

**QUARRYNO**  
**William J. Almon**  
**10570 Blandor Way**  
**Los Altos Hills, CA 94024**  
**www.quarryno.com**

February 2, 2011

The Board of Supervisors  
Santa Clara County  
70 West Hedding St. # 10  
San Jose, CA 95110-1705

*Re: February 8, 2011 Public Hearing Regarding Lehigh's Proposed Vested Rights*

To the Santa Clara County Board of Supervisors;

This hearing is designed to provide the public with the opportunity to comment on Lehigh Southwest Cement Company's (hereinafter "Lehigh") attempt to significantly expand its mining and dumping onto land far beyond its historical operations. Though Lehigh has submitted a lengthy argument in support of its attempted expansion, we have been brought together to address only its "vested rights" contention. As Lehigh has multiple applications to expand its operations pending in Santa Clara County, it is understandably easy to get confused and even fooled by the abundance of documentation and complex legalese Lehigh has put forth. However, we believe one thing is very clear;

**The proposed East Materials Storage Area (hereinafter "EMSA") is not, and has never been a legally "vested" mining or dumping ground.**

As publicly and judicially recognized, to establish a legal nonconforming use (i.e., a vested right), quarrying must have begun on Lehigh's property before the date(s) upon which the Santa Clara County Zoning Ordinance first required a Use Permit for quarrying in that district. Though the "diminishing asset rule" permits a legal nonconforming use to include not only those areas of the property that were actively being mined, but also those areas for which the owner objectively manifested an intent to mine in the future as of the relevant dates, the rule cannot apply to the proposed EMSA. The rule cannot apply because Lehigh did not own, nor was the proposed EMSA operated, or intended to be operated, as a quarry as of the relevant zoning ordinance dates (either on, or prior

to, 1937, 1947 or 1955). In fact, the proposed EMSA was “abandoned” for quarrying and remained unused until 1995, when it was bought back by Lehigh.

For example, a significant portion of the proposed EMSA was sold to Permanente Metals Corporation, a Delaware corporation and independent entity, in 1942 and used for the production of Aluminum and Magnesium. [Please see Exhibit “1” attached hereto]. Subsequently, Permanente Metals Corporation became Kaiser Aluminum and Chemical Corporation, in 1949, and continues to do unrelated business today. Kaiser Aluminum and Chemical Corporation had no use for limestone and did not mine or process it. Their defunct Aluminum plant was sold to Lehigh in 1995.

Another large portion of the proposed EMSA was transferred to Todd California Shipbuilding Corporation in 1941. [Please see Exhibit “2” attached hereto]. Todd California Shipbuilding Corporation became Permanente Metals Corporation thereafter and, later (1949), Kaiser Aluminum and Chemical Corporation for the production of Aluminum and Magnesium.

For further visual clarity, Exhibit “3” attached hereto is a map demonstrating that the proposed EMSA was owned by entities other than Lehigh as of the relevant zoning ordinance dates. In fact, Lehigh itself did not dispute that the proposed EMSA belonged to other entities as far back as 1980, and as recently as 2006.

In a letter dated June 3, 1980, from Lehigh’s counsel to Santa Clara County, Lehigh admitted that “Aluminum presently owns at Permanente approximately 155 acres adjoining a much larger tract of land, approximately 3,300 acres, owned by the Kaiser Cement Corporation. *Although Cement and Aluminum each have the Kaiser name, any historical connection is now gone, and they are separate and distinct, publicly traded companies having different ownership and management.*” [Please see Exhibit “4”, page 1, paragraph 2, attached hereto][emphasis added]. This admission clearly contradicts Lehigh’s allegedly “integrated” and “interdependent” operation as described by Lehigh’s current counsel in its January 4, 2011 submission to the Board of Supervisors.

Notwithstanding this obvious contradiction, we find Lehigh’s August 10, 2006 submission to the Board of Supervisors most surprising. In that submission, and through Lehigh’s same current counsel, it was represented that

“[n]ext to the Cement Plant is the former aluminum plant site, which covers approximately 153 acres. *The site was under completely separate ownership from the Quarry until 1995, when the owners sold the defunct plant to Kaiser Cement. The aluminum plant is not used, nor has it ever been used, to process mined material from Permanente Quarry.*” [Please see Exhibit “5”, page 3, paragraph 2, attached hereto][emphasis added].

Again, the “diminishing asset rule”, permits a “vested right” to include not only those areas of the property that were actively being mined, but also those areas for which the owner objectively manifested an intent to mine in the future. It is clear from the historical record, as well as Lehigh’s own submissions, that Lehigh did not own the proposed EMSA, nor was the proposed EMSA operated, or intended to be operated, as a quarry as of the time legally requisite.

As such, Lehigh’s argument that the proposed EMSA is “vested” and, therefore, can be operated freely without a Use Permit or County oversight is simply without merit. It would appear that a conclusion otherwise could only result if the historical land transfers, Lehigh’s admissions and prior nonuse is universally ignored. We sincerely hope that the substantial body of evidence against Lehigh’s “vested” right is not disregarded.

Should Lehigh wish to operate legally on the proposed EMSA, it must abide by and adhere to the same administrative regulations as every other quarrying entity in Santa Clara County. Lehigh must apply for, and obtain, a Use Permit. It must not be allowed to continue operating in the proposed EMSA without County oversight and approval. In addition, Lehigh’s ongoing dumping of mine waste in the proposed EMSA must cease until there is an EIR in place per CEQA. California law mandates as much.

Finally, though we recognize that Lehigh may apply for a Use Permit for the proposed EMSA, we believe that any such permit should not be approved until Lehigh properly restores its West Materials Storage Area (hereinafter “WMSA”). Lehigh’s prior reprimand to restore the WMSA to its deeded height restriction and its several representations to plant trees on the damaged areas remain unfulfilled.

It is important for the Board of Supervisors to understand that the Public has lost confidence in Lehigh’s numerous unkept promises. We feel that it is quite reasonable that Lehigh fulfill its prior commitments before new

ones are considered. It must not be forgotten that the WSMA was originally approved only as a *temporary* location for mine waste. Yet, Lehigh has been allowed to dump freely at the WMSA for years without restrictions, any public hearings or County recognition.

Notwithstanding its prior transgressions, Lehigh is now trying to get hold of a “vested” right in unspoiled land it only recently obtained. The Board of Supervisors must not let this occur. Lehigh’s historical disregard for Santa Clara County must be brought to an end.

Bill Almon

Acting for the Members QuarryNo

**EXHIBIT "1"**







**EXHIBIT "2"**

4-12-1941

1009-408

U. S. INT. REV. STAMP CANCELLED

THIS INDENTURE, made and entered into this 10th day of April, 1941, by and between The Permanente Corporation, a California corporation, hereinafter referred to by its corporate name, and Todd-California Shipbuilding Corporation, a Delaware corporation, hereinafter referred to by its corporate name,

WITNESSETH: That for and in consideration of the sum of Ten Dollars (\$10.00) lawful money of the United States of America, the receipt whereof is hereby acknowledged, The Permanente Corporation does hereby grant, bargain and sell to Todd-California Shipbuilding Corporation all that real property situated in the County of Santa Clara, State of California, more particularly described as follows:

PARCEL A: All that real property situated in Section 16 of Township 7 South, Range 2 West, M.D.B. & M., in the County of Santa Clara, State of California, being a portion of that parcel of land described as "Parcel No. 7" and conveyed to The Permanente Corporation by the Santa Clara Holding Co., Ltd., by Deed recorded July 12, 1939 in Book 942 of Official Records of Santa Clara County, California, at page 290 thereof, particularly described as follows:

Beginning at a point in the Southwesterly line of Rancho San Antonio, which point of beginning is distant thereon South 45° 10' East 182.23 feet from an iron pipe monument marking the most Westerly corner of that certain tract of land designated "Parcel No. 1" in that certain deed to the Santa Clara Holding Co., dated January 18, 1934 and recorded in Book 678 of the official records of said County, at page 428 thereof, said point of beginning being also the most Northerly corner of that certain tract of land described in the Deed from The Permanente Corporation to the Southern Pacific Company, dated March 22, 1941, recorded March 25, 1941 in Volume 1029, page 210, Official Records of Santa Clara County, which tract of land will be hereinafter designated "Parcel No. 13" (for purposes of this description, the bearing of said line of Rancho San Antonio is marked upon the ground by said iron pipe monument at the most Westerly corner of "Parcel #1" and by an iron pipe monument distant thereon Northwesterly 1672.60 feet from said corner of "Parcel No. 1" and is taken as South 45° 10' East). Running thence from said point of beginning on and along the Northwesterly line of said "Parcel No. 13" so conveyed to Southern Pacific Company, South 35° 08' 20" West a distance of 1760.00 feet; thence leaving said line of "Parcel No. 13" North 88° 44' 10" West a distance of 1070.00 feet; thence North 38° 29' 10" West a distance of 700.00 feet; thence North 51° 30' 50" East a distance of 200.00 feet; thence South 33° 29' 10" East a distance of 472.71 feet; thence North 35° 08' 20" East a distance of 916.04 feet; thence South 54° 51' 40" East a distance of 350.0 feet; thence North 35° 08' 20" East a distance of 1304.96 feet to a point in said Southwesterly line of Rancho San Antonio; thence along said line of Rancho San Antonio South 45° 10' East a distance of 710.14 feet, more or less, to said point of beginning, containing 47.5 acres, more or less of land.

PARCEL B: All that real property situate in Section 16 of Township 7 South, Range 2 West, M.D.B. & M., in the County of Santa Clara, State of California, being a portion of that parcel of land described as "Parcel No. 7" and conveyed to The Permanente Corporation by the Santa Clara Holding Co., Ltd., by Deed recorded July 12, 1939 in Book 942 of Official Records of Santa Clara County, California, at page 290 thereof, particularly described as follows:

Beginning at a point on the Southwesterly line of Rancho San Antonio, distant thereon South 45° 10' East 295.82 feet from a 3/4" iron pipe monument marking the most Westerly corner of that certain tract of land designated as "Parcel No. 1" in that certain Deed to Santa Clara Holding Co., dated January 18, 1934 and recorded in Book 678 of Official Records of Santa Clara County at page 428 thereof, said point of beginning being also the most Easterly corner of that certain tract of land described in the Deed from The Permanente Corporation to the Southern Pacific Company, dated March 22, 1941, recorded March 25, 1941 in Volume 1029, page 210, Official Records of Santa Clara County, which tract of land will be hereinafter designated "Parcel No. 13". Running thence from said point of beginning on and along the Southeastly line of said "Parcel No. 13" South 35° 08' 20" West a distance of 120.00 feet; thence leaving said line of Parcel No. 13 South 45° 10' East a distance of 132 feet, more or less, to a point on the right-of-way line of the Permanente Creek County Road, as said Road was established by Deed from Alice H. Swain et al, to County of Santa Clara, recorded February 16, 1894 in Book 170 of Deeds, page 10; thence Northeasterly on and along the Northwesterly right-of-way line of said County Road a distance of 120 feet, more or less, to the point of intersection thereof with said Southwesterly line of Rancho San Antonio; thence along said line of Rancho San Antonio North 45° 10' West a distance of 146 feet, more or less, to said point of beginning, containing 0.4 acres of land, more or less.

TOGETHER with the following rights-of-way and easements:

(a) To enter upon, construct and maintain necessary drainage structures and roads, and to use the same jointly and concurrently with The Permanente Corporation, within a strip of land 125 feet in width lying Southeastly from and contiguous to the Southeastly line of said "Parcel No. 13" heretofore conveyed by The Permanente Corporation to the Southern Pacific Company as aforesaid, and extending Southwesterly from said Southwesterly line of Rancho San Antonio a distance of 2800 feet.

(b) To enter upon said Parcel No. 13 and construct thereon an over-pass structure for roadway purposes and to maintain and use such structure for such purposes at the place, to the extent and in the manner that the right to construct, maintain and use the same was reserved by The Permanente Corporation to itself, its successors, grantees and assigns, in that certain deed from The Permanente Corporation to the Southern Pacific Company

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dated March 22, 1941 and recorded March 25, 1941 in Book 1029 of Official Records, page 210, of the records of Santa Clara County, California.

(c) To construct, maintain, use and operate railroad tracks, roadways and drainage structures within the following described area:

Commencing at a point in the Southerly line of "Parcel A" as herein described, distant thereon 400 feet Westerly from the most Southerly corner thereof; thence Southerly at right angles to said Southerly line of "Parcel A" to the existing spur track owned and operated by The Permanente Corporation; thence Southerly along said spur track to the Northwesterly line of "Parcel No. 13"; thence Northeasterly along said line of "Parcel No. 13" to the most Southerly corner of said "Parcel A"; thence along the Southerly line of "Parcel A" to the said point of commencement.

and to connect at any point within the last described area any railroad spur track to the existing spur track owned and operated by The Permanente Corporation; and the right to use the existing spur track from said point of connection Southerly to the junction with the Southern Pacific Company railroad tracks in Parcel No. 13.

(d) To use concurrently with The Permanente Corporation the interchange yard railroad facilities within said "Parcel No. 13".

(e) To dispose of excavated earth on the lands of The Permanente Corporation at such locations and as to such shape of embankment and in such manner as may be mutually agreed upon by the parties hereto, provided, however, that Todd-California Shipbuilding Corporation shall install all necessary drainage facilities where any such embankment may interfere with natural drainage.

(f) To use all spur tracks and sidings now or hereafter constructed and owned by The Permanente Corporation upon land not hereby conveyed by The Permanente Corporation to Todd-California Shipbuilding Corporation, provided such use does not unreasonably interfere with the use thereof by The Permanente Corporation.

Before placing any structure or facility upon the said rights-of-way and easements, the Todd-California shipbuilding Corporation shall submit to The Permanente Corporation for prior approval all plans and specifications covering such structures and facilities.

RESERVING, however, to The Permanente Corporation, its successors, grantees and assigns, from the tracts of land particularly described as Parcel A and Parcel B above, rights-of-way and easements as follows:

The right at any time or times and from time to time, to construct, repair, maintain and use for all purposes, roads, pipelines, sewers, conduits, telephone and telegraph wires and poles and wires and poles for conducting electricity, under, upon or over the property hereby conveyed, provided, however, that such structures shall be so constructed and used as not unreasonably to interfere with the use by Todd-California Shipbuilding Corporation of said land for its purposes, and provided further, that such structures and uses shall be confined to the strips of land generally described as follows:

(1) A strip of land 40 feet in width, commencing at the most Easterly corner of "Parcel B" as herein described, which corner is in the Northwesterly right of way line of the County Road known as Permanente Creek Road; running thence Westerly across said "Parcel B" and continuing Westerly across said "Parcel No. 13" which was conveyed by The Permanente Corporation to the Southern Pacific Company as aforesaid; thence, continuing Westerly across "Parcel A" as herein described and curving to the left into a direct line parallel to and perpendicularly distant approximately 175 feet Northwesterly from the Southeasterly line of said "Parcel A"; thence Southwesterly parallel with said Southeasterly line of "Parcel A" to the Southerly line thereof; thence Northwesterly over a strip of land lying Northerly from and contiguous to the Southerly line of said "Parcel A" and continuing Northwesterly along a strip of land lying Northeasterly from and contiguous to the Southwesterly line of "Parcel A" to the Northwesterly line of said "Parcel A".

(2) A strip of land 30 feet in width lying Northwesterly from and contiguous to the Southeasterly line of "Parcel A" and extending from the Southerly line of "Parcel A" Northeasterly to the Northeasterly line of "Parcel A".

Todd-California Shipbuilding Corporation may use both of said last described strips of land concurrently and jointly with The Permanente Corporation for any or all of said purposes or for any other purposes which do not unreasonably interfere with the rights reserved to The Permanente Corporation. Any roads constructed by either Todd-California Shipbuilding Corporation or The Permanente Corporation on said strips of land may be used by the other.

Todd-California Shipbuilding Corporation does hereby grant to The Permanente Corporation the right to use all spur tracks and sidings now or hereafter constructed and owned by Todd-California Shipbuilding Corporation upon the land hereby conveyed and upon land upon which it is hereby granted an easement and right to construct such spur tracks and sidings, provided such use does not unreasonably interfere with the use thereof by Todd-California Shipbuilding Corporation.

TO HAVE AND TO HOLD all and singular the said premises, together with the appurtenances, subject, however, to the grant and reservation, as the case may be, of the respective rights-of-way and easements hereinabove described.

All grants and reservations herein contained shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, the parties have executed this indenture in duplicate original, the day and year first hereinabove written, by their proper officers first thereunto duly authorized.  
(CORPORATE SEAL)

THE PERMANENTE CORPORATION  
By Edward H. Heller, Vice-President  
By Paul E. Rogers, Assistant-Secretary  
TODD-CALIFORNIA SHIPBUILDING CORPORATION  
By G. G. Sherwood, Treasurer  
By E. E. Trefethen, Jr., Secretary

STATE OF CALIFORNIA, CITY AND )  
COUNTY OF SAN FRANCISCO ( ss.

On this 10th day of April, in the year 1941, before me, Lulu P. Loveland, a Notary Public in and for the City and County of San Francisco, State of California, residing therein, duly commissioned and sworn, personally appeared Edward H. Heller, known to me to be the Vice-President of The Permanente Corporation, the corporation that executed the within instrument, and known to me to be the person who executed said instrument on behalf of said corporation, and acknowledged to me that said corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in said City and County of San Francisco, the day and year in this certificate first above written.  
(NOTARIAL SEAL)

Lulu P. Loveland, Notary Public in and for the City and County of San Francisco, State of California.

My commission expires: December 8th, 1942.  
STATE OF CALIFORNIA )  
COUNTY OF ALAMEDA ( ss.

On this 10th day of April, in the year 1941, before me, Nellie I. Phillips, a Notary Public in and for the County of Alameda, State of California, residing therein, duly commissioned and sworn, personally appeared Paul E. Rogers, known to me to be the Assistant Secretary of The Permanente Corporation, the corporation that executed the within instrument and known to me to be the person who executed said instrument on behalf of said corporation, and acknowledged to me that said corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in said County of Alameda, the day and year in this certificate first above written.  
(NOTARIAL SEAL)

Nellie I. Phillips, Notary Public in and for the County of Alameda, State of California.

My commission expires: April 17, 1944.  
STATE OF CALIFORNIA )  
COUNTY OF ALAMEDA ( ss.

On this 10th day of April, in the year 1941, before me, Nellie I. Phillips, a Notary Public in and for the County of Alameda, State of California, residing therein, duly commissioned and sworn, personally appeared G. G. Sherwood and E. E. Trefethen, Jr., known to me to be the Treasurer and Secretary, respectively, of Todd-California Shipbuilding Corporation, the corporation that executed the within instrument and known to me to be the persons who executed said instrument on behalf of said corporation, and acknowledged to me that said corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in said County of Alameda, the day and year in this certificate first above written.  
(NOTARIAL SEAL)

Nellie I. Phillips, Notary Public in and for the County of Alameda, State of California.

My commission expires: April 17, 1944.

FILING NO. 215135

Filed for record at the request of California Pacific Title & Trust Company Apr 12 1941 at 39 min. past 10 o'clock A.M.

CHAS. A. PAYNE, RECORDER  
M. W. Emlen Deputy Recorder  
compared book: *[Signature]*

fee 4.10 35f  
compared doc

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THIS DEED OF TRUST, made this 29th day of March, 1941, between L. L. Goodrich and V. D. Goodrich, her husband, as Trustor, ("Trustor" to be interpreted as "Trustors" where context requires), Corporation of America, a California corporation, as Trustee, and Bank of America National Trust and Savings Association, a national banking association, as Beneficiary,

WITNESSETH: That trustor irrevocably grants, transfers and assigns to trustee, in trust, with power of sale, the following described property situate in the County of Santa Clara, State of California, to-wit:

Lot One (1) in Block Three (3) as laid down, designated and delineated upon that certain Map entitled, "Map of Re-survey of Country Club Heights, part of Pala Rancho,

*[Handwritten notes and signatures]*

1046 O.R. 265

Being a part of said lot 9 of said Block 1, Map of said Subdivision No. 7 of the Seale Tract.

In witness whereof the said first party has executed this conveyance this 17th day of June 1941.

Melbert H. Burdick

STATE OF CALIFORNIA

COUNTY OF SAN MATEO (SS) On this 17th day of June in the year of our Lord one thousand nine hundred and forty one before me, Floyd Lowe a Notary Public in and for said County of San Mateo, State of California, residing therein, duly commissioned and sworn, personally appeared Melbert H. Burdick known to me to be the person described in and whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal at my office in said County of San Mateo, the day and year in this certificate first above written.

(NOTARIAL SEAL)

Floyd Lowe, Notary Public in and for said County of San Mateo, State of California. My commission expires Aug. 28, 1944. FILING NO. 226855

Filed for record at the request of California Pacific Title & Trust Company Jun 20 1941 at 41 min past 4 o'clock P.M.

CHAS. A. PAYNE RECORDER E.B. O'Brien Deputy Recorder

fee 1.00

compared doc. [Signature] compared book [Signature]

DEED

THIS DEED made this 5 day of May, 1941, by the The Roman Catholic Archbishop of San Francisco, a corporation, sole, as grantor, to The Permanente Corporation a (California) corporation, as grantees.

WITNESSETH: The grantor hereby grants to the grantees that certain tract of land situate in the County of Santa Clara State of California, which comprises a part of the southwest quarter of section 17, Township 7 south, range 2 west, M.D.B. & M., and which is particularly described as follows:

Beginning at an iron pin set for the quarter section corner between Secs. 17 and 20, T. 7 S., R. 2 W., M.D.B. & M. from which is set an iron pipe on side, S. 89° 51' E. 201.50 feet; thence N. 89° 51' W. 18.16 chs. to a stake from which bears a live oak tree with a blue and a round tin S. 89° 13' E. 26.80 feet; thence N. 1° 28' W. 22 chs. to a stake; thence S. 89° 51' E. 18.16 chs. to a stake; thence S. 1° 28' E. 22 chs. to the place of beginning, containing 40 acres and being part of the southwest quarter of said section 17, T. 7 S., R. 2 W., M.D. B. & M.

To have and to hold the above described property unto the grantees and its successors and assigns forever.

In witness whereof the grantor executes this deed by its duly constituted incumbent the day and year first hereinabove written.

THE ROMAN CATHOLIC ARCHBISHOP OF SAN FRANCISCO, a corporation sole by John F. Mitty, Its Incumbent

(CORPORATE SEAL)

STATE OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO (SS) On this fifth day of May 1941 before me, Henry J. O'Connor, a Notary Public in and for said City & County of San Francisco, duly commissioned and sworn, personally appeared John F. Mitty known to me to be the incumbent of the Corporation that executed the within and annexed instrument and acknowledged to me that such Corporation executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal at my office in said City and County of San Francisco, the day and year in this certificate first above written.

(NOTARIAL SEAL)

Henry J. O'Connor, Notary Public in and for said City and County, State of California. FILING NO 226854

Filed for record at the request of San Jose Abstract & Title Insurance Co. Jun 20 1941 at 44 min past 4 o'clock P.M.

CHAS. A. PAYNE RECORDER John Thomas Deputy Recorder

fee 1.00

compared doc. [Signature] compared book [Signature]

GRANT DEED

Ms. Elvira G. Wick, and Frank Wick, husband and wife, do hereby grant to Mr. E. [Name] and Mrs. [Name], his wife, as joint tenants all that real property situate in the County of Santa Clara State of California, described as follows:

81

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(NOTARIAL SEAL)

F.W. Hilton Notary Public in and for the County of Santa Clara, State of California.

FILING NO. 217302

Filed for record at the request of San Jose Abstract & Title Insurance Co. May 7 1941 at 51 min past 4 o'clock P. M.

Fee 1.00 of

Compared Doc

5-19-1941

CHAS. A. PAYNE RECORDER

J.H. Thomas Deputy Recorder

compared book

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THIS INSTRUMENT made and entered into this 16th day of May, 1941, by and between The Permanente Corporation, a California corporation, hereinafter called "Permanente", and Todd-California Shipbuilding Corporation, a Delaware corporation, hereinafter called "Todd",

WITNESSETH: That for and in consideration of the sum of ten dollars (\$10.00) lawful money of the United States of America, and other good and valuable considerations, the receipt whereof is hereby acknowledged, Permanente does hereby grant, bargain, sell and convey to Todd all that real property situated in the County of Santa Clara, State of California, more particularly described as follows:

All that real property situate in Section 16 of Township 7 South, Range 2 West M.D.B. & M. in the County of Santa Clara, State of California, being a portion of that certain parcel of land described as "Parcel No. 7" and conveyed to The Permanente Corporation by the Santa Clara Holding Co., Ltd., by deed recorded July 12, 1939 in Book 942 of Official Records of Santa Clara County, California, at page 290 thereof, particularly described as follows:

Beginning at a point in the northwesterly line of that certain tract of land designated "Parcel A" in that certain deed from The Permanente Corporation to Todd-California Shipbuilding Corporation dated April 10, 1941 and recorded April 12, 1941 in the office of the County Recorder of said Santa Clara County, in Volume 1029 of Official Records at page 408 thereof, distant thereon South 35° 08' 20" West 1304.96 feet from the most northerly corner of said "Parcel A"; running thence from said point of beginning North 54° 51' 40" West a distance of 803.55 feet; thence South 35° 08' 20" West a distance of 981.75 feet to that certain angle point in the boundary line of aforesaid "Parcel A" lying between the courses respectively designated North 51° 30' 50" East and South 38° 29' 10" East in aforesaid deed from The Permanente Corporation to Todd-California Shipbuilding Corporation; thence on and along the boundary line of said "Parcel A" South 38° 29' 10" East a distance of 472.71 feet to an angle point; thence, continuing along said boundary line of "Parcel A", North 35° 08' 20" East, a distance of 915.04 feet to an angle point; thence continuing along said boundary line of "Parcel A", South 54° 51' 40" East, a distance of 350.00 feet to an angle point; thence continuing along said boundary line of "Parcel A", North 35° 08' 20" East a distance of 200.00 feet, more or less, to said point of beginning; containing 12.52 acres, more or less, of land.

TO HAVE AND TO HOLD all and sundry, the said premises together with the appurtenances.

IN WITNESS WHEREOF said The Permanente Corporation has caused its corporate name to be hereunto subscribed and its corporate seal to be hereunto affixed by its officers first thereunto duly authorized on the day and year hereinbefore first written.

(CORPORATE SEAL)

THE PERMANENTE CORPORATION

By E.E. Trefethen, Jr.

By G.G. Sherwood

Vice President

Assistant Secretary

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10991-44

STATE OF CALIFORNIA )  
COUNTY OF ALAMEDA )SS

On this 16th day of May in the year 1941, before me, Paul E. Rogers, a Notary Public in and for the County of Alameda, State of California, residing therein, duly commissioned and sworn, personally appeared E.E. Trefethen, Jr. and G.G. Sherwood, known to me to be the Vice-President and Assistant Secretary respectively of The Permanente Corporation, the corporation that executed the within instrument, and known to me to be the persons who executed said instrument on behalf of said corporation, and acknowledged to me that said corporation executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal. at my office in said County and State, the day and year of this certificate first written. (NOTARIAL SEAL)

Paul E. Rogers Notary Public in and for the County of Alameda, State of California.

My commission expires: Oct. 23, 1944

FILING NO. 218212

Filed for record at the request of California Pacific Title & Trust Company May 19 1941 at 28 min past 11 o'clock A. M.

CHAS. A. PAYNE RECORDER

M. W. Emlen Deputy Recorder

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Compared doc

compared book

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DEED OF TRUST

THIS DEED OF TRUST made the 3rd day of May A.D. 1941, between C.A. Schaufel and Francis Schaufel, his wife, as trustor, and A.J. Tyler as trustee, and Louisa Pratt, and Edwina M. Hindle, mother and daughter, as joint tenants, as beneficiary.

WITNESSETH: That said trustor hereby grants, conveys and confirms unto said trustee the following described real property situated in the County of Santa Clara, State of California, to wit:

Portions of plots 14 and 18, as shown upon that certain map entitled, "Map of Davis & Cowell Tract", which map was filed for record in the office of the Recorder of the County of Santa Clara, State of California, on September 10, 1885 in Book B of Maps, at page 28, and more particularly described as follows:

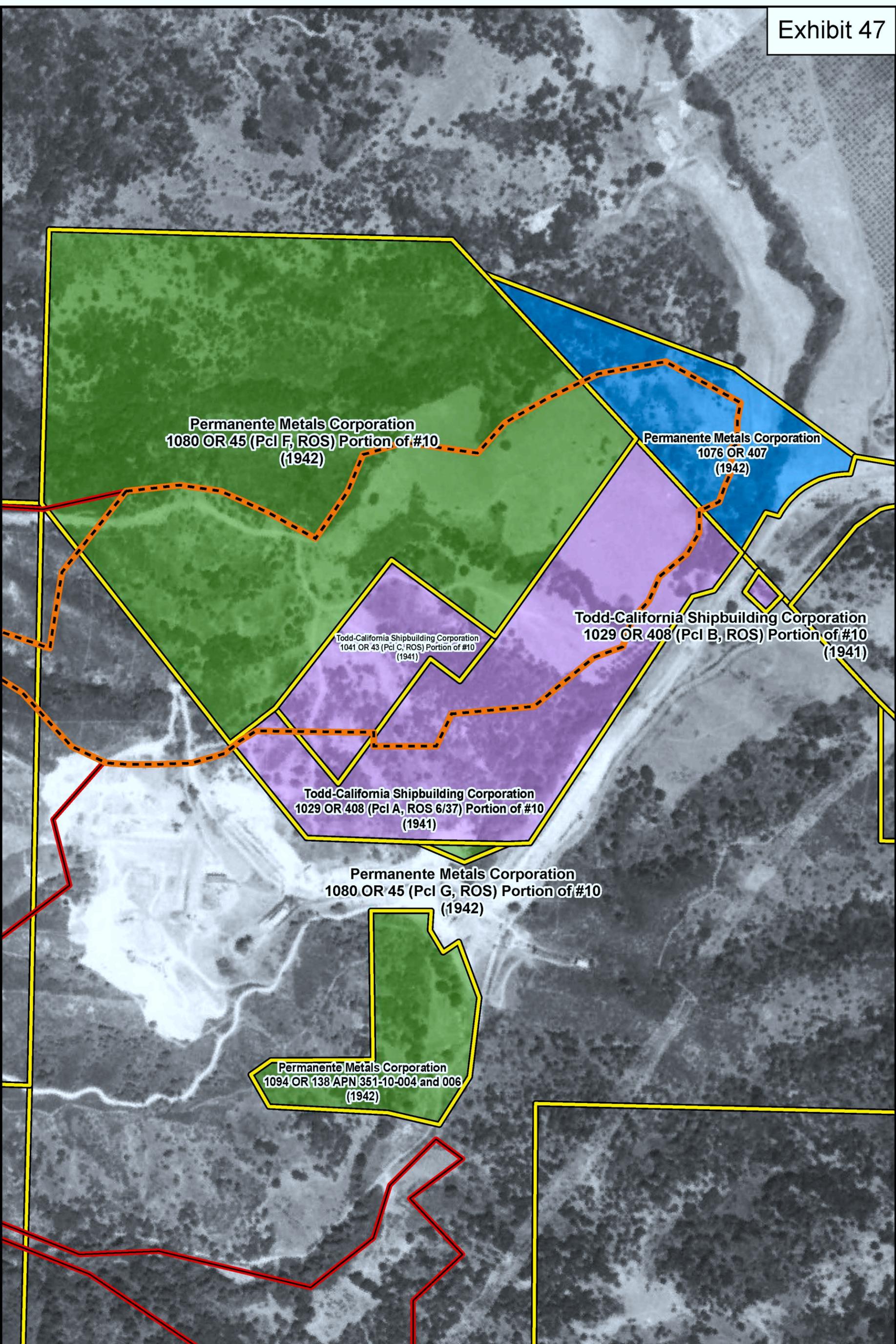
Beginning at the northeastern corner of Plot 14, as said Plot is shown upon the map above referred to; thence running along the northern line of said Plot 14 North 89° 45' West 268.89 feet to the northeastern corner of the 0.8712 acre tract described in the deed from Edna S. Lewis et ux, to Eugene J. Pontacq et ux, dated December 13, 1940 and recorded December 13, 1940 in Book 1019 O.R. page 91, Santa Clara County Records; thence South 0° 22' West 109.92 feet along the eastern line of said 0.8712 acre tract to the southeastern corner thereof; thence North 89° 38' West along the southern line of said 0.8712 acre tract 238.42 feet to the northeastern line of that certain 0.311 acre tract of land excepted from the description of Parcel 1 in the deed from Lillie T. Stewart et vir, to Gertrude E. Orendorff et vir, dated March 29, 1934, and recorded May 19, 1934 in Book 681 O.R. page 574, Santa Clara County Records; thence along the northeastern line of said 0.311 acre tract South 43° 29' East 98.75 feet to the northern line of North Quarry Road; thence easterly along the northern line of said road with its sinuosities, said northern line being 10 feet northerly from the center line of said road to the eastern line of said road to the eastern line of said Plot 14; a straight line between the extremities of said northern line bearing North 86° 20' East 436.75 feet, thence along the eastern line of said Plot 14 North 1° 36' East 150.60 feet to the point of beginning.

Assignment recorded MAR 3 1942 in Book 1079 of Official Records Page 506

1317



**EXHIBIT "3"**



Permanente Metals Corporation  
1080 OR 45 (Pcl F, ROS) Portion of #10  
(1942)

Permanente Metals Corporation  
1076 OR 407  
(1942)

Todd-California Shipbuilding Corporation  
1041 OR 43 (Pcl C; ROS) Portion of #10  
(1941)

Todd-California Shipbuilding Corporation  
1029 OR 408 (Pcl B, ROS) Portion of #10  
(1941)

Todd-California Shipbuilding Corporation  
1029 OR 408 (Pcl A, ROS 6/37) Portion of #10  
(1941)

Permanente Metals Corporation  
1080 OR 45 (Pcl G, ROS) Portion of #10  
(1942)

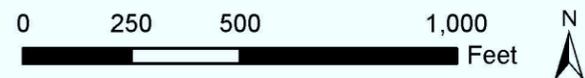
Permanente Metals Corporation  
1094 OR 138 APN 351-10-004 and 006  
(1942)

**Permanente Acquisition History (Metals)**

- Permanente Corporation to Permanente Metals Corporation
- Permanente Corporation to Todd-California Shipbuilding Corporation
- Roman Catholic Archbishop of SF to Permanente Metals Corporation

- Legal Lots
- Proposed EMSA RPA
- Proposed Comprehensive RPA

Background: 1939 Aerial



This map created by Santa Clara County Planning Office. The GIS data was compiled from various sources. While deemed reliable, the Planning Office assumes no liability. Permanente Road digitized based on Book 170 of the Official Record page 10 and Record of Survey 302353 recorded Jan 1944  
01/18/2011 - Y:\Matt\permanente quarry\projects\permanente road v7 EMSA.mxd

**EXHIBIT "4"**

3-111  
Ruffo

RUFFO, FERRARI & MCNEIL

A PROFESSIONAL CORPORATION

SUITE 1300, BANK OF AMERICA BLDG.  
101 PARK CENTER PLAZA  
SAN JOSE, CALIFORNIA 95113  
(408) 287-2233

PALO ALTO OFFICE  
550 HAMILTON AVENUE  
PALO ALTO, CALIFORNIA 94301  
(415) 327-3233

RE FILE NUMBER \_\_\_\_\_

June 3, 1980

Selby Brown, Esq.  
County Counsel  
County of Santa Clara  
70 West Hedding Street  
San Jose, California

Re: Kaiser Aluminum Permanente Plant

Dear Selby:

This letter is in response to our recent telephone conversation. I understand that preparatory to our meeting now scheduled for your office for June 25 at 10:00 o'clock a.m., you desire that I provide you with some background facts concerning the land use history of the Kaiser Aluminum and Chemical Corporation property and the land use questions that we will be discussing.

I have for some time been attempting to gather information concerning the land use history of Kaiser Aluminum's Permanente property, but with mixed results thus far. Aluminum presently owns at Permanente approximately 155 acres adjoining a much larger tract of land, approximately 3,300 acres, owned by the Kaiser Cement Corporation. Although Cement and Aluminum each have the Kaiser name, any historical connection is now gone, and they are separate and distinct, publicly traded companies having different ownership and management.

Aluminum commenced operations at Permanente under the name "Todd-California Shipbuilding" when it purchased a portion of its present property in 1941 and erected and operated a magnesium plant used in the war effort. The plant was located on a 47.5 acre parcel of property, which parcel is now part of Aluminum's 155 acres.

In 1941 Aluminum contacted the County for necessary governmental building and use permits and was advised by the then District Attorney that no use permit was necessary for the magnesium plant under the then existing County ordinances.

In that same year, the company changed its name to Permanente Metals Corporation. (In 1949, the name was changed to the present

Law Offices of  
RUFFO, FERRARI & McNEIL

Selby Brown, Esq.  
June 3, 1980  
Page 2

corporate name.)

In 1942 the company desired to construct a ferro-silica plant on a different and smaller parcel of land at Permanente and again sought the County's advice. Mr. Nestor Barrett and others on behalf of the County advised Aluminum to submit plans and specifications and a use permit would be issued. We cannot now locate a copy of such permit and are thus unable to determine whether the same was in fact ever issued. In any event, contact was made with the County's building department and apparently any necessary building permits ultimately issued. Subsequent to the war, this property was sold to Cement.

In 1948 the company commenced aluminum foil operations. The magnesium plant was no longer in production. Today the property is used for the production of aluminum foil and aluminum research and development. The foil operations employ approximately 125 to 146 people and research and development employs about 42 people. The company has a very significant investment in buildings and equipment on the property including a sewage treatment facility.

Over the years, Aluminum has from time to time sought and obtained building permits from the County for new structures as needed until finally in 1979, a member of the County's planning staff (Lucas Stamos) advised that a then sought building permit for a minor improvement should not be issued on the basis that Aluminum's existing use appeared to be nonconforming.

In 1941 when Aluminum first began its use of the Permanente property, the lands were zoned A-1. This zoning remained until January, 1972, when the Board of Supervisors adopted an interim zoning ordinance pending the outcome of the Monte Bello Ridge Study. In 1973, (December 12, 1973) the property was rezoned "A". Prior to the rezoning a green belt strip of land had been zoned around the property of Cement and Aluminum as a buffer from encroachment by urbanization.

It appears that from 1937 until approximately 1954, Section 12 of the Zoning Ordinance governed the permitted uses in the then A-1

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Selby Brown, Esq.  
June 3, 1980  
Page 3

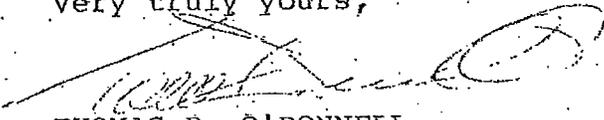
zone. This ordinance provided that the uses permitted in an "A-1" zone "included all uses not otherwise prohibited by law" except that "any use for which a use permit is required for the establishment of such use in any M-2 (heavy industrial) district" required the obtaining of a use permit as provided in Section 35 of the 1937 zoning ordinance. This ordinance was amended in 1954 and 1960 when present Article 47 was adopted.

A portion of Aluminum's property is in the Cupertino Urban Service area. The Cupertino General Plan of June 22, 1976 shows the company's property as being industrial as does the County's "Plan for the Monte Bello Ridge Mountain Area" (1974) although this plan designates the industrial use as being "existing urban development." Aluminum does not desire to annex to Cupertino, nor does it believe that there would be any public benefit to such annexation.

We would like to discuss your views concerning the zoning status of the company's uses at Permanente and in particular whether because of the zoning and the effect of the zoning ordinance in existence at the time Aluminum's uses commenced, the present use should not be treated as conforming, see e.g. Section 38.7 of the County's Zoning Ordinances.

If I may be of any further assistance to you prior to our meeting, please advise.

Very truly yours,



THOMAS P. O'DONNELL

TOD:js

**EXHIBIT "5"**



JOHN W. DIEPENBROCK  
KAREN L. DIEPENBROCK  
KEITH W. McRUDE  
BRADLEY J. ELGIN  
EILEEN H. DIEPENBROCK  
MARK D. HARRISON  
GENE K. CHEEVER  
MICHAEL V. BRADY  
LAWRENCE B. GARCIA  
SUSAN E. SIKKGAARD  
ANDREA A. NATARAZO  
JOEL PATRICK ERB  
JON D. RUBIN

R. JAMES DIEPENBROCK  
(1929 - 2002)

JEFFREY L. ANDERSON  
LARA M. O'BRIEN  
MICHAEL E. VINDIG  
JENNIFER L. DAUER  
CHAD O'NEAL HULENBURG  
SEAN K. HUNGERFORD  
LEONOR Y. DICOICAN  
CHRIS A. MCCANDLESS  
JEFFREY R. BOSCO  
DAK M. SILVERBOARD  
ANDREW P. TAUNHAUEN  
BLAIR W. WILL  
KRISTA J. DUNHEWEILER  
DAVID A. NEE  
JENNIFER D. BECHTOLD  
SARAH E. HARTMANN

*Via Overnight Mail*

August 10, 2006

Val Alexeeff  
Director, Department of Planning and Development  
County of Santa Clara  
70 West Hedding Street  
East Wing, 7th Floor  
San Jose, CA 95110

Re: Hanson Permanente Quarry - Response to Alleged Violations  
Mine Identification No. 91-43-0004  
Our File No.: 3577-001

Dear Mr. Alexeeff:

This firm represents Hanson Permanente Cement Corporation ("Hanson"). During your meeting with the operators on July 26, 2006, and again in our meeting on August 8, 2006, you requested that we provide the County with Hanson's position on the SMARA violations claimed by the Department of Conservation (DOC) and the Executive Director of the State Mining and Geology Board (SMGB).

As you explained, the information provided will assist the County to address and/or respond to the DOC's claimed violations. We understand the County is receiving pressure from the DOC to begin issuing notices of violation. We look forward to the opportunity to preview the County's written response to the DOC before it is finalized within the next couple of weeks.

As requested, and in anticipation of discussing the DOC's claims in greater detail, we summarize below the claims asserted by the DOC with respect to Hanson's Permanente Quarry, and our position on each.

400 CAPITOL MALL  
SUITE 1800  
SACRAMENTO, CA 95814  
WWW.DIEPENBROCK.COM 916 492.5000  
FAX: 916 446.4535

# **DIEPENBROCK HANSON**

Val Alexeeff

August 10, 2006

Page 2

## **BACKGROUND**

### **The Permanente Quarry**

As you know, Hanson's Permanente Quarry is a limestone and aggregate materials quarry within the Los Altos hills. Approximately 411 acres are disturbed by mining operations, representing both pre- and post-1976 disturbances. The quarry lies entirely within Hanson's 3500 acre property.

While early limestone extraction at the site is recorded as early as 1899, the quarry's present location stems from the 1939 purchase of approximately 1300 acres along Permanente Creek by Hanson's predecessor, The Permanente Corporation. The Permanente Corporation, later renamed Kaiser Cement Corporation, over time acquired several surrounding parcels to expand its ownership to over 3500 acres. Hanson purchased the entire property from Kaiser Cement in 1987.

The quarry has been repeatedly acknowledged by the County as a legal, non-conforming use, and lies within an area designated by the State Geologist as regionally significant.<sup>1</sup>

### **Cement Plant / Industrial Facilities**

On May 8, 1939, the Permanente Corporation obtained a use permit from the County for the "erection, construction and operation of a cement mill and the storage of cement..." (Exh. A.) The permit is for an unlimited term, and has no termination date. The permit is consistent with the 1937 zoning of the property, which allowed commercial and manufacturing uses. The cement plant was built to the east of the quarry and has operated continuously since. It now accounts for an estimated one-third of Northern California's cement production.

The cement plant permit has since been revisited by the County on three occasions. On July 17, 1950, the County amended the permit to allow an additional kiln and auxiliary facilities to be installed. On July 6, 1955, the County amended the permit to allow construction of a rotary kiln. Finally, on December 19, 1977, the County Board of Supervisors approved a proposal to modernize the cement plant by transitioning from a "wet" to a "dry" production process (involving an over \$50 million investment).

The cement plant is a stand-alone facility that is operationally distinct from the quarry. The cement plant processes limestone not only from the quarry, but also from

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<sup>1</sup> See Code of Regulations, tit. 14, § 3550.10 [Sector BB].

## **DIEPENBROCK HARRISON**

Val Alexeeff

August 10, 2006

Page 3

other sites. Indeed, when the Permanente limestone is exhausted, the cement plant will continue to operate by processing material from other sources.

Next to the cement plant is the former aluminum plant site, which covers approximately 153 acres. The site was under completely separate ownership from the quarry until 1995, when the owners sold the defunct plant to Kaiser Cement. The aluminum plant is not used, nor has it ever been used, to process mined material from the Permanente Quarry.

### **Reclamation Plan**

The County approved the current reclamation plan on March 7, 1985. (Exh. B.) The 330 acres covered by the reclamation plan represent "the existing and planned excavation and storage areas." (Exh. B, at 18.) The reclamation plan excludes certain pre-1976 disturbed areas, and other non-operational disturbances.

The reclamation plan described the excavation of the quarry pit at an overall gradient of 1:1, and called for the establishment of 3:1 slopes in both the west and east material storage areas. (Exh. B, at 28-29.) The approved plan also identified regions of historical slope instability on the northwestern pit face. (Exh. B, attachment.)

By design, the reclamation plan covers only post-1975 excavation, not the cement plant. The March 1, 1985 environmental assessment states, "This reclamation is limited to that portion of the quarry site which has occurred since January 1, 1976..." (Exh. C, at 2.) Further, the March 7, 1985 staff report provided that "This approval is for reclamation aspects of the quarry area and not the operational activity; nor does it include the area of the cement plant." (Exh. D, at 1.)

The reclamation plan was designed to address operations until 2010, with planned revisions at that time to address the final reclamation of the site. As you know, the scheduled amendment is nearing completion, and we are working with the County as to how to best present the amendment to the state.

### **Compliance History**

The quarry has received no violations since the annual mine reporting requirements became effective in 1991.

## **DIEPENBROCK HANSON**

Val Alexeeff  
August 10, 2006  
Page 4

### **ALLEGED VIOLATIONS**

#### **Disturbance Outside Approved Reclamation Plan Boundaries**

The DOC claims that the area of mining disturbance has exceeded the reclamation plan boundaries by at least 94 acres. The DOC appears to have reached this conclusion merely by comparing the area covered by the reclamation plan against the total disturbed area as reflected by current aerials.

The DOC's analysis ignores the long history of mining that occurred at the site before SMARA's effective date on January 1, 1976. It is well established under Public Resources Code section 2776 that disturbances pre-dating SMARA are exempt from reclamation requirements.

Historical aerials reveal that the current limits of disturbance were largely reached before SMARA was enacted. Exhibits E, F and G are aerials dated 1975, 1982 and 2005. The aerials trace the progression of the mining disturbance from pre-SMARA times to today, and demonstrate that the current limits of disturbance were, in most respects, reached by 1975.<sup>2</sup>

The aerials also show that most of the expansion between 1975 and today occurred within the reclamation plan boundaries. In exhibit H, we have endeavored to identify those small areas of expansion that lie outside the reclamation boundaries. We estimate that these areas account for less than six acres.<sup>3</sup> This additional acreage will be included in Hanson's upcoming reclamation plan amendment.

The DOC asserts that land disturbed before 1976 that has been since re-disturbed is subject to SMARA. However, the reclamation plan and supporting staff reports establish that the County meant to exclude certain ongoing disturbances from the plan. For instance, the shaded blue within Exhibit I includes continually-disturbed areas (such as haul roads and processing areas) omitted from the plan. Nothing in SMARA requires the County to modify its 1985 approval based on the DOC's current

---

<sup>2</sup> The yellow 1975 overlay on the 1982 and 2005 aerials is not perfectly drawn. The aerials from 1975, 1982 and 2005 appear to have been taken at different camera angles, or patched together from multiple aerials, in a way that prevents the 1975 disturbance limits overlay from point-to-point placement over the later aerials. As such, the aerial figures should be considered illustrative only.

<sup>3</sup> This minor acreage is unlikely to represent a substantial deviation from the reclamation plan. (See Pub. Resources Code, § 2777 [non-substantial deviations from an approved plan do not require amendment of the plan].)

## **DIEPENBROCK HANSON**

Val Alexeeff  
August 10, 2006  
Page 5

interpretation of SMARA, and the 1985 approval is immune from challenge under the doctrine of administrative res judicata.<sup>4</sup>

There is no need for a showdown on this issue, however. As discussed, Hanson's reclamation plan amendment will be submitted shortly, and will encompass all areas disturbed by mining, without regard to whether the disturbance occurred before or after SMARA's enactment.

### **Slope Instability: Already addressed in the Reclamation Plan**

The slope instabilities along the northern and western pit faces are not, as the DOC contends, violations of the reclamation plan. The historical instabilities were noted in the 1985 reclamation plan and slated to be addressed in the 20-year amendment. As you know, that is precisely what Hanson is now doing. Hanson recently removed the main obstacle to the stabilization work by acquiring the "Mid-Pen corner" in a land swap with the Mid-Peninsula Regional Open Space District. As previously discussed with the County's Planning Department, the stabilization plan will be submitted as part of a request for a minor modification to the reclamation plan. This submission is ready for the County's review; Hanson is merely awaiting confirmation from the County that it is ready to proceed in this manner.

### **The Cement Plant should not be part of the Reclamation Plan**

Hanson remains firm that the cement plant is not subject to SMARA and was appropriately excluded from the reclamation plan. It is a separately-permitted operation established in 1939 – predating SMARA's enactment by some 37 years – and has been operating continuously since in the same footprint as originally constructed. The vested rights that have accrued during that time would be severely damaged or devalued if the County or state were to force new SMARA obligations on the facility.

The DOC's proposal to identify the reclamation end use as "a cement plant" is not acceptable. Accepting would be tantamount to conceding SMARA jurisdiction over the cement plant, and conferring upon the state or County the authority to require future modifications to the reclamation plan affecting the cement plant. Hanson is not willing to subject this huge – over \$100 million – and long-standing investment to discretionary review. The DOC also gains nothing by setting the cost estimate to zero; a reclamation plan covering the cement plant serves no useful purpose if it does not require reclamation.

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<sup>4</sup> See *Hensler v. City of Glendale* (1994) 8 Cal.4th 1, 28 ["challenges to the actions of an administrative agency [must] be brought promptly"; failure to do so renders the agency decision final and immune from attack under the doctrine of administrative res judicata].

## **DIEPENBROCK HANRISON**

Val Alexeeff  
August 10, 2006  
Page 6

Nor may the state revisit the County's decision in 1985 to exclude the cement plant from the reclamation plan. The County then made a conscious determination that the cement plant was legally distinct from the quarrying operation. As stated above, the decision has long been final under the doctrine of administrative res judicata.<sup>6</sup>

In addition, various SMARA provisions confirm that the cement plant is not subject to SMARA.

First, only a "surface mining operation" requires reclamation<sup>6</sup>, and the cement facility is not a surface mining operation. "Surface mining operations" are defined within Public Resources Code section 2735 as the "mining of minerals" and related extraction processes.<sup>7</sup> The cement plant facility does not engage in such activities.

Second, 1993 revisions to Public Resources Code section 2714 clarify that mineral processing facilities are exempt from SMARA. Although the exemptions were passed eight years after the reclamation plan was approved, section 2714, subdivision (c), nonetheless offers additional support for Hanson's position that the cement plant site is not subject to reclamation under SMARA. Section 2714 provides:

SMARA does not apply to the following activities:

\* \* \*

(c) Operation of a plant site used for mineral processing, including associated onsite structures, equipment, machines, tools, or other materials, including the onsite stockpiling and onsite recovery of mined materials, subject to all of the following conditions:

(1) The plant site is located on lands designated for industrial or commercial uses in the applicable county or city general plan.

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<sup>6</sup> See *Hensler v. City of Glendale*, supra, 8 Cal.4th 1, 28.

<sup>6</sup> Pub. Resources Code, §§ 2770, subd. (a), 2772, subd. (a)(5).

<sup>7</sup> Under Public Resources Code section 2735, "surface mining operations" mean "all, or any part of, the process involved in the mining of minerals on mined lands by removing overburden and mining directly from the mineral deposits, open-pit mining of minerals naturally exposed, mining by the auger method, dredging and quarrying, or surface work incident to an underground mine. Surface mining operations shall include, but are not limited to: (a) Inplace distillation or retorting or leaching[;] (b) The production and disposal of mining waste[; and] (c) Prospecting and exploratory activities."

## **DIEPENBROCK HARRISON**

Val Alexeeff  
August 10, 2006  
Page 7

(2) The plant site is located on lands zoned industrial or commercial, or are contained within a zoning category intended exclusively for industrial activities by the applicable city or county.

(3) ~~None of the minerals being processed are being extracted onsite.~~

(4) All reclamation work has been completed pursuant to the approved reclamation plan for any mineral extraction activities that occurred onsite after January 1, 1976.

The exemption<sup>8</sup> requires that the plant site be located on land designated for commercial or industrial uses. The cement plant was established in the County's A-1 zone, which expressly allowed commercial and industrial uses.<sup>9</sup> Under established law, Hanson gained a vested right to the use of the cement plant according to the zoning that was effective when the use became established.

Further, on three subsequent occasions, the County reaffirmed the appropriateness of the cement plant at its present location. The County granted permit amendments on July 17, 1950 and July 6, 1955, and later approved plant upgrades on December 19, 1977.

### **Adequate Financial Assurances have been Maintained**

The July 13 Executive Officer's Report states the County wrongly reduced the financial assurances for the Permanente Quarry. Also, during our July 26 meeting, you relayed the DOC's position that all mining disturbances should be covered by a financial assurance cost estimate.

Hanson's financial assurance calculations are dictated, however, by the approved reclamation plan. Under Public Resources Code section 2773.1, subdivision (a), "Lead agencies shall require financial assurances of each surface mining operation

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<sup>8</sup> The third and fourth elements require no discussion because no mineral extraction has been recorded where the cement plant is located.

<sup>9</sup> The County's general plan was not adopted until long after the cement plant was established, and does not currently apply a land-use designation to the cement plant site because it is within the City of Cupertino's sphere of influence.

**DIEPENBROCK HARRISON**

Val Alexeeff  
August 10, 2006  
Page 8

to ensure reclamation is performed *in accordance with the surface mining operation's approved reclamation plan...*" (Italics added.)

Hanson submitted an updated financial assurance cost estimate in July 2006 based on the approved reclamation plan. To require an expanded cost estimate from Hanson that addresses all disturbed land – whether covered by the reclamation plan or not – would mean deviating from the financial assurance guidelines and from SMARA's express provisions.

Rather, Hanson intends to submit an updated cost estimate based on the amended reclamation plan, once the upcoming amendment is approved. We believe that this is the approach contemplated by SMARA and the financial assurance guidelines.

**CONCLUSION**

We look forward to continuing our discussion of how the County can incorporate these concepts into its response to the DOC.

Very truly yours,

DIEPENBROCK HARRISON  
A Professional Corporation

By:   
Mark D. Harrison

SKH:gjc  
Enclosures

cc: John Giovanola, Hanson  
Lizanne Reynolds, County of Santa Clara  
Gary Rudholm, County of Santa Clara