

From: [REDACTED]
To: [Public Comment](#)
Cc: [City Council](#)
Subject: Public Comment Agenda Item #11 - Council Meeting 6/8/2021
Date: Sunday, June 6, 2021 9:59:45 PM

My following comments on the monitoring and reporting of permitting activities for the Lehigh Hansen and Stevens Creek Quarry (6/8/2021 Agenda Item #11) are made as an individual and do not represent the views or comments of the City's Environmental Commission.

Monitoring the complex Lehigh and Stevens Creek Quarry permitting processes could be done at several levels within the City and reporting could be done with varying detail/effort, see my comments below. Since the permitting process is under the jurisdiction of the County, is being litigated and is drawing significant public attention, I believe monitoring and reporting is appropriately done at a policy-making level within the City. In my opinion the Environmental Commission does not have expertise on the scientific or legal permitting details, does not have adequate awareness/sensitivity to the potential legal liabilities and would be unable to respond to the permitting issues in a timely manner. The Environmental Commission could review and provide comments on specific questions brought forward by the assigned City policy maker.

Monitoring Level within the City (I recommend #1 or #2. I do not recommend #3.)

1. A City Council member
2. An appointed, policy-making member of City Staff
3. One member or a subcommittee of the Environmental Commission

Reporting Detail/Effort (I recommend #1, parts of #2 and #3. I do not recommend #4.)

1. Information from Joe Simitian
2. Information from relationships developed to understand the process and status
 - a. Other county supervisors (Simitian is only 1 of 5 that will vote on any permit application)
 - b. County permitting staff and managers
 - c. Air Boards, Water Boards, State mining division, etc
 - d. City of Cupertino, Town of Los Altos Hills, Mid-Peninsula Open Space, etc
 - e. Local activists, groups, etc
 - f. The permit applicant
3. Information provided by interested groups and individuals
 - a. Review and provide letters of support when appropriate
4. City staff (or consultant) technical review and comments on permit documents and in public hearings

Don Weiden

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Date: June 7, 2021

RE: AGENDA ITEM 11 for June 8, 2021 Meeting -- Request for support of the Santa Clara County Medical Association letter, Retain Legal Services concerned with the Operations of Lehigh Cement and Stevens Creek Quarries, and File an Amicus Brief in reference to Lehigh's recently filed suit

Dear Los Altos Mayor Neysa Fligor, Vice Mayor Anita Enander, Councilmember Lynette Lee Eng, Councilmember Sally Meadows, and Councilmember Jonathan D. Weinberg,

I am writing to you with gratitude for our City's commitment to protect our environment and quality of living in Los Altos. I am not an expert, but it appears to me that the proposed intensification and expansion of Lehigh Cement and Stevens Creek Quarries operations have concerned my neighbors and other residents of Los Altos and other nearby municipalities¹.

Recently, the Santa Clara County Medical Association in their detailed letter to the Santa Clara County Board of Supervisors wrote, *"the proposed Reclamation Plan Amendment poses serious health and safety risks to the community due to the extra 666 daily truck trips required to place outside fill into the quarry pit. Such activity over 30 years will lead to excess deaths and disability due to cancer, lung and cardiovascular disease, as well as heightened risk from traffic accidents."* [Read the full letter from the Santa Clara County Medical Association at this link.](#) **I also ask the city of Los Altos to write the Santa Clara County Board of Supervisors and provide our city's support of the Santa Clara County Medical Association letter.**

In addition, I ask the city of Los Altos to retain Shute, Mihaley and Weinberger for legal services concerned with the operations of Lehigh Cement and Stevens Creek Quarries. I have very much appreciated the timely and thoroughly-researched responses to the threats of expanded mining-operations at the Stevens Creek Quarry and the Lehigh Permanente Quarry that Cupertino has provided to the Santa Clara County Board of Supervisors on this issue but Los Altos also needs to protect our residents' health and home property investments similarly. The Santa Clara County Board of Supervisors and their staff have much to consider. I have appreciated the county staff's careful review of the applications. **I ask that the city of Los Altos file an amicus brief in reference to Lehigh's recently filed suit.**²

Shute, Mihaley and Weinberger firm has served as the City Attorney for Cupertino for approximately the past two years³. During that time, the attorneys at the firm have worked with

¹ Letters from the Midpeninsula Regional Open Space District, the cities of Cupertino, Los Altos, and Los Altos Hills on 2019 Amended Reclamation Plan from Lehigh <http://j.mp/Letters-2019-Amended-Reclamation-Plan>

² Los Altos Town Crier Article: Lehigh Cement files suit against county planning director Mar 2, 2021

https://www.losaltosonline.com/news/lehigh-cement-files-suit-against-county-planning-director/article_75ee4dc8-d7ac-5042-a368-79446bbda55c.html

³ "SMW Serves as City Attorney for Cupertino." *Shute, Mihaly & Weinberger LLP*, www.smwlaw.com/2019/10/06/smw-serves-as-city-attorney-for-cupertino/.

City staff to review and comment on applications that both Lehigh and Stevens Creek Quarries have submitted to the County, and to engage with the County more broadly on impacts that the proposed reclamation plan amendments and use permit would have on city residents, infrastructure, and the surrounding environment. This builds on past work that these lawyers did for other clients related to Lehigh's previous application for a reclamation plan amendment and associated determination of vested rights. It is also consistent with SMW's broader practice, which addresses all aspects of land use, regulation, and entitlement, and of environmental review.

SMW has a broad depth on these topics and has achieved success due to their expertise over the years. In particular, SMW has several outstanding accomplishments⁴ and legal victories for their clients that demonstrate their competence:

- "The firm prevails in litigation challenging Sonoma County's environmental review of a rock quarry expansion project near the small town of Forestville."⁵
- "The firm succeeds in the court of appeal in a case challenging Mendocino County's approval of a large expansion of a quarry. The court agreed with the firm's position that quarry activities occurring almost 50 years earlier did not establish a vested right to expand the mine."⁶
- "In response to litigation by the firm, Tuolumne County agrees to rescind its approval of the expansion of a limestone mine near Columbia State Historic Park and to prepare an environmental impact report for the project."⁷
- The firm advises the City of Saratoga in acquiring a former quarry to be redeveloped as a park subject to a conservation easement and in subsequent park planning and operations. The park opened in 2015 and in 2020 the City opens a trail providing access to Sanborn County Park and, from there, to open space and trails leading to the Pacific Ocean.⁸
- Victory in Mendocino County: SMW successfully challenged the County's approval of a vested right to mine a quarry without permits or environmental review oversight. Going forward, the quarry may only operate if it complies with California Surface Mining and Reclamation Act and local land-use regulations and undergoes CEQA review.⁹
- "The Court of Appeal held that Hansen Brothers' proposal for future mining constituted an impermissible intensification of the nonconforming use. It therefore affirmed the judgment of the superior court, which had denied a petition for a peremptory writ of

⁴ SMWlaw.com on March 25,2021

⁵ "Quarry Expansion Requires Thorough Environmental Review." *Shute, Mihaly & Weinberger LLP*, www.smwlaw.com/2020/11/25/quarry-expansion-requires-thorough-environmental-review/.

⁶ "No Vested Right to Quarry Expansion." *Shute, Mihaly & Weinberger LLP*, www.smwlaw.com/2018/11/25/no-vested-right-to-quarry-expansion/.

⁷ "Columbia State Historic Park Protected From Mine Expansion." *Shute, Mihaly & Weinberger LLP*, www.smwlaw.com/2014/11/25/columbia-state-historic-park-protected-from-mine-expansion/.

⁸ "Quarry Transformed into Park." *Shute, Mihaly & Weinberger LLP*, www.smwlaw.com/2011/09/17/quarry-transformed-into-park/.

⁹ "Shute Mihaly & Weinberger LLP." *Victory in Mendocino... - Shute Mihaly & Weinberger LLP*, [.facebook.com/125531757499897/posts/victory-in-mendocino-county-smw-successfully-challenged-the-countys-approval-of-/924078007645264/](https://www.facebook.com/125531757499897/posts/victory-in-mendocino-county-smw-successfully-challenged-the-countys-approval-of-/924078007645264/).

mandate to set aside a decision of the Nevada County Board of Supervisors (the Board) denying approval of the mining plan. The Board had concluded that, while Hansen Brothers had a vested right to mine a portion of its property, any right it might have had to quarry the hillside area of its property for rock had been lost by discontinuance for periods in excess of 180 days, and that Hansen Brothers' proposal for future mining constituted an impermissible intensification of the nonconforming use.”¹⁰

I recommend that the City retain the services of SMW in matters concerned with Lehigh and Steven’s Creek Quarries. Over the years residents of the area have been subject to air pollution, noise pollution, and increased traffic all associated with these facilities.

I worry that the future promises more environmental offenses as the recent Reclamation Plan Amendment calls for drastic intensification of operation and large expansion of the Lehigh quarry. It would be reassuring to the thousands of Los Altos residents to know that the City of Los Altos has the expertise of the prestigious public-interest law firm Shute, Mihaly & Weinberger by its side with its unparalleled experience in mining-law. Thank you for your attention to our concerns.

Sincerely,

Dave Singhal
Los Altos Resident 15 yrs
Santa Clara County Resident 55 yrs

¹⁰ “Stanford Law School - Robert Crown Law Library.” *Supreme Court of California*, scocal.stanford.edu/opinion/hansen-brothers-enterprises-inc-v-board-supervisors-31726.