

**COMPLIANCE AGREEMENT
AND STIPULATED ORDER TO COMPLY**

The County of Santa Clara (County) and Stevens Creek Quarry, Inc. (Property Owner collectively, Parties) enter into this Compliance Agreement and Stipulated Order to Comply, pursuant to Public Resources Code section 2774.1 (Agreement) on 16th day of May, 2018 regarding property located at the address 12100 Stevens Canyon Road, Cupertino, CA 95014, Assessor's Parcel Numbers 351-10-017, -019, -039, -040, -044, and 351-18-048. (Subject Property).

RECITALS

This Agreement allows Property Owner to cure known Ordinance Code and State law violations under terms, conditions and timing agreed upon by the Parties.

As more fully described below, Property Owner acknowledges that it has violated County and State law at the Subject Property.

The Parties acknowledge that the existing violations require time to cure because of the need to acquire permits and/or perform necessary repairs, construction, and/or reconstruction.

In exchange for the Property Owner entering into this Agreement and promising that it will cure all existing violations within the Agreement's prescribed terms, the County may stay the imposition of administrative fines (including nuisance abatement fines), regulatory fees, penalties and abatement costs. If Property Owner fails to cure all violations within the terms of this Agreement and the County does not extend the time for cure, or if the Property Owner commits or causes new violations, Property Owner agrees that the County has the ability to enforce this Agreement and stipulate to: (1) the existence of all violations described herein; and (2) the enforcement of all accrued administrative fines, regulatory fees, penalties, reasonable attorneys' fees, staff fees, and abatement costs against it.

During the term of this Agreement, the County will also stay further enforcement and court action. If the Property Owner does not cure all violations within the term of this Agreement and the County does not extend the time for cure, the County may reactivate enforcement action and Property Owner stipulates to judgment in favor of the County and summary abatement of the violations.

If the Property Owner fully cures the violations consistent with the terms, conditions and timing specified in this Agreement, the County will provide relief as specified below from administrative fines, regulatory fees, penalties and abatement costs.

The parties therefore agree as follows:

TERMS OF AGREEMENT

1. Acknowledgment of Violations

The Parties acknowledge and agree that Property Owner is currently violating County of Santa Clara Zoning Ordinance (Zoning Ordinance) section 4.10.370, et seq., and applicable provisions of the Public Resources Code and California Code of Regulations on the Subject Property. Property Owner acknowledges that the County granted it a Use Permit for Parcel A (Permit) in January 1984, modified on September 10, 1996, and that Condition #52 of the Permit granted Property Owner quarry use for a period of 20 years from February 18, 1995. Property Owner filed an extension application with the County for the Permit in 2014. The extension application was brought to the May 28, 2015 Planning Commission public hearing. At the request of the Department of Planning and Development, the Planning Commission continued the public hearing for the Stevens Creek Quarry Use Permit Renewal to a date uncertain.

The Parties acknowledge and agree that a new Permit is required to continue the quarry use on Parcel A of the Subject Property. Property Owner acknowledges and agrees that it has violated the California Surface Mining and Reclamation Act (SMARA), as described below. This Agreement is necessary because the Permit has expired, and Property Owner has failed to achieve full SMARA compliance.

The violations consist of:

| Ordinance Code Section/State statute | Description |
|---------------------------------------------------------------|--------------------------------------------------|
| Ordinance Code § AI-34, et seq. | Public Nuisance |
| Zoning Ord. § 5.80.030 | Public Nuisance |
| Zoning Ord. § 4.10.370 Part III, subd. C | Failure to Comply with Approved Reclamation Plan |
| Pub. Res. Code § 2770; Cal. Code Regs., tit. 14, §3706 & 3710 | Lack of Water Protections |

If during the term of this agreement, the County, its employees, or agents discover violations on the Subject Property that are not listed above or that Property Owner must apply for and complete additional County permits, the Parties agree that any newly discovered violations and/or permitting requirements shall be included in this agreement, without exception.

2. Remedy for the Violation

The Parties agree that Property Owner will comply with the approved Corrective Action Plan, as described below.

3. Preliminary Engineering Geologic Evaluation

Within 90 days following the signing of this Agreement, the Property Owner must submit a preliminary engineering geologic evaluation and proposal for an In-depth Engineering Geologic

Investigation (In-depth Investigation) of the quarry slopes, prepared by a Certified Engineering Geologist. The County Geologist will review the preliminary engineering geologic evaluation/proposal and provide feedback. The consulting engineering geologist and the County Geologist must come to a consensus regarding the acceptable scope of the In-depth Investigation.

4. In-depth Engineering Geologic Investigation Report

Within 150 days following the County's acceptance of the proposed scope of the In-depth Investigation, the Property Owner shall submit the resulting In-depth Investigation Report (Report), including detailed quantitative slope stability analyses. The Report must include the following: (1) recommended expanded reclamation area boundaries, if any, that encompass current and anticipated mining-related ground disturbances, and (2) solutions that demonstrate that there will not be slope failures or ground disturbances outside the recommended expanded reclamation area boundaries. The Report must include critical cross sections for proposed final cut slopes and factors of safety of analyzed slide planes. See SMGB guidelines (SP1 17 A) for the standards required for the geologic evaluation.

5. Corrective Action Plan

The Property Owner shall incorporate the recommendations of the In-depth Investigation Report into a Corrective Action Plan and shall submit the Corrective Action Plan concurrently with the In-depth Investigation Report. The County will subsequently review, adjust, and ultimately approve the Corrective Action Plan. The approved Corrective Action Plan will include the deadlines for the Property Owner to correct violations, as summarized in Exhibit A, and as shown on the Map of Violations, attached as Exhibit B. Once the County approves the Corrective Action Plan, Parties agree to amend this Agreement to make the deadlines to correct the violations a part of this Agreement.

6. Processing of Permits

The Parties agree that the Planning Department will process all required permit applications once Property Owner submits the appropriate applications and all necessary accompanying material. Parties further agree that these permit applications are being processed solely upon Property Owner's representation in this Agreement that it will cure the violations of State or County law on the Subject Property within the times specified in this Agreement. All failures by the Property Owner to cure the violations on the Subject Property within the prescribed time unless failure to comply with the timelines is due to some entity other than Property Owner, e.g. County delays, RWQCB delays, etc. shall be grounds for the County to revoke the issued permits pursuant to Zoning Ordinance section 5.20.210. This section also applies to additional permits that the County deems necessary during the term of this Agreement.

7. No Court Action During Term of Agreement

The Parties agree that the Planning Division will document the existing violations at the time this Agreement is executed by the parties, as well as any additional violations discovered during the term of the Agreement, and that the County agrees to forego formal court action for the time set forth in this Agreement.

8. Consent to Inspection

Property Owner consents to all inspections of the Subject Property by County staff as needed, at any time from 9:00 a.m. to 6:00 p.m., Monday through Friday, while this Agreement is in effect to determine Property Owner's compliance with this Agreement and State and County law. All such County inspections must comply with Cal-OSHA and federal MSHA mine safety requirements.

9. Time Limit to Cure the Violations

The Parties agree that Property Owner will cure the existing violations on the Subject Property in accordance with the terms of the approved Corrective Action Plan after the issuance of all necessary permits for new repair, construction, or reconstruction, unless, after due consideration and for good cause, the Department of Planning and Development Director (Director) agrees in writing to extend time to remedy the violations. The Director shall not unreasonably refuse any such extension. Property Owner shall apply for all necessary permits in accordance with the terms of the approved Corrective Action Plan. Failure by Property Owner to apply for all necessary permits in accordance with the terms of the approved Corrective Action Plan may result in the termination of the Agreement. The date from which the compliance period will begin to run is May 16, 2018 and terminate consistent with the approved Correction Action Plan.

10. Nuisance Abatement Fines, Fees, Penalties, and Costs

Administrative fines for the above-described violations will accrue from the date of approval of the Corrective Action Plan and concurrent revisal of this Agreement to include the deadline to correct violations. Administrative fines will be imposed only if the Director in his sole discretion reasonably determines that the Subject Property is not in compliance with this Agreement. Pursuant to Ordinance Code section A1-34, et seq., and Zoning Ordinance section 5.80.030, administrative fines will accrue at the rate of \$250 per day. Pursuant to Zoning Ordinance section 4.10.370, Part III, subd. C1, fines will accrue at a rate of \$250 per day until Property Owner returns the Subject Property to compliance. Thus, the total accrual rate of fines is \$500 per day. If this agreement is not extended, the administrative fines will equal \$500 per day, beginning with the date of approval of the Corrective Action Plan and concurrent revisal of this Agreement, and ending on the termination date of this Agreement.

In addition to these administrative fines, all fees and costs incurred for time spent by County employees on work relating to the Subject Property or the above-described violations, including fees for time spent enforcing this Agreement and attorneys' fees pursuant to Government Code section 25845, will continue to accrue during the time of this Agreement.

The County agrees that it will waive payment of above-listed fines if Property Owner abates all violations before the termination date of this Agreement or as that date is reasonably extended by County. Property Owner agrees to pay all County fees and costs for enforcing this matter, including attorneys' fees, in an amount not to exceed \$90,000 if it abates all violations before the termination date of this Agreement.

11. Failure to Cure Violations

Parties agree that if the Property Owner fails to cure the violations on the Subject Property within the prescribed time limit, and the Director does not grant a reasonable extension of time to comply, the County will revoke all permits issued pursuant to Zoning Ordinance section 5.20.210 and pursue all legal and administrative remedies against the Property Owner, as allowed by State and County law, to ensure that the violations on the Subject Property are cured.

If Property Owner fails to cure the violations on the Subject Property within the prescribed time limit and no extension is granted by the Director, Property Owner agrees to the entry of: (1) a stipulated judgment in favor of the County for all fines, fees, penalties, and costs associated with the violations, including the fines and fees set forth in Section 7, above; and (2) a stipulated order finding that the above-described violations of law continue to exist on the Subject Property and authorizing summary abatement of those conditions. Property Owner further agrees to waive all appellate rights with respect to the stipulated order and judgment.

12. Termination

The Parties agree that if Property Owner cures the violations on the Subject Property and the County, after inspecting the Subject Property, agrees in writing that Property Owner has cured all violations on the Subject Property, this Agreement shall terminate except those provisions regarding the payment of all fines and fees. This Agreement shall also terminate upon the lapse or revocation of the requested permit(s). This Agreement will NOT terminate if the Property Owner, before the permits lapse or expire, requests an extension approved in writing after due consideration and a finding of good cause by the Director.

13. Lawful Construction

Property Owner shall perform all repair, construction, and/or reconstruction on the Subject Property in accordance with all applicable County Ordinances and State laws. Property Owner agrees to obtain all necessary permits before any repair, construction, or reconstruction on the Subject Property.

14. Waiver

The failure of the County to proceed against Property Owner in an enforcement action, whether administrative, civil, or criminal, for any violation of the applicable Ordinances, State laws, or any provisions of this agreement shall not constitute or be deemed a waiver of the County's right to proceed against Property Owner for any subsequent violation. Nothing in this Agreement shall limit in any manner the authority of the County to apply and/or enforce any provisions of State or County law to the Property Owner for violations on the Subject Property.

15. Notices

All notices required by this agreement shall be sent, at a minimum, by first class United States Mail with postage prepaid to the parties as follows:

To County:

Planning Department
Attn: Code Enforcement Manager Mark Ruffing
County Government Center
70 W. Hedding St., E. Wing, 7th FL
San Jose, CA 95110

And:

Office of the County Counsel
Attn: Lead Deputy County Counsel Michael L. Rossi
County Government Center
70 W. Hedding St., E. Wing, 7th FL
San Jose, CA 95110

To Property Owner:

Stevens Creek Quarry, Inc.
Attention: Jason Voss
12100 Stevens Canyon Road
Cupertino, CA 95014

And:

Patrick Mitchell
Mitchell Chadwick LLP
3001 Lava Ridge Court, Suite 120
Roseville, CA 95661

Notices shall be deemed served upon deposit in the United States Mail.

16. Indemnification

Property Owner shall indemnify, defend, and hold harmless County, its officers, agents and employees from and against any and all claims or suits for damages or injury arising from: (a) the issuance of permits for the Subject Property; (b) compliance with or failure to abide by the land-use permits or the terms of this Agreement; and/or (3) all inspections of the Subject Property as described above. Property Owners shall further indemnify, defend, and hold harmless County, its officers, agents and employees from all costs; attorney's fees, expenses, and liabilities related to any claim or any action or proceeding brought within the scope of this indemnification. This indemnification shall not apply to item (3) in this section 16 to the extent caused by County staff or their consultants.

17. Binding on Successors

This Agreement is binding on the heirs, successors, and assigns of the parties.

18. Amendment

This Agreement may be amended, modified, or changed by the Parties if the amendment, modification, or change is in writing and approved by the Parties.

19. Runs with the Land and Recordation

The Agreement is binding on and runs with the Subject Property. The County shall record this Agreement with the County of Santa Clara Clerk-Recorder upon execution by the Parties. The County shall retain the original Agreement, with all recordation information upon it, and provide a copy to Property Owner.

20. Representations and Warranties

Property Owner hereby represents, warrants, and agrees as follows:

A. Property Owner hereby acknowledges and agrees that it understands this Agreement, has had adequate time to consult with an attorney of its choice to explain it to them, and has executed it voluntarily, without coercion or duress of any kind.

B. County, its officers, agents, and employees have not made any statement or representation to Property Owner regarding any fact relied upon in entering into this Agreement, and Property Owner does not rely upon any statement, representation, or promise of the County in executing this Agreement, except as expressly stated in this Agreement.

C. Property Owner has made such investigation of the facts pertaining to this settlement and this Agreement, and of all the matters pertaining thereto, as Property Owner deems necessary.

D. Property Owner has read this Agreement and understands its contents.

E. In entering into this Agreement, Property Owner assumes the risk of any misrepresentation, concealment, or mistake. If Property Owner should subsequently discover that any fact relied upon by him/her in entering into this Agreement was untrue, or that any fact was concealed from Property Owner, or that her understanding of the facts or the law was incorrect, Property Owner shall not be entitled to any relief in connection therewith including, without limitation on the generality of the foregoing, any alleged right or claim to set aside or rescind this Agreement. This Agreement is intended to be and is final and binding, regardless of any claims of misrepresentation, concealment of fact, or mistake of law or fact.

F. In the event of litigation concerning the terms of this Agreement, this Agreement shall be deemed jointly drafted by the Parties.

21. Entire Agreement

This Agreement contains the entire agreement between the parties and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are superseded by this Agreement.

22. Integration

Property Owner covenants and agrees that the terms of this Agreement are contractual, and not mere recital, and constitute a fully binding and complete agreement between Property Owner and the County with regard to its subject matter. This Agreement supersedes any and all prior or contemporaneous agreements, representations and understandings of or between the Parties, and

Property Owner is not relying on any such prior representations. Property Owner understands and agrees that the terms of this Agreement may not be altered, amended, modified, or otherwise changed in any respect or particular except by a writing duly executed by the Parties.

23. Severability

If at any time after the execution of this Agreement, any portion or provision of it is found to be illegal, invalid, unenforceable, nonbinding, or otherwise without legal force or effect, the remaining portions will remain in force and be fully binding.

This agreement is entered into between the parties as of the day and year first written above.

County:

Property Owner



 CEO

Kirk Girard, Planning Director

Name and Title:

[Notary Public Info and Seal]

[Notary Public Info and Seal]

Stevens Creek Quarry
Summary of Violations and Corrective Actions

Resolution of violation #1 requires compliance with requirements by the RWQCB for any use of the Upper Settling Basin as a water treatment device or an alternative that is acceptable to the RWQCB. This may require a revised drainage plan, cross section view, and erosion sediment control to protect the creek. Corrective measures must adhere to requirements of the Regional Water Quality Control Board.



Resolution of violation #2 requires an evaluation of the areas of the Upper Settling Basin to determine the extent to which the Reclamation Plan boundary must be expanded. (A lot-line adjustment was recorded in the Summer of 2017 to expand only the property boundary-and not the Reclamation Plan boundary-to include all of the Upper Settling Basin and dam.)

Resolution of violations #3 and #4 require a Reclamation Plan Amendment to expand the Reclamation Plan boundaries to include the areas of mining-related ground disturbances and the areas of grading necessary to repair the disturbances. (The approval of the anticipated expansion of the Reclamation Plan boundaries will be on condition that the Quarry obtain easements, a license, or other legal accesses to areas containing mining-related disturbances on neighboring properties.)

Resolution of violations #5, #6, and #7 require a Reclamation Plan Amendment that provides for long-term slope stability as recommended in the required In-depth Engineering Geologic Investigative Report (In-depth Investigation Report).

Quarry shall submit an application for a Use Permit and Reclamation Plan Amendment for Parcels A and B. The application must include compliance with the requirements of the Surface Mining and Reclamation Act (SMARA). The application must address: (1) issues raised in the Notice of Violation, dated September 27, 2017, (2) the recommendations to be presented in the In-depth Investigation Report, and (3) the seven violation areas as listed in Exhibit B, Map of Violations.

3 & 4. Mining-related ground movements beyond approved reclamation plan boundary (N & NW)

 Parcels
 Violation Areas
 2009 Reclamation Plan Boundary

5, 6, & 7. Failed finished cut slopes (N, NW, & SW)

1. Upper Settling Basin in-stream with Rattlesnake Creek

2. Upper Settling Basin & dam beyond approved reclamation plan boundary



County of Santa Clara
 Department of Planning and Development
 Planning Office
 County Government Center, East Wing
 70 West Hedding Street, 7th Floor
 San Jose California 95110-1705

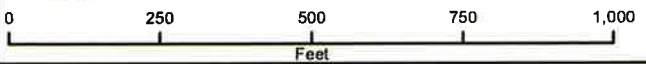
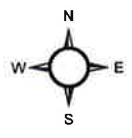


Exhibit B

Aerial Image Date:
 Nov-Dec 2016

Stevens Creek Quarry
Map of Violations
February 2018

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Santa Clara)

On May 16, 2018 before me, Michelle Martinez Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Richard A. Voss
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) (is) are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Michelle Martinez
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Compliance Agreement Document Date: May 16, 2018
Number of Pages: 12 Signer(s) Other Than Named Above: Kirk Girard

Capacity(ies) Claimed by Signer(s)

Signer's Name: Richard A. Voss
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: CEO
Signer Is Representing: _____

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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State of California)
County of Santa Clara)
On May 16, 2018 before me, Michelle Martinez Notary Public
Date Here Insert Name and Title of the Officer
personally appeared Kirk Girard
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is are subscribed to the within instrument and acknowledged to me that he she/they executed the same in his/her/their authorized capacity(ies), and that by his her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Michelle Martinez
Signature of Notary Public

Place Notary Seal Above

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Capacity(ies) Claimed by Signer(s)

Signer's Name: Kirk Girard
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: Director - SCC Planning & Dev.
Signer Is Representing: _____

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____