



96280

DATE: April 25, 2019
TO: Planning Commission
FROM: Rob Eastwood, Planning Manager
SUBJECT: Stevens Creek Quarry Annual Report

RECOMMENDED ACTION

Receive annual report, for Calendar Year 2018, relating to compliance with conditions of approval for Stevens Creek Quarry.

PROJECT DESCRIPTION

This Stevens Creek Quarry Annual Status Report (Report) updates the Planning Commission for the reporting period January 1, 2018 through December 31, 2018 pursuant to the following Conditions of Approval (“COA”) applicable to the Quarry:

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

The Use Permit (Attachment A) and Mediated Agreement (Attachment B) 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.

Department of Planning and Development Inspection staff regularly visited and inspected the Quarry throughout 2018 to verify condition compliance, including the following days:

January 10	SMARA Winterization Inspection
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February 24	Regular Inspection
March 14	Regular Inspection
May 30	Regular Inspection
June 28	Regular Inspection
September 14	2017 Annual SMARA Inspection
November 7	Regular Inspection
December 7	RWQCB / County Joint Inspection

REASONS FOR RECOMMENDATION

The 1996 Use Permit addressing Parcel A contains 53 conditions of approval. The 2002 Mediated Agreement addressing Parcel B contains 28 conditions of approval addressing operations and 8 conditions of approval addressing reclamation.

Based on ongoing inspection of the Quarry, a review of materials submitted to the County by the Quarry, and feedback from other regulatory agencies, the Department has determined that the Quarry is in compliance the conditions of approval, with the exception of the two areas described further below. Areas of condition compliance include maintenance of on-site roads and active areas of mining to meet Bay Area Air Quality Management District standards for dust suppression, including sweeping of Stevens Canyon Road (Condition 16), operations in compliance with County noise ordinance standards (Condition 21), adherence to prescribed hours of operation (Condition 25), maintenance of signage and fencing (Conditions 25, 28 and 34), and patrol and enforcement of speed limit laws for trucking companies (Conditions 32, 33, and 35).

Documentation of compliance with these conditions was verified through the on-site inspections by County inspection staff, consultation with other responsible County Departments, and in materials submitted by the Quarry Operator to the County (Attachment C).

The Department has determined that the Quarry was not in compliance with applicable conditions of approval in two general areas, described further below – (a) Importation of Aggregate from Lehigh Permanente and (b) Reclamation Plan Compliance / Use Permit expiration. These determinations occurred outside of the specified reporting period of calendar year 2018, as described below, but a summary is included to inform the Planning Commission on overall condition compliance.

In addition, the Quarry is not in compliance with their Statewide National Pollutant Discharge Elimination System (NPDES) General Permit and has received several NOV's

from the RWQCB as a result. More information on the violations is included below, and has been included in order to inform the Planning Commission on overall condition compliance

Importation of Aggregate from Lehigh Permanente Quarry

As described in the March 28, 2019 report provided to the Planning Commission relating to Lehigh Permanente Quarry truck traffic (Linked), the Department issued a Notice of Violation to Stevens Creek Quarry on February 15, 2019 regarding the importation, crushing, and resale of aggregate material on Parcel B of the Quarry.

This Notice of Violation responds to activities that began in 2018, when Lehigh Permanente Quarry began selling aggregate to Stevens Creek Quarry, first delivering the materials to Stevens Creek Quarry via a created internal haul road between the quarries and subsequently by using public streets within the City of Cupertino. In August, 2018, the Department issued a Notice of Violation to Lehigh Permanente regarding the grading and use of the internal haul road, which required the Quarries to cease use of the road and for Lehigh Permanente to apply for a Reclamation Plan to provide for restoration of the internal road, in compliance with SMARA. Subsequently, Lehigh Permanente began to deliver aggregate to Stevens Creek Quarry using public roads (Stevens Creek Boulevard, Foothill Boulevard, Stevens Canyon Road) within the City of Cupertino and portions of the unincorporated areas. Upon further review of this activity for conformance with the Stevens Creek Quarry Conditions of Approval, the Department determined that the importation, crushing and resale of aggregate material on Parcel B of Stevens Creek Quarry was a violation of the 2002 Mediated Agreement.

On February 15, 2019, the County issued a Notice of Violation (Attachment D) to Stevens Creek Quarry mandating that the Quarry cease this activity unless and until it obtains a Use Permit from the County. The Notice of Violation references the 2002 Mediated Agreement, which allows onsite surface mining and reclamation, but does not allow for the importation, processing, and resale of offsite-mined materials. If Stevens Creek Quarry does not cease the importation, refining, and reselling aggregate from Lehigh Permanente Quarry, the Notice of Violation informs Stevens Creek that it will be subject to administrative violation fines of up to \$1,000 per day and other legal action. According to County inspectors, Lehigh and Stevens Creek Quarries have ceased the importation of aggregate onto Stevens Creek Quarry following the issuance of the February 15, 2019 Notice of Violation.

Reclamation Plan – 2017 Notice of Violation and Compliance Agreement / Expiration of Parcel A Use Permit

The Department found that the Quarry did not comply with several applicable conditions of approval during the 2017 calendar year and subsequently 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. A map of showing the location of these violations has been included with this staff report as Attachment I. The County and the Quarry have since entered into a

Compliance Agreement and Stipulated Order to Comply on May 16, 2018 (Attachment F) to address all violations.

As outlined in the September 27, 2017 Notice of Violation, the mining activities that did not comply with the conditions of approval and SMARA included (a) use of the Upper Settling Basin within the Quarry as a water quality treatment device (b) mining related ground disturbance north of the northern property line and outside the Reclamation Plan area, (c) mining related ground disturbance west of the western property line and outside the Reclamation Plan area, and (d) two areas of slope failure of the finished cut slope on the west side of the quarry. The Notice of Violation references a corresponding Notice of Violation issued from the San Francisco Regional Water Quality Control Board (“RWQCB”) to the Quarry regarding use of the Upper Settling Basin. The Notice of Violation directed the Quarry Operator to apply for a Reclamation Plan Amendment to address the ground disturbances located outside of the Reclamation Plan boundaries and references applicable penalties of up to \$5,000 per day, per the County Zoning Ordinance.

Separately, the 1996 Use Permit addressing surface mining on Parcel A of the Quarry had expired. The 1996 Use Permit for surface mining operations allowed the use for a period of 20 years, subject to future application for extension. In 2014, the Quarry Operator filed for an extension prior to the Use Permit expiration and the extension was scheduled to be heard by the Planning Commission on May 28, 2015. At the request of the Department, the extension was continued to a date uncertain and subsequently expired.

On May 16, 2018, the Quarry Operator entered into a Compliance Agreement and Stipulated Order to Comply with the County that acknowledges the existence of the violations, expiration of the Use Permit for Parcel A, and prescribes a process and timeline for the Quarry Operator to correct the violations and apply for a new Use Permit and Reclamation Plan Amendment.

Specifically, the Compliance Agreement requires the Quarry Operator to first submit a Geologic Engineering Evaluation that evaluates slope stability and recommendations regarding reclamation to address the areas of violation. A preliminary Engineering Geologic Evaluation was submitted to the County and subsequently an In-depth Engineering Geologic Evaluation and Corrective Action Plan was submitted to the County on January 4, 2019. As outlined within this Corrective Action Plan, the Quarry Operator will apply for a Reclamation Plan Amendment and a Use Permit addressing Parcel A and Parcel B by May 31, 2019. On February 14, 2019, the Department responded to the Quarry Operator providing feedback regarding the Geologic Engineering Report and re-enforcing the proposed May 31, 2019 deadline for submittal of the Reclamation Plan Amendment and Use Permit.

Regional Water Quality Control Board Violations

As noted above, on May 30, 2017, the RWQCB issued an NOV and order for technical reports that required the Stevens Creek Quarry operator to submit reports addressing observed water quality violations along with a plan to address those violations. On December 12, 2017, RWQCB issued an additional NOV noting that they had not received some of the reports required by the May 30, 2017 NOV, and on April 2, 2018 the RWQCB

issued another violation pursuant to an inspection of Stevens Creek Quarry conducted on September 8, 2017, during which violations of the Statewide NPDES General Permit were observed. The RWQCCB sent a subsequent letter to Stevens Creek Quarry dated March 15, 2019 (Attachment J) pursuant to the December 7, 2018 inspection, which noted that while numerous improvements and modifications had been implemented at Stevens Creek Quarry, the operator was still in violation of their Statewide NPDES General Permit. This NOV directed the operator to improve management practices and monitoring plans and amend their Stormwater Pollution Prevention Plan (SWPPP) as appropriate. The NOV also directed the operator to submit a standalone comprehensive plan to remove total suspended solids and related pollutants, as required by the May 30, 2017 NOV.

BACKGROUND

Use Permit – Parcel A

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. As the Use Permit extension was not approved by the Planning Commission within two years of the 2015 expiration date, the use permit expired, per the terms outlined in the County Zoning Ordinance (Section 5.20.190)

Mediated Agreement – Parcel B

The Board of Supervisor'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. Between April and 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 Monte 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.

Reclamation Plan

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.

Financial Assurance Cost Estimate and Financial Assurance Mechanism

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. A revised FACE was submitted to the County on October 12, 2018 that requested a reduction in the FACE amount to \$1,311,769. As described within a January 23, 2019 letter to Stevens Creek Quarry (Attachment), the County denied this adjustment in the FACE amount and directed the Quarry Operator to modify the FACE amount to address required reclamation of existing violations at the Quarry and to incorporate suggestions from a submitted Geology Report regarding reclamation of these violation areas. On February 22, 2019, the Quarry Operator submitted a revised FACE estimate, that is currently under review by Department staff.

LINKS:

- [Linked To: 95822 : Receive report from Department of Planning and Development relating to Lehigh Permanente Quarry truck traffic.](#)

ATTACHMENTS:

- [Report Printout \(PDF\)](#)
- [Attachment A - Stevens Creek Quarry Parcel A Use Permit Conditions of Approval \(PDF\)](#)
- [Attachment B - Stevens Creek Quarry Parcel B Mediated Agreement \(PDF\)](#)
- [Attachment C - Stevens Creek Quarry 2018 Ticket Log \(PDF\)](#)
- [Attachment D - Stevens Creek Quarry February 2019 NOV \(PDF\)](#)
- [Attachment E - Stevens Creek Quarry September 2017 NOV \(PDF\)](#)
- [Attachment F - Stevens Creek Quarry Compliance Agreement \(PDF\)](#)
- [Attachment G - Stevens Creek Quarry 2018 FACE Inadequacy Letter \(PDF\)](#)
- [Attachment H - Stevens Creek Quarry Response to Corrective Action Plan \(PDF\)](#)
- [Attachment I - Map of Violations \(PDF\)](#)
- [Attachment J - SCQ 03-15-19 RWQCB NOV and 12-07-18 Inspection Report \(PDF\)](#)
- [Staff Presentation - 4-25-19 \(PDF\)](#)
- [Public Comment - 4-25-19 \(PDF\)](#)