

From: [Sean Hungerford](#)
To: [Doyle, Peggy](#)
Subject: [EXTERNAL] December 19, 2019 HLUET Committee Meeting - Agenda Item No. 6
Date: Wednesday, December 18, 2019 9:18:39 PM
Attachments: [12-18-19 Letter to HLUET Committee \(00400910xC24FB\).pdf](#)

Ms. Doyle,

Attached please find a letter for submittal to the HLUET Committee meeting on December 19, 2019 for Agenda Item No. 6.

Thank you.

SEAN K. HUNGERFORD, ESQ.
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December 18, 2019

VIA ELECTRONIC MAIL: peggy.doyle@cob.sccgov.org

Mike Wasserman, Chairperson
Housing, Land Use, Environment, and
Transportation Committee
County of Santa Clara
70 West Hedding Street, 1st Floor
San Jose, CA 95110

Re: *Permanente Quarry*
December 19, 2019 HLUET Committee
Agenda Item No. 6

Dear Chairperson Wasserman and Members of the Committee:

This firm represents Lehigh Southwest Cement Company (“Lehigh”) which operates the Permanente Quarry (“Quarry”). We are writing to clarify the record and correct certain statements made in the December 19, 2019 status report to the Housing, Land Use, Environment and Transportation Committee concerning Agenda Item No. 6. Our corrections are as follows:

1. Page 2 of the status report, under heading (1), references the August 2018 Notice of Violation issued concerning the “haul road.” The status report does not state, however, that Lehigh has completed all corrective actions to discharge this violation. Staff confirmed that this at a December 20, 2018 Planning Commission meeting and Lehigh also confirmed this in a January 31, 2019 letter to County Counsel. Thus, there is no outstanding “haul road” notice of violation subject to corrective actions or requests for modification.

2. Page 2 of the status report states, under heading (1), that Lehigh filed its Major Reclamation Plan Amendment application on March 22, 2019. This appears to be a typographical error – the application was in fact filed on May 22, 2019.

3. Page 3 of the status report, under heading (2), states that “a hearing” was held by the Code Enforcement Manager on October 22, 2019. This is inaccurate. The process for addressing alleged reclamation plan violations is contained in the County’s code. Pursuant to that code, Lehigh met with County staff on October 22, 2019 for the specific purpose of discussing a time schedule for corrective actions that would resolve the June 13, 2019 notice of violation. Staff attempted, however, to hold a “hearing” at that time. Lehigh stated that it did not request a hearing, nor had been given notice of a hearing, and a hearing did not take place. Rather, Lehigh explained at the meeting that it completed

all required corrective actions and would prepare a draft “stipulated order to comply” acknowledging this, which Lehigh sent to staff on October 29, 2019 (attached).

4. In further regard to the “stipulated order to comply,” County staff provided its own version of this document on November 8, 2019. The County’s version, however, does not function as a stipulated order to comply under the Surface Mining and Reclamation Act, or the County’s own surface mining ordinance, because it does not track the corrective actions listed in the June 13, 2019 notice of violation and raises new requirements not contained in that notice. This was not pointed out in the status report. We are attempting to meet with staff to clarify these issues.

5. Page 3 of the status report, under heading (4), also states that the County received a “notice of intent” from Lehigh to appeal to the State Mining and Geology Board and “has not received any further information related to this intended appeal.” In fact, in addition to providing the intent to appeal, Lehigh sent copies of the full, filed appeal to the Planning Department and the Office of County Counsel.

6. Page 3 of the status report, under heading (4), further states that “[t]he County has requested to meet with Lehigh to discuss the contents of the SOTC.” In fact, Lehigh, through counsel, sent many requests to the County for a meeting to discuss a final resolution of the June 13, 2019 notice of violation. The County thus far has refused to schedule this meeting. Lehigh continues to desire to meet with the County to resolve this issue.

We appreciate the opportunity to provide this input.

Sincerely,

HARRISON, TEMBLADOR, HUNGERFORD & JOHNSON



By

Sean Hungerford, Esq.

cc: Erika Guerra, Lehigh Southwest Cement Company

Stipulated Order to Comply

The County of Santa Clara (“County”) is the lead agency pursuant to the Surface Mining and Reclamation Act of 1975 (“SMARA”) with respect to surface mining operations occurring at the Permanente Quarry (“Quarry”), which is operated by Lehigh Southwest Cement Company (“Lehigh”).

On June 13, 2019, the County issued a “Notice of Violation and Public Nuisance: Intent to Record” (hereinafter, “NOV”) alleging violations of (1) SMARA’s regulations at Title 14, section 3706, for a failure to control sedimentation at the Quarry; and (2) the approved Reclamation Plan and Conditions of Approval Nos. 78(d) and 78(f) for a failure to use best management practices on slopes above Permanente Creek. The NOV directed Lehigh to perform six actions (listed further below) to correct the violations.

On June 28, 2019, Lehigh provided a response letter, expressing a desire to work cooperatively and requesting that the County issue a “stipulated order to comply” under SMARA and the County’s mining ordinance because certain response actions required longer than 30 days. (Pub. Resources Code, § 2774.1, subd. (a)(2)(B); S.C.C. Ord., § 4.10.370, Pt. III (C)(1).) While this request was pending, Lehigh has completed the corrective actions in the NOV as indicated in the table below:

<i>County’s Directives</i>	<i>Status of Lehigh’s Response</i>
1. By June 28, 2019 , submit a plan for soil stabilization and stormwater control and erosion prevention in the violation area to prevent further discharge of sediment into Permanente Creek.	Completed. On June 28, 2019 Lehigh submitted a plan describing completed actions and actions planned to prevent any discharge of sediment to Permanente Creek.
2. By June 28, 2019 , test the sediment material discharged into Permanente Creek for contaminants, such as selenium and submit a report presenting the results of that testing to the County Department of Planning and Development Planning Division (Planning Division) and the California Regional Water Quality Control Board (Regional Board). Further action may be required based on the results of this testing.	Completed. On June 28, 2019, Lehigh provided access to sampling and testing data for WMSA material.
3. By June 28, 2019 , test the water seeping from the slopes and flowing into Permanente Creek for contaminants, such as selenium and submit a report presenting the results of that testing to the County Planning Division and the Regional Board...	Completed. On June 28, 2019, Lehigh provided the County with laboratory results for water samples collected when seeps were flowing.
4. By July 5, 2019 , implement the soil stabilization and stormwater control and	Completed, with additional work in progress. Lehigh has implemented the actions listed in

<p>erosion prevention plan noted under Item 1.</p>	<p>its June 28, 2019 plan. Lehigh is performing additional grading and installing stormwater controls to ensure interim slope stability according to the “Yeager Yard Mitigation Measures Conceptual Design” contained in Attachment “A.” Lehigh expects this additional work to be complete by November 30, 2019, according to the schedule further below.</p>
<p>5. By July 12, 2019, submit slope stability calculations that analyze the stability of the south-facing slope of the West Materials Storage Area pursuant to California Code of Regulations, Title 14, § 3704(f), prepared by CEG. If unstable conditions are identified, you must also recommend remedial action.</p>	<p>Completed. On September 30, 2019, Lehigh provided a final reclamation design for this slope (see Stantec “WMSA Slope Instability Remediation Plan”) which included calculations showing that the design meets SMARA’s standards.</p>
<p>6. By August 14, 2019, modify and resubmit the Permanente Creek Restoration Plan Grading Approval application, deemed incomplete by the County on February 14, 2019 to include the portion of Permanente Creek located adjacent to the Yaeger Yard. The modification will need to address the sediment derived from erosion within the Yaeger Yard that has been deposited into Permanente Creek, and address the long-term stability of the slopes above and below the Yaeger Yard area.</p>	<p>Completed. On September 30, 2019, Lehigh supplemented its May 2019 application to include the final reclamation design for this slope (i.e., Stantec “WMSA Slope Instability Remediation Plan”). Lehigh included the design in its Reclamation Plan application (rather than the Permanente Creek Restoration Plan Grading Approval) because the slope stabilization constitutes reclamation activity.</p>

The County and Lehigh enter this Stipulated Order to Comply (“SOTC”) to memorialize Lehigh’s completed actions above, and to establish a November 30, 2019 deadline for completing the work shown in the “Yeager Yard Mitigation Measures Conceptual Design” contained in **Attachment “A.”** The parties agree that, upon the County’s receipt of Lehigh’s certification that this work is complete, the County shall regard the NOV as discharged.

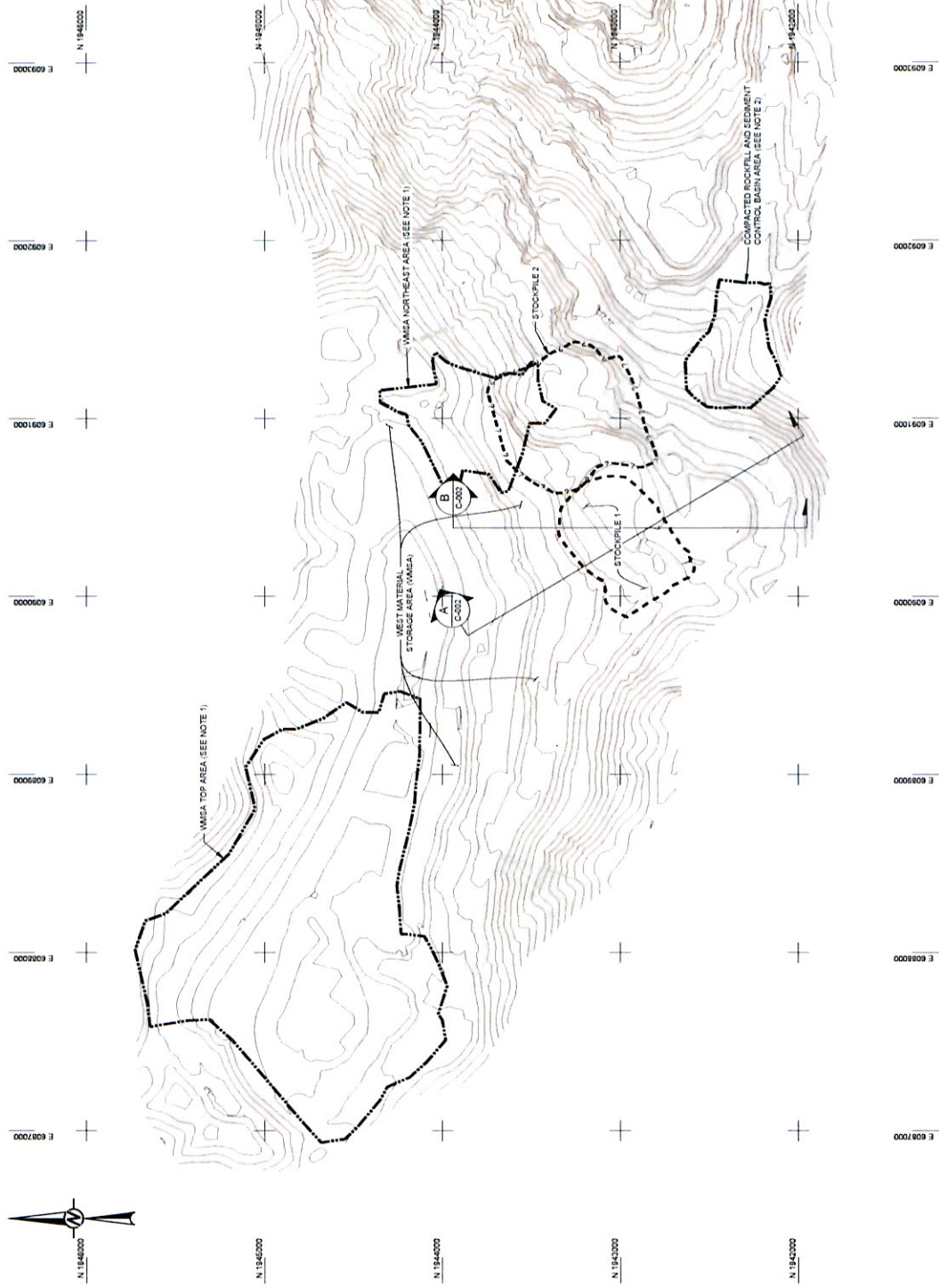
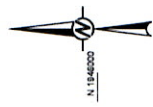
This Stipulated Order to Comply is effective upon execution.

October __, 2019

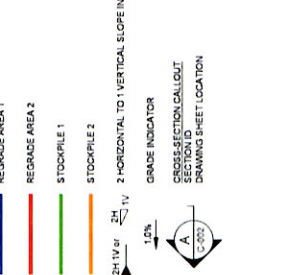
Santa Clara County, Department of Planning
and Development

October __, 2019

Lehigh Southwest Cement Company



- GENERAL LEGEND**
- 10' --- EXISTING GROUND CONTOUR (R-MSL)
 - 500' --- DESIGN CONTOUR (R-MSL)
 - --- GRADE BREAK
 - --- EXTENTS OF STOCKPILE 1
 - --- EXTENTS OF STOCKPILE 2 (APPROXIMATE)
 - --- STOCKPILE FILL LOCATIONS (APPROXIMATE)
 - --- REGRADE AREA 1
 - --- REGRADE AREA 2
 - --- STOCKPILE 1
 - --- STOCKPILE 2
 - --- 2H:1V @ 2' HORIZONTAL TO 1' VERTICAL SLOPE INDICATOR
 - --- GRADE INDICATOR
 - --- CROSS-SECTION CALLOUT SECTION AND SHOWN SHEET LOCATION



NOTES

- QUANTITIES PROVIDED IN TABLE 1 ARE APPROXIMATE AND BASED ON THE ASSUMPTIONS THAT THE CONTRACTOR SHALL MAINTAIN THE EXISTING CONTOUR AND THE FINAL RECLAIM TOPOGRAPHY PROVIDED BY OTHERS. THE OWNER AND THE CONTRACTOR ARE RESPONSIBLE FOR THE FINAL LOCATION AND CONFIGURATION OF THE PLACED STOCKPILE FILL OF EXCESS EXCAVATION FROM THE GRADING PLAN SHOWN ON DRAWING C-001. THE CONTRACTOR IS RESPONSIBLE FOR MAINTAINING THE EXISTING TOPOGRAPHY TO PREVENT EROSION, SLOPE STABILITY AND MAINTAIN SAFE WORKING CONDITIONS IN ACCORDANCE WITH APPLICABLE STANDARDS.
- COMPACTED ROCKFILL AND SEDIMENT CONTROL BASIN AREA MAY RECEIVE COMPACTED ROCKFILL FOR MITIGATIONS TO SLOPE STABILITY, SURFACE WATER MANAGEMENT, SLOPE EROSION CONTROL, AND SEDIMENT MANAGEMENT. DESIGN AND ASSOCIATED QUANTITIES TO BE PROVIDED BY OTHERS.

TABLE 1

AREA	APPROXIMATE CAPACITY (CY)
WMSA TOP AREA	1,500,000
WMSA NORTHEAST AREA	800,000

REFERENCES

- TOPOGRAPHY USED IN THE GENERAL SITE LAYOUT REPRESENTS THE AERIAL SURVEYS BETWEEN 2009 TO JUNE 2013 PROVIDED BY LEHIGH SOUTHWEST CEMENT COMPANY.
- COORDINATE SYSTEM IS IN CALIFORNIA STATE PLANE ZONE 3 NAD 83 (2011).



PROJECT
YEAGER YARD MITIGATION MEASURES
CONCEPTUAL DESIGN

TITLE
GENERAL ARRANGEMENT

CLIENT
 LEHIGH SOUTHWEST CEMENT CO.
 PERMANENTE PLANT
 SANTA CLARA COUNTY, CALIFORNIA

CONSULTANT
GOLDER
 TUCSON OFFICE
 4700 N. ORACLE ROAD, SUITE 210
 TUCSON, ARIZONA
 UNITED STATES OF AMERICA
 (T) (520) 888 8818
 www.golder.com

CONTRACT NO.
 1893852

CONTROL
 A104

REV. 1 of 4

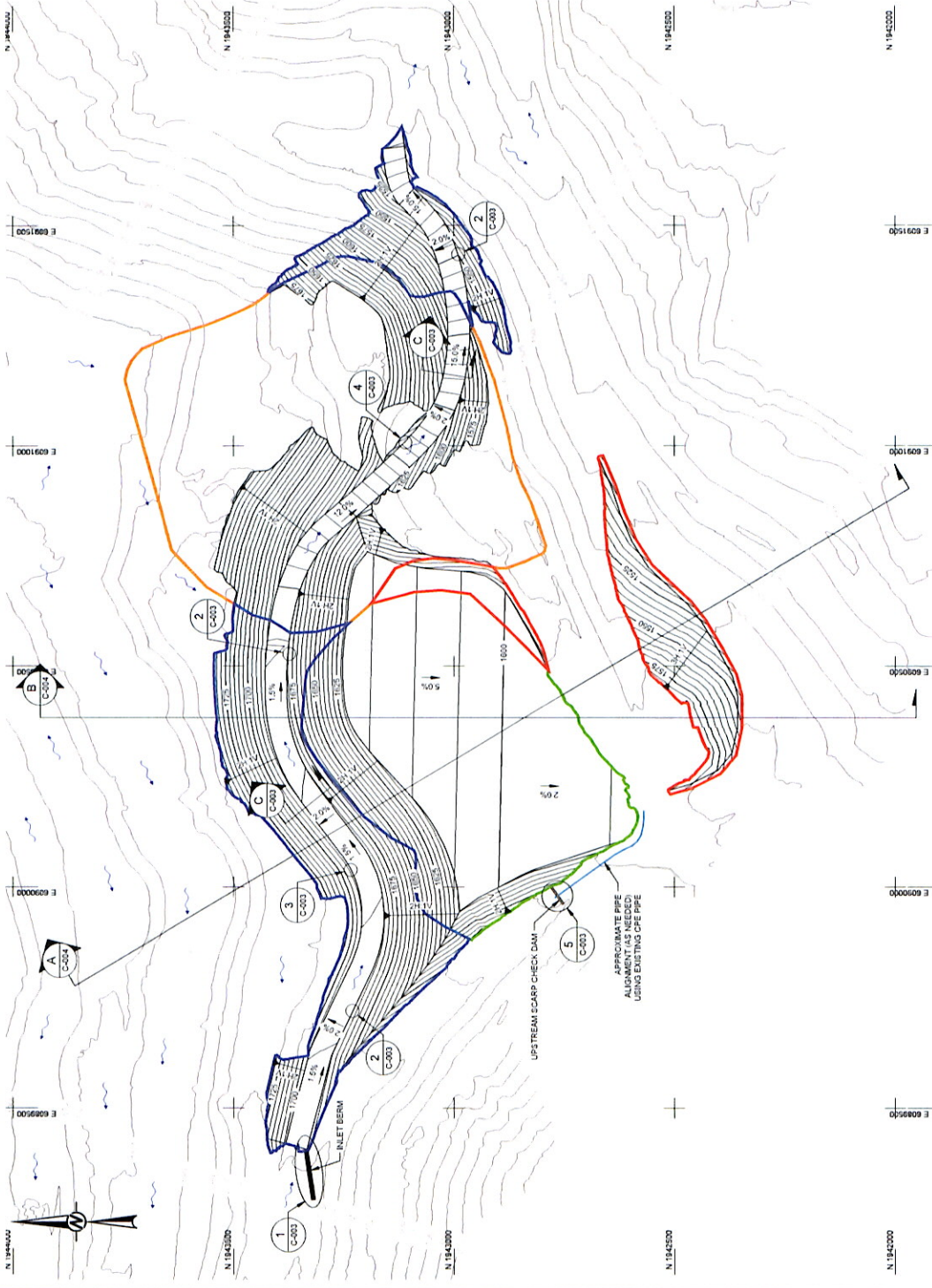
PROJECT NO.
 G-001

DATE 2018-07-15 **ISSUED FOR CONSTRUCTION**

REV YYY-AM-00 **DESCRIPTION**

DESIGNED **PREPARED** **REVIEWED** **APPROVED**

NL **NL** **CDJ** **WLF**



- LEGEND**
- EXISTING GROUND CONTOUR (8' MSL)
 - DESIGN CONTOUR (8' MSL)
 - GRADE BREAK
 - REGRADE 1
 - REGRADE 2
 - STOCKPILE 1
 - STOCKPILE 2
 - SURFACE WATER FLOW DIRECTION (SEE NOTE 1)
 - BERM
 - EXISTING CPE PIPE ALIGNMENT
 - SCARP CHECK DAM
 - 2H:1V @ 2H
 - 2.5:1 HORIZONTAL TO 1 VERTICAL SLOPE INDICATOR
 - 1.2% GRADE INDICATOR
 - CROSS-SECTION CALLOUT SECTION ID
 - DRAINING SHEET LOCATION

NOTES

- BERMS MAY REQUIRE MINIMUM REGRADES TO PROVIDE DRAINAGE OF SURFACE WATER TO THE DOWNSTREAM SIDE OF THE DAM. SLOPES MAY REQUIRE 15:1 FOOT HORIZONTAL TO 1 FOOT VERTICAL SLOPES EVERY 50 FEET IN ELEVATIONS.
- SURFACE WATER MANAGEMENT CONTROLS.
- QUANTITIES

LOCATION	CUT (CY)	FILL (CY)
REGRADE 1	154,000	8,200
REGRADE 2	52,000	100
STOCKPILE 1	589,200	0
STOCKPILE 2	228,700	21,500

REFERENCES

- TOPOGRAPHY USED IN THE GRADING PLAN REPRESENTS THE AERIAL SURVEY FROM MAY 28, 2019 PROVIDED BY LEHIGH-SOUTHWEST CEMENT COMPANY.
- COORDINATE SYSTEM IS IN CALIFORNIA STATE PLANE ZONE 3 (NAD 83 (2011)).

PROJECT
YEAGER YARD MITIGATION MEASURES
CONCEPTUAL DESIGN

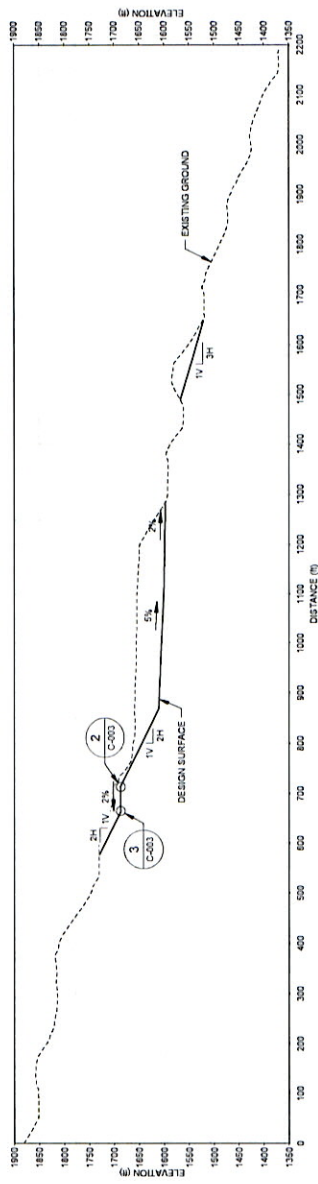
CLIENT
LEHIGH SOUTHWEST CEMENT CO.
PERMANENTE PLANT
SANTA CLARA COUNTY, CALIFORNIA

CONSULTANT
GOLDER
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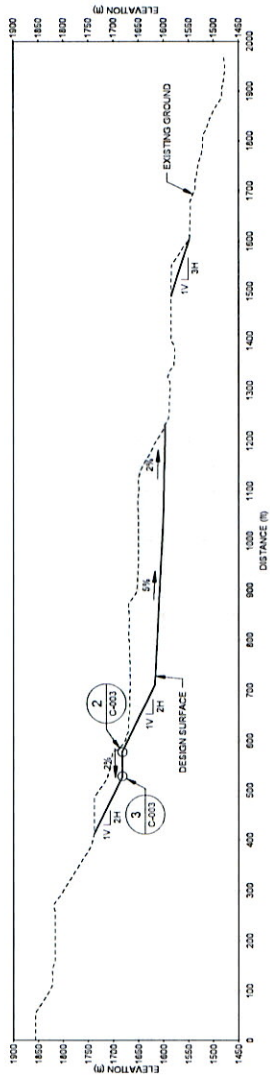
REVISIONS

NO.	DATE	DESCRIPTION	BY	CHKD.	APP'D.
0	2019-07-15	ISSUED FOR CONSTRUCTION			

PROJECT NO. 1893852
CONTROL A104
REV. 2 of 4
FRAME C-001



SCALE 1" = 12' CROSS-SECTION A



SCALE 1" = 12' CROSS-SECTION B



PROJECT: YEAGER YARD MITIGATION MEASURES
CONCEPTUAL DESIGN

CLIENT: LEHIGH SOUTHWEST CEMENT CO.
PERMANENTE PLANT
SANTA CLARA COUNTY, CALIFORNIA

TUCSON OFFICE
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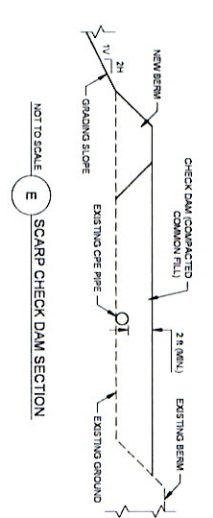
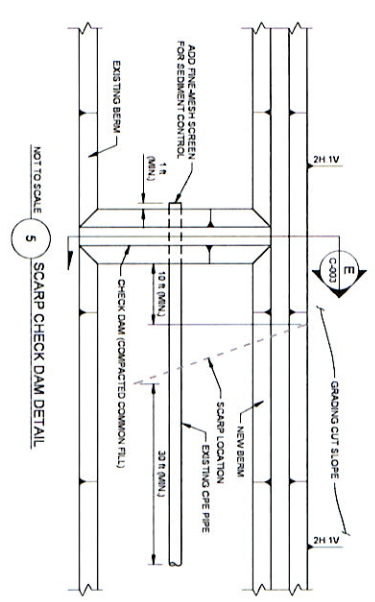
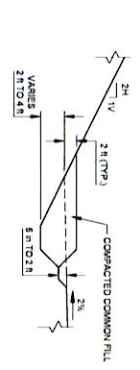
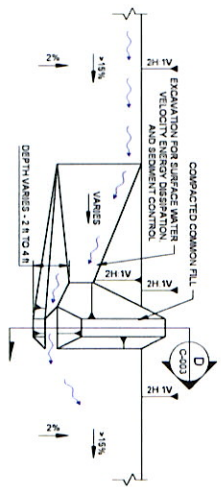
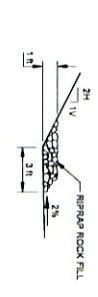
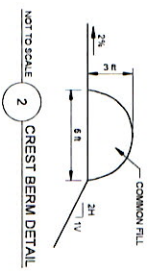
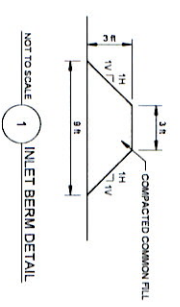
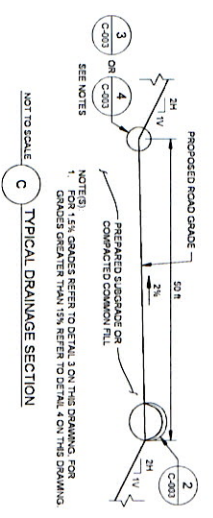


TITLE: CROSS-SECTIONS

PROJECT NO: 1893852
CONTROL: A104
REV: 0
DATE: 3/14
DRAWN: C-002

0 2018-07-15 ISSUED FOR CONSTRUCTION
REV: YYYY-MM-DD DESCRIPTION

DESIGNED: PREPARED: REVIEWED: APPROVED:



REV	DATE	DESCRIPTION	BY	CHKD	APP'D
0	2019-07-15	ISSUED FOR CONSTRUCTION			
<p>CLIENT: LEHIGH SOUTHWEST CEMENT CO. PERMANENTE PLANT SANTA CLARA COUNTY, CALIFORNIA</p> <p>PROJECT: YEAGER YARD MITIGATION MEASURES CONCEPTUAL DESIGN</p> <p>CONTRACT: TUCSON OFFICE 4702 N. ORACLE ROAD SUITE 210 TUCSON, ARIZONA UNITED STATES OF AMERICA [1-1-650] 868 8118 www.golder.com</p>					
<p>DESIGNED: PREPARED: REVIEWED: APPROVED:</p>					
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<p>FILE: C-003</p>					