



Midpeninsula Regional
Open Space District

R-21-93
Meeting 21-19
June 23, 2021

AGENDA ITEM 10

AGENDA ITEM

Santa Clara County Ridgeline Easement on Lehigh Quarry Property near Rancho San Antonio Open Space Preserve

GENERAL MANAGER'S RECOMMENDATION(S)

Direct the General Manager and General Counsel to enter into discussions with Santa Clara County staff regarding a grant of enforcement rights of the Ridgeline Easement held by the County on Lehigh Quarry lands and to return to the Midpeninsula Regional Open Space District Board of Directors at a future date with a finalized proposal.

SUMMARY

Santa Clara County (County) holds a Ridgeline Easement over portions of Lehigh Quarry (Lehigh), just south of Rancho San Antonio Open Space Preserve. This ridgeline protects the viewshed, reduces dust from quarry operations from exiting the quarry, and establishes a buffer between the quarry and adjacent natural preserve to protect local wildlife. The specific provisions and terms of the proposed grant of enforcement to protect the Ridgeline Easement require further analysis by County and Midpeninsula Regional Open Space District (District) staff. A grant of enforcement provisions to the District would allow the District to protect the important open space and environmental values held in the Ridgeline Easement.

BACKGROUND

In 1972, the Santa Clara County Board of Supervisors and Kaiser Cement & Gypsum Corporation (Kaiser), Lehigh's predecessor, agreed to protect the ridgeline between the quarry and what is now Rancho San Antonio Open Space Preserve (Rancho Preserve) by entering to a Ridgeline Easement that permanently prevents mining, quarrying, or other activities from lowering the ridgeline (see **Attachment 1**). A large landslide in 1987 caused Kaiser Cement to request an emergency grading authorization from the County to alter portions of the ridgeline subject to the protections of the easement, which the County granted. The approximate location of the easement relative to the current quarry rim and ridgeline is shown in **Attachment 2**.

A decade beforehand in 1977, the District lost a 20-acre corner of the Rancho Preserve just east of the Ridgeline Easement when a quarry-induced landslide on Lehigh property undermined the ridgeline. Following years of negotiation, the District exchanged the 20 acres of undermined land for 107-acres of Lehigh property in 2006 to improve public access rights and protect the remaining viewshed.

In 2014, the District secured additional land rights from Lehigh as part of a litigation settlement agreement related to their 2012 Reclamation Plan. These additional land rights restrict the height of the East Materials Storage Area, secure public trail easements, and secure rights of first offers/refusals. Lehigh also committed to attending District Board of Directors meetings annually.

DISCUSSION

At this time, the District has an opportunity to partner with the County in enforcing the Ridgeline Easement to ensure the ongoing protection of the ridgeline. Granting the enforcement provisions of the Ridgeline Easement to the District would support the County Board of Supervisors' and Kaiser's original promise to the public to protect the ridgeline. If Rancho Preserve and the District had been established prior to 1972, the District could have been a logical partner to hold the Ridgeline Easement and protect the open space values therein. The terms of a potential agreement require further elaboration and detailed discussions with County staff before the item could be recommended by District staff for approval by the District's Board of Directors (Board). The County Board of Supervisors placed an agenda item on their June 22nd meeting. If approved it directs County staff to discuss a potential grant of enforcement rights of the ridgeline easement with the District and, should an agreement be reached, return to the Board of Supervisors at their August 17, 2021 meeting.

Recently, in 2019, Lehigh Quarry proposed a Reclamation Plan amendment that increases mining in several areas of the property. The proposed Reclamation Plan environmental review process has not started. The District submitted a letter to Lehigh Quarry in March 2021 on the proposed Reclamation Plan amendment which communicates the District's concerns on a number of critical issues. (**Attachment 3**).

FISCAL IMPACT

Discussions with County staff concerning the potential grant of the enforcement provisions of the Ridgeline Easement has no immediate fiscal impact. The terms of the grant, including financial terms, have not been developed to date and would be part of a subsequent recommendation. Should an agreement be approved by the District and the County, enforcement of the Ridgeline Easement would require funds on an as-needed basis.

BOARD AND COMMITTEE REVIEW

The Lehigh Ad Hoc Committee recommends that the General Manager and General Counsel enter into discussions with County staff on granting the enforcement provisions of the Ridgeline Easement at its May 24, 2021 meeting.

PUBLIC NOTICE

Public notice was provided as required by the Brown Act.

CEQA COMPLIANCE

Discussions with County staff are not a project subject to the California Environmental Quality Act.

NEXT STEPS

If the Board approves the General Manager's recommendation, District staff will meet with County staff to discuss terms of the grant and return to the Board with a subsequent recommendation, tentatively scheduled for late August, 2021.

Attachments

1. Ridgeline Easement and Attachments
2. Map of Ridgeline Easement
3. Letter from the District to Lehigh Quarry on 2019 Reclamation plan amendment

Responsible Department Head:
Ana Ruiz, General Manager

Prepared by:
Aaron Hébert, Senior Resource Management Specialist

Graphics prepared by:
Fran Lopez Tapia, GIS Technician

4363258

BOARD OF SUPERVISORS

NO TAX DUE

NO FEE

BOOK 0052 PAGE 589

RIDGELINE PROTECTION EASEMENT DEED

This is a Ridgeline Protection Easement Deed made by KAISER CEMENT & GYPSUM CORPORATION, as Grantor, to the COUNTY OF SANTA CLARA, a political subdivision of the State of California, as Grantee.

WHEREAS, the Grantor is the owner in fee of that certain real property known as Permanente Cement Plant, situated in the County of Santa Clara, State of California; and

WHEREAS, the Grantor is conducting mining operations and other industrial use upon the property; and

WHEREAS, the site of the mining operations is in the western foothills of the County of Santa Clara and portions of that site have natural beauty and scenic attributes which compliment the surrounding lands; and

WHEREAS, Grantor, as an industrial operator within the County of Santa Clara, desires to make its operations at the Permanente Cement Plant as compatible with the natural environment and general welfare of the community as is reasonably practicable; and

WHEREAS, the ridge commonly known as "Permanente Ridge" provides a scenic backdrop to the residents in the northern portion of the County of Santa Clara and a natural screen to a portion of the industrial operations taking place on the site of the Permanente Cement Plant; and

4. Xerox of record of occurrence in 1973

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WHEREAS, the Grantor is willing to grant to the County of Santa Clara an easement protecting and maintaining the said ridge at specified elevations as herein provided;

NOW, THEREFORE, and in consideration of the premises, the Grantor grants and conveys to the County of Santa Clara a ridge-line protection easement in that certain real property of Grantor known as "Permanente Cement Plant," situate in the County of Santa Clara, State of California, and more particularly described in the following referenced deeds in the Official Records of the Recorder of the County of Santa Clara, and depicted as the area outlined in red on the USGS map attached as Exhibit "A" hereto:

<u>Book</u>	<u>Page</u>
945	17
945	98
945	99
1046	265
1090	212
1106	15
1103	591
1153	10
1242	221
1329	183
3510	223
5254	518
6830	732
7787	163
7787	164
8122	556
8757	470

and along that certain line shown in red and marked "Finished Permanente Ridge As Seen From Los Altos" on the map attached as Exhibit "B" hereto, of the nature and character and to the extent hereinafter expressed, which estate, interest and easement will result from the restrictions hereby imposed upon the use of said property by said Grantor, and to that end and for the purpose of

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accomplishing the intent of the parties hereto, said Grantor covenants on behalf of itself, its successors and assigns with the said Grantee, its successors and assigns, to do and refrain from doing severally and collectively upon the Grantor's said property the various acts hereinafter mentioned.

Grantor reserves the right to make full use of said real property and ridgeline subject to the provisions of this ridgeline protection easement for all purposes which do not interfere with, impair, destroy or detract from Grantee's rights hereunder.

The restrictions hereby imposed upon the use of said property of the Grantor and the acts which said Grantor shall refrain from doing upon their said property in connection therewith are as follows:

1. Grantor shall not lower the ridgeline described in Exhibit "B" for mining, quarrying or other purposes, below the sea level elevations along that certain line labeled "Proposed Future Ridgeline" on the profile map attached hereto as Exhibit "C"; nor will Grantor mine, quarry or otherwise excavate for minerals or mineral materials in the area shown as the "northeast slope" on Exhibit "B".

2. Grantor shall install, within sixty (60) days of the execution of this document, durable, fixed monuments, contained in concrete, at the four stations indicated on the ridgeline profile map attached as Exhibit "C" hereto, indicating the elevations above sea level referred to in paragraph 1 above.

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3. Grantee shall have the right to enter upon the real property for the purpose of making inspections from time to time regarding the preservation of the ridgeline easement.

4. This easement is granted to the County of Santa Clara, its successors and assigns forever. This grant shall be binding upon the successors and assigns of the Grantor.

IN WITNESS WHEREOF, KAISER CEMENT & GYPSUM CORPORATION has caused its corporate name and seal to be affixed hereto and this instrument to be executed by its duly authorized officer.

DATED: August 18, 1972.

KAISER CEMENT & GYPSUM CORPORATION

By Peter S. Hass
Title President

4363258

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FILED FOR RECORD
AT REQUEST OF

BOARD OF SUPERVISORS

OCT 4 3 22 PM '72

OFFICIAL RECORDS
SANTA CLARA COUNTY
GEORGE E. FOWLES
RECORDER

NEM:mo
8/15/72

NO FEE

Book 0052 page 600

RESOLUTION OF ACCEPTANCE

WHEREAS, there has been tendered to the County of Santa Clara, State of California, a ridgeline protection easement deed from the Kaiser Cement and Gypsum Corporation.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of Santa Clara, State of California, that the interest in real property conveyed by the ridgeline protection easement deed made by Kaiser Cement and Gypsum Corporation, as grantor, to the County of Santa Clara, as grantee, is hereby accepted by the undersigned officer on behalf of the Board of Supervisors of the County of Santa Clara, State of California, and the grantee consents to the recordation thereof by its duly authorized officer.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Clara, State of California, on August 22, 1972 by the following vote:

AYES: Supervisors, MEHRKENS, ~~CALVO~~, QUINN, CALVO, CORTESE

NOES: Supervisors, NONE

ABSENT: Supervisors, Sanchez

Charles A. Quinn

Chairman, Board of Supervisors

ATTEST: DONALD M. RAINS
Clerk, Board of Supervisors

Donald M. Rains

The foregoing instrument is a
correct copy of the original

ATTEST: DONALD M. RAINS

Clerk of the Board

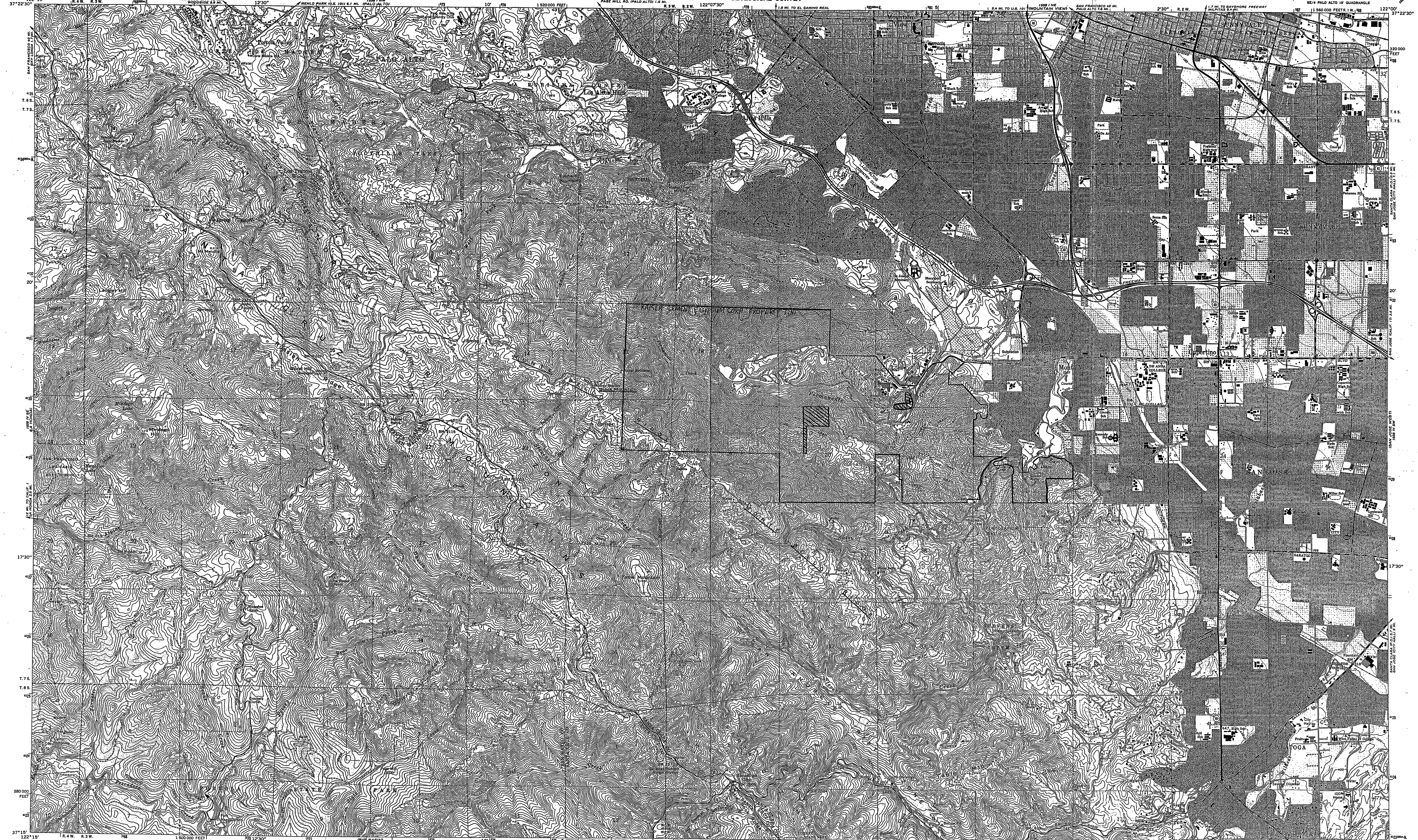
By *Jan L. Burnett* DEPUTY CLERK

AUG 22 1972

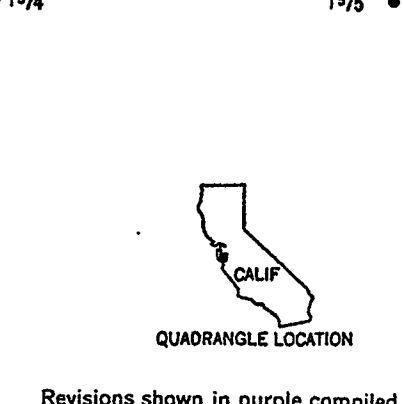
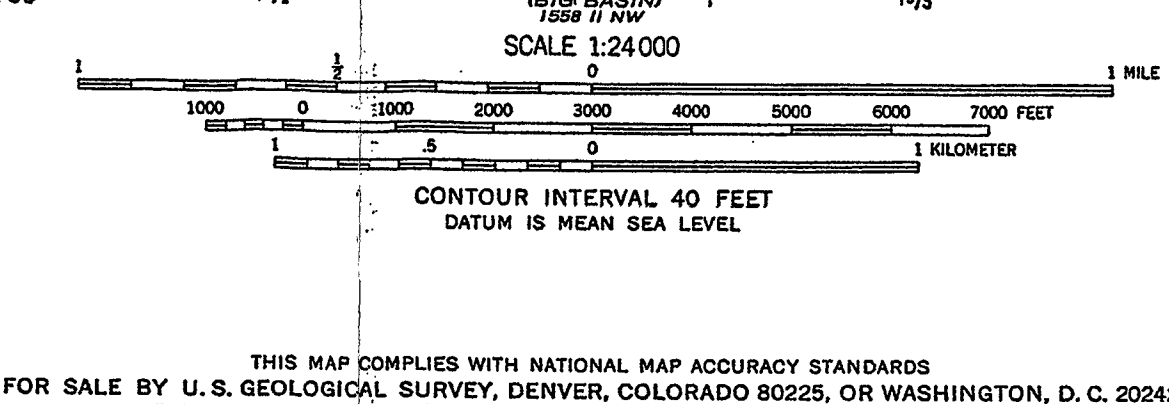
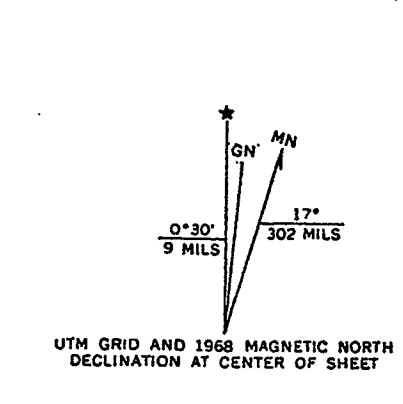
UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY

MINDEGO HILL QUADRANGLE
CALIFORNIA
7.5 MINUTE SERIES (TOPOGRAPHIC)

CUPERTINO QUADRANGLE
CALIFORNIA
7.5 MINUTE SERIES (TOPOGRAPHIC)

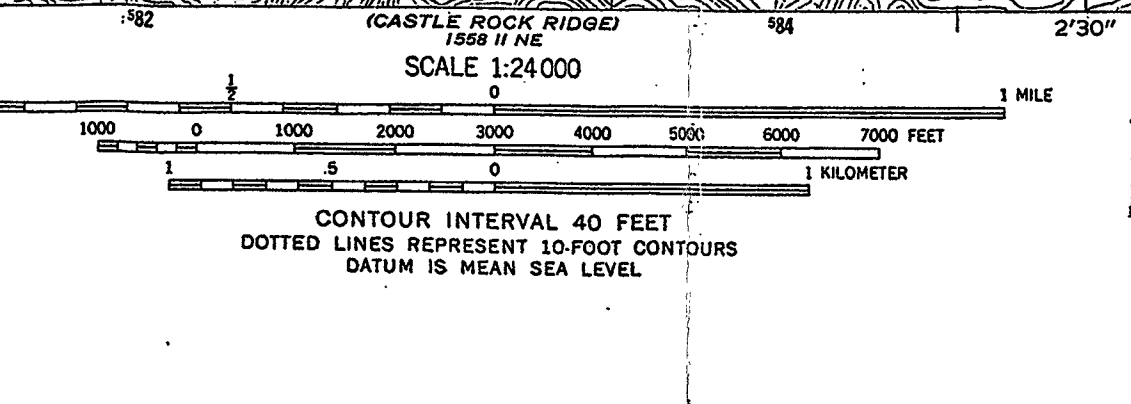
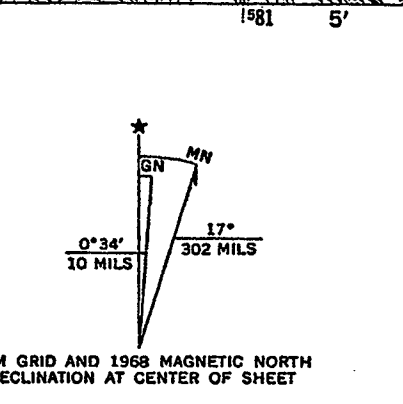


Mapped, edited, and published by the Geological Survey
Control by USGS, USC&GS, and USCE
Topography from aerial photographs by photogrammetric methods
Aerial photographs taken 1953. Field check 1955
Revised from aerial photographs taken 1960. Field check 1961
Polyconic projection. 1927 North American datum
10,000-foot grid based on California coordinate system, zone 3
1000-meter Universal Transverse Mercator grid ticks,
zone 10, shown in blue
Dashed land lines indicate approximate locations
Land lines unsurveyed in parts of T₆ 7 and BS-R 3 W.
Fine red dashed lines indicate selected fence lines



ROAD CLASSIFICATION
Unimproved dirt
State Route
Interstate Route
Heavy-duty
Light-duty
MINDEGO HILL, CALIF.
SW/4 PALO ALTO 14 QUADRANGLE
N3715-W12207.5/7.5
1961
REVISED 1968
AMS 1958 1 SW-SERIES V895

Mapped, edited, and published by the Geological Survey with
cooperation by the California Department of Water Resources
control by USGS, USC&GS, and USCE
Topography from aerial photographs by photogrammetric methods
and by planimetric surveys 1953. Aerial photographs taken 1948
based on aerial photographs taken 1950. Field check 1961
Polyconic projection. 1927 North American datum
10,000-foot grid based on California coordinate system, zone 3
1000-meter Universal Transverse Mercator grid ticks,
zone 10, shown in blue
Red tint indicates areas in which only landmark buildings are shown
Dashed land lines indicate approximate locations
Land lines unsurveyed in parts of T₆ 5--R 2 W
portion of this map lies within a subsidence area
Area covered by dashed light-blue pattern is subject to controlled inundation



ROAD CLASSIFICATION
Heavy-duty
Medium-duty
Unimproved dirt
Interstate Route
State Route
KCGC Property
Non KCGC Property
CUPERTINO CALIF.
SW/4 PALO ALTO 14 QUADRANGLE
N3715-W12207.5
1961
REVISED 1968
AMS 1958 1 SW-SERIES V895

FOR SALE BY U.S. GEOLOGICAL SURVEY, DENVER, COLORADO 80225 OR WASHINGTON, D.C. 20242
A FOLDER DESCRIBING TOPOGRAPHIC MAPS AND SYMBOLS IS AVAILABLE ON REQUEST

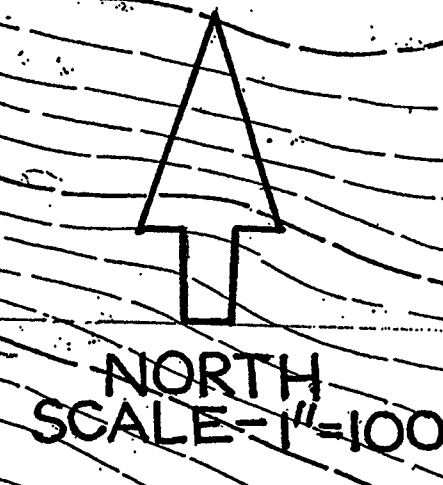
FOR SALE BY U.S. GEOLOGICAL SURVEY, DENVER, COLORADO 80225 OR WASHINGTON, D.C. 20242
A FOLDER DESCRIBING TOPOGRAPHIC MAPS AND SYMBOLS IS AVAILABLE ON REQUEST

Revisions shown in purple compiled from aerial photographs
taken 1968. This information not field checked
Purple tint indicates extension of urban areas

EXHIBIT A

FINISHED PERMANENTE RIDGE
AS SEEN FROM LOS ALTOS

25' PLANTING STRIP (RIDGE TOP)



NORTH
SCALE - 1" = 100'

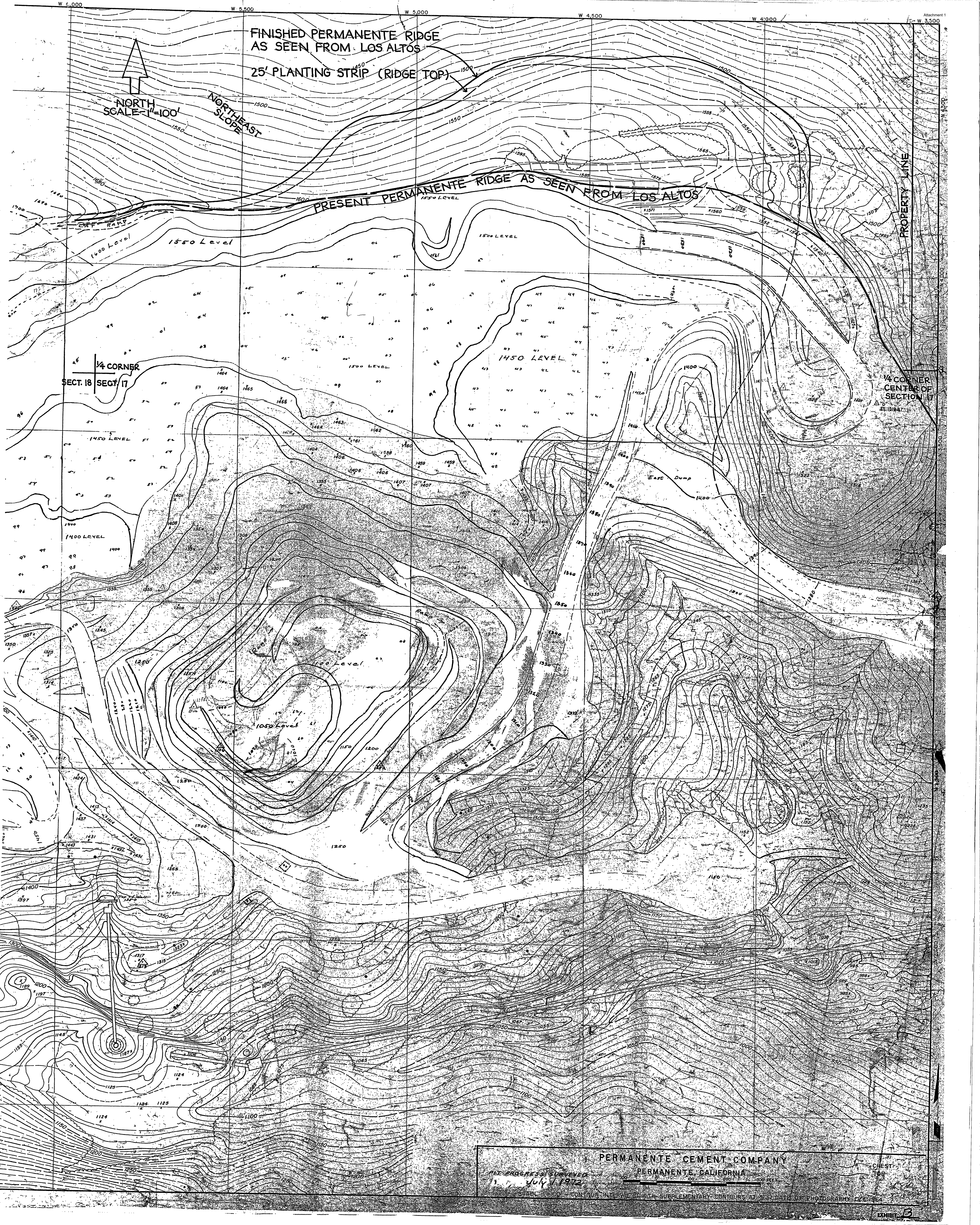
NORTHEAST
SLOPE

PRESENT PERMANENTE RIDGE AS SEEN FROM LOS ALTOS

PROPERTY LINE

1/4 CORNER
SECT. 18 SECT. 17

1/4 CORNER
CENTER OF
SECTION 17
ELEVATION



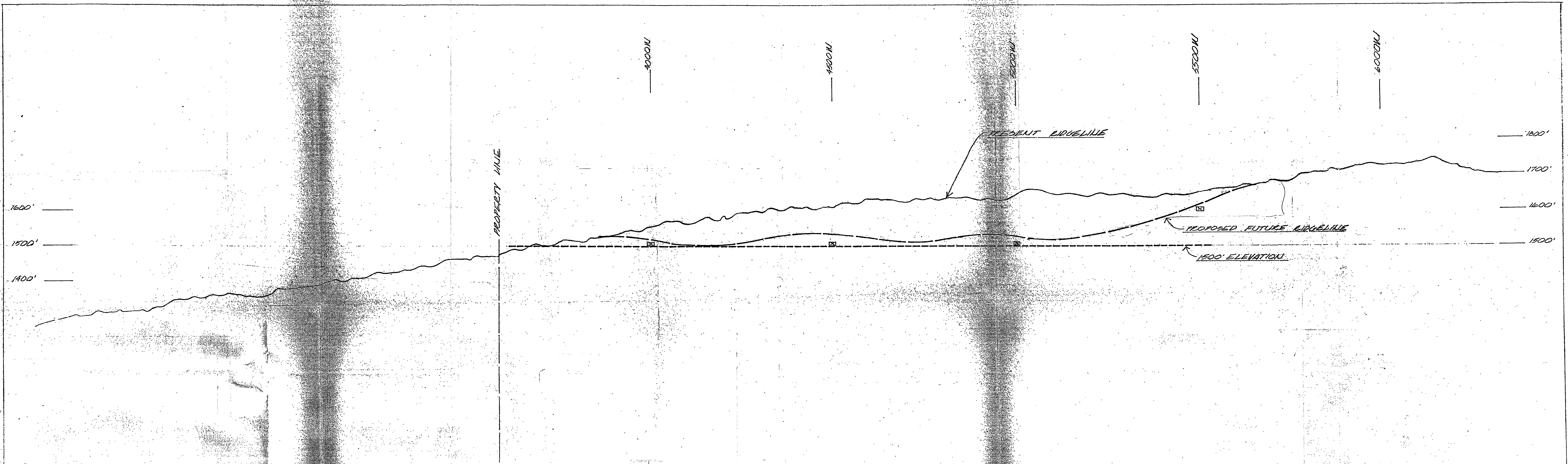
PERMANENTE CEMENT COMPANY
PERMANENTE, CALIFORNIA

PREPARED BY
July 1972

CHEST
108

SCALE: 1" = 100' CONTOUR INTERVAL: 5' WITH SUPPLEMENTARY CONTOURS AT 1' INTERVALS PHOTOGRAPHY: DEC 1964

EXHIBIT B



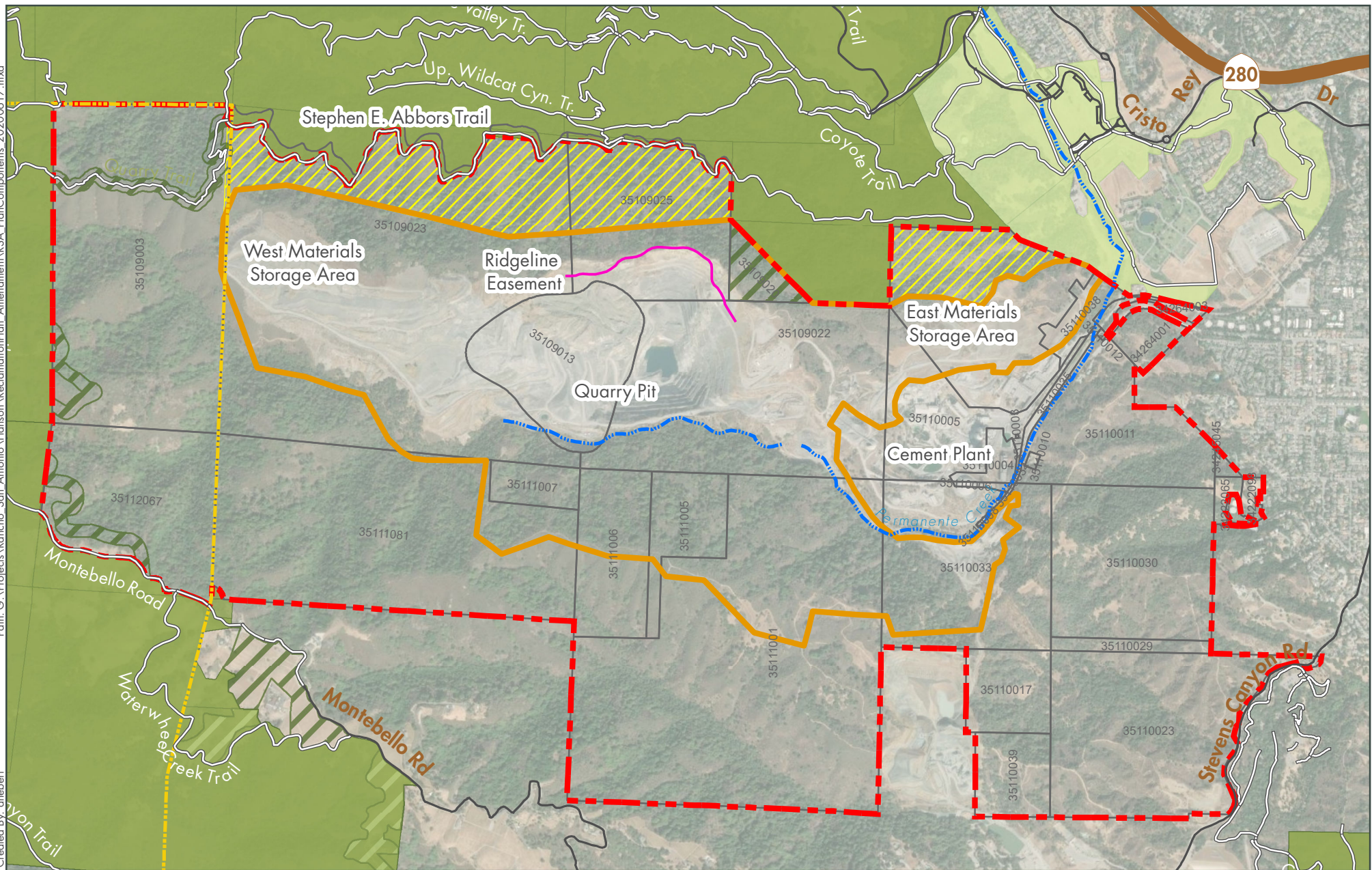
LOS ALTOS HILLS RIDGELINE SHOWING PERMANENT RIDGE

VIEWED FROM THE NORTH, LOOKING SOUTH

☒ ELEVATION MARKERS PLACED IN FIELD TO SHOW 1500' AND 1600' ELEVATION

SCALE: 1" = 100'

Path: G:\Projects\Rarcho - San Antonio\Hanson\ReclamationPlan_Amendment\RSA_PlanComponents_20200617.mxd
Created By: ahebert



Attachment 2: Ridgeline Easement and District Land Rights

- Approximate Ridgeline Easement Location (est. 1972)
- Reclamation Boundary
- Creek
- MROSD Easement Over Private Land
- MROSD Rights of First Refusal

Midpeninsula Regional
Open Space District
(Midpen)
6/7/2021



While the District strives to use the best available digital data, these data do not represent a legal survey and are merely a graphic illustration of geographic features.



Midpeninsula Regional
OpenSpace

Midpeninsula Regional Open Space District

GENERAL MANAGER
Ana M. Ruiz

BOARD OF DIRECTORS
Pete Siemens
Yoriko Kishimoto
Jed Cyr
Curt Riffle
Karen Holman
Larry Hassett
Zoe Kersteen-Tucker

March 23, 2021

Lehigh Southwest Cement Company
Attn: Erika Guerra, Environmental and Land Management Director
24001 Stevens Creek Blvd.
Cupertino, CA, 95014

Dear Ms. Guerra,

Thank you for providing tours to the Midpeninsula Regional Open Space District (Midpen) Board of Directors (Board) on the Lehigh Quarry (Quarry) property. We appreciated Lehigh's proactive outreach to discuss the proposed 2019 Reclamation Plan amendment. As you know, the Quarry is adjacent to our most popular preserve, Rancho San Antonio Open Space Preserve (Rancho Preserve) and Rancho San Antonio County Park (Rancho County Park) (collectively Rancho). Rancho County Park is managed by Midpen through a management agreement with Santa Clara County. Rancho receives nearly 800,000 visitors annually, a number that is likely over 1 Million since COVID-19. Along with being the most visited site, Rancho Preserve is also home to our Foothills Field Office, where approximately 30 employees report to work.

We expect a long future as neighbors and provide the following comments to uphold the public's interest and Midpen's mission to protect scenic and open space values in perpetuity. Midpen's mission is "to acquire and preserve a regional greenbelt of open space land in perpetuity, protect and restore the natural environment, and provide opportunities for ecologically sensitive public enjoyment and education." In June, Midpen's Board of Directors formed the Lehigh Quarry Review Ad Hoc committee to focus on the 2019 Reclamation Plan Amendment Application. We have identified a number of critical issues and concerns that we wish to share with you now so that Lehigh has the opportunity to respond and to modify the proposed 2019 Reclamation Plan as the environmental review process gets underway.

The proposed modification of the Ridgeline Easement and the ridgeline in general are concerning for several reasons. The scenic, aesthetic, and ecological impacts of the proposed project are significant and irreversible. County residents, the Board of Supervisors, and Kaiser sought to protect those values of the ridgeline when the easement was conveyed to the County in 1972. That easement was a promise to the public that the ridgeline would forever be protected and held intact, limiting the expansion of the Quarry in the highest reaches of the ridgeline and minimizing visual impacts as seen from surrounding communities. Since then, landslides caused by mining that was conducted under previous ownership have literally removed sections of the ridgeline that were supposed to be protected by the easement. The focus should be on protecting and restoring the ridgeline, rather than degrading it. The District strongly urges Lehigh to identify an alternative that does not further compromise the existing ridgeline, to strengthen the easement to protect the entire ridgeline, and to include enforcement mechanisms to ensure that the easement is not violated in the future. Midpen worked with Lehigh in the recent past to rectify the undermining and loss of a portion of Rancho Preserve, due to over steepened slopes

created by mining, through a land exchange and a modern easement that protects lands that are now under Lehigh ownership. Midpen supports a similar strengthening of the existing easement held by the County.

In addition, the two parcels owned by Lehigh within the jurisdiction of the City of Palo Alto are crucial to protecting habitat surrounding the Quarry operations. The West Materials Storage Area now extends right to the boundary of those parcels and has buried natural habitat under waste rock. Midpen and Lehigh have a history of working on public access in these parcels. Lehigh has granted a trail easement to Midpen for public access for the existing Quarry Trail and on another parcel for a future planned extension of the Black Mountain Trail. Now is the time to protect these parcels. Midpen requests that Lehigh, as part of its application process, grant through easement or ownership an assurance to the public that these lands will be protected in perpetuity.

The West Materials Storage Area (WMSA) continues to be a large environmental issue for Midpen and the surrounding communities. The aesthetic impacts from the materials are significant, as viewed from many Rancho trails and from the District's Fremont Older Open Space Preserve. The 2012 Reclamation Plan committed to the removal of the WMSA and Midpen wishes to hold Lehigh accountable to that commitment. The District's preferred alternative is for the material in the WMSA to be returned to the quarry pit, as approved in the 2012 Reclamation Plan. The District opposes importing fill from outside the Quarry.

The proposed revegetation plan is not adequate to leave the property in an ecologically functional condition that will support biodiversity and climate resiliency in the lands surrounding Rancho. The District desires to see a focus on habitat connectivity in the revegetation plan. We are developing a conceptual plan as a guide and will submit this shortly in hopes of encouraging Lehigh to be more proactive and thorough on this issue.

Fugitive dust is a chronic issue in the area and is likely worsened by the proposed 2019 Reclamation Plan. Quarry dust coats District vehicles and everything in Rancho with a scale only removable with a vinegar solution. The District has received complaints from visitors who are only parked for several hours in Rancho that their car was coated in this dust, requiring a car wash. The expansion of mining, as well as the truck traffic from the import of fill, represent a new and significant dust source, on top of the already ongoing sources of dust emissions. Lowering the ridgeline will only increase dust in Rancho. We understand the Bay Area Air Quality Management District has issued a permit regulating the dust emissions for the property. Adherence to the terms of the permit is important to Midpen. As a good neighbor, Midpen requests that Lehigh go beyond permit conditions and work to control dust entering Rancho. We would appreciate a more detailed discussion with Lehigh on this topic.

The protection of Permanente creek and its habitats is very important to Midpen's mission protecting the natural environment. This creek and many environmental issues extend beyond the Quarry boundary and affect surrounding habitats in Rancho and downstream. Natural waterways like this provide invaluable ecosystem benefits and connect our visitors with the natural environment. The full realization and completion of the Permanente Creek Restoration project that Lehigh has already committed to (but has not yet implemented) is of the utmost importance because it will provide important benefits to the impacted watershed. We recognize the work Lehigh has done to treat selenium containing waters and to manage the discharge with the Regional Water Quality Control Board. The potential for selenium discharge is an issue that may outlast the mining operations on the property. Continued vigilance by Lehigh and the Water


Board to monitor and manage water quality is critical to a healthy ecosystem and safe drinking water.

Midpen is also interested in public access to Rancho off of Stevens Creek Boulevard. Midpen requests that Lehigh work with Union Pacific to grant a trail easement either via Lehigh's existing easement or on a new right of way to either the county or Midpen to provide public access to Rancho from Stevens Creek Boulevard. This potential trail connection is highlighted in the *Joint Cities Coordinated Stevens Creek Trail Feasibility Study*.¹

Midpen acknowledges that Lehigh conducts important activities that support our local economy and avoids the impacts of importing cement. Minimizing the significant local environmental effects of mining while expanding the scope of activities on Lehigh's property is a challenge and we hope that Lehigh will work with us to ensure that its activities are done responsibly. Midpen's mission requires a vision into 'perpetuity' for recreation and ecosystem resilience in the Permanente Creek area. We appreciate Lehigh's consideration of these issues.

One of the commitments Lehigh and Midpen made to each other was to for Midpen to host Lehigh at a Midpen Board meeting for an annual presentation. The last annual update was in November 2018. The Board would welcome Lehigh making a presentation to the Board on current operations and the proposed reclamation plan amendments in the next few months.

Sincerely,



Ana Ruiz (Mar 13, 2020 3:41 PDT)

Ana Ruiz
General Manager

cc:

Kristina Loquist, Office of Supervisor S. Joseph Simitian, County of Santa Clara
 Rob Eastwood, Planning Manager, AICP, County of Santa Clara
 Robert Salisbury, Senior Planner, County of Santa Clara
 Elizabeth Pianca, Lead Deputy County Counsel, County of Santa Clara
 Kirsten Struve, Valley Water, Sr. Water Resources Specialist
 Lisa McCann, San Francisco Regional Water Quality Control Board
 Lindsay Whalin, Engineering Geologist, San Francisco Regional Water Quality Control Board
 Jim Baker, County Geologist, County of Santa Clara
 Roger Lee, Acting Public Works Director, City of Cupertino
 John Marvin, Air Quality Program Manager, Bay Area Air Quality Management District
 Ed Shikada, City Manager, City of Palo Alto
 Brad Kilger, Interim City Manager, City of Los Altos
 Alice Kaufman, Legislative Advocacy Director, Green Foothills
 Shani Kleinhaus, Environmental Advocate, Santa Clara Valley Audubon Society
 James Eggers, Chapter Director, Sierra Club Loma Prieta Chapter
 Midpeninsula Regional Open Space District Board of Directors

¹ Currently available at: <https://sunnyvale.ca.gov/business/projects/stevens.htm>