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VIA EMAIL AND U.S. MAIL

Rob Eastwood
Planning Manager
Santa Clara County Department of Planning and Development
County Government Center
East Wing, 7th Floor
70 West Hedding Street
San Jose, CA 95110

Re: Stevens Creek Quarry – Response to 1-31-19 Letter from City of Cupertino

Dear Mr. Eastwood:

As you know, I represent Stevens Creek Quarry, Inc. (“SCQ”) regarding its Stevens Creek Quarry (“SCQ Quarry”) located in Santa Clara County (“County”), California. On January 31, 2019, the Interim City Manager for the City of Cupertino (“City”) sent a letter (“City Letter”) to you regarding the transport of material from Lehigh’s Mine Site (“Lehigh Mine”) to the SCQ Quarry and subsequent processing of that material (“Activities”). Specifically, the City alleged that the Activities violated SCQ’s 1996 Conditions of Approval (“1996 COAs”), the 2002 Mediated Conditions (“Mediated Conditions”) and various state and local laws. The Letter makes additional allegations regarding Lehigh’s permits.

As you are aware, prior to August 2018, SCQ and Lehigh were using an interior haul road connecting Lehigh and SCQ’s property to transport material for processing. In August 2018, the County issued Lehigh a notice of violation for the use of the internal road. Lehigh and SCQ stopped using the haul road pursuant to the notice of violation, and began using public City streets to transport material from Lehigh to SCQ. The City contends that the use of City roads to transport material between the quarries has caused increased truck traffic and upset the neighbors. To timely address that issue, Lehigh and SCQ developed a plan to build a new road on Lehigh’s property to transport the materials. Lehigh submitted a reclamation plan amendment application to the County in November 2018, which would allow the construction of the proposed haul road. Unfortunately, rather than support the use of a private haul road as an obvious solution to the issue, the City sent you a letter that mischaracterizes SCQ’s approvals. SCQ maintains that the current Activities are consistent with its permits, approvals, and applicable laws.

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1. Import and Processing of Material at the SCQ Quarry is Not Prohibited

The City alleges that SCQ is prohibited from importing, unloading, and processing material mined offsite by the 1996 COAs and the Mediated Conditions. This is incorrect. Nowhere in either the 1996 COAs or the Mediated Conditions is importing, unloading, or processing of offsite material prohibited. As you are aware, the Mediated Conditions are largely the same as the 1996 COAs but are applicable to Parcel B. The 1996 COAs are comprised of 53 specific conditions and numerous sub-conditions that regulate and prohibit certain activities on the SCQ site.

The City's main argument on this point is that the absence of conditions regulating import and processing of offsite material proves that the County intended to prohibit import. However, COAs 39 through 42 allow for processing of recycle material, yet there are no conditions regulating the import of recycled materials. Recycling activities, of course, require unloading; therefore, the County's failure to regulate unloading obviously does not mean that the County intended to prohibit any unloading at the Quarry, as alleged by the City. Further, the current reclamation plan for the SCQ Quarry requires significant amounts of fill to be imported over many years to achieve completed reclamation slopes. As such, the absence of conditions specifically regulating import cannot be taken as a prohibition on import.

2. Use of City Roads to Haul Lehigh's Material is Consistent with SCQ's and Lehigh's Approvals

The City alleges that use of the public City Streets is inconsistent with the 1996 COAs' and Mediated Conditions' requirements that the Quarry only use a designated haul route. The City correctly notes that 1996 COA no. 17 and Mediated Condition no. 13 designate Stevens Canyon Road-Foothill Boulevard to Hwy 280 and Foothill Expressway as the only approved haul route. In the current situation, trucks involved in the Activities use a designated haul route to carry material onto SCQ's designated haul route, which leads to the SCQ Quarry. Thus, at all times, trucks used for the Activities are on a designated haul route.

3. Interior Private Haul Road

a. Use of an Interior Private Haul Road is Consistent with the 1996 COAs' and Mediated Conditions' requirements and the County Code

The City argues that a private road connecting Lehigh's and SCQ's properties cannot be used because this would violate the requirement that the only approved haul route is Stevens Canyon Road-Foothill Boulevard to Hwy 280 and Foothill Expressway. The requirement to identify the haul route to be used for a mining operation comes from the traffic safety section of the County's

surface mining ordinance, which states that “[h]aul routes on public roads shall be specified in the use permit conditions.” (Santa Clara County Zoning Ordinance §4.10.370, Part II(A)(4)(c), (emphasis added).) There is no similar requirement to designate haul routes on *private* roads. The fact that no internal haul route is specified in the 1996 COAs or the Mediated Conditions does not mean that SCQ is prohibited from using private internal haul routes. Based on the context of the County Code, the Mediated Conditions and COAs, there is no evidence that Mediated Condition 13 or COA 17 were intended to restrict the use of private roads to haul materials.

b. The Designation of Specific Access Points at the SCQ Quarry Does Not Prohibit Use of a Private Haul Road from Lehigh’s Property

The City argues that use of an internal, private haul road would be inconsistent with the 1996 COAs’ and the Mediated Conditions’ designation of three specific access driveways. The designation of specific access points in the 1996 COAs and Mediated Conditions is based on the County Code’s requirement for such designation in all surface mining permits, as set forth below:

Number and location of access points shall be specified. Such entrance shall be subject to approval by the agency having jurisdiction. If required, acceleration and deceleration lanes shall be provided which meet County Department of Roads and Airports Standards.

(Santa Clara County Zoning Ordinance §4.10.370, Part II(A)(4)(d).) The fact that the County ordinance requires each specified entrance to be approved by the agency having jurisdiction and states that acceleration and deceleration lanes may be required, shows that the County is only referring to access points on *public* roads. This same analysis applies to the Mediated Conditions, since those were drawn from the 1996 COAs. COA 13 and Mediated Condition 8 were only intended to limit the ingress and egress to Parcels A and B via *public* roads to the three existing driveways on Stevens Canyon Road. The County zoning code section requiring the specification of access points to *public roads* supports this argument.

4. The Activities Do Not Constitute a “Substantial Deviation” from SCQ’s Approved Reclamation Plan

The City argues that the Activities constitute a “substantial deviation” (as defined in the Surface Mining and Reclamation Act (“SMARA”) Regulations) that requires an amendment to the approved reclamation plan. Specifically, the City alleges that the Activities would require a reclamation plan amendment because they would extend the life of the mining operation, substantially affect the end use of the site, and would be inconsistent with a previously adopted environmental determination. As you know, SCQ is now preparing an amendment to its approved reclamation plan, so to the extent that the import-related activities are included in the

reclamation plan amendment, the City's arguments will be moot. The City seems to selectively abridge the language of 14 CCR 3502(d), which requires an amendment to the reclamation plan for a "**substantial** extension of the termination date of the mining operation **as set out in the approved reclamation plan.**" (Emphasis added.) Since there is no actual termination date included in the currently approved reclamation plan, the City does not have a strong argument that the import activity extends any termination date "as set out in the approved reclamation plan." The 2008 reclamation plan contemplated import of fill materials for backfilling, which would require significant truck traffic and take years to achieve. Further, since the reclamation activities for the Quarry will take many years to complete, conducting import activities while the Quarry reclamation is ongoing will not result in any extension of activities at the Quarry, let alone a "substantial" extension.

No water samples taken at the SCQ site support the City's argument that the Lehigh greenrock creates contamination at SCQ, and would somehow "substantially affect the end use of the site" or otherwise be inconsistent with a previous environmental determination. Even if some additional water quality monitoring is required, that would be covered in permits from the RWQCB.

Given the fact that import of materials for backfill and recycling is already permitted under previous approvals, and will be processed in equipment already onsite and in use for processing Quarry-derived material, it is a stretch for the City to allege that import of a slightly different material is such a fundamental change to the operation to constitute a "substantial deviation." The completion of the previously approved reclamation plan will be unaffected by the import activity and no change to the end use will occur.

5. Use of Public Roadways by Aggregate Trucks Does Not Constitute a Public Nuisance

The City argues that by their very nature, aggregate trucks constitute a public nuisance. This argument is absurd, given that aggregate trucks are a necessity in society for infrastructure, development and maintenance projects including road building and maintenance, schools, hospitals, houses, offices etc. The subject truck traffic does not "unlawfully obstruct[] the free passage or use, in the customary manner" of the City streets. (Cal. Civ. Code § 3479; *Stegner v. Bahr & Ledoyen, Inc.* (1954) 126 Cal.App.2d. 220, 230 [court found that there was no evidence the truck traffic from quarry operations obstructed free passage on the public road].) Presentations by the Santa Clara County Sheriff's office at the neighbor meeting on December 19, 2018 and on a call with the County and City Staff on December 14, 2018 made clear that the subject trucks were not a nuisance. Further, SCQ's trucks travel on Foothill Boulevard and Stevens Canyon Road on approved truck routes. The presence of the aggregate on-road trucks on City streets is not a nuisance.

Additionally, the City limits truck traffic to certain routes within the City, these routes include Foothill Boulevard between McClellan Road and Juniper Sierra Highway, and Stevens Canyon Road from the south City limits to McClellan Road. (City Municipal Code §§ 11.32.020 & 11.32.060 [violation of these sections is not determined to be a public nuisance *See* City Municipal Code § 1.09.180].)

6. Aggregate Trucks Are Not Required to be Tarped

The City alleges that the California Vehicle Code requires SCQ to cover its loads while on public streets. The City is incorrect. The California Vehicle Code states “[v]ehicles transporting loads of aggregate materials are not required to cover their loads if the load, where it contacts the sides, front, and back of the cargo container area, remains six inches from the upper edge of the container area, and if the load does not extend, at its peak, above any part of the upper edge of the cargo container area.” (Cal. Veh. Code § 23114(e)(4) (emphasis added).) This point, i.e. tarping is not required, was also made by the Sheriff’s Department in their December 2018 statements. SCQ’s trucks are operated in compliance with the above requirements, therefore no tarps are required under state law. The City also argues that tarps are required by the Cupertino Municipal Code which states “[i]t is unlawful for any person to drive or move any open vehicle or trailer within the City unless there is a tarp over the contents or the material is constructed and located as to ensure that all litter is prevented from being blown or deposited upon any street.” (Cupertino Municipal Code Section 9.18.215(A)(6).) In this case, the material carried by SCQ’s trucks is loaded with sufficient freeboard, consistent with state law, to ensure a secure load. To the extent that the Cupertino’s requirements for tarping aggregate trucks conflicts with state law and requires a different practice, that conflicting requirement is pre-empted by state law. (See, e.g., *City of Poway v. City of San Diego* (1991) 229 Cal.App.3d 84.)

7. Societal Needs

SCQ’s and Lehigh’s operations are critical to thousands of companies that are located in Santa Clara County, and whose owners, employees, customers and projects count on both SCQ and Lehigh to be open and operational every day. SCQ and Lehigh indirectly contribute to projects worth millions of dollars to the County’s economy. As such, unfair and aggressive enforcement action against SCQ and Lehigh, as is suggested by the City, would result in economic harm in the County far beyond these two companies. In addition, interfering with the operation of the Activities will result in an increase in regional truck traffic vehicle miles traveled (VMTs) and an increase in GHG emissions as the necessary aggregate for regional construction and maintenance projects is long-hauled from further distances to serve Santa Clara County’s needs including the needs of Caltrans, Santa Clara County Department of Public Works, Santa Clara Valley Water District, Mid-Peninsula Regional Open Space District and ironically, the City of Cupertino Department of Public Works.

8. Solution

The solution to the City's traffic complaints is straightforward and has been apparent for a few months. The County should approve the Lehigh Reclamation Plan Amendment for the haul road to connect the Lehigh and SCQ properties, or allow use of the already existing private road.

If you have any questions please contact me.

Sincerely yours,

MITCHELL CHADWICK LLP



Patrick G. Mitchell

cc: Jacqueline Ociano, Planning Director for Santa Clara County
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