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May 10, 2021

Mr. Robert Salisbury
County of Santa Clara
Department of Planning and Development
70 W. Hedding Street, East Wing, 7th Floor
San Jose, CA 95110

RE: Supplemental Environmental Impact Report for the Permanente Creek Restoration Project, Comments on Notice of Preparation

Dear Mr. Salisbury,

Please take into account the following comments from the Sierra Club Loma Prieta Chapter regarding your Notice of Preparation (NOP) of a Supplemental Environmental Impact Report (SEIR) to the 2012 Lehigh Permanente Quarry Reclamation Plan Amendment EIR for the Permanente Creek Restoration Project (“PCR” or “project”).

Project Description:

First, the Project Description at NOP pp. 2-3 should be revised to state that the provisions of the 2016 Amended Consent Decree (Decree), particularly paragraphs 33 through 42, reflect mandatory, minimum restoration duties imposed on Lehigh and are therefore necessary minimum elements of any “Project Description” applicable to the SEIR. For example, where paragraph 35 of the Decree that states Lehigh “shall layback and re-grade the north overburden slope to provide a stable slope no steeper than 2:1 (50% grade) and shall remove sufficient material to move the north toe of the slope at least 25 feet northward from its current location and elevation,” that statement is a minimum requirement, not simply a recommendation. ^[1]To the extent any such requirement in the Decree does not obtain legally necessary agency approval(s) after issuance of the SEIR the provisions of Decree paragraph 52 shall apply.

Second, for each activity in the Project Description, please describe in detail and by reach which actions and impacts are covered in the 2012 Lehigh Permanente Quarry Reclamation Plan Amendment EIR and identify sections and page numbers for easy reference. Likewise, please identify what new impacts not covered will be evaluated in this SEIR and reference the sections where this analysis is presented.

Mitigation:

The creek restoration objectives and activities described in the Decree are themselves mitigation requirements to resolve decades of Lehigh's Clean Water Act violations. Applicable measures to mitigate the impacts of the mitigation itself should be viewed in light of the ultimate restorative objective. That said, adequate mitigation for restoration project impacts is important, especially related to impacts on species and habitats. Trees form the backbone of what is left of the riparian habitat in this section of Permanente Creek and should only be removed if necessary, to secure the long-term restoration of the creek. To the extent native trees are removed, they should be replaced with 15-gallon trees at appropriate ratios, rather than 24-inch box trees. 15-gallon trees adapt better in the long run because they have not lived for as long in a box in the nursery environment.

Alternatives:

Alternatives to the restoration requirements in the Decree that entail additional costs are still enforceable as restoration requirements under the Decree if they fit within the cost escalation values in Decree paragraph 49. Moreover, nothing in the Decree limits any agency from imposing additional restoration requirements.

Please contact us with any additional design information about the preferred project and any proposed alternatives as soon as possible so we can respond as needed in relation to the requirements of the Decree.

We continue to urge the Department of Planning and Development to pursue this restoration project with all deliberate speed. Although the Decree was initially signed over eight years ago, not one shovel of mining waste has been removed from the creek and impacts of Lehigh's illegal disposal activities persist unabated.

Thank you for your consideration of these comments.

Sincerely,



Katja Irvin, AICP
Water Committee Co-Chair
Sierra Club Loma Prieta Chapter

cc: Reed Zars, Attorney at Law
James Eggers, Executive Director, Sierra Club, Loma Prieta Chapter