

# LAW OFFICE OF MARC CHYTILO

---

ENVIRONMENTAL LAW

July 18, 2014

Mr. Errin Briggs  
Santa Barbara County  
Planning and Development Department  
Energy Division  
123 E. Anapamu Street  
Santa Barbara, California 93101

By Electronic Delivery:  
ebriggs@co.santa-barbara.ca.us

Santa Barbara County Planning Commission  
c/o Planning and Development Department  
123 E. Anapamu Street  
Santa Barbara, California 93101

By Electronic Delivery:  
Dvillalo@co.santa-barbara.ca.us

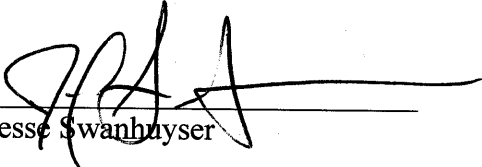
RE: Comment to Lompoc/Sepulveda Stone MND 12NGD-00000-00022

*Mr. Briggs and Honorable Members of the Planning Commission:*

Please accept the attached comments and exhibits to the above-described Mitigated Negative Declaration for the Lompoc/Sepulveda Stone Project, MND 12NGD-00000-00022.

Please contact me at 682-0585 if you have any questions in this regard.

Sincerely,

  
\_\_\_\_\_  
Jesse Swanhuysen

Comment to the Proposed Final Mitigated Negative Declaration  
Prepared for the Lompoc Mine/Sepulveda Mine

1. An EIR is required

CEQA establishes a low threshold for the preparation of an EIR, “which reflects a preference for resolving doubts in favor of environmental review.” *Santa Teresa Citizen Action Group v. City of San Jose* (2003) 114 Cal. App. 4th 689, 703. Accordingly, the lead agency must prepare an EIR, as opposed to a Negative Declaration or Mitigated Negative Declaration, whenever substantial evidence in the record supports a “fair argument” that the Project may have significant environmental impacts, even where substantial evidence also supports the opposite conclusion. *No Oil Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68, 75. “[S]ubstantial evidence includes fact, a reasonable assumption predicated upon fact<sup>1</sup>, or expert opinion supported by fact.” Guidelines § 12080 (e)(1). Under the fair argument standard, a court determines if there is any substantial evidence in the record that supports a fair argument that the project may have a significant effect on the environment. If the court finds any substantial evidence, even if there is evidence in the record that would support the agency’s determination that no significant impact will occur, a negative declaration cannot be upheld. See *Architectural Heritage Ass’n v County of Monterey* (2004) 122 Cal. App. 4th 1095; *Ocean View Estates Homeowners Ass’n v Montecito Water Dist.* (2004) 116 Cal. App. 4th 396, 399. Here, substantial evidence in the record supports a fair argument that the Project may have significant environmental impacts; as such, the County must prepare an EIR in order to comply with CEQA.

**2. MND Is Materially Flawed**

a. The Project Description is Incomplete

In order for an environmental review document to adequately evaluate the environmental ramifications of a project, it must first provide a comprehensive description of the project itself. An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR. *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus*

---

<sup>1</sup> If an agency has failed to study an area of possible environmental impact, a reviewing court may find the existence of a fair argument of significant impact based on the limited facts in the record that might otherwise not be sufficient to support a fair argument of a significant impact. Deficiencies the record will enlarge the scope of the fair argument by lending plausibility to a wider range of inferences concerning possible adverse impacts. *Majia v City of Los Angeles* (2005) 130 CA4th 322 (personal observations of traffic conditions by residents, coupled with absence of careful consideration of traffic issues by agency planners were sufficient to support a fair argument of significant traffic impacts).

(1994) 27 Cal. App. 4th 713, 730 (quoting *County of Inyo v. City of Los Angeles* (1977) 71 Cal. App. 3d 185, 193). As a result, courts have found that even if an EIR is adequate in all other respects, the use of a truncated project concept violates CEQA and mandates the conclusion that the lead agency did not proceed in the manner required by law. *San Joaquin Raptor*, 27 Cal. App. 4th at 729-30. Furthermore, “[a]n accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity.” *Id.* at 730 (citation omitted). Thus, an inaccurate or incomplete project description renders the analysis of significant environmental impacts inherently unreliable.

An accurate description of the project is one that considers the whole project, instead of narrowly focusing on a particular segment. CEQA “mandates ‘that environmental considerations do not become submerged by chopping a large project into many little ones—each with a . . . potential impact on the environment—which cumulatively may have disastrous consequences.’” *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1452; *see also McQueen v. Board of Directors* (1988) 202 Cal.App.3d 1136, 1146 (open space district “impermissibly divided the project into segments which evade CEQA review”); *Plan for Arcadia, Inc. v. Arcadia City Council* (1974) 42 Cal.App.3d 712, 726 (shopping center and parking lot projects are related and should be regarded as a single project for CEQA purposes).

Here, the Project Description notes that there was recent and illegal expansion at Site 1B. But the treatment of this unpermitted expansion is insufficient under CEQA. First, there is a substantial discrepancy in the record with respect to how large an area the expansion extends. The MND suggests that the unpermitted expansion was only 3.5 acres. MND p. 2. However, the biological report prepared by Mr. Storrer suggests that the expansion was 6 acres. Second, Storrer report indicates that the expanded area is *well within 100 feet* of the top of the west bank of the Santa Ynez River. MND Attachment E. The unpermitted expansion extends into an “Ecological Community of Particular Value” as defined in the Conservation Element of the Santa Barbara County’ Comprehensive Plan and violated the requirement for a 100-foot “buffer” or setback from “streams and rivers in rural areas into order to preserve and maintain ecological function.” Comprehensive Plan, Conservation Element p. 140-141. This expanded are requires remediation as a result of this intrusion into sensitive riparian habitat. Failure to include a description of the remediation work that is required makes the Project Description insufficient under CEQA.

b. Legally Insufficient Environmental Setting and Baseline

The County’s environmental review process is biased by the MND’s systematic deference to the applicant’s claim of vested rights allowing the expansion of extraction into undeveloped areas based on unsupported and legally unjustifiable conclusions. An “EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This

environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.” CEQA Guidelines § 15125(a), *Cal. Code Regs., tit. 14, § 15125, subd. (a)*. (hereafter “Guidelines”) “Although this regulation refers specifically to the analysis in an EIR, the agency determination it addresses—whether an impact is significant—also arises at the *initial study* phase of CEQA review, when the agency must decide whether there are any significant environmental effects requiring assessment in an EIR.” *Communities for a Better Environment v South Coast Air Quality Management District* (2010) 48 Cal. 4th 310, fn. 5 at 321, (emphasis added). Here, it appears that staff, relying on faulty assumptions about the character of rights held by the applicant addressed later in this letter, did not properly define the baseline of the project at the initial study phase. This led staff to erroneously conclude that an MND would be legally sufficient in this case. The DMND includes an overly narrow project description. The failure of the MND to properly describe the project, and to establish a baseline against which subsequent “significance” determinations are judged, undermines the legal validity of the process and adequacy of the DMND.

Importantly, any vested rights that the applicant may ultimately be determined to possess does not shield a lead agency from its core mandate—to inform decision makers and the public of the project's significant environmental impacts—under CEQA. *β 21100*.

The California Supreme Court recently addressed this very issue. The Court held that the physical conditions *actually existing at the time* should have been used as the baseline, rather than the maximum permitted capacity, in determining whether there would be a significant effect on the environment within the meaning of *Pub. Resources Code, §§ 21068, 21100, subd. (a), 21151, subd. (a)*. The baseline for CEQA analysis must be the *existing physical conditions* in the affected area, that is, the real conditions on the ground, rather than some “hypothetical” level of development or activity that could be undertaken pursuant to a permit or vested rights. *CEB at 319*. In that case, the Court ruled that the lead agency, the South Coast Air Quality Management District, violated CEQA when, in describing the project, it used a baseline level of activity that was equal to the maximum level of activity that had vested to ConocoPhillips under an existing permit. *CEB at 326-7*. The Court unequivocally states that a level of activity that is permitted or vested cannot establish a baseline for CEQA review.

The facts surrounding the Sepulveda mine are virtually identical to those in *CEB*, and the County similarly misunderstands the relationship between vested rights and CEQA review.<sup>2</sup> The MND

---

<sup>2</sup> Although there is no existing permit as in *CEB*, vested rights serve as a legal proxy for a permit, making the two cases analogous in all material facts. The doctrine of vested rights as developed in land use law states that a property owner who, in good faith reliance on a government permit, has performed substantial work and incurred

improperly limited the scope of any impact analysis to exclude impacts from mining activity that *may be* permitted pursuant to the applicant's vested rights and which *might be* undertaken at some time as late as 2060 (i.e. the maximum level of mining). This resulted in any and all impact significance determinations being measured unjustifiably against a "hypothetical" level of mining activity, rather the "existing physical conditions" as required by CEQA and the California Supreme Court.

While it may be that ultimately, the County may not restrict mining activity for which the applicant has a vested right, the environmental review document must be revised to include an appropriate baseline from which the rest of an environmental analysis proceeds. The court specifically addresses this question. "That a particular mitigation measure may be infeasible or precluded, as by the applicant's vested rights, is not a justification for not performing environmental review; it does not excuse the agency from following the dictates of CEQA and realistically analyzing the project's effects. After proper analysis, the agency might decide to disapprove the project because of its immitigable adverse effects or to approve it with a finding of overriding considerations. (*β 21081, subd. (b).*) [A]n applicant's vested rights might constitute a valid reason to forgo particular mitigation measures, but are not an excuse to avoid realistic CEQA analysis." *CEB at 325*. In short, an approach using hypothetical allowable conditions as the baseline results in illusory comparisons that can only mislead decision makers and the public as to the reality of the impacts and subvert full consideration of the actual environmental impacts, a result at direct odds with the fundamental goals of CEQA. See CEQA Guidelines § 15002: General Concepts.

### c. Specific Impact Areas

"CEQA establishes a duty for public agencies to avoid or minimize environmental" harms, and the statute "was intended to be interpreted in such a manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language. § 15003 (f); 15021 (a); *Friends of Mammoth v Board of Supervisors*, 8 Cal. 3d 247. Relatedly, the lead agency has a legal responsibility to assess not only "direct physical changes, [but also] reasonably foreseeable indirect physical changes [...] which may be cause by the project." Importantly, agency's decision about what standards to use in classifying environmental impacts as significant or insignificant involves considerations different from whether particular environmental impacts might result from the project. 14 Cal Code Regs § 15064(b). Here, the

---

substantial liabilities has a vested right to complete construction under the permit and to use the premises as the permit allows. Thus, a permittee who has expended substantial sums under a permit cannot be deprived by a subsequent zoning ordinance of the right to complete construction and to use the premises as authorized by the permit.

dearth of biological data<sup>3</sup> and a confusion of the standards related to classifying impacts vs. whether particular impacts might result, creates a material flaw in the MND.

i. The Project Will Adversely Impact the Endangered Steelhead

The CEQA Guidelines Appendix G demands that the lead agency “consider the whole action involved in the project, including off-site, indirect, cumulative and construction impacts.” Further, “[t]he lead agency **shall find** that a project may have a significant effect on the environment [**and must prepare an EIR**] where the project has the **potential to...reduce the number or restrict the range of [an] endangered [...] animal.**” County CEQA Thresholds (at p. 25 quoting Guidelines § 15065) Lead agencies must place “[s]pecial emphasis [...] on environmental resources that are rare or unique to that region and would be affected by the project.” Guidelines § 15125 (c).

The proposed Project site is located adjacent to the Santa Ynez River, immediately north of the inlet of Salsipuedes Creek, both of which are known habitat for the southern California steelhead. The MND acknowledges that the Project will “alter drainage patterns on the site and the rate of surface runoff to Salsipuedes Creek and ultimately to the Santa Ynez River.” MND p. 46. On August 18, 1997 the Southern California Steelhead was listed as an endangered species under the Endangered Species Act (ESA) by the Fish and Wildlife Service (FWS). 62 FR 43937. Further, on September 2, 2005, the Santa Ynez Hydrological Unit, and specifically the Salsipuedes sub-area, was designated as critical habitat for the population. 70 CFR 52580. Later, on January 5, 2006 the National Marine Fisheries Service (NMFS) issued a final rule in which it further refined the special status of southern California steelhead by designating the Santa Ynez River population a Distinct Population Unit (DSU).

Despite the Guideline’s clear requirement that special emphasis be placed on species like the southern California steelhead, the MND makes no effort to characterize or analyze the potential impacts to this endangered species. In fact, the species is only mentioned once in the entire MND as part of sentence that concludes that there is unlikely to be any impact to the species. Given the emphasis and care that the Guidelines set, and the fundamental goal of CEQA as an informational statute designed to support informed decision making, the failure of the MND to address the potential for impact to steelhead, let alone the failure to analyze the potential for a significant impact, is a material flaw.

---

<sup>3</sup> The original biological opinion on which the MND basis significance determinations were produced in 1991 and consists of 2 pages. The “updated” biological opinion does not include a site visit to or any analysis of resources at Site 1A.

The MND similarly omits discussion of the illegal and unpermitted destruction of riparian habitat on the banks of the Santa Ynez River, including the disposal of waste materials into waters of the United States, subject to regulation under § 404 of the Clean Water Act and necessitating a Streambed Alteration Agreement from the California Department of Fish and Wildlife under Fish and Game Code §1600, et seq. Exhibit ?? (photo from Storres report). The debris introduced into the riverbed will increase siltation and contaminate the gravel beds on which steelhead rely for spawning, thereby reducing the likelihood of species survival.

The Santa Ynez River has historically meandered from bank to bank, and although the live section in this reach is currently on the other side of the riverbed, it has, can, and will again flow on the south side, where the applicant has illegally destroyed habitat and disposed of mining waste on the banks and in the bed of the Santa Ynez River.

- ii. The patently inadequate biological surveys creates a strong inference of inadequacy

In the County Thresholds includes numerous requires on the lead agency in undertaking biological surveys against which significant impacts can be analyzed. The Thresholds direct staff is directed to prepare, or direct the preparation of, an analysis of species, the area of which the species are found within and in the vicinity of the project, an evaluation of the quality or sensitivity of that habitat, and to place an emphasis on special status species and the habitat on which they rely. Thresholds p. 27. As noted earlier, an evolutionarily distinct population of endangered steelhead trout are known to inhabit the Santa Ynez River and Salisipuedes Creek. In direct conflict with these requirements, the entirety of the biological assessment consists of two site visits, one conducted in 1991 (prior to the listing of the southern steelhead) of both sites, and the second in 2014 of only 6 acres of unpermitted expansion area at Site 1B. The sum total of analysis is four pages of text, and four pictures which depict substantial violations of County policy and undeniable negative impacts to sensitive riparian habitats. Further, the lead agency is supposed to consider the timing of any biological assessments and whether any impacts of the Project might occur at a “critical time in the life cycle of an important plant or animal.” Id. p. 28. However, the first study was conducted during the “the fall of 1991 before significant rain” and would therefore have been unable to assess a critical time for the migration and spawning periods for southern steelhead. MND p. 6. Lastly, the “updated” biological assessment only visited Site 1A. This despite the fact that 26 years had passed since any assessment was completed of Site 1A where a majority of the most disruptive Project activities take place.

- iii. Destruction of Terrestrial Habitat

The environmental review document must systematically identify the types and amounts of native habitat that will be impacted by the project. Here, there are oak woodlands and maritime

sage scrub among other important habitat types. As noted previously, unpermitted activities at Site 1B have destroyed between 3.5 and 6 acres of sage scrub. Further, the expansion of mining activities at Site 1A appears to expand into areas of Oak Woodlands. Exhibit 2 Expanded View of The Expansion Area.

The project generates considerable amounts of fine dust that impacts the biological resources of the Santa Ynez River. Steelhead spawning beds can be buried in silt. Excessive dust can compromise native plant regeneration and change soil chemistry and water chemistry. The impacts of dust must be considered as a cumulative impact, since the Celite mine also generates substantial amounts of dust that contributes to a significant impact to all downwind dust-sensitive uses and activities, including grapes and other agricultural products.

## **2. Fair Argument of Significant Visual Impacts**

The MND's treatment of visual resources is cursory and inadequate. The rich character and high sensitivity of existing visual resources must inform the lead agency's analysis of visual impacts. The project sites are both located in the rural area just outside, and the south-east, of the City of Lompoc. The setting at Site 1A is characterized by rolling hills, farm land and the riparian corridors of both the Santa Ynez River and Salsipuedes Creek. Further, Site 1A is located along heavily traveled transit corridors, including State Highway Route 1, Santa Rosa Road and Highway 246, as well as country road and local trails. As acknowledged in the MND, the County Thresholds and the General Plan classify these areas as "especially important." MND p. 22.

The Project will have a substantial adverse impact on these high quality and highly sensitive visual resources. Visual impacts include the expansion of mining and reclamation activities into previously undisturbed viewsheds, long-term placement of "surge piles" extending above ridgelines into the sky (see Exhibit 1, Photo of Reclaimed Area View From Highway 1; and Exhibit 3, Photo of View From Sweeney Road) and extensive grading operations as part of an "ongoing" reclamation that will persist for the next 47 years. Further, the mining and reclamation activity will scar the landscape until complete remediation is complete, leaving large off-white patches which catch the eye against the existing green and brown landscape. Additionally, past reclamation efforts have failed to achieve a contour that resembles the natural landscape's rolling hills. Exhibit 1, Photo of Reclaimed Area View From Highway 1. The expansion of mining activity into adjacent, un-mined hillsides will result in additional "re-contouring" that is likely to exacerbate this significant visual impact.

The County Thresholds state that where a project will "remove significant amounts of



vegetation, substantially alter the natural character of the landscape, or involve extensive grading visible from public areas,” the Project may have a significant impact. The Project will unquestionably have all three impacts. Current mining activity, as well as the planned expanded mining activity necessarily remove significant amount of vegetation. Similarly, the natural character of the landscape in the area of planned expansion will be substantially altered. The visual landscape from Sweeney Road, for example, is currently rolling hills and views of riparian corridors. If permitted to proceed, the hillside visible from Sweeney Road (see Exhibit 3, Photo of View From Sweeney Road). will be substantially altered to include look more like the view from Exhibit 1. The nature and extent of grading that will be visible from numerous public viewing areas exceeds the County’s Threshold and qualifies as a significant impacts. The reclamation activity involves grading as many as 90 acres over the course of 46 years all of which is visible from various public areas. The impact of these activities, as specifically described in the County Thresholds constitute substantial evidence supporting a fair argument that the aesthetic impacts of the Project will be significant and adverse.

a. *The Project will cause significant impacts to Views from Highway 1, Santa Rosa Road, Sweeney Road, Highway 246 and Lompoc*

“The opinions of area residents, if based on direct observation, may be relevant as to aesthetic impact and may constitute substantial evidence in support of a fair argument; no special expertise is required on this topic.” *Pocket Protectors, supra*, 124 Cal. App. 4<sup>th</sup> 903, 937, citing *Ocean View Estates, supra*, 116 Cal.App.4th at p. 402.

CEQA Guidelines demonstrate that where a project will “change the visual character of an area” or result in an “aesthetically offensive site open to public view,” significant impacts are likely. And as noted above, the County has placed special importance on visual recourses near travel corridors. Further, the State has designated State Route 1 as a “State Scenic Highway,” which should serve to heighten any analysis of aesthetic impacts to this special area. Unfortunately, the MND suggests that the Project will have a “less than significant” impact as measured by the CEQA Guidelines. We vehemently disagree and believe the record clearly indicates that the impacts will be significant. And under *Pocket Protectors*, the evidence that the Project may adversely change the visual character of the area is substantial and therefore an EIR is required.

Here, as discussed above, the expansion of mining operations to the North and East toward Sweeney Road, as well as associated reclamation activities, will in unequivocally “change the visual character” of the area as seen from Highway 1, Santa Rosa Road and Sweeney Road. Exhibit 1, Photo of Reclaimed Area View From Highway 1; and Exhibit 3, Photo of View from

Sweeney Road. The current visual character is pleasant rolling hills dotted with cows and calves. The planned expansion of mining and subsequent reclamation would alter the visual character by introducing bright white scars, heavy machinery and hauling equipment, and ultimately is highly unlikely to resemble its natural when operation/reclamation conclude in 46 years (see discussion below regarding success of past reclamation efforts).

The record shows that the Project will result in an aesthetically offensive site visible by the public from numerous locations. Jason Nasato observes on the record, “scars and tailings [are] visible going north on Highway 1, [and are] now visible from Highway 246 going west, near Mission Gate Rd and all the way into Lompoc.” In fact, the MND acknowledges that Site 1A is visible for 1.5 miles of Santa Rosa Road, as well as 1.5 miles of Highway 1. And the MND makes a reference to the fact that as the visual impacts decrease from these two roadways over time, the visual impacts will increase from Sweeney Road. It is clear from comments by Mr. Nasato that he finds the mining and reclamation activity “aesthetically offensive.” Photos recently taken by Pierre LaBarge show the distinction between the largely pastoral landscape of rolling hills, agricultural land and riparian corridors from Sweeney Road and the Winery, as compared to the un-natural and industrial landscape that remains when reclamation is complete. Exhibit 4, Photo from Winery, vs. Exhibit 1, Photo of Reclaimed Area View From Highway 1. Mr. LaBarge is extremely concerned with the visual impact of the Project because he, like others in the community, finds the mining scars offensive and economically damaging. Further, it would be entirely illogical to conclude that there are not numerous other community members share in their sentiments. Under *Pocket Protectors* and *Ocean View Estates*, public opinions constitute substantial evidence supporting a fair argument that the Project may have a significant aesthetic impact.

Lastly, Mr. Nasato notes that the project is also visible from the City Lompoc. As discussed below, no mention is made in the MND of the visual impact from the Lompoc.

Importantly, under CEQA, there is a “rebuttable presumption [that] any substantial, negative aesthetic effect is to be considered a significant environmental impact for CEQA purposes.” *Quail Botanical*, 29 Cal.App.4th at 1604. Further “it is inherent in the meaning of the word ‘aesthetic’ that any substantial, negative effect of a project on view and other features of beauty could constitute a ‘significant’ environmental impact under CEQA.” *Id.*

Further, the MND grossly mischaracterizes the past success of reclamation efforts and thereby unjustifiably understates the visual impacts of reclamation activity. The MND claims that the applicants has “demonstrate[d] a very high success rate[s] of achieving dense growth on properly

recontoured terrain.” DMND p. 15. Jason Nasato observes that in his “36 years of commuting [by Site 1A, he has] never seen any attempt to fill in scars, recontour, reseed or replace top soil. Sepulveda Building Materials needs to be held responsible for the devastation and disregard of this area.” Exhibit 1, Photo of Reclaimed Area View From Highway 1. Mr. Nasato goes on in another e-mail on the record to say “[t]he landscape is a travesty viewable to everyone traveling on Highway 1 and now sadly Highway 246.” Further, pictures recently taken by Pierre LaBarge IV (Exhibit 1) demonstrate that any claim by applicant or County that past reclamation efforts have achieved a contour that resembles the natural terrain or successfully revegetated mining sites is patently false. The MND’s conclusions with respect to are entirely contrary to the evidence on record and is an example of the type of issue addressed by CEQA Guidelines 15064(f)(5) regarding “evidence that is clearly inaccurate or erroneous.”

In summary, the aesthetic of the rolling hills, riparian corridors and agricultural lands that currently characterize the view from numerous public viewing areas will be substantially and adversely changed as a result of expanded mining and reclamation activity that would take place between today and 2060 if this Project were permitted to proceed under the current MND.

*b. The Project will cause significant Visual Impacts from Highway 246 and Lompoc*

The MND fails to disclose that the Project is visible from Highway 246, from the City of Lompoc and from Sweeney Road.<sup>4</sup> The existing view is, as discussed previously, the area is largely natural and significant not only to the citizens Lompoc, but also to individual who travel along Highway 246 and who live on Sweeney Road. The area is characterized by green or brown rolling hills and agricultural lands. The Project will introduce an unappealing and industrial element into the pastore setting that currently exists in the proposed expansion area of Site 1A. Under the County thresholds, this qualifies as a significant impact and requires the preparation of an EIR.

The MND entirely omits any consideration of project impacts from these Key Observation Points (KOPs). Importantly, if an agency has failed to study an area of possible environmental impact, a reviewing court may find the existence of a fair argument of significant impact based on the limited facts in the record that might otherwise not be sufficient to support a fair argument of a significant impact. Deficiencies the record will enlarge the scope of the fair argument by lending plausibility to a wider range of inferences concerning possible adverse impacts. *Majia v*

---

<sup>4</sup> Although the MND technically discloses the fact that the project will become increasingly visible from Sweeney Road as the mining activity moves North and East, the disclosure does not quantify or assess the nature and magnitude of the impact.

*City of Los Angeles* (2005) 130 CA4th 322 (personal observations of traffic conditions by residents, coupled with absence of careful consideration of traffic issues by agency planners were sufficient to support a fair argument of significant traffic impacts). Here, as in *Majia*, the County has failed to disclose or analyze impacts to aesthetic/visual resources from three KOPs. And as in *Majia*, this failure enlarges the scope of the fair argument standard. Further, the record contains evidence presented by various local citizens as to the impact of the Project on views from these areas. Mr. Nasato, who expresses his concerns to the County in numerous emails, specifically raises the visual impacts of the Project from both Highway 246 and from the City of Lompoc. Importantly, Mr. Nasato raised these concerns prior to the finalization of the draft MND. However, the final proposed MND ignores this request that the County address visual impacts from these vantage points. Further, Mr. LaBarge also has requested that the County assess the visual impacts of the Project from Sweeney Road. Exhibit 5, Letter to Planning Commission from Pierre LeBarge. Given the evidence on record about concerns of various members of the public about the impact of the Project from these KOPs, there is irrefutably substantial evidence of a fair argument on the record that the Project will have a substantial impact on the environment. This flaw alone requires, at the absolute least, that the MND be revised to disclose and analyze these visual impacts and re-circulated for a new comment period.

*c. The Project's Conflicts with Applicable Visual Policies is a Significant Impact*

Conflicts with applicable policies designed at least in part to mitigate or avoid significant environmental impacts are considered significant impacts under CEQA, requiring the preparation of an EIR. CEQA Guidelines Appendix G (IX)(b); *Pocket Protectors v. City of Sacramento* (2004) 124 Cal. App. 4<sup>th</sup> 903, 934, 936. (EIR required where petitioner demonstrated substantial evidence supporting a fair argument that the Project conflicted with land use policy that was “adopted for the purpose of avoiding or mitigation an environmental effect”).

The Scenic Highway Element of the Santa Barbara County Comprehensive Plan is intended to assist in preserving and enhancing the most scenic areas along state highways within the County. From its intersection with U.S. Highway 101 at Las Cruces, north to the southerly city limits of Lompoc, SR-1 has been designated a Scenic Highway under this element. A specific goal of the Scenic Highway Element is to “[e]nhance and preserve the valuable scenic resources located along roadways within the County.” Regrettably, the MND makes no mention of this aspect of County policy, and fails to undertake an analysis of if and how the Project might be consistent with it. As noted above, the mine is currently, and the Project would under the proposal, be a visual blight from Highway one.

### 3. Fair Argument of Policy Inconsistencies

The Conservation Element of the General Plan outlines the general County policy with respect to mineral resource extraction impacts to natural, cultural and visual resources. “The benefits of new or continued operations in certain areas may not outweigh the damage directly and indirectly attributable to mineral extraction. Consequently, it is recommended that mineral resource activities be permitted in the County *only if* adverse impacts would not result, if flooding and erosion problems would not be increased, and if adopted federal and state air and water quality standards would not be violated.” Conservation Element p. 18. The overriding policy of the County, therefore, is to take an exacting look at “new or continued operations” and permit those activities “only if” they can be accomplished consistent with the various specific policies laid out in the General Plan.

Conflicts with applicable policies designed at least in part to mitigate or avoid significant environmental impacts are considered significant impacts under CEQA, requiring the preparation of an EIR. CEQA Guidelines Appendix G (IX)(b); *Pocket Protectors v. City of Sacramento* (2004) 124 Cal. App. 4<sup>th</sup> 903, 934, 936. (EIR required where petitioner demonstrated substantial evidence supporting a fair argument that the Project conflicted with a land use policy that was “adopted for the purpose of avoiding or mitigation an environmental effect”). The Project conflicts with a variety of County and local policies, and under *Pocket Protectors*, each of these conflicts constitute a significant impact that requires the preparation of an EIR.

#### a. Watershed Policy Inconsistency

The first policy conflict exists with the “Hillside and Watershed Protection Policy 1,” which was adopted, in part, to protect hillsides and watersheds from changes in topography that might affect the watershed. The first sentence of the policy read: “Plans for development *shall* minimize cut and fill operations” (italics not in original). Although the Staff Report acknowledges that there is prima facie evidence of policy conflict in stating that the project will require “extensive excavation” (i.e. cut) and “large amounts of fill” (p. 10), the Staff Report then concludes that “[t]here are no feasible alternatives to the proposed excavation/filling that would reduce the amount of earthwork required to implement the Reclamation Plan.” The history of the site discloses that there are a number of methods that have been used to extract product from this site, and some entail more site modification than others. The EIR needs to examine alternative extraction methods that have been practiced on the site and are otherwise available as a result of evolving technology to ensure that the approved Project is consistent with this policy.

The second policy conflict exists with the “Hillside and Watershed Protection Policy 2.” The

policy was adopted for the purpose of protecting the local watersheds, and requires that “natural features, landforms, and native vegetation, such as trees, shall be preserved to the maximum extent feasible.”

1. Landforms

First, as described above, the dominant “natural feature” at Site 1A is the rolling hills, a prized characteristic in this part of the North County. However, the mining and reclamation activity will revise and alter this critical feature. The previously reclaimed area at Site 1A is completely transformed from rolling hills into a series of terraces or steps. See Exhibit 1, Photo of Reclaimed Area, viewed from Highway 1. Prior reclamation actions have unnecessarily converted the natural landforms and the proposed Reclamation Plan will have the same effect.

2. Oak Trees

The MND informs readers “Oak woodland communities exist [...] in the general area *but not in the mining areas.*” MND p. 6. And the Staff Report indicates “no trees would be removed as part of the project.” Staff Report p. 11. However, maps of the expansion area at Site 1A include numerous oak trees within the boundaries of areas that will be mined. Exhibit 2, expanded photo of Expansion area habitat. Given these clear examples of an inconsistency between the Project and Policy 2, *Pocket Protectors* applies and the Project requires an EIR.

b. *Historical and Archaeological Policy Inconsistency Requires Preparation of EIR*

The Project conflicts with “Historical and Archaeological Sites Policy 1.” Policy 1 mandates that “[a]ll available measures, including purchase, tax relief, purchase of development rights, etc., shall be explored to avoid development on significant historic, prehistoric, archaeological, and other classes of cultural sites.” Staff Report p. 13. The MND states that an “Archaeologist indicated that there is a high probability that undetected artifacts will be encountered during mining [including] as part of an intact cultural site.” MND p. 31. The policy is designed to mandate that all measures be explored to avoid what appears to be a likely outcome of the Project—development on significant cultural sites. As noted earlier, the applicant has not demonstrated a vested right to the expansion area, and as such, has no entitlement to mine in the expanded area without discretionary County approval, including the requirement of consistency with this policy. Neither the Staff Report, nor the MND make any mention of whether such measures as tax relief or project denial were considered as part of the Project.

Regrettably, no mention or consistency analysis is made in the Staff Report or the MND of a policy that is undeniably applicable to the Project. That policy is the “Historical and

Archaeological Sites Policy 2,” which states that “[w]hen developments are proposed for parcels where archaeological or other cultural sites are located, project design shall be required which avoids impacts to such cultural sites if possible.” Here is openly acknowledged that not only is there a habitation site (CA-SBA-2066) at the Project, but that past mining activity actually destroyed a majority of this rare archaeological site. MND p. 31. Again, the MND states that an “Archaeologist indicated that there is a *high probability that undetected artifacts will be encountered during mining* [including] as part of an intact cultural site.” MND p. 31. Despite the “high probability” that mining activities will impact cultural sites, there is no reference to or discussion of whether the Project is consistent with a policy that was adopted to avoid and mitigate exactly these impacts. *Pocket Protectors* again applies, and the County must prepare an EIR.

c. *Lompoc Area Policy Inconsistency*

The Project is also inconsistent with various policies specific to the Lompoc area. The first addressed hillside development, and states that “[t]he natural backdrop of the area should be preserved through strict controls on hillside development. Hillside grading over 30 percent on residential and commercial land should be severely restricted.” The mining activities are a commercial operation and hence the project site is de facto commercial land. As outlined previously, the “natural backdrop” of the area has been substantially altered by the mining and reclamation activities, which will only be exacerbated and extended if the Project is permitted to proceed. These concerns were underscored in the comments of Jason Nasato attached to the proposed Final NMD.<sup>5</sup>

Another Lompoc specific policy “[e]ncourage[s] the preservation of significant archeological resources and sites reflecting the County’s Indian [...] cultural historical heritage now in both public and private ownerships.” As noted above, the record makes that there is a “high probability that undetected artifacts will be encountered during mining [including] as part of an intact cultural site.” MND p. 31. The fact that no measures have been implemented to limit, reduce or restrict the potential for this significant impact is in clear conflict with a policy adopted to encourage such measures.

---

<sup>5</sup> P&D Staff inform commenters that the many photos submitted by Mr. Nasato as part of his comments to a prior version of the MND have been lost. (email, Errin Briggs, 7/18/14). It is unclear what efforts, if any, have been made to either find at the County the photos submitted the record of proceedings in this case, or to secure replacement copies. Mr. Nasato submitted his comments and photos through an email address and presumably could be recontacted by county staff to replace the files they have lost.

A third Lompoc specific policy with which the Project conflicts states that “[d]evelopment, construction, and roads cut in steep areas should be *limited to* ensure safety and *protection of* the terrain, as well as environmental and scenic values.” As Exhibit 2 demonstrates, current roads have been cut in such a way as to affect scenic values. Further, it can be reasonably inferred, that a substantial increase in the number/length of road that would be required to service the expanded mining area at Site 1A will increase erosion, siltation of nearby rivers/streams and is, therefore, not consistent with protection of scenic and environmental values.

#### **4. Other Issues Requiring Revision and/or Recirculation of MND**

##### **a. Hazardous Materials Discussion**

The MND fails to contain an inventory of equipment on the site, identify typical annual hours of operation or fuel consumption, or provide meaningful information allowing assessment of project air quality impacts. Perhaps this was based on the assumption that the existence of vested rights obviated this analysis, but as noted above, that legal conclusion is incorrect. The environmental review document must disclose all potentially significant project impacts. This includes quantifying emissions of ozone precursors, hazardous air pollutants including diesel exhaust, fine particulate and dust.

##### **b. Water Supply and Consumption Discussion**

The MND omits any discussion of water supply or consumption. Continuous dust suppression activities and the reclamation process (principally re-vegetation) logically will require substantial quantities of water. The MND provide no information or analysis regarding where this water will be acquired, and how *existing* drought conditions affect surrounding groundwater sources.



## EXHIBITS

Exhibit 1, Photo of Reclaimed Area View From Highway 1.

Exhibit 2, Expanded View of the Expansion Area.

Exhibit 3, Photo of View From Sweeney Road.

Exhibit 4, Photo of View from Winery.

Exhibit 5, Letter to Planning Commission From Pierre LaBarge IV.









July 18, 2014

Mr. Errin Briggs  
Santa Barbara County  
Planning and Development Department  
123 E. Anapamu Street  
Santa Barbara, California 93101

RE: Comment to Sepulveda Stone MND 12NGD-00000-00022

Mr. Briggs:

I own property at 2380 Sweeney Road. I was recently informed, for the first time, that the County was circulating an environmental review document for the Sepulveda Stone Expansion Project. I can see the project site from my property and believe there will be direct visual impacts upon my property. A number of my neighbors are similarly situated – not having received notice and being impacted.

The residential properties on Sweeney Road affected by the mining expansion have been sited to enjoy their views mostly to the south and west overlooking the beautiful rolling hills leading to the Santa Ynez River. The expansion is directly visible from my property and nearby homes, and will introduce an aesthetically offensive element to our views and the views from Sweeney Road and other public areas on the north side of the Santa Ynez River.

Currently, the Sepulveda mining site and area that has been disturbed by its activities is not visible from our property, nearby homes, nor from many parts of Sweeney Road. The steep cliffs leading to the Santa Ynez River provide a year-long green backdrop covered with native chaparral, brush and trees. Directly above these cliffs are gently rolling hills that give a real sense of open space. Their beauty changes with the seasons from bright green to yellow to brown and back to green again. I've had visitors at the winery from Japan to Sweden remark at how beautiful and pastoral the view is across the river. I've even had photographers want to set up cameras to capture images throughout the year showing the beauty of the changing colors in the open space. In short, the current visual landscape is natural and of extremely high quality, and is significant to myself and most residents of Sweeney Road. I can't imagine these images being lost.

The mining expansion will cause, for the first time, scarring of the vegetation and disturbance of soils in our viewshed. This will cause a distinct and severe change to the visual character of the area that will catch the viewer's eye as they gaze toward the otherwise unscarred landscape. The introduction of unnatural development will cause a loss of the beautiful, open space character of our views over the Santa Ynez River. It will significantly impact what these properties are purchased and cherished for -- the pastoral views and rural, natural landscape. The topography will forever be changed as the reclamation plan provides a stark contrast serially modifying what was formed by nature as the excavation (and restoration) traverses the visible slopes in the expansion area. The drive north on Highway 1 into Lompoc shows the failure of past reclamation efforts and its failure to return the landscape back its original form. These properties will be forever impacted and the valuable open, natural views in the area will never be the same.

The potential degradation of the visual and aesthetic qualities of this area is particularly significant since the project's viewshed serves as the "entrance" to the western end of the Sta. Rita Hills. The Sta. Rita

Hills is world-renowned for its vineyards, wineries and beautiful rolling hills. The project's scarring of the hills degrades the "curb appeal" of the area in the eyes of visitors on wine tours and others enjoying the splendors of Santa Rosa and Sweeney Roads. This area is frequented by recreational bicyclists, motorcyclists and motorists.

It is my opinion that any further degradation of the aesthetic qualities due to the project's visual impacts would cause a significant impact to important visual resources as viewed from Santa Rosa Road, from Highway 1 and from Sweeney Road. Persons that will be impacted include residents and visitors, and area businesses.

The wine industry accounts for nearly \$1 billion in economic effect for the county. The Lompoc area wine economy is growing, and it is important to protect the quality of this area to sustain that prosperity. The project will cause adverse impacts that conflict with the image and messaging that has allowed Lompoc's wine economy to expand.

It is my firm belief that this project has the potential to cause a number of significant impacts, however this letter focuses in visual resources. An EIR must be prepared.

Sincerely,

A handwritten signature in black ink, appearing to read "P. LaBarge IV". The signature is fluid and cursive, with a large initial "P" and a long, sweeping underline.

Pierre LaBarge IV

# LAW OFFICE OF MARC CHYTILO, APC

---

ENVIRONMENTAL LAW

January 9, 2017

Santa Barbara County Planning Commission  
c/o Planning and Development Department  
123 E. Anapamu Street  
Santa Barbara, California 93101

By Electronic Delivery:  
Dvillalo@co.santa-barbara.ca.us

RE: Comment to Lompoc Stone Vesting Determination Request  
16DET-00000-00004  
Item # 2, January 11, 2017

*Honorable Members of the Planning Commission:*

This office represents Pierre LaBarge IV, owner of a winery located at 2380 Sweeney Road, immediately across the Santa Ynez River from the Lompoc Stone Mine.

We objected in 2014 to the then-proposed CUP and Reclamation Plan revision and the associated mitigated negative declaration (MND) that was almost presented to the Planning Commission in July 2014. Many of those objections, concerns, and evidence of a potentially significant impact necessitating an environmental impact report (EIR) under the California Environmental Quality Act (CEQA) remain applicable to any expanded mining operations and to the continued use of the unpermitted processing area immediately above the Santa Ynez River.

Since 2014, the applicant has shifted tactics to try to avoid County's CUP jurisdiction under Ordinance 871 and application of the Surface Mining and Reclamation Act (SMARA) by unsupported claims of vested rights to expand mining operations into a portion of the lands that were the subject of the 2014 CUP proceeding. As described herein, the Applicant has failed to meet its evidentiary burden of showing by objective manifestations prior to 1958 establishing a clear intent to mine the 28.5 acres in question.

Additionally, the project is not eligible for consideration until the long-running zoning violation from the unpermitted more than doubling of the processing area is addressed and resolved. Moreover, the Planning Commission could not consider anything but denial of the project due to the absence of a CEQA document, which as previously determined, must be an EIR. Finally, the project entails numerous General Plan and Williamson Act/Uniform Rules inconsistencies that must be reconciled and resolved before the project could ever proceed.

**As a result, we support and endorse Staff's recommended denial of the request.**

MARC CHYTILO  
P.O. Box 92233 • Santa Barbara, California 93190  
Phone: (805) 682-0585 • Fax: (805) 682-2379  
Email: Marc@lomcsb.com



1. The Vesting Determination Should be Denied

a. Applicable Law – Vested Rights and the Diminishing Asset Doctrine

i. SMARA

Under SMARA, a mine owner only possesses a vested right to expand a pre-1975 non-conforming surface mining operation under the “diminishing asset” doctrine if the claimant produces evidence that they clearly intended to expand into such areas prior to adoption of SMARA. SMARA Regulations define the required showing for claimants seeking determinations of vested rights to expanded mining areas:

**As to any land for which Claimant asserts a vested right for expansion of operations, Claimant shall produce evidence demonstrating that the Claimant clearly intended to expand into such areas. Such evidence shall be measured by objective manifestations, and not subjective intent at the time of passage of the law, or laws, affecting Claimant’s right to continue surface mining operations without a permit.**

(SMARA Regulations, §3963).

“Under that [diminishing asset] doctrine, a vested right to surface mine into an expanded area requires the mining owner to show (1) **part of the same area was being surface mined when the land use law became effective**, and (2) **the area the owner desires to surface mine was clearly intended to be mined when the land use law became effective, as measured by objective manifestations and not by subjective intent**.” *Hansen Brothers Enterprises, Inc. v. Board of Supervisors* (1996) 12 Cal. 4th 533, 555-556 (emphasis added).

As evaluated in the Staff Report, the cursory materials offered by the applicant fail utterly to meet this burden of proof as to the 28.5 acres of land at issue.

ii. COUNTY ORDINANCE 871’s CUP REQUIREMENT

The general rule of law is that land use activities that become non-conforming as a result of new laws (such as the 1958 Ordinance 871 and the subsequent zoning ordinance) may be allowed to continue operations for a time that provides for their eventual elimination. SBMC § 35.101.010.B. Nonconforming uses are not to be enlarged, extended or expanded. The applicant must produce evidence of use from prior to 1958, when County Ordinance 871 first required a CUP for mining operations.

Mining operations may seek to employ the “diminishing asset” doctrine to the County’s CUP requirement, but face the same evidentiary burden as under SMARA, discussed above.

b. There Is No Competent Evidence of Vested Rights under the Diminishing Asset Doctrine, to otherwise

The Staff Report ably reviews the applicant's evidence, and concludes there is insufficient evidence to support findings of a vested right under the diminishing right doctrine.

Mr. Lee's declaration fails to establish anything of relevance to the intention of the operation, except that he recalls "the first rock that [he] split" as a youngster in 1956 at his father's quarrying operation. There is no other reference to the nature of the operation, whether he or his father contemplated or took steps to plan expansions of the operation into the 28.5 acres in question. Much of his testimony is unintelligible due to a lack of a foundation. For example, he references loading stone into a truck when he was 14-15, but fails to identify his birthday, much less the specific area that was worked. He does not specify whether his father worked full time for years at the site, or only sporadically. Mr. Lee's testimony is somewhat contradicted by Frank Acin, who testifies that Buster Lee "came in and worked the site" during the 1971-1972 period to 1974.

Frank Acin's 1990 declaration establishes that a succession of different "rock diggers" worked the site for short periods of time. Mr. Acin's written testimony establishes that there was no one owner, operator or other claimant during the period from 1971 to 1985 that had any intention to expand into the 28.5 acre area in question. Acin states Sepulveda came to the site in 1985, whereas Lee claims to have "started work" with Sepulveda in 1982 (without saying where) then he was "transferred" to run the Lompoc operation in 1984.

Since Sepulveda's first involvement with the site began in the 1980's (either 1985, 1984, or 1982), any intent it may claim to have had was after both the 1976 SMARA and the County's 1958 CUP requirement.

Larry Acin's 2007 letter further contradicts the others by stating Sepulveda "took over" in 1990. Since the Acin ownership began in 1971 and Sepulveda came in much later, any objective intentions they might claim to mine the 28.5 acres in question was too late to qualify under the diminishing assets doctrine.

Mr. Acin's letter lacks the dignity or decorum of a sworn statement, and is not as probative or credible as his father's sworn declaration.

In total, the supplied evidence fails to offer any objective manifestation of intent before 1958 (for Ordinance 871) or before 1976 (for SMARA) to expand into the 28.5 acre area in question, and the staff's recommendation must be upheld.

2. The Operator Must Remove or Obtain Permits for the Illegally Expanded Processing Area

The MND and prior Project Description disclosed that the Project's processing facility has illegally encroached into sensitive habitat on the banks of the Santa Ynez River and has discharged waste materials in sensitive riparian habitat and potentially into the Santa Ynez River without permits. The processing facility improperly expanded without authority into the setback zone above the banks of the Santa Ynez River.

The 2014 MND also acknowledged that a portion of a known, listed cultural site on the property was "destroyed by past mining activities" and that there is a "high probability that undetected artifacts will be encountered during [future] mining", but it is unknown if the locus of these resources coincides with the illegal processing area.

Currently, significant portions of the site are disturbed but neither experiencing active mining nor being reclaimed, with considerable adverse visual consequences. The current status of reclamation on this site should be investigated and compliance evaluated.

In light of these ongoing violations with significant environmental impacts, the County must commence enforcement of applicable authority to either secure proper permits or cease use of and commence a permitted restoration process to remediate for these illegal actions.

3. CEQA Applies to Anything Except Complete Denial

The technical comments submitted by this office to various aspects of the MND for the related project in 2014 established the need for an EIR. It is our opinion that the instant project also clearly has the potential for significant adverse impacts and an EIR must be prepared before the Planning Commission could take any affirmative action on the project.

Since the recommendation is to deny, no CEQA compliance is required, however should the Planning Commission consider any other action than immediate denial of the requested Vesting Determination, it must refrain from any further consideration until the environmental review document is prepared.

We therefore support staff's recommendations and urge the Planning Commission to deny the requested Vesting Determination and adopt the findings for denial.

\\


\\

\\

January 9, 2017

Page 5

Sincerely,



---

Marc Chytilo

CC: Client

Mr. Errin Briggs

[ebriggs@co.santa-barbara.ca.us](mailto:ebriggs@co.santa-barbara.ca.us)



Warning

As of: January 11, 2017 12:39 PM EST

## *No Toxic Air v. Santa Clara County*

Court of Appeal of California, Sixth Appellate District

July 28, 2016, Opinion Filed

H039547

### **Reporter**

2016 Cal. App. Unpub. LEXIS 5566 \*

NO TOXIC AIR, INC., Plaintiff and Appellant, v. SANTA CLARA COUNTY et al., Defendants and Respondents; LEHIGH SOUTHWEST CEMENT COMPANY et al., Real Parties in Interest and Respondents.

**Notice:** NOT TO BE PUBLISHED IN OFFICIAL REPORTS. [CALIFORNIA RULES OF COURT, RULE 8.1115\(a\)](#), PROHIBITS COURTS AND PARTIES FROM CITING OR RELYING ON OPINIONS NOT CERTIFIED FOR PUBLICATION OR ORDERED PUBLISHED, EXCEPT AS SPECIFIED BY [RULE 8.1115\(b\)](#). THIS OPINION HAS NOT BEEN CERTIFIED FOR PUBLICATION OR ORDERED PUBLISHED FOR THE PURPOSES OF [RULE 8.1115](#).

**Prior History:** [\*1] Santa Clara County Super. Ct. No. 1-11-CV201900.

**Judges:** RUSHING, P. J.; PREMO, J., ELIA, J. concurred.

**Opinion by:** RUSHING, P. J.

### **Opinion**

---

The Permanent Quarry (Quarry) is a 3,510 acre surface mining operation producing limestone and aggregate for the manufacture of cement, and is located in an unincorporated area of Santa Clara

County. The Quarry has been in existence since 1903, and is currently owned by Lehigh Southwest Cement Company and Hanson Permanente Cement (collectively "Lehigh").

At issue in this case, is the Santa Clara County Board of Supervisors' (County) 2011 resolution finding that the Quarry's surface mining operations are a legal nonconforming use.

No Toxic Air, Inc. (No Toxic Air) is a non-profit organization that represents residents of Santa Clara County. No Toxic Air filed a petition for peremptory writ of mandate challenging the County's March 1, 2011 resolution granting Lehigh legal nonconforming use status.

The trial court denied No Toxic Air's writ petition, affirming the County's resolution. No Toxic Air appeals the denial of the petition, arguing that the trial court erred in using the substantial evidence standard to review the County's findings. In addition, No Toxic Air asserts that the [\*2] County's determination that the Quarry's surface mining rights were vested, and therefore eligible for legal nonconforming use status, was not supported by the evidence in the administrative record.<sup>1</sup>

---

<sup>1</sup>Midpeninsula Regional open Space District, City of Los Altos, Town of Los Altos Hills, Town of Portola Valley, City of Sunnyvale, Committee for Green Foothills, and Breathe California filed an application to submit briefs as amici curiae in support of No Toxic Air. Lehigh requested leave to file an objection to the application. We granted Lehigh leave to file the objection, and deferred