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(1929 - 2002)

February 4, 2011

Mr. David Cortese, President of the Board and  
Members of the Board of Supervisors for Santa Clara County  
Supervisors Chambers  
70 West Hedding Street  
San Jose, CA 95110

*[VIA E-MAIL]*

Re: *Response to 2/2/2011 QuarryNo Letter*

Dear President Cortese and Members of the Board:

The purpose of this letter is to briefly respond to issues raised by QuarryNo in its February 2, 2011 letter to the Board. QuarryNo asserts in that letter that the East Materials Storage Area ("EMSA") is not vested for three reasons: (1) Lehigh did not own or operate the EMSA as of the vesting date; (2) the EMSA was "unused" for mining operations prior to the vesting date; and (3) Lehigh's counsel "admitted" in 2006 correspondence that the EMSA was not used for mining operations. These claims are not new; Lehigh has responded to them already, and provides a summary here.

First, vested rights run with the land: the Supreme Court stated in *Hansen Brothers Enterprises, Inc. v. Nevada County* (1996) 12 Cal.4th 533, 540, fn. 1 that "transfer of title does not affect the right to continue a lawful nonconforming use which runs with the land." Lehigh's own briefings make clear that the entire Permanente Site, including the EMSA, has changed hands many times over the course of its century-long history. No question exists, however, that the EMSA was part of the mining tract that Kaiser acquired in 1939, and had been part of the mining tract that was assembled and operated by the Santa Clara Holding Company, Kaiser's predecessor, in 1930. Photographs Lehigh has provided to the Board show that the EMSA was an integral part of quarrying operations on the Site before its change in legal ownership in 1942. The EMSA, along with the remainder of the Site, thus became vested after the County adopted its 1948 zoning ordinance. This fact stands regardless of EMSA ownership changes.

Second, the EMSA was used extensively as part of overall quarrying operations on the site following its change in legal ownership in 1942, and prior to the vesting date. QuarryNo points to a statement made in a 1980 letter from Kaiser's counsel to the County as proof that the EMSA was not part of the quarrying operations. That letter provides, in relevant part:

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**DIEPENBROCK HARRISON**

Mr. David Cortese, President of the Board  
Members of the Board of Supervisors for Santa Clara County  
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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.

This letter documents the fairly obvious fact that the two Kaiser companies were legally separate entities. It does not state or suggest that the EMSA was never used to support quarrying operations after 1942. We assume the letter did not so state because the on-the-ground facts showed otherwise.

Third, QuarryNo also cites to a 2006 statement made by Lehigh's counsel regarding the aluminum plant situated in the EMSA. That letter stated, in part:

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.**

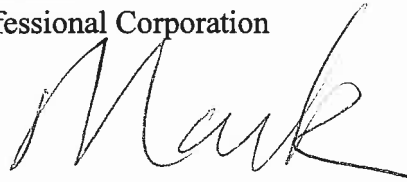
This letter is not, contrary to QuarryNow's assertion, an admission that the EMSA was not used in connection with mining operations. The 2006 letter instead addresses the question of whether the aluminum plant buildings needed to be included in the reclamation plan amendment. The statement referenced by QuarryNow was made in conjunction with our explanation that certain areas on the site, such as the cement plant, are not subject to the reclamation requirements that govern other areas on the Site used in the quarrying operations. The aluminum plant was never used to process quarry material; limestone is not required for aluminum production. The letter, again, does not state or suggest that the EMSA was never used to support mining operations. Indeed, at the time this letter was written, Lehigh was working with the County on its application for a reclamation plan amendment for all areas used in mining operations, which included the EMSA.

We hope this information is helpful to the Board in making its decision on this matter.

Very truly yours,

DIEPENBROCK HARRISON  
A Professional Corporation

By



Mark D. Harrison

**DIEPENBROCK HARRISON**

Mr. David Cortese, President of the Board

Members of the Board of Supervisors for Santa Clara County

February 4, 2011

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cc: Jody Hall Esser  
Lizanne Reynolds