

To: County of Santa Clara Department of Planning and Development Planning Office, the Santa Clara County Board of Supervisors & the Clerk of the Board
From: Rhoda Fry, Cupertino

Permanente Quarry/Lehigh Southwest Cement Company Legal Non-Conforming Use Determination: No Vested Rights

Introduction: This document augments the comprehensive report by the Santa Clara County Planning Department and demonstrates that the Permanente Quarry does not have a vested right to the Morris, Crocker, or “EMSA” parcels using the claimant’s information and other factual data.

Hanson Map with Vested Boundary: The claimant’s 2007 map¹ clearly demonstrates that the established “vested boundary” does not include Morris or “EMSA.” (Crocker inclusion would need to be determined by an expert). Note that this is not a reclamation boundary which would be well inside the vested boundary line. The “approximate property boundary” line has been enhanced in thin white and the “vested boundary” line has been enhanced with thick orange.



Diepenbrock Harrison declares that the properties were acquired for mining²,
There is no doubt that, in acquiring these parcels, Kaiser intended to devote them to mining.

however, Kaiser Board Meeting Minutes state that Morris was acquired for legal reasons:³
Vice President, E.E. Trefethen, Jr., explained that certain property adjacent to the property owned by this corporation in Santa Clara County, known as the Morris property, consisting of approximately 500 acres lying adjacent to the property of this corporation on the south, was for sale and that due to certain conditions which had developed on this property that could lead to legal involvements, it seemed advisable that this corporation should proceed to purchase the said Morris property for its own use.

¹ 1/4/2011 Diepenbrock Harrison letter, Appendix C last page emphasis added, document date on first page

² 1/4/2011 Diepenbrock Harrison letter, page 4

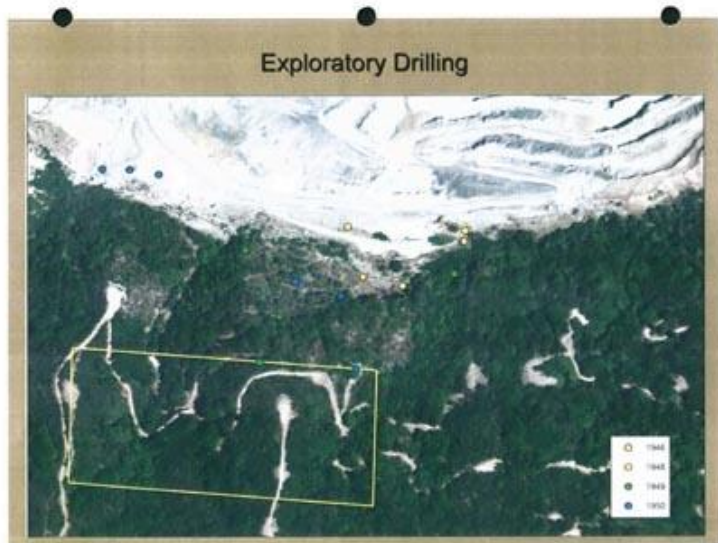
³ 1/4/2011 Diepenbrock Harrison letter, Appendix D, minutes from April 24, 1942 pages 27, 28

Morris & Crocker: Indeed, the Morris property contained an essential segment of road between portions of the operation; a hostile neighbor could have been disastrous to the operation. The intent to purchase for access-only is affirmed by the fact that in nearly seventy years of ownership, the only land improvement, which preceded the purchase date, is that road segment. Recall, “There must be evidence that the owner or operator at the time the use became nonconforming had exhibited an intent to extend the use to the entire property owned at the time.”⁴ There are only two exploratory drilling holes on the very edge of the Crocker parcel and these occurred too late for vesting consideration (1949 and 1950).

Morris Parcel with road segment is the key to access within facility⁵



Crocker Parcel exploratory holes don't qualify for vesting cut-off date⁶



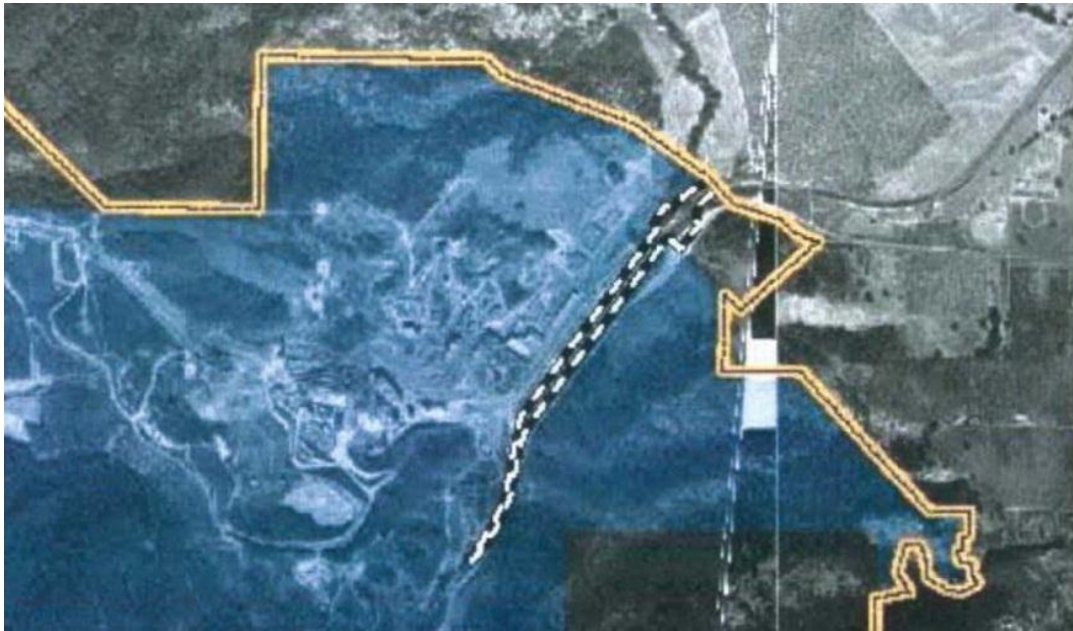
⁴ Hansen, State Supreme Court

⁵ 1/4/2011 Diepenbrock Harrison Appendix A page 53

⁶ 1/4/2011 Diepenbrock Harrison Appendix A page 56

It is to be expected that a corporation with such a disruptive operation, in an area with a growing population, would whenever possible purchase adjacent property to serve the dual purpose of avoiding a hostile neighbor from moving in while creating a buffer from their neighbors. The concept of creating a buffer is well-documented in the reclamation plans. Again, we know from the company's board meeting minutes that the Morris parcel was purchased for legal reasons. The board minutes surrounding the Crocker purchase do not appear to be in the claimant's Appendices. Finally, the claimant has failed to demonstrate that the paths on these parcels were intended for mining and it is equally plausible that these were logging roads.⁷

Public/Private Permanente Road Determination: When making the determination of the public or private Permanent road the decision makers should also examine the claimant's view of ownership below.⁸ This excerpt of an ownership map clearly shows a portion of Stevens Creek Blvd (Permanente Road) along with the rail spur as not being within the lines of ownership. This could be used as one measure as to where the public portion of the road would end.



⁷ [http://en.wikipedia.org/wiki/Black_Mountain_\(near_Los_Altos,_California\)](http://en.wikipedia.org/wiki/Black_Mountain_(near_Los_Altos,_California))

⁸ 11/05/2010 Diepenbrock Harrison letter EXHIBIT 9, excerpt

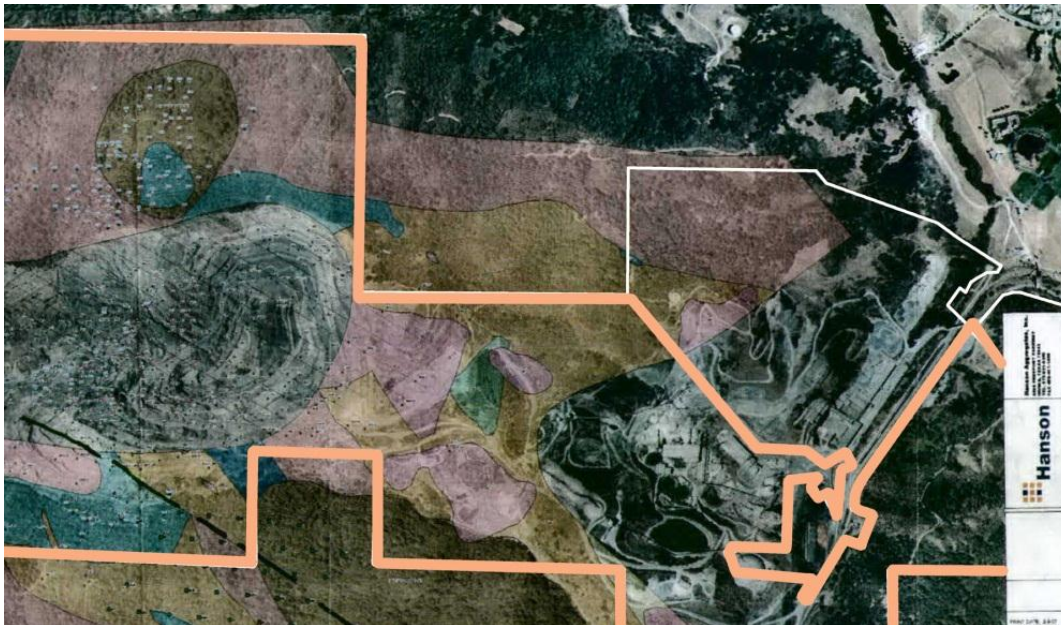
Area referred to as the East Materials Storage Area (EMSA): The Permanente Quarry does not have a vested right to an area referred to as the East Materials Storage Area (EMSA). The false claim that the area is vested because “it has always been an integrated part of the Facility”⁹ is most succinctly refuted by the claimant’s own letter, which affirms non-integration:¹⁰

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. The aluminum plant is not used, nor has it ever been used, to process mined material from the Permanente Quarry.

The independence of these two publicly traded companies is further affirmed:

1. By 1951, Kaiser Aluminum had 9 plants none of which required a quarry for a neighbor.
2. When Cupertino cement workers went on strike, the Cupertino foil plant continued to operate.
3. Conversely, when the Cupertino foil plant sold in 1990, the “facility” continued to operate.
4. The companies that occupied these sites were sold to different investors at different times.

Hanson Map with Vested Boundary: The claimant’s 2007 map¹¹ showing their established “vested boundary” does NOT include the area referred to as EMSA (see enhanced excerpt below). Thus the claimant has no right to threaten equitable estoppel for halting use of this property. The “approximate property boundary” line has been enhanced in thin white and the “vested boundary” line has been enhanced with thick orange. The EMSA area is outlined in thin white on the top right along with part of Permanente Road. The EMSA area is also outlined in thick orange on the bottom showing the beginning of the facility’s vested area.



⁹ 1/4/2011 Diepenbrock Harrison letter, page 5

¹⁰ 1/4/2011 Diepenbrock Harrison letter, Appendix C pages 285,286 contains 1/10/2006 letter

¹¹ 1/4/2011 Diepenbrock Harrison letter, Appendix C last page with document date on the first page

Company identifiers demonstrate these companies are in very different industries:

Corporate Identity	Lehigh Hanson	Kaiser Aluminum
Address	24001 Stevens Creek Blvd, Cupertino, CA 95014	23333 Stevens Creek Blvd, Cupertino, CA 95014
Stock	privately owned under HEIG.DE (Germany) also KCG, HAN, ...	KALU (NASDAQ) also KACC, KLU, MXM, ...
NAICS Code	327310 Cement Manufacturing	331316 Aluminum Extruded Product Manufacturing
DUNS NUMBER	103037458	177762192 (one of several)
EPA Registry ID	110000484039	110011654584

Permanente Metals History: The recently named “East Materials Storage Area”¹² is located on the original site of the publicly traded Permanente Metals Corporation (later Kaiser Aluminum), which started acquiring land adjacent to the Permanente Company (later Lehigh Hanson) in 1941.

In his lifetime American industrialist Henry J. Kaiser created many companies including Kaiser Shipyards, Kaiser Steel, Kaiser Motors, Kaiser Healthcare, Kaiser Aluminum (preceded by Kaiser Aluminum and Chemical Corporation and Permanente Metals), and Kaiser Cement (preceded by Permanente Cement and Permanente Company). WWII created a strategic inflection point for the industrialist who capitalized on abundant government opportunities. One was Permanente Metals which was launched using the United States government’s Reconstruction Finance Corporation.

At this site, Permanente Metals had a state of the art campus for magnesium production for incendiary bombs and ferrosilicon in WWII, fused phosphate fertilizer from New Almaden serpentine and phosphate rock from Idaho,¹³ and for aluminum extruded products until 1990. Diepenbrock Harrison has led the reader to believe that grading performed to build the company campus was a mining activity and that material storage is equivalent to dumping mining waste. Adding to this confusion, the claimant states:

Both companies performed mining and mining related operations. The cement plant was the end process that began with limestone mining in the adjacent quarry. The magnesium plant, similarly, processed dolomite mined from off-site Kaiser facilities including the Natividad quarry in Monterey County and was simply the last stop before mined material was processed before distribution to customers.¹⁴

Until the recent impermissible dumping of mining waste, “EMSA” has neither been used for mining nor has there been a plan to mine there prior to applicable vesting dates and therefore has no vested rights for mining. Even if there had been vested rights, the substantial changes in operations by both Permanente Metals and its successor, Kaiser Aluminum would confirm an abandonment or waiver of vested rights for mining.

¹² Note that although the same name was used in a previous reclamation plan, it referred to a different location that has since been renamed to “CMSA,” Central Materials Storage Area

¹³ [Geology and quicksilver deposits of the New Almaden District, Santa Clara County](#)

¹⁴ 1/4/2011 Diepenbrock Harrison letter, page 29

Unpermitted Surface Mining Operation & Impermissible Intensification thereof: The overburden area was first officially recognized by the county in a 2006 Notice of Violation and again in 2008 as an intensification of the previous Notice of Violation.¹⁵ In April 2009, county staff and Lehigh came to a provisional agreement until the timely delivery of a reclamation plan.¹⁶

1948: Permanente Metals state of the art campus



2009: same site under new ownership used for mining overburden



¹⁵ [2006 Lehigh NOV](#) and [2008 Lehigh NOV](#)

¹⁶ [2009 Agreement regarding EMSA and Associated Correspondence](#)

Kaiser Cement Plans to Close Quarry and Abandon Vested Mining Right: In 1992, Kaiser Cement, then owned by British Hanson Industries, pre-announced its exit plan from the quarry business, a clear intent by the facility to waive, abandon, or otherwise forgo its vested right in its operation. As Kaiser anticipated about 20 more years of remaining material in the quarry, they hired a consulting firm to plan “the City of the 21st Century” upon their 3600 acres. This plan was presented at the City of Cupertino Planning Commission.¹⁷

Around this time, former Kaiser employee Barbara Koppel served on the Cupertino City Council and Kaiser manager Tom Legan served on the County Board of Supervisors. Recognizing a conflict of interest and reversing county counsel opinion, the State of California Fair Political Practices Commission ruled unanimously that Supervisor Legan could not vote on his proposal to loosen hillside development restrictions as it could financially benefit his employer.¹⁸

Abandonment is further affirmed by the company’s lack of investment and disregard of regulators. The Diebenbrock Harrison letter dated January 4, 2011 touts the most recent cement plant investment was made around 1980, over thirty years ago (by now fully depreciated). The abundance of violations is well-known.

Considerations Regarding Vested Rights Determination by the County: We urge the County Board of Supervisors to consider the facts and not provide vested rights to the applicant.

Kaiser Aluminum and Chemical & Lehigh Hanson History and News: Below are some interesting stories about political connections, Permanente Metals, and cement and quarry¹⁹.

Political Connections	
1982	Kaiser Cement executive Tom Legan is appointed to fill Dan McCorquodale’s vacant seat on the Santa Clara County Board of Supervisors. (SJ 11/25/87) He serves on the board from 1982 – 1989. In 1986, he lost a bid for state senator against McCorquodale.
1985	Kaiser Cement executive and Santa Clara County Supervisor Tom Legan shows conflict of interest by seeking to increase housing densities on hillsides in unincorporated areas of the county which would substantially increase the value of Kaiser property. (SJ 7/13/85)
1987	Former Kaiser Cement employee, Barbara Koppel elected to Cupertino City Council (elected twice and serves 8 years) and also serves on the Bay Area Air Quality Management District BAAQMD. (SJ 11/21/90)
1992	Kaiser Cement Corp., owned by British Hanson, unveils plan to build 1,100 homes and a golf course in the hills west of Cupertino. (SJ 2/19/92)
1996	Supervisory candidate and longtime Cupertino council member Barbara Koppel fined for accepting too much money from Hanson and fails to accurately report \$500 from Assemblyman Jim Cunneen – who is now an adviser to Lehigh Hanson. (SJ 10/3/96)
2008	Sandra James, former Cupertino mayor (serving 8 years on Cupertino City Council) is hired as the company's community affairs and public relations manager. (SJ 10/29/2008)
2010	Supervisor Liz Kniss proposes Resolution No. 2010-162 commending Cupertino Citizen of the Year (& Lehigh Hanson PR manager) Sandy L. James. It is adopted unanimously.

¹⁷ APPENDIX A San Jose Mercury News 2/20/1992: DEVELOPER'S VISION OF 'CITY OF 21ST CENTURY'

¹⁸ APPENDIX B Two San Jose Mercury News Articles Santa Clara County Board of Supervisors and FPPC

¹⁹ (NYT = New York Times, SJ = San Jose Mercury News)

Permanente Metals	
1941	Permanente Metals Corporation becomes a neighbor of the Permanente Company. ²⁰
1943	The two companies make sure to be separate: “The Permanente Corporation, former official name of the cement plant, has been changed to the Permanente Cement Company. The change will prevent confusion between the cement and magnesium operations.” ²¹
1947	Permanente Metals Corporation closes the magnesium plant. (NYT 11/1/47)
1947	Permanente Metals Corporation hires San Francisco advertising company for national campaign of Kaiser Aluminum – [cement is not mentioned at all]. (NYT 3/4/47)
1948	NYT earnings reports of several companies including: Permanente Metals Corporation (for the year, \$2.67 a share) and Permanente Cement Company (for the quarter, \$1.09 a share). (NYT 6/17/48).
1950	Economic Changes Affect Aluminum: Permanente Metals Corporation purchases previously rented aluminum mill from the War Assets Administration. In late 1949 government adds aluminum to the list of strategic metals to be stockpiled. (NYT 1/3/50)
1950	Kaiser Aluminum and Chemical Corporation (the new name for Permanente Metals) announces stock split and supplies 30% of the nation’s aluminum. (NYT 4/7/55)
1951	Kaiser Aluminum expands to nine plants. (NYT 8/21/51)
1956	Company sponsors “Kaiser Aluminum Hour” drama series on NBC. (NYT 11/19/56)
1980	Some Kaiser Aluminum land is sold to the facility. ²²
1980	Claimant’s historical record states that “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.” ²³ These statements are not supported by the photographic record, demolition permits, or newspaper reports. This description more accurately matches a fire under Hanson ownership in 1993.
1983	Kaiser Aluminum correspondence with EPA: the company is separate from Kaiser Cement and the location of the latter is at the terminus of Stevens Creek Blvd. ²⁴
1983	Kaiser Aluminum obtains a building permit for a 5000 square foot storage facility and loading dock at the Cupertino plant. (Santa Clara County permit: 1983-39739-00)
1984	Kaiser Aluminum obtains a permit to re-roof. (permit: 1984-40550-00)
1987	British investor Alan Clore purchases Kaiser Aluminum and Chemical Corporation and reorganizes into a company called Kaisertech, LTD. (NYT 5/2/87)
1987	“Twenty workers at the Kaiser Aluminum & Chemical Corp. plant in Cupertino have complained about a mysterious skin rash during the past two weeks, a company official said.” (SJ 1/24/87)
1988	“kerosene fire Wednesday at the Kaiser Aluminum and Chemical Corp. in Cupertino. Central Fire District spokesman Angelo Chancellor said the fire broke out about 9:30 a.m. in two kerosene tanks.” (SJ 3/24/88)

²⁰ 1/4/2011 Diepenbrock Harrison letter, Appendix E, page 2

²¹ 1/4/2011 Diepenbrock Harrison letter, Appends D, page 42

²² 1/4/2011 Diepenbrock Harrison letter, Appendix E, page 2

²³ Santa Clara County [Historic Reference Public Access Binder](#), page 126

²⁴ See APPENDIX C of this document

1988	Kaiser Aluminum signs letter of intent to sell California, Ohio foil plants to TXL private investment group. (PRNEWSWIRE 6/2/88)
1988	Kaisertech agrees to be acquired by Maxxam group (NYT 5/24/88) owned by Texas wheeler dealer Charles Hurwitz and financed with Drexel Burnham Lambert junk bonds.
1989	Santa Clara County fines Kaiser Aluminum and Chemical Corp. \$79,392 for improper storage and handling of hazardous materials (SJ 6/27/89). See also the Santa Clara County Department of Environmental Health ²⁵ and the only EPA Kaiser Aluminum (0903175) document that is approved for release to the public. More information is unavailable due to litigation. Site is under consideration for the National Priorities List.
1990	“Kaiser expects to shut down the foil plant at the end of May. It will sell the entire operation to Coastal Aluminum Rolling Mills Inc. which plans to dismantle the plant and move the rolling mills and associated processing equipment to Williamsport, Penn.... The Kaiser foil operation is wedged into a gouged-out portion of the Cupertino foothills, behind a dusty Kaiser cement facility, and is in an old munitions plant dating back to at least World War II. Simon said about 100 employees work at the foil plant and the company hasn't decided how many employees, if any, that Kaiser will move into other operations... Coastal will offer to transfer some of Kaiser's foil mill employees to Pennsylvania with the equipment, “ (San Francisco Business Times 3/12/90)
1993	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 ... Kaiser operations faltered briefly when phone lines went out, ... The building was at the northern edge of Kaiser 's property. It formerly held the company's administration and engineering offices, but since 1989 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 . The cause remained under investigation, she said. (SJ 4/27/93)
1995	The remainder of Cupertino Kaiser Aluminum land is sold to the facility. ²⁶
Cement and Quarry	
1943	The two companies make sure to be separate: “The Permanente Corporation, former official name of the cement plant, has been changed to the Permanente Cement Company. The change will prevent confusion between the cement and magnesium operations.” ²⁷
1947	Permanente Cement Company offers 150,000 shares of common stock. (NYT 12//18/47)
1958	Permanente Cement announces earnings with record high sales. (3/14/58)
1980	Some Kaiser Aluminum land is sold to the facility. ²⁸
1980	Claimant’s historical record states that “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.” ²⁹ These statements are not supported by the photographic record, demolition permits, or newspaper reports. This description more accurately matches a fire under Hanson ownership in 1993.

²⁵ Santa Clara County Department of Environmental Health File [07S2W16L01f](#)

²⁶ 1/4/2011 Diepenbrock Harrison letter, Appendix E, page 2

²⁷ 1/4/2011 Diepenbrock Harrison letter, Appends D, page 42

²⁸ 1/4/2011 Diepenbrock Harrison letter, Appendix E, page 2

²⁹ Santa Clara County [Historic Reference Public Access Binder](#) page 126

1985	Striking Cupertino Kaiser Cement Corp. workers mark second month anniversary off the job Friday with a rally and little hope of a settlement in the near future. (SJ 8/31/85)
1985	EPA report identifies only one major air pollution site in the area -- the coal-and-coke burning Kaiser Cement plant in the hills above Cupertino. The disclosure that Kaiser Cement Corp. may be the single largest source of cancer-causing air pollution in Santa Clara County did not come as a great surprise to neighbors of the plant. (SJ 10/12/85)
1985	Air Board plans tests at Kaiser will measure metals that may cause cancer. (SJ 11/1/85)
1986	Hanson Industries agrees to acquire Oakland- based Kaiser Cement Corp. (SJ 11/28/86)
1987	A group of Cupertino and Los Altos residents will appear Tuesday before the Santa Clara County Board of Supervisors to object to the Kaiser Cement Corp.'s proposal to lower the hilltop ridge line near Monta Vista because of a landslide. (SJ 9/21/87)
1990	Bay Area Air Quality Management District ranks Kaiser Cement as top Santa Clara County polluter for arsenic, cadmium, chromium, mercury and nickel. (SJ 8/2/90)
1991	Nine South Bay companies, including Kaiser Cement & Gypsum, are told to warn nearby residents of potential cancer risks from their emissions, under a sweeping new regional program to reduce toxic air pollutants. (SJ 8/8/91)
1992	The British company that owns Kaiser Cement Corp. tonight is expected to unveil a plan to build 1,100 homes and a golf course in the hills west of Cupertino. (SJ 2/19/92)
1993	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 ... Kaiser operations faltered briefly when phone lines went out, ... The building was at the northern edge of Kaiser 's property. It formerly held the company's administration and engineering offices, but since 1989 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. The cause remained under investigation, she said. (SJ 4/27/93)
1993	Kaiser Cement agrees to pay \$685,933 for faulty cement (contaminated with dolomite in 1980) at Alameda County Jail. (SJ 3/6/91)
1995	The rest of the Kaiser Aluminum land in Cupertino is sold to the facility. ³⁰
1996	Kaiser Cement tire 45-day burning experiment raises health concerns. The Bay Area Air Quality Management District, which declared 25 Spare the Air days the same year, had quietly issued Kaiser its experimental permit in November 1995. (Metro 10/17-23/96)
2005	The dumping of quarry rock along a ridgeline in the Cupertino hillsides -- which created a jarring visual contrast to an otherwise natural setting -- will end this summer. The Palo Alto-based Committee for Green Foothills announced last week that the Hanson Quarry has agreed to end the dumping. (SJ 3/17/2005)
2007	HeidelbergCement buys Hanson. ³¹
2008	The largest emitter of greenhouse gases in Santa Clara County is the Hanson Permanente Cement Plant in Cupertino. (SJ 2/9/08)

³⁰ 1/4/2011 Diepenbrock Harrison letter, Appendix E, page 2

³¹ <http://www.aggregateresearch.com/article.aspx?ID=11020>

APPENDIX A: Kaiser Cement Plans Housing Development

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.

Caption: Map

MAP: CARL NEIBURGER -- MERCURY NEWS (**Kaiser Cement** Property)

Memo: Shorter version ran on page 1B of the Morning Final edition.

Edition: Peninsula/Am

Section: Local

Page: 1B

Index Terms: CONSTRUCTION PRODUCT COMPANY PLANNING DEVELOPMENT ; CUPERTINO

Record Number: 9201130287

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APPENDIX B: Santa Clara County Board of Supervisors and FPPC

FPPC STAFF RULES IN LEGAN CASE SUPERVISOR URGED NOT TO VOTE ON HILLSIDE DEVELOPMENT ISSUES

San Jose Mercury News (CA) - Thursday, July 4, 1985

Author: MICHAEL REZENDES, Mercury News Staff Writer

In a long-awaited opinion, the state Fair Political Practices Commission staff suggests that Santa Clara County Supervisor Tom Legan disqualify himself from further votes on a measure that would increase the value of property owned by his employer, Kaiser Cement Corp.

The opinion, which has been referred to the five FPPC commissioners, strongly contradicts the arguments of County Counsel Don Clark, who has said Legan acted properly when he proposed a general plan amendment that would nearly double the allowable density of development on county hillsides.

The commissioners are scheduled July 12 to hear opinions for and against Legan's position, and are expected to make a final decision on the matter. Lynn Montgomery, a spokeswoman for the FPPC, said the commission will not rule on whether Legan violated state conflict-of-interest laws on actions he has already taken. "The decision will simply set up guidelines for him to follow from now on," she said.

Legan said he intends to challenge the FPPC staff opinion before the commission. "I don't think that opinion is the last word," he said. Although he declined to be specific, he also said, "There are some areas (in the opinion) that were not appropriately addressed, and we'll be addressing (them) before the commission." Clark said he'll represent Legan at the commission's meeting in Sacramento. "I'm maintaining our initial position," he said.

Legan requested an opinion from the FPPC after newspaper articles raised the possibility that he had violated conflict laws. Since the articles have appeared, he has refrained from voting on all hillside matters while awaiting the FPPC ruling.

Legan's employer operates a mineral quarry in part of its 3,260 acres of hillside property in the northwestern part of the county. Parts of the property are in the cities of Cupertino and Palo Alto. About two-thirds of the Kaiser property is in a hillside zone under county jurisdiction. Legan is rock products manager at Kaiser and owns more than \$1,000 in company stock.

In July 1984, he suggested that the county loosen development restrictions on the 180,000 acres of land in its hillside zone. And in December, he was part of a 3-2 board majority that voted to proceed with an environmental study of the effect of his proposed general plan amendment.

State conflict-of-interest law says no public official "shall make, participate in the making, or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest." The law says an official has a financial interest in a decision if "the decision will have a financial effect, distinguishable from its effect on the public generally," on a source of income for the official.

After questions about the propriety of Legan's actions were raised, Clark said Legan acted properly because the effect of Legan's proposal "is not distinguishable from its effect upon all owners of hillside property in the county" -- arguing that hillside property owners make up a "significant segment" of the general public.

But the FPPC staff disagreed. After determining that Legan's proposal would have increased the fair market value of Kaiser property by approximately \$2.9 million, the opinion says "the effect on Kaiser will clearly be distinguishable from the effect upon the general public, most of whom will not be affected at all."

With Legan not voting on hillside development, the board seemed deadlocked 2-2 on the issue. In the December vote to study Legan's proposal, Legan was joined by Supervisors Susanne Wilson and Zoe Lofgren. Supervisors Rod Diridon and Dianne McKenna opposed the study. The board never gave final approval to the study, and in March voted

to drop the study from its agenda until the FPPC issued its opinion. On June 25, McKenna persuaded the board to set up a task force to study preserving open space on the hillsides. The vote was 4-0, with Legan abstaining. On Wednesday, McKenna said she was not surprised by the FPPC staff opinion. "I've anticipated that opinion," she said. "That's why I went ahead with my proposal."

Caption: Photo

Supervisor Tom Legan . . . Employed by Kaiser Cement

Edition: *Morning Final*

Section: *Local*

Page: 1B

Index Terms: CITY COUNCIL ETHICS ZONING DEVELOPMENT OFFICIAL SAN-JOSE

Record Number: 8501090639

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LEGAN CAN'T VOTE ON LAND-USE ISSUE, STATE PANEL RULES

San Jose Mercury News (CA) - Saturday, July 13, 1985

Author: *ARMANDO ACUNA, Mercury News Sacramento Bureau*

The state Fair Political Practices Commission ruled unanimously Friday that Santa Clara County Supervisor Tom Legan can't vote on a land-use issue that could financially affect his employer, Kaiser Cement Corp.

On a 4-0 vote, the commission upheld the legal opinion of its staff, which said efforts by Legan to increase housing densities on hillsides in the unincorporated areas of the county would substantially increase the value of Kaiser property.

. . .

County Counsel Donald L. Clark, who represented Legan at the hearing, said there was no conflict of interest because allowing more housing on the hillsides would have affected all owners of hillside property, who they claimed represented a "significant segment" of the public.

But the FPPC staff said a change in the county's general plan allowing higher hillside densities would increase the value of Kaiser's undeveloped land by \$2.9 million, a result the staff said "will clearly be distinguishable from the effect upon the general public."

Clark argued that Kaiser had no plans to develop any of its land for housing, stressing the "unity of use and unity of ownership" based on the quarry operation.

Commissioner Michael B. Montgomery was skeptical. He said that if Kaiser really didn't want to develop its land, then why hadn't the company made an effort to say, "We don't want to be part of the higher density." Later in the hearing Montgomery said Kaiser's reluctance to "to take everyone off the hook . . . sort of bothers me a little bit." Montgomery noted, for example, that Kaiser could sell its undeveloped property to residential builders and keep the quarry. And Commissioner Lim P. Lee, noting the clamor for more housing in the South Bay, said, "If the price is right, Kaiser will sell that land."

Caption: Photojump page hed

Supervisor Tom Legan . . . Kaiser rock products manager

Edition: *Morning Final*

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Index Terms: POLITICS SANTA-CLARA-CO.

Dateline: *Sacramento*

Record Number: 8501110813

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APPENDIX C: 1983 Letter from Kaiser Aluminum to EPA stating that the company is separate. This also supports the end of Stevens Creek Blvd. Source: Page 19 of the only EPA Kaiser Aluminum (0903175) document in the database that is approved for release to the public from Stevens.Shelley@epamail.epa.

**KAISER
ALUMINUM**

KAISER ALUMINUM & CHEMICAL CORPORATION

September 15, 1983

Ms. Vera Brady
Environmental Protection Agency
Mail T-2-2
215 Fremont Street
San Francisco, CA 94105

Dear Ms. Brady:

This is your notification that our address has changed from:

- RCRA* 1. Kaiser Aluminum, Stevens Creek Road, Permanente, California } *CAD0091552*
to: Kaiser Aluminum, Foil Plant, 23333 Stevens Creek Boulevard,
Cupertino, CA 95014.
2. Kaiser Cement is still located at the west terminus of Stevens *CAD00910953*
Creek Boulevard, Permanente, California.

*Super-Fund
CAS
Docket*

We are two separate companies who are located next to each other.

Very truly yours,



G. A. McGee
Plant Engineer

itk

23333 STEVENS CREEK BLVD., CUPERTINO, CALIFORNIA (408) 252-3780