



90239

DATE: May 24, 2018
TO: Planning Commission
FROM: Christopher Hoem, Associate Planner
SUBJECT: Stevens Creek Quarry 2017 Annual Report

RECOMMENDED ACTION

Annual status report, for calendar year 2017, regarding compliance with conditions of approval of the Stevens Creek Quarry Use Permit. File: 1253-17PAM; Owner/Applicant: Jason Voss; Property Address: 12100 Stevens Canyon Road, Cupertino; General Plan: HS; Zoning District: HS-d1-sr and HS-d1; Supervisorial District: 5; Assessor's Parcel Numbers: 351-10-019 (40 acres), 351-10-020 (40 acres), and 351-18-048 (66.2 acres).

Possible action: Accept or reject status report.

PROJECT DESCRIPTION

The Quarry Annual Status Report (Report) updates the Planning Commission for the reporting period January 1, 2017 through December 31, 2017, pursuant to the following COAs associated with the project:

1. 1996 Stevens Creek Quarry Use Permit COA #53.
2. 2002 Agreement Regarding Parcel "B" (Mediated Agreement) COA #27.

The Use Permit (Attachment B) and Mediated Agreement (Attachment C) conditions regarding compliance monitoring state the following:

Use Permit - Condition 53:

The use permit shall be reviewed at the end of six months (January 1997 Planning Commission meeting) for compliance with all conditions of approval and on an annual basis with a report to be submitted to the Planning Commission on compliance with conditions of the permit. This review shall be limited to compliance with conditions and, absent appropriate findings, shall not result in revision of conditions.

Mediated Agreement Regarding Parcel "B" - Condition 27:

The compliance monitoring and enforcement for the provisions of this agreement will utilize the same mechanisms as used for Parcel A.

County Planning staff (Staff) regularly inspected the Quarry in 2017 to verify condition compliance on the following days and observed several issues with Quarry operations as identified below under the Reasons for Recommendation section:

| | |
|--------------|-------------------------------|
| January 17 | Post-Winterization Inspection |
| February 8 | Regular Inspection |
| March 1 | Regular Inspection |
| March 15 | Regular Inspection |
| April 5 | Regular Inspection |
| May 17 | Regular Inspection |
| July 5 | Regular Inspection |
| August 2 | Regular Inspection |
| September 8 | RWQCB Joint Inspection |
| September 14 | 2017 Annual SMARA Inspection |
| October 11 | Regular Inspection |
| December 13 | Regular Inspection |

The County Department of Planning and Development (Department) also received the 2017 Annual Compliance Monitoring Report (Attachment D) from a contracted consultant, ICF Jones & Stokes on January 12, 2018.

REASONS FOR RECOMMENDATION

Compliance During the 2017 Calendar Year

The Department found that the Quarry did not comply with the applicable COAs during the 2017 calendar year. Thus, The Department issued the Quarry a Notice of Violation (Attachment E) on September 27, 2017. This notice listed the compliance issues and violations of the Surface Mining and Reclamation Act (SMARA) and the County Zoning Ordinance, as summarized below.

The County and the Quarry have since entered into a Compliance Agreement and Stipulated Order to Comply to address all violations.

Upper Settling Basin (Use Permit COA #1)

COA #1 states that the approved Reclamation Plan drawings are part of the conditions of the Use Permit. The approved Reclamation Plan encompasses all Quarry-related activities. Any Quarry-related activity when located outside of the Reclamation Plan area conflicts with the Reclamation Plan and violates COA #1.

Part of the Upper Settling Basin (See Attachment A – Quarry Map) is located beyond the southern boundary of the Reclamation Plan area, violating the Use Permit. A Reclamation Plan Amendment is therefore required to modify the boundaries of the Reclamation Plan area to include the entire Upper Settling Basin and correct the violation.

Mining-related Ground Disturbances Outside Mine Boundary (Use Permit COA #1)

COA #1 states that the approved Reclamation Plan drawings are part of the conditions of the Use Permit. Any mine-related ground disturbance located outside of the property boundaries and Reclamation Plan boundaries conflicts with the Reclamation Plan and violates COA #1.

A mining-related slope failure occurred at the north high wall above the quarry pit in 2016, violating COA #1. To remedy this issue, the Quarry constructed a temporary retaining wall, and constructed a buttress against the north wall of the quarry pit to further mitigate ground movement. As the buttress was enlarged, the retaining wall eventually became obsolete and was therefore removed. The buttress is expected to be augmented throughout 2018.

Staff observed mining-related ground disturbances beyond the northern property boundary. The Quarry has agreed to evaluate the mining-related ground disturbances to determine the extent to which the Reclamation Plan boundaries may need to be expanded to include all mining-related ground disturbances. The resulting Report is due October 15, 2018.

Erosion Control (COA #23)

COA #23 states that “Excavation shall be conducted in a manner so as to keep adjacent streams, percolation ponds, or water bearing strata free from undesirable obstruction, siltation, contamination, or pollution of any kind. The existing settling ponds shall be maintained to intercept sediment. Settling ponds and other retention devices shall be installed and maintained to control sediments so that no sediments are deposited in Stevens Creek Reservoir from this property as a result of the surface mining process.”

During the unusually wet 2017 rainy season, Staff observed erosion of the fill slope, causing silt to enter the adjacent creek. This siltation was a result of insufficient stormwater control measures at the Quarry. Based on Staff recommendations, the Quarry installed new and improved existing stormwater control measures throughout the site, including new silt fencing, straw wattles and jute netting on fill slopes, and rock-lining ditches and creating rock check dams along access and haul roads.

Subsequent inspections by County inspectors in late 2017 and early 2018 revealed that the recently added stormwater control measures marginally prevented eroded silt from being deposited in the creek. A superior, long-term solution for stormwater capture and treatment prior to discharge into the creek will be addressed in the pending Corrective Action Plan, as a part of the Compliance Agreement.

Compliance Agreement and Stipulated Order to Comply

The Department and the Quarry entered into a Compliance Agreement and Stipulated Order to Comply (Agreement; Attachment F), per Public Resources Code §2774.1, on May 16, 2018. The Agreement requires the Quarry to address all violations through the development of a Corrective Action Plan. As part of the Agreement, the Quarry is currently conducting a Preliminary Engineering Geologic Evaluation (Evaluation), due August 14, 2018, which will lead to an In-depth Engineering Geologic Investigation Report (Report) and a Corrective Action Plan, due October 13, 2018. The purpose of the Evaluation is for the consulting engineering geologist and the County Geologist to develop consensus regarding the acceptable scope of the investigation needed for the Report. The Report will include the following:

1. Detailed quantitative slope stability analysis of Quarry slopes;
2. Recommended expanded Reclamation Area boundaries, if any, that encompass current and anticipated mining-related ground disturbances; and,
3. Proposed solutions to prevent slope failures or ground disturbances outside the recommended expanded Reclamation Area boundaries.

The Quarry will submit a Corrective Action Plan concurrently with the Report. The Corrective Action Plan will include deadlines for the Quarry to correct violations, as described in Exhibit A of the Agreement (Attachment F).

The Quarry has also agreed to apply for a new Use Permit and Reclamation Plan Amendment to address all existing violations.

The next annual status report to the Planning Commission will include all activities occurring in 2018, and is expected in early 2019.

BACKGROUND

The Planning Commission granted Use Permit No. 173.977 on September 20, 1950 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 front portion of the Quarry (Parcel A). The Board also approved a Reclamation Plan for the rear portion (Parcel B). 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. In February 1995, the Planning Commission renewed the Use Permit for a period of twenty years, subject to the original conditions, and authorized on Parcel A the operations of a community recycling staging and composting program by the City of Cupertino. The Board further modified and adopted the Use Permit conditions on December 17, 1996 by resolution to their current form. The Quarry operator applied for a Use Permit renewal on December 29, 2014. On May 28, 2015, the Planning Commission continued the Use Permit renewal to a date uncertain to allow the Department additional time to review and analyze historical Quarry documents and site conditions.

The Board's prior actions relating to Parcel A and B resulted in an ongoing dispute, including litigation, about whether quarrying and related activities were a legal nonconforming use on Parcel B. In April through August 2002, the Board held a series of hearings regarding the legal nonconforming use of Parcel B. The Quarry indicated to the Board that it would seek judicial relief if the Board determined that the Quarry was not a legal nonconforming use on Parcel B. The Monta Vista/Stevens Canyon Neighborhood Association, an association of residents who live near the Quarry within unincorporated Santa Clara County, indicated to the Board that it would seek judicial relief if the Board determined that the Quarry was a legal nonconforming use on Parcel B. In August 2002, at the County's suggestion, the Quarry and the Association agreed to participate in a County-sponsored mediation program to avoid litigation. The Quarry and Association representatives developed a set of operating conditions for quarrying and related activities on Parcel B which came to be known as the

Mediated Agreement. On October 8, 2002, the Board adopted a resolution recognizing the Mediated Agreement.¹

During a 2005 inspection, County staff observed that the Quarry had expanded its mining activity to a 1.5 acre fill-area, located west of Parcel B, and a 12.2 acre area located along the eastern property line of Parcel B. On May 14, 2009, the Architecture and Site Approval Committee approved a minor amendment to the Stevens Creek Quarry Reclamation Plan (dated May 2007), and adopted a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program.

The existing Financial Assurance Mechanism is a surety bond held by the County in the amount of \$2,304,756.29. If necessary, this bond may be used to ensure reclamation of the Quarry. The 2017 Financial Assurance Cost Estimate (FACE) totaled \$1,911,126. The FACE is the amount that the Quarry estimates for the cost of reclamation of the site. The County reviewed the 2017 FACE and noted that several outstanding items related to slope failures near reclamation plan boundaries required further analysis. The County did not approve the reduction in the bond amount as requested in the 2017 FACE.

STAFF REPORT REVIEW

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ATTACHMENTS:

- Attachment A - Stevens Creek Quarry Map (PDF)
- Attachment B - 1996 Use Permit COAs (PDF)
- Attachment C - 2002 Mediated Agreement COAs (PDF)
- Attachment D - 2017 Annual Compliance Monitoring Report (PDF)
- Attachment E - Notice of Violation Letter September 27 2017 signed (PDF)
- Attachment F - Compliance Agreement May 16 2018 (PDF)

¹ The Agreement is the result of the mediation between representatives of Stevens Creek Quarry and Monta Vista, Stevens Canyon Residents Association regarding the Quarry operations during August and September 2002. On October 8, 2002, the Board of Supervisors adopted a resolution recognizing the Mediated Conditions for Stevens Creek Quarry Parcel B. Both Parcel A and Parcel B are identified on the Quarry map (Attachment A).