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DATE: November 18, 2021

TO: Planning Commission

FROM: Robert Salisbury, Senior Planner

SUBJECT: Stevens Creek Quarry Annual Report for 2020

RECOMMENDED ACTION

Accept annual report for Calendar Year 2020 relating to compliance with Conditions of Approval for Stevens Creek Quarry. Owner: Stevens Creek Quarry, Inc. 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: Five. File No.: PLN07-1253-2021 Annual Report.

PROJECT DESCRIPTION

This Annual Status Report (Report) updates the Planning Commission for the reporting period of January 1, 2020 through December 31, 2020, pursuant to the following Conditions of Approval (COA) applicable to the Stevens Creek Quarry (Quarry):

1. 1996 Stevens Creek Quarry Use Permit for Recycling and Composting Operation- Parcel "A" - COA No. 53
2. 2002 Stevens Creek Quarry Mediated Agreement for Mining Operation- Parcel "B" - COA No. 27

The Use Permit (Attachment A) and Mediated Agreement (Attachment B) collectively contain the COAs 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 2020 to verify condition compliance, including the following days:

January 29	SMARA Winterization Inspection
February 28	Regular Inspection
March 26	Regular Inspection
April 30	Regular Inspection
May 28	Regular Inspection
June 25	Regular Inspection
August 25	Regular Inspection
September 14	2020 Annual SMARA Inspection
October 30	Regular Inspection
November 27	Regular Inspection

REASONS FOR RECOMMENDATION

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

Based on monthly inspections 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. However, recent inspections conducted by the County have found multiple violations unrelated to Conditions of Approval that is documented in a Notice of Violation (NOV). This NOV has been included with this staff report as Attachment G and is discussed in more detail 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 No. 16), operations in compliance

with County noise ordinance standards (Condition No. 21), maintenance of signage and fencing (Conditions Nos. 25, 28 and 34), and patrol and enforcement of speed limit laws for trucking companies (Conditions Nos. 32, 33, and 35). These conditions and their status have been summarized in a table included with this staff report as Attachment C.

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, including a ticket log (Attachment D).

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

As reported in previous annual reports, the Department issued an NOV to the Quarry (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 these violations.

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 identified penalties of up to \$5,000 per day in accordance with 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, and the owner applied for a renewal on December 29, 2014. However, the Use Permit hearing was continued at the request of the Department and never rescheduled, and the Use Permit expired as a result. The Quarry currently operates without a Use Permit under the Compliance Agreement.

On May 16, 2018, the Quarry Operator entered into a Compliance Agreement and Stipulated Order to Comply (SOTC) with the County that admits to 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 covering Parcel A and Parcel B. Adherence to this Compliance Agreement

and SOTC allows the Quarry operator to continue operations (with an expired Use Permit) if the Quarry operator complies with the timelines and milestones specified in the SOTC.

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. County staff subsequently prepared an amendment to the May 16, 2018 Compliance Agreement and SOTC (Attachment F) which created a new series of milestones requiring the Quarry operator to obtain a new Use Permit and Reclamation Plan Amendment by April 23, 2023.

On December 11, 2020, the Quarry operator submitted an Engineering Geologic and Geotechnical Investigation Report as part of the resubmittal for the new Use Permit and Reclamation Plan Amendment application. This application was deemed incomplete, as were the two subsequent resubmittals. Due to SCQ's failure to submit a complete application by June 26, 2021, as stipulated by the Compliance Agreement and SOTC, SCQ is not in compliance with the Compliance Agreement.

Importation of Aggregate from Lehigh Permanente Quarry

As described in the May 28, 2020 report provided to the Planning Commission relating to Lehigh Permanente Quarry truck traffic, the Department issued an NOV to SCQ on February 15, 2019, for the importation, crushing, and resale of aggregate material on Parcel B of the Quarry and requiring that the Quarry cease this activity until they obtain a Use Permit from the County to allow for the importation of unprocessed material should SCQ want to continue this activity. According to County inspectors, Lehigh and SCQ have ceased the importation of aggregate onto Stevens Creek Quarry following the issuance of the February 15, 2019 NOV.

As part of the application for a new Use Permit and a Reclamation Plan Amendment submitted on September 21, 2020, the Quarry operator proposes to restart this importation, and has asked for approval to import 1 million cubic yards of unprocessed greenstone annually from Lehigh. As noted in the October 21, 2020 incomplete letter, the Department informed SCQ that this type of use is classified in the Zoning Ordinance as Manufacturing - Intensive, and is not allowed Hillside zoned properties such as SCQ. SCQ subsequently submitted a request for Zoning Interpretation that was heard by the Planning Commission on August 26, 2021, at which hearing the Planning Commission denied the requested Zoning

Interpretation. As a result, SCQ has removed mention of import of unprocessed aggregate from their Use Permit/RPA project description.

Regional Water Quality Control Board Violations

As reported in previous annual reports, 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 accepting the Quarry operator's corrective action plan to remove TSS subject to certain conditions.

The Department is coordinating with RWQCB staff to ensure that SCQ's proposed UP and RPA are adequately protective of water quality.

2021 Notice of Violation (outside of SCQ 2020 Annual Reporting Period)

On August 11, 2021, the Department issued a NOV to SCQ (Attachment G) for multiple violations of County codes and ordinances that were discovered during 2021 inspections related to SCQ's Use Permit and Reclamation Plan Amendment application. These violations include lack of building permits for multiple structures, and violations of electrical code, DEH code, Fire Code and Zoning.

A draft Compliance Agreement for these violations is currently being prepared by the Department. As soon as the draft has been finalized, it will be sent to SCQ for review and signature. Once executed, it will mandate remedies, and establish time frames, for all unresolved violations. Subsequent re-inspections by County staff shows that SCQ has begun correcting and has already correct certain violations. The status of these violations, their remedy, and SCQ's progress towards correcting them will be provided to the Planning Commission as part of next year's status report.

BACKGROUND

Use Permit – Parcel A

On September 20, 1950, the Planning Commission granted Use Permit No. 173.977 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 COAs 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). An application for a new Use Permit and RPA was submitted by SCQ on September 21, 2020, and this application is currently incomplete.

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 (Attachment B).

Reclamation Plan

The Quarry operates under a Reclamation Plan approved in 1983, which was modified on May 14, 2009 by the County's Architecture and Site Approval Committee at that time. 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 \$5,444,732.00. If necessary, this bond may be used to ensure reclamation of the Quarry. On December 12, 2020, the operator submitted a revised Financial Assurance Cost Estimate (FACE)(Attachment H) totaling \$6,446,111.00, the amount that the Quarry estimates is required for the cost of reclamation. As such, the Quarry operator is required to increase the bond by a minimum of \$1,001,379.00. On March 9, 2021 the County deemed the submitted FACE adequate and sent it to the Department of Mining and Reclamation (DMR) for comments. DMR responded by stating the submittal is incomplete and requesting additional information. At the direction of the Department, SCQ submitted the report requested by DMR, and DMR accepted the report and the FACE as complete and began their 45-day review. At the close of the review period, DMR sent a letter with several requested clarifications and changes, and the Department directed SCQ to revise their FACE per the comments from DMR, and resubmit it to the County. This revised FACE is currently being prepared by the operator.

LINKS:

- **Linked To: 95822 : Receive report from Department of Planning and Development relating to Lehigh Permanente Quarry truck traffic.**

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 COA Compliance Checklist 2020 (PDF)**
- **Attachment D - 2020 Truck Patrol Ticket Log (PDF)**
- **Attachment E - Stevens Creek Quarry September 2017 NOV (PDF)**
- **Attachment F - Amendment to Compliance Agreement 9-03-2020 (PDF)**
- **Attachment G - SCQ 2021 NOV (PDF)**
- **Attachment H -Stevens Creek_Revised December 2020 FACE Update_Reduced (PDF)**
- **Public Comment (PDF)**
- **Public Comment 2 (PDF)**
- **Public Comment 3 (PDF)**
- **Public Comment 4 (PDF)**
- **Staff Presentation (PDF)**