



101288

**DATE:** May 28, 2020

**TO:** Planning Commission

**FROM:** Robert Salisbury, Senior Planner

**SUBJECT:** Stevens Creek Quarry Annual Report for 2019

### **RECOMMENDED ACTION**

Receive annual report for Calendar Year 2019 relating to compliance with conditions of approval for Stevens Creek Quarry. Owner/Applicant: Jason Voss. Property address/location: 12100 Stevens Canyon Road, Cupertino. Assessor's Parcel Nos.: 351-10-019 (40 acres), 351-10-020 (40 acres), and 351-18-048 (66.2 acres). General Plan: Hillside. Zoning District: HS-d1-sr and HS-d1. Supervisorial District: 5. File No.: 1253-17PAM.

### **PROJECT DESCRIPTION**

This Annual Status Report (Report) updates the Planning Commission for the reporting period of January 1, 2019 through December 31, 2019 pursuant to the following Conditions of Approval ("COA") applicable to the Stevens Creek Quarry (Quarry):

1. 1996 Stevens Creek Quarry Use Permit - Parcel "A" - COA No. 53.
2. 2002 Stevens Creek Quarry Mediated Agreement - Parcel "B" - COA No. 27.

The Use Permit (Attachment A) and Mediated Agreement (Attachment B) collectively contain the conditions of approval under which the Quarry operates, covering both the mining operation (Parcel B) and the recycling and composting operation (Parcel A). Conditions regarding compliance monitoring state the following:

*Use Permit (Parcel "A") - Condition No. 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 (Parcel "B") - Condition No. 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 2019 to verify condition compliance, including the following days:

January 31	SMARA Winterization Inspection
February 28	Regular Inspection
March 28	Regular Inspection
April 30	Regular Inspection
May 30	Regular Inspection
June 25	Regular Inspection
August 30	Regular Inspection
September 12	2019 Annual SMARA Inspection
October 31	Regular Inspection
November 27	Regular 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 with conditions of approval with the exception of the two areas described further below. Staff has not yet been able to verify compliance with prescribed hours of operation (Condition 25). Once the required information has been submitted by Stevens Creek Quarry, staff will provide a supplemental memo to the Planning Commission with further information on Steven’s Creek Quarry’s adherence to allowed hours of operation.

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), 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 applicable County

Departments, and in materials submitted by the Quarry Operator to the County (Attachment C).

The Department determined that during 2019 Stevens Creek Quarry was not in compliance with the applicable conditions of approval in two areas, described further below – (a) Importation of Aggregate from Lehigh Permanente and (b) Reclamation Plan Compliance / Use Permit expiration. These issues were previously reported to the Planning Commission during the 2018 Annual Report. Attachment C provides a list of conditions of approval which are monitored annually and their compliance status.

In addition, the Quarry is not in compliance with their Statewide National Pollutant Discharge Elimination System (NPDES) General Permit as determined by the Regional Water Quality Board (RWQCB) and has received several Notices of Violation (NOVs) from that agency as a result. More information on the violations is included below.

### **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 to this report), 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 was issued in response to activities that began in 2018, when Lehigh Permanente Quarry began selling aggregate to Stevens Creek Quarry and delivering the material to Stevens Creek Quarry via an unpermitted internal haul road created between the two quarries. 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 Lehigh Quarry to cease use of the road and apply for a Reclamation Plan Amendment to provide for its restoration as required by SMARA. Subsequently, Lehigh Permanente began to deliver aggregate to Stevens Creek Quarry using public roads (Stevens Creek Boulevard, Foothill Boulevard, Stevens Canyon Road). 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 until such time as they obtain a Use Permit from the County specifically authorizing this importation of unprocessed material. 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. Should the import of unprocessed material into Stevens Creek Quarry recommence without appropriate permits, the County will take the enforcement action necessary to ensure SCQ ceases this activity.

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

As reported in previous annual reports, the Department issued the Quarry a Notice of Violation (Attachment E) on September 27, 2017 listing several ongoing compliance issues

and violations of the Surface Mining and Reclamation Act (SMARA) and the County Zoning Ordinance. The County and the Quarry subsequently entered into a Compliance Agreement and Stipulated Order to Comply on May 16, 2018 to address all violations (Attachment F).

The activities identified in the September 27, 2017 NOV 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 NOV directed the Quarry Operator to apply for a Reclamation Plan Amendment to address the ground disturbances located outside of the Reclamation Plan boundaries and identifies 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 expired in 2016. The 1996 Use Permit for surface mining operations on Parcel A was limited to 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 (SOTC) 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. Adherence to this Compliance Agreement and SOTC allows the Quarry operator to continue operations (with an expired Use Permit) so long as the Quarry operator complies with the timelines and milestones specified in the SOTC.

Specifically, the Compliance Agreement and SOTC 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. 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 was required to apply for a pre-application for a Reclamation Plan Amendment and a Use Permit addressing Parcel A and Parcel B by May 31, 2019. The operator complied with this requirement and the County issued a pre-application letter on October 23, 2019 which summarized the pre-application meeting and provided feedback to the operator on the submitted plan, completing the pre-application process. This pre-application letter has been included with this staff report as Attachment G. County staff subsequently prepared an amendment to the May 16, 2018 Compliance Agreement and SOTC which created a new series of milestones requiring the Quarry operator to apply for and obtain a new Use Permit and Reclamation Plan Amendment by June 26, 2020 (Attachment H). The SOTC was provided to the operator on May 20, 2020 for review and signature.

## **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 RWQCB sent a subsequent letter to Stevens Creek Quarry dated March 15, 2019 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 (TSS) and related pollutants, as required by the May 30, 2017 NOV. On April 24, 2020 the RWQCB issued a letter to the Quarry operator (Attachment I) accepting the Quarry operator's corrective action plan to remove TSS subject to certain conditions.

## **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 Southern portion of the Quarry (Parcel A), where the Quarry entrance, scale house, and recycling and composting operations are located. 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. The Use Permit renewal was heard by the Planning Commission on May 28, 2015 and continued to a date uncertain to allow the Department additional time to review and analyze historical Quarry documents and site conditions relevant to the Use Permit renewal. 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

The Quarry operates under a Reclamation Plan approved in 1983, which was modified on May 14, 2009, the Architecture and Site Approval Committee. The approved modification minorly amended the Reclamation Plan boundary and modified the approved reclamation planting palette.

### 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. On October 11, 2019 the operator submitted a Financial Assurance Cost Estimate (FACE) totaling \$5,444,732, the amount that the Quarry estimates is required for the cost of reclamation. On December 11, 2019 the County deemed the FACE amount adequate and sent the FACE to the California Department of Mine Reclamation for review. On February 3, 2020 DMR staff replied with a letter to the County detailing several issues with the FACE submitted by the operator (Attachment J). The County issued a letter in response concurring with the issues raised by DMR staff (Attachment K) and directed the operator to submit a revised FACE pursuant to DMR staff's comments. A requirement that SCQ provide an updated FACE by July 1, 2020 has been included in the Amendment to the Compliance Agreement sent to SCQ on May 19, 2020.

### LINKS:

- **Linked To:** 95822 : Receive report from Department of Planning and Development relating to Lehigh Permanente Quarry truck traffic.
- **Linked From:** 105246 : Receive annual report for Calendar Year 2020 relating to compliance with conditions of approval for Stevens Creek Quarry. Owner/Applicant: Jason Voss. Property Address/Location: 12100 Stevens Canyon Road, Cupertino (Assessor's Parcel Nos. 351-10-019 [40 acres], 351-10-020 [40 acres], and 351-18-048 [66.2 acres]). General Plan: Hillside. Zoning: HS-d1-sr and HS-d1. Supervisorial District: Five. File No.: 1253-17PAM.

## **ATTACHMENTS:**

- 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 2019 COA Compliance Status Table (PDF)
- Attachment D - Stevens Creek Quarry 2019 Citation Log (PDF)
- Attachment E - Stevens Creek Quarry February 2019 NOV (PDF)
- Attachment F - Stevens Creek Quarry September 2017 NOV (PDF)
- Attachment G - Stevens Creek Quarry Compliance Agreement (PDF)
- Attachment H - SCQ RPA and UP pre-app letter (PDF)
- Attachment I - Letter from DMR on SCQ FACE (PDF)
- Attachment J - Letter from RWQCB on SCQ corrective action plan (PDF)
- Attachment K - Response to DMR comment letter on SCQ 2019 FACE (PDF)
- Attachment C - Stevens Creek Quarry 2019 COA Compliance Status Table (Revised) (PDF)
- First Amendment to SCQ Compliance Agreement (PDF)
- Public Comment (PDF)
- Public Comment (PDF)
- Public Comment (PDF)
- Staff Presentation (PDF)