

January 28, 2020

VIA ELECTRONIC MAIL

Robert Salisbury, Senior Planner
Department of Planning & Development
Santa Clara County
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San Jose, CA 95110
Email: Robert.Salisbury@pln.sccgov.org

***Re: Permanente Quarry, June 13, 2019 Notice of Violation
California Mine ID No. 91-43-0004***

Dear Mr. Salisbury:

On behalf of Lehigh Southwest Cement Company (“Lehigh”), we deeply appreciate the time spent by the Planning Department staff and representatives of the Office of County Counsel on January 14, 2020¹ to discuss the corrective actions taken by Lehigh in response to Santa Clara County’s June 13, 2019 Notice of Violation (“NOV”) issued to the Permanente Quarry.

On January 15, 2020, you provided email correspondence that summarized the agreements reached between the County and Lehigh at the meeting. In certain respects, the summary requires more precision to capture the parties’ agreements going forward. Below, we offer a more detailed summary of the agreements reached. We have organized this letter to track the topics in the order presented in your email.

1. Section 2774.1 Process and Confirming Letter

Lehigh and the County agree that the County will follow the enforcement process in Public Resources Code section 2774.1 concerning the NOV and will not follow any other enforcement process that may be contained in the County’s ordinances (outside of the surface mining ordinance). The parties also agree that, within the section 2774.1 process, the County is now assessing the adequacy of two specific corrective actions and whether a “stipulated order to comply” will be needed.

In addition, Lehigh requested a letter from the County which confirms that the County is following the section 2774.1 process. The County subsequently provided a letter dated January 23, 2020

¹ The meeting was attended by Mr. Salisbury and Jacqueline Onciano, Rob Eastwood, Rob Salisbury, James Stephens, Elizabeth Pianca, Esq., Michael Rossi, Esq., Erika Guerra, Mark Harrison, Esq., Sean Hungerford, Esq.

confirming this. Accordingly, Lehigh will immediately dismiss the Notice of Appeal and Complaint filed November 27, 2019 in the Santa Clara County Superior Court (Case No. 19CV359808).

As a related matter, the County's January 23, 2020 letter also stated that the County would not, to the extent that a stipulated order is needed, include certain terms from the County's draft version of the stipulated order dated November 8, 2019. This could imply that the County may ask to include other terms from the County's draft stipulated order. To be clear, Lehigh does not agree that any aspect of the County's November 8 draft stipulated order can be used as a template for any future version. Lehigh will address this issue more fully in a separate response letter.

2. Verification of Erosion Control BMPs in Yeager Yard

The County acknowledges that, in a June 28, 2019 letter, Lehigh responded to the NOV that it had partially implemented the corrective actions listed in the NOV and was proceeding to implement the remainder. In the time since, Lehigh completed all remaining actions and now submits that the NOV should be discharged.

The parties agreed that County staff should have the opportunity to verify that Lehigh fully implemented two corrective actions listed in the NOV (Nos. 4 and 5). The parties agree that Lehigh has completed all other corrective actions, and that no other requirements of the NOV's corrective actions remain outstanding.

As to corrective action No. 4, the parties agreed that the County would perform an onsite inspection (attended by a certified QISP) to verify that Lehigh has implemented the soil stabilization and stormwater controls required, and that County staff would advise whether additional measures were needed to complete this work.

This inspection occurred on January 21, 2020, attended by two County staff members and the County's third-party expert (Kit Custis of Michael Baker International). We understand that the County recommended only a minor change to onsite BMPs (extending a discharge pipe). Lehigh has made and documented this change. Accordingly, corrective action No. 4 is fully implemented.

3. Meeting to Discuss Need for Additional Geotechnical Investigation

As to corrective action No. 5, the County and Lehigh agree to discuss whether additional geotechnical investigation is necessary to support the slope stability calculations previously submitted by Lehigh in satisfaction of correction action No. 5.

In this regard, Lehigh submitted a new slope design and stability calculations for the south-facing slope (in connection with Planning File No. PLN19-0106). The County asked whether additional investigation is needed to confirm subsurface geologic conditions (specifically, the presence of a greenstone ridge). The parties agree that their geotechnical experts shall meet to discuss whether additional investigation is required.

In general, Lehigh is not opposed to additional investigation if it is reasonable in scope. The County must bear in mind that Lehigh has already engaged two prominent geotechnical engineering

firms (Golder Associates and Stantec). Their analyses are incorporated in the slope redesign and Lehigh is confident that the data relied on meets accepted professional standards. We also note that the County already has accepted the May 2019 application (Planning File No. PLN19-0106) as complete, signifying that the stability analyses met SMARA's requirements. The need for additional investigation must be considered against this backdrop.

If, after the geotechnical experts meet, the parties agree that additional investigation is warranted, they also will consider whether the timing of that investigation renders a stipulated order to comply necessary.

4. Processing Schedule for Major Reclamation Plan Amendment

The County has agreed to provide Lehigh with a schedule for processing Lehigh's Major Reclamation Plan Amendment application (Planning File No. PLN19-0106). Lehigh looks forward to receiving this.

5. Documentation that County is Processing the Major Reclamation Plan Amendment

The County agreed to provide documentation that it is actively processing the Major Reclamation Plan Amendment application (Planning File No. PLN19-0106). Lehigh appreciates this statement. We observe, however, that the County advised Lehigh in August 2019 that it was engaging a consultant to process the application. Staff made similar statements in public meetings on December 19, 2019. To date, Lehigh has received no tangible evidence that active processing is underway, or that the process has actually advanced beyond the November 8, 2019 completeness determination over 60 days ago.

If the application is moved forward, Lehigh takes this opportunity to address the following preliminary matters:

a. CEQA Process

During the meeting, staff stated that it would develop a scope of work with a CEQA consultant for preparing the environmental review. It is appropriate for Lehigh to participate in those discussions to ensure that the scope, cost and process are aligned with Lehigh's expectations. We ask the County to include Lehigh in these discussions.

As a related matter, on August 29, 2019, Lehigh provided comments on a proposed scope of work from Ascent Environmental for contract planning services. To the extent that the County continues to plan on the use of contract planners for the application, many of the comments that Lehigh expressed then still apply.

b. Treatment of Haul Road Application

A separate Major Reclamation Plan Amendment application relating to the "Utility Road" (Planning File No. PLN19-0067), which stemmed from an August 2018 notice of violation, was deemed complete by the County and the County has informed Lehigh that it is ready to schedule this amendment

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for approval. Accordingly, we look forward to the County bringing this amendment forward to an approval hearing as soon as practicable.

CONCLUSION

Again, Lehigh appreciates the County's time and attention to this matter. If anything in this letter does not accurately reflect the discussions between Lehigh and the County, please let us know immediately.

Sincerely,

HARRISON, TEMBLADOR, HUNGERFORD & JOHNSON



By

Mark D. Harrison, Esq.

cc: Jacqueline R. Onciano, Planning Director, Santa Clara County
Rob Eastwood, Planning Manager, Santa Clara County
Michael L. Rossi, Esq., Lead Deputy County Counsel
Elizabeth G. Pianca, Esq., Lead Deputy County Counsel
Erika Guerra, Lehigh Southwest Cement Company