

March 13, 2020

VIA ELECTRONIC MAIL

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

Dear Mr. Salisbury:

INTRODUCTION

The purpose of this letter is to bring closure to Santa Clara County's June 13, 2019 Notice of Violation ("NOV"). We write this letter on behalf of Lehigh Southwest Cement Company, the operator of the Permanente Quarry.

The NOV alleged two violations stemming from a sediment discharge in part of the Quarry known as the Yeager Yard. The NOV listed six corrective actions. The NOV also listed timeframes for completing the corrective actions. Lehigh duly completed all corrective actions that could be completed on the NOV's timeframe. Two corrective actions, however, required more time than the NOV had allowed.

For the remaining corrective actions, Lehigh committed to entering into a "stipulated order to comply" to establish alternative deadlines and asked to meet with the County to discuss those deadlines. Lehigh and the County met on January 14, 2020 following a six-month delay. In the meantime, Lehigh duly completed the remaining corrective actions and provided documentation of that fact to the County, which the County accepted.

At the January 14, 2020 meeting, the County did not dispute that Lehigh completed the corrective actions but requested the opportunity to verify that certain corrective actions were completed to its satisfaction. To accommodate this, Lehigh and the County agreed to two follow-up tasks. First, the County would conduct an inspection to determine if the sediment controls in the Yeager Yard were adequate. Second, they would determine if additional investigation was needed to verify the existence of a buried bedrock feature assumed by Lehigh's geotechnical experts.

As to the first task, the County’s inspection team, which included an independent consultant retained by the County, visited the Yeager Yard on January 21, 2020. The County’s consultant wrote a report afterwards making six specific recommendations to Lehigh to prevent future sediment discharges. Lehigh accepts all six recommendations, as detailed below. For those recommendations that require additional work, that work will be complete by or before April 30, 2020 in accordance with the County’s request.

Concerning the second task, Lehigh has completed additional geologic investigation which verifies the geotechnical model developed by Lehigh’s third-party consultant. In February 2020, Lehigh commissioned a “seismic refraction survey” to verify the depth to bedrock under the Yeager Yard. The survey results corroborate the assumptions in the geotechnical analysis submitted by Lehigh and eliminate the need for more investigation.

In sum, Lehigh has completed all of the corrective actions in the NOV. To achieve a final resolution of the NOV, Lehigh also has completed, or is in the process of completing, every additional action which the County has requested.

Finally, so that the record is complete, this letter appends and incorporates by reference the exhaustive technical and scientific studies relating to slope stability, sediment control and water quality associated with the Yeager Yard. Lehigh directed these studies both in response to and independent of the NOV. Some have been submitted to other government agencies. Not all have, to date, been formally shared with the County. These materials ensure that the County is fully informed.

BACKGROUND

Quarry Overview

The Quarry is a surface mining operation in the unincorporated hillsides area of western Santa Clara County, approximately one mile west of the City of Cupertino. The Quarry is part of a 3,510-acre property owned by a Lehigh affiliate. (See Appendix 1 Maps.)

Pursuant to the Surface Mining and Reclamation Act (“SMARA”) (Pub. Resources Code, § 2710, et seq.), all surface mining operations in the state, including the Quarry, must have a “reclamation plan” approved by a lead agency. The County is the lead agency responsible for administering SMARA locally and for approving new or amended reclamation plans.

The County approved the current reclamation plan in June 2012 (“Reclamation Plan”). (Appendix 2 is the Reclamation Plan and Conditions of Approval.) The Reclamation Plan covers 1,238 acres of the 3,510-acre property. (See Appendix 1 Maps.) Of the area covered by the Reclamation Plan, approximately 546 acres are disturbed by mining operations. The balance is undisturbed or is held in reserve for future mining operations.

The area known as the Yeager Yard is located in the west-central portion of the Quarry, on the slopes north of and adjacent to Permanente Creek. (See Appendix 1 Maps.) The Yeager Yard is covered by the Reclamation Plan.

June 13, 2019 Notice of Violation

The NOV originated from site conditions resulting from heavy rains during the 2018-2019 winter. Following a series of storms, certain slopes in the Yeager Yard exhibited surface cracking and signs of movement, prompting concern for overall slope stability. Saturation of the slopes also caused seeps to emerge at mid-slope.

Lehigh acted promptly to control these conditions. Lehigh immediately installed an earthen berm and sedimentation basin at the bottom of the slope to intercept seep water and to prevent runoff from entering Permanente Creek. Lehigh also retained two highly-qualified professional engineering firms, Golder Associates and Stantec Consulting Services, to assess the area and provide recommendations for improving drainage and slope stability.

During the 2018-2019 winter months, Golder and Stantec monitored the Yeager Yard comprehensively. Monitoring was sophisticated and complex. It included: soil borings, installation of vibrating wire piezometers to monitor changes in groundwater depths and pore pressure, visual surveys, installation of inclinometers to detect below-ground movement and aerial surveys to track large-scale movement. The data collected in these investigations allowed Golder and Stantec to recommend various remedial actions, as detailed further below.

On June 13, 2019, the County issued the NOV.¹ (Appendix 3). The NOV identified two violations predicated on a “discharge of sediment to Permanente Creek.” The first alleged a “failure to control sedimentation” based on SMARA’s performance standards in Title 14, Code of Regulations, section 3706. The second alleged a failure to comply with a Reclamation Plan Condition of Approval (No. 78 d, f, requiring sediment controls). The NOV listed six corrective actions and timeframes for completion, which are listed in the chart on the following page.

Lehigh’s Response to NOV

Lehigh responded to the NOV in a timely manner. On June 28, 2019, Lehigh wrote to the County and described the corrective actions already completed, and those that would take more than 30 days to complete. (Appendix 4). Consistent with SMARA and Public Resources Code section 2774.1, Lehigh also expressed its commitment to enter a “stipulated order to comply” to set timeframes for completing the outstanding corrective actions.

The County did not formally respond to the June 28, 2019 letter. The County also did not respond to Lehigh’s follow-up letter on July 12, 2019. (Appendix 5.) Nonetheless, Lehigh proceeded to complete the two corrective actions that remained. The chart below summarizes Lehigh’s response to each of the six actions:

¹ Under SMARA, a notice of violation must specify the actions that the mine operator shall take to correct the violation. (Pub. Resources Code, § 2774.1, subd. (a)(1).) If corrective action will take longer than 30 days, SMARA allows the operator and lead agency to enter a “stipulated order to comply” setting a schedule for those actions. (Id., subd. (a)(2).)

<i>June 13, 2019 Corrective Actions</i>	<i>Status</i>
<p>1. By June 28, 2019, submit a plan for soil stabilization and stormwater control and erosion prevention in the violation area to prevent further discharge of sediment into Permanente Creek.</p>	<p>Complete. On June 28, 2019 Lehigh submitted a plan describing completed actions and actions planned to prevent any discharge of sediment to Permanente Creek.</p>
<p>2. By June 28, 2019, test the sediment material discharged into Permanente Creek for contaminants, such as selenium and submit a report presenting the results of that testing to the County Department of Planning and Development Planning Division (Planning Division) and the California Regional Water Quality Control Board (Regional Board). Further action may be required based on the results of this testing.</p>	<p>Complete. On June 28, 2019, Lehigh provided laboratory results for tests run on WMSA material.</p>
<p>3. By June 28, 2019, test the water seeping from the slopes and flowing into Permanente Creek for contaminants, such as selenium and submit a report presenting the results of that testing to the County Planning Division and the Regional Board. Further action may be required based on the results of this testing.</p>	<p>Complete. On June 28, 2019, Lehigh provided the laboratory data for water samples collected from seeps.</p>
<p>4. By July 5, 2019, implement the soil stabilization and stormwater controls in No. 1.</p>	<p>Complete. On June 28, 2019, Lehigh provided soil stabilization and erosion control plans and completed that work by October 15, 2019.</p>
<p>5. By July 12, 2019, submit slope stability calculations that analyze the stability of the south-facing slope of the West Materials Storage Area pursuant to California Code of Regulations, Title 14, § 3704(f), prepared by CEG. If unstable conditions are identified, you must also recommend remedial action.</p>	<p>Complete. On September 30, 2019, Lehigh provided a reclamation design for this slope with calculations showing that the design meets SMARA’s standards.</p>
<p>6. By August 14, 2019, modify and resubmit the Permanente Creek Restoration Plan Grading Approval application, deemed incomplete by the County on February 14, 2019 to include the portion of Permanente Creek located adjacent to the Yaeger Yard. The modification will need to address the sediment derived from erosion within the Yaeger Yard that has been deposited into Permanente Creek, and address the long-term stability of the slopes above and below the Yaeger Yard area.</p>	<p>Complete. On September 30, 2019, Lehigh supplemented its May 2019 application to include final reclamation designs for this slope. Lehigh included the design in its Reclamation Plan application (rather than the creek restoration grading) because the slope stabilization is reclamation activity.</p>

On October 29, 2019, Lehigh provided the County with a draft “stipulated order to comply” designed to memorialize the fulfillment of the corrective actions. (Appendix 6.) The County did not immediately respond.

County’s November 6, 2019 Draft Stipulated Order

On November 8, 2019, the County provided Lehigh with the County’s own version of a stipulated order to comply. (Appendix 7.)

The County’s stipulated order did not, however, track either the violations or the corrective actions in the NOV. Rather, it added new violations, added new corrective actions and called for Lehigh to waive important procedural and substantive rights. In an accompanying cover letter, the County also stated that it would withhold action on a pending application² if Lehigh did not execute the stipulated order.

Lehigh declined to execute the stipulated order. Instead, in December 30, 2019 letters to the County, Lehigh reiterated that all corrective actions were complete, and respectfully asked the County for a meeting to discuss a resolution of the NOV and for formal recognition that the corrective actions were complete. (Appendices 8 and 9). The meeting occurred on January 14, 2020.

January 14, 2020 Meeting with County

At the January 14, 2020 meeting, the County did not dispute that Lehigh completed the corrective actions but sought an opportunity to verify that two corrective actions were completed to the County’s satisfaction. Lehigh and the County committed to two follow-up tasks as part of this verification process:

1. County staff and a qualified third party would inspect the Yeager Yard to verify that Lehigh implemented the sediment controls required by corrective action No. 4, and if the third-party recommended additional best management practices (“BMPs”), the County would forward those recommendations to Lehigh.
2. The parties agreed that their geotechnical experts would determine whether additional investigation was needed to corroborate the existence of a subsurface ridge of native bedrock beneath a part of the Yeager Yard, as assumed by Stantec’s analysis. The County’s geologist requested evidence to verify that this ridge was actually in place.

Lehigh documented these agreements in a January 28, 2020 letter. (Appendix 10.)

On January 21, 2020, the County and its third-party stormwater consultant, Michael Baker International (“MBI”), inspected the Yeager Yard. MBI prepared a report dated February 12, 2020 that contained its observations. The County provided MBI’s report to Lehigh on February 21, 2020. At the same time, the County also provided a February 19, 2020 memorandum by the County’s geologist, and a modified version of the County’s November 8, 2019 stipulated order to comply. All three documents are included in Appendix 11.

² Lehigh’s May 2019 application to amend the Quarry’s Reclamation Plan.

County’s February 21, 2020 Draft Stipulated Order

The February 21, 2020 stipulated order, like the November 8, 2019 version, does not track the NOV or its six corrective actions. Similarly, the modified stipulated order contains improper procedural and substantive demands. It does, however, propose further actions that offer a framework for finalizing the sediment control plan called for in the NOV.

In relevant part, the modified stipulated order called for Lehigh to submit an “erosion and sedimentation control plan” by March 15, 2020 and to implement that plan by April 30, 2020:

- B. **By March 15, 2020**, submit directly to the County Planning Office an erosion and sedimentation control plan clearly showing the specific erosion control measures that will be installed to prevent sedimentation discharge into Permanente Creek from Yeager Yard slopes. This plan shall cover Permanente Creek below the WMSA instability area, including but not limited to Subarea 3 as shown on Figure 3.19-0 of the 2012 Lehigh Reclamation Plan Amendment, attached hereto as **Exhibit A**. This plan shall be prepared by a Qualified SWPPP Developer (QSD) and be submitted to and approved by the County prior to implementation. The County acknowledges that Lehigh has submitted a Corrective Action Plan (“CAP”) to the SF Bay Regional Water Quality Control Board intended to prevent sediment discharge. However, in order to comply with Condition of approval 68 (d), the geographic scope of the erosion and sediment control plan must be extended to the west to prevent further sediment discharge which could occur due to the condition of the Yeager Yard slopes.

- C. **By April 30, 2020**, implement the erosion and sedimentation control plan required and approved per Item B. After Operator implements the erosion and sediment control measures per the approved plan, they shall contact County staff to schedule an inspection to verify implementation. Adequate implementation shall be verified by inspection conducted by a third-party consultant retained by the County.

Lehigh is unable to execute the modified stipulated order because it would require that Lehigh waive important rights. While fully reserving its rights, however, Lehigh accepts the provisions above as a basis for bringing closure to corrective action Nos. 1 and 4 in the NOV, and to give effect to the agreements made on January 14, 2020, as set forth below.

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RESPONSE TO ADDITIONAL WORK REQUESTED BY COUNTY

The following summarizes the present state of affairs and Lehigh’s intentions:

The February 21, 2020 modified stipulated order proposes that Lehigh prepare an “erosion and sedimentation control plan” by March 15, 2020 and implement that plan by April 30, 2020.

This proposal was not part of the NOV. Eight months ago, on June 28, 2019, Lehigh submitted a “plan for soil stabilization and stormwater control and erosion prevention” in response to corrective action No. 1. The County received this without objection. As such, the February 21, 2020 request cannot be considered a requirement of the NOV.

Further, issuance of the modified stipulated order to comply was not part of the agreement reached in the January 14, 2020 meeting with the County. At that meeting, the parties agreed that the County would inspect the Yeager Yard, and that Lehigh would implement any reasonable sediment control BMPs recommended as a result of that inspection.

Nonetheless, in the spirit of the January 14, 2020 meeting and the agreements reached in that meeting, and while reserving all rights without prejudice, Lehigh will accommodate the County’s request and prepare an erosion and sedimentation control plan. In doing so, it is Lehigh’s objective that all governmental concerns relating to the Yeager Yard are addressed to bring final closure to the NOV.

Appendix 12 contains an *Erosion and Sediment Control Plan* (“Plan”) prepared by a Qualified SWPPP Developer (“QSD”) as specified in the modified stipulated order. The Plan describes sediment control BMPs in the Yeager Yard. Because the modified stipulated order itself did not identify specific sediment control BMPs, the Plan incorporates MBI’s recommendations for BMPs and covers the geographic area³ assessed in MBI’s report.

MBI made six distinct recommendations for additional sediment control BMPs.⁴ The recommendations, and Lehigh’s response to each, are in the chart below. As the chart demonstrates, Lehigh accepts each recommendation. Any additional work needed to implement the recommendations will be complete by April 30, 2020, in accordance with the County’s schedule.

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³ The modified stipulated order states that BMPs “must be extended to the west...” (Appendix 11, Stipulated Order, p. 2.) Lehigh observes that MBI recommended BMPs in a location “upstream from the collection basin.” (Appendix 11, MBI Report, p. 4.) Lehigh is proceeding on the basis that the County’s “west” extension area matches the “upstream” area described by MBI.

⁴ MBI also made many other recommendations concerning the reclamation process, site management, and matters not related to new sediment control BMPs. Lehigh will address those recommendations separately in due course.

<i>MBI's February 12, 2020 Recommendations</i>	<i>Response</i>
<p>6) The discharge pipe from the lined stormwater collection basin should be extended uphill and over the crest of the road to allow for gravity drainage to the water treatment plant. At the moment it follows the incline of the access road but terminates in a low point, photo 13. The discharge is now prevented from flowing downhill in the roadside ditch to the area of the water treatment plant because of recently deposited mine rock materials placed at the road's crest. This recommendation was provided to the mine operator, and the mine's representatives indicated that this would be implemented. Verify implementation at next inspection.</p>	<p>Lehigh accepts this recommendation. Lehigh completed a temporary pipe extension by January 27, 2020. Photographs documenting the extension are attached in Appendix 13. Lehigh has since improved this extension by replacing it with HDPE pipe and by routing flow around the stockpile and water treatment systems.</p>
<p>7) The lined stormwater collection basin should be armored to prevent erosion. This should be done as soon as the operator is allowed to enter the creek in accordance with their CDFW permit. This armoring should be consistent with the planned stream restoration.</p>	<p>Lehigh accepts this recommendation. Rip-rap armoring below the stormwater collection basin is already a design feature in plans submitted to CDFW. (Appendix 14.) Lehigh will install the armoring after receiving final CDFW approval.</p>
<p>8) Fine-grained materials should be placed into the smaller tension cracks in benches and roads to prevent infiltration of runoff. These tension cracks, located in the lower portion of the Yeager Yard, indicate ongoing slope instability and act as conduits for sheet flow and concentrated rainfall runoff leading to rapid percolation deep into the waste rock/landslide. Preventing these cracks from allowing surface water infiltration is critical for stabilizing the landslide. The mine's consultants can propose an alternative for prevention of runoff infiltration via cracks in the landslide.</p> <p>9) The larger tension cracks may need a more robust structure to allow water to flow over rather than into the crack. The operator's stormwater/engineering consultants infiltration. These structures should at a minimum be placed in the benches and roadways and in any other structure where runoff is concentrated. They should</p>	<p>Lehigh accepts the recommendation to fill surface cracks in the Yeager Yard with fine-grained material. This recommendation is incorporated into GEI's <i>Erosion and Sediment Control Plan</i>. (Appendix 12.) Lehigh's experts considered the use of structural components for larger cracks and concluded that fills using fine-grained material would be adequate. In addition, drainage improvements during the 2018-2019 winter season rerouted runoff away from these areas have reduced infiltration in these areas to direct precipitation.</p>

<p>be designed to be flexible so that they continue to perform as intended if the crack widens or if there's differential movement. Periodic inspections should be made of the crack filling and bridging structures, particularly before a known rainfall event, and repairs made as necessary.</p>	
<p>10) Silt fence fabric has fallen off of the wire mesh backing. The operator should re-tie the silt fencing to the support wire and make any needed repairs to prevent runoff from breaching these sediment control structures.</p>	<p>Lehigh accepts this recommendation, which has been incorporated into GEI's <i>Erosion and Sediment Control Plan</i>. (Appendix 12.)</p>
<p>13) I recommend that the BMPs on the WMSA slopes above the Permanente Creek be regularly inspected and replaced, as necessary. The timing of these inspections should be consistent with the monitoring schedule and requirements defined in the January 2020 CAP, and any other permit requirements. These inspections should document in writing, any measurements and/or observations of impacts to the creek from sediment discharge and/or slope instability, shallow or deep seated. Images of the areas inspected should be provided to supporting the conclusions and evaluations of impacts.</p>	<p>Lehigh accepts this recommendation. Lehigh performs BMP inspections monthly, and before and after qualified rain events, pursuant to Condition of Approval No. 78 (Appendix 2.)</p>
<p>14) The BMPs that are no longer performing as intended should be removed because the wire fencing and poles could become a hazard, but care must be taken to not allow the sediment and debris collected behind these structures to move downslope. This material may need to be removed from the slope.</p>	<p>Lehigh accepts this recommendation, which has been incorporated into GEI's <i>Erosion and Sediment Control Plan</i>. (Appendix 12.)</p>

Additionally, during the January 14, 2020 meeting, the County requested further evidence to document the presence of a buried ridge of bedrock beneath the Yeager Yard in a location assumed by Stantec. Lehigh has directed additional investigation to develop this evidence.

In February 2020, Lehigh commissioned Stantec to conduct a seismic refraction survey, a type of survey that sends compression waves through the earth and measures the velocity and characteristics of the refracted energy. The results show the presence of a buried bedrock ridge in the location assumed by Stantec. These results verify the geologic model and resolve the questions raised by the County's geologist in the January 14, 2020 meeting.

In summary, Lehigh has provided the County with the geologic information requested at the January 14, 2020 meeting, and adopted all sediment control recommendations made by the County and its consultant following that meeting.

ADDITIONAL SCIENTIFIC SUPPORTING DATA

Well beyond the corrective measures required by the County's NOV, Lehigh has taken more elaborate and detailed measures to study the Yeager Yard control erosion and slope stability in that area. All are referenced below, appended to this letter, and incorporated by reference in Lehigh's response to the NOV to ensure that the record is complete.

1. Lehigh directed Golder Associates to develop recommendations to immediately stabilize the Yeager Yard slopes until a permanent solution can be developed through the Reclamation Plan process. Golder's recommendations are in its *Technical Memorandum: Stability Analysis of Corrective Action Measures for Yeager Yard Area*, September 2019 (Appendix 15). Golder's main recommendations were (a) make drainage improvements to redirect storm runoff away from slopes and (b) remove 650,000 cubic yards of fill from the upper slopes to improve overall slope stability. Lehigh fully implemented both recommendations as of November 30, 2019.
2. Lehigh directed Stantec to develop recommendations for achieving permanent slope stability according to SMARA's standards. Stantec's recommendations are contained in *West Materials Storage Area Geotechnical Evaluation*, November 19, 2019⁵ (Appendix 16). Stantec recommended flattening the slopes by additional material removal. The attached evaluation provides the technical basis for its recommendations (including cross sections, shear strengths, material properties, and static and pseudo-static stability analyses for the final reclaimed condition). This supersedes an earlier version of this analysis in *Permanente Quarry – WMSA Slope Instability Remediation Plan*, September 27, 2019.
3. Lehigh also directed Stantec to prepare a summary of its geotechnical investigations at the Yeager Yard. Stantec's *Yeager Yard Monitoring, Assessment and Investigations: 2018-2019*, February 7, 2020 (Appendix 17), provides boring logs, groundwater monitoring and piezometer data, slope inclinometer data, tracking data for surface movement over approximately past year. The document also presents an analysis of historical photographs of the Yeager Yard that was used to support Stantec's slope stability recommendations.
4. Lehigh requested approval from the California Department of Fish & Wildlife ("CDFW") to improve the sedimentation basin in the Yeager Yard slope to collect seep water and storm runoff. Lehigh submitted the request to CDFW on September 9, 2019 with a technical memorandum by Stantec providing designs for the basin. (Appendix 14.) CDFW has not provided final approval but, in advance of approval, authorized Lehigh to install a temporary liner, pipeline and pump for the 2019-2020 wet season to ensure Permanente Creek is protected. These temporary features were completed by November 30, 2019.

⁵ Lehigh provided this document to Santa Clara County in November 2019 as a supplement to Lehigh's May 2019 application to amend the Reclamation Plan.

5. The RWQCB has required Lehigh to submit a number of documents which provide for monitoring and maintenance in the Yeager Yard and describe the actions that Lehigh will take to prevent sediment discharges. The RWQCB required these submittals in connection with a July 9, 2019 notice of violation that was based on the same sediment discharge addressed by the County's NOV. The submittals include:
- *Operations, Maintenance and Contingency Plan (OM&C) Plan*, August 2019. The OM&C Plan provides for surface and groundwater monitoring and visual observations of the Yeager Yard slopes. The OM&C plan (together with an addendum and update) is contained in Appendix 18.
 - *Corrective Action Plan*, 2020. This responds to information requests made by the RWQCB on November 25, 2019. It includes a characterization of the discharge, laboratory analyses of seeps, actions to improve slope stability, surface and groundwater monitoring plans, and actions that will be incorporated into the *Stormwater Pollution Prevention Plan* (see below) to prevent future discharges. The *Corrective Action Plan* is in Appendix 19.
 - *Stormwater Pollution Prevention Plan*, January 2020. Lehigh updated this plan to incorporate erosion and sediment controls in the Yeager Yard in compliance with Provisions A.2 and A.3 of the RWQCB's stormwater discharge permit (Order R2-2019-0024, NPDES Permit No. CA0030210). (Appendix 20.)

Lehigh's submittals to the RWQCB appear to have been satisfactory to the RWQCB. On February 13, 2020, the RWQCB issued a letter to Lehigh indicating that it considered its July 9, 2019 notice of violation to be resolved. (Appendix 21.)

CONCLUSION

Lehigh has completed all corrective actions in the NOV, and additionally, has committed to perform additional work that goes beyond the corrective actions in the NOV. Thus, there are no erosion and sediment controls requested which Lehigh has not completed or are in progress. Once the additional work is complete, Lehigh will provide the County with verification of that fact, and regard the NOV as fully discharged.

This letter, its contents and appendices are being provided to the County subject to a full and complete reservation of rights.

Sincerely,

HARRISON, TEMBLADOR, HUNGERFORD & JOHNSON



By

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March 13, 2020

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