Attachment B

Notice of Violation

August 17, 2018

County of Santa Clara

Department of Planning and Development
Planning Office

County Government Center, East Wing, 7th Floor
70 West Hedding Street
San Jose, California 95110-1705
(408) 299-5770 FAX (408) 288-9198
www.sccplanning.org

**** VIA Email and CERTIFIED U.S. Mail ****

August 17, 2018

Erika Guerra
Lehigh Hanson, Inc.
24001 Stevens Creek Blvd.
Cupertino, CA 95014

SUBJECT: NOTICE OF VIOLATION – PERMANENTE (LEHIGH) QUARRY

Dear Erika Guerra:

The County of Santa Clara (County) hereby issues this Notice of Violation to Lehigh Hanson, Inc. (Lehigh), owner of Permanente Quarry (Subject Property). This Notice of Violation is issued pursuant to Zoning Ordinance Code section 4.10.370, Part III(C) and Public Resources Code § 2774.1. The County expects the time necessary to correct the violations identified in this Notice of Violation will exceed 30 days. Accordingly, the County requires Lehigh to enter into a Stipulated Order to Comply with the County pursuant to Public Resources Code § 2774.1(a)(2). The timeline for compliance to correct the violations listed below will be included in the Stipulated Order to Comply.

On June 28, 2018, County staff inspected the Subject Property and observed illegal grading activity. On July 26, August 9 and August 15, 2018, County staff again inspected the Subject Property. County staff was only granted full access to inspect the haul road on August 15. Staff identified the following violations during these inspections:

1. Surface Mining and Reclamation Act (SMARA) (California Public Resources Code § 2773(a);
2. California Code of Regulations 14 § 3704(f), and;
3. California Code of Regulations 14 § 3706.

Attachments A and B contain evidence of these violations.

Descriptions of Violations

County staff observed the following violations:

1. *Grading outside the boundaries of the approved 2012 Reclamation Plan Amendment for Permanente Quarry (Reclamation Plan).*

On June 28, 2018, County inspectors observed a recently widened haul road between Permanente Quarry and Stevens Creek Quarry. The cuts and fills for this haul road violate SMARA because they are mining-related ground disturbances located outside of the Reclamation Plan boundaries. (See Attachment A.)

2. *Steep cut and fill slopes.*

   The cut and fill slopes for the haul road appear very steep (see Attachment B) and require slope-stability analysis to prove they meet State standards.

3. *Lack of erosion control.*

   On June 28, 2018, County staff observed a lack of erosion controls at the haul road area or Lehigh rock plant. Stormwater at these areas could potentially overwhelm existing drainage systems and result in an extreme discharge into Permanente Creek.

Actions Required of Lehigh

Lehigh must do the following to correct the violations described above:

1. Immediately cease and desist any further illegal grading of the recently-widened haul road between Permanente Quarry and Stevens Creek Quarry.

2. Immediately cease and desist all mining-related activity at the recently-widened haul road, including the transportation of minerals by Lehigh or any other party.

3. Immediately begin implementation of stormwater control measures at the haul road and rock plant. Stormwater and erosion control in these areas must be established before October 1, 2018.

4. Meet with County staff and counsel before September 1, 2018 to determine the terms of the Stipulated Order to Comply. This meeting will include discussion of deadlines for applying for a Reclamation Plan Amendment and submitting the slope-stability calculations, including plans and cross sections.

5. Submit slope stability calculations that analyze the stability of the cut and fill slopes pursuant to California Code of Regulations, Title 14, § 3704(f). If unstable conditions are identified, remedial action will be necessary.

6. Apply for an amendment of the Reclamation Plan to expand its boundaries to include the mining-related ground disturbances associated with the recent widening of the haul road. Currently, the required action only includes expanding the area of the Reclamation Plan boundaries on Assessor's Parcel Number (APN) 351-10-033 and not within APN 351-10-017, which is within City of Cupertino (City) limits. (See Attachment A.)

Other Considerations

County staff observed that the grading for the recently widened haul road occurred in both unincorporated County of Santa Clara and the City. This Notice of Violation addresses only the grading within the unincorporated area (APN 351-10-033). City currently has land use authority over the grading that has occurred within its jurisdiction (APN 351-10-017). Because the City has not adopted a SMARA ordinance, the lead agency for SMARA-related issues defaults to the California State Mining and Geology Board (SMGB). However, whenever an existing surface mining operation is within the jurisdiction of two public agencies, SMGB designates which public agency shall serve as the lead agency under SMARA. (See Public Resources Code § 2771)

For Stevens Creek Quarry, the City of Cupertino and the County of Santa Clara entered into an agreement (Attachment C) designating the County as lead agency under SMARA and CEQA.

A similar agreement between the City and County may enable the County to manage SMARA compliance in the area graded within the City limits. We will send a copy of this letter to the City for its review and potential action.

Fines

If Lehigh fails to comply with the requirements of this Notice of Violation or subsequent Stipulated Order to Comply, it will be subject to a penalty of not more than $5,000 per day, assessed from the original date that the County observed the violations, June 28, 2018. (Public Resources Code § 2774.1 and County Zoning Ordinance § 4.10.370 Part III (C).)

Sincerely,

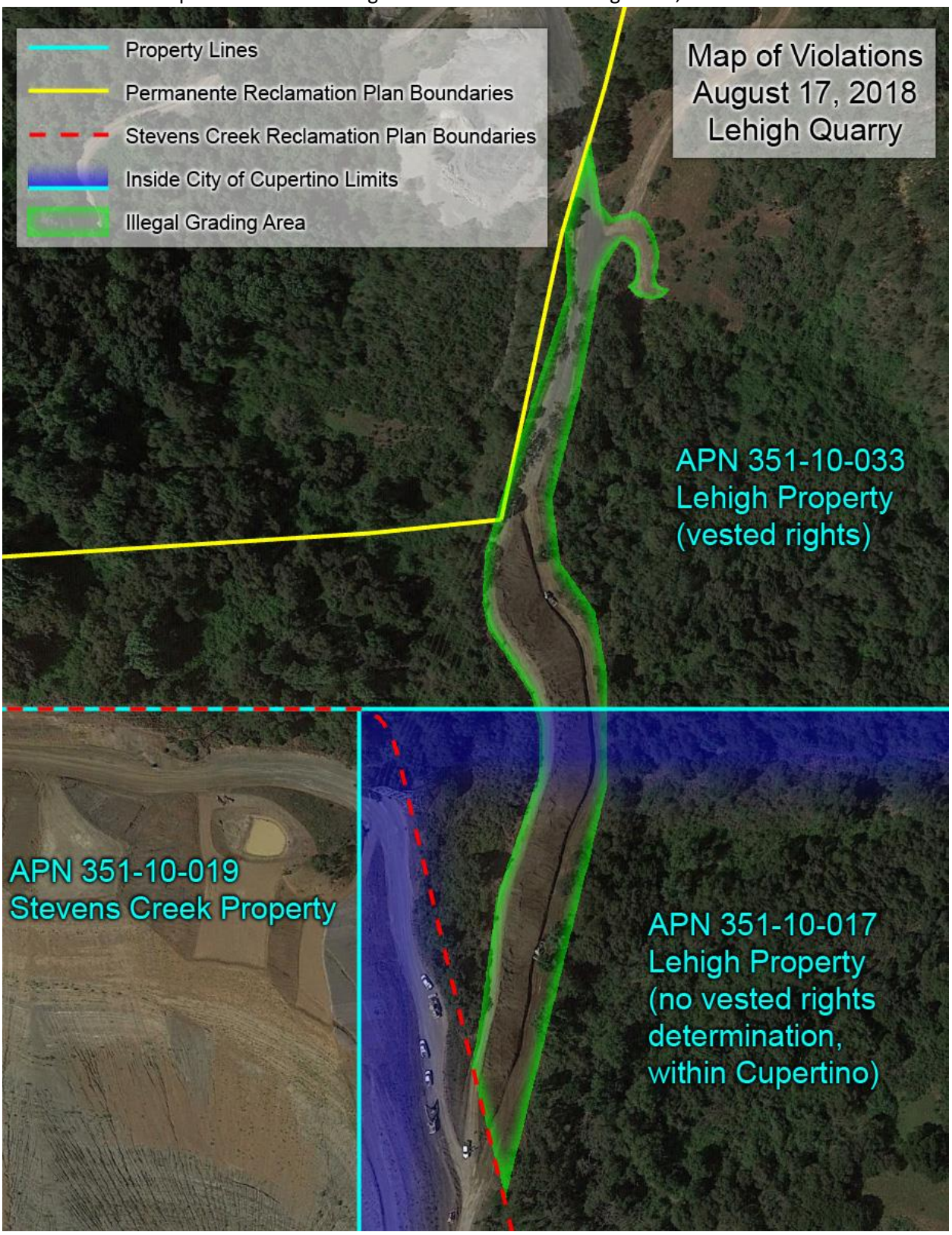
Christopher Hoem, AICP
Senior Planner

James Baker, CEG 1021
County Engineering Geologist

Enclosures:

Attachment A: Map of Violations
Attachment B: Photographs of Violations
Attachment C: Agreement Between the County of Santa Clara and the City of Cupertino regarding SMARA and CEQA Lead Agency Designation

cc: Kirk Girard, Director of Planning and Development
Rob Eastwood, Planning Manager
Elizabeth G. Pianca, Lead Deputy County Counsel
Michael Rossi, Lead Deputy County Counsel
Beth Hendrickson, Division of Mine Reclamation
Jack Gregg, San Francisco Bay Regional Water Quality Control Board
Kristin Garrison, California Department of Fish and Wildlife
Roger Lee, City of Cupertino
Aarti Shrivastava, City of Cupertino



* The lines and areas on this document are for informational purposes only.

Attachment B
Photographs of Violations
Lehigh Notice of Violation
August 17, 2018
08.15.2018 13:17

08.15.2018 13:20

08.15.2018 13:26

08.15.2018 13:25

08.15.2018 13:27

08.15.2018 13:28

08.15.2018 13:29

08.15.2018 13:30

08.15.2018 13:36

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AGREEMENT BETWEEN THE COUNTY OF SANTA CLARA AND THE CITY OF CUPERTINO REGARDING SMARA AND CEQA LEAD AGENCY DESIGNATION

This document constitutes an Agreement ("Agreement") between the COUNTY OF SANTA CLARA, a political subdivision of the State of California ("County"), and THE CITY OF CUPERTINO, a California municipal corporation ("Cupertino").

RECITALS:

A. Stevens Creek Quarry, Inc., (hereinafter referred to as "Applicant") currently operates a construction aggregates mine ("Operation") located in Santa Clara County. Applicant has applied for a reclamation plan amendment to expand the plan boundaries to cover an additional 12.2 acres (the "Project") to comply with directions from the State Office of Mine Reclamation that all disturbed areas associated with the Operation be included within the Operation's reclamation plan. A portion of the expansion area for the reclamation plan includes an area referred to as the "Layback Area," approximately nine acres of which are located within Cupertino. (See Exhibit A, attached hereto.) The sole purpose of the work within the Layback Area is to allow for reclamation work (e.g., slope-stability activities, re-vegetation) to occur within the Layback Area.

B. In order to commence work in the Layback Area, the Applicant must, among other things, obtain a Reclamation Plan amendment and post adequate Financial Assurances pursuant to the requirements of the Surface Mining and Reclamation Act of 1975, Cal. Public Resources Code § 2710 et seq. ("SMARA"). The permitting process may also require compliance with the California Environmental Quality Act, Cal. Public Resources Code § 21000 et seq. ("CEQA").

D. Because the Project is located in the jurisdiction of both the County and Cupertino, questions arose regarding which agency should be lead agency over the Project pursuant to both SMARA and CEQA.

E. Under the CEQA Guidelines, 14 Cal. Code of Regulations Section 15051, where two or more public agencies are involved with a project, the agencies "may by agreement designate an agency as the lead agency."

F. Where, as with this Project, a proposed surface mining operation is within the jurisdiction of two or more public agencies and mining is a permitted use within such agencies' jurisdiction, Section 2771 of SMARA allows for the designation of one of these public agencies to serve as the lead agency under SMARA for consideration of the project.

NOW, THEREFORE, the County and Cupertino agree as follows:

1. **SMARA Lead Agency Responsibility.** The County shall be the lead agency for the Project for purposes of SMARA in accordance with Section 2771 of SMARA.

2. **CEQA Lead Agency Responsibility.** In accordance with CEQA Guidelines Section 15051, the County shall be the lead agency for purposes of any environmental review of the Project that may be required under CEQA.

3. **Cupertino CEQA Review.** Cupertino shall be a responsible agency for purposes of any environmental review of the Project that may be required under CEQA.

4. **Land Use Jurisdiction.** This Agreement shall have no effect on any other jurisdictional issues related to the Project, including but not limited to any zoning or other land use regulations that may apply to the Project within the County's and Cupertino's respective jurisdictions.

5. **Consultation Process.** The County will provide Cupertino with regular updates about the Project and will forward key documents to Cupertino for their review (e.g., application materials, notices of public hearings, staff reports).

6. **Termination.** Either the County or Cupertino may terminate this Agreement by giving 60 days' written notice to the other party.

7. Notice. All notices and other correspondence provided pursuant to this Agreement shall be sent via facsimile, e-mail or U.S. mail to the following individuals:

County of Santa Clara:

Gary Rudholm
Senior Planner, Planning Office
70 W. Hedding Street, 7th Floor, E. Wing
San Jose, CA 95110-1770
gary.rudholm@pln.sccgov.org
fax: 408-299-9198

City of Cupertino:

Colin Jung
Senior Planner
10300 Torre Avenue
Cupertino, CA 95014-3255
colinj@cupertino.org
fax: 408-777-3333

IN WITNESS WHEREOF, the County and Cupertino have executed this Agreement as follows:

COUNTY OF SANTA CLARA:

By: _____
Pete Kutras, Jr.
County Executive

Date: August 7, 2008

CITY OF CUPERTINO:

By: _____
David Knapp
City Manager

Date: 8.19.08

APPROVED AS TO FORM AND LEGALITY:

By: _____
Lizanne Reynolds
Deputy County Counsel

APPROVED AS TO FORM AND LEGALITY:

By: _____
Charles Kilian
City Attorney

TOPOGRAPHY AND AERIAL PHOTOGRAPH SOURCE: Aero-Geodetic Corporation (10-26-06)

N

0 400'

SCALE: 1" = 400'-0"

- Site Boundary
- Surface Disturbance Boundary
- Area of Amendment

Exhibit A

Figure 5
Reclamation Plan
Amendment Areas
STEVENS CREEK QUARRY

RESOURCE DESIGN TECHNOLOGY, INC.