CC 10-1-19 #1

Special Closed Session

Written Communications

Cyrah Caburian

From: Edward Hirshfield <clairelouise@earthlink.net>
Sent: Thursday, September 26, 2019 4:45 PM
To: City Council
Cc: jean@bedord.com
Subject: The City Council liability

4 of the 5 City Council have placed all Cupertino citizens at a total of 100s of Millions of dollars of risk. This could come to tens of thousands of risk for each person. I warned you of this at the Council meeting when this stupidity was considered. I hope the lawsuits by friends of BC are withdrawn before the November ruling is made. This may be the only way to redeem yourselves notwithstanding whatever the Judge may find.

Ed Hirshfield

Sent from my iPhone

Cyrah Caburian

From: kirk vartan <kirk@kvartan.com>
Sent: Thursday, September 26, 2019 5:09 PM
To: City Council
Cc: info@revitalizevallco.com
Subject: DISAPPOINTED in your actions around Vallco

Follow Up Flag: Follow up
Flag Status: Flagged

Mayor and Council,

It is a shame you are trying to stop an already approved and entitled SB-35 project. Why are you setting the City up for this lawsuit? Let it go through our only you will be to blame. Your personal preferences are not relevant to the facts here and you are putting the City at great risk. This is a great project. Let it happen.

Kirk Vartan

Cyrah Caburian

From: City of Cupertino Written Correspondence
Subject: FW: I strongly support the Resolutions and Ordinances adopted by the Council on 8/20/2019

From: James Moore <cinco777@icloud.com>
Sent: Sunday, September 29, 2019 6:23 PM
To: Steven Scharf <SScharf@cupertino.org>; Liang Chao <LiangChao@cupertino.org>; Darcy Paul <DPaul@cupertino.org>; Jon Robert Willey <JWilley@cupertino.org>; Rod Sinks <RSinks@cupertino.org>; Cupertino City Manager's Office <manager@cupertino.org>; City Attorney's Office <CityAttorney@cupertino.org>
Cc: City Clerk <CityClerk@cupertino.org>
Subject: I strongly support the Resolutions and Ordinances adopted by the Council on 8/20/2019

Dear Mayor Scharf, Vice-Mayor Chao, Council Members Paul, Willey, Sinks, City Manager Feng, and City Attorney Minner,

With this e-mail, I wish to reconfirm my support for the 8/20/2019 Cupertino City Council vote which adopted Resolutions 19-108, 19-109, 19-110, and Ordinances 19-2187 and 19-2188.

Our neighbors, twelve signed the Referendums at our home, twenty others (also signers), and I are pleased that the Provisional office allocation of 2M sqft, passed on 12/4/2014 and which expired May 31, 2018, has now been officially removed from the Vallco Site. Please reference Resolution 14-211, created 12/11/2014, Table LU-1, Page 71 of 349, including footnote, and Resolution 14-212, Page 3 of 230, for details on the original appearance of this Provisional allocation with its 5/31/2018 expiration date.

As a longtime Cupertino resident, I want to share my view of the allegations made by Reed Moulds in his 9/26 "Taking legal action" message.

https://mailchi.mp/dcd77cd56b39/2019-0918-ramifications-of-council-downzoning-997513?e=37ca263395

1) I reviewed the Vallco Property Owner (VPO) and the City Feasibility Studies conducted by various experts, and found the City Study is credible. The 13.1 acre residential zoning, East of Wolfe Road, with density bonus (389*1.35/0.85) allows 618 units, which, if sold, not rented, is economically feasible for a developer to make a reasonable, not greedy, profit/ROI. The cost assumptions for the City Study were accurately sourced and the City Study's determination that "residential for sale housing on this site is economically feasible" is consistent and credible.

2) Reed writes "... it's hard to believe the city is helping Better Cupertino with the (SB35 VTC) litigation". Yes, Reed Moulds' accusation is hard to believe as it is false. Our City Attorney has denied this VPO accusation twice (to Yu and Bass) during CCC meeting Oral Communications (8/20 and 9/3). As someone intimately familiar with the FoBC SB35 lawsuit, I have observed no help or assistance from the City attorney.

3) Prior to it being posted on the City website, I picked up and reviewed a hardcopy of the VPO vs City of Cupertino Writ of Mandate. My layman's view is that the VPO Writ (Causes of Action) repeats the same claims previously made by Yu and Bass that have been refuted publicly during recent CCC meetings, by expert written reports, and by statements of the City to the media.

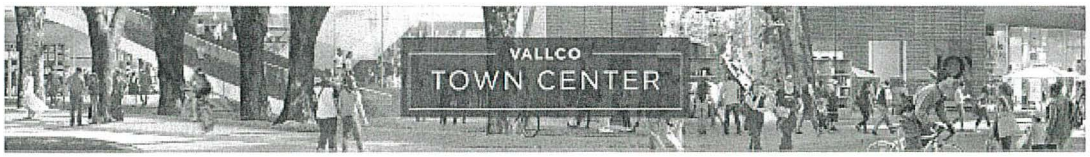
One final tidbit regarding Peter Pau's propensity for going to Court to get his way. In May 2019 (a decade later), the Pau's lost their appeal regarding their claimed 1031 Exchange in their Tax Year 2007 return. Cost to the Pau's is the unpaid tax amount of $2,278,306 + Applicable Interest.

https://ota.ca.gov/serp/?q=18011375

https://ota.ca.gov/wp-content/uploads/sites/54/2019/06/18011375_Pau_Decision_PFR_050719.pdf

James (Jim) Moore
Cupertino resident

September 26, 2019



Dear Neighbor,

As you may know, the Cupertino City Council recently moved to change the zoning of the Vallco Mall site to limit its development potential. With the City's new zoning plan, it would no longer be economically feasible to develop the site, which means the Vallco site would have to sit as an empty lot for the foreseeable future.

Importantly, this only will be the case if Better Cupertino succeeds in court in their effort to stop our SB-35 approved Vallco Town Center project. Given this, it's hard to believe the city is helping Better Cupertino with the litigation. Regardless, we are confident we will win in court and have been proceeding with demolition, preparing the site for the much-needed housing we have planned to build there. If you want periodic updates on demolition, sign up for them **here**.

We believe that the Cupertino City Council's actions to change Vallco's zoning violate a number of California's laws. To that end, we have filed a lawsuit against the City for State housing law, environmental review and procedural violations. The Council's actions have unnecessarily put the City, and Cupertino taxpayers, at great financial risk.

While we fully intend to bring Vallco Town Center as approved under SB 35 to fruition, given the remaining uncertainty we will fight to protect our ability to redevelop the Vallco site. It is deeply unfortunate that the City Council's actions have led to this situation.

If you want to let the City Council know your disappointment in their actions, email them **here**.

OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	) OTA Case No. 18011375
PETER PAU AND SUSANNA PAU	)
	) Date Issued: May 7, 2019
	)
	)

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellants:	Edwin P. Antolin, Attorney
For Respondent:	Carolyn S. Kuduk, Tax Counsel III
Office of Tax Appeals:	Mai C. Tran, Tax Counsel IV

J. JOHNSON, Administrative Law Judge: On December 11, 2017, the Board of Equalization (BOE) held an oral hearing on this matter. After considering the arguments and evidence presented, the BOE sustained the proposed assessment of respondent Franchise Tax Board in the amount of $2,278,306 in additional tax, plus applicable interest, for the 2007 tax year. By letter dated January 10, 2018, appellants filed this timely petition for rehearing pursuant to California Revenue and Taxation Code (R&TC) section 19048. Upon consideration of appellant's petition for rehearing, we conclude that the grounds set forth therein do not constitute good cause for a new hearing.

Good cause for a new hearing may be shown where one of the following grounds exists, and the rights of the complaining party are materially affected: 1) irregularity in the proceedings before the BOE by which the party was prevented from having a fair consideration of its case; 2) accident or surprise, which ordinary prudence could not have guarded against; 3) newly discovered evidence, material for the party making the petition for rehearing, which the party could not, with reasonable diligence, have discovered and produced prior to the decision of the appeal; 4) insufficiency of the evidence to justify the decision, or the decision is against law; or

5) error in law. (Cal. Code of Regs., tit. 18, § 30604;[1] *Appeal of Wilson Development, Inc.* (94-SBE-007) 1994 WL 580654; *Appeal of Do*, 2018-OTA-002P, Mar. 22, 2018.)

BACKGROUND

On their 2007 tax returns, appellants reported two like-kind exchanges (the Tantau and Wolfe transactions) pursuant to Internal Revenue Code (IRC) section 1031. IRC section 1031 requires that the same taxpayer that relinquishes property in a like-kind exchange also receive the replacement property in the exchange. (Treas. Reg. § 1.1002-1(d); *Chase v. Commissioner* (1989) 92 T.C. 874.) The properties were held by the partnerships. The partnerships entered into sales agreements to sell the properties. Appellant-husband owned an interest in the partnerships and, through other limited liability companies (LLCs), served as manager of the partnerships. According to the form of the transactions, on the day the properties were sold, partial interests in the properties (or entities holding the properties) were distributed, with the result that appellant-husband obtained an interest in a portion of the properties which he then reported as IRC section 1031 exchanges.

Respondent determined that each transaction failed as an exchange. Respondent determined that the partnerships, not appellant-husband, were the true sellers of the relinquished properties. In addition, respondent determined that appellant-husband did not receive the replacement property in the Tantau transaction because the replacement property was received by an LLC which had more than one member and was treated as a partnership, rather than by appellant-husband through a single-member disregarded entity.

In their briefs and at oral argument, appellants argued that appellant-husband was the seller of the relinquished properties and appellant-husband, through a disregarded entity, received the replacement properties. Appellants further argued that the LLC that received the replacement property in the Tantau transaction should be treated as a disregarded entity such that appellant-husband should be treated as receiving the replacement property directly.

The BOE determined that appellants did not show that they were entitled to treat the Tantau and Wolfe transactions as IRC section 1031 exchanges. The BOE determined that the partnerships, not appellant-husband, were the true sellers of the properties. Further, the BOE

[1] Appellants' petition for rehearing was filed with the Office of Tax Appeals while its emergency regulations were in effect. However, the relevant section of the permanent regulations, cited above and currently in effect, are substantially similar to the corresponding section of the emergency regulations, and therefore the changeover has no substantive effect on the analysis herein.

determined that the entity that received the replacement property in the Tantau transaction may not be treated as a disregarded entity owned by appellant-husband.

DISCUSSION

In their petition for rehearing, appellants contend that their petition should be granted because there was an irregularity in the proceedings, there is insufficient evidence to justify the BOE's decision, and the BOE's decision is against law. We consider each argument in turn.

1. Whether there was an irregularity in the proceedings

Courts have defined an irregularity in the proceedings as "an overt act of the trial court, jury, or adverse party, violative of the right to a fair and impartial trial, amounting to misconduct," (*Gray v. Robinson* (1939) 33 Cal.App.2d 177, 182), and as "[a]ny departure by the court from the due and orderly method of disposition of an action by which the substantial rights of a party have been materially affected." (*Gay v. Torrance* (1904) 145 Cal. 144, 149.) Courts have also required, in addition to identifying such an irregularity, that appellants show they were ignorant of the facts constituting the irregularity prior to the court's decision, "since it is settled that a party may not remain quiet, taking his chances upon a favorable verdict, and, after a verdict against him, raise a point of which he knew and could have raised during the progress of the [proceedings]." (*Gray v. Robinson, supra,* 33 Cal.App.2d at p. 183.)

Appellants argue that the BOE failed to address whether the tax liability was properly assessed on appellant-husband personally, instead of being assessed on the individual partners of the partnership. Appellants contend that the failure to address this issue is an irregularity in the proceedings that warrants a rehearing. Appellants' argument is without basis. Respondent's assessment is based on appellant-husband's distributive share of the partnership's gain from the sale of the two properties. Further, appellants made this argument in the briefs and there is no evidence that the BOE did not consider it.

As for appellants' assertions that the BOE failed to grasp the complex legal issues of this appeal and that this appeal was beyond the normal scope of appeals previously decided by the BOE, we note that appellants have not provided any evidence of this purported failure. Further, we note that the BOE has addressed these legal issues in prior appeals, including the BOE's

precedential opinion in the *Appeal of Brookfield Manor, Inc. et al.*, 89-SBE-002 (1989 WL 37900) Jan. 11, 1989 (*Brookfield Manor*), as well as an unpublished non-precedential decision.[2]

As for appellants' contention that they did not have enough time to present their appeal due to their change in counsel, appellants fail to provide any explanation of how this could have prevented appellants from having a fair consideration of its case. Appellants changed counsel prior to filing their reply brief. Appellants requested and were given multiple deadline extensions and allowed additional pages beyond the limits set by the regulations within which to file their reply brief. Appellants also submitted a response to respondent's reply brief. As such, appellants were provided ample opportunity to present their case after they changed their representation. Further, appellants did not request or express a need for additional time either prior to or at the hearing.

Appellants further contend that their appeal is subject to the written decision requirement in R&TC section 40, and that the lack of a written decision is an irregularity in the proceedings. Written decisions pursuant to R&TC section 40 were issued by the BOE *after* the conclusion of the petition for rehearing process. Therefore, appellants would not have received a written opinion until after the conclusion of this petition for rehearing process, not before it, and therefore this argument does not show an irregularity in the proceedings.[3] Accordingly, we find that there was no irregularity in the proceedings that prevented appellants from having a fair consideration of its case, and a rehearing is not warranted on this basis.

2. Whether there is insufficient evidence to justify the decision

When examining whether a petition for rehearing should be granted, such petition "shall not be granted upon the ground of insufficiency of the evidence to justify the [decision], . . . unless after weighing the evidence the [Office of Tax Appeals] is convinced from the entire

[2] The Board issued a nonprecedential summary decision in the *Appeal of Michael A. Giurbino and Suzanne E. Giurbino* (Case No. 861813) on November 29, 2016.

[3] Appellants assert that a rehearing must be granted to enable the Office of Tax Appeals to write an opinion on this appeal, pursuant to R&TC section 40. However, any statutory requirements placed upon the Office of Tax Appeals for issuing a written appeal in this matter are satisfied by this Opinion on Petition for Rehearing.

record, including reasonable inferences therefrom, that the [panel] clearly should have reached a different [decision]." (Code Civ. Proc., § 657.)[4]

Here, there was sufficient evidence in the record to justify the BOE's decision. In determining whether the substance-over-form doctrine should be applied to disregard the transfer of legal title of the properties from the partnership to the partners prior to the sale of the properties to third parties, the BOE considered who negotiated the sale and who held the benefits and burdens of ownership prior to the sale of the properties. (See generally, *Commissioner v. Court Holding Co.* (1945) 324 U.S. 331 (*Court Holding*); *Bolker v. Commissioner* (1983) 81 T.C. 782 (*Bolker*); *Chase v. Commissioner* (1989) 92 T.C. 874 (*Chase*); *Brookfield Manor*, *supra*.) The evidence in the record includes the sales agreements and subsequent documents related to the sale. In the Tantau transaction, the sales agreement and subsequent documents related to the sale were signed by the partnership. Prior to the sale, the partnership made distributions which resulted in appellant-husband being the sole owner of the partnership (a single-member LLC at that point) and the other partners receiving partial property interests. The evidence shows that, on the same day that the escrow on the Tantau transaction closed, two grant deeds were recorded. The first deed transferred interests in the Tantau property pursuant to the terms of the distribution agreement, which left the partnership (now wholly owned by appellant-husband) retaining a partial interest in the Tantau properties. The second deed transferred the Tantau properties to the third-party buyers. The sale took place under the terms and the amount listed in the sales agreement signed by the partnership. In addition, the loan documents reflected that the property was owned by the partnership prior to the sale to the third party. Further, the partnership's tax return, and not appellants' tax returns, reported rents and expenses from the property. Thus, the evidence supports finding that the benefits and burdens of ownership did not transfer to appellants prior to the sale.

Similarly, in the Wolfe transaction, the sales agreement and subsequent sales-related documents were signed by the partnership. Prior to the sale, the partnership executed a distribution agreement withdrawing all partners, including appellant-husband (through his indirect interest), from the partnership in exchange for partial property interests in the Wolfe property. Once escrow closed on the Wolfe transaction, two grant deeds were recorded. The

[4] In *Appeal of Wilson Development, Inc., supra*, the BOE largely adopted the aforementioned grounds for granting a rehearing, including the ground of an insufficiency of evidence to justify the decision, from Code of Civil Procedure section 657, which sets forth the grounds for a new trial in a California trial court.

first grant deed transferred the interests in the Wolfe property pursuant to the terms of the distribution agreement. The second grant deed transferred the Wolfe property to the third-party buyers. The sale took place under the terms set by the partnership with the recording of the transfer from the partnership to appellants occurring the day after the sale of the Wolfe property.

Appellants contend that, with respect to the Wolfe transaction, the BOE's decision ignores the fact that distribution occurred after the original sales agreement lapsed. However, the partnership and the third-party buyer linked the subsequent sales documents as amendments to the original sales agreement, and the last amendment specifically included a ratification of the original sales agreement, which revived the original sales agreement. Appellants also admitted that the partners were required to sell their interests in the Wolfe property consistent with the terms of the sale negotiated by the partnership. In addition, the loan documents reflected that the property was owned by the partnership. Further, the partnership's tax return, and not appellants' tax returns, reported rents and expenses from the property which shows that the benefits and burdens of ownership did not transfer to appellants prior to the sale. The evidence in the record, viewed in a light most favorable to the BOE's decision, supports a finding that the partnerships were the true sellers of the properties because the partnerships signed the sales agreements, the deeds distributing interests were only recorded after the sale was imminent, and the partnership retained the benefits and burdens of owning the properties until the sale to the third party closed.

Appellants' contention that the LLC acquiring the replacement property in the Tantau transaction should be treated as a partnership, and not as appellant-husband's single member LLC, is not supported by the evidence in the record. Appellants contend the loan documents for the replacement property show that the alleged non-appellant partner in the LLC was simply a creditor who held a security interest in the entity for collateral to secure the loan. The BOE considered the partnership tax return for the entity, wherein the entity reported three members, and the entity's operating agreement, wherein the members agreed to acquire, hold, improve, lease, operate and dispose of the replacement property for investment and for the production of income from the replacement property. The operating agreement also indicated that the members, other than appellant-husband, made initial contributions of $5 million to the entity and would make additional contributions to fund capital improvements and other specified items related to the replacement property. Further, the entity maintained its own books and records. Viewing the evidence in a light most favorable to the BOE's decision, the evidence supports

finding that the LLC that acquired the replacement property in the Tantau transaction had more than one member and should be treated as a partnership.

Appellants essentially argue that the BOE weighed the evidence incorrectly against them. However, the relevant inquiry for purposes of a petition for rehearing is not one which involves a weighing of the evidence, but rather is a question of whether there is evidence which, if given its fullest effect, is legally sufficient to support the decision. (See *Mosekian v. Ginsberg* (1932) 122 Cal.App. 774, 777; *Sanchez-Corea v. Bank of America* (1985) 38 Cal.3d 892, 906 (*Sanchez-Corea*).) In light of the above discussion, we find that the evidence supports the BOE's decision finding that the Tantau and Wolfe transactions did not qualify as IRC section 1031 exchanges. Therefore, a rehearing is not warranted on this basis.

3. Whether the decision is contrary to law

The question of whether the decision is contrary to law (or against law) is not one which involves a weighing of the evidence, but instead requires a finding that the decision is "unsupported by any substantial evidence." (*Sanchez-Corea*, *supra*, 38 Cal. 3d at p. 906.) This requires a review of the decision to "indulge in all legitimate and reasonable inferences" to uphold the decision. (*Id.* at p. 907.) The relevant question is not over the quality or nature of the reasoning behind the decision, but whether the decision can or cannot be valid according to the law. (*Appeal of NASSCO Holdings, Inc.* (2010-SBE-001) 2010 WL 5626976.)

Here, substantial evidence supports the finding that the BOE's decision was not contrary to law. Appellants make the same arguments on petition for rehearing that they made during briefing and oral argument on the original appeal. The BOE's decision followed the legal reasoning in *Court Holding, supra, Bolker*, *supra*, *Chase*, *supra*, and *Brookfield Manor, supra,* by determining that the sellers of the Tantau and Wolfe properties were the entities, not appellants. Further, appellants' contention that the sales agreement signed by the partnership in the Wolfe transaction was terminated prior to the ultimate sale of the property is contradicted by the evidence in the record and appellants' admission that they were bound by the contract to sell the property as negotiated by the partnership.

In addition, there is substantial evidence to support the finding that the LLC that acquired the replacement property in the Tantau transaction should not be treated as a disregarded entity. The BOE's decision is consistent with Treasury Regulation section 301.7701-2(a), which provides that, if an LLC has two or more owners, the LLC is treated as either a partnership or as

an association which is taxed as a corporation. The BOE followed the legal precedent set by *Commissioner v. Culbertson* (1949) 337 U.S. 733 in determining that the entity should be treated as a partnership based on all the facts and circumstances. As noted above, the record reflects that the LLC filed partnership tax returns in which the LLC reported three members and the members agreed in the LLC's operating agreement to acquire and invest in the replacement property for the production of income. As such, there is substantial evidence to support the finding that the LLC should be treated as a partnership, rather than a disregarded entity.

Based on the discussion above, and under the standard of review provided for in *Sanchez-Corea*, *supra*, *Appeal of Wilson Development, Inc.*, *supra*, and *Appeal of Do*, *supra*, we find that the BOE's decision is not contrary to law and a rehearing is therefore not warranted on this basis.

CONCLUSION

Appellants have not shown good cause for a new hearing under the *Appeal of Wilson Development, Inc.*, *supra*, and California Code of Regulations, title 18, section 30604, for obtaining a rehearing. Therefore, appellants' request for a rehearing is denied.

DocuSigned by:
John O Johnson
873D9797B9E64E1...
John O. Johnson
Administrative Law Judge

We concur:

DocuSigned by:
Jeffrey Margolis
5E0822FBB1BA41B...
Jeffrey I. Margolis
Administrative Law Judge

DocuSigned by:
Jeff Angeja
1D390BC3CCB14A9...
Jeffrey G. Angeja
Administrative Law Judge

Cyrah Caburian

From: Warren Mine <warrenmine@gmail.com>
Sent: Friday, September 27, 2019 9:14 AM
To: City Council
Subject: Vallco deveopment

Follow Up Flag: Follow up
Flag Status: Completed

I have been a resident of Cupertino since 1948 and an very disappointed in the Cupertino city hall actions with regard to Vallco redevelopment efforts. You are only causing problems in furthering the improvement of the Vallco property which is very close to us. I don't want to see litigation to waste Cupertino tax payers dollars. Maybe you need to consider resigning in the face of impeding development of Cupertino in an orderly manner in accordance with the laws of the state of California. If you have some ligitiment agruments the you should have a city wide meeting to explain your actions. I would attend.
Warren

Sent from my iPhone

Cyrah Caburian

From: gail.c@apple.com on behalf of Gail Cleveland <gail.c@apple.com>
Sent: Friday, September 27, 2019 12:48 PM
To: City Council
Subject: Vallco

I am tired of getting Reed Moulds emails and threats. Also saw he posted on FaceBook. He needs to cut the threats. I appreciate our City Council members looking after the city and the neighbors affected by this construction. It has caused us to be skeptical of Sand Hill and their motive.

Please City Council members keep up the good work and put them in their place.

Regards,
Gail
One of the very close neighbors of the project.

Cyrah Caburian

From: Sherry Burns <sherburns26@gmail.com>
Sent: Sunday, September 29, 2019 12:07 PM
To: City Council
Subject: Vallco

The City Council appears to be moving Cupertino backwards instead of embracing the needs of the community. The way the Council keeps changing the rules is doing nothing for the health of this city. All the legal wrangling is heading us straight towards bankruptcy (from a city that had deep pockets and could do so much for its residents).

The City should not be helping a small, yet very vocal group (Better Cupertino) with their lawsuits as this smacks of conflict of interest. The interest of the City should be to all the residents and the needs of the city.

Sherry

CC 10-1-19

Oral Communications

Written Comments

CC 10/1/19
ORAL Comm

Mayor's Cup Points System

The Mayor's Cup recognizes Silicon Valley cities and towns in four categories, based on population:

- Extra Small Cities: (25,000 or less in population)
  - Atherton, Brisbane, Capitola, Colma, Half Moon Bay, Hillsborough, Los Altos Hills, Millbrae, Monte Sereno, Portola Valley, Woodside
- Small City: (25,000-35,000 in population)
  - Belmont, Burlingame, East Palo Alto, Foster City, Los Altos, Los Gatos, Menlo Park, San Carlos, Saratoga
- Medium City: (35,000 to 100,000 in population)
  - Campbell, Cupertino, Gilroy, Milpitas, Morgan Hill, Mountain View, Newark, Pacifica, Palo Alto, Redwood City, South San Francisco, San Bruno, San Mateo, Santa Cruz, Watsonville
- Large City: (above 100,000 in population)
  - Daly City, Fremont, San Jose, Santa Clara, Santa Clara County, San Mateo County, Santa Cruz County, Sunnyvale

Point Class	Points Available
Participation/Registration by Mayor, Elected Council Members or City Managers*	10 points max
City Council Champion	5 points available
Newsletter or E-Newsletter Promotion *(Share with us for points)*	2 points available
Social Media Promotion *(Share with us for points)[Facebook, Twitter, Instagram, LinkedIn]*	2 points available
Connection to Parks & Recreation Department for Promotional Opportunities	2 points available

*Points for Mayor, Elected Council Members or City Managers are based on the percentage of your board who participate. *(Example- Three out of five council members participate, 60% board participation. Receive 60% of the available 10 points; therefore 6 points are awarded to the city.)*

The Mayor's Cup is awarded to the municipality with the most points possible in each category. Registration must be completed by **November 23rd, 12:00 pm** PST to be counted towards the "Mayor's Cup" standings. A "leader board" is periodically updated to reflect standings and encourage participation.

2018 Winners
Extra-Small City – Los Altos Hills
Small City – Saratoga
Mid-Sized City – Campbell
Large City – San Jose

How do you participate? When you are registering, select "Yes" when asked if you are an elected official and choose your city. Encourage other elected officials to challenge cross-county rivals in a spirited competition based on participation, not speed!

The winning City or Town (or the County) in each size category will receive the following:

- The "Mayor's Cup" for prominent display in your lobby!
- Recognition at the race and in post-race press.
- Bragging rights for the entire year!

CC 10/1/19
ORAL Comm

CITY OF
CUPERTINO

CITY MANAGER'S OFFICE

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
TELEPHONE: (408) 777-3223 • FAX: (408) 777-3366
CUPERTINO.ORG

July 3, 2019

Robert Salisbury
County of Santa Clara
70 West Hedding Street
East Wing, Seventh Floor
San Jose, CA 95110
Robert.Salisbury@pln.sccgov.org

Dear Mr. Salisbury,

Lehigh Southwest Cement Company ("Lehigh") recently submitted an application for a Major Reclamation Plan Amendment for the Permanente Quarry ("Application"), which proposes significant departures from past approvals and raises grave concerns for the City.

In its Application, Lehigh proposes to transfer aggregate from its own property, located just west of Cupertino, to the neighboring Stevens Creek Quarry ("SCQ"). Lehigh proposes to do so either by resuming use of an internal "Utility Road" that it improved illegally last year, without permits from the City or County, or via an alternative "Rock Plant Haul Road" that would climb an even steeper route over the ridge between the two properties. Such activity is not encompassed in Lehigh's vested rights, which the County defined as "continued surface mining operations." Instead, shipping aggregate offsite is a distinct activity for which Lehigh has no legal precedent, much less a vested right. Accordingly, the County should require the Lehigh apply for a use permit and conduct a full environmental review for this expansion of both its and SCQ's operations.

As the City explained in its January 31, 2019 letter to the County objecting to SCQ's and Lehigh's unpermitted and illegal hauling operations, the proposed Utility Road raises significant concerns, including those related to emissions, seismic stability, and ridgeline protections and views. The proposed route also crosses into the City (and the alternative Rock Plant Haul Road only exacerbates each of the City's concerns by climbing higher over the ridge). In considering whether Lehigh should be permitted to haul its aggregate to SCQ, the County should also assess the extent to which doing so will extend the useful life of the both Lehigh's operations and SCQ beyond what was contemplated when Lehigh obtained its vested rights determination.

The Application also includes a drastic departure from the Quarry's existing reclamation plan. Rather than backfilling the North Quarry with material available onsite

in the West Materials Storage Area, as set forth in the 2012 Reclamation Plan, the Application proposes to import up to *1 million cubic yards* of soil each year to backfill the North Quarry. Despite its study's acknowledgment that transporting 1 million cubic yards of soil will require 200,000 trips to and from the Quarry annually, Lehigh fails to acknowledge the significant local impacts of this truck traffic. Roughly 548 truck trips to and from the Quarry *per day* (if operations ran every day of the year) will have an extraordinary and wholly unacceptable impact on the City's residents, streets, and infrastructure. These will include, at a minimum, exacerbating traffic concerns related to congestion, queuing, spilling of debris, pedestrian and bike safety, and blocking of intersections; degrading air and water quality; and causing significant deterioration of City streets and infrastructure.

Both the enormous increase in truck traffic related to the proposed reclamation of the North Quarry and the traffic that will result from SCQ's expanded sales of Lehigh's aggregate highlight the need for a truck plan setting meaningful limits on daily trips, time of operations, queuing, and enforcement problems. The County should ensure that any consideration of Lehigh's Application includes meaningful conditions and recourse for the City, which has borne the brunt of both quarries' recent illegal hauling operation, as recognized in the County's February 15, 2019 Notice of Violation to SCQ and its February 20, 2019 Draft Notice regarding Lehigh's Haul Road Reclamation Plan Amendment.

Lehigh's Application is entirely silent about the pre-application for a Use Permit and Major Reclamation Plan Amendment submitted by SCQ, which proposes to import up to 1 million tons of material from Lehigh each year for processing and sale, along with an additional six to seven million tons of fill with which to reclaim that quarry. The cumulative effects of these projects are obvious and must be addressed, including by carefully evaluating any alternative that uses onsite material for reclamation.

Lehigh's Application also includes a worrying proposal to alter the 1972 Ridgeline Easement between Lehigh and the County to significantly change the Permanente Ridge. Though Lehigh attempts to mask its proposal as necessary to prevent natural erosion of the ridgeline, this proposal appears designed to increase production from the North Highwall Reserve of the Quarry. The 1972 Easement prohibits Lehigh from reducing the ridgeline below specified elevations. It has already violated that mandate. Nonetheless, Lehigh asks the County to not only endorse its past violations, but also to approve further departures from the Easement. Lehigh's proposal would reduce the height of the ridgeline by an average of 100 feet, which Lehigh refers to as "a slightly lower crest elevation." Lehigh reveals its intent to further develop this area when it notes that analysis conducted in 2018 "has revealed options for extending North Quarry production," and that the 1972 Easement inhibits "production of highwall reserves." As Lehigh acknowledges, "[t]he 1972 Easement has been effective in maintaining the northeast slope such that views of mining operations are obscured." The County should not accept further deviation from the binding terms of the Easement merely to enable Lehigh to increase its production from this area. Instead, it should deny Lehigh's request to modify the 1972 Easement or to reduce the height of the ridgeline in this area.

Additionally, the City urges the County to deny Lehigh's Application entirely until Lehigh comes into compliance with its various outstanding violations. These violations include the County's August 17, 2018 Notice of Violation for Lehigh's illegally grading the utility haul road outside the boundaries of its 2012 reclamation plan amendment. As noted above, Lehigh is prohibited from shipping its aggregate offsite via this or other roads without first obtaining a use permit from the County and undergoing environmental review. Additionally, the City issued an Administrative Citation and Notice of Violation on May 28, 2019 for Lehigh's illegal expansion of the utility road without City permission. Finally, as recently as June 13, 2019, the County issued a Notice of Violation related to Lehigh's discharging sediments into Permanente Creek. Lehigh should not receive further approvals until it has corrected all of its outstanding violations.

As revealed by the specific concerns highlighted here, Lehigh's Application is also inconsistent with the County's General Plan. General Plan Policy C-RC 47 requires that potentially adverse environmental impacts from the extraction and transport of mineral resources be minimized to the greatest extent possible, including disruption and damage to topography and increased traffic volumes and damage to road surfaces. For the reasons discussed here, rather than minimizing these impacts, Lehigh's Application compounds them.

Thus, as briefly summarized above based on a preliminary review, the City finds Lehigh's Reclamation Plan Amendment Application inappropriate and likely highly detrimental to the City's residents and resources. The City thus requests that the County scrutinize Lehigh's proposal to expand its operations via increased hauling between Lehigh and SCQ, to materially alter the terms of long-standing Ridgeline Easement, and to increase truck traffic by more than 550 trips per day, with a focus on identifying alternatives that will avoid the resulting impacts on the City and the surrounding community.

Sincerely,

Deborah L. Feng
City Manager

Midpeninsula Regional
OpenSpace | Midpeninsula Regional Open Space District

GENERAL MANAGER
Ana M. Ruiz

BOARD OF DIRECTORS
Pete Siemens
Yoriko Kishimoto
Jed Cyr
Curt Riffle
Karen Holman
Larry Hassett
Zoe Kersteen-Tucker

July 12, 2019

Mr. Rob Salisbury
Santa Clara County Planning Dpt.
70 West Hedding Street
East Wing, 7th Floor
San Jose, CA 95110

RE: Lehigh Southwest Cement Company Proposed Permanente Quarry Reclamation Plan Amendment Application

Dear Mr. Salisbury,

The Midpeninsula Regional Open Space District (District) submits the following preliminary comments on the May 2019 application from Lehigh Southwest Cement Company (Lehigh) for a proposed Reclamation Plan Amendment (2019 Amendment). Our comments raise concerns regarding the proposed expansion of the quarry operations into the protected Scenic Easement area. These concerns are focused on four main issues: inadequate geotechnical solutions to stabilize the existing quarry walls; continued water quality impacts of both groundwater and Permanente Creek; visual impacts resulting from the increased height of the West Materials Storage Area (WMSA) and lowering of the ridgeline; and the potential for increased air quality impacts. Additionally, the District is concerned that the proposed amendment would also result in continued implementation delays to fulfill current stream restoration obligations along Permanente Creek.

Protection of the Permanent Ridge Scenic Easement

The Permanente Ridge Scenic Easement owned by Santa Clara County (County) is extremely important to the District, our visitors, neighbors, and all County residents who value the scenic views of the prominent hillside. This easement protects the views looking to the north towards Lehigh Quarry. Even though the massive quarry is located just over the ridgeline from Rancho San Antonio Open Space Preserve, the scenic easement ensures that the viewshed remains one of natural splendor to be enjoyed by preserve visitors, neighbors and everyone in the Santa Clara Valley region. The scenic easement explicitly prohibits the mining activities proposed in the 2019 Amendment. To conform with existing legal requirements and uphold the intent of the scenic easement, the District urges that the County require Lehigh to amend its 2019 Amendment application to ensure compliance with County rules and regulations, and with the land use restrictions that apply to this important scenic easement. At a minimum, Lehigh should be required to provide an alternative in their application that complies with the scenic easement before the application is deemed complete.

Geotechnical Stability

The District raises significant concerns that recent mining activities remain out of compliance with the County-approved 2012 Reclamation Plan. These activities have created over-steepened quarry wall

slopes with insufficient benches, resulting in a less stable hillside that is prone to erosion and landslides. These over-steepened slopes are not properly mitigated in the 2019 Amendment, and should be reviewed by the County Geologist, State Office of Mine Reclamation, and State Mining and Geology Board immediately.

The District also has concerns regarding Lehigh's proposal to mine the ridge that is protected by the Permanente Ridge Scenic Easement. The 2019 Amendment cites the need to address potential erosion and stability issues created by mining the northern quarry slope. However, the proposal to mine the ridge that lies within the Scenic Easement in reality does little to lessen the slope steepness. To sufficiently address the stability issues, Lehigh should be required to follow the approved 2012 Amendment that calls for buttressing the mined slope with material from the WMSA. Expanding the mining area into the area protected by the Scenic Easement is not an acceptable approach to rectifying a condition created by past mining practices. It appears that the main driving benefit in mining this protected ridge protected is to extract additional product for additional profit by the quarry.

Water Quality

In the application, Lehigh cites water quality concerns associated with backfilling the quarry pit and buttressing the north quarry slope with the material stockpiled in the WMSA. However, the Regional Water Quality Control Board (RWQCB) developed and issued their recent 2018 Waste Discharge Requirements (WDR's) based upon the existing 2012 Reclamation Plan, which included relocating the WMSA into the quarry pit and buttressing the steeply mined quarry walls, indicating that water quality objectives are achievable using this approach. Lehigh does not provide material evidence to support their position, except for their desire to stop treating the groundwater they have intercepted through mining activities. Again, one has to assume that increasing the profit of the quarry through reductions in operating costs are the main driver for this proposal.

Important to a successful reclamation will be the non-limestone materials used to backfill the lowermost elevations of the quarry pit (including elevations below the water table that have been mined since the 2012 Amendment approval). Lehigh's proposed 2019 Amendment estimates that 80% of the total volume in the WMSA contains non-limestone rock. Lehigh has also stockpiled substantial volumes of non-limestone rock (primarily greenstone) elsewhere in the quarry. Given the volume of non-limestone material needed to backfill the large mining pit, it is critical to retain all existing non-limestone material onsite to use as backfill. This material should not be sold or hauled off site. Using existing onsite material avoids the added environmental impacts related to greenhouse gas emissions, traffic, and diesel exhaust that would otherwise occur if the County accepts Lehigh's proposal to sell and off-haul existing material for profit and import and in-haul outside fill for an additional profit. The trucking of this material is substantial – with an estimate given of up to one-million cubic yards of construction soil imported annually to the site from throughout the South San Francisco Bay Area. The application fails to describe the environmental impacts to Cupertino, surrounding communities, and Rancho San Antonio Open Space Preserve related to the off-haul and in-haul of this material. Moreover, the proposed use of imported soil (rather than onsite material) to fill in the mining pit is anticipated to extend the current 5-year reclamation timeline by an additional 25-30 years. The resulting extensive delay is unacceptable.

Visual Impacts

Lehigh's proposed 2019 Amendment would raise the WMSA an additional 160 feet in elevation. This proposal runs fully contrary to the prior approved 2012 Amendment, which requires removal of the WMSA. As part of the 2012 Amendment, the County recognized the visual impact of the expanded WMSA and allowed Lehigh to temporarily retain the WMSA during mining activities with the requirement that the WMSA be removed as part of reclamation activities. Adding 160 feet of additional

elevation would clearly result in greater visual impacts than the current 2012 Amendment and negate the original agreements made between the County and Lehigh.

Air Quality Impacts

The proposed mining of the scenic easement and additional storage at the WMSA are ridgetop construction activities subject to wind erosion. The District conducted an extensive air monitoring study in 2013-2014 at Rancho San Antonio Open Space Preserve (Winegar Air Sciences, October 2104). The study noted a correlation in the increase of particulate matter with proximity to the Lehigh quarry. The air was clearly degraded by particulate matter at a sample point located closest to Lehigh when compared with up-wind monitoring locations. Concentrations of particulate matter 10 micrometers or less in diameter (PM10) exceeded the California Standard at the monitoring site closest to Lehigh. The proposed mining activities pose a significant new air quality concern to the District and should be sufficiently addressed in the application

Delays in Completing the Permanente Creek Restoration Area

The ongoing delay in completing the Permanente Creek Restoration Area (PCRA) is of continued concern to the District. The 2019 Amendment states that "The proposed reclamation plan amendment would not change the reclamation approach or requirements for the PCRA". What appears to change is the timeline. Under the existing 2012 Amendment, PCRA restoration is to be completed by 2030. Per the 2019 Amendment, the timeframe for restoration is 10-20 years from approval, an extension of up to an additional 10 years – out to potentially 2040. Lehigh's existing slow pace for submitting necessary items requested by the County to comply with the 2012 Amendment raises serious concerns that the same slow approach and resulting delays would occur if the proposed 2019 Amendment is approved. Our concerns for the creek were recently justified and heightened by recent landslides from the Yeager Yard area into Permanente Creek. The PCRA restoration should be completed as soon as possible, and should not be delayed for another decade. The 2019 application should also be deemed incomplete because it lacks specificity in describing the timeframe for restoration of the PCRA.

The County holds the authority to uphold its commitment to the surrounding communities by protecting the Permanente Ridge Scenic Easement and requiring the timely implementation of the approved 2012 Amendment. It is clear that the existing 2012 Reclamation Plan is far superior to the Proposed 2019 Amendment by remaining much more protective of human health, the surrounding environment, and scenic vistas. The County is asked to deem Lehigh's 2019 Reclamation Plan Amendment application as incomplete until all the issues discussed above are adequately addressed.

Sincerely,

Ana M. Ruiz
General Manager
Midpeninsula Regional Open Space District

cc: Midpeninsula Regional Open Space District (District) Board of Directors
Erika Guerra, Environmental Director, Lehigh Quarry
Brian Malone, Assistant General Manager, District
Kirk Lenington, Natural Resources Manager, District

1 North San Antonio Road
Los Altos, California 94022-3087

SENT VIA EMAIL: supervisor.simitian@bos.sccgov.org

July 31, 2019

Supervisor Joe Simitian, District 5
Santa Clara County Board of Supervisors
County of Santa Clara
70 West Hedding Street, 10th Floor
San Jose, CA 95110

Re: Lehigh Southwest Cement Company Reclamation Plan Amendment Application

Dear Supervisor Simitian,

Our initial review of the Lehigh Southwest Cement Company ("Lehigh") Reclamation Plan Amendment Application ("Application") for its Permanente Quarry raises grave concerns for the citizens of Los Altos. We appreciate the efforts made by County staff in their review of the Application as described in Senior Planner Robert Salisbury's letter dated July 22, 2019 and concur with the issues raised by both the City of Cupertino letter dated July 3, 2019 and the Midpeninsula Regional Open Space District letter dated July 12, 2019 pertaining to visual impacts, geotechnical stability, traffic, air and water quality, and delays of the Permanente Creek Restoration.

Lehigh's intention to mine over a half-mile (3000 ft.) of the deeded Ridgeline Protection Easement, which preserves our "scenic backdrop to the residents in the northern portion of the County of Santa Clara," is unacceptable. The County General Plan highlights the importance of our viewshed, which applies to our ridgeline and Lehigh's proposed retention and expansion of the 173-acre West Materials Storage Area (WMSA) mountain of mining-waste that already mars the lower ridge, "Over time, the focus of General Plan policies has made it a priority to conserve as much as possible those hillsides immediately visible from the valley floor." The significant traffic increase of 666 trucks per day for 30 years has been underestimated. A cumulative traffic analysis must consider the Stevens Creek Quarry expansion plan, which allows 1300 trucks per day along with Lehigh's stated objective to open a new aggregate business. In addition to pollution from truck traffic, there is concern that fugitive dust from blasting with 1101 tons of explosives annually would negatively affect our residents. As Lehigh cement plant air emissions contribute to mercury water pollution in the adjacent Stevens Creek Reservoir and Calero Reservoir, 20 miles away, air and water pollution are also regional concerns.

We encourage the County to retain the 2012 Reclamation Plan. This superior plan protects the ridgeline, removes current and future WMSA visual impacts, minimizes traffic, and restores Permanente Creek in a timely manner. We also urge the County to reject Lehigh's 2019 Application until Lehigh comes into full compliance with its outstanding violations. Thank you for your continued attention to this major industrial site, which affects our residents and the entire district.

Sincerely,

Lynette Lee Eng

Lynette Lee Eng
Mayor

c: Assembly member Marc Berman
State Senator Jerry Hill
Los Altos City Council
Los Altos City Manager
Jacqueline Onciano, Santa Clara County Director of Planning

LOS ALTOS HILLS
CALIFORNIA

September 20, 2019

Mr. Robert Salisbury
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:

The Town of Los Altos Hills ("Town") submits these preliminary comments regarding the May 22, 2019 application from Lehigh Southwest Cement Company ("Lehigh") for the proposed Reclamation Plan Amendment ("Application") to Santa Clara County Planning Department ("County"). 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 the residents of Los Altos Hills. The Application raises concerns for the Town regarding scenic views, water quality, air quality and truck traffic as well as continued delays in the court-ordered restoration of Permanente Creek.

Protection of Scenic Views

The Town urges the County to enforce the 1972 Ridgeline Protection Easement deeded by Lehigh's predecessors to the County. Preservation of natural beauty and natural resources was a guiding principle in the formation of the Town of Los Altos Hills and continues to steer the Town's planning policies and ordinances. The 1972 Ridgeline Protection Easement shields from view the massive mining and cement operations of Lehigh.

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 visible from Town. 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 the "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

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California 94022
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Grantor mine, quarry or otherwise excavate for minerals or mineral materials in the area shown as the 'northeast slope' on Exhibit 'B'".

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

The Town recommends that the County not allow further delays to the court-ordered restoration of Permanente Creek on Lehigh's property. Water quality impairments have 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.

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. Importation of up 60 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.

Truck Traffic

The Application proposal to import up to 60 million tons 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.

Conclusion

The Town shares concerns raised by our neighbors, City of Cupertino (letter dated July 3, 2019), City of Los Altos (letter dated July 31, 2019) and 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 the Town's natural resources and residents, and therefore the Town of Los Altos Hills requests the County to firmly uphold key elements of the 2012 Rec Plan and enforce the 1972 Ridgeline Protection Easement.

Sincerely,

Carl Cahill
City Manager

cc: Honorable Supervisor Joe Simitian, District 5
Los Altos Hills City Council

County of Santa Clara

Department of Planning and Development
Planning Office

County Government Center, East Wing, 7th Floor
70 West Hedding Street
San Jose, California 95110-1705
(408) 299-5770 FAX (408) 288-9198
www.sccplanning.org

July 22, 2019

Ms. Erika Guerra
Lehigh Southwest Cement Company
24001 Stevens Creek Blvd
Cupertino, CA 95014

FILE NUMBER:	PLN19-0106
SUBJECT:	Major Reclamation Plan Amendment
SITE LOCATION:	24001 Stevens Creek Blvd.
DATE RECEIVED:	May 22, 2019

Dear Ms. Guerra:

The purpose of this letter is to inform you that the application for a Reclamation Plan Amendment ("Application") described below in Section I, submitted by Lehigh Southwest Cement Company ("Lehigh")[1] on May 22, 2019 has been deemed **incomplete**.

To complete the Application, Lehigh must submit the following information requested in Section II and summarized below, no later than 180 days from the date of this letter:

- Diagram showing extent of mining within areas covered by the 1972 Ridgeline Protection Easement ("1972 Easement");
- Additional clarification about the timeframe for completion of the Permanent Creek Restoration Area project and compliance with the consent decree;
- Specific mining plan for, and access to, the Rock Plant Reserve Area;
- Proposed tree removal and replacement; and,
- Additional information related to submitted Geotechnical reports.

Other issues and areas of concern identified by the Department related to this application are described in Section III below.

If the requested information is not submitted within 180 days, an application reactivation fee of 10% of the current application fee will be required to continue processing the application. If the requested information is not submitted within one (1) year from the date of this letter, the Application is deemed abandoned.

[1] The applicant is Lehigh Southwest Cement Company ("Lehigh") for property located at 24001 Stevens Creek Boulevard, Cupertino CA 95014. As stated on the Application, the property is owned by Hanson Permanente Cement, Inc.

Prior to submitting the requested information, you are required to schedule an appointment to discuss your responses to the comments below. Please contact Robert Salisbury (robert.salisbury@pln.sccgov.org / 408-299-5785) to schedule this appointment.

I. Project Description

On May 22, 2019, Lehigh submitted an Application to amend the existing Reclamation Plan for Lehigh Permanente Quarry (the "Quarry"), approved by the Board of Supervisors on June 26, 2012, hereon referred to as the 2012 Reclamation Plan. The Application proposes to amend the 2012 Reclamation Plan by completely replacing it, including the following significant modifications:

A. Expand the reclamation plan boundary area by 73.4 acres, increasing the total reclamation plan area from 1,238.6 acres to 1,312 acres.

B. Retain the overburden material currently stored in the West Materials Storage Area ("WMSA") in place, originally proposed to be used for backfilling of the main quarry pit under the approved 2012 Reclamation Plan. This Application proposes to instead import up to 1 million cubic yards per year of clean fill to backfill the main quarry pit, estimated to total 33 million cubic yards, and leave the WMSA overburden material in place.

C. Modify the maximum final elevation and recontour the WMSA, increasing the final elevation from approximately 1,900 feet mean sea level (msl) to 2,060 feet msl.

D. Modify the County's 1972 Ridgeline Protection Easement and decrease the lower ridge crest along a portion of the North Quarry highwall by approximately 100 feet, in order to mine additional limestone in this area and layback the slope for stabilization.

E. Expand mining activities into a new 30-acre area, referred to as the "Rock Plant Reserve", located to the south east of the main quarry pit, including reclamation.

F. Use an existing Pacific Gas & Electric, Co. utility access road, or establish a new haul road between Leigh and Stevens Creek Quarry ("Utility Haul Road") in order to facilitate the sale of aggregate material to Stevens Creek Quarry. (Note: This aspect of the project is currently proposed under the separate Utility Road Reclamation Plan Amendment Application, File No. PLN19-0067.)

G. Reclaim an approximately 3,600-foot segment of the existing Plant Quarry Road and adjacent areas. (Note: This aspect of the project is currently proposed under the separate Utility Road Reclamation Plan Amendment Application, File No. PLN19-0067.)

II. Summary of Required Supplemental Information

The following is a summary of the information that Lehigh must provide to the County to complete its Application.

A. Diagram showing extent of proposed mining within the 1972 Ridgeline Protection Easement

The County of Santa Clara is the holder of a Ridgeline Protection Easement ("1972 Easement"), granted to the County on August 18, 1972 by Kaiser Cement & Gypsum Corporation, which forbids quarrying and mining activities in areas shown on attached exihibits, and requires Kaiser Cement & Gypsum Corporation and its sucessors to maintain portions of the ridgeline at specific elevations. The Application proposes to lower the height of the ridgeline protected by the 1972 Easement, and appears to propose quarrying activities within areas were such activities In order to better evaluate these potential conflicts. Please submit a diagram or diagrams which clearly shows the limits of the 1972 Easement, including the areas within the 1972 Easement where mining activities are forbidden, and the extent of proposed mining activities within or in close proximity to those areas.

B. Revision to Permanente Creek Restoration Area ("PCRA") project timeline

Under the approved 2012 Reclamation Plan, the Permanente Creek Restoration Project is scheduled to be completed in 2030. The proposed Reclamation Plan Amendment proposes to potentially extend this timeframe to approximately 2040, creating an unexplained delay of 10 years. Please clarifify how the restoration time frames in the Application comply with the Consent Decree between the Sierra Club and Lehigh Southwest Cement Company and Hanson Permanente Cement, Inc.

C. Rock Plan Reserve Area Mining and Access Design

The submitted Reclamation Plan Amendment does include suffficient detail for the proposed mining and reclamation of the Rock Plant Reserve area, nor is there sufficient information descrbing how this area will be accessed from the existing quarry. Please provide an overview of this area on one sheet at a scale sufficient to show details, and include a separate sheet showing how this area will be accessed, along with detail showing how this area and the access road will rcclaimeds.

D. Proposed Tree Removal and Replacement

As required by 14 California Code of Regulation § 3503 (c), all reasonable measures be taken to protect the habitat of fish and wildlife. Pursuant to this requirement, please include in tabular format the number, species, and DBH (diameter at breast height) of trees to be removed as part of this Application.

E. Geology

Please submit updated geologic investigation reports prepared and signed by a Certified Engineering Geologist that adequately address the following issues.

1. The County's Geologic Hazards Ordinance requires that geologic reports be signed by a California Certified Engineering Geologist (CEG). The G-1 through G-4 reports (Binder 1, Appendix G) are signed by a Geological Engineer (Paul Kos, P.E.) and a Geotechnical Engineer (Nelson Kawamura, G.E.) who both appear qualified to conduct slope stability analyses included in the investigations. The G-5 report is also signed by a Certified Engineering Geologist (Jennifer Van Pelt, CEG#2662. However, the signature of a California Certified Engineering Geologist needs to be included on the G-1 through G-4 reports and the supplemental materials described below.

2. Subsurface geologic interpretations (fault planes, bedding planes, etc.) need to be added to all of the cross-sections (e.g. Figure No. 3.3 in Binder 1, Appendix G) and the "models" used in the slope stability analyses (including the additional cross-sections and analyses referred to in the following comments #3 and #4).

3. An additional cross-section and related slope stability analysis are needed for the south-facing slope in the Yeager Yard Area, including the area containing Well WMSA-DMW-11 located at the south end of the WMSA. Additional surface mapping and subsurface exploration are needed to thoroughly evaluate the extent of ground movement that appears to have occurred in response to the removal of a substantial amount of material from the lower portion of that slope.

4. An additional cross-section and related slope stability analysis are needed for the east-facing cut and fill slopes located north of the "County Jurisdiction" line in Figure No. 1 "Utility Road Grading Plan" in Appendix G-5.

5. Supplemental geologic/geotechnical evaluation (geologic cross-sections and slope stability calculations) of the long-term stability of the proposed "layback" of northwest highwall of the main pit (Section D-D'). The existing slide plane of the 1988 landslide must be shown and its shear strength considered in the analysis.

6. Supplemental geologic/geotechnical evaluation (geologic cross-sections and slope stability calculations) of the long-term stability of the upper portion of the proposed cut slope on the west side of the Rock Plant Reserve (Sections A-A', B-B'. and C-C'). The stability models must include the eastern edge of the existing (mapped) shear zone which also underlies the failing cut slope in the adjacent Stevens Creek Quarry. Unless better test data are available, utilize the same strength values determined there.

Please submit the items to address the issues raised in this Section II.E (Geology) in your Application and direct questions regarding the above geology items to Jim Baker (408-299-5774 / Jim.Baker@pln.sccgov.org).

III. Additional Issues/Areas of Concern

In addition to the incomplete items discussed above in Section II, the following additional issues and policy conformance areas apply to the Application:

A. **Existing Violations** – County Ordinance Code Section C1-71 provides that "[n]o permit required by this title [Title C] shall be issued to any applicant…upon which there exists a conflict with any County ordinance or state law…[p]ermits may be issued…if the applicant has executed a compliance agreement and is in the process of completing or has completed the repairs, construction, or reconstruction described in the compliance agreement." On June 13, 2019, a violation was issued to Lehigh by the County of Santa Clara for violation of the Surface Mining and Reclamation Act and County Zoning Ordinance Section 4.10.370 III (C)(1) related to discharge of sediment into Permanente Creek.[2] In addition, on July 9, 2019 the San Francisco Bay Regional Water Quality Control Board issued a violation related to the discharge of sediment into Permanente Creek. Accordingly, unless these violations are abated, the Department will recommend denial of this application, and will not conduct environmental review of this application consistent with Public Resources Code Section 210180(b)(5) and CEQA Guidelines Section 15270.

B. **Overlap with Utility Road Reclamation Plan Amendment** – The Application, being a proposed complete replacement of the approved 2012 Reclamation Plan, includes areas outside of the existing reclamation plan boundary. These areas are proposed to be included in the Reclamation Plan boundary by the Utility Road Reclamation Plan Amendment Application (File No. PLN19-0067), which is currently under review. The County's processing of this Application does not approve or imply an intent to approve the Utility Road Reclamation Plan Amendment. Should the Utility Road Reclamation Application be amended, or denied, changes to the Application will be required.

C. **Environmental Impact Report** - Due to the scope of the Application, the County will prepare an Environmental Impact Report ("EIR") to evaluate and disclose to the public and decision makers the environmental effects of the Application. During preparation of the required EIR, additional information and peer review of the submitted technical analyses and reports may be required. The County will provide Lehigh with specific requests for information once environmental review has commenced.

D. **Import of Fill – Environmental Impacts** - The Application proposes to retain the WMSA in place, and instead use approximately 33 million cubic yards of imported clean fill material for backfilling of the quarry pit. This import of fill would require

[2] Zoning Ordinance Section 5.20.140 states that the decision-making body may deny an applicatoin for any permit or approval if there is recorded notice of violation for any zoning, grading, building code, housing code, or other land use violation on the property that is the subject of the application.

approximately 200,000 truck trips annually, which equates to approximately 666 truck trips per weekday for 30 years. This increase of truck traffic and the resulting impacts to greenhouse gas emissions, public safety and congestion, likely constitute significant impacts under CEQA.

E. **Import of Fill – Feasibility** - It is unclear if the proposed importation of fill 33 million cubic yards of fill is feasible, as it is dependent upon multiple external economic factors outside the control of Lehigh Quarry. Given this uncertainty, and the requirement that the Quarry must be reclaimed per SMARA, the proposed Reclamation plan may be inconsistent with SMARA as it would create an ongoing liability if the Quarry could not be reclaimed. The County will conduct a peer review of the submitted economic study and may require modifications to the Reclamation Plan or conditions that ensure that the Quarry can be feasibly reclaimed, irrespective of external economic factors]

F. **Retention of WMSA – Visual Impacts** - The approved 2012 Reclamation Plan recognized the visual impact of the West Material Storage Area ("WMSA") and stated that WMSA material would be removed from the area and used to back-fill the main quarry pit. By contrast, the Application proposes to increase the height of the WMSA by 160 feet and retain it in place in perpetuity. This increase in height and permanent retention WMSA material in place may constitute a significant visual impact.

G. **Stevens Creek Quarry Haul Road** - The Application seeks continuation of transport of aggregate rock to Stevens Creek Quarry, either through the existing haul road or by establishment of a new haul road. However, the County of Santa Clara issued an NOV to Stevens Creek Quarry on February 15, 2019 requiring Stevens Creek Quarry to cease the importation of material from Lehigh due to the lack of required land use authorization to import, process and sell aggregate rock. As a result, Lehigh cannot use the proposed haul road for the purpose of exporting aggregate to Stevens Creek Quarry without Stevens Creek Quarry obtaining the necessary land use entitlements to import the aggregate from the haul road.

H. **Stevens Creek Quarry Reclamation Plan-** This expansion includes portions of APN 351-11-001, bordering Stevens Creek Quarry ("SCQ"), which SCQ also plans to incorporate into their Reclamation Plan boundary as identified in their Use Permit/Reclamation Plan Amendment pre-application (File No. PLN19-0110). The County may require Lehigh and/or SCQ to clarify how these overlapping reclamation plan areas are resolved.

If you have any questions, please contact Robert Salisbury at 408-229-5785 or robert.salisbury@pln.sccgov.org.

Sincerely,

FOR ROB SALISBURY

Robert Salisbury
Senior Planner

Atts: Notice of Violation for Yeager Yard Issues

cc: Jacqueline R. Onciano, Director of Planning and Development, County of Santa Clara
Rob Eastwood, Planning Manager, AICP, County of Santa Clara
Manira Sandhir, Principal Planner, AICP, County of Santa Clara
Jim Baker, County Geologist, County of Santa Clara
Elizabeth G. Pianca, Lead Deputy County Counsel, County of Santa Clara
Michael Rossi, Lead Deputy County Counsel, County of Santa Clara
Kristina Loquist, Office of Supervisor Simitian, County of Santa Clara
Kristin Garrison, Environmental Scientist, CA Department of Fish and Wildlife
Lindsay Whalin, Environmental Scientist, S.F. Bay RWQCB
Lisa Horowitz McCann, Assisant Executive Office, S.F. Bay RWQCB
Ana Ruiz, General Manager, Midpeninsula Regional Open Space District
Roger Lee, Acting Public Works Director, City of Cupertino
Deborah L. Feng, City Manager, City of Cupertino
Paul Fry, Engineering and Geology Unit Manager, Division of Mine Reclamation

CC 10/1/19
ORAL Comm

Resident Council Performance Evaluation

New city manager hired – progress in stabilizing senior positions.

Development projects

- Previous Council : Veranda , Hyatt House and Regnart Creek Trail (initial), Vallco Specific Plan
- Current Council: Cupertino Village Hotel, Regnart Creek Trail (final)
- **No new housing approved** – prevented over 1700 under any alternative Vallco SB 35 application
- **No move to expand housing** – just moves to restrict development, see Item 21 tonight
- Repealed community-driven Specific Plan

Negative publicity and embarrassing leadership

- Mayor Scharf – Wall around Cupertino "joke"
- Planning Commission Chair R "Ray" Wang – intimidation and threats to residents and critics with no action from council
- Downzoning Vallco

Closed sessions: 24 YTD, with 3 months left in 2019

- Excludes the public – no reportable action
- Legal costs significant

Legal expenses – over $1 million and increasing – ZERO benefit to Residents

- Mayor Scharf Measure C appeals -$225,441
- Randy Hom settlement - $341,531 ($205,000 settlement plus legal costs)
- Friends of Better Cupertino – Kitty Moore, Planning Commission, et.al.
- Vallco Referendum
- Sand Hill Properties lawsuit – downzoning actions by council
- All in addition to incurring typical liability

Assessment: - NEEDS IMPROVEMENT

October 1, 2019 by Jean Bedord, Cupertino resident

CC 10-1-19 #6

Fiscal Year 2019-2020 City Work Program add Financial Sustainability item

Written Communications

Cyrah Caburian

From: Jennifer Griffin <grenna5000@yahoo.com>
Sent: Tuesday, October 1, 2019 8:04 AM
To: City Council
Cc: grenna5000@yahoo.com
Subject: Blackberry Farm Golf Course

Dear City Council:

I see that we have an item on the City Council meeting about the Blackberry Farm Golf Course. Golf is a pastime often used by seniors as recreation. We need to keep recreation opportunities for seniors available in Cupertino. Golf is quite often used as a networking opportunity for tech companies. Warriors athlete, Steph Curry, has recently started a push to make golf available and popular for youth. Mr. Curry has relocated to the Peninsula and will most likely be interested in golfing opportunities in the Bay area.

Blackberry Farm Golf Course is a very valuable recreation opportunity to retain in Cupertino.

Thank you very much.

Sincerely,
Jennifer Griffin