

County of Santa Clara

Department of Planning and Development
Planning Office

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MEMORANDUM

Date: August 31, 2011

To: California State Mining and Geology Board

From: Jody Hall Esser, Director, Department of Planning & Development
Gary Rudholm, Senior Planner

Re: **Status Report Requested from the State Mining & Geology Board
Regarding the Processing of a Reclamation Plan Amendment and its
Associated Environmental Review of the Permanente Quarry,
State Mine ID #91-43-0004**

On June 9, 2011, the State Mining & Geology Board (SMGB) received a report from the County of Santa Clara, and a report from the operator of the Permanente Quarry, and received testimony from members of the public. Following these presentations, the Board directed the Office of Mine Reclamation (OMR) to provide a status report regarding the Permanente Quarry Reclamation Plan Amendment process at a subsequent meeting. The status report is scheduled for the SMGB meeting of September 8, 2011.

To assist OMR by providing up-to-date information about the County's efforts to enforce SMARA at the Permanente Quarry, the County of Santa Clara is submitting this report.

Currently, Permanente is the only surface mine within the jurisdiction of Santa Clara County with outstanding SMARA violations that must be addressed. Therefore, this report is devoted to the reclamation plan amendment process for the Permanente Quarry, exclusively, and is not a report regarding the County's SMARA program in general.

PERMANENTE QUARRY RECLAMATION PLAN AMENDMENT APPLICATION REVIEW

In a report dated June 9, 2011, the County advised the SMGB the status of work underway to concurrently process two Reclamation Plan Amendments (RPAs) being serially processed by the County, and the associated environmental review required under the California Environmental Quality Act (CEQA). During the June 9, 2011, SMGB meeting the County provided to the members of the Board a copy of the letter received from Lehigh, dated June 3, 2011, formally advising that Lehigh Southwest Cement Company, the mine operator, had decided to withdraw the two RPAs and to submit a modified application that would (1) eliminate a proposed expansion to include a second

pit mine, (2) combine both the EMSA RPA and the Comprehensive RPA into one amendment that would address all the existing areas of disturbance at Permanente, and (3) submit the modified proposal to the County by the first week of August.

In keeping with their commitment, the mine operator submitted the new application to the County Planning Office on Friday, July 29, 2011. The Planning Office commenced processing the application and is working to prepare a Draft Environmental Impact Report (DEIR).

Not dissimilar to efforts that have been underway for some time, please note the following snap shot of efforts underway between the last report to the SMGB and this date to bring Lehigh into full compliance with SMARA at the earliest possible opportunity.

- The County Geologist, Manager of Land Development Engineering, two Senior Planners, and a Planner III continue to scrutinize the application to determine by the legally prescribed deadline of September 6, 2011, whether the application is complete or incomplete.
- Planning Office staff forwarded a copy of the application to the Office of Mine Reclamation on August 9, 2011, and requested the OMR provide a preliminary review of the application. Comments from this review are expected on or about September 8, 2011. The preliminary review by OMR will supplement review conducted by the County.
- County staff completed contract negotiations with the environmental consultant who had been preparing the Draft Environmental Impact Reports for the two previous applications, changed the scope of work required, signed a new contract, and commenced work on the technical analysis.
- The supervisor of the Environmental Compliance Unit in the Planning Office and his lead staff member—the one coordinating Lehigh EIR preparation—are fully engaged in working with our EIR consultant to “salvage” as much of the analysis already drafted (for the two EIR’s in preparation through early June). At the direction of the County, the EIR consultant has assembled team members to enhance specialized skill and experience necessary to expeditiously move this project forward.
- The Planning Office is also retaining an additional contract Planner to support this DEIR preparation effort.
- The County has been in close coordination with the Water Board regarding selenium found in our field-testing of Permanente Creek earlier this year. The County has engaged a technical expert held in high regard statewide, and someone with over 30 years of experience in the impact of selenium on water quality in creeks and streams, to assist us in peer review of the EIR consultant’s report and recommendations.

- The County Planning Office updated its web page devoted to the Permanente Quarry and made the application materials available to the public.
- On August 18th, the County Planning Office published the legally prescribed Notice of Preparation (NOP) for the DEIR based on the new consolidated RPA scope. The open meeting to receive public testimony took place on August 30, 2011.
- Planning Office staff involved in every aspect of the Lehigh project meet on a weekly basis with the Director of the Department of Planning & Development. This group is often expanded to include the Manager of Land Development Engineering, Grading Inspectors, the County Geologist, GIS Technicians, and the County Surveyor. Deputy County Counsel is also generally present at these meetings. The Senior Planner in charge of SMARA compliance, the Senior Planner responsible for Environmental Compliance, and the Planner III assigned to preparation of the DEIR are in regular communication with staff at the Water Board and Air Resources Board staff regarding activities at the quarry and related public inquiries. To gather and confirm data, a Senior Planner and Planner III who are involved in preparation of the DEIR speak regularly with Lehigh staff; in addition, County Counsel and Department senior staff meet with Quarry representatives periodically.
- In addition to DEIR preparation and RPA processing, the Annual SMARA inspection took place on August 25, 2011. Because of the complexity of the Permanente Quarry site, an outside consultant was retained to assist staff with the field inspection, report preparation, and review of the financial assurance cost estimate (“FACE”). County staff who were involved in the inspection, and are involved in the report preparation, include a Senior Planner, the County Geologist, one Grading Inspector, and the County Surveyor.

The Department of Planning and Development continues to be in regular contact with all County Departments responsible for enforcement of County Ordinance Code or other regulations, including: Department staff (the Acting Planning Manager, 2 Senior Planners and 1 Planner III; County Geologist, Land Development Engineers and County Surveyor), the Department of Environmental Health, and the Santa Clara County Fire District (Fire Marshal and Hazardous Materials Unit). The Department is also hosting quarterly meetings so all enforcement agencies can meet to specifically discuss coordinated efforts and issues related to the Quarry site and operations.

SCHEDULE

The current schedule anticipates release of the DEIR for public comment by December 9, 2011, to be followed by a 60-day public comment period, a Final EIR to be certified by March 12, 2012, at which time the County may take an action regarding the RPA. Approval of the RPA will bring Permanente Quarry into compliance with SMARA. A copy of the schedule is attached for your reference.

BACKGROUND

The Permanente Quarry, operated by Lehigh Southwest Cement Co., is located west of the City of Cupertino at the end of Stevens Creek Boulevard. (This quarry was previously known as the Kaiser Permanente Quarry, and later known as the Hanson Permanente Quarry.) This is the largest operating surface mine within Santa Clara County. The County issued two SMARA Notices of Violation (NOV) to the mine operator. The means of abating both NOVs is through amendments to the Quarry's reclamation plan. The mine operator submitted separate amendment applications intended to address each violation. The County is currently processing reclamation plan amendments that are proposed to cure the Notices of Violations described above according to terms and schedules that have been shared with the Department of Conservation, Office of Mine Reclamation (OMR).

2006 Notice of Violation

In October 2006, the County of Santa Clara issued a NOV to the mine operator of Permanente Quarry for mining activities located outside the boundary of the Permanente Quarry Reclamation Plan, which the County approved in 1985. In January 2007, the mine operator submitted an application to amend the 1985 Reclamation Plan in accordance with the NOV. The County determined that extensive geological analysis was necessary to address slope stability issues in the existing pit. In December 2007 the mine operator requested, and was given, 24 months to complete the geological analysis. The analysis was completed and the analysis determined major modifications to the application were necessary. Lehigh submitted a revised application on May 28, 2010, and the application was deemed complete on September 24, 2010. This project is subject to the California Environmental Quality Act (CEQA), and an environmental impact report is being prepared.

2008 Notice of Violation

The County of Santa Clara issued a second NOV in June 2008 to Lehigh, the mine operator of Permanente Quarry, for stockpiling overburden material in the area commonly referred to as the East Materials Storage Area (EMSA) because it is not within the boundary of the approved 1985 Permanente Quarry Reclamation Plan. This NOV followed investigation of a complaint made to the County that petroleum coke was being stored in this location. Following a field inspection the County determined the material that was suspected to be petroleum coke was actually overburden excavated from the mine pit. The NOV provided the operator with 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 would 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 this application is currently under review.

The NOV also required that the mine operator cease use of the EMSA. The operator approached the County and explained that immediate use of the EMSA was necessary for operational reasons, because the approved location for overburden was 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 OMR, 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 stipulated that the County retained its authority to impose fines against the operator, if necessary.

cc:

President Cortese and Members of the Board of Supervisors

Jeff Smith, County Executive
Sylvia Gallegos, Deputy County Executive

Rob Eastwood, Senior Planner
Marina Rush, Associate Planner

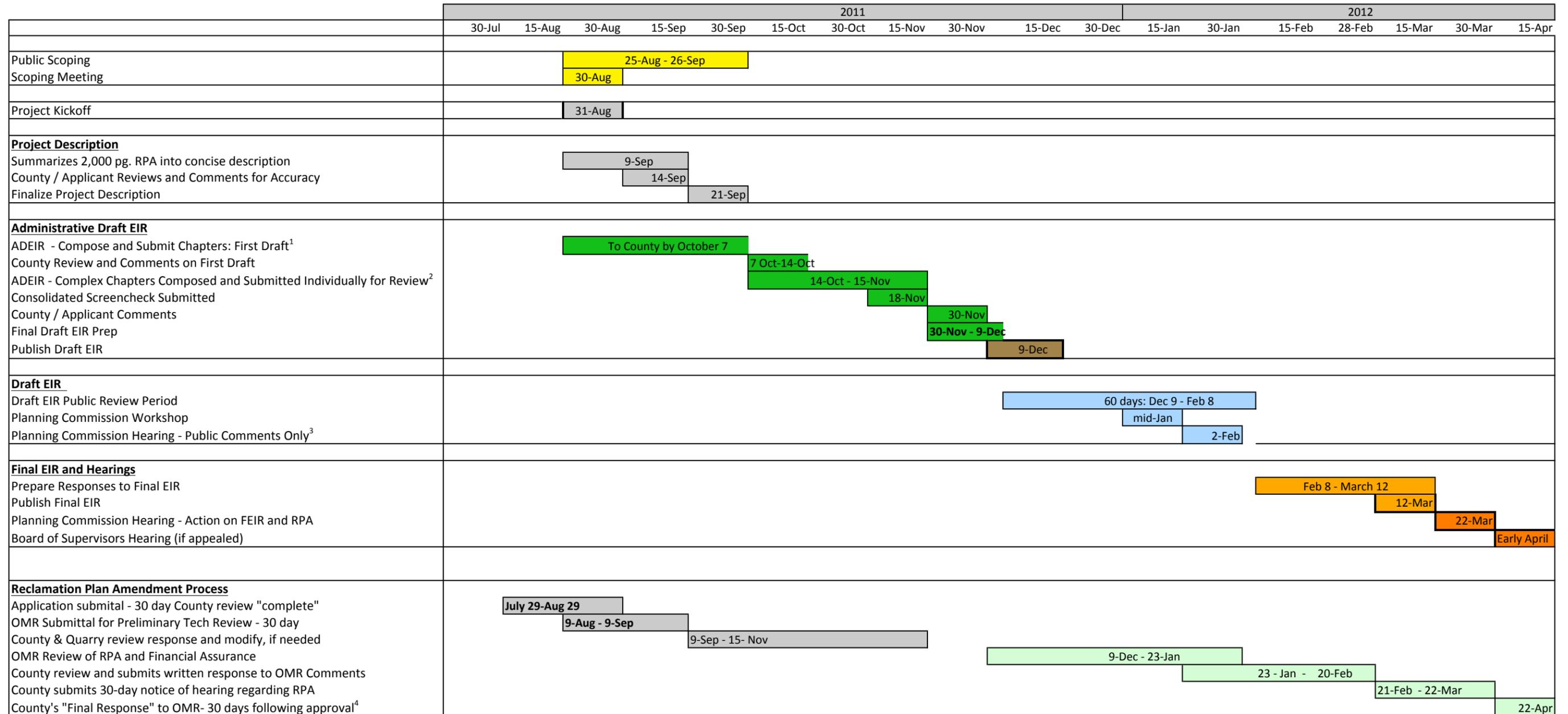
Miguel Márquez, County Counsel
Lizanne Reynolds, Deputy County Counsel
Elizabeth Pianca, Attorney VI, County Counsel

John Laird, Secretary, State of California Natural Resources Agency
Janelle Beland, Undersecretary, State of California, Natural Resources Agency
Liane Randolph, General Counsel, State of California, Natural Resources Agency

Jim Pompy, Chief, Office of Mine Reclamation

Permanente Quarry Reclamation Plan Amendment and EIR Schedule

(updated August 29, 2011)



¹ Chapters with no technical reports.

² Chapters requiring project specific modeling (eg. Air Quality) or complexities requiring additional analysis (eg. Hydrology)

³ Planning Commission may NOT take an action; for receiving public comments only.

⁴ Assumes no appeal. If appealed, then 30 days following BOS action.