

County of Santa Clara

Department of Planning and Development
County Government Center, East Wing, 7th Floor
70 West Hedding Street
San Jose, CA 95110
Phone: (408) 299-5700
www.sccplandev.org



MEMORANDUM

DATE: November 30, 2022

TO: Honorable Board of Supervisors
Jeffrey V. Smith, County Executive

FROM: ^{DS} *JRO* Jacqueline R. Onciano, Director, Dept. of Planning and Development

SUBJECT: Update on referral regarding Lehigh Permanente Cement Plant Use Permit Modification or Revocation

This memorandum is intended to provide the Board of Supervisors (Board) an update on the steps the Department of Planning and Development (Department) has taken, in conjunction with the Office of the County Counsel (County Counsel), to collect information from the public on whether the continuing operation of the Lehigh Permanente Cement Plant constitutes a public nuisance. This memorandum also provides an update on which of the violations issued on the Lehigh Permanente property between January 1, 2012 and December 31, 2021, as noted in the June 7, 2022 report to the Board, are specifically related to the Lehigh Permanente Cement Plant.

Background

At its January 25, 2022 regular meeting (Item No. 14), the Board approved a referral from Supervisor Simitian to Administration and County Counsel to report to the Board a list of all noticed violations of permits, laws, statutes, regulations, ordinances, consent decrees, or other court actions involving Lehigh Cement Plant and Quarry over the past ten years (January 1, 2012 – December 31, 2021). A report (http://sccgov.iqm2.com/Citizens/Detail_LegiFile.aspx?Frame=None&MeetingID=13959&MediaPosition=&ID=111274&CssClass=) responding to this referral was presented to the Board on June 7, 2022 (Item No. 29) and identified over 2,000 violations during the requested ten-year period.

In response to the violations report, the Board directed Administration and County Counsel to take specific additional actions related to the potential modification or revocation of Lehigh's Cement Plant Use Permit pursuant to County of Santa Clara Zoning Ordinance (County Zoning Ordinance) Section 5.20.210. Under that section, the Board may direct the Planning Commission to hold a hearing to revoke or modify any discretionary land use permit, including a Use Permit. The Planning Commission may revoke or modify a Use Permit following a public hearing if, based on evidence in the administrative record, the Planning Commission makes at least one of four specific findings. For purposes of the Cement Plant Use Permit, the relevant findings include: (1) that the Use Permit conditions have been or are being violated, and/or (2) that a public health or safety nuisance has been created by the exercise of the permit, or by changed circumstances from when the permit was approved.

On June 7, 2022, the Board directed the Planning Commission to conduct a modification or revocation hearing based on the first of the two potential findings noted above. Lehigh's Cement Plant Use Permit was conditioned on Lehigh conducting the permitted use in compliance with all applicable laws and ordinances. Still, the ten-year violations report showed that Lehigh had repeatedly violated applicable laws and ordinances at its cement plant and quarry. The Board recognized, however, that Administration and County Counsel would first need to parse out which of the violations detailed in the violations report related to the cement plant, as opposed to the quarry, given that the Use Permit only pertains to the operation of the cement plant.

The Board also directed Administration and County Counsel to explore and report back whether there was any evidence to support the second of the two potential findings noted above—whether the cement plant has created a public health or safety nuisance.

This memorandum provides information about the categorization of the violations listed in the violations report and an update on the staff's work to investigate whether the cement plant has created a public health or safety nuisance.

Categorization of Violations

The violations report, dated and submitted to the Board on June 7, 2022, provided information about violations at both Lehigh's quarry and cement plant without identifying whether each violation was related primarily to the quarry or the cement plant. As described above, violations explicitly associated with the cement plant operation are relevant to determining whether Lehigh violated the conditions of its Cement Plant Use Permit. County Counsel and the Department have therefore been working together to parse through the more than 2,000 violations listed in the violations report to determine which violations are related to cement plant operations. Thus far, staff has determined that the following items from the violations report are related to cement plant operations:

- ***Bay Area Air Quality Management District:*** Upon request, BAAQMD staff provided information about each violation's source and/or location. Of the 34 noticed violations, 31 were related to the cement plant. In addition, the two compliance agreements and the violations they addressed also related to the cement plant.
- ***California Air Resources Board:*** The settlement agreement addressing an alleged violation of the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions is related to the cement plant.
- ***U.S. Environmental Protection Agency:*** At least one of the agency's enforcement actions, namely a lawsuit brought for alleged violations of the Clean Air Act (EPA Case Number 09-2010-0503), relates to the cement plant.
- ***County Consumer Protection Division (Noise):*** All five noise violations are related to the cement plant.
- ***County Hazardous Materials Program:*** Department of Environmental Health staff used the location of each violation to determine whether each violation was related to the cement plant, the quarry, or a facility that supports the cement plant and the quarry. Of the 461 total violations noticed by the County, 276 violations relate exclusively to the cement plant, and 118 are related to facilities that support the quarry and the cement plant.

Additional information will be provided in a full report to the Board at the December 13, 2022 meeting.

Public Outreach on Lehigh Cement Plant to Collect Information Regarding Potential Public Health or Safety Nuisance

On October 12, 2022, an email was sent to the Lehigh Permanente Quarry interested parties list to collect information from the public on whether the Lehigh Cement Plant has created a public health or safety nuisance. In this email, staff requested information from the public regarding any direct personal experience with the effects of the Lehigh cement plant, whether **positive**, **negative**, or **neutral**. Recipients were asked to provide relevant information via a web form on the Department's Lehigh webpage no later than Friday, October 28, 2022.

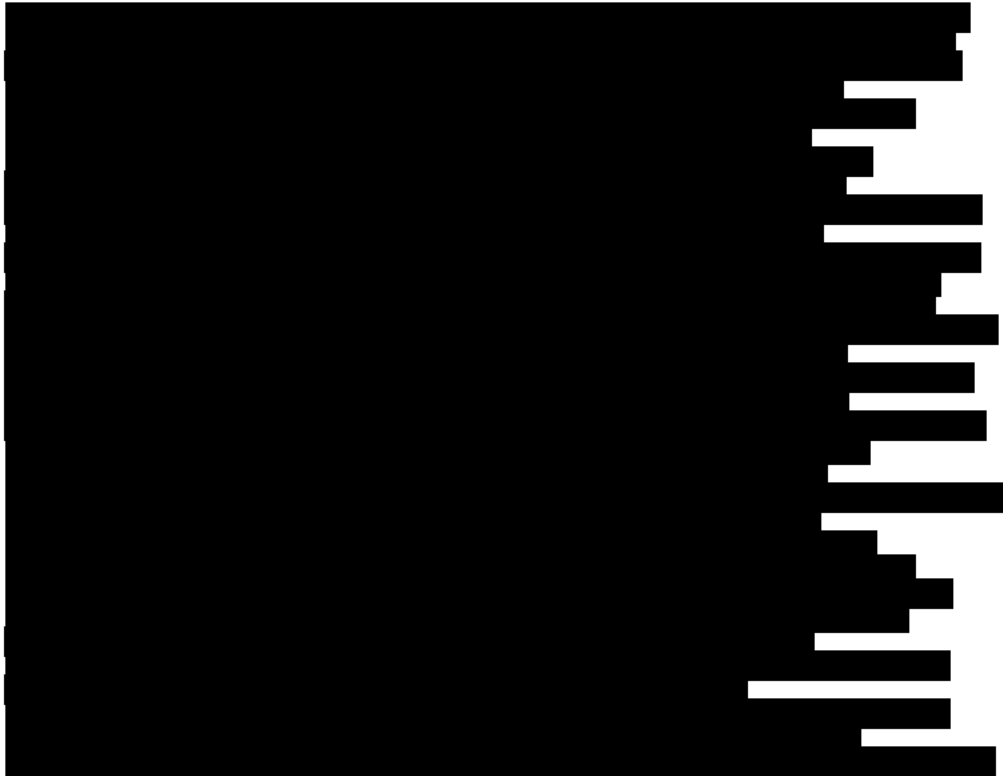
In addition, the Department worked with the Office of Public Affairs to send notices via the County's NextDoor, Twitter, and Facebook accounts. These notices informed the public of the requested information and provided links to the web form. As of the date of this memorandum, approximately 80 responses have been submitted, including one from Patrick Mitchell, attorney for Lehigh Permanente. County Counsel and the Department are analyzing the responses and plan to bring a full report back to the Board on this topic at the December 13, 2022, meeting.

Attachments:

1) Email to Lehigh Interested Parties, October 12, 2022

CC: Tiffany Lennear, Clerk of the Board, bosagenda@cob.sccgov.org
Chief Board Aides and Land Use Aides
Greta S. Hansen, Chief Operating Officer
James R. Williams, County Counsel
Sylvia Gallegos, Deputy County Executive

From: [Salisbury, Robert](#)
To: [Salisbury, Robert](#)
Bcc:



Subject: The County is seeking input from the public on your experience with the Lehigh Permanente Cement Plant
Date: Wednesday, October 12, 2022 11:35:00 AM

To all Lehigh interested parties:

The County of Santa Clara is seeking information from the public regarding any direct personal experience you may have had with the effects of the **Lehigh Cement Plant**, whether **positive**, **negative**, or **neutral**. A direct personal experience could include, for example, your personal experience of any impacts from the Lehigh Cement Plant to the environment at or near your address, including with respect to air quality, noise, water, traffic, health, or safety.

If you have had experiences that you would like to share, please share it with us by using the following link:

[Permanente Quarry \(Lehigh/Hanson\) - Department of Planning and Development - County of Santa Clara \(scgov.org\)](#)

We will be accepting information through Friday, October 28, so please provide your input on or before close of business Friday, October 28, 2022.

Kind regards,

Robert Salisbury, Senior Planner
County of Santa Clara Planning Office
70 W. Hedding Street, East Wing, 7th Floor
San Jose, CA 95110

email: Robert.Salisbury@pln.sccgov.org

Phone: (408) 299-5785

CONFIDENTIALITY NOTICE: This email message and/or its attachments may contain information that is confidential or restricted. It is intended only for the individuals named as recipients in the message. If you are NOT an authorized recipient, you are prohibited from using, delivering, distributing, printing, copying, or disclosing the message or content to others and must delete the message from your computer. If you have received this message in error, please notify the sender by return email.

Please visit our [website](#).

Click [here](#) to look up unincorporated property zoning information.

Questions on the status of your permit? Please e-mail: PLN-PermitCenter@pln.sccgov.org