

# Duarte files lawsuit against Azusa, mining company Vulcan Materials

**Daniel Tedford Los Angeles Newspaper Group, 8-5-10**

DUARTE - City officials filed a lawsuit Tuesday against Azusa and a mining operator to try to stop a recently approved Azusa Rock Quarry mining plan, officials said.

The Duarte council recently gave approval to city staff to pursue a lawsuit, which was finalized and presented to at Los Angeles Superior Court.

The lawsuit alleges an environmental report prepared by a city consultant for Vulcan Materials Co.'s mining plan was flawed and inadequate, according to the legal complaint.

"We think we have got a strong case," Duarte Councilman John Fasana said. "We will allow the justice system to make that determination."

Also, the lawsuit alleges city officials in Azusa violated the Brown Act when they did not put on the agenda a vote to reconsider the mining plan after it was initially turned down, according to the statement.

Azusa officials have argued the vote was within the law due to a clause that allows for "urgent" need votes.

The Azusa City Council approved Vulcan's plan 4-1 in July, which allowed for the mining company to mine 80 acres on the most western end of its property that was not earlier permitted for mining with the city.

In exchange, Vulcan has agreed to give up 80 acres on the eastern end of its property that was approved for mining, pay more in taxes to benefit city funds, and to use a more advanced technique to reshape the hillsides after mining.

Azusa City Manager Fran Delach said he felt confident the city would overcome any challenges to the plan.

He said the allegations in the complaint did not come as a surprise and since the city has heard them through the review process, he doesn't expect the legal arguments to sway from previous city statements.

"I think our arguments will most likely remain consistent," Delach said. "We expected these issues and we are prepared to defend both the (environmental impact report) and the Brown Act issue."

Delach said Duarte's concerns about air quality, water quality and other allegations the new plan will increase mining impacts were erroneous.

"I think (the new plan) is totally 180 degrees different than what was already entitled, which was a significant higher tonnage of mining," Delach said. "They can make those claims but the older mining permit had much more mining allowed ... that is what will come out if it goes to court."

Throughout the public hearing and review process Duarte raised concerns and submitted documents regarding the proposal. Much of those same concerns about air quality, land use, noise, aesthetics, and the amount of estimated material at the mining site were used as the basis of Duarte's argument in its lawsuit, according to the complaint.

"They can talk about maximum permissible mining, but this plan clearly allows more mining when you look at the cubic yards available through 2038, they would need to mine more than they have done historically," Fasana said. "We believe this is actually an expansion of reserves."

In addition, Duarte's earlier complaints about the baseline used as a comparison in the environmental impact report, city officials believe that Azusa didn't follow proper California Environmental Quality Act guidelines, lack of consideration of alternative options, and outdated documents and studies were also used as the foundation for a legal stance against the plan, according to the complaint.

Duarte set aside \$700,000 two years ago in preparation to fight Vulcan's plan and has spent about \$200,000 of that thus far, officials said.

"When Duarte set up their \$700,000 war chest, it signaled to us the project had already been prejudged," Vulcan spokeswoman Peg Casey said. "This lawsuit ... will be based on the record that has been established through this extraordinarily long entitlement process. We believe the record absolutely is sound and will be validated through the legal process."

Within the development agreement between Azusa and Vulcan, the mining company agreed to pay for the legal fees associated with any challenges to the plan.

Delach said he expects the legal team to be a mix of Vulcan and city attorneys, but Casey said those decisions have not yet been decided.