



# TOWN OF PORTOLA VALLEY

7:30 PM – Regular Meeting of the Town Council  
 Wednesday, September 25, 2013  
 Historic Schoolhouse  
 765 Portola Road, Portola Valley, CA 94028

## REGULAR MEETING AGENDA

### 7:30 PM – CALL TO ORDER AND ROLL CALL

Councilmember Aalfs, Councilmember Derwin, Councilmember Driscoll, Vice Mayor Wengert, Mayor Richards

### ORAL COMMUNICATIONS

Persons wishing to address the Town Council on any subject may do so now. Please note however, that the Council is not able to undertake extended discussion or action tonight on items not on the agenda.

### CONSENT AGENDA

The following items listed on the Consent Agenda are considered routine and approved by one roll call motion. The Mayor or any member of the Town Council or of the public may request that any item listed under the Consent Agenda be removed and action taken separately.

- (1) **Approval of Minutes** – Special Town Council Meeting of September 11, 2013 (3)
- (2) **Approval of Warrant List** – September 25, 2013 (7)
- (3) **Recommendation by the Parks & Recreation Committee** – Proposed change to Committee Charter (16)

### REGULAR AGENDA

- (4) **Report from Town Attorney** – Consideration of Direction to the Town Attorney Regarding Participating in the Preparation of an Amicus Brief Supporting No Toxic Air Incorporated's Lawsuit Against Lehigh Quarry Related to the Board of Supervisors' Determination related to Vested Rights (18)
- (5) **Recommendation by Town Manager** – Approve Town Council Fall/Winter Meeting Schedule (90)

### COUNCIL, STAFF, COMMITTEE REPORTS AND RECOMMENDATIONS

- (6) **Reports from Commission and Committee Liaisons** (91)  
*There are no written materials for this item.*

### WRITTEN COMMUNICATIONS

- (7) **Town Council Weekly Digest** – September 13, 2013 (92)
- (8) **Town Council Weekly Digest** – September 20, 2013 (103)

### CLOSED SESSION

- (9) **CONFERENCE WITH LABOR NEGOTIATORS**  
 Government Code Section 54957.6  
 Agency Designated Representatives: Mayor Richards and Vice Mayor Wengert  
 Unrepresented Employees: Town Staff
- (10) **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**  
 Government Code Section 54956.9(b)  
 Significant Exposure to Litigation: one case

### REPORT OUT OF CLOSED SESSION

### ADJOURNMENT

#### **ASSISTANCE FOR PEOPLE WITH DISABILITIES**

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Town Clerk at (650) 851-1700. Notification 48 hours prior to the meeting will enable the Town to make reasonable arrangements to ensure accessibility to this meeting.

#### **AVAILABILITY OF INFORMATION**

Copies of all agenda reports and supporting data are available for viewing and inspection at Town Hall and at the Portola Valley Library located adjacent to Town Hall. In accordance with SB343, Town Council agenda materials, released less than 72 hours prior to the meeting, are available to the public at Town Hall, 765 Portola Road, Portola Valley, CA 94028

**SUBMITTAL OF AGENDA ITEMS**

The deadline for submittal of agenda items is 12:00 Noon WEDNESDAY of the week prior to the meeting. By law no action can be taken on matters not listed on the printed agenda unless the Town Council determines that emergency action is required. Non-emergency matters brought up by the public under Communications may be referred to the administrative staff for appropriate action.

**PUBLIC HEARINGS**

Public Hearings provide the general public and interested parties an opportunity to provide testimony on these items. If you challenge any proposed action(s) in court, you may be limited to raising only issues you or someone else raised at the Public Hearing(s) described in this agenda, or in written correspondence delivered to the Town Council at, or prior to, the Public Hearing(s).

PORTOLA VALLEY TOWN COUNCIL SPECIAL MEETING NO. 865, SEPTEMBER 11, 2013

Mayor Richards called the meeting to order at 6:30 p.m. and led the Pledge of Allegiance. Ms. Hanlon called the roll for the Council's third annual meeting in the Redwood Grove. When he was Mayor, Councilmember Ted Driscoll launched the tradition in July 2011, in the hope that it would become a "routine each summer because the space is so spectacular, one of the nicest in the Town Center complex and a natural amphitheatre."

Present: Councilmembers Jeff Aalfs and Ted Driscoll; Mayor John Richards

Absent: Councilmember Maryann Derwin; Vice Mayor Ann Wengert

Others: Nick Pegueros, Town Manager  
Sharon Hanlon, Town Clerk  
Karen Kristiansson, Deputy Town Planner  
Leigh Prince, Town Attorney

ORAL COMMUNICATIONS

None

CONSENT AGENDA [6:31 p.m.]

- (1) Approval of Minutes: Town Council Regular Meeting of August 28, 2013
- (2) Ratification of Warrant List: September 11, 2013 in the amount of \$337,738.15.

By motion of Councilmember Aalfs, seconded by Councilmember Driscoll, the Council approved the Consent Agenda with the following roll call vote:

Aye: Councilmembers Aalfs and Driscoll, Mayor Richards

No: None

REGULAR AGENDA

- (3) Recommendation by Conservation Committee and Deputy Town Planner: Request to adopt Redwood Guidelines

With Conservation Committee Chair Judith Murphy and Vice Chair Marianne Plunder out of town, Ms. Kristiansson presented this item. She explained that the Committee developed the guidelines over the past year to protect redwood trees that are planted in appropriate locations, to discourage planting them in places that aren't appropriate, and to allow for removal of the latter. After the Conservation Committee incorporated their suggestions, both the ASCC and Planning Commission recommended that the Town Council adopt the guidelines and incorporate them into the Town's Design Guidelines.

The guidelines discuss planting, care and removal of redwood trees, and contain a list of screening plants that can be used instead where redwood trees are not appropriate to the environment, Ms. Kristiansson said.

In response to questions from the audience, Mayor Richards said that landscaping plans must be submitted for Town approval only on major projects, and it's not likely that the Town has recommended redwood screening at property borders over the past 10 years. Mayor Richards also explained that the Town doesn't have the "police power" to order the removal of redwood screening, but staff would be willing to talk to property owners in cases where neighbors object.

Wendy Hafkenschiel, Westridge Drive, noted that lines of redwoods and oaks between property lines along Westridge Drive are completely changing the appearance. Mayor Richards explained that when such plantings aren't in the context of major projects, it's difficult for the Town to keep on top of them. Property owners don't have to go through a long, complex process to remove such trees, Mayor Richards said. Ms. Hafkenschiel said redwood trees are entirely inappropriate there, and olive trees would have been a much better choice.

Ms. Kristiansson emphasized that the process of obtaining a tree removal permit is straightforward. Once the Conservation Committee ascertains that the redwoods are inappropriately planted, the permit can be issued. There's not a lot of review, she said.

As for the issue of property owners being unaware of the implications of the plantings landscapers install, Mayor Richards said one of the reasons for including information about where redwoods are and are not appropriate in the Town's Design Guidelines is to ensure that landscapers will know about them.

Wendy Hafkenschiel asked whether there might be triggers that require review of landscaping plans that aren't part of major projects. Tom Hafkenschiel said he was required to obtain a permit to replace a retaining wall that was falling down said the proposed guidelines seem weak. He said they're suggestions that have no teeth. The retaining wall work he did was basically just a repair, he stated, but a property owner doesn't need a permit to plant a line of redwoods that obstruct the views of several hundred people for the rest of their lives.

Mayor Richards pointed out that permits historically have focused on health and safety issues. The guidelines are consistent with the way the Town has dealt with people in Town up until now, he said, indicating that it's the right thing to do at this point. Addressing the issue of "police powers" is a different matter, but something that can be discussed.

Mr. Hafkenschiel suggested putting the issue on the ballot, because it's the major issue in Portola Valley. Town Attorney Prince said that an election probably wasn't necessary, just an ordinance or an amendment, which would also have a public process associated with it. Councilmember Driscoll suggested the Town might conduct a poll to determine the level of concern. As he sees it, this is an area where the desire to preserve the natural environment and address the privacy issue seem to conflict.

Councilmember Aalfs, noting that he was on the ASCC for three years before joining the Council, said many of the projects the ASCC reviewed involved installing screening, including redwoods, so he knows it's a fairly common occurrence.

Councilmember Aalfs moved to adopt the Redwood Guidelines as recommended by the Conservation Committee. Seconded by Councilmember Driscoll, the motion carried 3-0.

- (4) Recommendation by Town Manager: Response to the San Mateo County Grand Jury – "San Mateo County Special Districts: Who is Really in Charge of the Taxpayer's Money? The Mosquito District Embezzlement: Is it the Tip of the Iceberg?"

Mr. Pegueros explained that the four-page letter drafted to respond to the Grand Jury report on special districts in San Mateo County goes into more detail than usually included in the Town's responses to Grand Jury reports. He said he felt it was necessary in this case because it's such a big issue.

Councilmember Driscoll said that it struck him in reading the Grand Jury report that there appears to be an attitude, with perhaps an excess of libertarians appointed to the Grand Jury this year. Even the title of the document "seemed a little bit over the top," he said.

Mr. Pegueros said the Grand Jury report provides numerous findings based on the information provided, it's impossible to opine on it.

Councilmember Driscoll moved to approve the response to the San Mateo County Grand Jury Report as recommended. Seconded by Councilmember Aalfs, the motion carried 3-0.

(5) Appointment by Mayor: Request for appointment of members to the Teen Committee

Upon motion by Councilmember Aalfs, seconded by Councilmember Driscoll, the Council voted 3-0 in concurrence with the Mayor's appointment of Reuben Sarwal and Mark Gerhart to the Teen Committee.

COUNCIL, STAFF, COMMITTEE REPORTS AND RECOMMENDATIONS

(6) Reports from Commission and Committee Liaisons [6:54 p.m.]

Councilmember Driscoll:

(a) Geologic Safety Committee

The Town Geologist has suggested amending the Town's geologic map to reflect new information as reported in the article "Reassessment of the 1906 San Andreas Fault rupture in Portola Valley." Any revisions would have to go through the Geologic Safety Committee and the Planning Commission before coming back to the Town Council, Councilmember Driscoll explained.

Mayor Richards, reporting on behalf of Councilmember Derwin:

(b) Library JPA

The Library JPA Board, meeting on September 9, 2013, approved:

- The Library JPA Investment Grant
- Library Grant Activities Report for the Period of January-June 2013
- The FY 2013-14 Adopted Budget
- The FY 2013-14 Library Fund Balance Policy

Mayor Richards also reported that:

- Carole Groome suggested a budget workshop
- The Portola Valley Library will sponsor the Tricycle Music Festival, a countywide program, on September 15, 2013

WRITTEN COMMUNICATIONS [7:00 p.m.]

(7) Town Council August 29, 2013 Weekly Digest

- (a) #10 – Email from Director of Mediation and Facilitation Services for Peninsula Conflict Resolution Center (PCRC), Anne Bers re: Summary of Mediation Services for FY 2012-13 – August 27, 2013

Councilmember Driscoll noted that according to the PCRC report, the Town had zero referrals to PCRC this past year.

(8) Town Council September 6, 2013 Weekly Digest

- (a) #10 – Letter from Martha Poyatos, Local Agency Formation Commission (LAFCo) Executive Officer, to Members of the Formation Commission re: Special Report: Los Trances County Water District Organizational Alternatives

Mr. Pegueros indicated that in a meeting regarding LAFCo, he learned that due to errors identified in the distributed report, LAFCo will revise and recirculate it. The topic of possible interest in ownership of district lands if the district dissolves also was discussed.

ADJOURNMENT [7:07 p.m.]

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Mayor

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Town Clerk

INVOICE APPROVAL LIST REPORT - DETAIL WITH GL DIST

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TOWN OF PORTOLA VALLEY

| Vendor Name               | Invoice Description1 | Ref No.   | Discount Date |                 |
|---------------------------|----------------------|-----------|---------------|-----------------|
| Vendor Name Line 2        | Invoice Description2 | PO No.    | Pay Date      |                 |
| Vendor Address            | Vendor Number        |           | Due Date      | Taxes Withheld  |
| City                      | Bank                 | Check No. | Check Date    | Discount Amount |
| State/Province Zip/Postal | Invoice Number       |           |               | Check Amount    |

|                 |                               |       |            |       |
|-----------------|-------------------------------|-------|------------|-------|
| ARC             | TC Maint Manual, Pub Wrks Com | 14592 | 09/25/2013 |       |
|                 |                               |       | 09/25/2013 |       |
| P.O. BOX 192224 | 0112                          |       | 09/25/2013 | 0.00  |
| SAN FRANCISCO   | BOA                           | 48015 | 09/25/2013 | 0.00  |
| CA 94119-2224   | 844728                        |       |            | 79.10 |

| GL Number  | Description     | Invoice Amount | Amount Relieved |
|------------|-----------------|----------------|-----------------|
| 05-64-4308 | Office Supplies | 79.10          | 0.00            |

|           |       |        |       |
|-----------|-------|--------|-------|
| Check No. | 48015 | Total: | 79.10 |
| Total for | ARC   |        | 79.10 |

|                       |                   |       |            |          |
|-----------------------|-------------------|-------|------------|----------|
| CITY OF REDWOOD CITY  | August IT Support | 14594 | 09/25/2013 |          |
| C/O Ms. Terrie Gillen |                   |       | 09/25/2013 |          |
| 1017 MIDDLEFIELD ROAD | 638               |       | 09/25/2013 | 0.00     |
| REDWOOD CITY          | BOA               | 48016 | 09/25/2013 | 0.00     |
| CA 94063              | BR30520           |       |            | 1,957.70 |

| GL Number  | Description              | Invoice Amount | Amount Relieved |
|------------|--------------------------|----------------|-----------------|
| 05-54-4216 | IT & Website Consultants | 1,957.70       | 0.00            |

|           |                      |        |          |
|-----------|----------------------|--------|----------|
| Check No. | 48016                | Total: | 1,957.70 |
| Total for | CITY OF REDWOOD CITY |        | 1,957.70 |

|                     |                        |       |            |        |
|---------------------|------------------------|-------|------------|--------|
| COPYMAT             | SOD Blitz 2013 Mailers | 14600 | 09/25/2013 |        |
|                     |                        |       | 09/25/2013 |        |
| 1918 EL CAMINO REAL | 0046                   |       | 09/25/2013 | 0.00   |
| REDWOOD CITY        | BOA                    | 48017 | 09/25/2013 | 0.00   |
| CA 94063-2113       |                        |       |            | 267.05 |

| GL Number  | Description       | Invoice Amount | Amount Relieved |
|------------|-------------------|----------------|-----------------|
| 05-64-4310 | Town Publications | 267.05         | 0.00            |

|           |         |        |        |
|-----------|---------|--------|--------|
| Check No. | 48017   | Total: | 267.05 |
| Total for | COPYMAT |        | 267.05 |

|                             |                          |       |            |           |
|-----------------------------|--------------------------|-------|------------|-----------|
| COTTON SHIRES & ASSOC. INC. | August Applicant Charges | 14596 | 09/25/2013 |           |
|                             |                          |       | 09/25/2013 |           |
| 330 VILLAGE LANE            | 0047                     |       | 09/25/2013 | 0.00      |
| LOS GATOS                   | BOA                      | 48018 | 09/25/2013 | 0.00      |
| CA 95030-7218               |                          |       |            | 13,590.16 |

| GL Number  | Description                  | Invoice Amount | Amount Relieved |
|------------|------------------------------|----------------|-----------------|
| 96-54-4190 | Geoloqist - Charges to Appls | 13,590.16      | 0.00            |

|           |                             |        |           |
|-----------|-----------------------------|--------|-----------|
| Check No. | 48018                       | Total: | 13,590.16 |
| Total for | COTTON SHIRES & ASSOC. INC. |        | 13,590.16 |

|                |                          |       |            |       |
|----------------|--------------------------|-------|------------|-------|
| CULLIGAN       | 9/1/13 - 9/30/13 Service | 14595 | 09/25/2013 |       |
|                |                          |       | 09/25/2013 |       |
| P. O. BOX 5277 | 0250                     |       | 09/25/2013 | 0.00  |
| CAROL STREAM   | BOA                      | 48019 | 09/25/2013 | 0.00  |
| IL 60197-5277  |                          |       |            | 41.20 |

| GL Number | Description | Invoice Amount | Amount Relieved |
|-----------|-------------|----------------|-----------------|
|-----------|-------------|----------------|-----------------|

INVOICE APPROVAL LIST REPORT - DETAIL WITH GL DIST

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TOWN OF PORTOLA VALLEY

| Vendor Name               | Invoice Description1 | Ref No.   | Discount Date |                 |
|---------------------------|----------------------|-----------|---------------|-----------------|
| Vendor Name Line 2        | Invoice Description2 | PO No.    | Pay Date      |                 |
| Vendor Address            | Vendor Number        |           | Due Date      | Taxes Withheld  |
| City                      | Bank                 | Check No. | Check Date    | Discount Amount |
| State/Province Zip/Postal | Invoice Number       |           |               | Check Amount    |

|            |               |           |          |        |
|------------|---------------|-----------|----------|--------|
| 05-64-4336 | Miscellaneous |           | 41.20    | 0.00   |
|            |               | Check No. | 48019    | Total: |
|            |               | Total for | CULLIGAN | 41.20  |

|                 |                            |       |            |           |
|-----------------|----------------------------|-------|------------|-----------|
| GO NATIVE INC   | August PV Vegetation Mgmt. | 14601 | 09/25/2013 |           |
|                 | Town Center/Trails         |       | 09/25/2013 |           |
| P.O. BOX 370103 | 632                        |       | 09/25/2013 | 0.00      |
| MONTARA         | BOA                        | 48020 | 09/25/2013 | 0.00      |
| CA 94037        | 2573                       |       |            | 13,728.00 |

| GL Number  | Description                   | Invoice Amount | Amount Relieved |           |
|------------|-------------------------------|----------------|-----------------|-----------|
| 05-66-4342 | Landscape Supplies & Services | 6,084.00       | 0.00            |           |
| 20-60-4270 | Trail Surface Rehabilitation  | 7,644.00       | 0.00            |           |
|            |                               | Check No.      | 48020           | Total:    |
|            |                               | Total for      | GO NATIVE INC   | 13,728.00 |

|                            |                         |       |            |        |
|----------------------------|-------------------------|-------|------------|--------|
| ARIS GONZALES              | Refund Facility Deposit | 14602 | 09/25/2013 |        |
|                            |                         |       | 09/25/2013 |        |
| 1051 BEACH PARK BLVD. #310 | 1004                    |       | 09/25/2013 | 0.00   |
| FOSTER CITY                | BOA                     | 48021 | 09/25/2013 | 0.00   |
| CA 94404                   |                         |       |            | 900.00 |

| GL Number  | Description              | Invoice Amount | Amount Relieved |        |
|------------|--------------------------|----------------|-----------------|--------|
| 05-56-4226 | Facility Deposit Refunds | 900.00         | 0.00            |        |
|            |                          | Check No.      | 48021           | Total: |
|            |                          | Total for      | ARIS GONZALES   | 900.00 |

|                  |                           |       |            |       |
|------------------|---------------------------|-------|------------|-------|
| HAYWARD          | Materials, TC Parking Lot | 14603 | 09/25/2013 |       |
|                  | Fence Repair              |       | 09/25/2013 |       |
| 429 FRONT STREET | 1237                      |       | 09/25/2013 | 0.00  |
| SALINAS          | BOA                       | 48022 | 09/25/2013 | 0.00  |
| CA 93901         | 37005492-00               |       |            | 24.64 |

| GL Number  | Description       | Invoice Amount | Amount Relieved |        |
|------------|-------------------|----------------|-----------------|--------|
| 05-66-4348 | Repairs/Vandalism | 24.64          | 0.00            |        |
|            |                   | Check No.      | 48022           | Total: |
|            |                   | Total for      | HAYWARD         | 24.64  |

|                |                       |       |            |        |
|----------------|-----------------------|-------|------------|--------|
| HORIZON        | Fertilizer for Fields | 14604 | 09/25/2013 |        |
|                |                       |       | 09/25/2013 |        |
| P.O. BOX 52758 | 0289                  |       | 09/25/2013 | 0.00   |
| PHOENIX        | BOA                   | 48023 | 09/25/2013 | 0.00   |
| AZ 85072-2758  | 1N145864              |       |            | 293.95 |

| GL Number  | Description                | Invoice Amount | Amount Relieved |        |
|------------|----------------------------|----------------|-----------------|--------|
| 05-58-4240 | Parks & Fields Maintenance | 293.95         | 0.00            |        |
|            |                            | Check No.      | 48023           | Total: |
|            |                            | Total for      | HORIZON         | 293.95 |



**INVOICE APPROVAL LIST REPORT - DETAIL WITH GL DIST**

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TOWN OF PORTOLA VALLEY

| Vendor Name               | Invoice Description1 | Ref No.   | Discount Date |                 |
|---------------------------|----------------------|-----------|---------------|-----------------|
| Vendor Name Line 2        | Invoice Description2 | PO No.    | Pay Date      |                 |
| Vendor Address            | Vendor Number        |           | Due Date      | Taxes Withheld  |
| City                      | Bank                 | Check No. | Check Date    | Discount Amount |
| State/Province Zip/Postal | Invoice Number       |           |               | Check Amount    |

|                  |                                |       |            |        |
|------------------|--------------------------------|-------|------------|--------|
| J.W. ENTERPRISES | Portable Lav's, 9/15 - 10/2/13 | 14598 | 09/25/2013 |        |
|                  |                                |       | 09/25/2013 |        |
| 1689 MORSE AVE   | 829                            |       | 09/25/2013 | 0.00   |
| VENTURA          | BOA                            | 48024 | 09/25/2013 | 0.00   |
| CA 93003         | 170362                         |       |            | 235.44 |

| GL Number  | Description         | Invoice Amount | Amount Relieved |
|------------|---------------------|----------------|-----------------|
| 05-58-4244 | Portable Lavatories | 235.44         | 0.00            |

|           |                  |        |        |
|-----------|------------------|--------|--------|
| Check No. | 48024            | Total: | 235.44 |
| Total for | J.W. ENTERPRISES |        | 235.44 |

|                               |                               |       |            |          |
|-------------------------------|-------------------------------|-------|------------|----------|
| JENSEN LANDSCAPE SERVICES INC | Ford Field Renov. Proj, Aug13 | 14605 | 09/25/2013 |          |
|                               |                               |       | 09/25/2013 |          |
| 1983 CONCOURSE DRIVE          | 849                           |       | 09/25/2013 | 0.00     |
| SAN JOSE                      | BOA                           | 48025 | 09/25/2013 | 0.00     |
| CA 95131                      | 019606                        |       |            | 9,500.00 |

| GL Number  | Description           | Invoice Amount | Amount Relieved |
|------------|-----------------------|----------------|-----------------|
| 08-68-4531 | Ford Field Renovation | 9,500.00       | 0.00            |

|           |                             |        |          |
|-----------|-----------------------------|--------|----------|
| Check No. | 48025                       | Total: | 9,500.00 |
| Total for | JENSEN LANDSCAPE SERVICES I |        | 9,500.00 |

|               |                         |       |            |           |
|---------------|-------------------------|-------|------------|-----------|
| KPMG LLP      | Grant Report/Evaluation | 14599 | 09/25/2013 |           |
|               |                         |       | 09/25/2013 |           |
| DEPT 0922     | 985                     |       | 09/25/2013 | 0.00      |
| DALLAS        | BOA                     | 48026 | 09/25/2013 | 0.00      |
| TX 75312-0922 | 44862557                |       |            | 13,904.00 |

| GL Number  | Description    | Invoice Amount | Amount Relieved |
|------------|----------------|----------------|-----------------|
| 05-66-4341 | Community Hall | 13,904.00      | 0.00            |

|           |          |        |           |
|-----------|----------|--------|-----------|
| Check No. | 48026    | Total: | 13,904.00 |
| Total for | KPMG LLP |        | 13,904.00 |

|                         |                   |       |            |          |
|-------------------------|-------------------|-------|------------|----------|
| KUTZMANN & ASSOCIATES   | August Plan Check | 14606 | 09/25/2013 |          |
|                         |                   |       | 09/25/2013 |          |
| 39355 CALIFORNIA STREET | 0090              |       | 09/25/2013 | 0.00     |
| FREMONT                 | BOA               | 48027 | 09/25/2013 | 0.00     |
| CA 94538                |                   |       |            | 2,053.75 |

| GL Number  | Description         | Invoice Amount | Amount Relieved |
|------------|---------------------|----------------|-----------------|
| 05-54-4200 | Plan Check Services | 2,053.75       | 0.00            |

|           |                       |        |          |
|-----------|-----------------------|--------|----------|
| Check No. | 48027                 | Total: | 2,053.75 |
| Total for | KUTZMANN & ASSOCIATES |        | 2,053.75 |

|             |                        |       |            |           |
|-------------|------------------------|-------|------------|-----------|
| PERS HEALTH | October Health Premium | 14593 | 09/25/2013 |           |
|             |                        |       | 09/25/2013 |           |
| VIA EFT     | 0108                   |       | 09/25/2013 | 0.00      |
|             | BOA                    | 48028 | 09/25/2013 | 0.00      |
|             |                        |       |            | 18,560.20 |

| GL Number  | Description              | Invoice Amount | Amount Relieved |
|------------|--------------------------|----------------|-----------------|
| 05-50-4086 | Health Insurance Medical | 18,560.20      | 0.00            |

**INVOICE APPROVAL LIST REPORT - DETAIL WITH GL DIST**

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TOWN OF PORTOLA VALLEY

| Vendor Name               | Invoice Description1 | Ref No.   | Discount Date |                 |
|---------------------------|----------------------|-----------|---------------|-----------------|
| Vendor Name Line 2        | Invoice Description2 | PO No.    | Pay Date      |                 |
| Vendor Address            | Vendor Number        |           | Due Date      | Taxes Withheld  |
| City                      | Bank                 | Check No. | Check Date    | Discount Amount |
| State/Province Zip/Postal | Invoice Number       |           |               | Check Amount    |

|           |             |        |           |
|-----------|-------------|--------|-----------|
| Check No. | 48028       | Total: | 18,560.20 |
| Total for | PERS HEALTH |        | 18,560.20 |

|                       |                |       |            |          |
|-----------------------|----------------|-------|------------|----------|
| PETERSEN DEAN         | Refund Deposit | 14597 | 09/25/2013 |          |
|                       |                |       | 09/25/2013 |          |
| 7980 ENTERPRISE DRIVE | 1005           |       | 09/25/2013 | 0.00     |
| NEWARK                | BOA            | 48029 | 09/25/2013 | 0.00     |
| CA 94560              |                |       |            | 1,000.00 |

| GL Number  | Description | Invoice Amount | Amount Relieved |
|------------|-------------|----------------|-----------------|
| 96-54-4205 | C&D Deposit | 1,000.00       | 0.00            |

|           |               |        |          |
|-----------|---------------|--------|----------|
| Check No. | 48029         | Total: | 1,000.00 |
| Total for | PETERSEN DEAN |        | 1,000.00 |

|                  |                         |       |            |          |
|------------------|-------------------------|-------|------------|----------|
| GARY REYNOLDS    | Reimb., WAY2 Road Maint | 14607 | 09/25/2013 |          |
|                  |                         |       | 09/25/2013 |          |
| 540 WAYSIDE ROAD | 1238                    |       | 09/25/2013 | 0.00     |
| PORTOLA VALLEY   | BOA                     | 48030 | 09/25/2013 | 0.00     |
| CA 94028         |                         |       |            | 2,160.00 |

| GL Number  | Description      | Invoice Amount | Amount Relieved |
|------------|------------------|----------------|-----------------|
| 86-00-4375 | General Expenses | 2,160.00       | 0.00            |

|           |               |        |          |
|-----------|---------------|--------|----------|
| Check No. | 48030         | Total: | 2,160.00 |
| Total for | GARY REYNOLDS |        | 2,160.00 |

|                    |                            |       |            |        |
|--------------------|----------------------------|-------|------------|--------|
| ROBERTS MARKET     | Refreshments, Energy Wkshp | 14608 | 09/25/2013 |        |
|                    |                            |       | 09/25/2013 |        |
| 3015 WOODSIDE ROAD | 1236                       |       | 09/25/2013 | 0.00   |
| WOODSIDE           | BOA                        | 48031 | 09/25/2013 | 0.00   |
| CA 94062           |                            |       |            | 214.01 |

| GL Number  | Description   | Invoice Amount | Amount Relieved |
|------------|---------------|----------------|-----------------|
| 05-64-4336 | Miscellaneous | 214.01         | 0.00            |

|           |                |        |        |
|-----------|----------------|--------|--------|
| Check No. | 48031          | Total: | 214.01 |
| Total for | ROBERTS MARKET |        | 214.01 |

|                           |                         |       |            |        |
|---------------------------|-------------------------|-------|------------|--------|
| STEPHANIE RUSTIA          | Refund Facility Deposit | 14609 | 09/25/2013 |        |
|                           |                         |       | 09/25/2013 |        |
| 1051 BEACH PARK BLVD #310 | 1239                    |       | 09/25/2013 | 0.00   |
| FOSTER CITY               | BOA                     | 48032 | 09/25/2013 | 0.00   |
| CA 94404                  |                         |       |            | 650.00 |

| GL Number  | Description              | Invoice Amount | Amount Relieved |
|------------|--------------------------|----------------|-----------------|
| 05-56-4226 | Facility Deposit Refunds | 650.00         | 0.00            |

|           |                  |        |        |
|-----------|------------------|--------|--------|
| Check No. | 48032            | Total: | 650.00 |
| Total for | STEPHANIE RUSTIA |        | 650.00 |

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| Vendor Name               | Invoice Description1 | Ref No.   | Discount Date |                 |
|---------------------------|----------------------|-----------|---------------|-----------------|
| Vendor Name Line 2        | Invoice Description2 | PO No.    | Pay Date      |                 |
| Vendor Address            | Vendor Number        |           | Due Date      | Taxes Withheld  |
| City                      | Bank                 | Check No. | Check Date    | Discount Amount |
| State/Province Zip/Postal | Invoice Number       |           |               | Check Amount    |

|                  |                         |       |            |           |
|------------------|-------------------------|-------|------------|-----------|
| BYRON SHAW       | Reimb., WAY2 Road Maint | 14610 | 09/25/2013 |           |
|                  |                         |       | 09/25/2013 |           |
| 900 WAYSIDE ROAD | 0358                    |       | 09/25/2013 | 0.00      |
| PORTOLA VALLEY   | BOA                     | 48033 | 09/25/2013 | 0.00      |
| CA 94028         |                         |       |            | 19,025.97 |

| GL Number  | Description      | Invoice Amount | Amount Relieved |
|------------|------------------|----------------|-----------------|
| 86-00-4375 | General Expenses | 19,025.97      | 0.00            |

|           |            |        |           |
|-----------|------------|--------|-----------|
| Check No. | 48033      | Total: | 19,025.97 |
| Total for | BYRON SHAW |        | 19,025.97 |

|                                |                        |       |            |       |
|--------------------------------|------------------------|-------|------------|-------|
| SIERRA PACIFIC TURF SUPPLY INC | Pest Treatment, Fields | 14611 | 09/25/2013 |       |
|                                |                        |       | 09/25/2013 |       |
| P.O. BOX 84                    | 842                    |       | 09/25/2013 | 0.00  |
| CAMPBELL                       | BOA                    | 48034 | 09/25/2013 | 0.00  |
| CA 95009                       | 0410549-IN             |       |            | 81.71 |

| GL Number  | Description                | Invoice Amount | Amount Relieved |
|------------|----------------------------|----------------|-----------------|
| 05-58-4240 | Parks & Fields Maintenance | 81.71          | 0.00            |

|           |                               |        |       |
|-----------|-------------------------------|--------|-------|
| Check No. | 48034                         | Total: | 81.71 |
| Total for | SIERRA PACIFIC TURF SUPPLY IN |        | 81.71 |

|                                |                       |       |            |          |
|--------------------------------|-----------------------|-------|------------|----------|
| SMALL BUSINESS BENEFIT PLAN TR | October Dental/Vision | 14612 | 09/25/2013 |          |
|                                |                       |       | 09/25/2013 |          |
|                                | 0132                  |       | 09/25/2013 | 0.00     |
| BELMONT                        | BOA                   | 48035 | 09/25/2013 | 0.00     |
| CA 94002-0156                  |                       |       |            | 2,446.30 |

| GL Number  | Description                | Invoice Amount | Amount Relieved |
|------------|----------------------------|----------------|-----------------|
| 05-50-4090 | Health Ins Dental & Vision | 2,446.30       | 0.00            |

|           |                             |        |          |
|-----------|-----------------------------|--------|----------|
| Check No. | 48035                       | Total: | 2,446.30 |
| Total for | SMALL BUSINESS BENEFIT PLAN |        | 2,446.30 |

|                        |                               |       |            |        |
|------------------------|-------------------------------|-------|------------|--------|
| SPARTAN ENGINEERING    | Security/Fire Monitor FY13-14 | 14613 | 09/25/2013 |        |
|                        |                               |       | 09/25/2013 |        |
| 510 PARROTT STREET, #6 | 0095                          |       | 09/25/2013 | 0.00   |
| SAN JOSE               | BOA                           | 48036 | 09/25/2013 | 0.00   |
| CA 95112               | 8409M, 8410M                  |       |            | 900.00 |

| GL Number  | Description                   | Invoice Amount | Amount Relieved |
|------------|-------------------------------|----------------|-----------------|
| 05-66-4346 | Mechanical Sys Maint & Repair | 900.00         | 0.00            |

|           |                     |        |        |
|-----------|---------------------|--------|--------|
| Check No. | 48036               | Total: | 900.00 |
| Total for | SPARTAN ENGINEERING |        | 900.00 |

|                     |                        |       |            |        |
|---------------------|------------------------|-------|------------|--------|
| STAPLES             | August Office Supplies | 14614 | 09/25/2013 |        |
|                     |                        |       | 09/25/2013 |        |
| STAPLES CREDIT PLAN | 430                    |       | 09/25/2013 | 0.00   |
| DES MOINES          | BOA                    | 48037 | 09/25/2013 | 0.00   |
| IA 50368-9020       |                        |       |            | 403.65 |

| GL Number  | Description     | Invoice Amount | Amount Relieved |
|------------|-----------------|----------------|-----------------|
| 05-64-4308 | Office Supplies | 403.65         | 0.00            |

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| Vendor Name               | Invoice Description1 | Ref No.   | Discount Date |                 |
|---------------------------|----------------------|-----------|---------------|-----------------|
| Vendor Name Line 2        | Invoice Description2 | PO No.    | Pay Date      |                 |
| Vendor Address            | Vendor Number        |           | Due Date      | Taxes Withheld  |
| City                      | Bank                 | Check No. | Check Date    | Discount Amount |
| State/Province Zip/Postal | Invoice Number       |           |               | Check Amount    |

|           |         |        |        |
|-----------|---------|--------|--------|
| Check No. | 48037   | Total: | 403.65 |
| Total for | STAPLES |        | 403.65 |

|                           |                            |       |            |       |
|---------------------------|----------------------------|-------|------------|-------|
| SWANK MOTION PICTURES INC | Postage, Teen Com'te Movie | 14615 | 09/25/2013 |       |
|                           |                            |       | 09/25/2013 |       |
| 10795 WATSON ROAD         | 765                        |       | 09/25/2013 | 0.00  |
| ST LOUIS                  | BOA                        | 48038 | 09/25/2013 | 0.00  |
| MO 63127                  | RG1839342                  |       |            | 26.50 |

| GL Number  | Description    | Invoice Amount | Amount Relieved |
|------------|----------------|----------------|-----------------|
| 05-52-4166 | Teen Committee | 26.50          | 0.00            |

|           |                           |        |       |
|-----------|---------------------------|--------|-------|
| Check No. | 48038                     | Total: | 26.50 |
| Total for | SWANK MOTION PICTURES INC |        | 26.50 |

|                   |                        |       |            |        |
|-------------------|------------------------|-------|------------|--------|
| BARBARA TEMPLETON | Transcription Services | 14616 | 09/25/2013 |        |
|                   |                        |       | 09/25/2013 |        |
| 304 MELVEN COURT  | 369                    |       | 09/25/2013 | 0.00   |
| SAN LEANDRO       | BOA                    | 48039 | 09/25/2013 | 0.00   |
| CA 94577-2011     | 754                    |       |            | 562.50 |

| GL Number  | Description            | Invoice Amount | Amount Relieved |
|------------|------------------------|----------------|-----------------|
| 05-54-4188 | Transcription Services | 562.50         | 0.00            |

|           |                   |        |        |
|-----------|-------------------|--------|--------|
| Check No. | 48039             | Total: | 562.50 |
| Total for | BARBARA TEMPLETON |        | 562.50 |

|                    |  |       |            |          |
|--------------------|--|-------|------------|----------|
| TOWNSEND MGMT, INC | Ford Field Proj./CIP Street Resurf./August App Charges | 14617 | 09/25/2013 |          |
|                    |  |       | 09/25/2013 |          |
| P.O. BOX 24442     | 609  |       | 09/25/2013 | 0.00     |
| SAN FRANCISCO      | BOA  | 48040 | 09/25/2013 | 0.00     |
| CA 94124           |  |       |            | 1,187.50 |

| GL Number  | Description                 | Invoice Amount | Amount Relieved |
|------------|-----------------------------|----------------|-----------------|
| 05-68-4531 | Ford Field Renovation       | 475.00         | 0.00            |
| 05-68-4533 | CIP13/14 Street Resurface   | 332.50         | 0.00            |
| 96-54-4194 | Engineer - Charges to Appls | 380.00         | 0.00            |

|           |                    |        |          |
|-----------|--------------------|--------|----------|
| Check No. | 48040              | Total: | 1,187.50 |
| Total for | TOWNSEND MGMT, INC |        | 1,187.50 |

|                     |                              |       |            |           |
|---------------------|------------------------------|-------|------------|-----------|
| TREE SPECIALIST INC | Fire Abatement/Emer Tree Wrk | 14618 | 09/25/2013 |           |
|                     |                              |       | 09/25/2013 |           |
| 1198 NEVADA AVE     | 839                          |       | 09/25/2013 | 0.00      |
| SAN JOSE            | BOA                          | 48041 | 09/25/2013 | 0.00      |
| CA 95125            |                              |       |            | 13,100.00 |

| GL Number  | Description     | Invoice Amount | Amount Relieved |
|------------|-----------------|----------------|-----------------|
| 05-64-4333 | Fire Prevention | 12,600.00      | 0.00            |
| 20-60-4271 | Storm Damage    | 500.00         | 0.00            |

|           |                     |        |           |
|-----------|---------------------|--------|-----------|
| Check No. | 48041               | Total: | 13,100.00 |
| Total for | TREE SPECIALIST INC |        | 13,100.00 |

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| Vendor Name               | Invoice Description1 | Ref No.   | Discount Date |                 |
|---------------------------|----------------------|-----------|---------------|-----------------|
| Vendor Name Line 2        | Invoice Description2 | PO No.    | Pay Date      |                 |
| Vendor Address            | Vendor Number        |           | Due Date      | Taxes Withheld  |
| City                      | Bank                 | Check No. | Check Date    | Discount Amount |
| State/Province Zip/Postal | Invoice Number       |           |               | Check Amount    |

|                                |                            |          |            |          |
|--------------------------------|----------------------------|----------|------------|----------|
| TURF & INDUSTRIAL EQUIPMENT CO | Replacement Deck for Mower | 14619    | 09/25/2013 |          |
|                                |                            | 00006147 | 09/25/2013 |          |
| 2715 LAFAYETTE STREET          | 513                        |          | 09/25/2013 | 0.00     |
| SANTA CLARA                    | BOA                        | 48042    | 09/25/2013 | 0.00     |
| CA 95050                       |                            |          |            | 3,826.39 |

| GL Number  | Description                | Invoice Amount | Amount Relieved |
|------------|----------------------------|----------------|-----------------|
| 05-58-4240 | Parks & Fields Maintenance | 3,826.39       | 3,826.39        |

|                                |                |       |            |        |
|--------------------------------|----------------|-------|------------|--------|
| TURF & INDUSTRIAL EQUIPMENT CO | Tractor Repair | 14620 | 09/25/2013 |        |
|                                |                |       | 09/25/2013 |        |
| 2715 LAFAYETTE STREET          | 513            |       | 09/25/2013 | 0.00   |
| SANTA CLARA                    | BOA            | 48042 | 09/25/2013 | 0.00   |
| CA 95050                       |                |       |            | 388.72 |

| GL Number  | Description                | Invoice Amount | Amount Relieved |
|------------|----------------------------|----------------|-----------------|
| 05-58-4240 | Parks & Fields Maintenance | 388.72         | 0.00            |

|           |                             |        |          |
|-----------|-----------------------------|--------|----------|
| Check No. | 48042                       | Total: | 4,215.11 |
| Total for | TURF & INDUSTRIAL EQUIPMENT |        | 4,215.11 |

|                             |                         |       |            |        |
|-----------------------------|-------------------------|-------|------------|--------|
| U.S. BANK EQUIPMENT FINANCE | September Lease Payment | 14621 | 09/25/2013 |        |
|                             |                         |       | 09/25/2013 |        |
| P.O. BOX 790448             | 472                     |       | 09/25/2013 | 0.00   |
| ST. LOUIS                   | BOA                     | 48043 | 09/25/2013 | 0.00   |
| MO 63179-0448               | 235873221               |       |            | 452.28 |

| GL Number  | Description      | Invoice Amount | Amount Relieved |
|------------|------------------|----------------|-----------------|
| 05-64-4312 | Office Equipment | 452.28         | 0.00            |

|           |                             |        |        |
|-----------|-----------------------------|--------|--------|
| Check No. | 48043                       | Total: | 452.28 |
| Total for | U.S. BANK EQUIPMENT FINANCE |        | 452.28 |

|                               |                          |       |            |          |
|-------------------------------|--------------------------|-------|------------|----------|
| VISION INTERNET PROVIDERS INC | CMS Upgrade, 50% of cost | 14622 | 09/25/2013 |          |
|                               |                          |       | 09/25/2013 |          |
| P.O. BOX 251588               | 827                      |       | 09/25/2013 | 0.00     |
| LOS ANGELES                   | BOA                      | 48044 | 09/25/2013 | 0.00     |
| CA 90025                      | 25386                    |       |            | 6,770.00 |

| GL Number  | Description                    | Invoice Amount | Amount Relieved |
|------------|--------------------------------|----------------|-----------------|
| 05-64-4311 | Internet Service & Web Hosting | 6,770.00       | 0.00            |

|           |                               |        |          |
|-----------|-------------------------------|--------|----------|
| Check No. | 48044                         | Total: | 6,770.00 |
| Total for | VISION INTERNET PROVIDERS INC |        | 6,770.00 |

|                  |                    |       |            |          |
|------------------|--------------------|-------|------------|----------|
| WOODSIDE PRIORY  | Refund C&D Deposit | 14623 | 09/25/2013 |          |
|                  |                    |       | 09/25/2013 |          |
| 302 PORTOLA ROAD | 0230               |       | 09/25/2013 | 0.00     |
| PORTOLA VALLEY   | BOA                | 48045 | 09/25/2013 | 0.00     |
| CA 94028         |                    |       |            | 5,000.00 |

| GL Number  | Description | Invoice Amount | Amount Relieved |
|------------|-------------|----------------|-----------------|
| 96-54-4205 | C&D Deposit | 5,000.00       | 0.00            |

|           |                 |        |          |
|-----------|-----------------|--------|----------|
| Check No. | 48045           | Total: | 5,000.00 |
| Total for | WOODSIDE PRIORY |        | 5,000.00 |

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| Vendor Name               | Invoice Description1 | Ref No.   | Discount Date |                 |
|---------------------------|----------------------|-----------|---------------|-----------------|
| Vendor Name Line 2        | Invoice Description2 | PO No.    | Pay Date      |                 |
| Vendor Address            | Vendor Number        |           | Due Date      | Taxes Withheld  |
| City                      | Bank                 | Check No. | Check Date    | Discount Amount |
| State/Province Zip/Postal | Invoice Number       |           |               | Check Amount    |

|                 |                                |       |            |        |
|-----------------|--------------------------------|-------|------------|--------|
| WORLD JOURNAL   | Ad, Candidate Elect Statements | 14624 | 09/25/2013 |        |
|                 |                                |       | 09/25/2013 |        |
| 231 ADRIAN ROAD | 738                            |       | 09/25/2013 | 0.00   |
| MILLBRAE        | BOA                            | 48046 | 09/25/2013 | 0.00   |
| CA 94030        | 1786911, 1786910               |       |            | 128.00 |

| GL Number  | Description | Invoice Amount | Amount Relieved |
|------------|-------------|----------------|-----------------|
| 05-64-4320 | Advertising | 128.00         | 0.00            |

|           |               |        |        |
|-----------|---------------|--------|--------|
| Check No. | 48046         | Total: | 128.00 |
| Total for | WORLD JOURNAL |        | 128.00 |

Total Invoices: 33

|                            |            |
|----------------------------|------------|
| Grand Total:               | 133,458.72 |
| Less Credit Memos:         | 0.00       |
| Net Total:                 | 133,458.72 |
| Less Hand Check Total:     | 0.00       |
| Outstanding Invoice Total: | 133,458.72 |

**TOWN OF PORTOLA VALLEY**  
**Warrant Disbursement Journal**  
**September 25, 2013**

Claims totaling \$133,458.72 having been duly examined by me and found to be correct are hereby approved and verified by me as due bills against the Town of Portola Valley.

Date \_\_\_\_\_

\_\_\_\_\_  
Nick Pegueros, Treasurer

Motion having been duly made and seconded, the above claims are hereby approved and allowed for payment.

Signed and sealed this (Date) \_\_\_\_\_

\_\_\_\_\_  
Sharon Hanlon, Town Clerk

\_\_\_\_\_  
Mayor

**Sharon Hanlon**

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**From:** Simone LaValle [simone.lavalle@gmail.com]  
**Sent:** Thursday, September 12, 2013 6:58 AM  
**To:** Sharon Hanlon  
**Subject:** For Town Council: Parks & Rec Committee New Meeting Date Request

Dear Town Council,

At our August 26th meeting, it was recommended and agreed upon by all members of the committee to change the monthly meetings from the third Monday to the first Monday of the month. This was decided due to the chair's inability to make the third Monday meetings work in addition to avoiding as many Monday holidays to meet on a more regular basis throughout the year.

Thank you for your consideration in advance.

Kind Regards,  
Simone LaValle  
Parks & Rec Committee Chair



## **PARKS AND RECREATION COMMITTEE**

### **OBJECTIVE**

To develop, promote and maintain quality recreational and community enrichment programs, recreational facilities and park areas in the Town of Portola Valley.

### **DUTIES AND FUNCTIONS**

- 1) Advise the Town Council as to park and recreational needs and suggest steps to be taken to fill these needs.
- 2) Review proposals that affect park and recreational activities and/or facilities.
- 3) Advocate for park and recreational issues and assist in providing information to Town residents.
- 4) Assist in advising the residents of Portola Valley as to recreational and enrichment programs available.
- 5) Keep well informed as to use and conditions of playing fields, parks and recreational facilities, as well as to the status of recreational programs. This shall be accomplished through quarterly communications with the Recreational Facilities Coordinator and Presidents of Athletic Leagues.
- 6) Encourage, coordinate and advise citizens and private organizations in establishing local recreational and community enrichment programs.
- 7) Draft and recommend a Parks and Recreation Budget that may be merged into the Town's Annual Budget.
- 8) Recommend use policies concerning parks and recreational facilities (including fees, access, and rules pertaining to use).
- 9) Organize and run an annual fun run (historically: Zotts to Totts)

### **RESPONSIBLE TO:**

The Town Council

### **COORDINATION:**

All Town Committees and Commissions  
Town Staff  
PV Schools  
Presidents of Athletic Leagues and Recreational Clubs

### **MEMBERSHIP**

Up to thirteen members appointed by the Mayor with Council Concurrence. One year terms. Rotating chair, vice chair and secretary selected by Committee.

### **MEETINGS**

Held on ~~third~~ first Monday of each month at 7:30 p.m.



# MEMORANDUM

## TOWN OF PORTOLA VALLEY

---

**TO:** Town Council

**FROM:** Leigh F. Prince, Town Attorney

**DATE:** September 20, 2013

**RE:** Amicus Brief Supporting No Toxic Air, Inc.'s Lawsuit against Lehigh Quarry Related to the Board of Supervisors' Determination Regarding Vested Rights

**RECOMMENDATION:** Consider information regarding the amicus brief supporting No Toxic Air, Inc.'s lawsuit against the Lehigh quarry related to the Santa Clara County Board of Supervisors' determination regarding vested rights and direct Town staff as to next steps, if any.

**DISCUSSION:** The Lehigh quarry dates back more than 100 years and is a legal non-conforming use. In 2010, Lehigh applied to amend its reclamation plan. As a result, the County of Santa Clara (County) decided that a formal determination regarding the geographic scope of the quarry's vested rights was needed. The Board of Supervisors determined that Lehigh had vested mining rights as to a majority of its property (13 of the 19 parcels that comprise the quarry property). No Toxic Air, Inc. (or Bay Area for Clean Environment, BACE<sup>1</sup>) challenged the Board of Supervisors' decision. Santa Clara County Superior Court upheld the decision of the Board of Supervisors finding that there was substantial evidence supporting the Board's decision regarding Lehigh's vested rights. No Toxic Air, Inc. has appealed the trial court's ruling. The issues on appeal relate to vested rights and the extent of the non-conforming use.

Generally, intensification or expansion of a non-conforming use is prohibited. However, unlike other non-conforming uses, mining uses anticipate expansion into areas not yet exploited at the time a change in zoning causes the use to be non-conforming. The property owner can be determined to have vested rights to mine those not yet exploited areas so long as the property owner can show an objective intent to extend the mining

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<sup>1</sup> The City of Cupertino recently received a letter alleging that BACE is a suspended corporation and, therefore, does not have standing to pursue the appeal regarding which the amicus would be submitted.

use into those unexploited areas and that the intent existed at the time of the zoning change. This is what is referred to as the “diminishing-asset doctrine” and it may exempt a mining operation from permitting requirements otherwise needed to expand. This legal doctrine specific to mining or extractive uses is the focus of the appeal.

The Town of Portola Valley has received a request to consider joining an amicus brief with the Town of Los Altos Hills and the Mid-Peninsula Regional Open Space District. The amicus brief will be prepared by the law firm of Shute, Mihaley & Weiberger, LLP regarding issues related to the expansion of a legal non-conforming use and the diminishing assets doctrine. The City of Los Altos also recently decided to join and contribute an amount not to exceed \$7,500 for the preparation of the amicus brief, which is anticipated to cost between \$21,000 and \$32,000.

Generally, an amicus brief is a brief prepared and filed by a person or organization that is not a party to the case, but has some knowledge or perspective that is different and valuable to the court. It is unclear what knowledge or perspective the Town could contribute to the legal arguments regarding the diminishing assets doctrine as the Town does not have mining or extractive uses within its borders. The Town’s role in this amicus brief would be limited to contributing money to the cost of the preparation of the brief and the Town would be listed as a party who made a monetary contribution. The only apparent potential link that this appeal has to the Town is that should the County’s decision be overturned as to the extent of the vested rights, Lehigh may have to do additional environmental review as part of the permitting process to expand its mining operations and that review may consider the impact to the Crystal Springs Reservoir from which the Town receives some of its water supply.

In a separate lawsuit, Mid-Peninsula Regional Open Space District and BACE challenged the County’s Environmental Impact Report on the Reclamation Plan Amendment claiming that it is inadequate in its scope and sufficiency regarding air quality, both surface and ground water quality, toxic materials disturbance and release, wildlife impacts, and feasible alternatives analysis. The Santa Clara County Superior Court heard arguments in this case on Friday, September 13, 2013. The amicus brief does not address the topic of environmental review.

cc: Town Manager

**Sharon Hanlon**

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**Subject:** Please join the Town of Los Altos Hills and the Mid-Peninsula Open Space District in filing an Amicus Brief f

**Attachments:** Amicus Brief Information Sheet 2013-7-25.doc; Mercury pollution in Crystal Spring reservoir 2010-7-7.doc; 2010-03-10 EPA's Notice of Violation to Lehigh Southwest Cement Plant.pdf; 2011-07-20 DOC's 30 day notice to remove Lehigh from AB 3098 list.pdf; California Regional Water quality Control Board's NOV to lehigh 3-26-10.pdf; U.S. Department of Labor issued citations to Lehigh 2010-12-21.pdf; 2011-12-19 Sierra Club filed lawsuit against Lehigh.pdf; 2011-07-20 DOC's 30 day notice to remove Lehigh from AB 3098 list.pdf; California Regional Water quality Control Board's NOV to lehigh 3-26-10.pdf; U.S. Department of Labor issued citations to Lehigh 2010-12-21.pdf; 2011-12-19 Sierra Club filed lawsuit against Lehigh.pdf

**From:** Barry Chang [<mailto:councilbarry@gmail.com>]

**Sent:** Thursday, August 22, 2013 2:56 PM

**To:** John Richards; Ann Wengert; Jeff Aalfs; Maryann Derwin; Ted Driscoll; Nick Pegueros; TownCenter

**Subject:** Please join the Town of Los Altos Hills and the Mid-Peninsula Open Space District in filing an Amicus Brief f

Dear Honorable Mayor Richards & Council Members,

Please join the Town of Los Altos Hills and the Mid-Peninsula Open Space District in filing an Amicus Brief for BACE's (Bay Area for Clean Environment, currently a 3,000 member-strong, IRS 501 C3 non profit grass root local organization; formerly known as No Toxic Air) lawsuit against Santa Clara County and Lehigh Southwest Cement Plant (Lehigh) on Lehigh's vested rights issue.

Within the doctrine of nonconforming use, rules allowing nonconforming use should be narrowly construed because nonconforming use is highly disfavored. The issue in BACE's appeal is that Santa Clara County has outrageously distorted the doctrine of nonconforming use. The county overruled its own staff's recommendation and gave much more than what Lehigh had originally requested. Given the fact that Lehigh is the largest polluter of mercury, nitrogen oxides and sulfur dioxides in the Peninsula and South Bay, compounded with Lehigh's long history of violating the Federal Clean Air Act, Federal Clean Water Act, Federal Labor laws and State Mining laws, it is our duty to stop these violations and to protect our residents' health and safety.

Please find attached the following: Amicus Brief Information Sheet and Notice of Violations (NOVs) to Lehigh from EPA, and other regulatory agencies.

Also attached is Chronicle Staff Writer's, Kelly Zito's article on July 7, 2010 about "Mercury found in fish from S. F. water supply". Crystal Spring Reservoir supplies water for residents in Peninsula cities, including Woodside and Portola Valley. As the biggest Mercury polluter to San Francisco Bay for more than seventy years, Lehigh is only 26.8 miles away from Crystal Spring Reservoir. One must wonder the main source of mercury in Crystal Spring Reservoir comes from Lehigh Southwest Cement Plant on 24001 Stevens Creek Blvd., Cupertino, CA.

The video link is to the Town of Los Altos Hills' unanimous decision to file an Amicus Brief with Mid-Peninsula Open Space District at its August 15, 2013 town council meeting.

Video: <http://www.losaltoshills.ca.gov/city-government/city-council/reports>

Should you have any questions, please feel free to contact me or our attorney, Mr. Stuart Flashman, at [510-652-5373](tel:510-652-5373) (O), [510-504-0154](tel:510-504-0154) (Cel). Or email him at [stu@stufash.com](mailto:stu@stufash.com). Thank you very much for your help.

Sincerely,  
Barry Chang  
A Cupertino City Council Member  
[408-688-6398](tel:408-688-6398)

## AMICUS BRIEF INFORMATION SHEET

Case Name: No Toxic Air, Inc. v Santa Clara County & Santa Clara County Board of Supervisors, Lehigh Southwest Cement Company & Hanson Permanente Cement, Inc. Real Parties in Interest.

Case number: Trial Court – Santa Clara County Superior Court 111CV201900  
Court of Appeal, 6<sup>th</sup> Appellate Dist. Ho39547

The case is a challenge to the County’s determination of the extent of Lehigh/Hanson’s vested mining rights at the Permanente Quarry just outside of the Cupertino city limits. While the limestone quarry dates back more than 100 years, and provides the raw material for Lehigh/Hanson’s adjoining large cement factory. Between the factory and quarry, the operation is one of the largest sources of air (mercury) and water (selenium) pollution in the South Bay.

The area actually being mined remained rather small until the 1970s, when it expanded to meet the demand for cement for construction and highway projects. The State Office of Mining Reclamation came down on Lehigh/Hanson in 2004 for violations of state mining law. They prodded the County into giving Lehigh/Hanson two notices of violation for mining areas outside the approved reclamation plan. However, the County agreed to allow the mining to continue unabated while Lehigh/Hanson prepared a new expanded reclamation plan.

In that context, Lehigh/Hanson had to address whether it needed a use permit, and a permit under state mining law, for its existing operations. That led Lehigh/Hanson to apply to the County to grant it mining rights as a legal nonconforming use. County staff, after extensive investigation recommended that Lehigh/Hanson be granted some vested mining rights, but the Board of Supervisors overruled County staff and granted Lehigh/Hanson all the mining rights they asked for, including the right to continue dumping mining waste in the eastern and western material storage areas, which are both large and unsightly (and polluting) piles of mining debris.

The primary “vesting date”, when the County began to seriously regulate mining, was January 1948. At that time, the quarry operation (then Kaiser Cement Company), while large, was rather compact in the areas being mined. Nevertheless, the County, and the trial judge, bought Lehigh/Hanson’s arguments that even as little as purchasing a several hundred acre land parcel was enough to vest the entire parcel with rights to conduct any and all mining operations across the entire parcel. The issue on appeal is whether that outrageous distortion of the doctrine of nonconforming uses, which says that nonconforming uses are highly disfavored and rules allowing nonconforming uses should be narrowly construed, should be allowed to stand.

While the specific rule at issue in the case, the “diminished assets doctrine” has only been applied in narrow circumstances, the County’s and trial court’s interpretation, if accepted

by the appellate court, could greatly expand the ability to use its rationale to expand a wide variety of nonconforming uses.

We are looking for one or more amicus briefs in support of the general concept that rules allowing legal nonconforming uses, and especially rules allowing the expansion of legal nonconforming uses, are extremely dangerous to the orderly planning provided by zoning law and therefore should be construed narrowly and stringently to minimize the damage to orderly city planning.

[http://articles.sfgate.com/2010-07-07/news/21940413\\_1\\_mercury-levels-methyl-mercury-young-children-and-women](http://articles.sfgate.com/2010-07-07/news/21940413_1_mercury-levels-methyl-mercury-young-children-and-women)

# Mercury found in fish from S.F. water supply

## Scientists try to identify source of contamination

July 07, 2010 | By Kelly Zito, Chronicle Staff Writer



Daniel Ray of San Jose hooks a bass in Calero Reservoir in Morgan Hill, one of those included in the study.

Credit: John Sebastian Russo / The Chronicle

When researchers wanted to test largemouth bass at Lower Crystal Springs Reservoir for mercury levels, the reservoir's managers in San

Francisco figured the scientists were simply looking for a clean sample to compare with toxic results at other spots.

Instead, the study showed that the fish in the San Mateo County lake - which collects rainwater as well as water piped in from Yosemite's Hetch Hetchy reservoir - had some of the highest mercury levels in the state.

Now, the San Francisco Public Utilities Commission, which oversees Crystal Springs and the rest of the sprawling network that supplies drinking water to 2.5 million people in San Francisco, San Mateo, Santa Clara and Alameda counties, is trying to find the source of the heavy metal, a neurotoxin that can cause developmental damage in children and brain, lung and kidney problems in adults.

"It was a big surprise," said Tim Ramirez, manager for natural resources and land management at the commission's water enterprise division. "We're going to jump on it and try to find out what's going on."

## **No swimming**

Mercury contamination in predator fish like the bass does not indicate that the water itself is unsafe for drinking or swimming - though the 22.6 million-gallon Crystal Springs has long been off-limits to swimming, fishing and boating to protect drinking water quality. The naturally occurring mineral becomes hazardous when it interacts with bacteria that thrive in low-oxygen environments. The bacteria change the mercury into methyl mercury, which is consumed by microscopic organisms at the low end of the food chain. As each creature is in turn eaten by a bigger creature, the mercury becomes more concentrated.

The study was done by researchers at the San Francisco Estuary Institute, who released the results of the landmark, \$1.5 million, two-year project in June. They sampled sport fish at nearly 300 popular fishing lakes in California for methyl mercury, PCBs, DDT and other contaminants. Twenty-one percent of the lakes, including Crystal Springs, had at least one fish species with mercury concentration above 0.44 parts per million - a level considered unsafe for ingestion by young children and women of child-bearing age. Less than 1 percent of the lakes had similar levels of PCBs, a set of highly noxious



chemicals now banned but once used commonly in electronic components and coolants.

## **Understanding risks**

**Sponsored Links**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street  
San Francisco, CA 94105-3901

MAR 10 2010

CERTIFIED MAIL NO. 7003 3110 0006 2000 8625  
RETURN RECEIPT REQUESTED

IN REPLY: AIR-5  
REFER TO: Docket No. R9-10-02

David Vickers  
President  
Lehigh Southwest Cement Company  
12667 Alcosta Blvd.  
Bishop Ranch 15  
San Ramon, CA 94583

Dear Mr. Vickers:

Re: Lehigh Southwest Cement Company Notice and Finding of Violation

Dear Mr. Vickers:

Enclosed is a copy of a Notice of Violation and Finding of Violation ("NOV/FOV") issued pursuant to sections 113(a)(1), 113(a)(3) and 167 of the Clean Air Act, 42 U.S.C. §§ 7401-7671q (the "Act"), notifying you that the United States Environmental Protection Agency ("EPA"), Region IX, finds that Lehigh Southwest Cement Company ("Lehigh") has violated certain sections of the Act's Prevention of Significant Deterioration of Air Quality and Title V Operating Permit Program, at its Portland cement plant located in Cupertino, California (the "Facility").

You should be aware that section 113(a)(1), 113(a)(3) and 167 of the Act authorizes EPA to issue an order requiring compliance with the requirements of the Act, issue an administrative penalty order, or commence a civil action seeking an injunction and/or a civil penalty. Furthermore, section 113(c) of the Act provides for criminal penalties in certain cases.

In addition, section 306 of the Act, 42 U.S.C. 7606, the regulations promulgated thereunder (2 C.F.R. Part 180), and Executive Order 11738 provide that facilities to be utilized in federal contracts, grants and loans must be in full compliance with the Act and all regulations promulgated pursuant to it. A violation of the Act may result in the Cupertino Plant being declared ineligible for participation in any federal contract, grant, or loan.

If you wish to discuss the enclosed NOV/FOV, you may request a conference with EPA within ten (10) working days of receipt of this NOV/FOV. The conference will afford Lehigh an opportunity to present information bearing on the finding of violation, the nature of the violations, and any efforts it may have taken or proposes to take to achieve compliance.

If you have any questions pertaining to this NOV/FOV, please contact Charles Aldred of the Air Enforcement Office at (415) 972-3986, or have your attorney contact Ivan Lieben of the Office of Regional Counsel at (415) 972-3914.

Thank you for your cooperation in this matter.

Sincerely,



Deborah Jordan  
Director, Air Division

Enclosure

cc w/enc: BAAQMD  
CARB



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901

MAR 10 2010

IN REPLY: AIR-5  
REFER TO: Docket No. R9-10-02

Jack Broadbent  
Air Pollution Control Officer  
Bay Area Air Quality Management District  
939 Ellis St.  
San Francisco, CA 94109

Dear Mr. Broadbent:

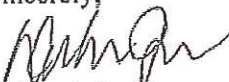
Enclosed for your information is a copy of a Notice of Violation and Finding of Violation ("NOV/FOV") that the United States Environmental Protection Agency ("EPA"), Region IX, issued to the Lehigh Southwest Cement Company ("Lehigh") for violations of the Clean Air Act ("Act") at Lehigh's Portland cement plant in Cupertino, California (the "Facility").

The purpose of the NOV/FOV is to notify Lehigh that EPA finds that it has violated the Prevention of Significant Deterioration and Title V Operating Permit Program requirements of the Act at the Facility. The violations are set forth more specifically in the enclosed NOV/FOV. The NOV/FOV has been issued pursuant to sections 113(a)(1), 113(a)(3) and 167 of the Act, 42 U.S.C. § 7401-7671q.

The Act also provides that after 30 days from the issuance of an NOV, EPA may determine if any action will be taken pursuant to Section 113 of the Act.

If you have any questions concerning this NOV/FOV, please contact Charles Aldred of the Region 9 Air Enforcement Office at (415) 972-3986, or [aldred.charles@epa.gov](mailto:aldred.charles@epa.gov).

Sincerely,

  
Deborah Jordan  
Director, Air Division

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901

MAR 10 2010

IN REPLY: AIR-5  
REFER TO: Docket No. R9-10-02

Jim Ryden  
Enforcement Division Chief  
California Air Resources Board  
P.O. Box 2815  
Sacramento, CA 95812

Dear Mr. Ryden:

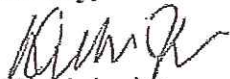
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If you have any questions concerning this NOV/FOV, please contact Charles Aldred of the Region 9 Air Enforcement Office at (415) 972-3986, or [aldred.charles@epa.gov](mailto:aldred.charles@epa.gov).

Sincerely,

  
Deborah Jordan  
Director, Air Division

Enclosure

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX

|                                 |   |                     |
|---------------------------------|---|---------------------|
| In the Matter of:               | ) |                     |
|                                 | ) |                     |
| LEHIGH SOUTHWEST CEMENT COMPANY | ) | Docket No. R9-10-02 |
|                                 | ) | NOTICE OF VIOLATION |
| Proceeding under Section 113(a) | ) | AND FINDING OF      |
| of the Clean Air Act,           | ) | VIOLATION           |
| 42 U.S.C. § 9613(a)             | ) |                     |
|                                 | ) |                     |

NOTICE OF VIOLATION/FINDING OF VIOLATION

This Notice of Violation and Finding of Violation ("NOV/FOV") is issued to the Lehigh Southwest Cement Company ("Lehigh") for violations of the Clean Air Act ("CAA" or the "Act"), as amended, 42 U.S.C. §§ 7401-7671q, at its Portland cement manufacturing facility located in Cupertino, California (the "Facility"). Lehigh violated the Prevention of Significant Deterioration ("PSD") and Title Operating Permit Program requirements of the Act at the Facility. This NOV/FOV is issued pursuant to Sections 113(a)(1), 113(a)(3) and 167 of the Act. Section 113(a)(1) requires the Administrator of the United States Environment Protection Agency ("EPA") to notify any person she finds in violation of an applicable implementation plan or a permit. The federal PSD regulations also clarify that failure to comply with the PSD provisions renders a source subject to enforcement under Section 113 of the Act. See 40 C.F.R. § 52.23. The authority to issue this NOV has been delegated to the Regional Administrator of EPA Region 9 and further re-delegated to the Director of the Air Division in EPA Region 9.

### SUMMARY OF VIOLATIONS

The Facility is a Portland cement manufacturing plant comprised of one kiln, and associated equipment used to produce clinker, including a preheater tower, precalciner, clinker cooler, induced draft ("ID") and other fans, cement finish mills, and extensive sections of ductwork.

This NOV/FOV concerns a series of physical modifications made to the Facility from 1996 through 1999. Lehigh subsequently operated the Facility with the modified equipment which resulted in significant net emission increases. As a result, the projects, either individually or in the aggregate, caused an increase in production of cement and an increase in emissions of air pollutants to the atmosphere from the Facility.

The Facility is located in an area that has at all relevant times been classified as attainment for nitrogen dioxide ("NO<sub>2</sub>") and sulfur dioxide ("SO<sub>2</sub>"). Accordingly, the PSD provisions of Part C, Title I of the Act apply to operations at the Facility for oxides of nitrogen ("NO<sub>x</sub>")<sup>1</sup> and SO<sub>2</sub> emissions. EPA has determined that the physical or operational changes identified in this NOV/FOV, either individually or in the aggregate, were major modifications for PSD purposes since the Facility significantly increased both actual and potential emissions of NO<sub>x</sub> and SO<sub>2</sub> as a result of the changes. Moreover, Lehigh failed to apply for one or more PSD permits for the modifications covering NO<sub>x</sub> and SO<sub>2</sub>.

---

<sup>1</sup>NO<sub>x</sub> serves as the regulated pollutant for the NO<sub>2</sub> standard.

emissions. Lehigh's failure to apply for a PSD permit or install and operate additional emissions controls meeting best available control technology ("BACT") covering these pollutants when it constructed and began operating the physical or operational changes was a violation of the PSD requirements of the Act.

Lehigh has also violated the Title V Operating Permit Program requirements of the Act set forth at 42 U.S.C. §§ 7461-7661f, the federal Title V regulations set forth at 40 C.F.R.

Part 70, and the approved Bay Area Air Quality Management District ("BAAQMD") Title V program set forth at Regulation 2 Rule 6. BAAQMD has administered an approved Title V Operating Permit Program since November 29, 1994. Lehigh's failure to identify PSD requirements in its application submitted to BAAQMD for a Title V permit, supplement or correct that application to include PSD requirements, or obtain a Title V permit that contains the PSD requirements after the construction and operation of the physical or operational changes are violations of Title V requirements. See 42 U.S.C. §§ 7661b(a)-(b) and 7661c(a); 40 C.F.R. §§ 70.5(a)(c); BAAQMD Regulation 2 Rule 6. As a result, Lehigh obtained a deficient Title V permit, i.e., one that did not include all applicable requirements, and therefore is operating the Facility without a valid Title V permit in violation of 42 U.S.C. §§ 7661a, 7661b, and 7661c; 40 C.F.R. §§ 70.1, 70.5 and 70.6; and BAAQMD Regulation 2 Rule 6.



## STATUTORY & REGULATORY BACKGROUND

### National Ambient Air Quality Standards

1. The Administrator of EPA, pursuant to authority under Section 109 of the Act, 42 U.S.C. § 7409, has promulgated National Ambient Air Quality Standards ("NAAQS") for certain criteria pollutants relevant to this NOV/FOV, including NO<sub>2</sub> and SO<sub>2</sub>. See 40 C.F.R. §§ 50.4, 50.5, 50.7, 50.8, 50.9, and 50.10.

2. Pursuant to Section 107(d) of the Act, 42 U.S.C. § 7407(d), the Administrator promulgated lists of attainment status designations for each air quality control region ("AQCR") in every state. These lists identify the attainment status of each AQCR for each of the criteria pollutants. The attainment status designations for the California AQCRs are listed at 40 C.F.R. §§ 81.305.

### Prevention of Significant Deterioration

3. Section 110 of the Act, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA a plan that provides for the implementation, maintenance and enforcement of primary and secondary NAAQS in the state. Upon approval by EPA, the plan becomes part of the applicable state implementation plan ("SIP") for that state.

4. Section 110(a)(2)(C) of the Act, 42 U.S.C. § 7410(a)(2)(C), requires that each SIP include a PSD permit program as provided in Part C of Title I of the Act, 42 U.S.C. §§ 7470-7491. Part C sets forth requirements for SIPs for attainment areas to ensure maintenance of the NAAQS.

5. On June 19, 1978, pursuant to Sections 160 through 169 of the Act, 42 U.S.C. §§ 7470-7479, EPA promulgated federal PSD regulations at 40 C.F.R. § 52.21. 43 Fed. Reg. 26,402.

6. The federal PSD program was incorporated into all applicable implementation plans nation-wide and contains the applicable PSD program requirements for each plan until EPA approves into an individual SIP a replacement program. See 40 C.F.R. § 52.21(a); 42 U.S.C. § 7410(a)(2)(C).

7. Pursuant to Section 107(d) of the Act, 42 U.S.C. § 7407(d), the Administrator promulgated lists of attainment status designations for each AQCR in every state. These lists identify the attainment status of each AQCR for each of the criteria pollutants. The NO<sub>2</sub> and SO<sub>2</sub> attainment status designations for the California AQCRs are listed at 40 C.F.R. § 81.305.

8. The BAAQMD has primary jurisdiction over major stationary sources of air pollution sources in the San Francisco Bay Area Intrastate AQCR. 40 C.F.R. § 81.21. This jurisdiction includes the Facility.

9. Section 161 of the Act, 42 U.S.C. § 7471, requires that each SIP contains provisions to implement the Act's PSD program for areas of that state which are designated as being in attainment with any NAAQS for a criteria pollutant. The PSD program applies to major new sources of air pollution.

10. The PSD permitting program for the San Francisco Bay Area Intrastate AQCR is the federal PSD program, which is set forth at 40 C.F.R. § 52.21.

11. Subsequent to 1978, the PSD regulations have been periodically revised. As the PSD violations identified in this NOV/FOV first commenced from 1991 through 2003, the 1992 amendments to the PSD regulations contain the applicable provisions pertaining to the alleged violations identified in this NOV/FOV. See 57 Fed. Reg. 32314 (July 21, 1992).

12. 40 C.F.R. § 52.21 (b)(1)(i)(a) (1992) defined a "major stationary source" as any stationary source within one of 28 source categories which emits, or has the potential to emit, 100 tons per year ("tpy") or more of any air pollutant subject to regulation under the Act. Portland cement plants are included among the 28 source categories.

13. The PSD Regulations defined a "major modification" as "any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act." 40 C.F.R. § 52.21(b)(2)(i) (1992).

14. 40 C.F.R. § 52.21(b)(3)(i) (1992) defined "net emissions increase" as the "amount by which the sum of the following exceeds zero:

a. Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

b. Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and otherwise creditable."

15. 40 C.F.R. § 52.21(b)(21) (1992) defined "actual

emissions" as follows: "In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation." The PSD regulations also provide that "[f]or any emissions unit ... which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit on that date." 40 C.F.R. § 52.21(b)(21)(IV) (1992).

16. 40 C.F.R. § 52.21(b)(4) (1992) defined "potential to emit" as the "maximum capacity of a stationary source to emit a pollutant under its physical or operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including the air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable."

17. As such, the PSD regulations utilize an actual-to-potential test to determine whether an emissions increase occurred. Moreover, 40 C.F.R. § 52.21(b)(23)(i) (1992) defined "significant" and states that, in reference to  $\text{NO}_x$  and  $\text{SO}_2$ , significant net emissions increase means an increase that would equal or exceed 40 tons or more per year.

18. An applicant for a PSD permit to modify a stationary source is required to submit all information necessary to allow the permitting authority to perform any analysis or make any

determination required in order to issue the appropriate permit.  
40 C.F.R. § 52.21(n) (1992).

19. 40 C.F.R. § 52.21(i) (1992) prohibited commencement of actual construction of a major modification to which the PSD requirements apply unless the source had a permit stating that the requirements of 40 C.F.R. §§ 52.21(j)-(r) had been met.

20. The PSD permitting process required, among other things, that for pollutants emitted in significant amounts, the owner or operation of a major source apply BACT to control emissions, 40 C.F.R. § 52.21(j) (1992); model air quality, 40 C.F.R. § 52.21(l) (1992); and perform a detailed impact analysis regarding both the NAAQS and allowable increments, 40 C.F.R. § 52.21(k) (1992).

21. Any owner or operator of a source or modification subject to 40 C.F.R. § 52.21 who commenced construction after the effective date of the PSD regulations without applying for and receiving a PSD permit is subject to appropriate enforcement action by EPA. 40 C.F.R. § 52.21(r)(1) (1992); Sections 113 and 167 of the Act, 42 U.S.C. §§ 7413 and 7477.

#### Title V Operating Permit Program

22. Title V of the Act, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program for "major sources," including any source required to have a PSD permit. See Section 502(a) of the Act, 42 U.S.C. § 7661a(a). Regulations implementing the Title V permit program are set forth in 40

C.F.R. Part 70.

23. Pursuant to Title V, it is unlawful for any person to violate any requirement of a permit issued under Title V or to operate a major source except in compliance with a permit issued by a permitting authority under Title V. Section 502(a) of the Act, 42 U.S.C. § 7661a(a).

24. Under Section 502(d)(1) of the Act, states were required to develop and obtain approval to administer Title V programs. 42 U.S.C. § 7661a(d)(1). EPA granted interim approval of BAAQMD's Title V Operating Permit Program effective July 24, 1995, and final full approval was effective November 30, 2001. See 40 C.F.R. Part 70 Appendix A.

25. Sources subject to Title V and falling under BAAQMD's jurisdiction are required to submit to BAAQMD timely and complete Title V applications that identify, among other things, all "applicable requirements," including PSD requirements. See 40 C.F.R. § 70.5(a); BAAQMD Rule 2-6-404 and 2-6-405.

26. Sources subject to Title V and falling under BAAQMD's jurisdiction who have submitted an application are required to supplement or correct the application to include applicable requirements that were not included in the original application. 40 C.F.R. § 70.5(b); BAAQMD Rule 2-6-405.10.

27. Sources subject to Title V and falling under BAAQMD jurisdiction must obtain a Title V permit that: 1) contains such conditions necessary to assure compliance with the applicable

requirements; 2) identifies all applicable requirements the source is subject to; and 3) certifies compliance with all applicable requirements, and 4) where a source is not meeting requirements, contains a plan for coming into compliance.

Sections 503 and 504 of the Act, 42 U.S.C. §§ 7661b and 7661c(a); 40 C.F.R. §§ 70.1, 70.5 and 70.6; BAAQMD Rule 2-6-409.

28. Failure of a source subject to Title V to submit a complete application, supplement that application when new requirements become applicable, or to obtain a Title V permit that contains all applicable requirements, such as PSD requirements, are violations of the Act.

#### FINDINGS OF FACT

29. The Facility is a Portland cement manufacturing facility, which is located at 24001 Stevens Creek Boulevard, Cupertino, Santa Clara County, California.

30. The San Francisco Bay Area Air Basin, which includes Santa Clara County where the Facility is located, was designated as attainment/unclassifiable at all times for NO<sub>2</sub> and SO<sub>2</sub> by operation of law under Sections 107(d)(1)(C) and 186(a) of the Act, 42 U.S.C. §§ 7407(d)(1)(C) and 7486(a). See 56 Fed. Reg. 56694 (Nov. 6, 1991); 40 C.F.R. § 81.305.

31. Lehigh is the current owner and operator of the Facility. The Facility was formerly owned by Hanson Permanente Cement and Kaiser Cement Corporation.

32. The Facility includes one kiln, and associated

equipment used to produce clinker, including a preheater tower, précalciner, clinker cooler, induced draft ("ID") and other fans, cement finish mills, and extensive sections of ductwork.

33. The combustion of coal, petroleum coke, and natural gas at the kiln at the Facility produces emissions of NO<sub>x</sub> and SO<sub>2</sub>, which are released to the atmosphere through a collection of 32 individual mini-stacks exiting from the baghouse.

34. Between 1996 and 1999, Lehigh commenced construction of various physical and/or operational changes at the Facility, and has continued to operate the Facility with these modifications, including, but not limited to, the following:

- a. Upgrades to the finish mill; and
- b. Various other modifications, upgrades, and operational changes *[Note: The underlying documents identifying these other projects have been claimed by Lehigh as confidential business information, and therefore are not being specifically identified in this NOV/FOV. Regardless, as the NOV/FOV raises allegations relating to all physical or operational changes commencing from 1996 through 1999, these other projects are covered within the scope of the NOV/FOV.]*

35. Lehigh intended that these physical or operational changes, either individually or in the aggregate, would increase the production capacity of the Facility.

36. These physical or operational changes, either



individually or in the aggregate, resulted in an increase in annual clinker production at the Facility.

**Prevention of Significant Deterioration**

37. The Title V Permit issued by BAAQMD included, among other conditions, the following annual emissions limits for NO<sub>x</sub> and SO<sub>2</sub> emissions from the Kiln at the Facility:

|                       | NO <sub>x</sub> | SO <sub>2</sub> |
|-----------------------|-----------------|-----------------|
| Emissions limit (tpy) | 5,072           | 2,106.8         |

38. As the limits in the Title V Permit for the Facility are federally enforceable, they constitute the Facility's Potential to Emit ("PTE").

39. Based upon a comparison of pre-construction actual emissions to post-construction PTE, the physical or operational changes identified in Paragraph 34, either individually or in the aggregate, resulted in net emissions increases from the Facility of NO<sub>x</sub> and SO<sub>2</sub>.

40. The net emissions increases of NO<sub>x</sub> and SO<sub>2</sub> as a result of the physical or operational changes identified in Paragraph 34, either individually or in the aggregate, constitute a PSD significant net emissions increase since the increases were above 40 tpy for NO<sub>x</sub> and SO<sub>2</sub>.

41. Each of the physical or operational changes identified in Paragraph 34 constituted, either individually or in the aggregate, a "major modification" to the Facility for PSD purposes, as defined by 40 C.F.R. § 52.21 (b) (2) (i).

42. Lehigh did not apply for a PSD Permit covering NO<sub>x</sub> and

SO<sub>2</sub> emissions for any of the physical or operational changes identified in Paragraph 34.

43. Lehigh failed to install and operate BACT-level emission controls for NO<sub>x</sub> and SO<sub>2</sub> emissions from the Facility either at the time each of the physical or operational changes identified in Paragraph 34 were commenced or any time since their completion and operation.

#### Title V Operating Permit Program

44. As alleged in Paragraphs 34 through 43, Lehigh commenced one or more major modifications at its Facility commencing from 1996 through 1999, and the modifications triggered the requirements to obtain a PSD permit, undergo a PSD BACT analysis, and operate in compliance with the PSD permit. Lehigh failed to satisfy these requirements.

45. Lehigh first submitted a Title V application to BAAQMD on June 21, 1996. The final permit was issued by BAAQMD on November 5, 2003.

46. Prior to issuance of the Title V permit, Lehigh failed to supplement and/or correct its Title V permit application to identify all applicable requirements, including PSD requirements for NO<sub>x</sub> and SO<sub>2</sub>, a plan to come into compliance with those PSD requirements, and an updated certification of compliance that included the PSD requirements.

47. As a result of Lehigh's failure to provide complete information in its application or to supplement and/or correct

**Title V Operating Permit Program**

51. Notice is also given to Lehigh that it failed to supplement or correct its Title V application submitted to BAAQMD to include PSD requirements or obtain a Title V permit that contained PSD requirements, and therefore is in violation of Title V of the Act.

**ENFORCEMENT**

52. For any violation of a SIP, such as for PSD violations, Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), provides that at any time after the expiration of 30 days following the date of the issuance of a notice of violation, the Administrator may, without regard to the period of violation, issue an order requiring compliance with the requirements of the SIP, issue an administrative penalty order, or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties of not more than \$25,000 per day for each violation that occurs on or before January 30, 1997, not more than \$27,500 per day for each violation that occurs after January 30, 1997, not more than \$32,500 per day for each violation that occurs after March 14, 2004; and not more than \$37,500 per day for each violation that occurs after January 12, 2009. 42 U.S.C. § 7413(a)(1); Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, as amended; 40 C.F.R. Part 19.

53. Sections 113(a)(3) and 167 of the Act, 42 U.S.C. §§ 7413(a)(3) and 7477, provide additional authority for EPA to enforce against violators of the Act.

54. Section 113(c) of the Act, 42 U.S.C. § 7413(c), provides for criminal penalties, imprisonment, or both for persons who knowingly violate any federal regulation or permit requirement. For violations of the SIP, a criminal action can be brought 30 days after the date of issuance of a Notice of Violation.

55. Section 306 of the Act, 42 U.S.C. § 7606, the regulations promulgated thereunder (2 C.F.R. Part 180), and Executive Order 11738 provide that facilities to be utilized in federal contracts, grants and loans must be in full compliance with the Act and all regulations promulgated pursuant to it. A violation of the Act may result in Lehigh and/or the Facility being declared ineligible for participation in any federal contract, grant, or loan.

#### PENALTY ASSESSMENT CRITERIA

56. Section 113(e)(1) of the Act, 42 U.S.C. § 9613(e)(1), states that the Administrator or the court shall determine the amount of a penalty to be assessed by taking into consideration such factors as justice may require, including the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violations, the economic benefit of noncompliance, and the seriousness of the violation.

57. Section 113(e)(2) of the Act, 42 U.S.C. § 9613(e)(2),

allows the Administrator or the court to assess a penalty for each day of violation. This section further provides that for purposes of determining the number of days of violation, where EPA makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of an NOV, the days of violation shall be presumed to include the date of the NOV and each and every day thereafter until the facility establishes that continuous compliance has been achieved, except to the extent that the facility can prove by the preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.


## OPPORTUNITY FOR CONFERENCE

58. Lehigh may confer with EPA regarding this NOV/FOV if it so requests. A conference would enable Lehigh to present evidence bearing on the finding of violation, on the nature of violation, and on any efforts it may have taken or proposes to take to achieve compliance. If Lehigh seeks such a conference, it may choose to be represented by counsel. If Lehigh wishes to confer with EPA, it must make a request for a conference within 10 working days of receipt of this NOV/FOV. Any request for a conference or other inquiries concerning the NOV/FOV should be made in writing to:

Ivan Lieben  
Office of Regional Counsel  
U.S. EPA (ORC-2)  
75 Hawthorne Street  
San Francisco, CA 94105

(415) 972-3914

Dated: 3-9-10

  
\_\_\_\_\_  
Deborah Jordan  
Director, Air Division



# DEPARTMENT OF CONSERVATION

*Managing California's Working Lands*

## OFFICE OF MINE RECLAMATION

801 K STREET • MS 09-06 • SACRAMENTO, CALIFORNIA 95814

PHONE 916 / 323-9198 • FAX 916 / 445-6066 • TDD 916 / 324-2555 • WEB SITE [conservation.ca.gov](http://conservation.ca.gov)

July 20, 2011

**Via Email:** [Scott.Renfrew@LehighHanson.com](mailto:Scott.Renfrew@LehighHanson.com)

**Via Certified Mail:** 7010 2780 0000 4767 7882

Mr. Scott Renfrew  
Designated Agent  
Lehigh Southwest Cement Company  
24001 Stevens Creek Boulevard  
Cupertino, CA 95014

Dear Mr. Renfrew:

**30-DAY PENDING REMOVAL FROM THE AB 3098 LIST, RECLAMATION PLAN NON-COMPLIANCE, PERMANENTE QUARRY, MINE ID #91-43-0004**

The purpose of this letter is to bring to your attention a matter of AB 3098 list eligibility pursuant to the Surface Mining and Reclamation Act of 1975 (SMARA) Section 2717(b) regarding the Permanente Quarry (Quarry). The Quarry is actively operated by the Lehigh Southwest Cement Company. The County of Santa Clara (County) is the SMARA lead agency for this surface mining operation.

On October 10, 2006, the County issued the Quarry an Order to Comply (OTC)/Notice of Violation (NOV) requiring the operator to prepare an amended reclamation plan and submit it for approval in accordance with a Compliance Schedule. Violations identified in the order included instability of the pit slopes and surface mining operations occurring outside the approved reclamation boundary. Based on that schedule, the Quarry should have come into compliance by December 2007. Subsequently, the schedule was extended for an additional two years to allow for completion of geotechnical investigations.

While still under the October 10, 2006 Order to Comply, the operator expanded operations outside the approved reclamation plan boundary and began dumping materials in the East Materials Storage Area (EMSA). The County issued a NOV on June 20, 2008 to the Quarry operator for the illegal stockpiling material outside the approved reclamation plan boundary.

In a status letter to the State Mining & Geology Board (SMGB), dated June 9, 2011, the County indicated that the CEQA review of the amended reclamation plan is underway.

The current target date for achieving full compliance with SMARA at the Quarry is June 2012. The letter states that this is the earliest date in which the Final Environmental Impact Report (FEIR) is expected to be certified, depending on the volume of public comments received by the County. This "best case" schedule is approximately five years longer than the OTC/NOV allowed for achieving compliance, and well after the original violations were brought to the County's attention.

Public Resources Code (PRC) Section 2770(a) provides that no person shall conduct surface mining operations unless a permit is obtained from, and a reclamation plan and financial assurances for reclamation have been submitted to, and approved by, the lead agency for the operation. Surface mining operations must be conducted in accordance with the approved reclamation plan. Except as provided under PRC Section 2714, any surface mining operations conducted without an approved reclamation plan is a violation of SMARA.

We understand that the County is reviewing two reclamation plans for the Quarry, one for the EMSA, and a more comprehensive reclamation plan. These plans cover two parts of the same operation. However, pursuant to California Code of Regulations (CCR) Section 3502(d) a surface mining operation as defined in PRC Section 2735 and Title 14 CCR Section 3501, shall have no more than one approved reclamation plan applicable to the operation.

Further, CCR Section 3502(g) provides that, should an expansion of an operation into an area not covered by an approved reclamation plan be determined by the lead agency to be a substantial deviation, an amended reclamation plan shall be prepared that ensures adequate reclamation for the surface mining operation. The EMSA should not be treated as a separate reclamation amendment, but included in a single amended reclamation plan which includes all areas disturbed by surface mining operations.

The Department of Conservation's Office of Mine Reclamation (OMR) periodically publishes a list of mining operations that meet the requirements of PRC Section 2717(b). This list is generally referred to as the AB 3098 list, in reference to the 1992 legislation that established it. The Public Contract Code prohibits state agency purchases of mined materials produced by mining operations that are not included on the AB 3098 list. Sections 10295.5 and 20676 of these statutes also prohibit the sale of such materials to local government agencies. The requirements for inclusion on the AB 3098 list include compliance with the financial assurance requirements developed pursuant to PRC Section 2773.1.

This letter serves as official notice that, if the violations noted in the OTC extend beyond 30 days after the date of this notice, the Quarry will be removed from the AB 3098 List. The appropriate steps that the Lehigh Southwest Cement Company must take to resolve this violation is to:



1. Prepare and submit to the lead agency for approval, a reclamation plan amendment that encompasses all the area disturbed by surface mining operations, including those areas conducted outside the approved reclamation plan boundary. The Quarry will not be list eligible until the proposed reclamation plan amendment has been approved by the County.
2. Submit to the lead agency for approval, a revised financial assurance cost estimate (FACE) that includes the cost of reclaiming all the area disturbed by surface mining operations conducted outside the reclamation plan boundary. The Quarry will not be list eligible until the revised financial assurance has been approved by the County.

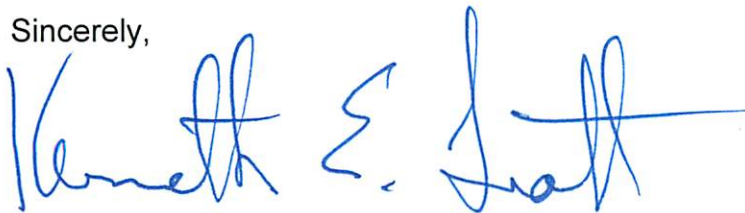
Proof of the adequacy of the FACE must be submitted to OMR by the lead agency, not by the mine operator. The submission must be in accordance with the SMGB financial assurance guidelines.

Reinstatement to the AB 3098 list requires an approved reclamation plan and financial assurances that cover the affected surface mining operation pursuant to PRC section 10295.5 (a). Prior to reinstatement, the Department will need to verify that the surface mining operations being conducted at the Quarry are covered by an approved reclamation plan and adequate financial assurances.

In summary, the Permanente Quarry, CA Mine ID #91-43-0004, is scheduled to be removed from AB 3098 list 30 days after the date of this notice unless the OTC violations are corrected.

If you have any questions regarding this letter, please contact Bret Koehler at (916) 323-9198.

Sincerely,



Kenneth E. Trott, Manager  
Reporting and Compliance Unit

cc: Marvin Howell, Lehigh Southwest Cement Company  
Gary Rudholm, County of Santa Clara  
Stephen Testa, State Mining & Geology Board



# California Regional Water Quality Control Board

## San Francisco Bay Region

Page 50



Linda S. Adams  
Agency Secretary

1515 Clay Street, Suite 1400, Oakland, California 94612  
(510) 622-2300 • Fax (510) 622-2460  
<http://www.waterboards.ca.gov/sanfranciscobay>

Arnold Schwarzenegger  
Governor

*Sent via certified Mail - Return Receipt Requested*

March 26, 2010

Lehigh Southwest Cement Co.  
c/o Scott Renfrew, Environmental Manager  
24001 Stevens Creek Boulevard  
Cupertino, CA 95014

**Subject: NOTICE OF VIOLATION and required corrective actions for failure to protect stormwater at industrial facility**

**Facility: Lehigh Southwest Cement Co. (formally Hanson Permanente Cement) Industrial facility, located at 24001 Stevens Creek Boulevard, Cupertino, Santa Clara County  
WDID No. 2 43I006267**

Dear Mr. Renfrew:

You are hereby given notice that the industrial facility indicated above (Facility) is in violation of stormwater protection requirements. On behalf of Water Board staff, a PG Environmental, LLC, inspector recently inspected the Facility, and noted numerous water quality violations. **You are required to correct the problems noted in the attached Inspection Findings, Violations, and Corrective Actions Report and send us documentation of your corrective actions by the dates indicated in this Report.**

The Facility is in violation of the NPDES General Permit for Discharges of Storm Water associated with Industrial Activities Excluding Construction Activities, Order No. 97-03-DWQ (Permit<sup>1</sup>) and the San Francisco Bay Water Quality Control Plan (Basin Plan<sup>2</sup>).

### Permit violations

The Permit requires industrial facility owners to implement controls that reduce pollutants in stormwater discharges to the Best Available Technology Economically Achievable/Best Conventional Pollutant Control Technology (BAT/BCT) performance standard. Development and implementation of a Storm Water Pollution Prevention Plan that complies with the requirements in Section A of the Permit and that includes Best Management Practices (BMPs)

<sup>1</sup> Permit: [http://www.waterboards.ca.gov/water\\_issues/programs/stormwater/industrial.shtml](http://www.waterboards.ca.gov/water_issues/programs/stormwater/industrial.shtml)

<sup>2</sup> Basin Plan Table 4.1, Prohibitions:  
[http://www.waterboards.ca.gov/sanfranciscobay/water\\_issues/programs/planningtmdls/basinplan/web/tab/tab\\_4-01.pdf](http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/planningtmdls/basinplan/web/tab/tab_4-01.pdf)

- 2 -

that achieve BAT/BCT constitutes compliance with this requirement. Our inspector observed that the Facility does not meet this standard, and therefore, the Facility is in violation of the Permit.

**Basin Plan Prohibition violations**

Additionally, the Facility is in violation of the Basin Plan, which is the Regional Water Board's master water quality control document. The Basin Plan applies to all discharges within the Regional Water Board's jurisdiction, including discharges from this Facility. We observed during the February 10, 2010, inspection evidence of discharges that are in violation of, at a minimum, Basin Plan Prohibition 7:

- **Prohibition 7** prohibits rubbish, refuse, bark, sawdust, or other solid wastes into surface waters or at any place where they would contact or where they would be eventually transported to surface waters, including flood plain areas.

Please refer to the attached inspection report for the details of the violations and required corrective actions.

**Consequences for not coming into compliance**

Failure to return to compliance with the Permit and failure to comply with the Basin Plan prohibitions are violations of CWC Section 13385(a)(2) and (a)(4), respectively, for which the Water Board may impose civil liability in the amount not to exceed \$10,000 per day of each violation, plus \$10 per gallon in excess of 1,000 gallons per discharge.

**Additional notes**

If you need guidance, the California Stormwater Quality Association (CASQA) publishes a handbook for Industrial Stormwater Best Management Practices<sup>3</sup>. The CASQA handbook is one of many online resources that describe industry standard BMPs. Please note that Water Board can not specify means of compliance. It is your responsibility to select and correctly implement an appropriate suite of BMPs. Use of the CASQA handbook or other similar guidance documents may help you achieve compliance, but it does not guarantee compliance.

If you have any questions regarding this letter, please contact Christine Boschen at (510) 622-2346 or by email at [cboschen@waterboards.ca.gov](mailto:cboschen@waterboards.ca.gov).

Sincerely,

Dyan C. Whyte  
Assistant Executive Officer

Encl.: February 10, 2010, Inspection Findings, Violations, and Corrective Actions

<sup>3</sup> CASQA BMP Handbook: <http://www.cabmphandbooks.com/Industrial.asp>

- 3 -

February 10, 2010, Inspection Photo Log  
February 10, 2010, Inspection Exhibit Log

cc:

Stuart Tomlinson, VP  
Lehigh Southwest Cement Co.  
12667 Alcosta Boulevard, Suite 400  
San Ramon, CA 94583

Jeff Brummert, VP  
Lehigh Southwest Cement Co.  
12667 Alcosta Boulevard, Suite 400  
San Ramon, CA 94583

David W. Knapp, City Manager  
City of Cupertino  
By e-mail [dknapp@cupertino.org](mailto:dknapp@cupertino.org)

Rick Kitson, Director  
Public and Environmental Affairs  
City of Cupertino  
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# News Release



U.S. Department of Labor  
Office of Public Affairs  
Washington, D.C.  
Release Number: 10-1774-NAT

For Immediate Release  
Dec. 21, 2010  
Contact: Amy Louviere  
Phone: 202-693-9423

## MSHA announces results of November impact inspections

ARLINGTON, Va. – The U.S. Department of Labor’s Mine Safety and Health Administration today announced that federal inspectors issued 250 citations, orders and safeguards during special impact inspections conducted at 12 coal and 10 metal/nonmetal mine operations last month.

These inspections, which began in force during April following the explosion at Upper Big Branch Mine, involve mines that merit increased agency attention and enforcement due to their poor compliance history or particular compliance concerns, including high numbers of violations or closure orders; indications of operator tactics, such as advance notification of inspections that prevent inspectors from observing violations; frequent hazard complaints or hotline calls; plan compliance issues; inadequate workplace examinations; a high number of accidents, injuries or illnesses; fatalities; and adverse conditions such as increased methane liberation, faulty roof conditions and inadequate ventilation.

During November’s impact inspections, coal mines were issued 114 citations, 11 orders and one safeguard. For metal/nonmetal mines, 113 citations and 11 orders were issued. Since April, MSHA has conducted impact inspections at 182 coal and metal/nonmetal mines.

During an inspection conducted during the week of Nov. 15 at Lehigh Permanente Cement Co. Mine in Santa Clara County, Calif., MSHA issued 30 citations and six orders to the company. Five 104(d) orders were issued, including a violation for a supervisor’s failure to de-energize electrically powered equipment prior to removing a guard. Another 104(d) order was issued for unsafe access where inadequately secured steel plates could have fallen on miners or delivery drivers accessing a storage area; this hazard had been reported to mine management two weeks earlier. A 104(b) order was issued for failure-to-abate in a timely manner a fall protection violation, in which miners working at the top of a mill were exposed to an approximately 36-foot drop to the concrete below. Sixty percent of the citations and orders were significant and substantial violations. So far this year, MSHA inspectors have issued 185 citations and 21 orders at this mine.

“MSHA’s impact inspection program is helping to reduce the number of mines that consider egregious violation records a cost of doing business,” said Joseph A. Main, assistant secretary of labor for mine safety and health. “We will continue using this important enforcement tool to protect the nation’s miners.”

**Editor’s note:** A spreadsheet containing the entire results of November’s impact inspections accompanies this news release.

###

U.S. Department of Labor releases are accessible on the Internet at <http://www.dol.gov>. The information in this news release will be made available in alternate format (large print, Braille, audio tape or disc) from the COAST office upon request. Please specify which news release when placing your request at 202-693-7828 or TTY (202) 693-7755. The Labor Department is committed to providing America’s employers and employees with easy access to understandable information on how to comply with its laws and regulations. For more information, please visit <http://www.dol.gov/compliance>.

E-FILING

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Attorney at Law  
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ADR

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DEC 19 2011

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Clerk, U.S. District Court  
Northern District of California  
San Jose

Reed Zars (Wyo. Bar No. 6-3224)  
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910 Kearney Street  
Laramie, Wyoming 82070  
Tel: (307) 745-7979  
E-mail: *rzars@lariat.org*  
*Application pending for admission pro hac vice*

Attorneys for Sierra Club, Plaintiff

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

SIERRA CLUB,

Plaintiff,

v.

LEHIGH SOUTHWEST CEMENT  
COMPANY, HANSON PERMANENTE  
CEMENT, INC. and  
HEIDELBERGCEMENT, INC.

Defendants.

Civil No.:

CV 11-06392

HRL

COMPLAINT

**I. JURISDICTION, STATEMENT OF THE CASE, AND VENUE**

1. Jurisdiction. This court has subject matter jurisdiction over the claims set forth in this complaint pursuant to 33 U.S.C. §1365(a)(1)(A) (citizen suit provision of the Clean Water Act) and 28 U.S.C. §1331 (federal question statute). The relief requested is authorized pursuant to 28 U.S.C. §§2201 and 2202 (declaratory judgment), and 33 U.S.C. §§1319 and 1365 (Clean Water Act).

1           2.     Intradistrict Assignment. Pursuant to Civil L.R. 3-2(c), this case should be  
2 assigned to the San Jose Division because the properties that are the subject of this action, the  
3 waters and environment of Permanente Creek and defendants' Permanente Facility, are located in  
4 Santa Clara County.

5           3.     Venue. Venue in the Northern District of California is proper pursuant to  
6 33 U.S.C. §1365(c)(1) (Clean Water Act citizen suit provision) because defendants' water  
7 pollution discharge violations are located in this District. Venue also lies in the Northern District  
8 of California, pursuant to 28 U.S.C. §1391(b) and (e), because the property that is the subject of  
9 this action is in Santa Clara County, California, and because defendants' Permanente Facility is  
10 located in Santa Clara County, California.

11           4.     This is a federal Clean Water Act citizen suit enforcement action brought by  
12 plaintiff Sierra Club against defendants Lehigh Southwest Cement Company, Hanson Permanente  
13 Cement, Inc., and HeidelbergCement, Inc. (collectively, "Lehigh") to enjoin and penalize  
14 significant and ongoing violations of the Clean Water Act ("CWA") at Lehigh's Permanente  
15 quarry and cement plant in Santa Clara County, California ("Permanente Facility"). This  
16 complaint seeks declaratory and injunctive relief and the imposition of civil penalties (payable to  
17 the federal Treasury) under the federal Clean Water Act, 33 U.S.C. §§1319(d) and 1365(a).

18           5.     In compliance with Section 505(b)(1)(A) of the CWA, 33 U.S.C. §1365(b)(1)(A),  
19 on August 24, 2011 and October 18, 2011, Sierra Club notified the Administrator of the  
20 Environmental Protection Agency ("EPA"), the State Water Resources Control Board ("State  
21 Water Board"), the San Francisco Bay Regional Water Quality Control Board ("San Francisco  
22 Bay Water Board") and Lehigh of the violations alleged herein, and plaintiff's intent to sue. A  
23 true and accurate copy of Sierra Club's October 18, 2011 notice letter, that repeats and enlarges  
24 upon the claims set forth in Sierra Club's August 24, 2011 letter, is attached hereto as **Exhibit A**.

25           6.     At least sixty days have passed since Sierra Club's notice letters were mailed to  
26 Lehigh and the other recipients. Lehigh continues to be in violation of the CWA. Neither EPA,  
27 the State Water Board, nor the San Francisco Bay Water Board has commenced and diligently  
28 prosecuted a court action to redress the violations alleged in Sierra Club's notice letters.

1 Moreover, neither EPA, the State Water Board, nor the San Francisco Bay Water Board has  
2 commenced an administrative penalty action under Section 309(g) of the CWA, 33 U.S.C.  
3 §1319(g), or comparable state law to penalize the violations alleged in Sierra Club's notice letters.

## 4 II. PARTIES

5 7. Plaintiff Sierra Club is a non-profit corporation incorporated in California. Sierra  
6 Club has over 600,000 members nation-wide, with over 140,000 members in California. The  
7 Sierra Club brings this action on behalf of its adversely affected members.

8 8. Sierra Club is a "person" within the meaning of Section 502(5) of the Clean Water  
9 Act, 33 U.S.C. §1362(5).

10 9. The Sierra Club represents its members' interests in exploring, enjoying, and  
11 protecting the wild places of the Earth; to practicing and promoting the responsible use of the  
12 Earth's resources and ecosystems; to educating and enlisting humanity to protect and restore the  
13 quality of the natural and human environment; and to using all lawful means to carryout those  
14 objectives. The Sierra Club's concerns encompass the exploration, enjoyment and protection of  
15 surface and sub-surface waters in California.

16 10. Members of Sierra Club reside near Permanente Creek and regularly visit and  
17 recreate near Permanente Creek. Sierra Club members use the water and riparian habitats that are  
18 harmed by Lehigh's illegal discharges of pollutants into Permanente Creek. Lehigh's failure to  
19 comply with the Clean Water Act has injured the past, present and future interests of Sierra Club's  
20 members in using Permanente Creek for recreation including use as a hiking and biking corridor,  
21 for viewing the water and natural scenery along Permanente Creek, and for protecting the wildlife  
22 that relies on Permanente Creek.

23 11. Lehigh's unlawful discharges of selenium and other toxic and conventional  
24 compounds into Permanente Creek pollute Permanente Creek to such an extent that its water is  
25 lethal to some forms of aquatic life, and is harmful to the development, reproduction and long-  
26 term survival of many other forms of aquatic life. Permanente Creek is unable to meet water  
27 quality standards (also called "objectives") necessary to sustain a diverse and healthy assemblage  
28 of aquatic life. As a consequence, pursuant to CWA Section 303(d), 33 U.S.C. §1313(d),



1 Permanente Creek is listed by EPA and the State Water Board as impaired due to excessive and  
2 harmful concentrations of selenium and chronic toxicity.

3 12. Sierra Club members suffer injuries to their aesthetic, recreational, environmental,  
4 and/or economic interests as a result of Permanente's status as a polluted stream, and Lehigh's  
5 unlawful pollutant discharges into Permanente Creek that cause or contribute to that status.

6 13. The water in Permanente Creek does not meet water quality standards necessary to  
7 protect the health of aquatic species and therefore represents an unhealthy environment for such  
8 species. Sierra Club members hike near, observe wildlife in, photograph, and otherwise use the  
9 waters of Permanente Creek that are being polluted by Lehigh's unlawful discharges. Sierra Club  
10 members refrain from these activities or enjoy them less because of Lehigh's unlawful pollutant  
11 discharges.

12 14. The aesthetic, recreational, environmental, economic, and health-related interests of  
13 Sierra Club's members have been and continue to be injured by Lehigh's violations complained of  
14 herein. The interests of plaintiff's members that are directly injured by Lehigh's violations  
15 include but are not limited to, enjoying the benefits of Permanente Creek unsullied by the  
16 pollution being discharged into that creek by Lehigh.

17 15. If Lehigh's unlawful discharges were enjoined, and the pollution to Permanente  
18 Creek therefore reduced, the harm to the interests of Sierra Club's members would be at least in  
19 part redressed. The assessment of civil penalties against Lehigh would also redress Sierra Club  
20 member injuries by preventing and/or deterring Lehigh and others from illegally discharging  
21 pollutants into Permanente Creek.

22 16. Defendant Lehigh Southwest Cement Company operates the Permanente Quarry.  
23 Lehigh Southwest Cement Company is a California corporation doing business in California.  
24 Lehigh Southwest Cement Company is a subsidiary of Lehigh Cement Company, a Pennsylvania  
25 corporation. Lehigh Cement Company is a wholly-owned subsidiary of HeidelbergCement, Inc.

26 17. Defendant Hanson Permanente Cement, Inc. is the owner of the Permanente  
27 Quarry. Hanson Permanente Cement, Inc. is an Arizona corporation doing business in California.  
28 Hanson Permanente Cement, Inc. is a wholly-owned subsidiary of HeidelbergCement, Inc.

1 18. Defendant HeidelbergCement, Inc. (including other appendages such as “AG” and  
2 “Group”) owns Lehigh Southwest Cement Company and Hanson Permanente Cement, Inc.  
3 HeidelbergCement, Inc. is also listed by the Santa Clara County Assessor’s Office as the owner of  
4 the real property that comprises the Permanente Facility.

5 19. Defendant Lehigh Southwest Cement Company is a person within the meaning of  
6 Section 502(5) of the Clean Water Act, 33 U.S.C. §1362(5). Defendant Hanson Permanente  
7 Cement, Inc. is a person within the meaning of Section 502(5) of the Clean Water Act, 33 U.S.C.  
8 §1362(5). HeidelbergCement, Inc. is a person within the meaning of Section 502(5) of the Clean  
9 Water Act, 33 U.S.C. §1362(5).

### 10 III. LEGAL BACKGROUND

11 20. Section 301(a) of the CWA, 33 U.S.C. §1311(a), prohibits the “discharge of any  
12 pollutant by any person” into waters of the United States except in compliance with the terms of a  
13 permit, such as a National Pollutant Discharge Elimination System (“NPDES”) permit issued by  
14 EPA or an authorized state pursuant to Section 402 of the CWA, 33 U.S.C. §1342.

15 21. Citizens may enforce violations of CWA Section 301 through the citizen suit  
16 provision in Sections 505(a) and (f) of the CWA, 33 U.S.C. §1365(a) and (f).

17 22. The term “discharge of a pollutant” is defined at CWA Section 502(12), 33 U.S.C.  
18 §1362(12), as “(A) any addition of any pollutant to navigable waters from any point source . . .”

19 23. The term “pollutant” is defined at CWA Section 502(6), 33 U.S.C. §1362(6), as  
20 “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions,  
21 chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded  
22 equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into  
23 water.”

24 24. The term “navigable waters” is defined at CWA Section 502(7), 33 U.S.C.  
25 §1362(7), as “the waters of the United States, including the territorial seas.”

26 25. The term “point source” is defined at CWA 502(14), 33 U.S.C. §1362(14), as “any  
27 discernible, confined and discrete conveyance, including but not limited to any pipe, ditch,  
28 channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal

1 feeding operation, or vessel or other floating craft, for which pollutants are or may be discharged.  
2 This term does not include agricultural stormwater discharges and return flows from irrigated  
3 agriculture.”

4 26. An NPDES permit may only lawfully be issued if it contains effluent limits  
5 sufficient to ensure compliance with all applicable in-stream water quality standards, technology-  
6 based effluent standards, and water quality-based effluent standards. 33 U.S.C. §§1311, 1312,  
7 1316, 1317 and 1342.

8 27. EPA regulations at 40 C.F.R. §122.28 allow EPA or an authorized state to issue  
9 general NPDES permits to categories or subcategories of dischargers. To receive coverage under  
10 a general permit, a discharger must submit a Notice of Intent (“NOI”) and agree to abide by the  
11 terms of the general permit and any EPA or state notice of permit coverage.

12 28. The state of California is authorized by EPA to administer an NPDES program for  
13 regulating the discharge of pollutants into the waters of the United States.

14 29. On April 17, 1997, the State Water Board issued Water Quality Order 97-03-DWQ  
15 that sets forth the most recent version of a general permit for storm water discharges from  
16 industrial activities (“General Storm Water Permit”).

17 30. On May 1, 2008, the State Water Board issued Water Quality Order R2-2008-0011  
18 that sets forth the most recent version of a general permit for Discharges of Process Wastewaters  
19 from Aggregate Mining, Sand Washing, and Sand Offloading Facilities to Surface Waters  
20 (“General Sand and Gravel Permit”).

#### 21 **IV. FACTUAL BACKGROUND**

22 31. The Permanente Facility is located on approximately 3,500 acres of land in Santa  
23 Clara County that is owned, operated and otherwise controlled by Lehigh. Lehigh claims the  
24 Permanente Facility provides over 50 percent of the concrete used in the Bay Area.

25 32. Kaiser Cement Corporation constructed the original cement plant next to  
26 Permanente Creek in Santa Clara County in 1939. At that same time, the Kaiser subsidiary  
27 Permanente Corporation (later named Permanente Cement Company) purchased the current quarry  
28 lands that would supply the limestone for the cement plant.

1           33.     Sometime in 1986-87, Hanson PLC purchased 100% of the stock of Kaiser  
2 Cement. Hanson Permanente Cement, Inc., a subsidiary of Hanson PLC, owned and operated the  
3 Permanente Facility from sometime in 1986-87 until 2007 when HeidelbergCement Inc. acquired  
4 100% of the stock of Hanson PLC. Hanson Permanente Cement, Inc., now owned by  
5 HeidelbergCement, Inc., has remained the owner of the Permanente Facility for the last 25 years.

6           34.     In 2007, HeidelbergCement, Inc., also the owner of the Lehigh group of cement  
7 companies located elsewhere in California and in other states, created Lehigh Southwest Cement  
8 Company to operate the Permanente Facility.

9           35.     Permanente Creek runs from its headwaters in the Coast Range east through the  
10 middle of the quarry property, then north through the cities of Cupertino, Los Altos and Mountain  
11 View before draining into the San Francisco Bay.

12           36.     Lehigh discharges pollutants generated by its quarry mining, processing and  
13 cement manufacturing operations directly into Permanente Creek.

14           Lehigh's Quarry Pit Wastewater Discharges

15           37.     Lehigh's quarry mining and processing operations have exposed pollutants to rain  
16 water, ground water and toxic wastewater. As these waters flow and come over and through  
17 Lehigh's disturbed soils, rock, cement, settled sediments, and other quarry process wastes,  
18 pollutants such as selenium, arsenic, molybdenum, nickel, chromium, manganese, residual  
19 blasting agent (ammonium nitrate/fuel oil or "ANFO"), dust suppressants, coagulants, waste filter  
20 cake and other toxic elements and compounds, are transported with, and otherwise are picked up  
21 by the water and are collected at the bottom of the quarry pit ("quarry pit wastewater").

22           38.     Lehigh then pumps the quarry pit wastewater on a regular basis through a pipe into  
23 a waste pond (Pond 4) and thence through a pipe into Permanente Creek. Permanente Creek flows  
24 into the San Francisco Bay.

25           39.     Lehigh has discharged, and continues to discharge, selenium and other toxic  
26 substances into Permanente Creek at levels in excess of applicable water quality standards.  
27 Lehigh does not employ pollution control measures to reduce or eliminate selenium and other  
28 toxic substances in its quarry pit wastewater to levels below all applicable water quality standards.

1 40. Lehigh's quarry dewatering process routes water to Pond 4, where it then  
2 discharges to Permanente Creek, almost continuously or regularly depending on the time of year.  
3 Lehigh's regular dewatering process is interrupted only when maintenance or repair of the  
4 pumping system or other aspects of the storm water management system is performed.

5 41. The location of the quarry pit, Pond 4, and the pipe that discharges selenium and  
6 other toxic pollutants from the pit and Pond 4 into Permanente Creek is accurately portrayed on  
7 the map attached hereto as **Exhibit B**.

8 42. The average daily flow of quarry pit wastewater that Lehigh pumps into Pond 4  
9 ranges from 250,000 to 2,500,000 gallons.

10 43. According to Lehigh's March 17, 2010 Report of Potential Exceedance of Water  
11 Quality Standards, developed by Geosyntec Consultants: "The results of the metals analyses  
12 indicate that water being collected in the quarry may contain concentrations of selenium that  
13 exceed water quality standards, and, when discharged through the quarry dewatering system  
14 pursuant to the SWPPP [Storm Water Pollution Prevention Plan], could be contributing to  
15 exceedances of the water quality standards for selenium in Permanente Creek."

16 44. Selenium is listed as both a toxic and a priority water pollutant. 33 U.S.C.  
17 §1317(a)(1); 40 C.F.R. §401.15; 40 C.F.R. Part 423, Appendix A. Selenium impacts the  
18 reproductive cycle of many aquatic species, can impair the development and survival of fish, and  
19 can damage gills or other organs of aquatic organisms.

20 45. Pollutants in Lehigh's quarry pit wastewater flow downstream through Lehigh's  
21 property, through public parks and neighborhoods, and finally into San Francisco Bay. Pollutants  
22 in Lehigh's quarry pit wastewater are taken up by animal and plant life in and along Permanente  
23 Creek, and also percolate into underground aquifers.

24 46. Lehigh has no NPDES permit issued pursuant to CWA Section 402, 33 U.S.C.  
25 §1342, or any other CWA permit, which authorizes the continuous discharge of quarry pit  
26 wastewater into Permanente Creek.

27 \\  
28 \\  
29

1 Lehigh's Stream Fill Discharges

2 47. Lehigh has used, and continues to use, the banks and bed of Permanente Creek as a  
3 disposal area for quarry mine tailings, overburden, and other mining and cement manufacturing  
4 wastes ("mine wastes"). Lehigh is responsible for dumping with trucks, bulldozers and other  
5 heavy equipment, and continues to dump with such equipment and/or allow landslides, gullies,  
6 channeled debris flows, and other types of mass wasting and slope failure to dump, mine wastes  
7 into Permanente Creek.

8 48. Mine wastes from the Permanente Facility exist on debris slopes at or beyond the  
9 angle of repose. These debris slopes often extend to and into Permanente Creek. Mine wastes  
10 initially deposited by Lehigh at the top of the debris slopes have been conveyed downhill into  
11 Permanente Creek by mechanisms including soil creep and sheet wash. Lehigh's mine wastes  
12 pose a continuous and substantial risk of discharging into Permanente Creek in the future.

13 49. The locations where Lehigh has dumped mine wastes into Permanente Creek, and  
14 on or near the banks of the Creek, include, but are not limited to, those shown on **Exhibit C**.

15 50. The mine wastes dumped into Permanente Creek continuously discharge, release  
16 and otherwise add their pollutants into the stream's waters much like coffee grounds in a  
17 percolator. As the waters of Permanente Creek flow over and through the mine wastes dumped  
18 into the Creek, and/or as rainwater and storm water runoff falls upon or flows over the mine  
19 wastes placed within the Creek and on or near the banks of the Creek, pollutants such as selenium,  
20 arsenic, molybdenum, nickel, chromium, manganese, ANFO, and other toxic elements and  
21 compounds, are dissolved into, suspended in and are otherwise added to the water ("water-borne  
22 mining wastes").

23 51. The water-borne mining wastes flow downstream through Lehigh's property,  
24 through public parks and neighborhoods, and finally into San Francisco Bay. Lehigh's water-  
25 borne mining wastes are taken up by animal and plant life in and along Permanente Creek, and  
26 also percolate into underground aquifers.

27 52. Lehigh has discharged, and continues to discharge, water-borne mining wastes into  
28 Permanente Creek at levels in excess of applicable water quality standards. Lehigh does not

1 employ pollution control measures to reduce or eliminate the pollutants in its water-borne mining  
2 wastes to levels below all applicable water quality standards.

3 53. The average concentration of dissolved pollutants in Permanente Creek increases  
4 significantly as the stream flows through Lehigh's mining wastes. Lehigh water sampling and  
5 testing has shown that the water in Permanente Creek downstream of most of Lehigh's pollutant  
6 discharges contains from three to over 100 times the dissolved concentrations of arsenic, selenium,  
7 nickel, manganese and molybdenum compared to the water upstream of most of Lehigh's  
8 pollutant discharges.

9 54. Lehigh has no NPDES permit issued pursuant to CWA Section 402, 33 U.S.C.  
10 §1342, or any other CWA permit, which authorizes the continuous discharge of water-borne  
11 mining wastes from the mining wastes dumped into Permanente Creek described above.

12 55. Lehigh has no "dredge and fill" permit issued pursuant to CWA Section 404, 33  
13 U.S.C. §1344, or an NPDES permit issued pursuant to CWA Section 402, 33 U.S.C. §1342, or any  
14 other CWA permit for the mining wastes described above that were discharged into Permanente  
15 Creek since the passage of the CWA in 1972 to the present, or that continue to be discharged into  
16 Permanente Creek and/or pose a significant risk of being discharged into the Creek, or that  
17 currently and continuously pollute the water and clog the bed, banks and wetlands of Permanente  
18 Creek.

19 The General Storm Water Permit

20 56. In 1997, Kaiser Cement Corporation obtained limited coverage for storm water  
21 discharges from the Permanente Facility under the General Storm Water Permit by filing a notice  
22 of intent ("NOI"). Lehigh has not filed a similar NOI.

23 57. As its name suggests, the General Storm Water Permit does not authorize Lehigh to  
24 discharge non-storm water. Lehigh's quarry pit wastewater is not storm water. The General  
25 Storm Water Permit does not authorize Lehigh's discharges of quarry pit wastewater, water-borne  
26 mining wastes, and mine waste fill described above.

27 //

28 //

1           58.     The General Storm Water Permit only authorizes certain storm water runoff  
2 discharges, and certain non-storm water discharges from the Permanente Facility into Permanente  
3 Creek, and only under certain conditions.

4           59.     The General Storm Water Permit prohibits the unpermitted discharge of pollutants  
5 into waters of the United States.

6           60.     Part A of the General Storm Water Permit states: “Except as allowed in Special  
7 Conditions (D.1.) of this General Permit, materials other than storm water (non-storm water  
8 discharges) that discharge directly or indirectly to waters of the United States are prohibited.  
9 Prohibited non-storm water discharges must either be eliminated or permitted by a separate  
10 NPDES permit.”

11          61.     Special Conditions Section D.1.a. in the General Storm Water Permit authorizes  
12 several narrow, environmentally-benign “non-storm water discharges.”

13          62.     The General Storm Water Permit does not cover Lehigh’s discharges of quarry pit  
14 wastewater into Permanente Creek because they are not storm water discharges and they are not  
15 authorized non-storm water discharges.

16          63.     On October 24, 2011, Lehigh submitted to the San Francisco Bay Water Board an  
17 NOI for a General Sand and Gravel Permit to authorize discharges of quarry pit wastewater into  
18 Permanente Creek.

19          64.     To the extent a General Sand and Gravel Permit is applicable to Lehigh’s quarry pit  
20 wastewater discharges, it does not cover Lehigh’s discharges of any pollutants for which no  
21 effluent limits are expressly set forth in that permit, including but not limited to selenium, arsenic,  
22 molybdenum, nickel, chromium, manganese, ANFO, dust suppressants, coagulants, waste filter  
23 cake and chronic toxicity.

24          65.     Plaintiff incorporates by reference and realleges the allegations contained in  
25 paragraphs 1 through 64 for the causes of action set forth below.

26                   **FIRST CAUSE OF ACTION – Unpermitted Pit Wastewater Discharges**

27          66.     The Clean Water Act at Section 301(a), 33 U.S.C. § 1311(a), prohibits the  
28 “discharge of any pollutant by any person” into waters of the United States except in compliance



1 with the terms of a permit such as an NPDES permit issued pursuant to Section 402 of the CWA,  
2 33 U.S.C. §1342.

3 67. Each of the defendants is a “person” within the meaning of Section 502(5) of the  
4 CWA, 33 U.S.C. §1362(5).

5 68. Permanente Creek is a water of the United States within the meaning of CWA  
6 Section 502(7), 33 U.S.C. §1362(7).

7 69. The substances in Lehigh’s quarry pit wastewater, including selenium, arsenic,  
8 molybdenum, nickel, chromium, manganese, ANFO, dust suppressants, coagulants, waste filter  
9 cake and sediment, are each “pollutants” within the meaning of CWA Section 502(6), 33 U.S.C.  
10 §1362(6).

11 70. Any substances that alone or in combination cause or contribute to the exceedance  
12 of California’s water quality standard or objective for chronic toxicity are pollutants.

13 71. The pipe through which quarry pit wastewater flows from Lehigh’s Pond 4 into  
14 Permanente Creek is a “point source” within the meaning of CWA Section 502(14), 33 U.S.C.  
15 §1362(14).

16 72. Lehigh adds its quarry pit wastewater pollutants into Permanente Creek on a  
17 continuous basis.

18 73. Lehigh has no NPDES permit, or any other CWA permit, authorizing its  
19 continuous discharge of quarry pit wastewater into Permanente Creek.

20 74. The General Storm Water Permit does not cover Lehigh’s discharges of quarry pit  
21 wastewater into Permanente Creek because they are not storm water discharges and they are not  
22 authorized non-storm water discharges.

23 75. The General Storm Water Permit also does not cover Lehigh’s discharges of quarry  
24 pit wastewater because Lehigh has not filed an NOI for a General Storm Water Permit and the  
25 Kaiser General Storm Water Permit NOI is non-transferable.

26 76. A General Sand and Gravel Permit does not cover Lehigh’s discharges of quarry pit  
27 wastewater because it does not authorize discharges of pollutants for which no effluent limits are  
28 expressly set forth in that permit, including but not limited to selenium, arsenic, molybdenum,

1 nickel, chromium, manganese, ANFO, dust suppressants, coagulants, waste filter cake and chronic  
2 toxicity.

3 77. Lehigh's continuous discharges of quarry pit wastewater into Permanente Creek  
4 have violated CWA Section 301(a), 33 U.S.C. § 1311(a), every day for at least the last five years,  
5 and continue to violate CWA Section 301(a), 33 U.S.C. § 1311(a), because Lehigh has no NPDES  
6 permit authorizing this continuous discharge.

7 78. Unless enjoined, Lehigh will remain in continuing violation of the CWA.

8 79. Pursuant to Section 309(d) of the CWA, 33 U.S.C. §1319(d), Lehigh is liable for  
9 civil penalties of up to \$37,500 per day for its violations of Section 301 of the CWA, 33 U.S.C.  
10 §1311.

11 **SECOND CAUSE OF ACTION – Pit Wastewater Discharges in Violation of General**  
12 **Storm Water Permit**

13 80. Plaintiff incorporates by reference and realleges the allegations contained in  
14 paragraphs 1 through 79.

15 81. Lehigh's continuous discharges of quarry pit wastewater into Permanente Creek  
16 have violated the "Discharge Prohibitions" in Part A.1. of the General Storm Water Permit every  
17 day for at least the last five years, and continue to violate the "Discharge Prohibitions" in Part A.1.  
18 of the General Storm Water Permit.

19 82. Lehigh's quarry pit wastewater discharges are not permitted storm water discharges  
20 because, *inter alia*, they are not solely the result of storm water runoff, snow melt runoff, and  
21 surface runoff and drainage, they contain toxic wastes, and because they take place year-round and  
22 not just during storm events. Lehigh's quarry pit wastewater discharges also are not authorized  
23 non-storm water discharges as described in Special Conditions Part D.1. of the General Storm  
24 Water Permit because, *inter alia*, they are not identified as such in that permit or in Lehigh's  
25 annual reports, they contain significant quantities of pollutants, and they are causing or  
26 contributing to the violation of water quality standards for selenium and toxicity in Permanente  
27 Creek.

28 //

1           83.     Lehigh's continuous discharges of quarry pit wastewater into Permanente Creek  
2 have also violated the General Storm Water Permit every day for at least the last five years, and  
3 continue to violate the General Storm Water Permit because they are causing or threatening to  
4 cause pollution, contamination, nuisance, and are causing or contributing to the violation of water  
5 quality standards for selenium and toxicity in Permanente Creek. Standard Provisions at C.17;  
6 Discharge Prohibitions at A.2, C.1 and C.2.

7           84.     Lehigh's continuous discharges of quarry pit wastewater into Permanente Creek  
8 have also violated the General Storm Water Permit every day for at least the last five years, and  
9 continue to violate the General Storm Water Permit because Lehigh has failed: (1) sufficiently to  
10 identify, and to control with Best Available Technology ("BAT"), such discharges consistent with  
11 Effluent Limitations Part B.3., (2) to follow the Storm Water Pollution Prevention Plan  
12 ("SWPPP") requirements in Section A, including the requirement to disclose such discharges  
13 pursuant to Section A.6. and to revise the SWPPP pursuant to Section A.9., and (3) to sample,  
14 analyze and report such discharges consistent with Section B, including sampling for pollutants  
15 including selenium and toxicity as required by Section B, 5.c.ii.

16           85.     Unless enjoined, Lehigh will remain in continuing violation of the CWA.

17           86.     Pursuant to Section 309(d) of the CWA, 33 U.S.C. §1319(d), Lehigh is liable for  
18 civil penalties of up to \$37,500 per day for its violations of Section 301 of the CWA, 33 U.S.C.  
19 §1311.

### 20           **THIRD CAUSE OF ACTION – Unpermitted Stream Fill Discharges**

21           87.     Plaintiff incorporates by reference and realleges the allegations contained in  
22 paragraphs 1 through 86.

23           88.     The water-borne mining wastes described above are "pollutants" within the  
24 meaning of CWA Section 502(6), 33 U.S.C. §1362(6).

25           89.     Each mining waste site shown on **Exhibit C** is a "point source" within the meaning  
26 of CWA Section 502(14), 33 U.S.C. §1362(14).

27           90.     Each mining waste site adds water-borne mining wastes into Permanente Creek on  
28 a continuous basis.

1 91. Lehigh has no NPDES permit, or any other CWA permit, authorizing the  
2 continuous discharge of water-borne mining wastes into Permanente Creek.

3 92. The General Storm Water Permit does not cover Lehigh's discharges of water-  
4 borne mining wastes into Permanente Creek.

5 93. Lehigh has violated for at least the last five years, and continues to violate, CWA  
6 Section 301(a), 33 U.S.C. §1311(a), and the General Storm Water Permit Discharge Prohibitions  
7 at A.1 and A.2, by discharging without an NPDES permit water-borne mining wastes from the  
8 mining wastes it has dumped into Permanente Creek.

9 94. Unless enjoined, Lehigh will remain in continuing violation of the CWA.

10 95. Pursuant to Section 309(d) of the CWA, 33 U.S.C. §1319(d), Lehigh is liable for  
11 civil penalties of up to \$37,500 per day for its violations of Section 301 of the CWA, 33 U.S.C.  
12 §1311.

#### 13 **FOURTH CAUSE OF ACTION – Unpermitted Stream Fill**

14 96. Plaintiff incorporates by reference and realleges the allegations contained in  
15 paragraphs 1 through 95.

16 97. The mining wastes described above are "pollutants" within the meaning of CWA  
17 Section 502(6), 33 U.S.C. §1362(6).

18 98. Each piece of heavy equipment that Lehigh used to dump mining waste into  
19 Permanente Creek is a "point source" within the meaning of CWA Section 502(14), 33 U.S.C.  
20 §1362(14).

21 99. Lehigh has no CWA Section 404, 33 U.S.C. §1344 "dredge and fill" permit that  
22 authorized the mine waste fill that Lehigh has dumped into Permanente Creek, or any other CWA  
23 permit that authorizes the dumping of mine waste fill into Permanente Creek.

24 100. Lehigh has violated, and continues to violate CWA Section 301(a), 33 U.S.C.  
25 §1311(a), and the General Storm Water Permit, Discharge Prohibitions at A.1 and A.2, by  
26 discharging unpermitted mine waste fill into Permanente Creek, by allowing unpermitted mine  
27 waste fill to remain in Permanente Creek, and by failing to remove and/or obtain a permit for the  
28 unpermitted mine waste fill that it has dumped into Permanente Creek.

1 101. Unless enjoined, Lehigh will remain in continuing violation of the CWA.

2 102. Pursuant to Section 309(d) of the CWA, 33 U.S.C. §1319(d), Lehigh is liable for  
3 civil penalties of up to \$37,500 per day for its violations of Section 301 of the CWA, 33 U.S.C.  
4 §1311.

#### 5 V. RELIEF REQUESTED

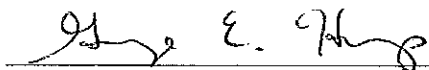
6 WHEREFORE, plaintiff respectfully requests the Court enter an Order:

- 7 A. Declaring Lehigh has violated, and continues to violate the Clean Water Act by  
8 discharging pollutants into Permanente Creek without a permit as alleged above;
- 9 B. Enjoining Lehigh from discharging any pollutants into Permanente Creek without a permit;
- 10 C. Ordering Lehigh to obtain an individual NPDES permit or permits from the San Francisco  
11 Bay Water Board to discharge pollutants into Permanente Creek prior to any modification  
12 of the injunction above;
- 13 D. Order Lehigh to prepare and submit to the Court and to plaintiff a comprehensive plan,  
14 including interim and final deadlines, that describes how Lehigh proposes to achieve full  
15 and continuing compliance with the Clean Water Act at its Permanente Facility in the most  
16 expeditious and effective manner possible. The plan shall include, *inter alia*, all necessary  
17 measures to attain and maintain all water quality standards for Permanente Creek, and the  
18 restoration of Permanente Creek to its former, natural condition. After allowing plaintiff  
19 time to respond to Lehigh's plan, Order Lehigh to:
- 20 1. Perform all work necessary to achieve prompt, strict and continuous compliance  
21 with the provisions of the Clean Water Act, including the restoration of Permanente Creek  
22 and the attainment and maintenance of all water quality standards throughout all reaches of  
23 Permanente Creek within or affected by Lehigh's Permanente Facility;
- 24 2. Set aside sufficient funds available to the Court to ensure prompt, continuous,  
25 consistent and long-term compliance with the Court's order;
- 26 E. ORDER Lehigh to pay to the federal Treasury a civil penalty of \$37,500 per day for each  
27 of its violations of the Clean Water Act. CWA Section 309(d), 33 U.S.C. §1319(d).  
28

- 1 F. ORDER Lehigh to pay plaintiff its costs of litigation, including but not limited to
- 2 reasonable attorney and expert witness fees, as authorized by CWA Section 505(d), 33
- 3 U.S.C. §1365(d);
- 4 G. Retain jurisdiction over this matter for purposes of enforcing and effectuating the Court's
- 5 order;
- 6
- 7 H. GRANT such other relief as the Court deems necessary and proper.

8 DATED this 19<sup>th</sup> day of December 2011.

9  
10  
11 SIERRA CLUB, Plaintiff

12 

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307-745-7979

October 18, 2011

**VIA CERTIFIED MAIL: RETURN RECEIPT REQUESTED**

Mr. Henrik Wesseling, Plant Manager  
 Lehigh Southwest Cement Company  
 Hanson Permanente Cement, Inc.  
 Permanente Plant  
 24001 Stevens Creek Boulevard  
 Cupertino, CA 95014

Dr. Bernd Scheifele, Chairman  
 HeidelbergCement  
 Berliner Strasse 6  
 69120 Heidelberg  
 Germany

RE: Supplemental Notice of Intent to Sue for Violations of the Clean Water Act at Lehigh's Permanente Plant in Santa Clara County, California.

Dear Mr. Wesseling and Dr. Scheifele,

We are writing on behalf of Sierra Club to supplement its letter to you of August 21, 2011, and to further notify you of its intent to file suit against Lehigh Southwest Cement Company, Hanson Permanente Cement, Inc., Lehigh Hanson, Inc., and HeidelbergCement Group (collectively, "Lehigh") to enjoin and penalize significant and ongoing violations of the Clean Water Act ("CWA") at your Permanente quarry and cement plant in Santa Clara County, California ("Permanente Facility"). Lehigh is liable for the continuous, unpermitted discharge into Permanente Creek of millions of gallons of polluted quarry water, containing elevated levels of selenium and other toxic pollutants, and sediment and other conventional pollutants, for at least the last five years. Lehigh is also liable for the continuous, unpermitted discharge of pollutants into Permanente Creek from tons of mine tailings and waste that have been dumped into Permanente Creek. These wastes act similar to coffee grounds, clogging Permanente Creek and continuously discharging a brew of harmful chemicals such as selenium and other toxic and conventional pollutants into its waters.

Each of the continuous, unpermitted discharges described above have caused and/or contributed to significant exceedances of water quality standards for selenium and toxicity in Permanente Creek, have caused and/or contributed to Permanente Creek's state and federal listing as an impaired water body due to the presence of such pollutants, and have substantially diminished the creek's ability to sustain aquatic life including but not limited to steelhead trout and the California red-legged frog, both of which are federally listed as threatened species. Each of the continuous, unpermitted discharges described above violate CWA Sections 301, 402



and 404, 33 U.S.C. §§ 1311, 1342 and 1344. Additionally, each of the discharges described above violate Parts A.1. and A.2., and Standard Provisions Section C, in the California State Water Resources Control Board's General Permit for Discharges of Storm Water Associated with Industrial Activity, Order No. 97-03-DWQ ("the General Storm Water Permit"), to the extent it applies to Lehigh, because they are unauthorized, non-storm water discharges. Alternatively, even if any of the discharges described above are storm water discharges, (1) they violate the CWA because Lehigh lacks legitimate authorization under any NPDES permit to discharge storm water to waters of the United States, or (2) they violate the General Storm Water Permit, because, among other reasons, they are causing or contributing to exceedances of water quality standards for selenium and toxicity in Permanente Creek.

Pollutants illegally discharged by Lehigh into Permanente Creek also enter Santa Clara County's underground drinking water supply as they flow across the unconfined areas of the Santa Clara Subbasin aquifer. The Santa Clara Subbasin aquifer is the primary reservoir of drinking water for San Jose and surrounding cities.

The Clean Water Act at Section 505, 33 U.S.C. § 1365(a)(1), authorizes citizens to bring suit to enjoin violations of an effluent standard or limitation and to seek civil penalties for such violations. The definition of effluent standard or limitation includes the discharge of pollutants into waters of the United States without a permit. 33 U.S.C. § 1365(f); Committee to Save Mokelumne River v. East Bay Utility Dist., 1993 U.S. Dist. LEXIS 8364, 11, n. 7 (E.D. Cal. 1993); *aff'd*, 13 F.3d 305, 309 (9th Cir. 1993), cert. denied, 115 S. Ct. 198 (1994). Violators of the CWA are also subject to an assessment of civil penalties of up to \$32,500 per day per violation for all violations occurring through January 12, 2009, and up to \$37,500 per day per violation for all violations occurring after January 12, 2009, for each violation, pursuant to Sections 309(d) and 505(a) of the CWA. 33 U.S.C. §§ 1319(d), 1365(a) and 40 C.F.R. §§ 19.1 - 19.4.

To the extent required by the Clean Water Act at 33 U.S.C. § 1365(a)(1), we are writing to notify you that Sierra Club intends to file suit in the applicable federal district court anytime 60 days after the postmark date of this supplemental notice letter to enjoin and penalize the violations described below.

### **I. Background**

The Permanente Facility is located on approximately 3,500 acres of land in Santa Clara County that is owned, operated and otherwise controlled by Lehigh. Lehigh claims the Permanente Facility provides over 50 percent of the concrete used in the Bay Area.

Kaiser Cement Corporation constructed the original cement plant next to Permanente Creek in Santa Clara County in 1939. At that same time, the Kaiser

subsidiary Permanente Corporation (later named Permanente Cement Company) purchased the current quarry lands that would supply the limestone for the cement plant. In 1986-87, Hanson PLC purchased 100% of the stock of Kaiser Cement. Hanson Permanente Cement, Inc., a subsidiary of Hanson PLC, owned and operated the Permanente Facility from 1986-87 until 2007 when HeidelbergCement acquired 100% of the stock of Hanson. Hanson Permanente Cement, Inc., now owned by HeidelbergCement, has remained the owner of the Permanente Facility for the last 25 years. In 2007, HeidelbergCement, also the owner of the Lehigh group of cement companies located elsewhere in California and in other states, created Lehigh Southwest Cement Company to operate the Permanente Facility.

Permanente Creek runs from its headwaters in the Coast Range east through the middle of the quarry property, then north through the cities of Cupertino, Los Altos and Mountain View before draining into the San Francisco Bay.



From <http://www.lehighpermanente.com/#/virtual-tour/4537662984>.

## II. The Violations

### A. Unpermitted Quarry Discharges

The federal Clean Water Act at Section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant from a point source into waters of the United States, except in compliance with provisions of the Act. See also, 33 U.S.C. § 1362(6), (7), (12) and (14). Of particular importance here, CWA Section 301(a) prohibits the discharge of pollutants into waters of the United States without a National Pollutant Discharge Elimination System ("NPDES") permit that, in turn, requires compliance with in-stream water quality standards, technology-based effluent standards, and water quality-based effluent standards. 33 U.S.C. §§ 1311, 1312, 1316, 1317 and 1342.

In 1997, Kaiser Cement Corporation obtained limited coverage for storm water discharges from the Permanente Facility under the General Storm Water Permit by filing a notice of intent ("NOI"). **Attachment 1.** Lehigh has not filed a similar NOI. Nevertheless, to the extent the General Storm Water Permit applies to Lehigh by virtue of the Kaiser NOI, and in accordance with CWA Section 301(a), the General Storm Water Permit also prohibits the unpermitted discharge of pollutants into waters of the United States. In particular, the General Storm Water Permit prohibits all pollutant discharges into Permanente Creek from point sources at the Permanente Facility unless such discharges are identified and regulated as storm water discharges, are separately permitted, or are expressly identified and excluded from regulation as authorized non-storm water discharges. The General Stormwater Permit provides as follows:

A. DISCHARGE PROHIBITIONS

1. Except as allowed in Special Conditions (D.1.) of this General Permit, materials other than storm water (non-storm water discharges) that discharge either directly or indirectly to waters of the United States are prohibited. Prohibited non-storm water discharges must be either eliminated or permitted by a separate NPDES permit.
2. Storm water discharges and authorized non-storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance.

General Storm Water Permit, pp. 5-6, **Attachment 1.**

The narrow "non-storm water discharges" exceptions that are authorized by the General Storm Water Permit are limited to the following exclusive list of environmentally-neutral or benign discharges:

D. SPECIAL CONDITIONS

1. Non-Storm Water Discharges

- a. The following non-storm water discharges are authorized by this General Permit provided that they satisfy the conditions specified in Paragraph b. below: fire hydrant flushing; potable water sources, including potable water related to the operation, maintenance, or testing of potable water systems; drinking fountain water; atmospheric condensates including refrigeration, air conditioning, and compressor condensate; irrigation drainage; landscape watering; springs; ground water; foundation or footing drainage; and sea water infiltration where the sea waters are discharged back into the sea water source.

- b. The non-storm water discharges as provided in Paragraph a. above are authorized by this General Permit if all the following conditions are met:
- i. The non-storm water discharges are in compliance with Regional Water Board requirements.
  - ii. The non-storm water discharges are in compliance with local agency ordinances and/or requirements.
  - iii. BMPs [Best Management Practices] are specifically included in the SWPPP [Storm Water Pollution Prevention Plan] to (1) prevent or reduce the contact of non-storm water discharges with significant materials or equipment and (2) minimize, to the extent practicable, the flow or volume of non-storm water discharges.
  - iv. The non-storm water discharges do not contain significant quantities of pollutants.
  - v. The monitoring program includes quarterly visual observations of each non-storm water discharge and its sources to ensure that BMPs are being implemented and are effective.
  - vi. The non-storm water discharges are reported and described annually as part of the annual report.

According to Lehigh's own statements, Lehigh has been discharging without a proper permit, and continues to discharge without a proper permit, pollutants generated by its quarry mining, processing and cement manufacturing operations directly into Permanente Creek, a water of the United States. In particular, Lehigh's quarry mining and processing operations have exposed pollutants to rain water, ground water and process wastewater. As these waters flow and come together and through Lehigh's disturbed soils, rock, cement, settled sediments, and other quarry process wastes, pollutants such as selenium, arsenic, molybdenum, nickel and manganese, residual blasting agent (ANFO), dust suppressants, coagulants, waste filter cake and other toxic elements and compounds, are transported with, and otherwise are picked up by the water and are collected at the bottom of the quarry pit ("quarry pit wastewater").

Lehigh then pumps the quarry pit wastewater on a regular basis through a pipe into a waste pond (Pond 4) and thence through a pipe into Permanente Creek. Permanente Creek flows into the San Francisco Bay. Lehigh employs no pollution control measures to reduce or eliminate selenium and other toxic substances that are dissolved and suspended in its quarry pit wastewater. As Lehigh explained to

the California Regional Water Quality Control Board, San Francisco Bay Region ("Water Board"):

[T]he quarry dewatering process routes water to Pond 4, where it then discharges to Permanente Creek, almost continuously or regularly depending on the time of year, the volume of storm water and groundwater that collects in the quarry bottom. This regular dewatering process is interrupted only when regular maintenance of the pumping system or other aspects of the storm water management system require maintenance.

Lehigh Response to the Water Board, December 13, 2010, at page 6, attached hereto as **Exhibit A**. A map showing the location of the quarry pit, Pond 4, and the pipe that discharges selenium and other toxic pollutants from the pit and Pond 4, is attached hereto as **Exhibit B**.

According to Lehigh in that same response, "[t]he average *daily flow* into Pond 4 can range from 250,000 to 2,500,000 gallons." **Exhibit A** (emphasis added).

Not only that, Lehigh also admits that the quarry pit wastewater it has been discharging into Permanente Creek, and that it continues to discharge into Permanente Creek, is contaminated with selenium<sup>1</sup> in concentrations that greatly exceed water quality standards. Again, according to Lehigh:

The results of the metals analyses indicate that water being collected in the quarry may contain concentrations of selenium that exceed water quality standards, and, when discharged through the quarry dewatering system pursuant to the SWPPP [Storm Water Pollution Prevention Plan], could be contributing to exceedances of the water quality standards for selenium in Permanente Creek.

**Exhibit C**, Report of Potential Exceedance of Water Quality Standards, Geosyntec Consultants, March 17, 2010, p. 8.

Lehigh's qualification that the quarry pit wastewater it is discharging into Permanente Creek "could" contain concentrations of selenium above water quality

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<sup>1</sup> Selenium is listed as both a toxic and a priority water pollutant. See, 33 U.S.C. §1317(a)(1); 40 C.F.R. §401.15; 40 C.F.R. Part 423, Appendix A. According to the court in *Ohio Valley Envtl. Coalition, Inc. v. Hobet Mining, LLC*, 723 F. Supp. 2d 886, 900 (S.D. W.Va. 2010), "[S]elenium is a naturally occurring element, common in the environment. It is problematic only in high concentrations, but at certain levels has toxic effects. Selenium impacts the reproductive cycle of many aquatic species, can impair the development and survival of fish, and can even damage gills or other organs of aquatic organisms subjected to prolonged exposure. It can also be toxic to humans, causing kidney and liver damage, and damage to the nervous and circulatory systems."

standards is unnecessary. Although not a necessary element to establish liability under the Clean Water Act, Lehigh's own sampling evidence shows that selenium concentrations in its quarry pit wastewater *are* in excess of water quality standards.

The water quality standards applicable to Permanente Creek are set forth in the 2007 San Francisco Bay Basin Water Quality Control Plan ("Basin Plan") and the California Toxics Rule at 40 C.F.R. §131.38. Both the Basin Plan at Table 3-4 and the California Toxics Rule establish a chronic total selenium standard of 5.0 micrograms per liter in fresh water. **Exhibit D.** The Basin Plan at Section 3.3.18 also requires that "[a]ll waters shall be maintained free of toxic substances in concentrations that are lethal to or that produce other detrimental responses in aquatic organisms." **Exhibit D.** Due to chronically elevated levels of selenium and toxicity immediately downstream from the Permanente facility, EPA recently approved the listing of Permanente Creek as impaired for both selenium and aquatic toxicity. **Exhibit E,** EPA Approval Letter, November 12, 2010; Water Board 2010 Integrated Report, Appendix A, Category 5 List.

Water quality testing of the quarry pit wastewater performed by Lehigh in January of 2010 found that the concentration of dissolved selenium in Pond 4 was 82 micrograms per liter, well over ten times the applicable 5.0 micrograms per liter water quality standard. (Had Lehigh properly analyzed for total selenium rather than just the dissolved component, this value likely would have been higher. Furthermore, Lehigh has failed altogether to analyze this wastewater for toxicity.) As explained above, Lehigh discharges its quarry pit wastewater in Pond 4 directly into Permanente Creek without employing any measures to reduce selenium concentrations or toxicity. **Exhibit C,** Report of Potential Exceedance, Table 2-1 and Appendix A, page 4 of 16.

In 1997, Kaiser Cement Corporation obtained limited coverage for storm water discharges from the Permanente Facility under the General Storm Water Permit by filing a notice of intent. **Attachment 1.** However, as its name indicates, that permit only applies (to the extent it has any legal application to Lehigh) during specified storm events and not to the on-going, non-storm water discharges from Pond 4 described here. **Attachment 1.** The Water Board emphatically confirmed this fact on February 18, 2011:

Lehigh repeatedly asserts that the Facility's discharges of quarry bottom water, wash-down water, and dust suppression water are in compliance with the Industrial General Storm Water Permit. The Industrial General Storm Water Permit specifically prohibits all three of these self-admitted discharges from the Lehigh facility. *Lehigh is grossly mistaken in its assertion that the Facility is permitted to discharge these three types of non-storm water flows.*

**Exhibit F**, Water Board staff review and response to Lehigh's letter of December 13, 2010, in response to our "13267" letter of November 29, 2010, p. 1 (emphasis added).

Because Lehigh pumps its quarry pit wastewater into Pond 4 on a continuous or regular basis, and because Pond 4 is the functional equivalent of a full bathtub, the continuous pumping of quarry pit wastewater inexorably results in the continuous discharge of pollutants through a pipe directly into Permanente Creek. Lehigh has no permit authorizing this continuous discharge. As a consequence, Lehigh has violated and continues to violate CWA Section 301(a), 33 U.S.C. § 1311(a), by discharging selenium and other toxic and conventional contaminants in its quarry pit wastewater ("pollutants") through a pipe ("point source") into Permanente Creek ("water of the United States") without an authorizing permit.

Lehigh's continuous discharges of quarry pit wastewater into Permanente Creek have also violated, and continue to violate, the "Discharge Prohibitions" in Part A.1. of the General Storm Water Permit set forth above. These discharges are not permitted storm water discharges because, *inter alia*, they are not solely the result of storm water runoff, snow melt runoff, and surface runoff and drainage, and because they take place year-round and not just during storm events. Moreover, Lehigh's quarry pit wastewater discharges are not authorized non-storm water discharges as described in Special Conditions Part D.1. of the General Storm Water Permit because, *inter alia*, they are not identified as such in that permit or in Lehigh's annual reports, they contain significant quantities of pollutants, and they are causing or contributing to the violation of water quality standards for selenium and toxicity in Permanente Creek.

Alternatively, even assuming Lehigh's continuous discharges of quarry pit wastewater are storm water discharges, they are in violation of the CWA either because: (1) such discharges are not covered by the General Storm Water Permit because Lehigh has not filed an NOI and the Kaiser NOI is non-transferable, or (2) such discharges are in violation of the General Storm Water Permit because they are causing or threatening to cause pollution, contamination, nuisance, and are causing or contributing to the violation of water quality standards for selenium and toxicity in Permanente Creek. Standard Provisions at C.17; Discharge Prohibitions at A.2, C.1 and C.2, **Attachment 1**.

Moreover, Lehigh is in violation of the General Storm Water Permit with respect to its discharges of selenium and other toxic pollutants in its quarry pit wastewater by: (1) failing sufficiently to identify, and to control with Best Available Technology ("BAT"), such discharges consistent with Effluent Limitations Part B.3., (2) failing to follow the Storm Water Pollution Prevention Plan ("SWPPP") requirements in Section A, including the requirement to disclose such discharges pursuant to Section A.6. and to revise the SWPPP pursuant to Section A.9., and (3) failing to sample, analyze and report such discharges consistent with Section B,

including sampling for pollutants including selenium and toxicity as required by Section B, 5.c.ii.

Lehigh's continuous, active and unpermitted discharge of quarry pit wastewater into Permanente Creek has violated CWA Section 301(a), 33 U.S.C. § 1311(a), and the provisions of the General Storm Water Permit cited above, each and every day, for each pollutant in such wastewater, for at least the last five years.

#### B. Unpermitted Stream Fill Discharges

According to Lehigh's own reports, the company has used, and continues to use, Permanente Creek as a disposal area for quarry mine tailings, overburden, and other mining and cement manufacturing wastes ("mine wastes"). Lehigh is responsible for dumping with trucks, bulldozers and other equipment, and continues to dump with such equipment and/or allow landslides, gullies, channeled debris flows, and other types of mass wasting and slope failure to dump, mine wastes into Permanente Creek. Because a significant amount of Lehigh's mine wastes are on debris slopes at or beyond the angle of repose, and because such debris slopes often extend to and into Permanente Creek, mine wastes initially deposited at the top of the debris slopes regularly discharge, and continuously pose a substantial risk of discharging, down-slope into Permanente Creek.

Lehigh is also responsible through merger, acquisition, consolidation and/or other similar transactions for the dumping of such mine wastes into Permanente Creek by companies that Lehigh purchased *in toto*, at least back to the passage of the CWA in 1972 ("Lehigh Group"). This is because HeidelbergCement accepted all of Hanson's liabilities with respect to the Permanente Facility after it purchased 100 percent of the stock of Hanson in 2007, and Hanson accepted all of Kaiser's Permanente Facility liabilities after Hanson purchased 100 percent of the stock of Kaiser in 1986-87.

Lehigh's March 11, 2011 "Permanente Creek Long-Term Restoration Plan" documents many of these mine wastes stream disposal sites. An annotated stream profile diagram, taken from Figure 2-5 in Lehigh's Restoration Plan and attached hereto as **Exhibit G**, shows the location of some of the more notorious mine wastes disposal sites at the Permanente Facility along the various sections of Permanente Creek.

The locations where the Lehigh Group has dumped mine wastes into Permanente Creek, and on or near the banks of the Creek, include, but are not limited to, those shown on **Exhibit G**. The mine wastes dumped into Permanente Creek continuously discharge, release and otherwise add their toxins into the Creek's waters much like coffee grounds in a percolator. As the waters of Permanente Creek flow over and through the mine wastes dumped into the Creek, and/or as rainwater and storm water runoff falls upon or flows over the mine wastes placed within the Creek and on or near the banks of the Creek, pollutants



such as selenium, arsenic, molybdenum, nickel, manganese, residual blasting agent including ammonium nitrate/fuel oil or "ANFO", and other toxic elements and compounds, are dissolved into, suspended in and are otherwise added to the water ("water-borne mining wastes"). These water-borne mining wastes flow downstream through Lehigh's property, through public parks and neighborhoods, and finally into San Francisco Bay. Lehigh's water-borne mining wastes are also taken up by animal and plant life in and along Permanente Creek, and also percolate into underground aquifers.

The mine wastes that physically remain in the creek bed and adjacent wetlands, or that are carried to various downstream locations during high flow events, and the water-borne mining wastes are all unpermitted pollutants that exist in the water column, banks and wetlands of Permanente Creek.

According to Lehigh's May 2010 Hydrologic Investigation, appended to its Reclamation Plan Amendment submitted to Santa Clara County on May 21, 2010, as revised and resubmitted on July 29, 2011, the average concentration of dissolved pollutants in Permanente Creek increases significantly as the creek flows through Lehigh Group's mining wastes. **Exhibit H.** For example, the water in Permanente Creek at monitoring location SW-2 downstream of most of Lehigh Group's pollutant discharges contains from three to over 100 times the dissolved concentrations of arsenic, selenium, nickel, manganese and molybdenum compared to the water upstream of most of Lehigh Group's discharges at monitoring location SW-1. See **Exhibit H**, Figure 6.2 (monitoring locations); Table 6.6 (average pollutant values for monitoring locations); and Figures 6.13 and 6.14 (bar charts illustrating significant increase in pollution from SW-1 to SW-2).

Lehigh has no NPDES permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342, that authorizes the continuous discharge of water-borne mining wastes from the mining wastes dumped into Permanente Creek described above. Each mining waste site in Permanente Creek is discharging "pollutants" into Permanente Creek and is a "point source."

Lehigh also has no "dredge and fill" permit issued pursuant to CWA Section 404, 33 U.S.C. § 1344, or an NPDES permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342, for the mining wastes described above that were discharged into Permanente Creek from 1972 to the present, or that continue to be discharged into Permanente Creek and/or pose a significant risk of being discharged into the Creek, or that currently and continuously pollute the water and clog the bed, banks and wetlands of Permanente Creek.

As a consequence and as described above, Lehigh has violated and continues to violate CWA Section 301(a), 33 U.S.C. § 1311(a), and the General Storm Water Permit, Discharge Prohibitions at A.1 and A.2, by: (1) discharging without a permit pollutants from the mining wastes dumped into Permanente Creek, (2) discharging unpermitted fill material in the form of mining wastes into Permanente Creek, (3)

allowing this unpermitted fill material to remain in Permanente Creek, and (4) failing to remove and/or obtain a permit for this unpermitted fill material that has been dumped into Permanente Creek.

Each and every day for the last five years Lehigh has violated CWA Section 301(a), 33 U.S.C. § 1311(a), as a result of the continuous, unpermitted discharge of pollutants from the mining wastes dumped into Permanente Creek. Each and every day for the last five years Lehigh has violated CWA Section 301(a), 33 U.S.C. § 1311(a), by discharging unpermitted fill material in the form of mining wastes into Permanente Creek, by allowing this unpermitted fill material to remain in Permanente Creek, and by failing to remove and/or obtain a permit for this unpermitted fill material that has been dumped into Permanente Creek.

### **III. Offer to review information.**

To the extent you have evidence that shows, contrary to the allegations in this letter, that Lehigh is in full compliance with all applicable requirements we urge you to provide it to us so that we may potentially avoid, or at least limit, litigation on these issues.

### **IV. Noticing Party and Attorneys**

The address of Sierra Club is 85 Second Street, Second Floor, San Francisco, CA 94105. The telephone number of Sierra Club is 415-977-5500. Sierra Club has individual members who have been, and continue to be, injured by the excessive and unlawful discharges from Lehigh's Permanente facility into Permanente Creek described above. Those injuries are fairly traceable to Lehigh's unlawful discharges, and can be redressed, at least in part, through the cessation of such discharges.

The attorneys representing Sierra Club in this matter are set forth below.

Reed Zars  
Attorney at Law  
910 Kearney Street  
Laramie, WY 82070  
307-745-7979

George Hays  
Attorney at Law  
236 West Portal Avenue, #110  
San Francisco, CA 94127  
415-566-5414

### **V. Conclusion**

Lehigh has been operating, and continues to operate the Permanente facility in violation of the Clean Water Act. We will seek an injunction to end the illegal, unpermitted discharges alleged in this letter, to restore the hydrologic and aquatic integrity of Permanente Creek, and to recover, on behalf of the United States, the maximum civil penalty for Lehigh's Clean Water Act violations for at least the last five years, as allowed by the applicable statute of limitations.

Exhibit A

If you have any questions regarding the allegations in this notice letter, believe any of the foregoing information to be in error, wish to discuss the exchange of information consistent with the suggestion above, or would otherwise like to discuss a settlement of this matter prior to the initiation of litigation, please contact the attorneys below.

Yours sincerely,

Reed Zars

Reed Zars  
Attorney at Law  
910 Kearney Street  
Laramie, WY 82070  
307-745-7979

George Hays *BH/rz*

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pc: by certified mail:

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U.S. Environmental Protection Agency  
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Washington, DC 20460

Thomas Howard, Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

Eric Holder, U.S. Attorney General  
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Jared Blumenfeld, Regional Administrator  
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San Francisco Bay  
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Registered Agent  
Lehigh Southwest Cement Company  
Corporation Service Company  
2730 Gateway Oaks Dr., Suite 100  
Sacramento, CA 95833

pc: by regular mail

Santa Clara County Board of Supervisors  
70 West Hedding Street  
San Jose, CA 95110

Santa Clara Valley Water District  
5750 Almaden Expressway  
San Jose, CA 95118

Mayor Gilbert Wong  
City of Cupertino  
Cupertino City Hall  
10300 Torre Avenue  
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Mayor Ron Packard  
City of Los Altos  
Los Altos City Hall  
One North San Antonio Road  
Los Altos, CA 94022

Mayor Jac Siegel  
City of Mountain View  
City Hall  
500 Castro Street  
Mountain View, CA 94039

Stevens & Permanente Creeks Watershed Council  
2353 Venndale Avenue  
San Jose, CA 95124

Midpeninsula Regional Open Space District  
330 Distel Circle  
Los Altos, CA 94022-1404

Department of Conservation  
Office of Mine Reclamation  
801 K Street, MS 09-06  
Sacramento, CA 95814-3529

### **Exhibits Provided in Enclosed CD**

Attachment 1: 2007 Kaiser NOI and 2007 General Storm Water Permit.

Exhibit A: Lehigh Response to the San Francisco Bay Regional Water Quality Control Board, December 13, 2010, page 6.

Exhibit B: Map showing the location of the quarry pit, Pond 4, and the pipe that discharges selenium and other toxic pollutants from the pit and Pond 4.

Exhibit C: Report of Potential Exceedance of Water Quality Standards, Geosyntec Consultants, March 17, 2010, p. 8.

Exhibit D: 2007 San Francisco Bay Basin Water Quality Control Plan ("Basin Plan"), including Chapter 3, Section 3.3.18 (toxicity), and Table 3-4 Numeric Freshwater Water Quality Objectives, and the California Toxics Rule at 40 C.F.R. §131.38.

Exhibit E: EPA approval letter listing Permanente Creek as impaired for selenium and toxicity, November 12, 2010; Water Board 2010 Integrated Report, Appendix A, Category 5 List.

Exhibit F: Water Board staff review and response to Lehigh's letter of December 13, 2010, in response to our "13267" letter of November 29, 2010, p. 1.

Exhibit G: Permanente Creek stream profile diagram showing examples of mine waste dump sites that continuously discharge pollutants into the creek.

Exhibit H: Hydrologic Investigation, Attachment F to Lehigh Reclamation Plan Amendment submitted to Santa Clara County on May 21, 2010 and July 29, 2011, excerpts including Figure 6.2, Table 6.6, and Figures 6.13 and 6.14.



|                                 |          |
|---------------------------------|----------|
| <b>URS Corporation</b>          |          |
| Lehigh Southwest Cement Company |          |
| Site Layout Map                 |          |
| 26817600                        | Figure 2 |
| FEBRUARY 2010                   |          |

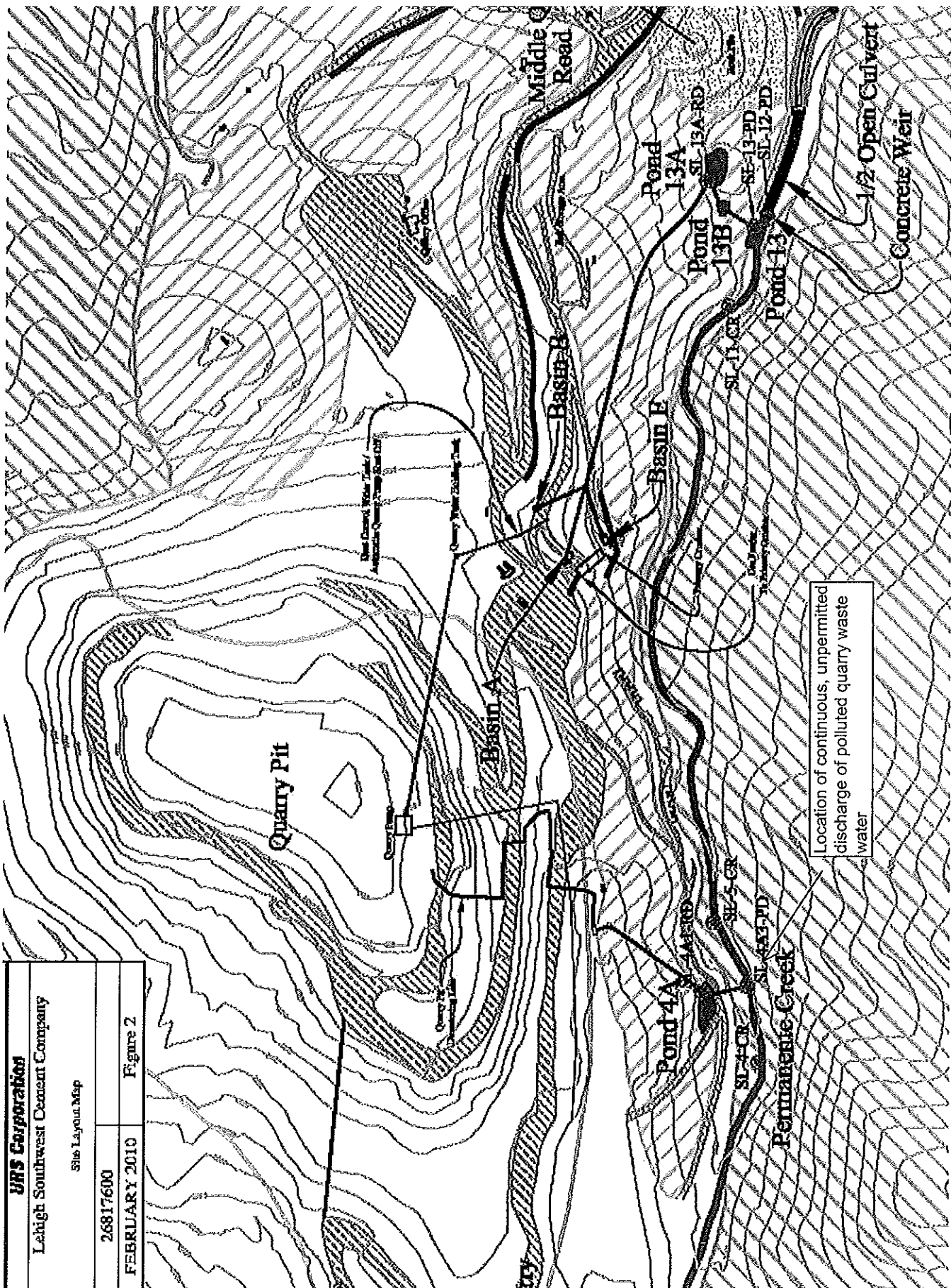


Exhibit B









# MEMORANDUM

## TOWN OF PORTOLA VALLEY

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**TO:** Mayor and Members of the Town Council

**FROM:** Nick Pegueros, Town Manager

**DATE:** September 25, 2013

**RE:** **Town Council Meeting Schedule: October – December 2013**

Upon review of the Town's holiday schedule and consideration of special meetings required for the balance of this year, I recommend that the Town Council consider the modifications to the meeting schedule described below. Advance notice of the meeting changes allows members of the Town Council, committee members, the public, and Town staff the opportunity to plan accordingly.

**October 9: Housing Element Study Session with Planning Commission at 7:30; Regular Agenda at time to be determined.**

This study session is needed to both follow up on the Ad Hoc Housing Committee Report and start the Housing Element Update work. Staff will present an overview of the update process and draft schedule, a proposal for public engagement, and updated information about the programs that the Ad Hoc Housing Committee identified as priorities for the Housing Element.

**October 30: Joint Meeting with the EPC at 7:00 (5<sup>th</sup> Wednesday)**

The EPC will have several items to discuss with the Town Council, primarily surrounding the new TIS AM radio antenna. The antenna is scheduled to be installed and operational in time for the meeting.

**November 13: Portola Road Corridor Plan Study Session with Planning Commission at 6:30; Regular Agenda at 7:30PM**

The Planning Commission has prepared a draft of the Portola Road Corridor Plan. As part of that process, the Commission has identified several items on which Town Council input is desired before finalizing the plan and moving towards adoption. This study session would provide an opportunity for the Council to provide feedback on both these issues and the draft plan as a whole.

**November 27: Cancel due to holiday schedule**

**December 25: Cancel due to holiday schedule**

#5

There are no written materials for this agenda item.

# **TOWN COUNCIL WEEKLY DIGEST**

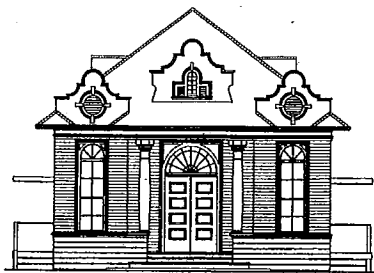
**Friday – September 13, 2013**

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1. Agenda (Action) – Town Council – Wednesday, September 11, 2013
2. Agenda (Cancellation) – Sustainability Committee – Monday, September 16, 2013
3. Agenda (Cancellation) – Parks & Recreation Committee – Monday, September 16, 2013
4. Agenda (Cancellation) – Planning Commission – Wednesday, September 18, 2013
5. Memo from Administrative Services Manager, Stacie Nerdahl, re: Update to Field Rental Policy
6. Agenda from Local Agency Formation Commission "LAFCo" meeting held on – September 11, 2013
7. Invitation - Portola Valley Summer Concert Series – Thursday, September 19, 2013
8. Memo from Nick Pegueros, Town Manager re: Weekly Update – Friday, September 13, 2013

## **Attached Separates (Council Only)**

1. San Mateo County Mosquito and Vector Control District - Report for July / August 2013 and Agenda from meeting of the MVCD held on September 11, 2013 re: Grand Jury Report District Response
2. Invitation from Midpeninsula Regional Open Space "MROSD" – 40<sup>th</sup> Anniversary Founders' Day Festival – September 14, 2013
3. Invitation from Loma Prieta Sierra Club to the Town Council – "A Fierce Green Fire" the Battle for a Living Planet – (See attached flyer for various screenings in local cities)



# TOWN OF PORTOLA VALLEY

6:30 PM – Special Town Council Meeting

Wednesday, September 11, 2013

Redwood Grove – adjacent to the Historic Schoolhouse

765 Portola Road, Portola Valley, CA 94028

## ACTION AGENDA

### 6:30 PM – CALL TO ORDER AND ROLL CALL

Councilmember Aalfs, Councilmember Derwin, Councilmember Driscoll, Mayor Richards, Vice Mayor Wengert

**Councilmember Derwin and Vice Mayor Wengert were absent**

### ORAL COMMUNICATIONS

Persons wishing to address the Town Council on any subject may do so now. Please note however, that the Council is not able to undertake extended discussion or action tonight on items not on the agenda.

### CONSENT AGENDA

The following items listed on the Consent Agenda are considered routine and approved by one roll call motion. The Mayor or any member of the Town Council or of the public may request that any item listed under the Consent Agenda be removed and action taken separately.

- (1) **Approval of Minutes** – Regular Town Council Meeting of August 28, 2013
- (2) **Approval of Warrant List** – September 11, 2013

**Approved 3-0**

### REGULAR AGENDA

- (3) **Recommendation by Conservation Committee and Deputy Town Planner** – Request to Adopt Redwood Guidelines

**Council approved adoption of the Redwood Guidelines 3-0**

- (4) **Recommendation by Town Manager** – Response to the San Mateo County Grand Jury - "San Mateo County Special Districts: Who is Really in Charge of the Taxpayer's Money? The Mosquito District Embezzlement: Is it the Tip of the Iceberg?"

**Approved 3-0**

- (5) **Appointment by Mayor** - Request for appointment of members to the Teen Committee

**The Mayor, with Council concurrence, appointed Reuben Sarwal and Mark Gerhart to the Teen Committee**

### COUNCIL, STAFF, COMMITTEE REPORTS AND RECOMMENDATIONS

- (6) **Reports from Commission and Committee Liaisons**

*There are no written materials for this item.*

**Councilmember Driscoll reported that the Town Geologist suggested amending the geologic map to reflect new information as reported in the article "Reassessment of the 1906 San Andreas Fault rupture in Portola Valley".**

**Mayor Richards attended the Library JPA that held discussion about budget. Carole Groome suggested a budget workshop. This Saturday, September 15<sup>th</sup>, the Portola Valley Library will sponsor "Tricycle Music Festival", a countywide program.**

### WRITTEN COMMUNICATIONS

- (7) **Town Council Weekly Digest** – August 29, 2013

**#10 – Councilmember Driscoll noted that in the PCRC report, the Town had zero referrals to PCRC this past year**

(8) Town Council Weekly Digest – September 6, 2013

**#10 – Town Manager Pegueros attended a meeting regarding LAFCo. Errors were identified in the distributed report. LAFCo will revise the report and recirculate. Discussed was the topic of possible interest in ownership of district lands if the district dissolves.**

**ADJOURNMENT: 7:07 pm**

**ASSISTANCE FOR PEOPLE WITH DISABILITIES**

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Town Clerk at (650) 851-1700. Notification 48 hours prior to the meeting will enable the Town to make reasonable arrangements to ensure accessibility to this meeting.

**AVAILABILITY OF INFORMATION**

Copies of all agenda reports and supporting data are available for viewing and inspection at Town Hall and at the Portola Valley Library located adjacent to Town Hall. In accordance with SB343, Town Council agenda materials, released less than 72 hours prior to the meeting, are available to the public at Town Hall, 765 Portola Road, Portola Valley, CA 94028.

**SUBMITTAL OF AGENDA ITEMS**

The deadline for submittal of agenda items is 12:00 Noon WEDNESDAY of the week prior to the meeting. By law no action can be taken on matters not listed on the printed agenda unless the Town Council determines that emergency action is required. Non-emergency matters brought up by the public under Communications may be referred to the administrative staff for appropriate action.

**PUBLIC HEARINGS**

Public Hearings provide the general public and interested parties an opportunity to provide testimony on these items. If you challenge any proposed action(s) in court, you may be limited to raising only issues you or someone else raised at the Public Hearing(s) described in this agenda, or in written correspondence delivered to the Town Council at, or prior to, the Public Hearing(s).



Sustainability Committee  
Notice of Cancellation  
Monday, September 16, 2013

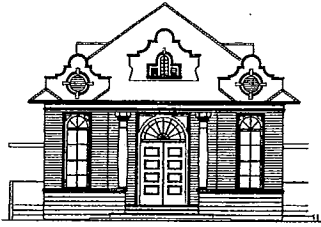
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# **SUSTAINABILITY COMMITTEE MEETING**

## **NOTICE OF CANCELLATION**

**Monday, September 16, 2013**

The Sustainability Committee meeting regularly scheduled for Monday, September 16, 2013 has been cancelled. A special meeting will be held on Monday, September 23, 2013 at 3:30 p.m.



Parks & Recreation Committee  
Notice of Cancellation  
Monday, September 16, 2013

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# **PARKS AND RECREATION COMMITTEE MEETING**

## **NOTICE OF CANCELLATION**

**Monday, September 16, 2013**

The regular meeting of the Parks & Recreation Committee, scheduled for Monday, September 16, has been cancelled.





# MEMORANDUM

## TOWN OF PORTOLA VALLEY

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**TO:** Planning Commission

**FROM:** CheyAnne Brown, Planning Technician

**DATE:** September 13, 2013

**RE:** Cancellation of Planning Commission Meeting

The Regular Meeting of the Planning Commission scheduled for Wednesday, September 18, 2013 has been cancelled. The next regular meeting of the Planning Commission is scheduled for Wednesday, October 2, 2013 at 7:30 p.m.

cc: Town Manager  
Town Council  
Town Planner  
The Almanac  
Barbara Templeton

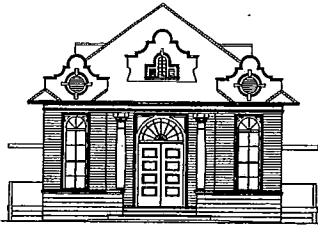
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This Notice is posted in compliance with Section 54955 of the Government Code of the State of California.

Date: September 13, 2013

CheyAnne Brown  
Planning Technician

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# MEMORANDUM

## TOWN OF PORTOLA VALLEY

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**TO:** Mayor and Members of the Town Council

**FROM:** Stacie Nerdahl, Administrative Services Manager 

**DATE:** September 6, 2013

**RE:** **Update to Field Rental Policy**

Recently the Council approved staff's recommendation that rental of the Community Hall facilities for private events be restricted to Portola Valley residents. In order to maintain consistent policies regarding the use of all town facilities, staff will apply this new "residents only" policy to private field rentals as well. Along with unifying the private rental permission of the Community Hall with the fields, this will also serve to minimize staff time involved with non-resident private field activities, while ensuring that fields are kept available for Town-sponsored and resident usage. This change will only affect the use of fields for private events (such as wedding parties and private picnics) and will not change the Town's adopted policy for sports uses of the fields.



# LOCAL AGENCY FORMATION COMMISSION

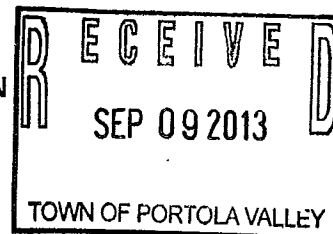
455 COUNTY CENTER, 2ND FLOOR • REDWOOD CITY, CA 94063-1663 • PHONE (650) 363-4224 • FAX (650) 363-4849

## AGENDA

SAN MATEO LOCAL AGENCY FORMATION COMMISSION

Wednesday, September 11, 2013

2:30 p.m.



County Government Center

**455 County Center, Room 101**

Redwood City, California

← **Note special location**

1. Roll Call
2. Consent Agenda\*
  - a) Approval of Action Minutes: July 17, 2013
  - b) LAFCo File Number 13-09 -- Proposed Annexation of 230 Shawnee Pass to the West Bay Sanitary District (CEQA Exempt) (1.007 Acre)
  - c) LAFCo File Number 13-10 – Proposed Annexation of 500 Portola Road to the West Bay Sanitary District (CEQA Exempt) (1.15 Acres)
3. Public Comment for Items not on the Agenda
4. Appointment of Vice Chair for the Remainder of Calendar Year 2013
5. Consideration of Amendment of FY 2013-2014 LAFCo Budget Based on Adjusted FY 2012-2013 Fund Balance
6. Consideration of Adoption of Agreement with County of San Mateo for Office Space, Supplies, Personnel and Legal Services
7. Report on Los Trancos County Water District
8. Recommended Response to the San Mateo County Civil Grand Jury Report: "Peninsula Health Care District – Landlord, Real Estate Developer or Health Care Leader?"
9. Recommended Response to the San Mateo County Civil Grand Jury Report: "San Mateo County Special Districts: Who is Really in Charge of Taxpayer's Money? The Mosquito Abatement District Embezzlement: Is it the Tip of the Iceberg?"

\*All items on the consent agenda may be approved by one roll call vote unless a request is made at the beginning of the meeting that an item be withdrawn. Any item on the consent agenda may be transferred to the regular agenda.

LAFCo Agenda  
September 11, 2013  
2 of 2

10. Applications Received and not yet Ready for Hearing (Agenda Listing pursuant to Government Code Section 56857 - No Action Required):
  - a) Proposed Annexation of APN# 182-34-011 near the Intersection of Arastradero and Alpine Roads (Santa Clara County) to the West Bay Sanitary District
  - b) Proposed Annexation of 830 Los Trancos Road (Santa Clara County) to the West Bay Sanitary District
11. Legislative Update
12. Commissioner/Staff Reports
13. Adjournment

**NOTICE:** State law requires that a participant in a LAFCo proceeding who has a financial interest in the decision and who has made a campaign contribution of more than \$250 to any Commissioner in the past year must disclose the contribution. If you are affected, please notify Commission staff before the hearing. Also, pursuant to Government Code Sections 56700.1 and 81000 et seq. any person or combination of persons who directly or indirectly contribute \$1,000 or more or expend \$1,000 or more in support of or opposition to a change of organization or reorganization that has been submitted to the Commission must comply with the reporting and disclosure requirements of the Political Reform Act of 1974.

**Access for the Disabled:**

LAFCo meetings are accessible to people with disabilities. Individuals who need special assistance or a disability-related modification or accommodation (including auxiliary aids or services) to participate in this meeting; or who have a disability and wish to request an alternative format for the agenda, meeting notice, agenda packet or other writings that may be distributed at the meeting, should contact the LAFCo Executive Officer at least five working days before the meeting at phone number (650) 363-4224, fax (650) 363-4849 or e-mail [mpoyatos@smcgov.org](mailto:mpoyatos@smcgov.org). Notification in advance of the meeting will enable the LAFCo staff to make reasonable arrangements to ensure accessibility to this meeting and the materials related to it.

**THURSDAY, SEPT 19TH**  
**PV TOWN CENTER**  
**LAWN**  
**50's MUSIC**  
**FUN FOR ALL!**



**3:30 FARMER'S MARKET STARTS!**

**5:30 GOURMET FOOD TRUCKS SERVE!**

**6:00-7:30 LIVE 50's MUSIC!!!**

**DAVE CRIMMEN**  
**AND**  
**THE BAND**

**FREE - FABULOUS - FUN**  
**BRING YOUR FRIENDS AND**  
**NEIGHBORS, BLANKETS, CHAIRS,**  
**DOGS, DRINKS, AND YOUR SMILE!**



Psssst:

This is the season finale for our Summer Concert Series! Look for more great summer music concerts in June of 2014! Submit band applications or suggestions to: Paige Bishop. [plf365@gmail.com](mailto:plf365@gmail.com)

**Portola Valley**  
**Summer Concert Series**





# MEMORANDUM

## TOWN OF PORTOLA VALLEY

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TO: Mayor and Members of the Town Council  
FROM: Nick Pegueros, Town Manager  
DATE: September 13, 2013  
RE: Weekly Update

The purpose of this report is to provide a summary update on items/projects of interest for the week ended September 13, 2013.

- 1. Trial Biological Management on Russ Miller Field** – The Town’s contractor, Botanical Arts, worked this week on the trial program to change how the field is fertilized. As you monitor the appearance and health of the field over the next couple of months, it is important to note that the field was recently damaged by birds feasting on grubs.
- 2. Update on TIS AM Radio Antenna Installation** – Staff provided the EPC with an update on the antenna installation. The equipment arrived this week and Howard has begun scheduling contractors to install the antenna and perform the necessary wiring. Staff is committed to having the antenna operational the week of October 21<sup>st</sup>, in advance of the October 30<sup>th</sup> special meeting between the Council and the EPC.
- 3. Update to Geologic Maps** – The Town Geologist has advised staff that he will begin work with the Geologic Safety Committee in the next several months. He is also providing an estimate of the cost for drafting time to make the changes.
- 4. First stage of “Hello Healthy” Employee Wellness Challenge Complete** – I’m pleased to report that of the nine employees participating in the wellness program, three reached the Stage One goal of 1,000,000 in 100 days. According to Kaiser Permanente, the average adult takes 3,000 to 5,000 steps per day. Of all participants in the Town’s wellness challenge, the median average steps per day was 9,550. There are two more stages in the 300-day wellness challenge.

# **TOWN COUNCIL WEEKLY DIGEST**

**Friday – September 20, 2013**

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1. Agenda – ASCC – Monday, September 23, 2013
2. Agenda – Conservation Committee – Tuesday, September 24, 2013
3. Website eNotice Subscriber Stats – Current as of September 11, 2013
4. Postcard Mailing – Portola Valley & Woodside SOD-BLITZ - Live Webcast Results (Thursday, October 3 at 7:00 pm) – SOD Management Meeting (Saturday, October 5 at 1:00 pm) – both events will be held at the Portola Valley Community Hall
5. Resident Mailing - New Evacuation Route Map for the Community – August 9, 2013
6. Email from Mark Simon, EO Public Affairs of the San Mateo County Transit District re: Alleged report of financial misconduct in the San Mateo County Transit District budget – Thursday, September 19, 2013
7. Letter from Martha Poyatos, Executive Officer of LAFCo to Director Dean Peterson of the San Mateo County Health System re: Request that the Environmental Health Division undertake a Feasibility Study of assuming Mosquito and Vector Control Services in the event that the San Mateo County Mosquito and Vector Control District is dissolved – September 17, 2013
8. Notice from C/CAG – Consideration of Adoption of the Final 2013 San Mateo County Congestion Management Program (CMP) – September 17, 2013
9. Memo from Nick Pegueros, Town Manager re: Weekly Update – Friday, September 20, 2013

## **Attached Separates (Council Only)**

1. Connections Newsletter - Summer 2013 – 25<sup>th</sup> Anniversary of California Healthy Cities and Communities (CHCC) Program



TOWN OF PORTOLA VALLEY  
 ARCHITECTURAL AND SITE CONTROL COMMISSION (ASCC)  
 Monday, September 23, 2013  
Special Field Meeting (time and place as listed herein)  
 7:30 PM – Regular ASCC Meeting  
 Historic Schoolhouse  
 765 Portola Road, Portola Valley, CA 94028

**SPECIAL ASCC FIELD MEETING\***

4:00 p.m. 5 Naranja Way Field meeting for continued consideration of plans for residential redevelopment of this 2.5-acre Westridge Subdivision property. (ASCC review to continue at Regular Meeting)

**7:30 PM - REGULAR AGENDA\***

1. Call to Order:
2. Roll Call: Breen, Clark, Hughes, Koch, Ross
3. Oral Communications:

Persons wishing to address the Commission on any subject, not on the agenda, may do so now. Please note, however, the Commission is not able to undertake extended discussion or action tonight on items not on the agenda.

4. Old Business:
  - a. Continued Architectural Review for New Residence with Detached Office, Pool and Pool Cabana, and Site Development Permit X9H-657, 5 Naranja Way, Maffia
5. New Business:
  - a. Architectural Review for Residential Additions with New Detached Garage and Modifications to Driveway Access, 1305 Westridge Drive, Hirsch-Long
  - b. Architectural Review of Proposed Temporary Construction Tent, 50 Pine Ridge Way, Gilbert
6. Commission and Staff Reports:
7. Approval of Minutes: September 9, 2013
8. Adjournment:

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\*For more information on the projects to be considered by the ASCC at the Special Field and Regular meetings, as well as the scope of reviews and actions tentatively anticipated, please contact Carol Borck in the Planning Department at Portola Valley Town Hall, 650-851-1700 ex. 211. Further, the



start times for other than the first Special Field meeting are tentative and dependent on the actual time needed for the preceding Special Field meeting.

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**PROPERTY OWNER ATTENDANCE.** The ASCC strongly encourages a property owner whose application is being heard by the ASCC to attend the ASCC meeting. Often issues arise that only property owners can responsibly address. In such cases, if the property owner is not present it may be necessary to delay action until the property owner can meet with the ASCC.

**WRITTEN MATERIALS.** Any writing or documents provided to a majority of the Town Council or Commissions regarding any item on this agenda will be made available for public inspection at Town Hall located 765 Portola Road, Portola Valley, CA during normal business hours.

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#### **ASSISTANCE FOR PERSONS WITH DISABILITIES**

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Assistant Planner at 650-851-1700, extension 211. Notification 48 hours prior to the meeting will enable the Town to make reasonable arrangements to ensure accessibility to this meeting.

#### **PUBLIC HEARINGS**

Public Hearings provide the general public and interested parties an opportunity to provide testimony on these items. If you challenge a proposed action(s) in court, you may be limited to raising only those issues you or someone else raised at the Public Hearing(s) described later in this agenda, or in written correspondence delivered to the Planning Commission at, or prior to, the Public Hearing(s).

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This Notice is Posted in Compliance with the Government Code of the State of California.

Date: September 20, 2013

CheyAnne Brown  
Planning Technician

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**TOWN OF PORTOLA VALLEY**  
**Conservation Committee**  
**Tuesday, September 24, 2013 - 7:45 PM**  
**Historic Schoolhouse**  
**765 Portola Road, Portola Valley, CA 94028**

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**AGENDA**

1. Call to Order
2. Oral Communications
3. Approval of Minutes - August 27 minutes were unavailable at time of packet distribution. They will be agendized at the October meeting
4. Site Permits -
  - NEW - 3 Grove
  - REVISED - 5 Naranja

Tree Permits -  
None

Brush consultants -
5. Old Business
  - A. Backyard Habitat program - DeStaebler  
Get together info/data/links for Town website
  - B. Native Plant Garden at Town Center - preliminary plan drawn by GoNative
  - C. Tip of the month - Plunder
  - D. Committee cooperation ASCC/Trails/Open Space  
Create volunteer trails workforce
  - E. Weeding checklist/creek maintenance/traffic - Heiple
  - F. Final native plant lists for Town website and ASCC - recommended, discouraged, invasive, dry, deer. How are the additional lists coming along?
  - G. Broom Pull - March 8, anything to do now?
  - H. Jasper Ridge program 9/26 - we are co-sponsors
6. New Business
  - Danna suggests adding Echium fatuosum to our invasive plan list
7. Announcements
  - Announcements - Oaks near tennis court were "canopy lightened" at our suggestion
8. Adjournment

## Website eNotice Subscriber Stats

| Category                                   | Type           | 7/26/13    | 8/5/13<br>(after<br>postcard) | 8/29/13    | 9/11/13<br>(after Forum<br>email) |
|--|----------------|------------|-------------------------------|------------|-----------------------------------|
| <b>Total Active Subscribers</b>            |                | <b>491</b> | <b>561</b>                    | <b>578</b> | <b>591</b>                        |
| Ad Hoc Committees                          | Event Calendar | 48         | 53                            | 59         | 60                                |
| Architectural & Site Control Commission    | Event Calendar | 86         | 94                            | 101        | 103                               |
| Bicycle, Pedestrian, Traffic Committee     | Event Calendar | 55         | 67                            | 75         | 78                                |
| Bicycling Groups Schedule                  | Event Calendar | 38         | 44                            | 55         | 57                                |
| Cable & Utilities Undergrounding Committee | Event Calendar | 48         | 58                            | 65         | 68                                |
| Classes                                    | Event Calendar | 135        | 154                           | 168        | 172                               |
| Community Events Committee                 | Event Calendar | 81         | 96                            | 106        | 113                               |
| Conservation Committee                     | Event Calendar | 54         | 61                            | 69         | 71                                |
| Cultural Arts Committee                    | Event Calendar | 69         | 82                            | 93         | 96                                |
| Emergency Preparedness Committee           | Event Calendar | 68         | 82                            | 92         | 96                                |
| Farmers' Market                            | Event Calendar | 44         | 66                            | 83         | 90                                |
| Finance Committee                          | Event Calendar | 43         | 48                            | 53         | 54                                |
| Geologic Safety Committee                  | Event Calendar | 52         | 61                            | 67         | 69                                |
| Green Events                               | Event Calendar | 298        | 311                           | 316        | 320                               |
| Historic Resources Committee               | Event Calendar | 44         | 52                            | 57         | 58                                |
| Holiday Dates                              | Event Calendar | 70         | 83                            | 91         | 94                                |
| Housing                                    | Event Calendar | 0          | 8                             | 18         | 23                                |
| Library                                    | Event Calendar | 102        | 121                           | 134        | 138                               |
| Nature & Science Committee                 | Event Calendar | 74         | 87                            | 97         | 99                                |
| Open Space Acquisition Advisory Committee  | Event Calendar | 63         | 71                            | 78         | 81                                |
| Parks & Recreation Committee               | Event Calendar | 74         | 84                            | 96         | 102                               |
| Planning Commission                        | Event Calendar | 84         | 91                            | 97         | 102                               |
| Public Works Committee                     | Event Calendar | 57         | 62                            | 68         | 69                                |
| Special Town Events                        | Event Calendar | 148        | 169                           | 183        | 188                               |
| Summer Concert Series                      | Event Calendar | 0          | 16                            | 33         | 36                                |
| Sustainability Committee                   | Event Calendar | 36         | 42                            | 49         | 51                                |
| Teen Committee                             | Event Calendar | 41         | 47                            | 52         | 53                                |
| test                                       | Event Calendar | 10         | 13                            | 18         | 19                                |
| The Sequoias                               | Event Calendar | 61         | 69                            | 75         | 77                                |
| Town Council                               | Event Calendar | 98         | 112                           | 118        | 123                               |
| Town Government                            | Event Calendar | 74         | 85                            | 91         | 95                                |
| Trails and Paths Committee                 | Event Calendar | 82         | 95                            | 105        | 110                               |
| Staff Employee                             | Job Manager    | 39         | 41                            | 47         | 48                                |
| Volunteer                                  | Job Manager    | 44         | 49                            | 55         | 56                                |
| Elections                                  | News           | 0          | 12                            | 21         | 27                                |
| Fire Prevention                            | News           | 0          | 14                            | 24         | 29                                |
| Green News                                 | News           | 316        | 329                           | 335        | 337                               |
| Town News                                  | News           | 209        | 234                           | 250        | 254                               |
|  |                | 3336       | 3824                          | 4172       | 4307                              |
|  |                |            |                               |            |                                   |
| <b>New subscribers (since 7/26/2013):</b>  | <b>100</b>     |            |                               |            |                                   |
| <b>Total new eNotice subscriptions:</b>    | <b>971</b>     |            |                               |            |                                   |

(650) 464-2899 cell

## Portola Valley & Woodside SOD-BLITZ 4

### SUDDEN OAK DEATH / PHYTOPHTHORA RAMORUM

Live Webcast of Results: Thursday, October 3 @ 7:00 pm  
SOD Management Meeting: Saturday, October 5 @ 1:00 pm



**Both events will be held at:**  
Portola Valley Community Hall,  
765 Portola Road, Portola Valley

The **Live Webcast of Results** will be broadcast to "Citizen Scientists" throughout the state and will provide the results from the Spring 2013 SOD-BLITZ. Questions will be received from all satellite locations, including Portola Valley.

A **SOD Management Meeting** will be held on Saturday, October 5th, at 1:00 pm at the Portola Valley Community Hall. This meeting will focus on the biology of SOD and what to do to control the disease. **There have been big changes in recommended treatments, and the meeting will present these new recommendations.** Additionally, there will be training on how to use a new mobile app - SODMAP!

**If you have GPS equipment, please bring it to the meeting for instructions to assist in permanent monitoring of trees.**

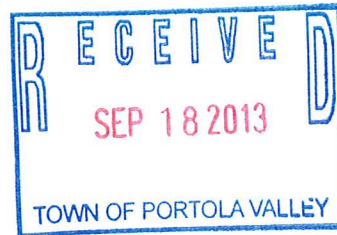


*Matteo Garbelotto, Professor in the Department of Environmental Science, Policy, and Management at U.C. Berkeley, will answer questions about Sudden Oak Death and this important, ongoing study.*

**For more information, contact:**

Brandi de Garmeaux, Town of Portola Valley  
851-1700 x222 or bdegarmeaux@portolavalley.net

Kevin Bryant, Town of Woodside  
851-6790 or kbryant@woodsidesidetown.org



August 9, 2013

Dear Neighbors & Friends,

This summer, LTCWD Watershed Fire Protection in conjunction with our local CERPP leaders -Bill Tagg & Steve Friedman - and Chief Dan Ghorso from Woodside Fire Protection District, have worked together to create an updated **Evacuation Route Map** for our community. Each homeowner is receiving two (2) laminated maps that should be kept in an easily accessible location.

A special thank you to Charlie Krenz who spent countless hours creating and perfecting the map you now hold in your hands.

A great deal of time and thought went into this map and we hope everyone will take the time to closely review the possible evacuation route options that we may be directed to take in the event of a wildland fire or other emergency:

- Los Trancos Road to Alpine Road
- Joaquin Road to Alpine Road (1-way directed by Sheriff in emergency)
- Pony Tracks Ranch (Safe Haven only)

**This map supersedes all maps found in the community directories through 2012.**

For those new to the community, it is a good idea to drive all these routes to familiarize yourself with the directions. For everyone, it is recommended that you drive these routes with home healthcare aids, nannies, new drivers and anyone else who spends a great deal of time with you and your family.

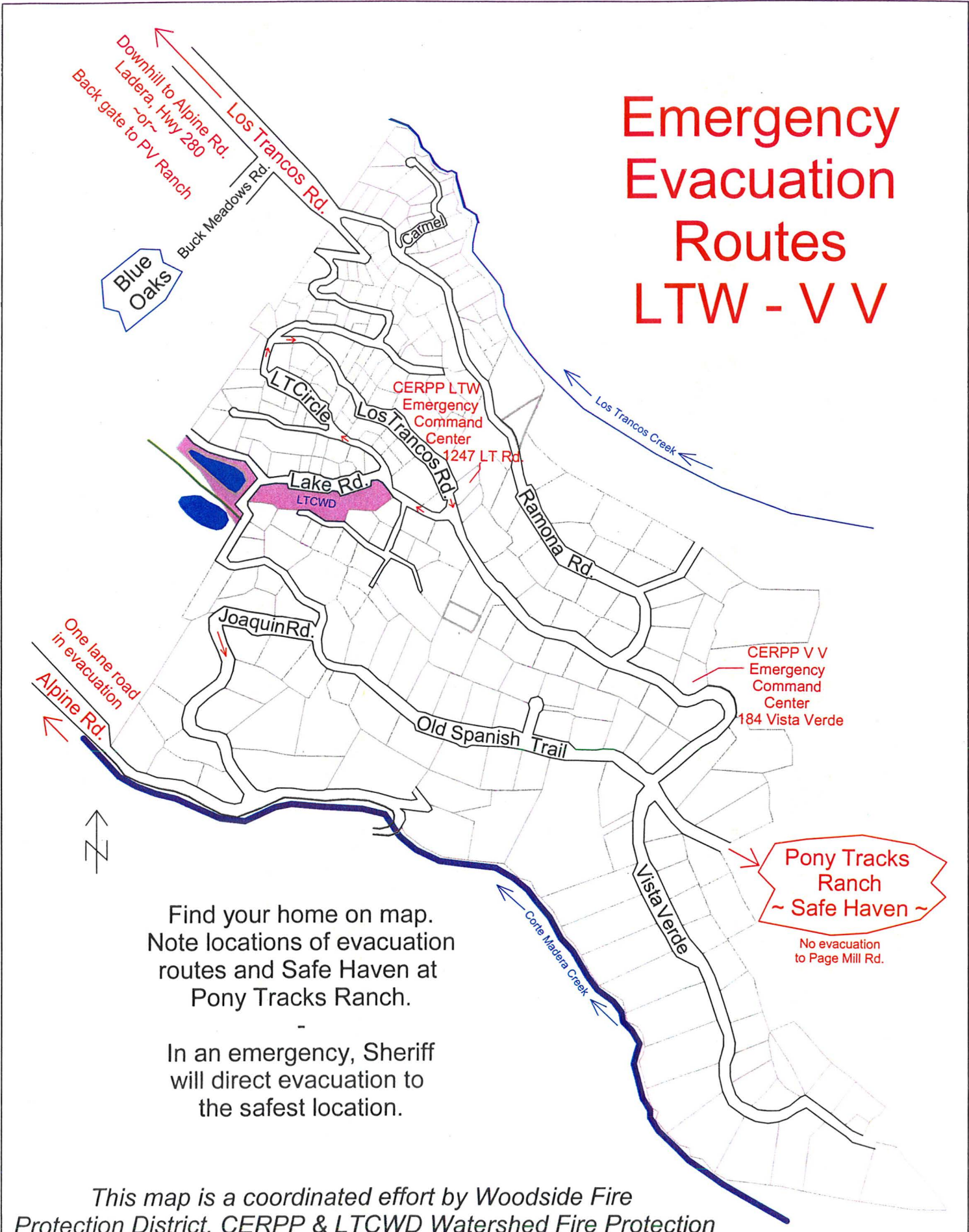
On the flip side of the map you will find **P.L.E.A.S.E.** (Prepare Leave Early And Save Everyone). Do take a moment to carefully review this important checklist.

In the meantime, be prepared and stay safe.

Sincerely,

Tracy Sherman  
LTCWD Board Director  
Watershed Fire Protection

# Emergency Evacuation Routes LTW - V V



Find your home on map.  
Note locations of evacuation routes and Safe Haven at Pony Tracks Ranch.

In an emergency, Sheriff will direct evacuation to the safest location.

Pony Tracks Ranch  
~ Safe Haven ~

No evacuation to Page Mill Rd.

This map is a coordinated effort by Woodside Fire Protection District, CERPP & LTCWD Watershed Fire Protection

Sign up for Emergency Alerts: [SMCAalert.info](http://SMCAalert.info)

# P.L.E.A.S.E.

## Prepare Leave Early And Save Everyone

**TEAR THIS PAGE OUT AND POST IT ON YOUR REFRIGERATOR**

### LONG BEFORE A FIRE THREATENS

#### Prepare an Evacuation Checklist and Get Organized:

- Critical medications
- Important personal papers, photos and digital files
- Essential valuables
- Pet and Livestock transport and equipment
  - Pet carriers, food, water, medications, halters, leashes, blankets, plastic bags, paper towels, first aid kit, toys, treats, etc.
- Change of comfortable clothing and toiletries
- Cell phone with charger
- An evacuation route map with at least 2 routes and a family meeting place
- Drive your planned route of escape before an actual emergency
- Sign up for San Mateo County's Community Alert System at [www.smcalert.info](http://www.smcalert.info)

### WHEN WILDFIRE APPROACHES AND EVACUATION IS IMMINENT

- Locate your evacuation checklist and place items in your vehicle
- Park your vehicle facing outward and with your keys in the ignition
- Locate your pets and keep them nearby
- Prepare farm animals for transport (if capable)
- Close windows and doors, chimney dampers to the house – air conditioning off.
- Close garage doors and all inside doors including pet doors
- Take down drapes and curtains to prevent combustion from radiant heat
- Turn on all lights so your house is visible in heavy smoke
- Charge pre-positioned garden hose lines for firefighters use in combating fire
- If the roof is combustible, clean off debris and wet roof down -- place ladder leading to roof
- Move propane BBQ appliances away from structures
- Remove any combustible patio furniture or other items such as door mats, play structures, and firewood from structures
- Keep the radio tuned to local stations for timely reports on the fire status and for evacuation instructions
- Cover up. Wear long pants, long sleeve shirt, heavy shoes or boots, cap, bandana for face cover, goggles or glasses
- If told to evacuate, leave the area as directed. All evacuation instructions provided by officials should be followed immediately for your safety
- If the fire cannot be stopped and passes over your home before you and your family evacuate, the safest place for your protection is inside the house with all the doors closed

**COMPLY WITH ALL EVACUATION ORDERS**

**BeReadyToday.org**

**Nick Pegueros**

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**From:** Bhatnagar, Shweta <Bhatnagars@samtrans.com>  
**Sent:** Thursday, September 19, 2013 12:00 PM  
**Subject:** San Mateo County Transit District Focus of NBC-11 Story

On Thursday night's 11 p.m. newscast, NBC 11 will air a story claiming they have uncovered "financial misconduct" in the San Mateo County Transit District's budget.

These allegations are being leveled largely by two disgruntled ex-employees and they are entirely untrue.

For several weeks, we have been working with the NBC-11 investigative team and have produced multiple documents at their request. They began their inquiry under false pretenses, stating only that they wanted to do a story on the financial challenges facing the agency, but as their inquiries continued, it became evident they are relying on false allegations by two disgruntled ex-employees.

Seven weeks after their initial request, Mike Scanlon sat for an on-camera interview with reporter Vicky Nguyen, who repeated the allegations, and described the information provided by these two sources as "a pattern of fraud."

Mike categorically denied the allegations for the simple reason that they are not true. There is no evidence of misappropriation of funds of any kind because no misappropriations have taken place. There is no pattern of fraud.

Once NBC raised these issues, we brought them to the attention of the agency's independent auditors who confirmed that these were simply miscoded transactions. They have already been corrected. To put this into perspective, there were 5 miscoded transactions made over the course of four years in the many tens of thousands of transactions that occur every year.

In fact, NBC-11 contacted the auditor and attempted to coerce them into commenting further on the story. The auditor's policy is not to speak to the news media, but in an email to the agency, the auditor indicated it was clear the NBC-11 reporter did not have a grasp of fundamental accounting principles.

A story on the same subject was recently covered by the San Mateo Daily Journal, <http://www.smdailyjournal.com/articles/news/2013-09-12/employee-x-blows-whistle-on-samtrans/1775220.html>

As the Daily Journal story reported and as we have repeatedly told NBC-11, these allegations were made initially by an employee, recently dismissed for cause, and were fully investigated by independent investigators. The investigators interviewed everyone involved, including the employee, and concluded these accusations were without merit. We provided those documents, along with dozens of others, to NBC-11.

The miscoded transactions total about \$300,000 over three years in a District with combined annual budgets of more than \$500 million.

NBC-11 is prepared to air interviews with individuals they described as experts in public finance accounting who undoubtedly will call into question our practices, based on an erroneous description provided and characterized by NBC-11.

They will air an interview with a former SamTrans accountant, who will allege that he made the accounting entries in question at the direction of his superiors. This is simply not true. They also are likely to air an interview with an ex-employee, who recently lost her appeal of a dismissal for cause, and she will make similar claims. They have not identified this individual directly. Again, these claims are false.



The interview was characterized by extremely aggressive behavior by Ms. Nguyen, who frequently interrupted Mike and wouldn't let him complete answers to her questions. Despite these obstacles, Mike stated repeatedly that he has the highest confidence in the integrity and ethical standards of the employees at this agency. He noted that we are the object of independent audits by a firm we hire as well as by state and federal regulators and that we regularly receive a clean bill of health from all audits. He noted that our accounting documents have repeatedly won awards for their quality and depth. He said repeatedly the allegations are false; in fact, he called them delusional.

It has been profoundly frustrating to attempt to work with NBC-11 as they have pursued this story. We believe that transparency is our best response to the false allegations and we have provided dozens of documents to their reporter and devoted significant time and resources to responding to them. But when an organization is determined to proceed despite the extensive information we have provided them and without independent verification of allegations by disgruntled ex-employees, it is difficult to receive fair treatment. In fact, we fully expect we will not.

We also expect that NBC-11 will attempt to do further stories in the coming days and weeks in an attempt to draw attention to their station and to bolster these flimsy and false claims.

Once the story airs, we will consider what, if anything, we will do in response, either legally or in terms of public communication.

We will gladly go over all of the documents we provided to NBC-11 should any of you have questions regarding these claims.

Should you be contacted by a reporter to comment on this matter, we would appreciate the opportunity to brief you in more detail prior to your making any comment. You are always welcome to direct any media inquiries on this to me.

Thank you in advance for your support.

Mark Simon  
Executive Officer for Public Affairs  
San Mateo County Transit District  
*SamTrans*  
*Caltrain*  
*San Mateo County Transportation Authority*  
Phone: (650) 508-6340  
Fax: (650) 508-6281

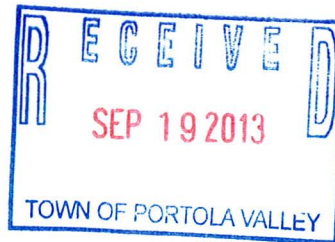
SAN MATEO

**LOCAL AGENCY FORMATION COMMISSION**

455 COUNTY CENTER, 2ND FLOOR • REDWOOD CITY, CA 94063-1663 • PHONE (650) 363-4224 • FAX (650) 363-4849

September 17, 2013

Dean D. Peterson, Director  
County of San Mateo Health System  
Environmental Health Services  
2000 Alameda de las Pulgas, Suite 100  
San Mateo, CA 94403



Dear Mr. Peterson:

As you know, at the September 11, 2013 Local Agency Formation Commission (LAFCo) meeting, the Commission considered a draft response to the 2012-13 Civil Grand Jury 2012-13 report concerning the San Mateo County Mosquito & Vector Control District. The following Grand Jury recommendation was specific to LAFCo and San Mateo County Environmental Health Services:

*R9. That LAFCo further study the dissolution of the District and evaluate the cost savings that might result from transferring the function to the San Mateo County Environmental Health Department.*

The draft response considered by the Commission included a recommendation that the San Mateo County Environmental Health Division and not LAFCo conduct further study because the Environmental Health Division has the internal organizational knowledge and expertise to best determine how service would be provided if absorbed by the County. After further consideration, the Commission amended their response to state that the Commission would request the San Mateo County Environmental Health Division to conduct a study evaluating the feasibility of transferring mosquito and vector control services to the County.

To that end, LAFCo requests that the Environmental Health Division undertake a feasibility study of assuming mosquito and vector control services in the event the San Mateo County Mosquito and Vector Control District is dissolved. It is requested that the study include a recommended organizational structure that would include absorbing appropriate personnel of the District, a recommended budget for operation, administration and capital improvements and provisions to assure maintaining level of service while providing for accountability and transparency. The analysis should assume that all revenues and expenditures would be segregated for the purpose of mosquito and vector control services.

Given that the County of San Mateo and the San Mateo County Mosquito and Vector Control District serve and protect the same constituency and receive funding from that same

September 17, 2013  
Dean D. Peterson, Director  
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constituency, it makes sense to study the possibility of maximizing resources and creating efficiencies to the extent possible. If you have questions about this request, please do not hesitate to contact me.

Sincerely,



Martha Poyatos  
Executive Officer

- C: Members, Formation Commission
- Foreperson, Civil Grand Jury
- John Maltbie, County Manager
- Jean S. Fraser, Chief, SMC Health System
- Robert Gay, SMCMVCD
- City Managers

# C/CAG

## CITY/COUNTY ASSOCIATION OF GOVERNMENTS OF SAN MATEO COUNTY

*Atherton \* Belmont \* Brisbane \* Burlingame \* Colma \* Daly City \* East Palo Alto \* Foster City \* Half Moon Bay \* Hillsborough \* Menlo Park \* Millbrae  
Pacifica \* Portola Valley \* Redwood City \* San Bruno \* San Carlos \* San Mateo \* San Mateo County \* South San Francisco \* Woodside*

September 17, 2013



**- REVIEW NOTICE -**

### DRAFT SAN MATEO COUNTY CONGESTION MANAGEMENT PROGRAM (CMP) - 2013

To All Interested Parties:

The Draft 2013 San Mateo County Congestion Management Program (CMP) was approved for distribution and comment at the City/County Association of Governments (C/CAG) meeting on September 12, 2013. C/CAG will consider adoption of the Final 2013 CMP at a public hearing planned on Thursday, November 14, 2013 at 6:30 p.m. in the Bacciocco Auditorium (2nd floor), San Mateo County Transit District, 1250 San Carlos Avenue, San Carlos, CA. Copies of the final version are expected to be available in January 2014.


The Draft 2013 CMP is available at <http://ccag.ca.gov/studies-2013CongMgmtPrg.html> for review. For hard copies, please contact the C/CAG staff listed below.

If you would like to provide comments on the Draft 2013 CMP, please submit them in writing by **October 16, 2013** to:

John Hoang  
City/County Association of Governments  
555 County Center, 5<sup>th</sup> Floor  
Redwood City, CA 94063  
Fax: (650) 361-8227  
E-mail: [jhoang@smcgov.org](mailto:jhoang@smcgov.org)

All comments received during the review period will be considered before the final plan is adopted. Thank you for your time and interest in this matter.

Sincerely,

  
Sandy Wong  
C/CAG Executive Director

DISTRIBUTION LIST:

Metropolitan Transportation Commission – Ken Kirkey  
SamCEDA – Rosanne Foust  
Alameda County Transportation Commission – Art Dao  
San Francisco County Congestion Management Agency – Tilly Chang  
Santa Clara County Congestion Management Agency – Michael T. Burns  
Bay Area Air Quality Management District – Jean Roggencamp  
Association of Bay Area Governments – Ezra Rapport  
Caltrans District 4 – Bijan Sartipi  
SamTrans/JPB/Transportation Authority – Corrine Goodrich, Joe Hurley  
Peninsula Traffic Congestion Alliance – John Ford

Bay Area Congestion Management Agencies  
County/City Managers  
Planning Directors  
Public Works Directors  
Newspapers  
State/Federal Legislators  
Bicycle Pedestrian Advisory Committee Members  
C/CAG Board Members\*  
Congestion Management and Environmental Quality (CMEQ) Committee Members\*  
C/CAG Technical Advisory (TAC) Committee Members\*  
Airport Land Use Committee Members  
C/CAG Staff

\* Draft was previously reviewed by these members



# MEMORANDUM

## TOWN OF PORTOLA VALLEY

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TO: Mayor and Members of the Town Council  
FROM: Nick Pegueros, Town Manager  
DATE: September 20, 2013  
RE: Weekly Update

The purpose of this report is to provide a summary update on items/projects of interest for the week ended September 20, 2013.

- 1. Meeting on Skate Ramp** – Staff met with a group of parents who would like to recommend that the Parks & Recreation Committee consider a proposal to locate a skate ramp on the sports court here at Town Center. Upon an initial review it appeared that the item could move rather quickly through the Town's processes. However, in consultation with the Town's insurer and Town Attorney, there are a number of liability issues that must be considered prior to installation. Staff is working to identify those issues and discuss solutions with the Parks & Recreation Committee at their October 7<sup>th</sup> meeting.
- 2. Concert Series Finale** – The final concert of the season was held last night and it was relatively well attended. In response to noise concerns from the neighbors Town volunteer Kevin Welch took decibel readings during the concert from several points on the Town Center property line. All recordings were within reasonable levels. In addition to the concert, the Library hosted a family story time and big clocks play in the Community Hall.
- 3. Flags at Half Staff** – You may have noticed that the flags at Town Hall were at half-staff this week in honor of the victims of the Washington Navy Yard tragedy.