



Midpeninsula Regional Open Space District

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County Government Center
70 W. Hedding Street, 7th Floor, East Wing
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February 17, 2011

RE: The Lehigh Permanente Quarry Reclamation Plan Amendment Draft Environmental Impact Report (SCH#2010042063)

On behalf of Midpeninsula Regional Open Space District (District), I would like to provide the following comments on the Draft Environmental Impact Report (DEIR) for the Lehigh Permanente Quarry Reclamation Plan Amendment. The District has previously submitted numerous comment letters on various recent proposals related to the Permanente Quarry, as referenced in our May 17th, 2011 letter regarding the scoping of the subject DEIR.

East Materials Storage Area (EMSA)

The proposed EMSA remains extremely problematic. The District does not believe that Lehigh or the County have shown that this area is in fact a pre-existing use area associated with the quarry. We concur with the County Geologist's conclusion, as presented to the Board of Supervisor's for the public hearing related to existing non-conforming use (vested right), that the area proposed for mine waste at the EMSA was never a part of the quarry operations. It instead was developed and used for industrial manufacturing related to Kaiser's magnesium and aluminum plant operations. Many maps identify this location with the name "Permanente Metals" given to the magnesium and aluminum plant operations. In fact one natural gas source was shared by the metals manufacturing plants and the cement plant, as noted in the historic resources section of the DEIR, again testament to this location being a manufacturing plant facility, subject to a use permit, as opposed to an existing non-conforming quarry operation.

Quarry related overburden and waste dumped at the EMSA are in fact a very recent phenomenon, beginning in 2006, that correctly resulted in the County's 2008 Notice of Violation that this was not an allowed use. We believe that the record shows that the EMSA, until very recently, was never a part of quarry operations, and therefore cannot be "vested". Instead, development of the proposed EMSA area is clearly subject to a County use permit.

The addition of the EMSA as a "quarry operation" and inclusion in the Reclamation Plan Amendment is characterized in the DEIR as a "significant and unavoidable" visual impact. The proposed visual impacts related to the EMSA are simply staggering. The huge stepped waste pile proposed is vastly out of character with the surrounding topography, the hillside protection zone district, the County scenic ridge easement, valley view shed protection policies, and park protection policies. Within the historic context, the value of the visual resources at stake is well documented and recognized. This new unnatural waste pile will form the new background to the County scenic easement granted by Kaiser long ago in recognition of the visual importance of Permanente Ridge, and the strong community and County support behind its protection.

The 1985 Reclamation Plan stressed the importance of reclaiming a small pile of quarry waste at the time known as the east materials area (Area C). The scale of this pile is dwarfed by the proposed EMSA, but at the time was recognized as a visual impact to be immediately remedied. This allowed for quarrying to the west of this old waste pile, "while maintaining a knoll as a visual buffer between the quarried area and the Santa Clara Valley area". The 1985 Mitigated Negative Declaration (MND) for the 1985 Reclamation Plan states that "The existing ridgeline will be maintained by means of the (scenic) easement agreement and conditions of this reclamation plan to insure neither the quarry pit nor materials storage area will be visible towards the north and east." It further states that "The Permanente ridgeline and its easement dedication will insure no exposure of the quarry or its material area towards the north and northeast." One has to ask why the existing visual impact of the quarry is so much greater than the County initially envisioned. One also has to question the construction of the proposed EMSA which dwarfs this prior area of concern and also moves the huge pile of proposed quarry waste up to 5000' closer to the valley floor!

The DEIR project baseline is established as 2007, the year following Lehigh's initiation of dumping in the EMSA and one year prior to the County's Notice of Violation to Lehigh for unauthorized use of this area. Since Lehigh had initiated quarry waste disposal by 2007, the DEIR assumes the entire 6,500,000 tons of waste have been already piled in the proposed EMSA. This is clearly problematic, and inappropriate. The EMSA is in fact a new project, initiated in a new area, subject to a County Use Permit.

The DEIR concludes that alternatives which would not construct the EMSA (no project alternative) , or the removal of the EMSA at final reclamation (Alternative 1) are "least preferred" , since the lack of or lower height of the reclaimed EMSA would not provide visual screening for the existing Cement Plant site. This assumes the EMSA is built, it is not. The cement plant operates under a use permit issued and regulated by the County. This issue illuminates the overlap of the historic manufacturing plant facilities area (part of which is proposed to be buried by the EMSA waste) and the "quarry operations" proposed.

If the construction of a quarry waste dump is being done to screen the cement plant operations, isn't that more appropriately completed under a use permit amendment for the existing cement plant? It is also clear from a review of the cement plant site and the DEIR's supporting documents that substantial waste material is also being placed outside of the footprint of the proposed EMSA, in other areas around the cement plant. While also highly visible from the surrounding area, we assume that this ongoing operation is also intended to visually screen existing cement plant structures and features. Are these new fills a part of a use permit amendment for the plant? It is appropriate that all new fills proposed to visually screen the permitted cement plant, be reviewed and regulated under the cement plant use permit.

It is absurd for the DEIR to conclude that not building the new unprecedented visual impact associated with the proposed EMSA would result in a greater visual impact because the public will be able to then see the cement plant facility which already exists, and has been highly visible for decades. The County has had a history of failures with regard to scenic protection associated with the quarry and cement plant. This is an opportunity to finally get it right. The County should not be misled to use this Reclamation Plan Amendment process to mitigate past visual protection failures with a new much larger impact, the EMSA.

The visual analysis that is included in the DEIR also clearly shows that the proposed EMSA is far larger in extent and much higher than that necessary to visually screen a portion of the existing cement plant operations from the surrounding communities. The EMSA is proposed as a quarry waste dump to accommodate the substantial deepening of the existing quarry proposed under the Reclamation Plan Amendment. Any other characterization is simply disingenuous. The incredibly significant visual impact associated with the proposed EMSA cannot be understated.

Regarding the visual impacts associated with the proposed project, the no project alternative is clearly preferred since the EMSA would not be constructed. The DEIR is incorrect in the assumption that reclamation of the EMSA would have to wait 25 years to occur. The County could order this immediately to resolve the existing violation.

The visual simulation presented in the DEIR also appears to be overly optimistic, and paints a prettier, greener picture than what would actually likely exist. The proposed EMSA is a waste rock dump. Waste rock is a very difficult material to revegetate, the time involved in revegetation will likely be much longer than presented. The greening of the site as depicted is also misleading. Much of the initial growth will be grass. As is evident from the top of the WMSA visible from the valley floor, the grass is brown for over half of the year, a significant contrast to the surrounding evergreen hillsides and ridges. It would also likely have erosion rills and surficial slippage, exposing bare patches of ground. The look will be more like the look of any nearby garbage landfill, unnaturally stepped and brown for most of the year, with sparse woody vegetation, not exactly compatible with scenic hillside protection.

In addition to the visual impacts discussed above, the proposed EMSA is also a source of significant impact, related to air quality, requiring mitigation. As an immediate neighboring property, in public trust, we are opposed to the ongoing and proposed dust impacts associated with the EMSA construction. The air quality assessment presented in the DEIR attempts to characterize dust and associated known toxic substances related to the quarry waste disposal by assessing the existing operations in the EMSA. The existing operation is occurring further away from the park/open space properties, and at a smaller scale than the proposed full EMSA. This is not a fair representation or analysis. A detailed analysis for air quality impacts should be conducted at the shared property line to characterize potential impact to the recreating public and our nearby Foothill Field Office facility. Additionally, a long-term continuous air quality monitoring station should be established at this location. The PG&E Trail located within the Rancho San Antonio Open Space Preserve is often heavily impacted by dust generated by the quarry and cement plant operations, that leaves a layer of dust on vegetation. The quantification and analysis of air quality impact to the Open Space Preserve, including the Field Office located within is not well studied or characterized in the DEIR.

The EMSA is identified in the DEIR as a new source area for selenium, adding to the existing quarry related water quality impacts to Permanente Creek. Water quality and biological resources per the DEIR would incur significant and unavoidable environmental impacts associated with the proposed project. The DEIR discusses project alternatives and concludes the extended time frame to reclamation of the EMSA would increase water quality impacts.

An additional alternative should be analyzed in the DEIR, an alternative that allows no further placement of waste within the EMSA and the immediate removal of all material that has been recently placed there, and **immediate** site restoration. Further, the alternative overburden disposal should have been included in the DEIR. These alternatives would **avoid** the significant and “unavoidable” impacts identified in the DEIR related to the EMSA. The alternatives presented in the DEIR, including the Preferred Project, attempt to address the Project’s significant impacts when Lehigh is finished making them, as opposed to avoidance of impacts or immediate mitigation of existing impacts. Per CEQA and the stated DEIR objectives, alternatives considered must be capable of eliminating or reducing significant environmental effects. The removal of the EMSA would eliminate and/or reduce the significant and unavoidable impacts identified in the DEIR. Per CEQA this alternative is also feasible, capable of being accomplished in a successful manner.

In fact, the County agreement with Lehigh to continue dumping in the EMSA, following the County’s notice of violation states that there is no assurance that the quarry waste will remain if the quarry continues to place it under the agreement. In other words, Lehigh can continue dumping quarry waste at their own risk, knowing they may need to remove it. The alternatives noted above appear superior to the alternative presented in the DEIR since they would remove/ stop an additional source of water quality impact from an operation that is already out of compliance for water quality impacts, would not create additional dust impacts, and would not further substantially degrade visual resources.

Toxics/ Hazardous Materials

Section 4.9 of the DEIR states that “in some cases, past industrial or commercial activities on a site could have resulted in spills or leaks of hazardous materials to the ground, resulting in soil and/or groundwater contamination.” It further states that “at sites where contamination is suspected or known to have occurred, the site owner is required to perform a site investigation and perform site remediation, if necessary.”

The proposed EMSA is a significant concern regarding potential toxic substances associated with the old magnesium and aluminum plant locations. These obvious potential toxic concerns do not appear to have been investigated or evaluated in the DEIR. The quarry waste dumping proposed, particularly around the old graded metals manufacturing building pads and the down-slope edge of proposed EMSA waste is of most concern. Geotechnical fill placement details show that the former metals manufacturing area is proposed to have keyways excavated for the foundation support of the proposed EMSA waste pile. Given the magnesium and aluminum plants that existed in this location from 1941 through the 1990, it is necessary to investigate potential toxics within the existing soil. The potential health risk to mine workers, the surrounding community (including adjacent parkland), surface water, groundwater, and wildlife must be evaluated if toxics are encountered. We are surprised that quarry related disturbance has been allowed to take place, and continues to take place in this location, given the history of the site, without such an investigation. This issue was also raised by others during the DEIR scoping process.

EIR scope/ Baseline

We propose that the DEIR not use the artificial date (2007) to begin its analysis, but instead utilize the prior Reclamation Plan and associated maps and plans as the benchmark starting point. This may help explain why Lehigh at this late date has taken the exceptionally desperate and aggressive approach of beginning to place waste material right out in front of the surrounding communities and adjacent park/open space preserve land. It's possible that Lehigh and their predecessors may have excavated a larger area than previously identified on the mining plans associated with the prior reclamation plan. Another possible indicator of this is that the WMSA, the only dumpsite identified in 1985, has also grown larger and taller than initially envisioned/proposed. The proposed EMSA appears to be the only convenient spot left to dump without filling the existing quarry pit, or hauling the waste material generated offsite. This bold desperate move by the Quarry has unfortunately been aided by past poor County oversight, as documented by the State Division of Mines and Geology, and the recent unsupported Board of Supervisor's “vested” determination.

The baseline utilized in the DEIR certainly should not grandfather the new use of the EMSA just because Lehigh chose to initiate dumping there, knowing full well that the Reclamation Plan Amendment was required. This simply doesn't pass the straight face test.

We have submitted numerous letters on the various iterations of reclamation plan amendments that have spun out of Lehigh and the County recently in an attempt to address quarry non-compliance issues. These issues are not uncommon for a quarry which has been operated intensively for 80 years. There are limitations on available resources and accessible product, and places to dump the waste generated. In fact, the DEIR states that “continued mining in the quarry is becoming infeasible from a geotechnical standpoint” and that regarding the status of the mineral designation, given 100 years of mining, “the reserves of limestone that feasibly can be extracted are approaching their limits.” The recent proposal for a new south quarry pit also seems to substantiate this concern.

We have previously asked for an analysis of where quarry operations actually are in comparison with where the quarry operation was envisioned to be under the prior reclamation plan. This is essential at the quarry pit location, as well as for the proposed EMSA, and is necessary to understand existing conditions, cumulative, and future likely conditions/ impacts. It is particularly important with regard to the depth and area of the existing quarry pit versus the dimensions of record from the 1985 Reclamation Plan. This should clearly be shown.

The EMSA is also very confusing. The DEIR assumes its built, and even states in section 4.7 that “much of the stockpiling activity has already occurred,” yet the visual analysis regarding the visual impact from the PG&E trail at Rancho San Antonio OSP states that that “although the existing overburden deposits are not a dominant feature in the landscape, the substantial increase in the height of the overburden deposit during construction could block views of the scenic mountains behind the EMSA.” It appears through on-site review using the visual analysis presented in the DEIR that much more quarry waste is proposed to be dumped at the EMSA than currently exists. This needs to be rectified for an adequate environmental assessment of potential impacts. The DEIR should clearly detail what is on the ground now at the EMSA to give reviewers a better understanding of the levels of potential impacts being discussed.

This should include all contours and cross-sections at the quarry pit and EMSA as they currently exist, the 1985 reclamation plan final topography and cross-sections, and any proposed new changes in topography. While some contours and cross sections are presented in the DEIR they are often of differing, past dates (2007, 2009 etc.) and the original Reclamation Plan contours and cross-sections are not presented at all. It also appears that the quarry has undergone some substantial changes in the intervening years. The DIER should have an analysis of actual existing conditions compared with the conditions proposed under the former Reclamation Plan and proposed future conditions.

Water quality/ Biological Resource Impacts

The existing selenium-related impacts to Permanente Creek water quality are of serious concern. Permanente Creek exits the Lehigh property and flows through Rancho San Antonio County Park/ Open Space Preserve. The existing selenium related water quality impacts are thus transferred from their

origin on the Lehigh property, to these public recreation facilities, then downstream through residential areas, and finally to the San Francisco Bay. Selenium levels that exceed water quality standards have been noted at both the Lehigh property and also in samples taken from downstream park/open space land.

Lehigh's proposal contained in the Reclamation Plan Amendment is to substantially deepen the existing quarry pit. There are significant problems associated with this related to water quality, particularly selenium. The main source of selenium identified in the Reclamation Water Quality assessment by SES is through groundwater inflow. The deepening of the quarry will substantially increase the volume of groundwater inflow into the quarry pit per the DEIR. To deepen the quarry groundwater will need to be pumped out, as currently occurs. The quarry currently does not have permits or regulatory approval to discharge the groundwater that is currently being intercepted, pumped, and discharged into Permanente Creek, with pollutants in excess of water quality standards. The DEIR proposes not only to allow the existing pollution to continue for another 20-plus years, but proposes to add additional volume, stating that water treatment costs would be too high, and treatment is therefore infeasible.

The quarry pit is a vested part of quarry operations and the operator has the right to quarry there. Fortunately, there is no vested right to pollute water, particularly when that water flows downstream to public resources. The quarry simply needs to stop polluting water as the cost of doing business. We question and strongly disagree with the DEIR assertion that water treatment is infeasible and that the significant and unavoidable water quality pollution impacts would instead simply be allowed to continue, and likely worsen, well into the future.

The two other main sources of selenium pollution identified in the DEIR are runoff from the quarry walls, and runoff from the WMSA. As proposed, the deepening of the quarry pit would extend and increase the quarry wall source, again increasing the source area for selenium. The WMSA is also identified as a significant source of selenium. One has to question the rationale of not only waiting to address the WMSA source of selenium pollution until phase III of the project, while at the same time proposing to build a new substantial source, the EMSA, during phase I. There is a significant ongoing impact that these proposed new changes will add to. This must be addressed within the cumulative impacts analysis in the DEIR.

While the long-term water quality mitigation proposed appears promising, as stated in the DEIR, it must be viewed as speculative until actual implementation and monitoring determine success or not. Avoiding new or expanded sources seems prudent, particularly when water quality standards are already being exceeded. There is no clear understanding of the existing level of impact since the water pollution findings have only recently been discovered. The trend of the selenium pollution is unclear (rising, stable, decreasing). Given the substantial area of recent disturbance, and assumed increase in groundwater pumping due to the quarry floor lowering, it is perhaps best to assume that it could get worse, even if everything were to stop today. There is no need to wait and see while pollution is occurring. Immediate water treatment, avoidance of new practices that could add to the ongoing pollution, and immediate reclamation/ mitigation of existing sources appears necessary. The Project as proposed in the DEIR does not meet the stated project objective of protecting water quality, and does not avoid or eliminate residual hazards to the environment.

Vegetated Buffer

We are in favor of the concept of maintaining a vegetated buffer as proposed within the DEIR. We are however, nervous with including this in the reclamation plan amendment. Our concern is that this reclamation plan amendment is necessary to account for disturbance areas that Lehigh and their predecessors have routinely disturbed well outside of the area approved. We want to be sure that this buffer area is somehow formally dedicated for no disturbance. Inclusion of the buffer into a reclamation plan could also be viewed as an approval to disturb (and then reclaim) consistent with the rest of the quarry operations. The County should be certain that this is not the case. Given the quarry history of disturbance out of bounds, there needs to be some formal assurance that this buffer area is actually an area where no disturbance will occur.

Recreation

We believe that impacts to recreation are substantially greater than identified in the DEIR, in particular the impact of the EMSA. The visual impact of the proposed project is determined to be significant and unavoidable, since it assumes the presence of the EMSA. The 2006 dawning of the EMSA began a significant period of recreational impact. Quarry operations that had until then been separated by a ridgeline from the main public recreation areas of the Rancho San Antonio County Park and adjacent Open Space Preserve, were compromised by new noise, dust, and visual impact. Ranch San Antonio is our most heavily utilized Preserve, with an annual visitation of approximately 500,000 recreationalists. The District has fielded many complaints from our visitors regarding the new quarry operations that have been undertaken immediately adjacent to the Park/Preserve. The EMSA quarry waste pile is immediately evident to visitors, as a new backdrop, upon entry into the Park/Preserve. The view from the PG&E Trail has been compromised by dumped quarry waste, and is projected to grow in height obscuring the scenic ridgeline views beyond. The current view from the scenic Anza Knoll within the County Park is simply staggering given the new quarry waste dump that has leapt up over the past few years. It is not possible to separate the recreational impact from the visual impact. The recreational impact of the Project has to also be characterized as significant and unavoidable. Again, as with many comments before, the EMSA is the reason for the significant impact. The Project rationale that since the EMSA was begun the year before the DEIR established baseline, it is assumed built, attempting to grandfather the impacts as "existing" and are therefore determined to be unavoidable. In reality the EMSA is not constructed, and the impacts or possible alternatives associated with its construction have never been reviewed or addressed under CEQA, by the County, or by the public. The potential impacts are in fact avoidable, if not built.

Flooding/ Hydrology

This section is simply unacceptable as presented in the DEIR. The Santa Clara Valley Water District has estimated that a 100-year flood on Permanente Creek would potentially inundate 3,170 parcels including homes, businesses, schools, public institutions, and road/ highway infrastructure, with an

estimated \$48,000,000 in damages for a single event. This is a huge potential impact if adequate detention through the Project is not feasible. The Lehigh property is quite large when compared to the detention facilities currently being investigated by the Water District. The Project must identify adequate flood water detention built into the reclamation plan.

Thank you for the opportunity to provide comments on the subject DEIR. Please feel free to contact me by email at mbaldzikowski@openspace.org or by phone at 650 691-1200 if you have any questions regarding this or any prior comment letters.

Sincerely,



Matt Baldzikowski
Resource Planner III

Cc: District Board of Directors
Stephen E Abbors, District General Manager
Erin Garner, Chair, State Mining and Geology Board
Jim Pompy, Director, Office of Mine Reclamation
George Shirakawa, President, County of Santa Clara Board of Supervisors

County of Santa Clara

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MEMORANDUM

DATE: September 1, 2011

TO: Marina Rush, Planner
County Planning Office

FROM: Kimberly Brosseau, Park Planner
County Parks Department

SUBJECT: Notice of Preparation of an Environmental Impact Report for the Mining Reclamation Plan Amendment for Permanente Quarry (File No. 2250-13-66-10P (M1) and 10EIR (M1))

The County Parks Department has reviewed the Notice of Preparation (NOP) of an Environmental Impact Report (EIR) for the Permanente Quarry (modification to the existing May 2010 application) for a Mining Reclamation Plan Amendment for issues related to park use, trails, and implementation of the Countywide Trails Master Plan and submits the following comments.

The Trails Element of the Park and Recreation Chapter of the 1995-2010 County General Plan indicates a trail alignment nearby the subject parcel. Per the General Plan, Countywide Trail Route R1-A (*Juan Bautista de Anza NHT*) is located northeast of the project site. The *Santa Clara County Countywide Trails Master Plan Update*, which is an adopted element of the General Plan, designates the countywide trail as a "trail route within other public lands" for hiking, off-road cycling, and equestrian use. This trail route provides an important connection between the City of Cupertino and Rancho San Antonio County Park. The City of Cupertino's Final Stevens Creek Trail Feasibility Study also indicates this trail route as an important connection between Rancho San Antonio County Park and the City of Cupertino.

Visual Resources

The quarry is located adjacent to Rancho San Antonio County Park (Diocese Property). Since the County Parks Department is an adjacent property owner, modifications to the Reclamation Plan should take into account the potential aesthetic/visual impacts of the quarry and mitigation of views from these public parklands and trails.

The project is located in a Zoning District with a Design Review overlay for the Santa Clara Valley Viewshed (d1). It is expected that the applicant will construct as per the submitted plans and comply with design guidelines towards screening the project from public views.



An adequate vegetated buffer between the degraded hillsides and the adjacent County parkland and trails should be incorporated into the Reclamation Plan for the quarry.

Biological Resources

The EIR for the Reclamation Plan Amendment should discuss whether or not the project would have an impact on Permanente Creek and the California red-legged frog (CRLF) and California tiger salamander. The CRLF has mitigation sites on the adjacent Diocese property.

Surface Hydrology, Drainage and Water Quality

The EIR for the Reclamation Plan Amendment should evaluate potential hydrological impacts resulting from any grading, recontouring and seeding of the site. The EIR should also discuss if there are any proposed modifications to the riparian corridor or Permanente Creek. The Reclamation Plan Amendment should also take into account adequate erosion control measures and proposed grading and the potential impacts it may have to the adjacent County parkland and trails.

The Santa Clara Valley Water District (SCVWD) is currently preparing a Final EIR for the Permanente Creek Flood Protection Project, which includes a proposed flood detention basin facility to be constructed, operated and maintained at Rancho San Antonio County Park Diocese Property as the Project's Recommended Alternative. This Permanente Creek Quarry's Reclamation Plan should evaluate future hydrological modifications that may impact the District's Permanente Creek Flood Protection Project for portions of Permanente Creek through Rancho San Antonio County Park.

Noise Impacts

The EIR for the Reclamation Plan Amendment should evaluate any potential noise impacts to the adjacent Rancho San Antonio County Park and impacts that noise from the quarry may have on park users.

Air Quality

The EIR for the Reclamation Plan Amendment should evaluate any potential air quality impacts as a result of the quarry use and associated truck trips generated to and from the quarry on the adjacent Rancho San Antonio County Park and impacts that may have on park users.

The County Parks and Recreation Department appreciates the opportunity to provide comments on the NOP of an EIR for the Permanente Quarry Reclamation Plan Amendment. We look forward to reviewing the EIR once it becomes available. If you have any questions regarding this letter, please contact me at (408) 355-2230 or by email at: Kimberly.Brosseau@prk.sccgov.org.

Sincerely,



Kimberly Brosseau
Park Planner

cc: Jane Mark, Senior Planner
Don Rocha, Natural Resources Management Program Supervisor
Ana Ruiz, Midpeninsula Regional Open Space District



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Midpeninsula Regional Open Space District

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May 17, 2011

Marina Rush, Planner III
County of Santa Clara Planning Office
70 West Hedding Street, East Wing, 7th Floor
San Jose, CA 95110

RE: Notice of Preparation of an EIR Comprehensive Reclamation Plan Amendment and Conditional Use Permit for Permanente Quarry (State Mine ID# 91-43-004)

On behalf of Midpeninsula Regional Open Space District (District), I would like to provide the following comments on the scoping of the Environmental Impact Report (EIR) for the Lehigh Permanente Quarry Comprehensive Reclamation Plan Amendment and Conditional Use Permit (State Mine ID # 91-43-004). The District has previously commented on prior notices of preparation for Permanente Quarry Reclamation Plan Amendments dated June 20, 2007, May 20, 2010, and February 3, 2011. These comments remain valid due in part to the fact that the most current Comprehensive Reclamation Plan Amendment encompasses the same geographic areas. Prior written comments are therefore included as attachments to this comment letter.

The District is deeply troubled that the intent of the 2007 Comprehensive Reclamation Plan Amendment has expanded from an attempt to bring into compliance a grossly out-of-compliance quarry operation, to an Amendment that includes a new 250-acre quarry pit with a new 20-30 year life span. Since the 2007 Amendment, the East Materials Storage Area, referenced as "the main overburden storage site for the mining operation" was activated. The waste pile continues to grow in size even without having completed an adequate visual impact or human health analysis to understand the magnitude of the environmental and cumulative impacts or the mitigation measures that can be put in place to address these issues. In fact, an environmentally superior alternative exists, as is discussed at the end of this letter. The District urges the County to consider this permit review as an opportunity to relocate the waste material into the existing North Quarry rather than increase the existing waste storage area to avoid compounding the visual impacts and scenic easement issues associated with this project.

The following environmental concerns should be addressed in the proposed EIR:

Visual Impacts

The East Materials Storage Area is proposed to transition into the Central Materials Storage Area and result in a new terraced, unnatural ridge composed of dumped quarry waste that would ultimately lie at a considerable height above the natural existing ground surface. If permitted, this proposed new landform would be grossly out of compliance with Santa Clara County's scenic hillside protection policies. The District requests that the visual impact analysis in the proposed EIR include views from Cristo Rey Drive, at the entrance to Rancho San Antonio County Park and Open Space Preserve, and from the PG&E Trail, which lies adjacent to the proposed storage areas. Additionally, the analysis should include vantage points from the nearby scenic Monte Bello Road.

Dust Impacts

Dust impacts to sensitive resources and the recreating public at the adjacent County Park and Open Space Preserve must be analyzed in the proposed EIR. Given the past decades of ongoing quarry operations at this location, cumulative long-term impacts due to dust are of great concern. As such, the District strongly recommends including a continuous air quality monitoring and reporting program as mitigation and as a condition of approval for any future quarry expansion or permit revision. This monitoring and reporting

program should continue through the life of the operation and include monitoring stations within 100 feet of the adjacent PG&E Trail, which passes near the proposed and current materials storage areas. Monitoring parameters should include particulate matter and the suite of potentially toxic substances known to occur in the quarry waste.

Noise Impacts

Noise impacts associated with the proposed and ongoing waste materials storage areas should also be evaluated at the Quarry/Open Space boundary to assess compliance with County noise regulations. To note, according to the Santa Clara County General Plan, the maximum level of noise a new land use (in this case, it is an expanded land use) may impose on neighboring parks, open space reserves, and wildlife refuges, shall be the upper limit of the "Satisfactory Noise Level" (currently at 55 decibels).

Cumulative Impacts

The District is concerned that the currently full West Materials Storage Area has the potential to be re-mined for construction aggregate. This same concern exists for the new proposed storage areas. This concern, and real possibility, highlights the need to evaluate the extended length of use of these sites to then identify, analyze, and mitigate potential cumulative long-term impacts. For example, the cumulative visual impacts associated with the existing and proposed material storage areas need to be thoroughly evaluated against current County hillside protection policies, the existing scenic ridge easement language, and County General Plan goals for park and open space. This analysis should include a historic visual analysis since the visual impact has dramatically increased over time. The cumulative water resources impacts need to evaluate potential impacts to Permanente Creek given that Permanente Creek has been severely impacted by past quarry practices. It is reasonable to assume that an increase in quarry operations consisting of a new 250 acre South Quarry pit within the relatively pristine half of the watershed will result in a substantial cumulative impact.

Alternatives Analysis

Lastly, the EIR should identify and evaluate a range of reasonable alternatives. As previously stated in prior comment letters, feasible alternatives exist for the waste pile that would avoid creating an artificial, ridge-like mound adjacent to public recreation land and within full view of surrounding communities and the valley floor. An alternative that suspends fill placement in the East Materials Storage Area, eliminates the Central Materials Storage Area, and instead immediately begins backfilling the existing North Quarry Pit for reclamation should be evaluated as a potentially superior environmental alternative. This alternative may serve to balance long-standing quarry deficiencies, halt the unprecedented acceleration of visual impacts, and provide the quarry with future raw materials. The no project alternative, and alternatives that allow quarry expansion only on vested property, should also be evaluated as feasible alternatives.

The County's review of the proposed use permit amendment presents an opportunity for the County to reevaluate the current and proposed quarry practices and to identify any changes that would allow the County to more closely and effectively manage quarry operations. The District urges the County to consider this permit review as an opportunity to relocate the waste material into the existing North Quarry rather than increase the existing waste storage area to avoid compounding the visual impacts and scenic easement issues. The District also asks that any mitigation measure identified through the environmental process also be added as a condition of approval of the use permit.

Thank you for the opportunity to provide comments for the scoping of the subject EIR. Please feel free to contact me by email at mbaldzikowski@openspace.org or by phone at 650 691-1200 if you have any questions regarding this or any prior comment letters.

Sincerely,



Matt Baldzikoski, Resource Planner II

cc: District Board of Directors
Stephen E Abbors, District General Manager



Regional
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| 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



OpenSpace

Midpeninsula Regional Open Space District

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Stephen E. Abbots

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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

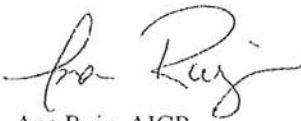
The timeline for waste disposal within the EMSA is also of concern. At the recent April 28th public hearing it was stated that existing quarry sales are 50% of normal. This has the potential to double the projected 5-year timeframe, which already seemed overly optimistic. It is also unclear if the waste 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

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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
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