



MEMORANDUM

TO: Mayor Packard and Members of the City Council
FROM: Jolie Houston, City Attorney
RE: Lehigh Quarry
CC: Doug Schmitz, City Manager
DATE: January 21, 2011

The purpose of this memorandum is to provide a brief summary of the some of the past and current issues concerning the facility commonly referred to as the “Lehigh Quarry.”¹

Brief Summary of Background / History

The Permanente Quarry is owned by Hanson Permanente Cement, Inc. and operated by Lehigh Southwest Cement Company (the “Quarry”). The Quarry is located in the Santa Clara County (“County”) foothills and is a limestone and aggregate mining operation. In addition to the Quarry and mining operations, there is also a cement manufacturing operation, which according to the County is governed by a use permit issued in May 1939.

In 1985, the County approved a reclamation plan for the Quarry pursuant to the Surface Mining and Reclamation Act (“SMARA”).² This reclamation plan was valid for 25 years. After the County approved the reclamation plan in 1985, it was found that the reclamation plan did not cover the entire operation of the Quarry and the County issued a notice of violation. In January 2007, the Quarry applied for approval of amendments to the approved reclamation plan.

In 1999, the San Francisco Bay Area Regional Water Quality Control Board (“SF BRWQCB”) issued the Quarry a clean-up and abatement order to address unauthorized construction of in-stream ponds, instability of creek banks and the need for a long term creek restoration plan. In March 2010, the SF BRWQCB issued the Quarry a notice of violation for failure to comply with storm water protection requirements. I understand that the Quarry was required to implement and maintain best management practices and complete other water balance surveys regarding drainage, storm water and waste water. It is not clear if the Quarry has implemented these best management practices.

In June 2008, the County issued a notice of violation instructing the Quarry to cease depositing material in an area known as East Materials Storage Area (“EMSA”). In April 2009, the Quarry applied for a separate Reclamation Plan Amendment for this area. It is not clear if the Quarry cured this notice of violation.

¹ The memorandum relies on facts and information obtained from various public records and websites.

² Public Resources Code § 2710 *et seq.*

The Bay Area Air Quality Management District (“BAAQMD”) implements state and federal air quality regulations and has authority to issue the Title V permit renewals under supervision of the EPA. Title V permits must be renewed every five years. The Quarry applied to renew its permit in April 2008. In March 2010, the United States Environmental Protection Agency (“EPA”) issued the Quarry a notice of violation under the Clean Air Act. I understand that BAAQMD is in the process of reviewing the Title V permit renewal, and it is not clear if the Quarry cured this notice of violation.

In 2008, BAAQMD conducted health risk assessments for the Quarry. The health risk assessment showed that the Quarry’s operations were below the levels determined by BAAQMD to warrant public notice or risk reduction measures. In July 2009, the EPA and BAAQMD began monitoring air quality at Stevens Creek Elementary School.³ To date, the results from the Stevens Creek Elementary School are consistent with the BAAQMD’s health risk assessment. I have been informed that there are no monitoring stations within the Town of Los Altos Hills or the City, which are often downwind from the Quarry.

Current County Reclamation Plan Amendment Applications

The Quarry is regulated by the SMARA and also the County Zoning Ordinance. The Quarry has submitted applications for two reclamation plan amendments:

- (1) Reclamation Plan Amendment for the EMSA; and
- (2) Comprehensive Reclamation Plan Amendment for the areas used in the quarrying operation.

These reclamation plan amendment applications are pending and are also subject to review under the California Environmental Quality Act (“CEQA”). There will be two Environmental Impacts Reports (“EIR”) prepared for these amendments. I understand that the Draft EIRs have not been circulated.

Non-Conforming Use Determination

The County Zoning Ordinance generally requires use permits for quarrying activities unless the quarrying was established before the County’s Zoning Ordinance required use permits. Currently, the County is in the process of reviewing the Quarry’s reclamation plan amendment applications. Part of this review requires an analysis of whether the Quarry activities have been established as a “legal nonconforming use.” This analysis is necessary to determine whether the Quarry must obtain a use permit for its quarrying operations on all or part of its site. I understand that the County and the Quarry have acknowledged that a use permit for a new pit mine is required and the Quarry is concurrently processing it with the Quarry’s Comprehensive Reclamation Plan amendment. As to the extent of the Quarry’s legal nonconforming use of the site, the County has scheduled a public hearing for this determination. This hearing will be held on February 8, 2011, at 1:30 p.m.

³ This monitoring was to measure hexavalent chromium.

City's Oversight

Because the Quarry is located within the County and not within the City of Los Altos (“City”) boundaries, the City has no local control and/or permitting authority over the Quarry. However, the City and/or its residents can participate and/or comment at any of the public agency hearings concerning the permitting of the Quarry, the Quarry’s operations and activities, or the EIRs for the Reclamation Plan Amendments. The City may also comment on the Quarry’s nonconforming use status.

Other Environmental Regulations / Agency Oversight

There are other federal, state and local laws which authorize public agencies to regulate the Quarry’s activities. The following are some of the federal, state and local agencies that have regulatory control over the Quarry:

Local

- Bay Area Air Quality Management District (“BAAQMD”) - Attains and maintains air quality standards.
- Santa Clara County Planning Department - Plans and regulates land uses and development within the County, including reviewing and approving the reclamations plans (or amendments) required under SMARA.
- San Francisco Bay Area Regional Water Quality Control Board (“SF BRWQCB”) – Develops and enforces water quality objectives and implementation plans to protect the State’s waters.
- Santa Clara Valley Water District – Acts as the County’s water wholesaler and as a flood protection agency.
- Santa Clara Environmental Health – Assesses the environmental conditions and circumstances that affect the health and safety of the community.
- County Sheriffs Department and the California Highway - Responsible for enforcement of the California Vehicle Code on Foothill Boulevard, Stevens Canyon Road and other roadways which serve the Quarry.
- City of Cupertino and County – Noise ordinances may provide remedies for noise created by idling trucks.

State

- Office of Mine Reclamation (“OMR”) – Administers the SMARA and provides assistance to cities and counties and mine operators for reclamation planning and promotes cost effective reclamation.
- California Air Resources Board – Attains and maintains healthy air quality and conducts

research into the causes of and solutions to air pollution.

- Water Resource Control Board – Preserves, enhances and restores the quality of California's water resources.

Federal

- Environmental Protection Agency (“EPA”) – Leads the nation’s environmental science, research, education and assessment efforts.
- U.S. Fish & Wildlife – Works with other agencies to conserve, protect and enhance fish, wildlife and plants and their habitats.

Recommended Actions

The Council should discuss and consider authorizing the following actions:

- (1) Direct staff and/or City Attorney to gather information from the regulatory agencies;
- (2) Appoint Ron Packard and David Casas as an ad hoc committee on matters regarding the Quarry;
- (3) If the ad hoc committee is appointed, then direct it to discuss with the Town Council’s representatives the sharing and pooling of information and resources;
- (4) Direct staff and/or ad hoc committee to request the installation of an air quality monitoring station for measuring air quality impacts on the City (since it is claimed that the general direction of wind is from the Quarry towards the Town and the City) and the only air quality monitoring station is in the City of Cupertino;
- (5) Direct staff and/or ad hoc committee to request the installation of a water quality monitoring device in Permanente Creek in the City (since it is claimed that one of the major runoffs into the Town and the City is below stream of the water monitoring device);
- (6) Designate this as a City Attorney special project in an amount not to exceed \$25,000.