

# County of Santa Clara

Department of Planning and Development  
Planning Office

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February 20, 2019

Ms. Erika Guerra  
Lehigh Southwest Cement Company  
24001 Stevens Creek Blvd  
Cupertino, CA 95014

FILE NUMBER: PLN18-2250  
SUBJECT: Reclamation Plan Amendment  
SITE LOCATION: 24001 Stevens Creek Blvd.  
DATE RECEIVED: November 26, 2018

Dear Ms. Guerra:

The purpose of this letter is to inform you that the application for a Reclamation Plan Amendment ("Application") submitted by Lehigh Southwest Cement Company ("Lehigh")<sup>1</sup> on November 26, 2018 is incomplete.

To complete the Application, Lehigh must submit the following information (further details requested in Section II below) no later than 180 days from the date of this letter.

- Provide Attachment A - Vested Rights Consistency Determination form,
- Pay Environmental Assessment Fee,
- Address Environmental Information Form Incomplete Items,
  - Clarify Phasing
  - Clarify Scope
  - Clarify Grading and Retaining Walls
  - Clarify slope and erosion control of the Haul Roads
  - Submit a Biology Report
  - Submit a revised SWPPP
  - Submit a Viewshed Analysis
- Demonstrate how the Utility Haul Road will be reclaimed,
- Correct the Bond Amount Discrepancy,

<sup>1</sup> The applicant is Lehigh Southwest Cement Company ("Lehigh") for property located at 24001 Stevens Creek Boulevard, Cupertino CA 95014. As stated on the Application, the property is owned by Hanson Permanente Cement, Inc.

- Submit a Geologic Investigation Report prepared and signed by a Certified Engineering Geologist.

If the requested information is not submitted within 180 days, an additional fee of 10% of the application fee will be required to continue processing the application. If the requested information is not submitted within one (1) year from the date of this letter, the Application is deemed abandoned.

Prior to submitting the requested information, you are required to schedule an appointment to discuss your responses to the comments below. Please contact Rob Eastwood (Rob.Eastwood@pln.sccgov.org / 408-299-5792) to schedule this appointment or with any questions regarding this letter.

### **I. Project Description**

On November 26, 2018, Lehigh submitted an Application to amend the Reclamation Plan for Lehigh Permanente Quarry (the “Quarry”) as approved by the Board of Supervisors on June 26, 2012. The Application proposes to expand the Quarry’s 2012 Reclamation Plan boundaries to incorporate and reclaim mined lands associated with the following two haul roads, both of which would connect the Quarry to Stevens Creek Quarry, located at 12100 Stevens Canyon Blvd., Cupertino, CA 95014:

- a. An approximately one-quarter mile long, 11-foot wide Pacific Gas & Electric, Co. utility access road (“Utility Haul Road”) that was widened to approximately 40 feet in spring 2018 without County permission to allow Lehigh to haul unprocessed mined products (“greenstone”) from the Quarry to Stevens Creek Quarry. On August 17, 2018, the County of Santa Clara (“County”) issued Lehigh a Notice of Violation for, among other things, illegal grading of this haul road outside the 2012 Reclamation Plan boundaries. The County’s Notice enjoined any use of the haul road to transport minerals.
- b. A proposed new haul road (“Rock Plant Haul Road”) approximately 36 feet in width. Following its construction, Lehigh proposes to use the Rock Plant Haul Road to transport greenstone from the Quarry to Stevens Creek Quarry.

The Utility Haul Road and the proposed Rock Plant Haul Road both involve mining-related ground disturbances in unincorporated areas of the County outside the 2012 Reclamation Plan boundaries for the Quarry. In addition to these areas, both haul roads involve mining-related ground disturbances on the following properties: (1) a portion of Lehigh’s property located within the incorporated limits and jurisdiction of the City of Cupertino (APN 351-10-017) and (2) a portion of Stevens Creek Quarry’s property (APN 351-10-019).

### **II. Summary of Required Supplemental Information**

The following is a summary of the information that Lehigh must provide to the County to complete its Application.

#### **A. Vested Rights Consistency Determination**

The County Board of Supervisors determined on March 1, 2011 (“2011 Vested Rights Determination”) that Lehigh possesses vested rights to conduct quarry surface mining operations

on thirteen Quarry parcels. One of these parcels, APN 351-10-033, encompasses the portions of the Utility Haul Road and the proposed Rock Plant Haul Road that lie within unincorporated County jurisdiction.

The Utility Haul Road was widened in spring 2018 to allow the exportation of greenstone to Stevens Creek Quarry, an activity that would instead take place via the proposed Rock Plant Haul Road upon its construction. Because the 2011 Vested Rights Determination focused on the geographic extent of Lehigh's vested rights, the County did not then consider whether these proposed uses—the construction and use of haul roads to export greenstone from the Quarry—would fall within the substantive scope of Lehigh's vested rights.

The County must accordingly determine whether these proposed uses fall within the scope of Lehigh's recognized vested rights. Should the County determine that the proposed uses fall outside the scope of Lehigh's vested rights, Lehigh would be required to obtain a Use Permit to undertake these mining-related activities pursuant to Santa Clara County Zoning Ordinance § 4.10.370 and the California Surface Mining and Reclamation Act of 1975 ("SMARA"), Pub. Res. Code § 2770(a).

For the County to determine whether these proposed uses fall within the scope of Lehigh's recognized vested rights, the County must answer the following questions to make the vested rights consistency determination:

1. Are the proposed uses incidental or auxiliary to the Quarry's surface mining operations as they existed at the 1948 vesting date recognized by the 2011 Vested Rights Determination?
2. Would the proposed uses substantially change the Quarry's surface mining operations as they existed at the 1948 vesting date?
3. Would the proposed uses impermissibly intensify the Quarry's mining operations?

To facilitate the County's vested rights consistency determination, please submit the information requested in Attachment A to this letter.

#### **B. CEQA Requirements**

The Application includes a petition for exemption from an Environmental Assessment. The County has determined that the Application has the following potential environmental impacts:

- a. Loss of habitat;
- b. Removal of native trees;
- c. Removal of oak woodland;
- d. Construction in area with steep topography;
- e. Import or export of more than 2,500 cubic yards of material;
- f. Total earthwork in excess of 5,000 cubic yards; and
- g. Generation of new traffic by customers of Stevens Creek Quarry using Stevens Canyon Road.

The Application does not qualify for an exemption to CEQA's Environmental Assessment requirements and is subject to environmental review. Under CEQA, the environmental review must evaluate the haul road in its entirety, including the construction, use, and reclamation of the road on the parcels within the City's jurisdiction and on lands owned by Stevens Creek Quarry.

On November 26, 2018, Lehigh paid fees in the amount of \$531 when submitting its petition for an exemption from an Environmental Assessment. The County has determined that an Environmental Assessment is the appropriate CEQA process. The \$531 fee paid with the petition will be deducted from the Environmental Assessment fee as follows:

Environmental Assessment fee	\$4,068
Petition for exemption submitted on 11/26/18	<u>-\$531</u>
Difference required:	\$3,537

Please pay the remaining \$3,537 Environmental Assessment fee to the County when submitting the required information in response to this letter.

#### **C. SMARA Findings – Approved End Use of Property**

The proposed Reclamation Plan Amendment would leave the approximately 40-foot wide Utility Haul Road as a widened road rather than reclaim it to its pre-existing state. This widened haul road does not appear suitable for the Quarry's approved post-reclamation end use of open space. Demonstrate how the Utility Haul Road would be reclaimed consistent with the approved end use of open space and with consideration of the baseline condition of the utility access road prior to its unpermitted expansion in 2018.

#### **D. Bond Amount**

Page 5 of proposed Reclamation Plan Amendment states that the Financial Assurance Mechanism (bond) total for the Quarry is \$53,861,976. However, the actual posted bond total is \$54,657,484. Please correct this discrepancy in your Application.

#### **E. Environmental Information Form Incomplete Items**

1. The proposed Reclamation Plan Amendment would necessitate additional reclamation activities concerning the two haul roads. The Quarry's 2012 Reclamation Plan sets forth three phases of reclamation activities. State the phase(s) of reclamation (1 through 3) in which the activities related to reclamation of the two haul roads will occur.
2. The addenda to the Environmental Information Form have conflicting values. Please clarify and correct the following discrepancies:

The first addendum states the following:

- The reclamation plan boundary expansion area is 4.3 acres.
- Placement of topsoil up to 4,850 cubic yards.

The second addendum states the following:

- The reclamation plan boundary expansion area is 7.1 acres.

- Placement of topsoil totaling 4,920 cubic yards.
3. Revise the Environmental Information Form to correctly indicate that grading is required as part of the project. Accordingly, please indicate the height and dimensions of the accompanying retaining wall(s).
  4. Construction of the Rock Plant Haul Road would occur on slopes greater than ten percent (10%). Please indicate the percent of slope and describe how erosion and siltation will be prevented.
  5. Per SMARA regulations, 14 CCR § 3703, wildlife and wildlife habitat shall be protected in accordance with the following standards:
    - a. Rare, threatened or endangered species as listed by the California Department of Fish and Game, (California Code of Regulations, Title 14, sections 670.2 - 670.5) or the U.S. Fish and Wildlife Service, (50 CFR 17.11 and 17.12) or species of special concern as listed by the California Department of Fish and Game in the Special Animals List, Natural Diversity Data Base, and their respective habitat, shall be conserved as prescribed by the federal Endangered Species Act of 1973, 16 U.S.C. section 1531 et seq., and the California Endangered Species Act, Fish and Game Code section 2050 et seq. If avoidance cannot be achieved through the available alternatives, mitigation shall be proposed in accordance with the provisions of the California Endangered Species Act, Fish and Game Code section 2050 et seq., and the federal Endangered Species Act of 1973, 16 U.S.C. section 1531 et seq.
    - b. Wildlife habitat shall be established on disturbed land in a condition at least as good as that which existed before the lands were disturbed by surface mining operations, unless the proposed end use precludes its use as wildlife habitat or the approved reclamation plan establishes a different habitat type than that which existed prior to mining.

To ensure compliance with these standards, submit a biology report by a qualified biologist showing the number of trees and the amount of habitat for endangered, threatened, or rare wildlife or plants that would be removed as part of the construction of the Rock Plant Haul Road and replaced as part of reclamation.

6. SMARA regulations, 14 CCR § 3706, set forth mandatory performance standards for drainage and erosion control. Surface mining and reclamation activities shall be conducted to protect on-site and downstream beneficial uses of water in accordance with the Porter-Cologne Water Quality Control Act, Water Code § 13000, et seq., and the Federal Clean Water Act, 33 U.S.C. § 1251, et seq.

The existing Stormwater Pollution Prevention Plan (SWPPP) does not adequately address the additional stormwater controls necessary due to the increased impermeability of the ground at the two haul roads. Submit a revised SWPPP that demonstrates sufficient stormwater control measures at and downslope of the project area.

7. Submit a viewshed analysis that demonstrates the visibility, as proposed for final reclamation, of the two haul roads from public viewpoints on the Santa Clara Valley floor.

## **F. Geology**

Please submit a geologic investigation report prepared and signed by a Certified Engineering Geologist that adequately addresses the issues outlined in items F.1-3 below. A detailed Engineering Geologic Map and Cross-Sections should be included. The consulting geologist should discuss the proposed scope of investigation with the County Geologist prior to undertaking any field work. Subsequent slope stability analyses should be conducted using the geometries and strength characteristics determined by the geologic investigation. The possible effect of groundwater on the slope stability calculations must also be part of the investigation. This “confirmation” investigation must take place before the Application can be deemed complete.

1. Attachments A and B are signed by Paul Kos “Senior Geological Engineer.” The California Department of Consumer Affairs’ website for license lookup does not indicate that Mr. Kos has a Certified Engineering Geologist license, which is required to sign geologic reports submitted to Santa Clara County Planning Division. (See County Ordinance Code § C12-612.)
2. Attachments A and B indicate that Stantec is “assuming” that 1.5:1 cut slopes will be stable. Stantec's slope stability analyses assume a shear strength for weak greenstone bedrock (which Stantec considers to be “conservative”). However, several published geologic maps show that the majority of the Rock Plant Haul Road would be underlain by even weaker Santa Clara Formation with bedding plans that dip at relatively shallow angles toward the northeast, parallel with the ground surface. Such a “dip slope” condition in potentially weaker materials was not considered in the analyses. Stantec claims, “Future studies are expected to verify the assumed conditions, and should be confirmed prior to the commencement of any construction activities.”
3. Stantec has not refuted with field mapping or subsurface exploration the possibility that portions of the proposed alignment of the Rock Plant Haul Road are underlain by landslide deposits. If such deposits are present, the slope stability analyses and resulting extent of over-excavation required to mitigate that condition will need to be revised accordingly.

Please submit the items to address the issues raised in this Section II.F (Geology) in your Application and direct questions regarding the above geology items to Jim Baker (408-299-5774 / [Jim.Baker@pln.sccgov.org](mailto:Jim.Baker@pln.sccgov.org)).

## **III. Additional Issues**

In addition to the incomplete items discussed above in Section III, please be aware of these additional issues that are related to the Application to utilize the haul road to process material at Stevens Creek Quarry.

### **a. Stevens Creek Quarry Zoning Violations**

Stevens Creek Quarry is comprised of parcels commonly identified as “Parcel A” and “Parcel B.” Parcel A is covered by a Use Permit modified by the County Board of Supervisors in September 1996 (Attachment B hereto). Parcel B is covered by a Mediated Agreement authorized by resolution of the Board of Supervisors in October 2002 (Attachment C hereto).

The proposed construction and use of the Rock Plant Haul Road is in conflict with the 1996 Use Permit and 2002 Mediated Agreement.

As outlined in a Notice of Violation sent to Stevens Creek Quarry on February 13, 2018, the importation, processing and resale of aggregate from offsite mined lands on Parcel B is an unauthorized use that is not authorized by the 2002 Mediated Agreement. Any importation, processing, and resale of aggregate from offsite mined lands on Parcel B requires Stevens Creek Quarry to secure a Use Permit from the County.

In addition, the proposed Rock Plant Haul Road would conflict with conditions of approval for Stevens Creek Quarry operations that designate authorized haul routes and ingress/egress locations. Condition of approval number 8 of the 2002 Mediated Agreement states, "ingress and egress locations to be limited to three (3) existing driveways onto Stevens Canyon Road." Condition of approval number 13 of the 2002 Mediated Agreement states that the "Haul route being approved is Stevens Canyon Road-Foothill Boulevard to Highway 280 and Foothill Expressway. No other route to be used." The Rock Plant Haul Road would add an additional haul route and ingress/egress location in conflict with these conditions.

Lehigh's proposed hours and days of operation for the haul road (24-hours per day, 365-days per year) would also conflict with the restrictions applicable to Stevens Creek Quarry (6:30 am to 5:00 pm, Monday through Friday, exclusive of specified holidays). (See Attachment B, Condition No. 25, and Attachment C, Condition No. 20.)

Stevens Creek Quarry has entered into a Compliance Agreement with the County of Santa Clara that requires it to apply for a new Use Permit and Reclamation Plan Amendment. Lehigh is informed that construction and use of the entire proposed Rock Plant Haul Road will not be permitted until Stevens Creek Quarry obtains the relevant authorizations.

**b. City of Cupertino Authorization**

The proposed Reclamation Plan Amendment documents both the Utility Haul Road and the Rock Plant Haul Road transversing property (APN 351-10-017) within the jurisdictional boundaries of the City of Cupertino ("City"). Construction, use, and reclamation of a haul road within the City's jurisdiction is subject to the City's authorization, which may include, but is not limited to, land use authorization in accordance with the City's applicable zoning requirements and reclamation in accordance with SMARA.

Please be advised that if the County approves the proposed Reclamation Plan Amendment prior to construction and use of the Rock Plant Haul Road, Lehigh must provide evidence of authorization from the City to construct and use the portion of the Rock Plant Haul Road within the City of Cupertino. Pursuant to SMARA, the City may request that the Division of Mine Reclamation designate the appropriate lead agency, which could be the County, as the SMARA lead agency for the relevant City jurisdictional disturbed area.

**c. Stevens Creek Quarry Reclamation Plan**

According to plans submitted with the Application, construction of the Rock Plant Haul Road would change the geometry of quarry slopes within Stevens Creek Quarry. These plans show a lowering of the hilltop within Stevens Creek Quarry from 1,035 feet mean sea level (msl) to

1,000 feet msl. Stevens Creek Quarry will need to submit an amendment to its approved Reclamation Plan to address these adjustments in elevations.

If you have any questions, please contact Robert Salisbury at 408-229-5785 or [robert.salisbury@PLN.sccgov.org](mailto:robert.salisbury@PLN.sccgov.org)

Sincerely,

Jacqueline R. Onciano  
Director of Planning & Development

Encl: Attachment A - Vested Rights Consistency Evaluation  
Attachment B - Stevens Creek Quarry 1996 Use Permit  
Attachment C - Stevens Creek Quarry 2002 Mediated Agreement

cc: Jacqueline Onciano, Director of Planning and Development, County of Santa Clara  
Rob Eastwood, Planning Manager, AICP, County of Santa Clara  
Manira Sandhir, Principal Planner, AICP, County of Santa Clara  
Jim Baker, County Geologist, County of Santa Clara  
Elizabeth G. Pianca, Lead Deputy County Counsel, County of Santa Clara  
Kristina Loquist, Office of Supervisor Simitian, County of Santa Clara  
Paul Fry, Engineering and Geology Unit Manager, Division of Mine Reclamation  
Roger Lee, Acting Public Works Director, City of Cupertino