MEMORANDUM

Date: February 16, 2011

To: President Dave Cortese and Members of the Board of Supervisors
   Jeffrey V. Smith, County Executive
   Gary Graves, Deputy County Executive
   Sylvia Gallegos, Deputy County Executive

From: Gary Rudholm, Senior Planner, Planning Office

Re: Responses to comments made during the Public Comment portion of the Board of Supervisors Meeting on February 8, 2011, from Barry Chang related to Lehigh Southwest Cement Plant and the Permanente Quarry

During the Public Comment portion of the February 8, 2011, meeting of the Board of Supervisors Mr. Barry Chang made statements to the Board regarding the Lehigh Southwest Cement Plant and the Permanente Quarry reclamation plan amendments currently under review by the Planning Office. The following responses are provided for your information.

SPEAKER COMMENT:

"Good morning, Honorable Supervisors. What I'm going to talk about is the Notice of Violation of Lehigh. Nothing to do with this afternoon, Item 27. I'm fully aware of that. This is my 13th request to please put Lehigh's Notice of Violation on the agenda. You have ignored me all seven months, but the more I figure out, the more astounding. I just recently learned that the County Planning Department signed an agreement with Lehigh to abate the Notice of Violation. Does the County of Planning Department have the authority to do that? Who also has without a public hearing. Without an environmental impact report, which is very alarming. Please put this item on agenda. Santa Clara County residents have a right to know what's going on about the Notice of Violation. Why there's no enforcement. There's no penalty. Thank you."

Response:

In August 2010 Mr. Chang was made aware, and was provided a copy, of the Agreement between the County of Santa Clara and Lehigh Southwest Cement Company that allows the mine operator to use an area known as the East Materials Storage Area (EMSA) while the mine operator also pursues a Reclamation Plan Amendment (RPA) that would abate the Notice of Violation (NOV) he referenced. The issue regarding enforcement of the NOV by staff is the
subject of memorandums, all of which are posted on the Planning Office web page, and it is
summarized below.

The County investigated a complaint that alleged Lehigh Southwest Cement Company
("Lehigh") stockpiled petroleum coke in the EMSA. Following a field inspection, the County
determined the material to be overburden excavated from the mine pit. The County issued an
NOV, which provided the operator two options for addressing the violation: (1) remove the
material, or (2) apply for and obtain an amendment to the existing approved reclamation plan for
Permanente Quarry. An approved amended reclamation plan could authorize retaining the
material in the EMSA and provide for reclamation consistent with state and County mine
reclamation standards. The mine operator chose to apply for the reclamation plan amendment,
and the application is currently under review.

The Surface Mine and Reclamation Act (SMARA) establishes a process to cure violations such
as this, including filing for and obtaining a Reclamation Plan Amendment from the lead agency.
Fines may be imposed if the mine operator fails to take action to correct the violation(s). Lehigh
has taken actions to correct the EMSA NOV, therefore, no fines can or should be imposed at this
time. Approval of the proposed amendment would abate the violation and is thus the means of
enforcement.

The operator approached the County and explained that immediate use of the EMSA is necessary for
operational reasons, because the approved location to permanently store the overburden, known as the
West Materials Storage Area, is running out of room. Without using the EMSA the operator would be
forced to leave the material in the pit, which would prevent the operator from excavating some of the
remaining mineral reserves.

Following consultation with the State Office of Mining and Reclamation, the County signed an
agreement with Lehigh stipulating a rigorous schedule to complete the work necessary to submit a
reclamation plan amendment application, and all other information required to complete the
environmental impact review. The agreement also stipulates that the County retains its authority to
impose fines against the operator, if necessary. Should Lehigh not comply with a strict compliance
schedule, or fail to cooperate with the County as it processing the reclamation plan amendment, then
fines will be imposed.

The reclamation plan amendment described above requires review under the California Environmental
Quality Act and this review is underway. A Draft Environmental Impact Report (DEIR) is expected to
be published by the summer of 2011 for public review. A public hearing will be convened before the
Planning Commission to receive comments regarding the DEIR.

Mr. Chang has again asked, “Why is the County not taking action?” The County has taken action by
issuing the NOV. By filing for reclamation plan amendment, Lehigh has taken action to cure the
violation. The Board of Supervisors is aware of actions taken to date by staff and Lehigh, and does not
appear believe any other actions are warranted at this time.

cc:
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