



PUBLIC WORKS DEPARTMENT

CITY HALL
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May 28, 2019

Erika Guerra
Lehigh Hanson, Inc.
24001 Stevens Creek Blvd.
Cupertino, CA 95014

ADMINISTRATIVE CITATION AND NOTICE OF VIOLATION

Dear Ms. Guerra,

The City of Cupertino (City) hereby issues this Administrative Citation and Notice of Violation (Citation) to Lehigh Hanson, Inc. (Lehigh), owner of Permanente Quarry. As described in the County of Santa Clara's Notice of Violation dated August 17, 2018, Lehigh expanded and graded an existing utility road that extends from Lehigh's Permanente Quarry to neighboring Steven Creek Quarry (Haul Road). In doing so, Lehigh cut and filled significant volumes in a steeply sloped setting, built and graded a larger road designed for heavy vehicles, and removed approximately 35 trees, all within the City's jurisdiction. Lehigh failed to provide notice to or obtain permits from the City for this work, which is the subject of this Citation.¹

Lehigh is responsible for the violations described in Section I, each of which constitutes a violation of the Cupertino Municipal Code (CMC) and a public nuisance. Lehigh must correct the violations as set out in Section II, or face further penalties set forth in Section III.

I. VIOLATIONS

A. Grading without a permit.

"No person may grade, fill, excavate, clear land, stockpile or dispose of soil or earth materials or perform any other land disturbing or landfilling activity without first

¹ The road expansion project also extended onto portions of Lehigh's property and the neighboring Stevens Creek Quarry property that fall within the jurisdiction of Santa Clara County.

obtaining a permit as set forth in this chapter.” CMC § 16.08.050.² Permit applicants must provide information to the City including a site map, grading plan, interim erosion and sediment control plan, work schedule, and soils and geological engineering report where required, as well as application fees and a performance bond. §§ 16.08.080-160. Grading in excess of 1,000 cubic yards also requires supervision under section 16.08.230. Lehigh failed to obtain a grading permit or provide any of the associated information, payment, supervision, or security required under Chapter 16.08.

B. Violation of design standards.

Lehigh failed to submit a civil engineer’s report for the Haul Road prior to performing the work. Accordingly, the Haul Road is subject to the minimum standards set forth in CMC section 16.08.200. Section 16.08.200 requires, for example, that “[c]uts shall not be steeper in slope than two horizontal to one vertical” unless a site investigation deems the deviation to be safe. *Id.* § 16.08.200(A)(1). Similarly, “[n]o compacted fill shall be made which creates an exposed surface steeper than two horizontal to one vertical.” *Id.* § 16.08.200(B)(3). The Haul Road appears to violate these standards.

According to the Stantec road assessment, several of the slopes constructed as part of the Haul Road expansion appear to be steeper than permitted by section 16.08.200. *See* Letter from Lehigh to County of Santa Clara dated October 31, 2018 at p. 11-14.³ For example, the cut slope is 1H:1V and the fill slope is 1.3 H:1 V at cross-section C; and the cut slope is 0.8 H:1 V and the fill slope is approximately 1.3H:1V at cross-section D. Each is steeper than is permitted by section 16.08.200.

C. Lack of erosion control in violation of City requirements.

Chapter 9.18 requires erosion control measures at construction sites and implementation of best management practices. §§ 9.18.020(10), 9.18.210(2). There is no evidence that Lehigh implemented effective erosion controls, run-on and runoff controls, sediment controls, or other site management measures during or after construction of the Haul Road, at least until required to do so by City and County staff after discovery of its violations.

D. Unauthorized removal of protected trees.

Chapter 14.18 protects a variety of trees based on heritage status and species. It prohibits removal of protected trees without a permit and requires submission and approval of a tree protection plan as part of grading operations. §§ 14.18.110, 14.18.210(A).

Lehigh removed approximately 35 trees while expanding the Haul Road without documenting their size or species, applying for a tree removal permit, or filing a tree

² All further references are to the City’s Municipal Code unless otherwise specified.

³ Available at <https://www.cupertino.org/home/showdocument?id=23406>.

protection plan. Information subsequently provided by Lehigh indicates that many of the removed trees were likely coast live oak, blue oak, California bay, interior live oak, and California buckeye, all of which are protected species.

II. CORRECTIVE ACTION REQUIRED

Please correct the above-mentioned violations by conducting the following actions by the dates specified below. Lehigh may request that the City's Director of Public Works approve alternative dates for completion of the work described below for good cause. Absent written approval of an alternative schedule by the Director of Public Works, failure to comply with this timeline will result in additional penalties specified in Section III of this Citation.

1. Within 30 days of the date of this Citation, submit complete applications for all permits required to regrade the Haul Road to pre-expansion conditions (the Restoration), with required documentation and consistent with all design requirements and best management practices required by the CMC;
2. By June 25, 2019, resubmit a complete application for a retroactive tree removal permit that addresses the City's April 26, 2019 Application Incomplete Letter; and
3. Within 30 days of the date of this Citation, pay to the City an administrative citation fee of \$100 for this Citation and all outstanding fees associated with the permits described above;
4. Within 30 days of issuance of the last permit required to complete the Restoration, or some other time as approved in writing by the Director of Public Works, begin work consistent with City permits.

III. CONSEQUENCES OF FAILURE TO CORRECT

Failure to take timely corrective actions described above may result in the imposition of additional citations, penalties, and/or other legal remedies pursuant to sections 1.09, 1.10, and 1.12 of the CMC.

Please be advised that failure to comply with the CMC is a violation that may be pursued as a Public Nuisance and/or issuance of a further administrative citations and penalties. Should public nuisance proceedings occur, Lehigh will be financially liable for all costs of the procedure including abatement costs, staff time, administrative and inspection fees, attorneys' fees, and any court-specified fines, should you be issued a citation. Within ten business days of this Citation, you may contest the existence of the violations or your responsibility for them by filing an appeal with the city clerk for the matter to be heard by a hearing officer. § 1.10.070.

Your prompt response and attention regarding this matter is appreciated. Should you have any questions or concerns, I can be contacted at (408) 777-3350 or RogerL@cupertino.org.

We look forward to your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Roger Lee". The signature is fluid and cursive, with the first name "Roger" being more prominent than the last name "Lee".

Roger Lee

Acting Director Public Works

cc: Heather Minner
Timm Borden

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