserted at a Cupertino City Council meeting on December 21, 2010, “The EMSA has been a storage area for more than 70 years.” Mr. Howell, a Land Use Planning and Permitting Manager, has been with Hanson since 1986.
- “The photographic record clearly shows storage commencing by the vesting date ... a continuation of a well-established, integrated site operations.”¹⁷

The truth is the “photographic record” Lehigh Hanson has produced shows nothing of the sort. And, with a landholding of 3500-acres, is Lehigh Hanson actually suggesting that the founder of the Kaiser Permanente Health Plan, the legendary American industrialist, Henry J. Kaiser, “integrated” the stockpiling of dusty, dirty mining waste with a cafeteria, a laboratory, administration buildings, parking areas, and the production of munitions and aluminum foil?

¹² Lehigh Hanson's Attorney Correspondence, 01/04/2011, page 15.

¹³ County staff: “demolition permit records...should be available by February 15.”

¹⁴ Lehigh Hanson's Attorney Correspondence, 01/04/2011, page 28.

¹⁵ *Hansen*

¹⁶ County of Santa Clara “planning public access binder”: File 2250-13-66-09P, page 188.

¹⁷ Lehigh Hanson's Attorney Correspondence, November 5, 2010, page 8.

Concrete examples¹⁸ of company “integration” include: The Metals Corporation used a product that was mined – *off-site*. Both the cement and metals companies distributed products. They shared newsletters, easements, finances, employees, administrative services, water, and Mr. Kaiser. Be that as it may, what is left unanswered is how the Facility has been able to continue making cement without the metals operation for the past 21-years.

An intensification of an existing violation

“A nonconforming use may be modified to a use deemed similar in nature, but lesser in intensity and impacts.”¹⁹ And, “In order to continue, the nonconforming use must be similar to the use existing at the time the restrictive ordinance became effective.”²⁰

Clearly, the stockpiling of mining waste is not “similar to,” nor “lesser in intensity and impact” than the previous nonconforming use, and the State of California Department of Conservation’s Office of Mine Reclamation (OMR), and, albeit belatedly, the County of Santa Clara, came to the same conclusion with two County Notices of Violation – *after* the exhaustive complaints of a concerned citizen.²¹

Grandfathered in charade

“Finally, the County has never questioned vested rights to the EMSA parcel.”²² Equally, the Permanente Quarry has never illegally expanded, or made a vested rights claim after an unauthorized act. The fact is the County took this newcomer, Lehigh Hanson, at their word for a few short years, but thanks to the tireless efforts of concerned citizens – their grandfathered in charade is over. If anyone should be penalized for perpetrating a fraud, it is not Henry J. Kaiser, or the County of Santa Clara; it is Lehigh Hanson’s sole responsibility to abide by our laws.

In stark contrast, Hanson was extremely hesitant in 1988 before installing new rock-crushing equipment, seeking permission, in writing, *prior* to the installation, making certain the activity was “included within our grandfathered quarry use ... in no event do we wish to modify our existing use permit.”²³ Clearly, what has transpired after the change in ownership of Permanente in the late 1980s is a succession of reckless, and ill-advised departures from past standard operating procedures, policies, and practices.

“Rather, the County has always regarded the facility as a vested operation, including where the EMSA is located.”²⁴ A timeline is recounted as to why this is a “FACT,” with extra emphasis added to an excerpt from a County Planning Department report, **“In the case of the Hanson**

¹⁸ Lehigh Hanson’s Attorney Correspondence, 01/04/2011, page 28.

¹⁹ County of Santa Clara Zoning Code, 4.50.020.B

²⁰ Hansen Bros. Enterprises v. County of Nevada, *supra*, 12 Cal 4th 533, 553; Rehfeld v. City and County of San Francisco (1933) 218 Cal. 83; City of Yuba City v. Chemiavsky (1931); 117 Cal. App. 568; and Endara v. City of Culver City (1956) 140 Cal.App.2d 33.

²¹ October 10, 2006, County of Santa Clara Order to Comply/Notices of Violation (§2744.1): Hanson Cement Inc.; June 20, 2008, County of Santa Clara Notice of Violation (§2744.1): Hanson Permanente Cement.

²² Lehigh Hanson’s Attorney Correspondence, 01/04/2011, page 5.

²³ Lehigh Hanson: 01-04-11 Appendix G - Vested Rights Affirmations, page 102.

²⁴ Lehigh Hanson’s Attorney Correspondence, 01/04/2011, page 5.

Permanente Quarry, the operation was established before the zoning ordinance regulations were adopted and therefore has been recognized by the County for many years as a legal non-conforming use.”

We agree with the County, and never questioned the vested rights of the “**Permanente Quarry**” either. However – a cafeteria, a metals laboratory, administration buildings, parking areas, and a munitions/aluminum factory are *not* a quarry. Lest there be any remaining confusion, Lehigh Hanson’s legal counsel, Diepenbrock Harrison, made the issue perfectly clear on August 10, 2006:

“Next to the cement plant is the former aluminum plant site, which covers approximately 153 acres. The site was under completely separate ownership from the quarry until 1995, when the owners sold the defunct plant to Kaiser Cement [owned by Hanson]. The aluminum plant is not used, nor has it ever been used, to process mined material from Permanente Quarry.”²⁵

Permanente Road

Lehigh Hanson is also not being truthful about Permanente Road: “It is clear by 1937 Permanente Road was not used as a public “street,” but rather provided only access to the mining operations.”²⁶ Longtime residents will testify being able to drive right up to the administration area, and wander around freely; recalling it as far removed from the quarrying that Kaiser continuously moved west, and as far away from our community as humanly possible.

The guard shack was/is located *past* the traditional first entrance. The fact that two separate entrances to Permanente existed is further evidence that two completely different uses existed: One, a very intense mining operation, and the other completely open to the public until Hanson barricaded the entrance, and turned the area into a mining waste dump – 200-feet from our watershed that flows into the San Francisco Bay; a contemptible act. **(Exhibits: pages 20-21)**

The County’s legacy

Aside from the superior staff research, and legal non-conforming use analysis²⁷, my community is deeply unsettled by the clear dereliction of the County’s jurisdictional duties, and the overt partiality shown to this valley newcomer. In 2010/11, the Board:

- Failed to attend any of the Leigh Hanson study sessions sponsored by the City of Cupertino, turning a blind eye to the fear and suffering engulfing our community.
- Failed to reassure the citizenry when the Bay Area Air Quality Management District (BAAQMD) installed a \$500,000 toxic air monitoring station at Monta Vista Park; two current County Board members sit on the BAAQMD Board.
- Failed to attend the “Mercury Measurements near the Lehigh Hanson Cement Plant” presentation²⁸ at the DeAnza College Kirsch Center for Environmental Studies.

²⁵ Lehigh Hanson 01-04-11 Appendix G - Vested Rights Affirmations, page 286.

²⁶ Lehigh Hanson’s Attorney Correspondence, 01/04/2011, page 30.

²⁷ County of Santa Clara Permanente Quarry Legal Nonconforming Use Analysis, 01-27-11

²⁸ Conducted by the San Francisco Estuary Institute; the mercury fallout locally is 6 times higher when the cement plant is running vs. when it is not running: <http://www.youtube.com/watch?v=sbdGULPQT3o>

- Found it appropriate to encourage the concerned members of the Los Altos Hills Town Council to refrain from discussing Lehigh Hanson.
- Summarily dismissed the exhausted attempts to discuss the alarming number of Lehigh Hanson air, land, water, and labor violations with concerned City of Cupertino Councilman, Barry Chang: <http://www.youtube.com/watch?v=tfHVjJcd-wU>
- Found it appropriate to expound on the merits of producing cement locally during a Lehigh Hanson press event held in Cupertino. Alongside two former Cupertino Mayors, Councilman Orrin Mahoney and Sandy James, now a Lehigh Hanson Community Affairs Manager, County Supervisor Liz Kniss was “delighted” to share, “Environmentally they make a great difference in this area ... one of the best parts of this cement is it’s close by, meaning it doesn’t have to be transported over a long distance, diminishing green house gas.”²⁹ **(Exhibits: page 22)**

Disconcerting is the unacceptable gap in the County’s annual Surface Mining Inspection Reports. Gary Rudholm, “This report is to cover the calendar years of 1998, 1999, and 2000.”³⁰

Unspeakable is the 2009 plain white paper “agreement” made between Lehigh Hanson and the County allowing the illegal dumping of mining waste to continue. **(Exhibits: pages 23-25)**

“Following receipt of the EMSA NOV the mine operator met with staff and explained that use of this area is necessary for operational reasons: it needs the space to permanently store overburden material from the mine pit.” **(Exhibits: pages 26-28)**

If a private citizen were to seek retroactive permission to “permanently” stockpile household waste in an open-air pit next to our watershed because they ran out of room in their garbage cans, the answer would be a financial penalty, and a resounding no!

Transparency: Why was this “agreement” crafted on a plain white sheet of paper instead of the official County of Santa Clara County letterhead? Why wasn’t it copied to the Board, or to the County Executive, Jeffery V. Smith? Why wasn’t there a public hearing, or CEQA review?

The community consensus is the assessed property tax value for 3500-acres, coupled with Lehigh Hanson’s political connections, unlocks backdoors not available to the average citizen. Therefore, before the County grants any further plain white paper agreements without a public hearing, allow me to introduce this newcomer’s short history in our Valley of Heart’s Delight:

- In 1997, a temporary permit was granted by BAAQMD for Hanson to burn tires to fuel its kilns. After a public outcry, the permit was revoked. The BAAQMD Board included another former Cupertino Mayor, and longtime Permanente employee, Barbara Koppel.
- In 2005, the applicant *self-reported* their toxic mercury emissions as 219lbs. That number has been revised to a horrifying 1284 lbs. Note: Longtime residents did not know the cement plant was emitting mercury until they began questioning the “Don’t eat the fish” signs that appeared without fanfare around 2004 at the Stevens Creek Reservoir.

²⁹ June 23, 2010 Lehigh Press Event: <http://www.cupertino.org/index.aspx?page=482>

³⁰ Lehigh Hanson: 01-04-11 Appendix G - Vested Rights Affirmations, page 122.

- In 2010, the applicant received 11 Bay Area Regional Water Quality Control Board violations, including an order to submit a technical report regarding the pumping of water from the quarry bottom, routing it through an on-site pond, and discharging who knows what into the Permanente Creek; an activity characterized by the applicant as “routine maintenance.” The applicant has failed to produce the report due January 7, 2011.
- In the past 4 years, the applicant received 24 BAAQMD violations with five still pending.
- In spite of a 1972 Scenic Ridgeline Protection Easement agreement between Kaiser and the County, an expanding mile-long scar on Permanente Ridge is visible from Milpitas to Palo Alto, and two of the four fixed monuments marking ridgeline-lowering limits have vanished.
- Landslides onto the adjacent Midpeninsula Regional Open Space District (MROSD) landholding have trespassed onto public property; in other words, that enormous 600-acre, 700-ft deep open wound – the applicant wishes to expand – is collapsing.
- In 2010, the U.S. Department of Labor’s Mine Safety and Health Administration (MSHA) inspectors issued 185 citations, and 21 orders for the Permanente mine; sixty percent were significant and substantial violations.
- In March 2010, a U.S. Environmental Protection Agency (EPA) Notice and Finding of Violation to the applicant contends Hanson violated the Clean Air Act when it altered the facility from 1996 to 1999 to increase cement production; the applicant “is operating the Facility without a valid Title V permit.”

After it’s all said and done, the above list provides overwhelming grounds to cancel Lehigh Hanson’s kiln Conditional Use Permit: Permanente’s signed 1939 affidavit states, “...said equipment is warranted by the manufacturers thereof to remove a minimum of [??] of all dust resulting from operation of the plant, leaving less dust than is contained in the ordinary air.”

Less than ordinary air? The suffocated, and dismissed complaints regarding the “dust” (aka toxic waste) are well represented in the public record – but wait; there’s more: “Failure to comply with all the aforementioned provisions and conditions will be cause for the cancellation of this Use Permit by the County Planning Commission.” And, condition #2 states, “That when there is a violation of the above provision or of any other provision of law or ordinance it shall constitute cause for the Board of Supervisors to suspend the Use Permit to operate said plant...”

A violation of any other provision of law? How about the unresolved EPA Clean Air Act violation; the unresolved BAAQMD violations; the unresolved Water Quality Control Board, or MSHA violations? How about all of the above? **(Exhibits: pages 29, 30, 31)**

Last, but not least, rather than do what is right, Lehigh Hanson is threatening to sue us, the taxpayers of the County of Santa Clara. In other words, the new, lawbreaking bully up on the hill believes the laws of the United States of America do not apply to them.

Sincerely,

Susan Sievert
Monta Vista/Cupertino

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By MICHAEL CRONK, San Jose Mercury News (CA) - Wednesday, April 28, 1993

Page 11: Google Earth, October 2009

Page 12: Permanente Metals Corporation, “Bancroft Library Kaiser Collection, June 20, 1942”
Lehigh Hanson: 01-04-11 Appendix A - Photographs and Maps, page 107

Page 13: U.S. Geological Survey, September 1948

Page 14: U.S. Geological Survey, October 1991

Page 15: Air-Photo (2001): County of Santa Clara, Planning public binder inserts, page 12

Page 16: U.S. Geological Survey, September 2002

Page 17: Digital Globe, February 2007

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Page 19: DEVELOPER’S VISION OF ‘CITY OF 21ST CENTURY’
By BERNARD BAUER, San Jose Mercury News (CA) - Thursday, February 20, 1992

Page 20: U.S. Geological Survey, September 1948

Page 21: Google Earth, October 2009

Page 22: June 23, 2010 Lehigh Press Event
<http://www.cupertino.org/index.aspx?page=482>

Page 23- 25: AGREEMENT: County of Santa Clara, File 2250 – 09P

Page 26- 28: Surface Mining and Reclamation Act (SMARA) Update, August 12, 2010
<http://www.sccgov.org/keyboard/attachments/Committee%20Agenda/2010/August%2012,%202010/202934809/KeyboardTransmittalWeb203170319.PDF>

Page 29- 31: April 26, 1939 Applicant’s Affidavit and Use Permit #23. Lehigh Hanson: 01-04-11
Appendix B - Governmental Records and Reports, pages 56, 59, 63

Finally, around 1980, the facility's primary office, previously abandoned for a number of years, was vandalized and destroyed by arson. Following the fire, the structure, and several associated buildings and features were razed.

3. PEDESTRIAN SURVEY & CULTUAL INVENTORY

REDACTED

CEMENT PLANT FIRE RAISES PLUME OF SMOKE

San Jose Mercury News (CA) - Wednesday, April 28, 1993
Author: MICHAEL CRONK, Mercury News Staff Writer

A fire at the Kaiser Cement Corp. plant in the hills behind Cupertino and Los Altos destroyed a storage building and sent a huge plume of smoke into the air afternoon but caused no injuries.

Concerned that flames might spread into the hillsides, officials with the Santa Clara County Fire Protection District and the cities of Los Altos and Sunnyvale sent about 75 firefighters to the scene.

Kaiser operations faltered briefly Monday when phone lines went out, spokesman Mark McKenna said.

The building was at the north edge of Kaiser `s property. It formerly held the company's administration and engineering offices, but since 1989 it had been used for storage.

The fire was reported at 4:42 p.m. and contained about 6 p.m. Firefighters were hampered by inadequate water supplies, said Teresa Meisenbach, senior deputy fire marshal with Central Fire Protection District.

The cause remained under investigation, she said.

Kaiser has operated the cement plant and quarry since 1939, and officials there say it has produced a large share of the cement for major Bay Area construction projects, including Candlestick Park, the Oakland Coliseum and the San Mateo and Dumbarton bridges.

County of Santa Clara Population 1.7 million: "EMSA" is less than 1000-ft from neighbors, Permanente Creek, and Road.

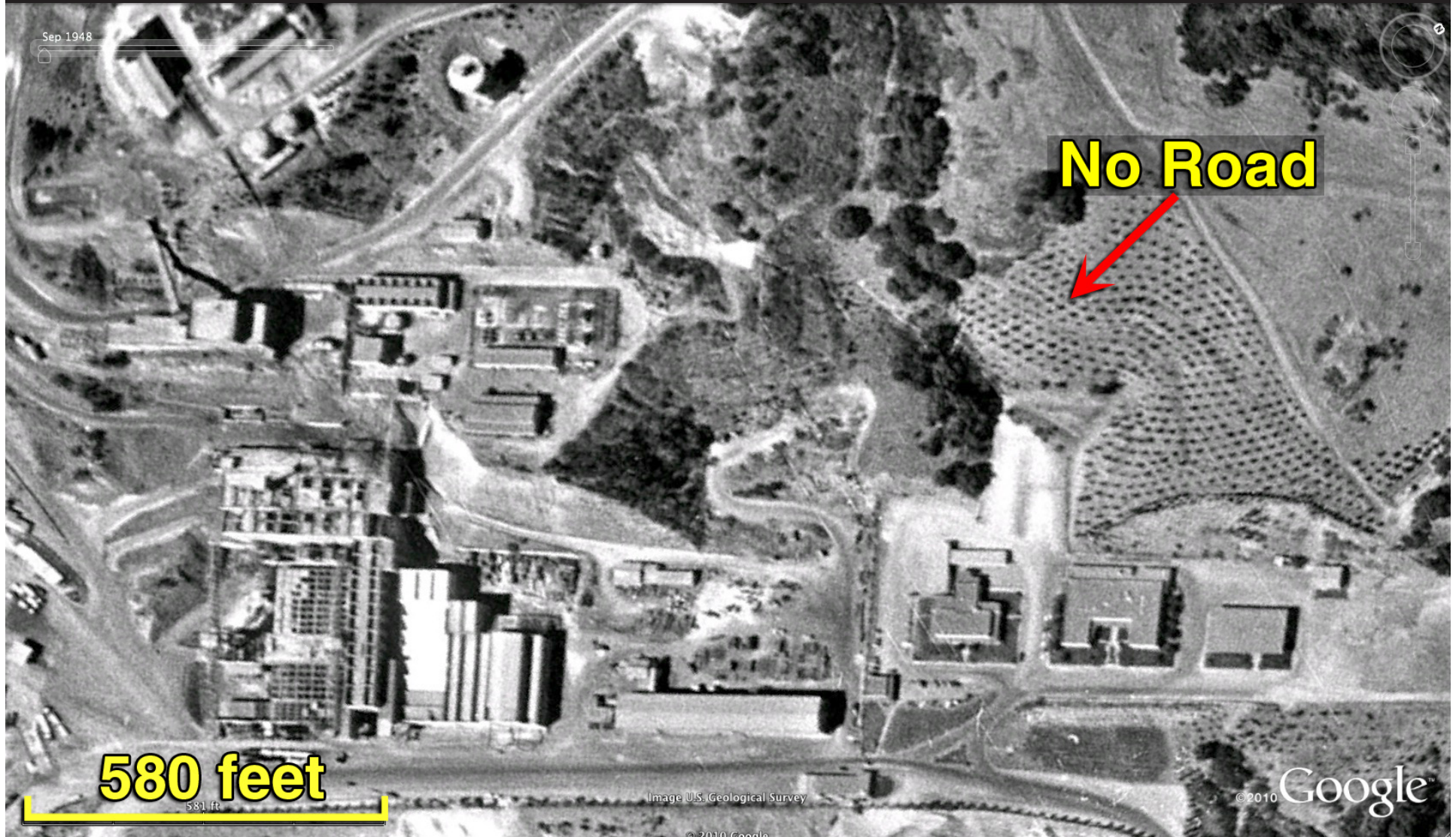


1942: Permanente Metals Corporation, a cafeteria, laboratory, administration buildings, parking area – *and no mining waste.*

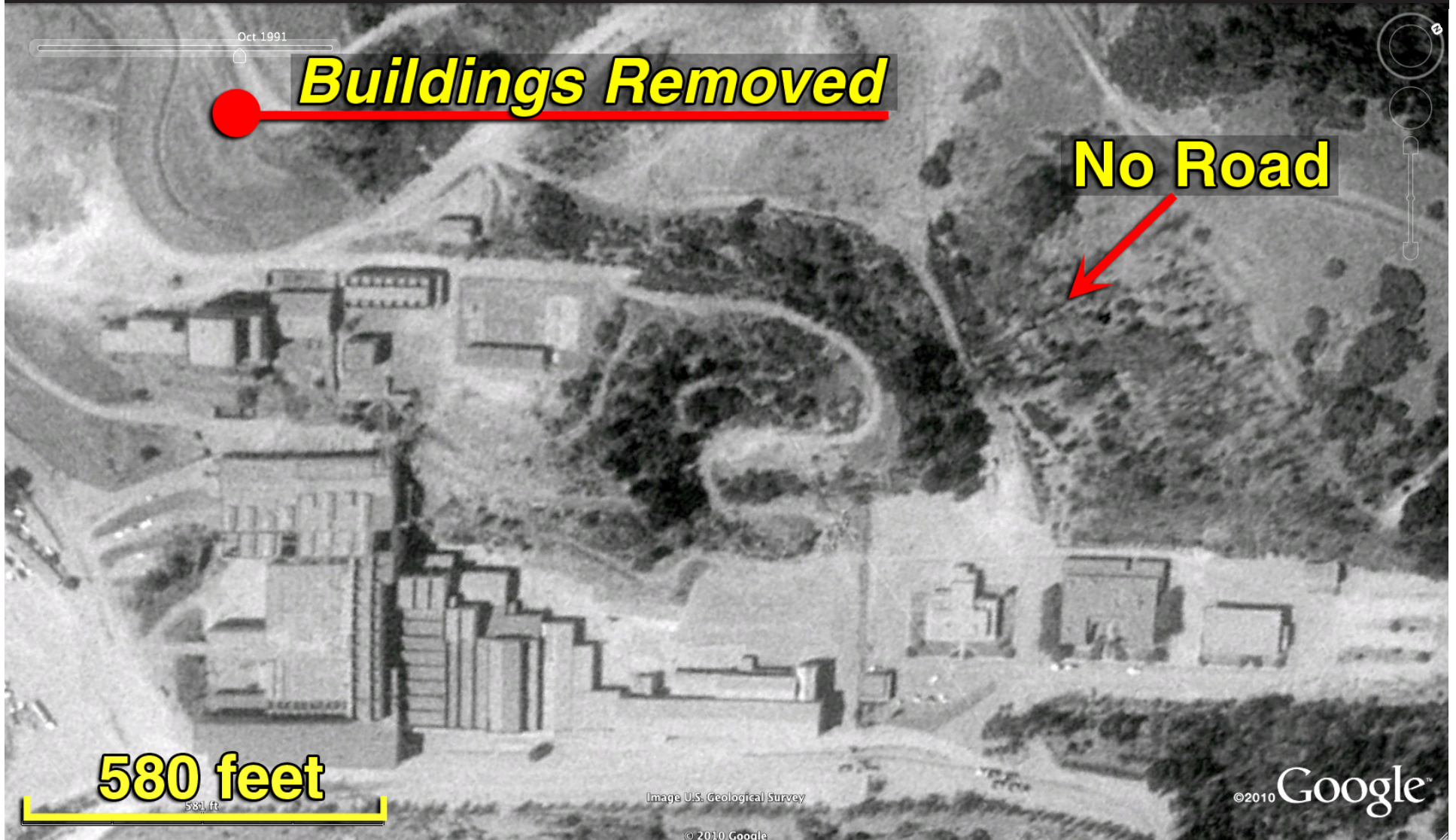


CAFETERIA AND ADMINISTRATION BLDGS.,
PERMANENTE METALS LABORATORY, ALSO PARKING AREA

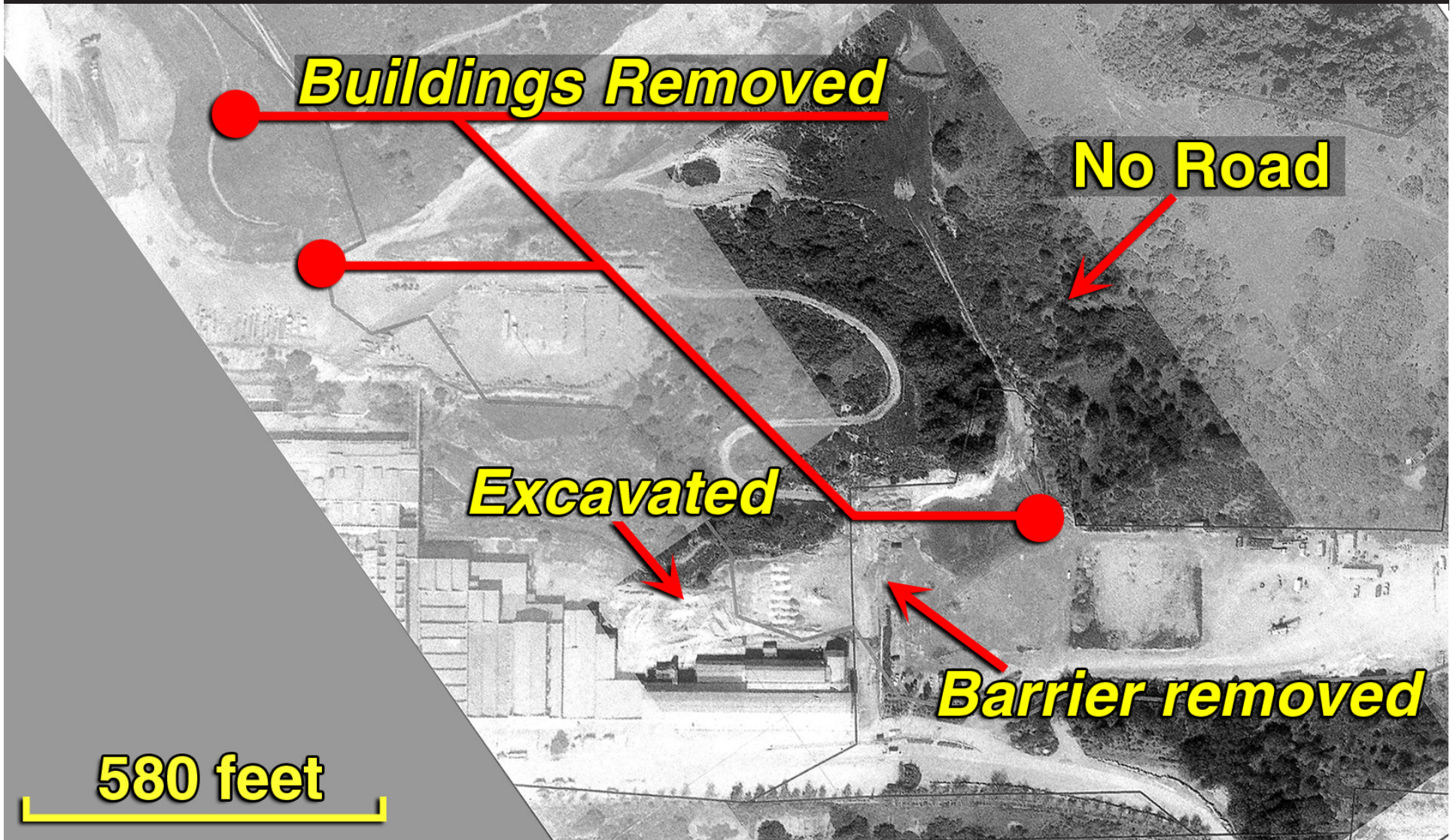
SEPT 1948: Permanente Metals Corporation landholding – *and no mining waste.*



OCT 1991: Buildings were removed – *and no mining waste.*



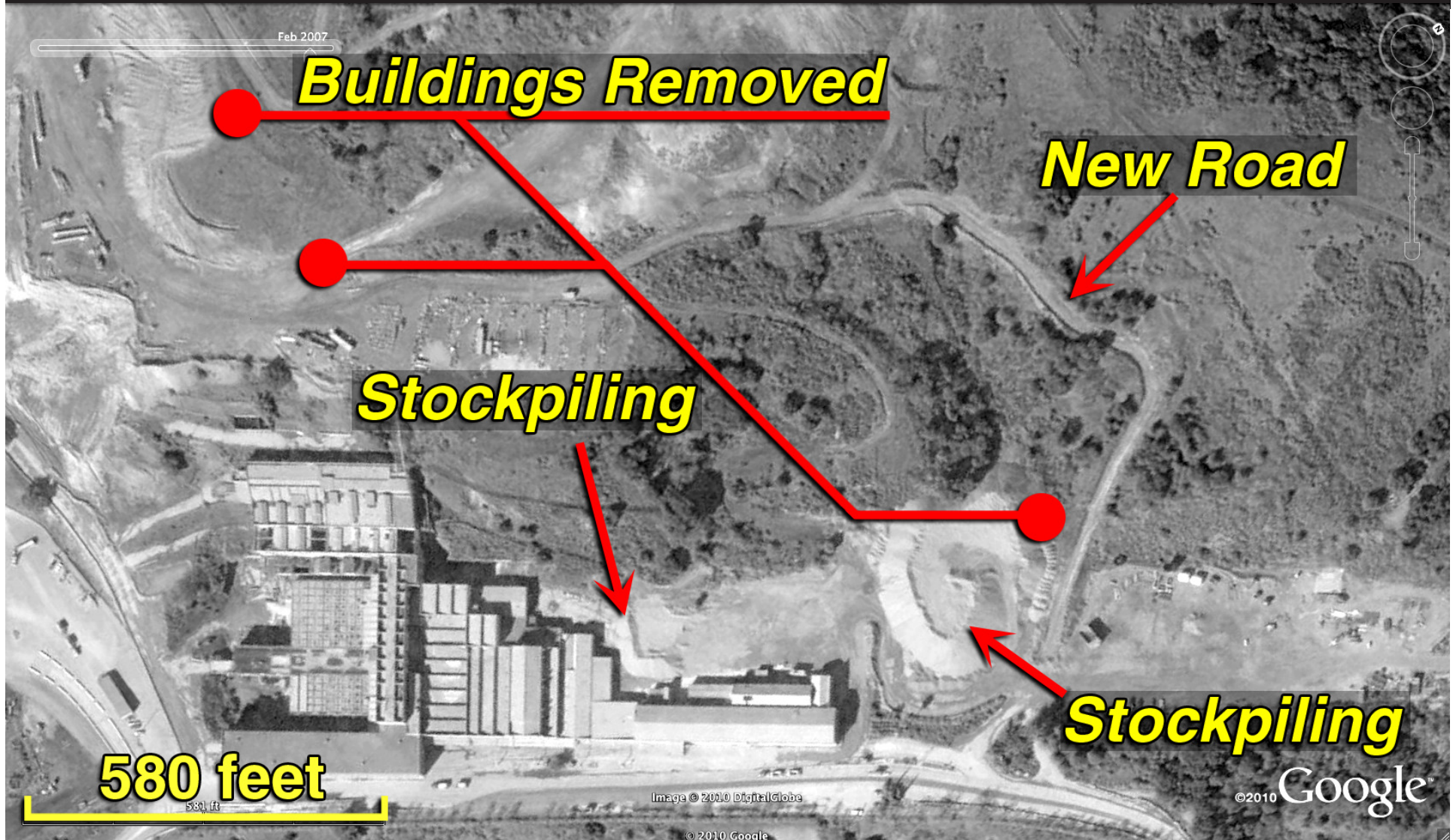
2001: After the fire, more buildings and features were removed, the area was excavated – *and no mining waste.*



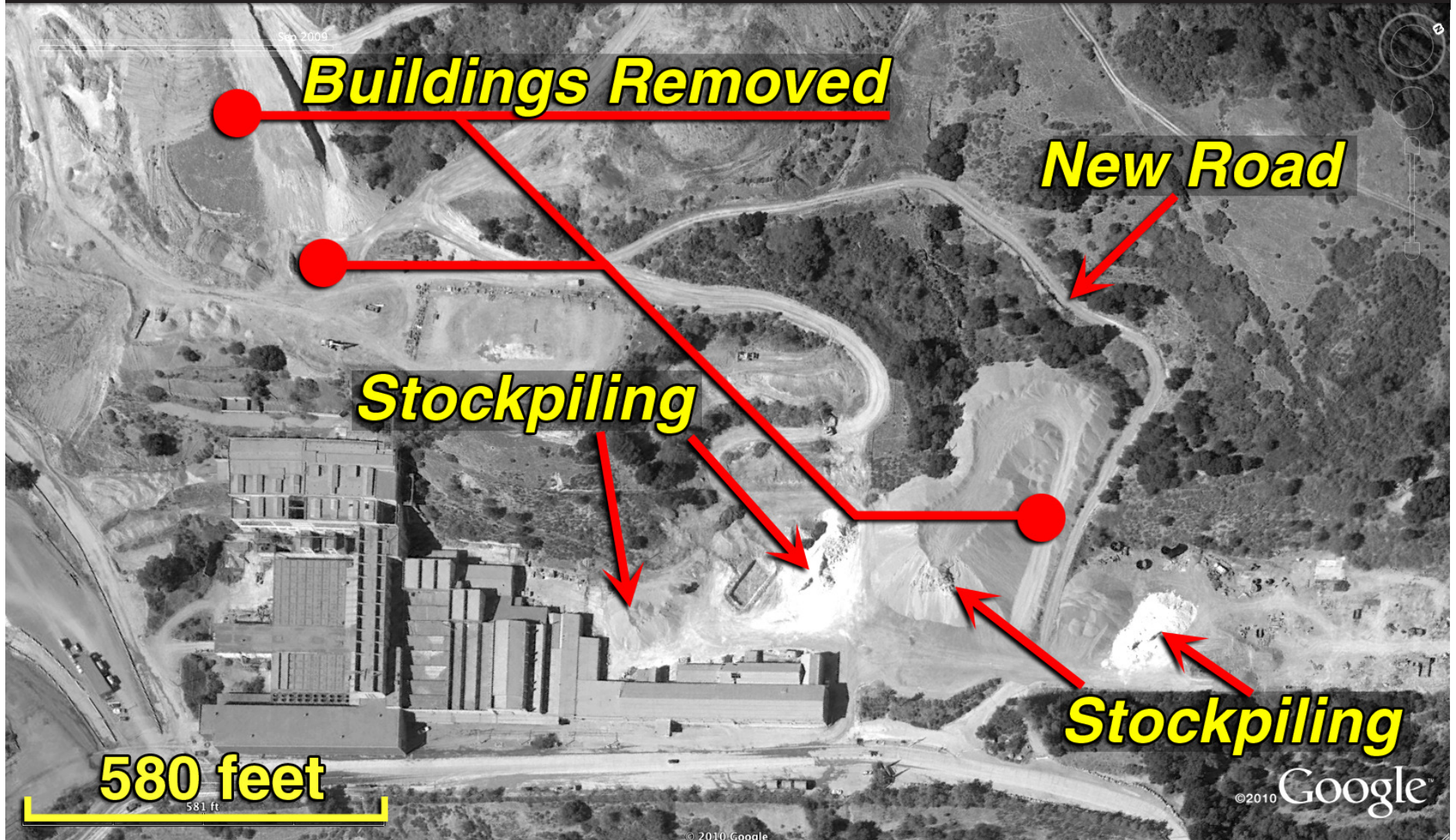
SEPT 2002: A new haul road was constructed, and stockpiles of mining waste appear without a permit or CEQA review.



FEB 2007: Four months after the County of Santa Clara's 2006 Notice of Violation – *mining waste was not abated.*



OCT 2009: “an intensification of the existing violation” – fifteen months after the second NOV in June 2008.



DEVELOPER'S VISION OF 'CITY OF 21ST CENTURY'

San Jose Mercury News (CA) - Thursday, February 20, 1992

Author: BERNARD BAUER, Mercury News Staff Writer

A spokesman for the owner of the Kaiser Cement Corp. unveiled a plan Wednesday night for a high-tech "city of the 21st and 22nd century" on 3,600 acres in the foothills west of Interstate 280 adjacent to Cupertino.

The community of homes, office parks, golf courses and open space would link up with mass transit and Highway 85 via a 17-mile Southern Pacific railroad line that now serves the Kaiser quarry and cement factory, said Los Angeles-based consultant John Janneck, who represents Hanson Trust PLC, the British holding company that bought Kaiser Cement in 1986.

Janneck, in making an informational presentation to the Cupertino Planning Commission, said the first phase of development could begin as soon as 1997. "It's reasonable to assume it will be developed by someone, so why not take advantage of it now?" Janneck said.

The dramatic proposal comes as Cupertino appears poised to enact strict limits on hillside development. Earlier this month, a majority of the city council endorsed a proposed ordinance that would effectively block significant development in the hills west of I-280, including the Kaiser property.

While most of the Kaiser land is under Santa Clara County's jurisdiction, county regulations would require annexation to Cupertino before development could occur. "In order to protect those hills, we need that ordinance in -- period," said Phil Zeitman, co-chairman of CURB, a slow-growth citizens group in Cupertino. "What (Janneck) is proposing is mind-boggling."

The hillside protection ordinance would require minimum lot sizes of five to 20 acres per home, effectively ending large-scale development in that area. While Janneck did not specify the size of the proposed Kaiser development at Wednesday's meeting, city officials say he has suggested building up to 3,200 homes. "We don't want to make this a rich man's enclave," Janneck said. "We must make this property available to everybody." Janneck said that the community could be served entirely by public transportation, eliminating the need for cars. He said the community should be built with Silicon Valley's cutting-edge technology.

About 20 percent of the Kaiser land is used for quarry and cement operations. The rest is woods. Janneck said that under one scenario, only 10 percent of the land -- 360 acres -- would be developed, with the rest remaining open space. By comparison, the adjacent hillside land owned by the Roman Catholic Diocese of San Jose, which also wants to build hundreds of homes, is 208 acres. Kaiser officials estimate that the quarry has about 20 more years of material. The cement operation, which underwent a major modernization in 1984, is one of the worst air polluters in Santa Clara County.

1948: The first entrance was open to public; the second to the quarry was/is a guarded entrance and closed to the public.



Barricades now block the public access entrance.





AGREEMENT

THIS AGREEMENT is made this 14th day of April, 2009, by and between the County of Santa Clara, a political subdivision of the State of California (hereinafter referred to as the "County") and the undersigned duly authorized representatives of Lehigh Southwest Cement Company and Hanson Permanente Cement, Inc. (hereinafter referred to as "Company") regarding the Permanente Quarry.

RECITALS

A. The Company owns and operates the Permanente Quarry ("Quarry"), which is located within the jurisdiction of the County.

B. In March 1985, the County approved a Reclamation Plan for the Quarry ("Reclamation Plan").

C. In October 2006, the County issued an Order to Comply/Notice of Violation ("2006 Order") pursuant to the Surface Mining and Reclamation Act of 1975 ("SMARA"), Pub. Res. Code § 2710 *et seq.*, to the Quarry owner/operator requiring the processing of an amendment to the Reclamation Plan to encompass mining-related disturbance outside of the approved reclamation plan (except for the cement plant), and set forth a compliance schedule for the amendment. A copy of the 2006 Order is attached as Exhibit A to this Agreement.

D. In May 2008, the County issued a modification to the compliance schedule included in the 2006 Order ("2008 Schedule Modification"). A copy of the 2008 Schedule Modification is attached as Exhibit B to this Agreement. The 2008 Schedule Modification called for the Company to file a reclamation plan amendment by February 2010, with final County action on the amendment to take place in 2011.

E. In June 2008, the County issued a Notice of Violation ("2008 NOV") related to the placement of overburden material in an area known as the East Materials Storage Area ("EMSA"). A copy of the 2008 NOV is attached as Exhibit C to this Agreement. Among other things, the 2008 NOV instructed the Company to cease depositing material in the EMSA.

F. Due to operational needs at the Quarry, the Company desires to continue using the EMSA. The County is amenable to allowing the Company to use the EMSA pending final action on a reclamation plan amendment, provided the Company files and diligently pursues a reclamation plan amendment for the EMSA. Accordingly, the County and the Company agree as follows:

AGREEMENT

1. With respect to the Reclamation Plan amendment for the EMSA ("EMSA Amendment"), the parties agree as follows:

A. Not later than April 20, 2009, the Company shall submit to the County an application for the EMSA Amendment. Upon a timely request by Company to meet with County staff prior to April 20, 2009 to discuss the requirements for the application, County representatives will make themselves available for such a meeting.

B. Within thirty (30) days of the Company's submittal, the County shall make a completeness/incompleteness determination specifying in writing the information, if any, needed to make the application complete. The Parties intend to meet during the first week of May to facilitate the County's completeness review.

C. If the County deems the application incomplete, the Company shall respond to the County's incompleteness determination by providing a resubmittal within thirty (30) days after the incompleteness determination.

D. Within thirty (30) days of the Company's resubmittal, the County shall review the Company's resubmittal and determine the completeness/incompleteness of the application.

E. In the event the County still deems the application incomplete, the Company shall be required to continue working in good faith with the County to provide the additional material within thirty (30) day resubmittal/review cycles as outlined above. However, if the County determines that the Company has not produced a complete application by July 20, 2009, the County shall assess, starting as of June 20, 2009, a penalty of \$250/day, which daily penalty shall be doubled every thirty days thereafter, until such time as a complete application is submitted to the County and deemed complete by the County. The penalty shall cease when the County deems the application complete.

2. Upon execution of this Agreement, the Company may recommence use of the EMSA as depicted on Exhibits D and E, subject to the stipulations and understandings set forth in this Agreement, pending final action by the County on the EMSA Amendment, and the language in the 2008 NOV instructing the Company to cease depositing material in the EMSA is modified to conform to this Agreement.

3. Nothing in this Agreement shall be interpreted in a manner that indicates that the County will approve the EMSA Amendment or will allow the Company to continue using the EMSA if the EMSA Amendment application is denied or if the Company withdraws the EMSA Amendment application prior to the County taking final action on the application. Nor shall anything in this Agreement be interpreted as a waiver

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

4. Due to timing requirements for geotechnical studies, the County agrees to amend and reissue the compliance schedule issued with the 2006 Order and revised pursuant to the 2008 Schedule Modification to extend the date for submission of the Quarry's overall Reclamation Plan amendment application from February 2010 to May 2010.

5. This Agreement is binding on the Company's successors in interest with respect to the Quarry property and operations.

IN WITNESS WHEREOF, the parties have executed this Agreement, in counterpart, on the day and year first hereinabove written.

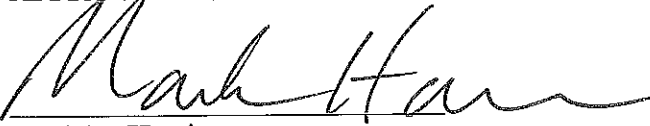
LEHIGH SOUTHWEST CEMENT COMPANY,

By: 

(SEAL)

ATTEST: _____

APPROVED AS TO FORM:



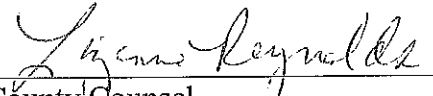
Mark D. Harrison
Counsel for Company

COUNTY OF SANTA CLARA,
A political subdivision of the State of California

By: 

Jody Hall Esser
Director, Department of Planning & Development

APPROVED AS TO FORM AND LEGALITY:


County Counsel

County of Santa Clara

Department of Planning and Development

Planning Office




PLN01 081210

Prepared by: Michael Lopez
Planning Manager

DATE: August 12, 2010

TO: Supervisor Donald F. Gage, Chairperson
Supervisor Liz Kniss, Vice Chair
Housing, Land Use, Environment, & Transportation Committee (HLUET)

FROM: 
Jody Hall Esser
Director of Planning and Development

SUBJECT: Surface Mining and Reclamation Act (SMARA) Program Update

RECOMMENDED ACTION

Accept report relating to implementation of the Surface Mining and Reclamation Act (SMARA) Program.

FISCAL IMPLICATIONS

There are no fiscal implications to accepting this report.

CONTRACT HISTORY

Not applicable.

REASONS FOR RECOMMENDATION

This report is a bi-annual informational update requested by and presented to the HLUET Committee.

Curtner Quarry (County File 1988) (State Mine ID 91-43-0001)

The Curtner Quarry is an operating surface mine located northeast of the City of Milpitas (east of Highway 680, off Scott Creek Road). The County issued an NOV September 1, 2006, because a portion of the site that continued to be used as part of normal operations was identified in the reclamation plan as reclaimed. The NOV required the mine operator to amend the existing reclamation plan and clarify those areas within the mine that would remain disturbed during ongoing mine operations, and those that would not. The ASA Committee approved the reclamation plan amendment on August 14, 2008, thus abating the NOV. The quarry has continued to operate to date without further incident.

Freeman Quarry (County File 6538) (State Mine ID 91-43-0010)

The Freeman Quarry is an active mining operation located south of Gilroy and west of Highway 101. In response to a Notice of Violation issued by the County in June 2007, and a subsequent Order to Comply issued in September 2007, in March 2008 the operator submitted an application to amend the quarry's reclamation plan to provide consistency between the drawings depicting the boundary of the reclamation area and the use permit area, thereby encompassing all areas of disturbance associated with mining operations. The ASA Committee approved the amendment on June 12, 2008. The quarry is in good standing with the County and OMR requirements and regulations.

In late 2009 the mine operator filed for a pre-application meeting with staff to discuss a proposal for future expansion of this mine, one that would enlarge the area where harvesting of material is currently allowed, and would provide for additional land within an expanded Use Permit and Reclamation Plan boundary where overburden material would be permanently placed and reclaimed. The pre-application meeting was held in January 2010. The operator subsequently submitted an application on July 23, 2010, for a modification of the existing Use Permit and Reclamation Plan for an expansion of the mine operations and the area subject to reclamation. Review of this application is in its early stages. Staff will keep the HLUET Committee informed in subsequent reports regarding progress of the application review.

Lexington Quarry (County File 3690) (State Mine ID 91-43-0006)

The Lexington Quarry is located east of the Lexington Reservoir, in the Santa Cruz Mountains above the City of Los Gatos. This is an operating surface mine. The mine operator submitted an application for renewal and expansion of its Use Permit and Reclamation Plan in November 2000. The mine operator later modified the application as directed by the County under a Notice of Violation issued in October 2006 to encompass additional land within the permit and reclamation plan boundary. The operator submitted revised plans in 2007 to incorporate the areas of disturbance, as well as address slope stability issues. Staff continued to process the Use Permit Renewal, Reclamation Plan, and environmental review as required under CEQA.

On May 24, 2010, the Planning Office published a Final Environmental Impact Report (FEIR) related to the proposed renewal and expansion of the quarry's Use Permit and Reclamation Plan; the Planning Commission certified the FEIR on June 3, 2010. On the same date the Commission also approved renewal and expansion of the Use Permit, approved the Reclamation Plan, and approved a Lot Line Adjustment, which is necessary to allow for work to stabilize one of the slopes above the quarry. Completion of the use permit and reclamation plan fully abated the 2006 Notice Of Violation issued by the County.

Permanente Quarry (County File 2250) (State Mine ID 91-43-0004)

The Permanente Quarry, operated by Lehigh Southwest Cement Co., is located west of the City of Cupertino at the end of Stevens Creek Boulevard. (This quarry was previously known as the Kaiser Permanente Quarry, and later known as the Hanson Permanente Quarry.) This is the largest operating surface mine within Santa Clara County. The mine operator has two SMARA Notices of Violation issued by the County requiring abatement. One affects a portion of the

land, known as the East Materials Storage Area (EMSA). The second affects all the quarry property that has land disturbed due to mining operations that is not included in the quarry's approved reclamation plan .

The EMSA-related NOV requires the mine operator to address the deposition of overburden material from the mine pit in an area outside the approved reclamation plan boundary. Following receipt of the EMSA NOV the mine operator met with staff and explained that use of this area is necessary for operational reasons: it needs the space to permanently store overburden material from the mine pit. The NOV required the operator to submit an application for an amendment to the reclamation plan that would address storing the material in this location, provide a plan for reclamation of the site area, and include all the technical details required under SMARA for such a plan. The operator submitted a proposed reclamation plan amendment for the EMSA in April 2009.

The County held a public outreach meeting in June 2009 during which staff presented the proposed reclamation plan amendment intended to address the EMSA. Staff also attended a study session in January 2010 held by the Cupertino City Council and responded to questions from the Council regarding the reclamation plan process and SMARA. (Staff attended a similar meeting in July 2010.) Staff held a public scoping meeting in Cupertino on April 28, 2010, to receive comments from the public regarding the issues to be analyzed as part of the CEQA review; the County retained consultant has commenced analysis. Staff expects a Draft Environmental Impact Report to be issued in October 2010.

The second violation must be abated through a comprehensive reclamation plan amendment. The operator submitted an application for this "comprehensive" reclamation plan amendment on May 28, 2010. Staff deemed the application incomplete on July 26, 2010, and required additional information. Staff expects the information to be provided within approximately 30 days.

The application includes an expansion of the area subject to mineral extraction; it proposes to include a second pit located just south of the existing pit, and across from Permanente Creek. This second pit requires a Use Permit as well as a Reclamation Plan. The proposed comprehensive reclamation plan amendment would also address slope stability issues within the existing mine pit by importing material from the second pit, buttressing the existing slopes, and creating final slopes that are less steep than the current reclamation plan allows.

Staff has been in regular communication with the State Office of Mine Reclamation ("OMR"), which provides technical advice to local agencies regarding SMARA compliance, as well as the State Mining and Geology Board, regarding the status of the quarry's reclamation plan amendments. Because the comprehensive amendment is required to abate a longstanding Notice of Violation, the Order to Comply establishes a strict schedule for compliance. OMR recently contacted the County to inquire about whether the comprehensive amendment is on schedule. To help ensure that the amendment stays on schedule, staff is commencing the CEQA review process before the application is deemed complete, and intends to use the same environmental consultant that the County is using for the EMSA amendment to minimize the time needed to prepare the necessary CEQA documents. Staff will also provide monthly updates to OMR regarding the progress of both reclamation plan amendments.

Serpa Quarry (County File 2071) (State Mine ID 91-43-0002)

The Serpa Quarry is an inactive mine located east of Milpitas, off Old Calaveras Road. The property owners hope to develop the land for residential uses and served notice to the mine operator to cease operations. The operator filed for a reclamation plan amendment because it would not be possible to reclaim the site with the final slopes as envisioned in the original reclamation plan, which was approved in 1983. The Architecture and Site Approval Committee convened a public hearing on March 11, 2010, and approved the reclamation plan amendment. Raisch Products, the mine operator, is no longer in business. The property owner of the quarry site, however, has accepted responsibility for implementing the amended reclamation plan and is in the process of reclaiming the land. Full reclamation is expected to be complete on or by March 31, 2015.

The undersigned further states that, under the circumstances of this particular case:

1. The establishment, maintenance and conducting of the use for which this permit is sought will not be detrimental to health, safety, morals, comfort, convenience or welfare of persons residing or working in the neighborhood of such use for the following reasons:

Said proposed plant is to be most modern design and fully equipped with Cottrell Dust Precipitating equipment, of the latest design, which said equipment is warranted by the manufacturers thereof to remove a minimum of 99% of all dust resulting from operation of the plant, leaving less dust than is contained in ordinary air. The plant is likewise of wet process design, which, in itself, reduces the dust hazard to a minimum. In addition to the above, the proposed plant is to be situated in an isolated position on the property in a canyon not in close proximity to any community or dwelling.

2. The proposed use will not be detrimental to the general welfare or injurious to property or improvements in the neighborhood of such use for the following reasons: (see description of plant contained under Number 1).

THE PERMANENTE CORPORATION,

By *[Signature]*
Its Vice President

the Permit is conditioned thereon.

The use permitted hereby shall be conducted and shall conform in all particulars to the provisions of all applicable laws and ordinances. Failure to comply with all the aforementioned provisions and conditions will be cause for the cancelation of this Use Permit by the County Planning Commission.

SANTA CLARA COUNTY PLANNING COMMISSION

By James M. Campbell
Chairman, Secretary

Date May 8, 1939

Approved and confirmed by Board of Supervisors, County of Santa Clara, State of California, on the 8th day of May 1939.

BOARD OF SUPERVISORS, COUNTY OF
SANTA CLARA, STATE OF CALIFORNIA

By [Signature]
Chairman.

USE-PERMIT NO 23

The foregoing Use permit is issued subject to the following conditions:

1. That the plant be constructed and operated in accordance with the ordinances of the County of Santa Clara and in such manner that dust be controlled in the manner specified in the application heretofore filed with the Planning Commission and that a bond satisfactory to the Board of Supervisors in the amount of \$50,000 be posted with the Board of Supervisors for the faithful performance of these conditions.
2. That when there is a violation of the above provision or of any other provision of law or ordinance it shall constitute cause for the Board of Supervisors to suspend the Use Permit to operate said plant, and
3. That failure to cease operations upon suspension of the use permit by the Board of Supervisors shall be one of the terms of forfeiture of said bond.

SANTA CLARA COUNTY PLANNING COMMISSION

BY Janice M. Campbell Secretary

Date May 8, 1939

We agree to conform to all the foregoing conditions.

Applicant: THE PERMANENTE CORPORATION

By P. J. Humphreys
Vice-President.

Address: 1522 Latham Square Building,
Oakland, California

Date May 8th, 1939