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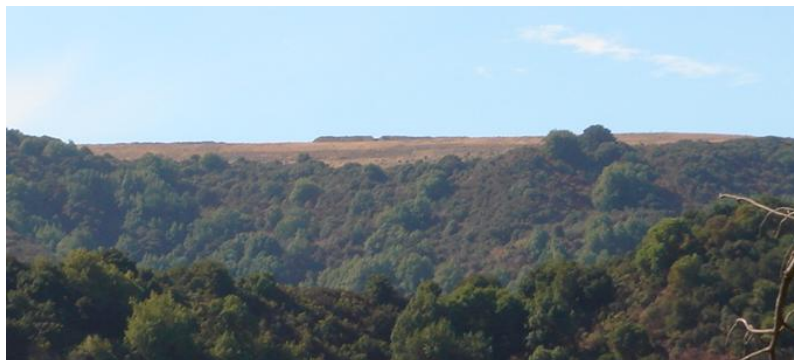
Dear Marina,

QuarryNo hereby responds to the Santa Clara County request for Public comments on the possible environmental issues for the proposed Comprehensive Reclamation Plan Amendment and Conditional Use Permit for Lehigh Permanente Quarry. It should be noted that although we are amending a Reclamation Plan from 1985 there has been no reclamation to date. We repeat there has been no reclamation to date. This is very troubling and brings into question the entire process and regulatory focus.

Our comments below follow in order the Environmental Topics listing in the County Notice of Preparation dated March 10, 2011.

**VISUAL RESOURCES** – The County solicited comments on public scenic view site lines in addition to those shown in the Reclamation Plan. Our concern goes much farther as this is not a new issue.

Kaiser Cement, the original owner, granted a permanent scenic easement (deed dated August 18, 1972) to the County to shield the Quarry from Public view. In addition Condition #8 of the current 1985 Reclamation Plan states that the maximum height of Area A (now designated the West Material Storage Area) shall not exceed the top of the ridgeline.



Today it is clearly visible as a result of Lehigh deliberately and continuously dumping excessive mine waste there. Lehigh has violated a given property right of the Residents of Santa Clara County while the County Supervisors looked on and directed the Staff to take no effective action.

This ridgeline must be restored if the Public is to have any confidence in Lehigh's commitment to be a good neighbor and the Supervisors oath to uphold the law.

Lehigh's disregard for Visual Resources is not a thing of the past but continues today in the Santa Clara County Rancho San Antonio Park where Lehigh has recently dumped mine waste so high as to intrude on Park trails and views. This has been ongoing since 2009 when Lehigh arrogantly but accurately stated in their submitted Reclamation Plan that such dumping will probably be completed prior to any approval.

The purpose of an EIR is to mitigate not just identify environmental impacts. The damage is now irreversible so the request by the County for Public comments on mitigating the impact is disingenuous. The proposed EIR should be expanded to list all irreparable damage that has already occurred not just the impact on the Park. Here is a photo of the view from the PG&E trail in Rancho San Antonio Park.



In addition the current Reclamation Plan dated 1985; the one now being amended here, stated that "Planting under the guidance of this Plan is ongoing" The aerial photo here shows that to be totally false.



Lehigh is willing to promise anything but fails to live up to its promises knowing that the County Board of Supervisors will support its inaction. It is unreasonable to expect the Residents to have any confidence in new steps to preserve the visual environment when prior ones are disrespected by their elected officials and Lehigh... The current view from Highway 280 going North of the Quarry can only be labeled “ugly” as viewed from multiple sight lines.

**BIOLOGICAL RESOURCES** – The entire Biological Resource Assessment (Attachment E) is highly flawed and must be completely redone. It is based on 2-3 year old surveys, studies and field investigations conducted by Lehigh’s consultant WRA in 2008-2009. It alerts one to forthcoming documents in 2010 which are obviously now available.

Worse it is erroneous since Lehigh withheld from WRA the fact that they discharge hundreds of thousands to millions of gallons per day of industrial process water into Permanente Creek as part of normal operations as described in the California Regional Water Quality Control Board Notice of Violation dated February 18, 2011.

Such continuous high flows are not taken into consideration in the WRA study. Instead WRA makes calming statements such as “Portions of the Creek only convey surface water for a few weeks during annual peak rains” on Page 23. Lehigh obviously cannot be trusted.

The preservation of woodland and wildlife is open to question if Lehigh’s past actions are taken into account. A good example is the East Material Storage Area. Here is a before and after photo showing the destruction of native oaks and wildlife habitat.

BEFORE:



AFTER:



All this destruction occurred over the past 2 years as Lehigh expanded into the East Material Storage area without an EIR in place following their then unapproved Reclamation Plan dated April 2009 and even currently not yet approved. The damage has been done in direct violation of CEQA.

Permanente Creek will bisect the area designated by Lehigh for expansion as it will flow directly between the current North Pit and the new South Pit. It will be bridged by a 4 lane road requiring a massive bridge to carry the traffic over it.

The endless lines of trucks bringing limestone out of the Quarry as well other trucks bringing mine waste out to fill the old Pit and the Central Material Storage Area will devastate the surrounding area and certainly Permanente Creek. However nowhere in the submitted Reclamation Plan are there estimates of the bridge traffic. No where is there an analysis of the impact of the traffic on the wildlife there. While the Reclamation Plan addresses Off Site Traffic there is nothing provided for On site traffic. This is a major omission.

We do know that the mine waste trucked over the bridge to the East Material Storage Area alone will total 6.5 million tons. After adding the associated limestone and the Central Storage Area mine waste the amount needed to be trucked over the bridge is staggering. The continuous road dust and rocks falling into Permanent Creek as a result of the bridge traffic has not been identified making the comment "The proposed bridge will span the creek and channel will remain as it currently exists with natural substrate." on page 56 ludicrous.

Permanente Creek downstream is a breeding area for the California Red Legged Frog and the construction of a massive bridge across it sized to carry truck traffic continuously will surely be a final death knell for the "protected" Red Legged Frog living below it. We say protected in quotes as it is obviously not protected here.

The California Red Legged Frog is listed as a Threatened Species under the Endangered Species Act. It gained international fame in Mark Twain's famous short story "The Celebrated Jumping Frog of Calaveras County". They are now present in only 10% of their original habitat.

Lehigh currently has a request in for draining their ponds along the Creek but the Bridge will surely be their final solution for what they regard as the frog problem. Lehigh has long touted their funded studies by Dr. Mark Jennings but an independent Biologist must be retained to confirm the dire outcome that is suggested here for the California Red Legged Frog.

**CULTURAL RESOURCES** -- The Lehigh Quarry and Cement Plant has over 100 years of History in Santa Clara County. Henry Kaiser, an exceptional businessman, at one point lived on the property. During World War II incendiary bombs made of magnesium were produced there. Ownership thereafter changed and with multinational business cycles the Quarry and Cement Plant passed to German ownership.

Regardless of ownership the site was always a source of what we know to be today major pollution. In 2005 it was a top emitter of Mercury producing 1,284 pound while claiming 219 pounds. The mine waste conveniently labeled overburden strewn over the site contains toxins that meet Superfund levels.

Regretfully it can only become a lasting monument to Man's insensitivity to his environment.

**GEOLOGY & SOILS** -- While there is extensive discussion of soil types and factors of safety in the Reclamation Plan there is little confidence provided to the Public that Lehigh will abide by the State Mining and Reclamation Act (SMARA). SMARA is repeatedly quoted with no mention made as to the extensive existing erosion on the site and the high risk of damaging earthquake activity.

SMARA does not allow for an acceptable level of erosion. Any erosion is a violation of SMARA. However the County has failed to inspect and force Lehigh to abide. While the Public sees erosion everyday the County sees nothing. Erosion washes away topsoil, it inhibits revegetation and leads to sediment buildup in streams. There must be a firm plan in the EIR with budgeted resources to demonstrate that the County can properly manage the Lehigh Quarry operation per SMARA.

This is particularly critical as the County is now accepting responsibility to regulate a Conditional Use Permit as well as the current Reclamation Plan. Since 1985 there has been no reclamation. After 26 years we are again promised reclamation. There is no Public confidence it will happen now.

The Lehigh plan is to dig a new 1,000 foot deep Pit in a residential neighborhood which is close to the San Andreas Fault line. We know that the North side of the current Pit is a slopeless vertical wall as a result of earthquake induced landslides. The Berrocal Fault Line runs through the center of the East Material Storage Area (EMSA) and any landslide there promises to go into Permanente Creek, a Federally Threatened Species Habitat, and onto adjacent private property.

Over the next 20 years there is a reasonable expectation of significant seismic activity. Golder Associates, Lehigh's consultant, says there are natural shear lines between the limestone and the greenstone below. Further they say that in some places the final slopes for the South Pit may not be sufficient to preclude instability.

Consequently for these stated risks Lehigh must be accountable for any financial losses that their mining disturbance causes. The Public does not want to inherit the financial exposure after Lehigh has left the scene or sold the operation.

A bond will not suffice and consequently the existing Hanson Permanente Cement Title to the property must include a first lien to the County limited up to the full value of the property for proper remuneration. The public does not want to deal with a far away Bond issuer arguing over the wording of the bond covenants.

Lehigh has deliberately violated SMARA by expanding beyond its Mining Boundaries. The California Office of Mine Reclamation states that this is a Major SMARA Violation. This should be front and center in the proposed EIR but there is no mention or even suggestion of that in the documents presented to the Public. Why is this hidden?

The major residue resulting from the Lehigh operation is the extensive mine waste scattered over the site and affectionately called overburden. According to Attachment H of the Reclamation

Plan (Table 5) the EMSA overburden contains 2.6mg/kg of Arsenic, well above California Health Screening Levels (CHSL).

The same Table 5 states Mercury to be .11mg/kg but Lehigh reported 3 times as much (.31mg/kg) in the rigorous sampling done for the Air District and reported December 6, 2010. In total it appears the overburden is toxic. The assumption in the Reclamation Plan is that it is not. This is a major cover up.

It is very critical in that the overburden mine waste is scattered everywhere and will even be blended into the top soil covering over 700 acres at a depth of only 3 inches. Below that is the toxic mine waste. In addition it will fill the North Pit and be piled high forever contributing toxins into the watershed. After having been blasted out of the ground and crushed it is now much more porous and hence the leaching estimates in the Reclamation Plan are erroneous.

Consequentially there must be extensive testing of the current overburden in the WMSA and the EMSA to determine its true toxicity level and what must be done to remove it. This is a serious issue which is swept under the Reclamation Plan rug.

**Hydrology, Drainage and Water Quality --** Lehigh was served a Notice of Violation (NOV) by the San Francisco Regional Water Quality Control Board on February 18, 2011 for discharging huge volumes of Quarry Pit water into Permanente Creek. In the NOV the Water Board noted Lehigh's failure to correct past violations and its non-compliance attitude.

This NOV was based on prior inspections as well as Lehigh responses to the Water Board particularly the Lehigh response of December 13, 2010. In that response Lehigh stated the volume of water dumped into Permanente Creek ranged from a flow of 250,000 gallons per day to 2,500,000 gallons per day.

This amount of water originating primarily in the Pit bottom overwhelms all natural flows into Permanente Creek yet is not reflected in the Reclamation Plan. Equally significant the content of the water is quite toxic. According to Lehigh this daily discharge is mandatory to operation of the Quarry.



It suggests that we have to make a trade off between Permanente Creek or a new Quarry for the next 20 years. However this is not addressed in the EIR nor are Lehigh's violations listed.

Without County regulation Permanente Creek will be nothing more than a waste water sewer pipe in 20 years.

The Reclamation Plan focuses only on Hydrology and Water Quality when mining stops. The Conditional Use Permit is not addressed but it will govern 117 acres of the operation. The County must delineate in the EIR the terms of the Conditional Use Permit including controls and penalties that will be imposed to prevent the demise of Permanente Creek.

**PUBLIC SERVICES-NOISE ABATEMENT** -- The noise emanating from the facility particularly at night is a public nuisance. The repeated booms from the blasting is even louder but of shorter duration. While Lehigh pledges in their reclamation Plan that there will be no blasting on weekends and at night such blasting is ongoing today. There must be daily fines in the Conditional Use Permit if it continues to occur in the future.

**LAND USE** -- The assumption is made in the Reclamation Plan that the land will eventually be used as Open Space. This is an appealing use as it requires less reclamation cost for Lehigh while at the same time blending into the local landscape. However how this will be assured is unaddressed. Lehigh states that they reserve the right to mine on the land for other materials and even consider other usages so the Open Space designation is questionable. This designation must be certain or else stated as only an attractive yearning.

**AIR QUALITY** -- The omission of the adjoining Cement Plant impact on Air Quality is not acceptable. The two operate as one integrated operation and hence cannot be separated when it comes to Public Health. This will be part of the cumulative impact of concern.

**GREENHOUSE GAS EMISSION** -- Lehigh is the 2<sup>nd</sup> largest emitter of Greenhouse Gases in Santa Clara County. Cars represent only 36% of the CO<sub>2</sub> emissions here with industry generating 43%. Santa Clara County is unique in this regard. However as SB375 is implemented the County will have to force reduction actions on residents to accommodate Lehigh's load as Lehigh's emissions are directly tied to their production.

To stay in production Lehigh must emit CO<sub>2</sub> into the atmosphere as well as Methane and Nitrous Oxide. Methane is 21 times and Nitrous Oxide 310 times in impact as the same amount of Carbon Dioxide. In addition to these emissions Lehigh has a minimum of 100,000 Diesel truck trips per year transporting product to/from the facility.

Each County will be given a target to meet and Santa Clara County will have to make reductions elsewhere to offset the Greenhouse Gas load generated by Lehigh over the next 20 years. According to the California Air Resources Board (CARB) the main focus will be on creating disincentives to drive. These will include new taxes and fees on cars and gasoline plus congestion pricing tolls and parking fees. If these fail CARB suggests even incenting residents to leave.

We cannot shut down power plants but the County Supervisors can limit expansion of Quarries and companion Cement Plants. The EIR must spell out the Greenhouse Gas emissions projected for the next 20 years due to Lehigh operations and detail the impact on residents. Not granting a

Use Permit for a new Quarry is not a choice shown in the Santa Clara County Climate Action Plan. Instead the County is looking for residents to make significant sacrifices to save Lehigh.

**ALTERNATIVES** -- The alternative to digging a new Quarry Pit in a residential area is not to do it. Lehigh possesses another Quarry with dramatically lower Mercury content in Redding California. That limestone can be shipped here by rail at the same cost both in greenhouse gas emissions as well as direct transportation costs. An independent analysis must be done and included in the EIR.

**GROWTH INDUCING IMPACTS** -- We must have Cement but it does not have to be produced locally. Cement is only 10% of the concrete poured today. It can be brought by rail economically and is transported today throughout California. Consequently rather than increasing growth it would appear that Lehigh will reduce growth by making Santa Clara County less appealing to those concerned about their health and the environment. There must be independent studies done at Lehigh's expense to prove the opposite.

**CUMULATIVE IMPACTS** -- There are many cumulative impacts. The combined impact of air borne toxins falling from the sky onto the ground and leaching into the water supply is obvious but unaddressed. The combined impact of a Cement Plant coupled to a Quarry is obvious but unaddressed. More subtle is the cumulative effect of 69 toxins being breathed simultaneously. That is not addressed here either but must be in the draft EIR.

**USE PERMITS** -- This is a topic unaddressed in the NOP but of paramount concern. Use permits are key to the County's ability to regulate the Lehigh Quarry. The elements to be regulated must be identified along with how they will be measured and penalties assessed if they are not met. Their absence here is disquieting.

Thank you for this opportunity to comment and we hope this submission is taken into consideration in the development of the draft EIR.



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