



107047

DATE: August 26, 2021

TO: Planning Commission

FROM: Robert Salisbury, Senior Planner

SUBJECT: Stevens Creek Quarry Zoning Interpretation Application

RECOMMENDED ACTION

Consider application for interpretation of the Zoning Ordinance to determine whether the importation and processing of unprocessed material from Lehigh Permanente Quarry to Stevens Creek Quarry is an allowed use pursuant to the definition of "Surface Mining" (Zoning Ordinance Section 2.10.040) or as "Incidental Activities" to "Surface Mining" (Zoning Ordinance Section 2.10.020(B)). Owner/Applicant: Stevens Creek Quarry, Inc. Property Address/Location: 12100 Stevens Creek Road, Cupertino (Assessor's Parcel Nos. 351-10-017, -019, -039, -040, -044 and 351-18-048). Zoning: HS-d1. Supervisorial District: Five. File No.: PLN20-119.

Possible action:

- a. Find that the denial of the application is exempt under the California Environmental Quality Act (CEQA) in accordance with Public Resources Code Section 21080(b)(5) and CEQA Guidelines Section 15270.

AND

- b. Deny the Zoning Interpretation application.

OR

- a. Declare intent to approve the Zoning Interpretation application to allow importation and processing of unprocessed material from Lehigh Permanente Quarry to Stevens Creek Quarry as an allowed use pursuant to the definition of "Surface Mining" (Zoning Ordinance Section 2.10.040) or as "Incidental Activities" to "Surface Mining" (Zoning Ordinance 2.10.020 (B)); and, direct the Department of Planning and Development to conduct environmental review in accordance with CEQA.

STAFF RECOMMENDATION

Staff recommends that the Planning Commission:

a. Find that the denial of the application is exempt under CEQA in accordance with Public Resources Code Section 21080(b)(5) and CEQA Guidelines Section 15270.

b. Deny the Zoning Interpretation application to allow importation and processing of unprocessed material from Lehigh Permanente Quarry to Stevens Creek Quarry as an allowed use pursuant to the definition of ‘*Surface Mining*’ (Zoning Ordinance Section §2.10.040) or as ‘*Incidental Activities*’ to ‘*Surface Mining*’ (Zoning Ordinance §2.10.020(B)).

PROJECT DESCRIPTION

On September 21, 2020, Stevens Creek Quarry, Inc. (“SCQ”) submitted a Reclamation Plan Amendment (“RPA”) and Use Permit (“UP”) application for the Stevens Creek Quarry located at 12100 Stevens Creek Road, Cupertino in unincorporated county and is zoned HS-d1. The RPA and UP application proposes to continue the existing surface mining operation, and it also proposes to importation and processing of unprocessed aggregate from the adjacent Lehigh Permanente Quarry.

The County issued a Notice of Violation on February 15, 2019 to SCQ directing SCQ to cease the unpermitted importation of unprocessed aggregate from Lehigh Permanente Quarry.

Following the Department’s review of the application materials, the Department issued a letter to SCQ on October 21, 2020 deeming the application incomplete. The incomplete letter notified SCQ an issue of concern: that SCQ’s proposed importation and processing of unprocessed material from Lehigh Permanente Quarry is classified in the Zoning Ordinance as ‘*Manufacturing – Intensive*’ (Zoning Ordinance Section § 2.10.040), and is not an allowed use in rural zoned properties (HS-d1), such as SCQ.

On December 11, 2021, SCQ resubmitted their UP and RPA application and concurrently submitted an application for a Zoning Interpretation, seeking an interpretation of the Zoning Ordinance to allow importation and processing of unprocessed aggregate, either as part of the County regulations governing ‘*Surface Mining*’ (Zoning Ordinance § 2.10.040), or as an ‘*Incidental Use*’ to ‘*Surface Mining*’, under County Zoning Ordinance § 2.10.020(B).

The Zoning Interpretation application request specifies that SCQ proposes to extract and process two million tons of aggregate per year and import and process an additional one million tons per year of unprocessed aggregate from the neighboring Lehigh Permanente Quarry. In their resubmittal letter (Attachment A), the applicant provides an opinion on how the proposed importation and processing of material from Lehigh Quarry is consistent with County General Plan Policies, is similar in nature to the existing uses at both SCQ and Lehigh Permanente Quarry, is ancillary to the existing use, and should be considered a permissible use.

DEFINITION OF TERMS

County Zoning Ordinance, Chapter 2.10, includes non-residential use classifications and descriptions of groups of land uses that have similar characteristics, and specifies that all permitted uses are regulated under one of the use classifications defined in Chapter 2.10. Zoning Ordinance definitions of land use categories relevant to this project are listed below:

‘Surface Mining’ is “the process of obtaining minerals, such as sand, gravel, rock, aggregate, or similar materials by removing overburden and mining directly from mineral deposits, by open pit mining of naturally exposed minerals, by use of the auger method, by dredging, and by quarrying.”

Surface Mining uses may be established in all Rural Base Zoning Districts (Exclusive Agriculture (A), Agricultural Ranchlands (AR), Hillside (HS), and Rural Residential (RR)), and the General Use (A1) Special Purpose Base District with a Use Permit. Surface Mining uses are not allowed in any other Zoning District.

‘Manufacturing – Intensive’ is “Manufacturing of products from raw or unprocessed materials, where the finished product may be combustible or explosive. This category also includes storage, dismantling, reduction or destruction of items or materials. This category shall also include any establishment or facility using large unscreened outdoor equipment or structures such as conveyor belt systems, cooling towers, cranes, storage silos, or similar equipment that cannot be integrated into the building design, or engaging in large-scale outdoor storage. This category also includes any industrial use that generates noise, odor, vibration, illumination, or particulate that may be offensive or obnoxious to adjacent land uses, or requires a significant amount of on-site hazardous chemical storage or use. This use shall include any packaging of the product being manufactured on-site. Examples include, but are not limited to, the production of the following: largescale food and beverage operations; lumber, milling, and planning facilities; aggregate, concrete, and asphalt plants; foundries, forge shops, open air welding, and other intensive metal fabrication facilities; chemical blending, mixing, or production; and plastic processing and production; junkyards; scrap metal recycling and salvage; and vehicle dismantling, wrecking and crushing.”

Manufacturing – Intensive uses may be established in the Heavy Industrial (MH) Commercial and Industrial Base District, and the General Use (A1) Special Purpose Base District with a Use Permit. Manufacturing – Intensive uses are not allowed in any other Zoning District.

‘Recycling Facilities - Concrete, Asphalt, and Soil Recycling’ is “Crushing, recycling, storage, and reprocessing of concrete, asphalt, and soil. This classification does not include storage of topsoil as part of an approved quarry reclamation plan. May be conditioned or limited in terms of days and hours of operation, vehicle access, types of materials to be recycled or stored onsite, size and location of processing equipment and storage areas, construction or improvement of roads, surety bonds, or other matters. Such limitations or restrictions may be based on location and characteristics of the site, including parcel size, level of traffic, adjoining uses and environmental setting.”

Concrete, Asphalt, and Soil Recycling uses may be established in the Heavy Industrial (MH) Commercial and Industrial Base District, the General Use (A1) Special Purpose Base District with a Use Permit. In addition, Concrete, Asphalt, and Soil Recycling uses may be established in all Rural Base Zoning Districts (Exclusive Agriculture (A), Agricultural Ranchlands (AR), Hillside (HS), and Rural Residential (RR)) with a Use Permit provided the Recycling Use is associated with an existing quarry operation. Concrete, Asphalt, and Soil Recycling uses are not allowed in any other Zoning District

County Zoning Ordinance § 2.10.020 (B) defines ‘***Incidental Activities***’ as “*An incidental activity carried out as part of a primary use, which is not expressly identified by the zoning ordinance as part of the primary use classification, may be conducted if determined by the applicable decision-making authority to be appropriately ancillary to the primary use, and generally compatible in nature with the uses permitted by the applicable zoning designation.*”

REASONS FOR RECOMMENDATION

Zoning Interpretations by the Planning Commission

Pursuant to Zoning Ordinance Section 1.20.040(B), the Planning Commission is authorized to interpret any provisions of the zoning ordinance that may apply to any matter under the commission’s consideration. Since the Zoning Interpretation is associated with a Use Permit application, which would be within the Planning Commission’s review authority, the Zoning Interpretation is being brought forward by the Department of Planning and Development to the Commission for a determination. The Department is bringing the Zoning Interpretation application to the Planning Commission because the Planning Commission’s decision on the Zoning Interpretation application will inform the processing of the Use Permit and Reclamation Plan applications that have been applied for by SCQ and that are currently incomplete.

What is before the Planning Commission is a Zoning Interpretation application and not the underlying Use Permit and Reclamation Plan Amendment application. Therefore, the Planning Commission will not be evaluating the merits of the Use Permit and the Reclamation Plan Amendment application or its consistency with the applicable findings and policies in the County General Plan and Zoning Ordinance, as environmental review, staff analysis, and public noticing have not yet taken place.

California Environmental Quality Act (CEQA)

CEQA for Denial

Section 15270 of the CEQA Guidelines and Public Resources Code Section 21080(b)(5) specifies that CEQA does not apply to projects that are denied. If the Planning Commission denies the Zoning Interpretation application, CEQA does not apply.

CEQA for Intent to Approve

If the Planning Commission declares its intent to approve the Zoning Interpretation application and find that importation and processing of unprocessed aggregate from Lehigh Quarry either is part of the definition of *Surface Mining* and/or is an *Incidental Activity* to Stevens Creek Quarry’s existing *Surface Mining*, the Department will prepare a CEQA document to analyze the impacts resulting from the change.

Project - Zoning Interpretation Application to allow Importation to Stevens Creek Quarry of Unprocessed Aggregate Material from Lehigh Quarry

As noted in the Project Description section of this report, SCQ filed a Zoning Interpretation application to have the Zoning Ordinance interpreted such that it allows for the importation and processing of unprocessed aggregate as an allowed use, either as part of County

regulations governing ‘*Surface Mining*,’ or as an ‘*Incidental Use*’ to a use classified as ‘*Surface Mining*’.

For purposes of determining whether the importation and processing of unprocessed aggregate falls under the use classification ‘*Surface Mining*’ the standard set forth under the Zoning Ordinance is whether the use “is substantially similar in nature and intensity to at least one listed permitted use, and the use is clearly compatible with both the intent of the applicable district and the applicable land use designation of the general plan.” (Zoning Ordinance, §2.10.020(A)(1).)

For purposes of determining whether the importation and processing of unprocessed aggregate is an incidental activity to the primary activity of ‘*Surface Mining*’ is whether the incidental activity is “appropriately ancillary to the primary use, and generally compatible in nature with the uses permitted by the applicable zoning designation.” (Zoning Ordinance, §2.10.020(B).)

The Department recommends that the Planning Commission deny the proposed Zoning Interpretation application summarized/itemized by topic and bullet point below, followed by a detailed analysis of each topic:

- **General Plan Inconsistency and Incompatibility** – Approval of the Zoning Interpretation would be inconsistent and incompatible with the goals of the County's General Plan:
 - *Industrial Uses – General Plan Intent*– The General Plan limits industrial uses in rural areas to mineral extraction and uses that require a remote, rural setting or result in the productive use of the natural environment;
 - *Continued Quarry Operations and Impacts* – Approval of the Zoning Interpretation could allow mining operations to continue in perpetuity or for long periods of time, instead of being limited by the availability of on-site mineral resource;
 - *Reclamation Delay* – Approval of the Zoning Interpretation could cause unreasonable delay in quarry reclamation of surface mining sites, causing significant and prolonged impacts in rural zoning districts; and,
 - *Comparison of “Importation and Processing” with “Concrete Recycling* –There are significant differences between importation and processing of concrete and asphalt for recycling and import of unprocessed aggregate for processing and sale.
- **Importation and Processing of Unprocessed Aggregate is Not Appropriately Ancillary to the Primary Use of Surface Mining** - The importation of unprocessed materials for processing on-site is not appropriately ancillary to the existing surface mining use.

General Plan Inconsistency and Incompatibility

For purposes of determining whether the importation and processing of unprocessed aggregate falls under the use classification ‘*Surface Mining*’, the standard set forth under the

Zoning Ordinance is whether the use “is substantially similar in nature and intensity to at least one listed permitted use, and the use is clearly compatible with both the intent of the applicable district and the applicable land use designation of the general plan.” (Zoning Ordinance, §2.10.020(A)(1)). In addition, when considering an interpretation of the Zoning Ordinance, the interpretation shall consider “all relevant “purpose” language”, shall ensure consistency with the general plan and shall assure protection of the public safety, comfort, convenience, and general welfare.” (Zoning Ordinance, § 1.20.040 (A).)

Industrial Uses – General Plan Intent

The County General Plan recognizes that allowing aggregate and construction materials to be produced from local sources is of fundamental importance to the economy of the county and region. Therefore, the General Plan and County Zoning Ordinance allows *surface mining* operations to be located where useful aggregate deposits are located, including within rural areas. By comparison, other similar industrial uses such as *Manufacturing* are not allowed in rural areas, such as Hillside, as they are not directly associated with open space, rural resources, and agriculture (General Plan, *Growth and Development*, Page K-2; and General Plan *Land Use Policies* R-LU 18, Page Q-3).

Part of County General Plan Strategy #1 for managing rural growth and development states that:

With the exception of unique and specialized land uses, the types of non-urban, low density uses allowed in the rural areas consist of rural residential and commercial, institutional, and industrial uses that either (a) are directly associated with open space, resources, and agriculture found in the rural areas, such as wineries, camps and retreats, or surface mining operations, or (b) are of a size, scale and intensity intended to provide goods and services to the resident rural community.

County General Plan Policy R-LU 18 specifies:

All allowable uses in Hillside zones must be consistent with the basic intent of the 'Hillside' designation. The range of allowable uses shall be limited to agriculture, grading, mineral extraction, parks, low-density recreational uses and facilities, land in its natural state, wildlife refuges, very low density residential development, and commercial, industrial, or institutional uses which by their nature require remote, rural settings or which support the recreational or productive use, study or appreciation of the natural environment.

County General Plan Policy R-LU 25 states:

Non-residential land uses allowed in Hillside areas shall be of a generally low density or low intensity nature and preserve the resources and rural character of the land.

Policy R-LU 25 further states that non-residential uses shall:

- a. *avoid or minimize any potentially significant adverse environmental impacts,*
- a. *provide adequate access to safely accommodate potential traffic without significantly impacting local transportation routes,*
- b. *demonstrate no significantly increased risks associated with natural hazards,*
- c. *not create adverse visual impacts as viewed from the Valley floor or from adjacent public recreational areas; and*
- d. *cause no significant increase in the demand for public services or infrastructure, including potential impacts on school districts.*

The Zoning Interpretation for the definition of ‘*Surface Mining*’ that SCQ has applied for is inconsistent and incompatible with the County’s General Plan. The General Plan policies allow for mineral extraction, and the County allows incidental and ancillary processing of the mineral being extracted on-site as a necessary component of surface mining uses. However, the General Plan does not contemplate mineral importation and the processing of the mineral being imported as an allowable use in the rural areas. Such an interpretation would be inconsistent with the General Plan’s policy intent to preclude industrial uses from Hillside areas except for the limited purpose of mineral extraction or uses requiring a remote, rural setting or supporting the productive use of the natural environment (General Plan Policy R-LU 18). Importation and processing of aggregate, considered an industrial use, does not require a remote or rural setting, nor does it result in the productive use of the natural environment.

On June 22, 2021, SCQ submitted a letter explaining why it believes that the processing of aggregate is clearly compatible with the intent of the General Plan policies related to mineral development in the Hillside designation: because export to SCQ from Lehigh would reduce the amount of aggregate that would otherwise remain on Lehigh property as a waste material. Consequently, denying the import of unprocessed aggregate would prompt development of a new mine site elsewhere in the County or even farther away. As a result, SCQ takes the position that the County would be ignoring its own General Plan policies if the requested importation were not allowed.

However, the Department finds this supposition to be speculative. While it may be financially beneficial to SCQ to be allowed to import and process this material, it is not necessary in order to prevent this material from being waste material. Typically, the quarry producing the aggregate can process it on-site, sell it directly to the markets, or use it for reclamation purposes, which would be consistent with the General Plan policies that allow mineral extraction.

Continued Quarry Operations and Impacts

Surface mines, and the reclamation of surface mines, are regulated by the Surface Mining and Reclamation Act (“SMARA”). SMARA requires surface mines to have an approved Reclamation Plan (“RP”) that specifies how a mine will be reclaimed once mining has ended. SMARA also requires an active surface mine to be mining and/or undergoing reclamation.

However, SMARA also allows an idle mine to temporarily suspend active mining without commencing reclamation under an Interim Management Plan (“IMP”). Under SMARA, a mine is considered “idle” if it *“curtails for a period of one year or more surface mining operations by more than 90 percent of the operation's previous maximum annual mineral production, with the intent to resume those surface mining operations at a future date.”*

By allowing importation and processing of materials, the Zoning Interpretation that SCQ is requesting could create a perverse incentive for operators to extend the life of the quarry by relying primarily on importation and processing to meet market demands. Under normal circumstances, an operator has no incentive to produce less than what can be sold based on current market demand. By comparison, importation could postpone the date at which reclamation commences, thereby extending the surface mining use and its associated impacts. Again, the General Plan policies do not contemplate this long-term use of aggregate processing for materials that are not actively being extracted from the rural lands. Processing of minerals should be commensurate with and related to on-site extraction consistent with the General Plan policies that allow mineral extraction. Allowing processing of material extracted from a separate location would be inconsistent with the intent of the County’s General Plan to allow limited industrial uses in these areas.

Reclamation Delay

Concomitant with incentivizing delay in reclamation, the Zoning Interpretation application could also allow mining operations to continue longer than otherwise would be expected for operations that do not include importation. The Zoning Ordinance defines ‘*Surface Mining*’ as: *“the process of obtaining minerals, such as sand, gravel, rock, aggregate, or similar materials by removing overburden and mining directly from mineral deposits, by open pit mining of naturally exposed minerals, by use of the auger method, by dredging, and by quarrying.”* By their nature, surface mining uses are limited by the availability of the mineral resource being extracted, and the impacts resulting from surface mining operations cease once mining has ceased. If importation, processing and sale of imported unprocessed aggregate were to be considered ‘*Surface Mining*’ under the Zoning Ordinance, as the applicant has requested, the impacts generated by mining activities, such as noise, traffic, and dust, would continue without the inherent limitation that exist with surface mining uses. This is particularly of concern in rural base zoning districts in which commercial and industrial uses are not permitted. Other than mineral extraction, commercial and industrial uses in Hillside must *“require remote rural setting or support the recreational use, study or appreciation of the natural environment”* as specified by General Plan Policy R-LU 18.

Comparison of “Importation and Processing” with “Concrete Recycling”

SCQ states in their application that importation and processing of aggregate would be substantially similar in nature to the concrete recycling import activities that currently occur at Stevens Creek Quarry under an approved land use entitlement (File No. 1253-89A). SCQ also states that the purpose of the Hillside zoning district includes protecting and promoting the wise use of a range of natural resources, including natural resources, and that the interpretation SCQ is seeking would *“promote the wise use of natural resources”* and *“utilize another source of locally produced construction aggregate, without the need to create a new*

mine site elsewhere in the County.” Consequently, SCQ takes the position that the requested Zoning Interpretation is compatible with the County Zoning Ordinance and therefore should be approved.

In their June 22, 2021 letter, SCQ further explains that their proposal to import and process aggregate is substantially similar in nature and intensity to surface mining operations and recycling facilities uses, is clearly compatible with the intent of the Hillside Zoning District, and is compatible with the intent of County General Plan policies, and therefore can and should be approved by the Planning Commission.

As analyzed above, the Department disagrees with these statements and finds the importation to be fundamentally inconsistent and incompatible with the intent of the General Plan for the Hillside areas. In addition, there are several significant differences between SCQ’s Zoning Interpretation application and the allowed concrete and asphalt recycling use. As noted above, the importation of material could increase the lifespan of a quarry. This is not the case for imported recycled material. The recycling operation, as a separately permitted use with a relatively low annual throughput amount (approximately one hundred thousand tons per year), has not and will not extend the lifespan of SCQ.

Another significant distinction between the recycling use and the proposed importation of unprocessed aggregate is that the asphalt and concrete material that SCQ recycles would otherwise be placed in a landfill. The County General Plan (General Plan Book B, Page O-40) specifically calls this out as a reason for allowing and encouraging colocation, stating:

An additional benefit of recycling is the resulting reduction in the volume of material being deposited in the area’s solid waste landfills, thus extending the useful life of those facilities.

As noted above, aggregate from another quarry would not fall under that category, as it can be processed on-site, sold off site, or used for reclamation. Therefore, the proposed importation would not be similar to a concrete recycling use and would remain inconsistent and incompatible with the General Plan provisions for the Hillside areas.

Importation and Processing of Unprocessed Aggregate is Not Appropriately Ancillary to the Primary Use of Surface Mining

County Zoning Ordinance § 2.20.020(B) specifies that “[a]n incidental activity carried out as part of a primary use, which is not expressly identified by the zoning ordinance as part of the primary use may be conducted if determined **by the applicable decision making authority to be appropriately ancillary to the primary use classification**, and generally compatible in nature with the uses permitted by the applicable zoning designation.”

In their application letter, SCQ states that the importation and processing of material would be ancillary and incidental to the existing surface mining operation, and that the importation of unprocessed aggregate would be substantially similar to concrete and recycling facilities that are allowed uses in the Hillside zoning district.

Although SCQ’s representation that it would utilize existing equipment and facilities to process the imported material is factual, the quantity that SCQ proposes to import constitutes a very significant proportion of their total throughput. Specifically, SCQ proposes to import

one million tons a year and extract and process two million tons a year, for a total annual throughput of three million tons per year. The amount of imported material constitutes one-third of the total amount processed by SCQ annually.

The Zoning Ordinance does not specify objective criteria for determining when a proposed use is “appropriately ancillary” to a primary use. *Ancillary*, by definition, means providing necessary support to a primary activity. Since the proposed importation would be 50% of the extracted materials, the Department does not consider this importation to be appropriately ancillary to the surface mining use given this high proportion.

As a result, the Department finds that the requested Zoning Interpretation is not appropriately ancillary to the existing *Surface Mining* use.

Conclusion

Based on the analysis above, the Department finds the proposed Zoning Interpretation to be inconsistent and incompatible with the County’s General Plan. The Department also finds the proposed importation to be inappropriately ancillary to the existing Surface Mining use. As a result, the Department recommends that the Planning Commission **deny** the proposed Zoning Interpretation and take the following actions:

- a. Find that the denial of the application is exempt under CEQA in accordance with Public Resources Code Section 21080(b)(5) and CEQA Guidelines Section 15270.
- b. Deny the Zoning Interpretation application to allow importation and processing of unprocessed material from Lehigh Permanente Quarry to Stevens Creek Quarry as an allowed use pursuant to the definition of ‘*Surface Mining*’ (Zoning Ordinance Section §2.10.040) or as ‘*Incidental Activities*’ to ‘*Surface Mining*’ (Zoning Ordinance §2.10.020(B)).

BACKGROUND

Permitting History

On September 20, 1950, the Santa Clara County Planning Commission granted Use Permit No. 173.977 for the surface mining operation at Stevens Creek Quarry.

On January 10, 1984, the Board of Supervisors approved a Use Permit with a Reclamation Plan for the Southern portion of the Quarry (Parcel A), where the Quarry entrance, scale house, and recycling and composting operations are located.

On July 5, 1990, the Planning Commission modified the Use Permit to allow the recycling of concrete, asphalt and natural earth, and on November 8, 1990, the Quarry received Architecture and Site Approval for the recycling facility.

On February 18, 1995, the Planning Commission renewed the Use Permit for a period of twenty years (February 18, 2015), subject to the original conditions, and authorized the operation of a community recycling staging and composting program by the City of Cupertino on Parcel A. On December 17, 1996, the Board of Supervisors further modified and adopted the Use Permit Conditions of Approval by resolution to their current form.

On December 29, 2014, the Quarry operator applied for a Use Permit renewal, and the Use Permit renewal was subsequently heard by the Planning Commission on May 28, 2015 and continued to a date uncertain to allow the Department additional time to review and analyze historical Quarry documents and site conditions relevant to the Use Permit renewal. As the Use Permit extension was not approved by the Planning Commission within two years of the 2015 expiration date, SCQ's Use Permit expired, per the terms outlined in the County Zoning Ordinance (Section 5.20.190). As a result, SCQ was in violation of the County Code pursuant to section 4.10.370 (E) (Part I). SCQ currently operates under a Compliance Agreement, executed on May 16, 2018, that requires SCQ to apply for and obtain a Use Permit for the existing operation, and adhere to processing milestones and other deadlines to ensure that the operator obtains a Use Permit in a timely fashion.

In 2018, SCQ commenced the importation and processing unprocessed aggregate from neighboring Lehigh Permanente Quarry in violation of Zoning Ordinance Sections 4.10.307 and 5.80.030. Subsequently, on February 15, 2019, the County issued a Notice of Violation directing SCQ to cease importing material from Lehigh Permanente Quarry.

On September 21, 2020, SCQ submitted a request for a Use Permit and Reclamation Plan for the existing Stevens Creek Quarry, which was subsequently deemed incomplete for processing. On December 11, 2020, SCQ resubmitted their Use Permit and Reclamation Plan application, and concurrently submitted an application for a Zoning Interpretation, requesting that the County interpret the Zoning Ordinance to allow importation of and processing of aggregate, either as part of County regulations governing '*Surface Mining*,' or as an '*Incidental Use*' to a '*Surface Mining*', which is the subject of this report. The Use Permit and Reclamation Plan application is currently deemed incomplete for processing by the County.

Through the review of this application, the County has identified several zoning, building, fire code, and environmental health violations on the property. A Notice of Violation documenting these issues was sent to SCQ on August 11, 2021 (refer to Attachment E).

Comments and Public Noticing

In response to a referral to the City of Cupertino ("City"), the City provided a comment letter on December 30, 2020 to the Department regarding SCQ's Use Permit, RPA, and Zoning Interpretation application, recommending that the County deny the Zoning Interpretation due to inconsistency with the County General Plan. The City's comment letter has been included as Attachment B.

On June 9, 2021, a courtesy notice of the Planning Commission's hearing for the Zoning Interpretation was published in the San Jose Post Record, and a copy of the public notice was mailed to all real property owners within a 1000-foot radius of the subject property on June 9, 2021. Additionally, on June 10, 2021, this notice was emailed to the SCQ interested parties list. Since the item was continued by the Planning Commission to a date certain on August 26, 2021, a courtesy notice was sent to the interested parties list as a reminder on August 18, 2021.

All public comments have been attached to this report as Attachment F.

STAFF REPORT REVIEW

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ATTACHMENTS:

- Attachment A - Zoning Interpretation Application Request Letter (PDF)
- Attachment B - SCQ Letter from Cupertino dated 12.30.20 (PDF)
- Attachment C - Letter dated June 22, 2021 from SCQ requesting continuance (PDF)
- Attachment D - Proof of Publication and Affidavit of Mailing (PDF)
- Attachment E - SCQ Notice of Violation 08.11.21 (PDF)
- Attachment F - Public Comments (PDF)
- Public Comments (PDF)