

Date: February 14, 2022

From: Rhoda Fry, resident Santa Clara County

To: Santa Clara County Board of Supervisors

CC: Cupertino, Los Altos, Los Altos Hills, Sunnyvale, Mountain View City Councils, California State Senators Dave Cortese and Josh Becker, Midpeninsula Regional Open Space District Board, Green Foothills Legislative Advocacy Director Brian Schmidt, Sierra Club Loma Prieta Chapter Director James Eggers, State Mining and Geology Board, State Division of Mining Reclamation, Assistant Executive Officer at San Francisco Bay Regional Water Quality Control Board  
Lisa Horowitz McCann

RE: Board of Supervisors Meeting February 15 Agenda Item #13 Acquisition of Lehigh Referral (attached)

Dear Board of Supervisors,

Yes, it is time for the County to acquire Lehigh's site in Santa Clara County, which is owned by Hanson Permanente and operated by Lehigh, which are collectively owned by Heidelberg Cement of Germany. Thank you for approving the previous two referrals providing data on the accuracy of Lehigh's Financial Assurance Cost Estimate (FACE) and records of violation.

Do know that although California's demand for cement has remained robust in the past two years, the cement plant has been idle along with blasting for limestone-mining. The cement plant is in such grave disrepair that it would require substantial renovation or replacement. Due to the extraordinarily high amounts of mercury in the local limestone, Lehigh would likely be unable to comply with the more stringent EPA mercury-emission rules for new and modified plants. Consequently, the days of Portland-cement manufacturing at the Santa Clara site are most certainly already over. Likewise, the two new proposed mining areas are also infeasible due to one being protected by the 1972 Ridgeline Easement Protection Deed and the second due to its threats to the Permanente Creek which is protected by the Federal Clean Water Act and the State Porter-Cologne Act.

First, I have two near term requests to the County and second, I shall outline considerations for the acquisition cost of this property.

Two Near-Term Requests:

1. The County should cease operations at the newly erected rock plant at Lehigh. I have written about this previously. This operation is not vested as it was abandoned and fell into disrepair over a decade ago in 2011, the new manufacturing process is different, the product is likely different, and Lehigh asserted its abandonment by processing aggregate at its neighbor's property, Stevens Creek Quarry. Any of these four tests fail vested rights. Moreover, the 2012 approved Reclamation Plan Amendment asserts that there is sufficient fill onsite to fill the quarry to protect water quality and serve as a foundation for a buttress to protect our ridgeline (that has already lost 50 to 75 feet of elevation due to the County's failure to enforce our deed). Removing fill with this new operation increases the need for imported fill and violates the 2012 agreement. Also of concern is that the new plant received permits from the Bay Area Air Quality Management District (BAAQMD) only after

BAAQMD's legal department requested the engineers to recalculate the cancer risk. See FOIA documentation here: [https://www.dropbox.com/s/rr8hmrpdtc8pk4i/29811\\_A0017.pdf?dl=0](https://www.dropbox.com/s/rr8hmrpdtc8pk4i/29811_A0017.pdf?dl=0) Please also consider that BAAQMD's legal department allegedly intimidated employees to destroy petroleum pollution records: <https://www.kqed.org/news/11791348/bay-area-air-district-settles-whistleblower-suit-over-trove-of-destroyed-documents>

2. Since we know that affordable housing is important, please require that Lehigh install modern pollution controls on their equipment and restore the Hammond-Snyder home adjacent to the cement plant so that it can be occupied once again. In 2012, the Board of Supervisors voted to have the oldest home in Cupertino vacated so that Lehigh could avoid installing modern pollution controls. The installation of modern pollution controls would have allowed the caretaker's family to remain in the home, preventing it from falling into disrepair. This historic home is part of our City, County, and State's history. Its owners, Dr. Hammond, was our County physician, the Sara Cody of his day, and his wife was Martha Snyder, was the daughter of California pioneer John Snyder who lived in a similar home nearby.

#### Considerations for Acquisition:

1. Lehigh's owner, Heidelberg Cement is a \$45B company that needed to raise money. So, in 2021, Martin Marietta completed the purchase of all of Heidelberg's West Coast operations with the notable exception of the Permanente Quarry and cement plant in Santa Clara County. In my opinion, in spite of Lehigh's ambitious expansion proposal, Martin Marietta declined to buy; I don't think that Lehigh could have even given it away in a package deal, first because the expansion proposal is not feasible as outlined earlier and second because of the gargantuan remediation costs.

2. What is reclamation? Under SMARA (California's Surface Mining and Reclamation Act), prior to mining, a quarry operator must earmark funds for the cost of restoring the land to a stable state so that it can have a secondary beneficial use, such as open space. Note that reclamation does not restore the land to how it had been. The earmarked funds are called the Financial Assurance Mechanism. At Lehigh, these funds are secured by \$63M in bonds (similar to an insurance policy). The County should also determine whether these bonds are properly backed at full value.

Thanks to a third-party review of Lehigh's Financial Assurance Cost Estimate (FACE) requested by Supervisor Simitian, the County has recently determined that \$63M is inadequate to do the reclamation as described in the approved 2012 Reclamation Plan Amendment (RPA). So if Lehigh walks away, the County could be stuck with the cost of reclamation over and beyond the bond amount. On February 11, 2022, Lehigh was to have responded to a 27-line item from the Planning Department that requested a revised Financial Assurance Cost Estimate (FACE):

[https://stgenpln.blob.core.windows.net/document/2250\\_2021\\_FACE\\_Letter\\_Inadequacy.pdf](https://stgenpln.blob.core.windows.net/document/2250_2021_FACE_Letter_Inadequacy.pdf)  
Lehigh's response has either not been posted to the County website or has not been received.

Keep in mind that reclamation is supposed to be conducted concurrently with mining; sadly, little has been done. For example, by now the East Materials Storage Area (EMSA) should have been stable, yet last year, Lehigh trucked out 745 cubic feet of silt from the EMSA. That responsibility will now belong to the County. The EMSA is a mountain of mining-waste pile that was illegally built by Lehigh and retroactively permitted by the County. It was the subject of Notices of Violation and a

lawsuit from the Open Space District and Bay Area for a Clean Environment. Perhaps had the County appropriately regulated the site, the need for trucking silt and water-quality problems in that area would not exist today. Moreover, the Open Space District has suggested the need to run the water treatment plants well after mining has ceased. The primary reason for the water treatment plant is that the County permitted mining below the water table. The list goes on and on.

Now that the quarry has been idle for two years, it is high time for true reclamation to begin.

3. In addition to the inadequacy of Lehigh's estimate, Lehigh has excluded a major landslide above Permanente Creek that is a documented health and safety hazard to homes and structures downstream. Even Lehigh's own documents state that it is unsafe to work there in the wintertime. Given that a 1983 quarry-caused flood deluged and evacuated Blach Middle School and other structures 4 miles downstream confirms that there is cause for concern. This landslide must be repaired and the cost of its repair must be accounted for in an offer to purchase the property.

4. Lehigh has also excluded its sizeable industrial complex of buildings, railyard and land that have a long history of hazardous materials. The complex is not part of the quarry so it is not part of the Reclamation Plan Area. The site has been used to manufacture magnesium, magnesium incendiary bombs that were dropped on Japan during WWII, phosphate fertilizer, plasticite (an asbestos-containing stucco-like material manufactured during WWII), aluminum, cement plant, and railyard, among others. Due to asbestos lawsuits at the Permanente site and others, Hanson Permanente went through years-long bankruptcy court proceedings. There is neither a closure plan nor an assessment for the industrial complex.

5. Thanks to another referral by Supervisor Simitian we will soon have a comprehensive list of violations. The County should also consider the multiple EPA Superfund documents, Geotracker, and leave no stone unturned. Court documents reveal the Lehigh management took bribes and hired unlicensed contractors: <https://countyda.sccgov.org/news/news-release/former-manager-permanente-cement-plant-convicted-bribery>. Other management was scheduled for sentencing on February 9, 2022.

6. Some of Lehigh's property has been untouched and will be suitable for open space. However, I am concerned about the site's suitability for housing which would significantly reduce its value to the County. There is groundwater pollution, dust from the quarry at elevated levels, and soil pollution (arsenic, beryllium, cadmium, chromium, lead, mercury, PCBs, and selenium, per Midpeninsula Regional Open Space District appeal letter to the County 2012 and EPA site assessment pdf pages 6 and 45). The cost of bringing in utilities such as sewer, water, and utilities must be considered along with site challenges, such as the hilly terrain (geotechnical), proximity to Permanente Creek, and PG&E towers.

As outlined above, the cost of reclamation, remediation, and rehabilitation will be staggering. It will make remediation at our County's 4100-acre Almaden Quicksilver County Park literally look like a walk in the park. Please ensure that the County conduct an in-depth study and, if necessary invest in 3<sup>rd</sup> party studies, to determine the appropriate land-value as balanced with the cost of remediation.

Sincerely,

Rhoda Fry

County of Santa Clara  
Board of Supervisors  
Supervisorial District 5  
Supervisor S. Joseph Simitian



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109544

**DATE:** February 15, 2022

**TO:** Board of Supervisors

**FROM:** S. Joseph Simitian, Supervisor

**SUBJECT:** Lehigh Cement Plant and Quarry Acquisition Options

**RECOMMENDED ACTION**

Approve referral to Administration and County Counsel to report to the Board within 90 days with options for consideration relating to the potential acquisition of the Lehigh Cement Plant and Quarry property located in unincorporated Santa Clara County, Cupertino, and Palo Alto. (Simitian)

**FISCAL IMPLICATIONS**

There are no direct costs associated with the approval of this referral. It is expected that the report-back will identify potential costs, including possibilities to finance those costs, of any options presented for the Board's consideration.

**REASON FOR RECOMMENDATIONS**

Over the hundred odd years that there has been active mining on the Lehigh site, and with large scale commercial mining starting in 1939, the community context in which this mining has taken place has changed considerably. Co-location of mining/heavy industry and residential subdivisions is certainly not something that a modern urban planner would actively contemplate; yet that is exactly what we find at the site today.

The Lehigh Cement Plant and Quarry is an historical anachronism. A significant segment of the community has repeatedly called for its closure. Not surprisingly, the current owners resist that path while there is limestone to be mined and a cement market to purchase their product.

By this referral, the Administration and County Counsel are directed to explore and report back on the feasibility of potential acquisition of the site, including outright purchase, either from a willing seller or through the use of eminent domain. Options for financing such an acquisition should be presented, along with a discussion of advantages or disadvantages associated with the various financing options.

Potential financing options could derive from future land use opportunities should the County acquire the property. For example, some members of the community have called for housing on the site. If housing were constructed there might be revenue associated with that activity that could be used to offset all or a portion of the acquisition costs. To the extent such opportunities exist, Administration and County Counsel should include them in the options they present to the Board.

Additionally, Administration and County Counsel should consider the possibility of County acquisition on a no-cost or low- cost basis if the current property owner (i.e., Lehigh) were to seek forgiveness for reclamation costs.

In offering this referral I am, of course, mindful of the fact that our County anticipates the possibility of an application to amend the current Reclamation Plan; indeed, an application was submitted in 2019, but ultimately not pursued by the applicant who apparently now contemplates a substantially revised application. It is understood, of course, that any future land use application, should there be one, will be lawfully considered pursuant to applicable law and on its merits.

That said, this referral is made now because:

- The multiplicity of complaints and violations at the Lehigh Cement Plant and Quarry suggests continuing incompatibility of uses;
- The potential, in fact likely, possibility of a new application for continued and expanded activity at the site suggests *now* is the time to envision and consider other possibilities which are both in the public interest and fair to the property owner;
- And finally, experience just across the Bay, at the recently opened park and camping facility which is the former Dumbarton Quarry, provides tangible evidence that reclamation and conversion can be accomplished.

To be sure, the undertaking anticipated by this referral is substantial, and the anticipated timeline is certainly not short. That said, the problems are real, the time is now, and we know that a good outcome is achievable. Rather than let the years pass and simply respond on a

reactive basis, our County should begin today to identify and pursue other more desirable possibilities.

To that end, Administration and County Counsel is directed to consult with all relevant stakeholders and consider collaboration with all potential partners in developing a planning process, timeline and eventually a proposal for the property in question.

## **BACKGROUND**

The Lehigh property includes a total of 3,510 acres, 2,656 of which are in unincorporated Santa Clara County and include the cement plant and quarry that are of interest to the community. The remaining acreage is within the incorporated cities of Cupertino and Palo Alto.

The current (2012) Reclamation Plan contemplates full reclamation of the site by June 30, 2032. That existing Plan contemplates hillside open space as the proposed end use following reclamation. In 2019, as noted above, Lehigh submitted an application for a Reclamation Plan Amendment (RPA). The pending RPA would have permitted modified, expanded operations and extended the reclamation timeline.