



# TEXAS LEHIGH CEMENT COMPANY LP

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June 6, 2018

Commissioners, City of Kyle Planning and Zoning Commission  
Kyle City Hall  
100 W. Center St.  
Kyle, Texas 78640

Re: Opposition to Re-zoning Request for Property at 3400 Block of Kyle Crossing  
Road: Zoning File Z-18-0026;  
Scheduled for Planning and Zoning Hearing on June 12, 2018

Dear Commissioners:

Texas Lehigh Cement Company LP is the owner of the quarry property ("the Quarry") that is located to the immediate west of the 14.36 acre tract on Kyle Crossing Road that is seeking re-zoning. The applicant seeks to re-zone the property to R-3-3 Multifamily zoning. Texas Lehigh opposes the re-zoning for the following reasons, and asks that the P&Z Commission recommend against it

Texas Lehigh has owned the Quarry since 1978, and during that period it has extracted high grade cement quality limestone for processing at the Texas Lehigh kiln in Buda at the north end of the Quarry. About 2/3 of the Quarry is in Kyle, and the other 1/3 is in Buda. The part of the Quarry that is in Kyle is about 532 acres. Texas Lehigh has evaluated the reserves in the Quarry and has estimated that its high grade limestone will provide a reliable source for cement for the remainder of this century and beyond.

In 2005, at a time when the Quarry was in the extra-territorial jurisdiction ("ETJ") of Kyle, Texas Lehigh and Kyle negotiated and entered into a Development and Annexation Agreement ("the Agreement"). The Agreement provided for annexation of 532 acres of the Quarry into Kyle, as well as provisions addressing permitted uses, approved extraction and blasting activities, compliance with state and federal regulations, and a detailed zoning ordinance to be adopted after voluntary annexation. The Agreement, with exhibits, ran to approximately 40 pages. After approval by the Kyle City Council it was recorded in the Official Public Records of Hays County.

The City of Kyle subsequently zoned the Quarry "CM", with conditional use permits and a conditional overlay, by adopting the draft zoning ordinance included in the Agreement. At that time, the "CM" district was the most use intensive zoning district under the Kyle City Code.

The primary purpose of the Agreement, other than annexation, was to provide long-term regulatory certainty and to ensure that development and operation of the Quarry and the interests of the City and the public were all protected. At the time the Agreement was adopted, most

properties adjoining the Quarry were undeveloped or were occupied by businesses involved in commercial activities or agriculture.

The Agreement also addressed setbacks along the outer boundaries of the Quarry, especially where the quarry was bounded by public roads. It set limits on noise and vibration from quarry activities, and included a commitment by the City not to apply “nuisance” measures against the Quarry so long as it was operated consistently with the Agreement.

At the request of the City, Texas Lehigh also dedicated property to the City for street right-of-way and drainage and utility easements along Kohler’s Crossing Road and Dry Hole Road. Texas Lehigh received no payment from the City for the donated land.

The purpose of explaining this background is to show that the City and the Company have long been aware that intense quarry activities, including mineral extraction and blasting, will be carried on at the Quarry for the foreseeable future. Under the Agreement, the current Quarry permits, and under vested rights provisions of Texas law, Texas Lehigh’s right to continue mineral extraction and blasting have solid legal protection. The Company has a right to engage in mineral extraction and blasting on the east side of the Quarry close to the 14 acre tract seeking re-zoning for multi-family housing.

Texas Lehigh is a careful and prudent quarry operator. However, noise and vibration are an inevitable part of operating a quarry, particularly a quarry the size and configuration of this one. Mineral quarries are generally considered to be acceptable uses adjoining agricultural and commercial zoned property, but under good planning principles residential development should not be placed at the edge of an active quarry. Quarrying is a high impact extractive and industrial activity, and under accepted zoning standards residential and industrial uses are considered to be incompatible. Where residential and industrial activities do exist in close proximity, they should be separated by a substantial buffer district of commercial, agricultural, or other non-residential uses.

As we understand the pending re-zoning proposal, the 14.36 acre tract would be re-zoned to the R-3-3 Multifamily residential district, which permits up to 28 units per buildable acre. This could result in several hundred residential units being built a short distance from the Quarry. The Commissioners and City staff should seriously consider whether it is prudent, reasonable or fair to subject several hundred families and future Kyle neighbors to live adjacent to an active limestone quarry.

Texas Lehigh is in compliance with the regulations applicable to the Quarry, including the terms of the 2005 Agreement and the Kyle zoning ordinance adopted when the Quarry was annexed. The Company will continue to comply with these rules and its obligations under the Agreement. However, we can foresee significant problems if multi-family housing is built next to the Quarry. Future residents of apartments next to our Quarry will not necessarily be aware of the applicable rules and agreements, and they may not understand the broad protections that Texas law affords a pre-existing and permitted extractive industry. We are concerned that future neighbors will conclude that a quarry should not exist next to apartments, and will pressure the City and other authorities to curtail the Company’s activities.

Denying the re-zoning request will both prevent housing from being built in an inappropriate, incompatible location and will avoid unnecessary future conflicts between the Company and its neighbors.

Sincerely,



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Neil Hodgson, President