

County of Santa Clara

Department of Planning and Development

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December 7, 2010

Mr. David Knapp, City Manager,
City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014

Dear Mr. Knapp:

I am in receipt of your letter dated November 9, 2010, and attachments thereto. Notwithstanding more recent correspondence on related matters, I thought it appropriate to formally respond to your letter of the 9th—please forgive the delay.

In your letter you requested the County, “... pursue a course of action that will address the concerns of Cupertino residents”. You offer that, “ A declaration of legal non-conforming use will circumvent the need to obtain a land use permit for the EMSA. A use permit could provide appropriate regulation of the [EMSA] to protect the community and address legitimate citizen concerns. ”

The determination as to whether or not or to what extent, a non-conforming use has been established on any portion of the site owned by Heidelberg Cement, Inc., operated by Lehigh Southwest Cement Company (Lehigh), and generally referred to as the “Permanent Quarry”, must be based on facts. The nonconforming use determination (also known as a “vested right”) for surface mining is not a land use authorization subject to the California Environmental Quality Act (CEQA). Lehigh either has or has not established non-conforming surface mining use on the EMSA. If a non-conforming use has not been established, then the County will require Lehigh to obtain a use permit. If a use permit is required the property owner must file and staff will process a use permit application simultaneously with pending proposals for amendments to the Reclamation Plan for the Permanent Quarry. The vested rights hearing will be scheduled in January or February 2011.

Two Reclamation Plan amendments are pending: one for the EMSA portion of the site to be followed by a second comprehensive Reclamation Plan amendment for the entire site. Both amendments are subject to CEQA and the preparation of Environmental Impact Reports.

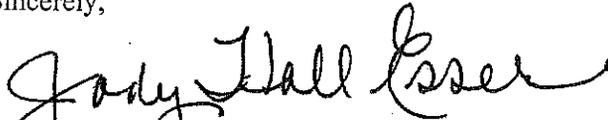
While the EMSA Reclamation Plan Amendment is being processed, the County is allowing continued use of the EMSA subject to an agreement with Lehigh containing rigorous requirements and time limitations. This agreement will be voided should a use permit, if required, and/or the EMSA Reclamation Plan Amendment not be approved. Section 3 of this agreement states, “ Nothing in this agreement shall be interpreted in a manner that indicates the County will approve the EMSA Amendment or will allow the Company to continue using the EMSA if the EMSA [Reclamation Plan] Amendment application is denied or if the Company withdraws the EMSA Amendment application prior to the County taking final action on the application. Nor shall anything

in this Agreement be interpreted as a waiver of the County's legal authority, including but not limited to its enforcement authority under SMARA,"

With regards to the letters from constituents that you attached to your November 9, 2010 correspondence, I will personally acknowledge each letter, and the names of the senders have been added to the mailing list for future notifications.

Please contact me should you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Jody Hall Esser". The signature is written in black ink and is positioned above the typed name and title.

Mrs. Jody Hall Esser, Director
Department of Planning and Development
County of Santa Clara

JHE:mh