From: Rhoda Fry
Date: 02/27/2020
Public Comment: Santa Clara County Planning Commission (02/27/20)

Dear Santa Clara County Board of Supervisors and Planning Commissioners:
We are concerned about two applications that have been submitted by Lehigh for a portable rock plant and a conveyor system to the Bay Area Air Quality Management District (BAAQMD) described in the 2/26/2020 Stationary Source Committee Agenda. We ask that the Santa Clara County Planning Department investigate as to whether these have been permitted appropriately.

1. Portable Rock Plant
   Lehigh appears to have asserted that they have permission to build a portable rock plant. Is a County Use Permit required?
   a) The agenda states that the stationary rock plant terminated use in 2014. This is incorrect. The stationary rock plant terminated use in 2011, just after the work-related massacre that killed four people and injured 7 others. By not using the stationary rock plant, Lehigh has likely abandoned any vested right it had to it. Lehigh has further demonstrated abandoning its use by illegally selling usable overburden to Stevens Creek Quarry for processing and resale in 2018/2019.
   b) Does Lehigh have a "vested right" to build a portable rock plant? A portable plant is very different from a stationary plant.
   c) Would the portable rock plant create a product that is different from that of the stationary rock plant? If so, then this would constitute a new use. Note that the type of product sold by Stevens Creek Quarry was different from what Lehigh had sold in the past. Yes, it was a similar material, but the end product was different.
   d) A new rock plant operation means more truck traffic from rock sales and more truck traffic to dump imported waste to fill the pit from offsite as follows.
   e) The intent to erect a portable rock plant also indicates the intent to sell overburden that could be used to fill the large pit. Overburden should stay on site. The pit needs to be filled because the County allowed Lehigh to mine below the water table. This in turn makes a portion of the Permanente Creek run dry as water goes to lower elevations and potentially compromises the aquifer. Does the County intend to make Lehigh retain overburden on site per the 2012 Reclamation Plan?
2. Please also look at the conveyor system.

Please find attached:

1. Page from BAAQMD Stationary Source Committee Agenda[1]
2. Recently imposed air-district fines.[2] Please note that the air district rarely enforces fugitive dust events. If enforcement occurs, it only happens if an inspector happens to be there. There is no video-monitoring to protect the citizens of Santa Clara County.
3. Loma Prieta Chapter of the Sierra Club letter opposing Lehigh's 2019 proposal

All of Lehigh's air, water, noise pollution and more, which create a nuisance and risk to public health, starts with the County's land use decisions.

Sincerely,

Rhoda Fry
cc: Cities of Cupertino, Los Altos, Los Altos Hills, Midpeninsula Regional Open Space District

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[1] February 26, 2020 BAAQMD Stationary Source Committee Agenda pdf page 13
https://www.baaqmd.gov/~/media/files/board-of-directors/2020/ssc_agenda_02262020-pdf.pdf?la=en
[2] February 19, 2020 BAAQMD Board of Directors Agenda pdf page 26
https://www.baaqmd.gov/~/media/files/board-of-directors/2020/brd_agenda_02192020-pdf.pdf?la=en

Marathon (formerly Tesoro) Refinery Fluidized Catalytic Cracking Unit Oxides of Nitrogen (NO_X) Abatement:

Marathon is proposing to abate NO_X emissions from their fluidized catalytic cracking unit by installing selective catalytic reduction abatement.

Lehigh Southwest Company:

In two separate projects, Lehigh is proposing to install a portable rock plant and a temporary portable conveyor. Lehigh has permits for aggregate processing equipment in their Rock Plant, but the sources have not operated since 2014, and require refurbishing to operate. Lehigh proposes to install new portable aggregate processing equipment until refurbishment of the permanent equipment is completed.

In addition, Lehigh operates a conveyor system that suffered structural failure. The system conveys material between two critical equipment, a clinker and kiln mill, that is required for the facility to operate. Lehigh proposes to install and operate a temporary conveyor system while the permanent system is repaired.

On December 3, 2019, Lehigh entered into a Consent Decree with U.S. Environmental Protection Agency. The Consent Decree covers 14 Lehigh facilities, including the Cupertino facility. The Consent Decree requires NO_X and Sulfur Dioxide (SO_2) abatement controls, and imposes emissions limits.

Schnitzer Steel:

Schnitzer Steel operates a scrap metal recycling and metal shredding operation in Oakland. Schnitzer Steel is requesting to increase the allowable number of ocean-going vessels transporting materials from Schnitzer Steel's scrap metal recycling facility from 26 ship calls per calendar year to 32 ship calls per calendar year. Recently, smaller ships and partially loaded ships have been used to transport Schnitzer Steel's scrap metal, resulting in the need to have more ship calls per year to transport the same amount of material. Schnitzer Steel is also proposing to install abatement equipment to abate emissions from their metal shredder.

SETTLEMENTS FOR $10,000 OR MORE REACHED

There was 1 settlement(s) for $10,000 or more completed in January 2020.

1) On January 10, 2020, the Air District reached settlement with Lehigh Southwest Cement Company for $22,500, regarding the allegations contained in the following 6 Notices of Violation:

NOV #	Issuance Date	Occurrence Date	Regulation	Comments from Enforcement
A56541A	7/24/2018	7/23/2018	9-13-302	Visible emission exceeded standard of 10%
A56542A	8/29/2018	8/15/2018	9-13-503.1	S-154, cement kiln, 2017 annual source test report not submitted to District
A56542B	8/29/2018	8/15/2018	9-13-503.11	S-154, cement kiln, 2017 annual CEM RATA report not submitted to District
A56542C	8/29/2018	8/15/2018	2-6-307	Facility did not submit CEM Audit and Emission Test Reports to District within 60 days of completion
A56545A	3/14/2019	5/19/2017	2-6-307	Mercury (Hg) continuous emission monitor (CEM) not meeting performance standards
A56545B	3/14/2019	5/19/2017	1-522.6	Mercury (Hg) continuous emission monitor (CEM) not meeting performance standards

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SIERRA CLUB
LOMA PRIETA CHAPTER
SAN MATEO, SANTA CLARA & SAN BENITO COUNTIES

December 18, 2019

Mr. Robert Salisbury
robert.salisbury@pln.sccgov.org
County of Santa Clara Planning Office
70 W. Hedding Street, East Wing, 7th Floor
San Jose, CA 95110

RE: Lehigh Southwest Cement Company's Application for Permanente Quarry Reclamation Plan Amendment, May 2019

Dear Mr. Salisbury,

Earlier in this decade the Sierra Club filed a lawsuit against Lehigh Southwest Cement Company and Hanson Permanente Cement (Lehigh) for Clean Water Act violations. The lawsuit resulted in a Consent Decree signed in 2015. The terms of the decree required Lehigh to 1) install water treatment facilities for discharges to Permanente Creek and 2) restoration of certain reaches of Permanente Creek, reaches ravaged by decades of quarry activities on Lehigh's property. Water treatment facilities are now operating. However, a recent landslide near the Yeager Yard dumped mining waste and sediment into Permanente Creek. Both the Water Board and Santa Clara County (County) issued notices of violation. Lehigh also received a notice of violation for grading an unpermitted internal haul road to Stevens Creek Quarry (SCQ). Neither Lehigh nor SCQ had permission to grade a road or transport material between the two quarries.

In May 2019, despite ongoing violations, Lehigh submitted an application for a Reclamation Plan Amendment (Application) to Santa Clara County Planning Department. The Application proposes significant changes from the existing County-approved 2012 Reclamation Plan Amendment for Permanente Quarry (2012 Rec Plan) and these changes are concerning for all residents of Santa Clara County and our environment. The Application raises concerns regarding scenic views, water quality, air quality and truck traffic as well as continued delays in the court-ordered restoration of Permanente Creek. Although the Consent Decree was signed over four years ago, not one shovel of mining waste has been removed from the creek.

Cement production is one of the dirtiest and most energy intensive industries, accounting for 5-8% of all anthropogenic CO_2 emissions worldwide. Many improvements have been made in the cement industry but our local Lehigh plant has not kept up. Cement factories in India and China produce less CO_2 emissions and air contaminants (PM, SO_2, NO_x) than the PET coke fueled Lehigh plant. The Bay Area deserves better. At least a dozen companies and universities are inventing cleaner cement alternatives. We urge the County to consider alternative sources of cement rather than enabling this high polluting facility.

Protection of Scenic Views

We urge the County to enforce the 1972 Ridgeline Protection Easement deeded by Lehigh's predecessors to the County. In direct violation of the 1972 Ridgeline Protection Easement, the Application proposes mining the ridgeline, dropping the ridge elevation by approximately 100 feet for a distance of 3000 feet along the ridge. In addition, the Application proposes to increase the height of the West Material Storage Area ("WMSA") by 160 feet allowing this mass of mining waste to be visible beyond the ridgeline. The 1972 Ridgeline Protection Easement Deed "assigns forever" from Kaiser Cement & Gypsum Corporation and its successors as Grantor to Santa Clara County as Grantee protection of "natural beauty and scenic attributes". The deed states:

> "Grantor shall not lower the ridgeline described in Exhibit 'B' for mining, quarrying or other purposes below the sea level elevations along that certain line labeled 'Proposed Future Ridgeline' ... nor will the Grantor mine, quarry or otherwise excavate for minerals or mineral materials in the area shown as the 'northeast slope'".

Blasting explosives on the ridgetop, an area exposed to high wind erosion, has the potential to carry larger volumes of fugitive dust to wider distances.

Protection of Water Quality

We recommend that the County not allow further delays to the court-ordered restoration of Permanente Creek on Lehigh's property. Water quality impairments have historically resulted in a lawsuit by Sierra Club as well as Federal and State regulatory actions that required Lehigh to construct two onsite water treatment facilities to treat quarry pit water before it is released into Permanente Creek. The Application proposes to delay the court-ordered restoration of Permanente Creek by 10 years or more. Permanente Creek continues to be ravaged by Lehigh's mining activities. On July 9, 2019 the Regional Water Quality Control Board issued a Notice of Violation to Lehigh for a landslide from the Yeager Yard into Permanente Creek. Delays to the stream restoration must not to be allowed.

Complete restoration of Permanente Creek depends on the fill of the pit so that it no longer acts as a sink to stream flows. The 2012 Rec Plan filled the pit with mining overburden from WMSA. The new Application suggests importing at least 33 million cubic yards of clean soil to fill the pit. The Application notes a study of local soil availability. What the study lacks is the increasing competition for clean soil from sea level rise projects along the Bay. For example, (Can someone state a statistic for the amount of fill needed for Shoreline project or others??)

The Application proposes a significant and concerning departure from the county-approved 2012 Rec Plan pertaining to the West Material Storage Area ("WMSA"), a massive mountain of mining waste (currently 48 million tons). The Application proposes to increase the mass of WMSA and to leave the overburden in place. This is in direct contradiction with the 2012 Rec Plan which required Lehigh to backfill the North Quarry pit with the on-site WMSA mountain of material. The Application cited water quality concerns potentially caused from moving WMSA; however, the 2012 Rec Plan and subsequent 2018 Regional Water Quality Control Board's Water Discharge Requirements for Lehigh already approved backfilling the pit with WMSA

material. Years of water quality monitoring of quarry pit water and seepage from WMSA resulted in new water treatment facilities and regulations to manage existing contaminants. The Water Board's response to Lehigh's application suggests that the pit may not need to be filled but could become a lake. Importation of at least 33 million tons of off-site material to be placed in the pit with substantial portions submerged below the water table raises additional water quality questions.

The Application includes a new 30 acre quarry across Permanente Creek from the existing quarry. Excavations on both sides of the creek will severely impact the creek's ability to function. We recommend that Santa Clara County update the SMARA ordinance to limit excavation to 20 feet above the water table and add other protective provisions. Neighboring Santa Cruz County ordinance already has this restriction:

> §16.54.050 (C) (3) Water. (c): *The lowest elevation of any mining operation at any time shall be 20 feet above the peak groundwater elevation unless the Planning Commission determines that a lower or higher elevation will ultimately benefit the recharge of the aquifer.*[2]

Santa Clara County also recognized the benefits to water quality by limiting the depth of mines in the January 2009 Stevens Creek Quarry Reclamation Plan Amendment:

> *The operation would not excavate to depths that are below the local groundwater table that could create a water surface at reclamation.*[1]

Mining below the water table can create hydrological and pollution issues. Currently, the pit draws down flows from Permanente Creek making it a losing stream along the pit. The quarried rocks exposed to oxygen and oxygenated water leach contaminants such as Selenium. The major focus of water contamination from Lehigh into Permanente Creek is a result of mining below the water table. We recommend the County adhere to a policy that prohibits mining below the water table.

Truck Traffic

The Application proposal to import at least 33 million cubic yards of off-site construction soil to fill the quarry pit raises serious traffic and emissions concerns. By Lehigh's estimate, 666 trucks per day year-round for 30 to 40 years would traverse local streets. The increased traffic, emissions and congestion would negatively impact health, safety and quality of life for nearby residents. The Town recommends denying the Application's proposal to import soil as a primary means to reclaim the quarry pit. The 2012 Rec Plan to backfill the North Quarry by means of conveyors of on-site material is substantially less detrimental to the community than this Application. The Application's proposal for soil importation delays the pit reclamation timeline by over 25 years.

The County's General plan clearly prohibits any proposal that would increase truck traffic to the level proposed in the Application.

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[1] Santa Clara County Stevens Creek Quarry Reclamation Plan Amendment, January 2009, p4 www.sccgov.org/sites/dpd/DocsForms/Documents/1253_SCQ_RPA.pdf

County General Plan Policy C-RC 47

Potentially adverse environmental impacts from extraction and transport of mineral resources should be minimized to the greatest extent possible, including, but not limited to:
a. nuisances, such as dust, odor, debris, and noise;
b. disruption and damage to natural features, such as ground cover, topography, drainage, habitat, groundwater, and related issues; and
c. increased traffic volumes and damage to road surfaces.

Conclusion

We share concerns raised by others, namely the Town of Los Altos Hills (letter dated September 2019), the Regional Water Quality Control Board (letter dated September 2019), the City of Cupertino (letter dated July 3, 2019), the City of Los Altos (letter dated July 31, 2019) and the Midpeninsula Regional Open Space Authority (letter dated July 12, 2019) in their letters to the County regarding the Application. The County's incomplete letter of July 22, 2019 raises additional concerns about existing violations and inadequate geologic reports. The Application is detrimental to natural resources and residents, and therefore we request the County to firmly uphold key elements of the 2012 Rec Plan and enforce the 1972 Ridgeline Protection Easement.

Sincerely,

Mike Ferreira
Executive Committee Member
Sierra Club Loma Prieta Chapter

Sources:
California's Cement Industry, Failing the Climate Challenge by Ali Hasanbeigi and Cecilia Springer, Global Efficiency Intelligence.
Carbon Smart Materials Palette, an Architecture 2030 Project.

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