SCCMA Santa Clara County Medical Association

B/S Chair ____
BD of Supv. ✓
Clerk ____

700 Empey Way, San Jose, CA 95128
(408) 998-8850 FAX (408) 289-1064

February 1, 2011

THIS RELATES TO
2·8·11 Item No. 27
Supplemental Information No.
13

To the Board of Supervisors of Santa Clara County:

The Honorable Dave Cortese, District 3
The Honorable Mike Wasserman, District 1
The Honorable George Shirakawa, District 2
The Honorable Ken Yeager, District 4
The Honorable Liz Kniss, District 5

The Santa Clara County Medical Association (SCCMA) recognizes the potential negative impact on public health due to cement plant operations which contribute to global warming and emit a variety of toxic pollutants into the air with direct exposure to the population and the environment of our County. We also recognize that the Lehigh cement plant is the fourth largest emitter of mercury, a potent neurotoxin, from cement plants in the United States. The SCCMA asks that all current violations of the Cupertino site of the Lehigh Southwest Cement Company, including mining operations, be corrected and that as long as the plant operates, new EPA standards for mercury, hydrochloric acid, total particulate matter, and total hydrocarbons be implemented and directly monitored where emitted into the air via a single stack. We also ask that any future violations noted be promptly corrected as a condition of all permits granted.

We ask for full enforcement of the laws and regulations to protect public and environmental health in this region. We are opposed to expansion of any polluting activity in a densely populated area that poses a risk to public health. We support smart and sustainable development with minimal impact on residents or the environment.

In line with the policy of the California Medical Association, if operation and development is allowed, then the plant should conform to pollution limits in line with new EPA rules for cement plants. Any existing cement plant should conform to new EPA limits for mercury at 43 lb/million tons of clinker for existing sources. For any expansion of existing cement plants or new development of cement plants, the plant should use best management practices and conform to the new EPA limit of 14 lb/million tons of clinker. Strict monitoring and enforcement will be necessary for the safety of the surrounding residents.

Societal costs of pollution are immense on an individual and global perspective. It is our goal to support and promote the health and well being of our entire population in Santa Clara County, which not only improves lives but is also cost effective for all of us in the long run.

Respectfully submitted,

Cindy Lee Russell, M.D.
Chair, Environmental Health Committee
Santa Clara County Medical Association

Bill Parrish, CEO
Santa Clara County Medical Association

Regional OpenSpace | Midpeninsula Regional Open Space District

February 3, 2011

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

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

Members of the Board:

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

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

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

Proposed East Materials Storage Area

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

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

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

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

Original Quarry Parcel

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

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

New Proposed South Quarry

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

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

Conclusion

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

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

Sincerely,

Stephen E. Abbors
General Manager
Midpeninsula Regional Open Space District

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

Regional OpenSpace | Midpeninsula Regional Open Space District

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.

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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.

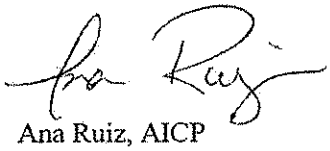
Lack of Reclamation
The visible quarry area continues to grow. The Surface Mining and Reclamation Act (SMARA) requires that reclamation occur concurrently with quarry disturbance activity, yet very little final reclamation has occurred over the substantial period of mining. Waste disposal within the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

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

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

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

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

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

Sincerely,

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

BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT

February 04, 2011

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

Dear Supervisor Cortese:

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

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

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

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

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

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

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

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

1. New emission controls will be designed to significantly reduce emissions of gases that sometimes condense to form a plume that is visible from the cement kiln exhaust. The kiln will also be equipped with a single emission stack, to replace the multiple existing stacks, to enhance the continuous monitoring of emissions.

2. A new Dust Mitigation Plan has been developed to reduce the emissions of dust from various operations at the facility. The elements of the plan will be included as an enforceable condition in the facility's permit.

3. The District has established a comprehensive air monitoring station at the Monta Vista Community Center in Cupertino. Data collected at this site to date show no concerns in terms of unhealthy levels of air pollutants related to the Lehigh facility.

4. The District has begun developing a rule that will require additional control of air pollutants not addressed by the recent EPA rule amendments (in particular, emissions of nitrogen oxides, which contribute to regional levels of smog and fine particulate matter). This District rule will be considered for adoption later this year, and Lehigh's Title V permit will subsequently be revised to incorporate these requirements.

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

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

Sincerely,

Jack P. Broadbent

Jack P. Broadbent
Executive Officer/Air Pollution Control Officer

JB:BFB:bb