

County of Santa Clara

Department of Planning and Development

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OFF-AGENDA MEMORANDUM

DATE: February 19, 2020

TO: Housing, Land Use, Transportation and Environment Committee (HLUET)

FROM: Jacqueline  Ronciano, Director, Department of Planning and Development

SUBJECT: **Department Response to letter from Lehigh Southwest Cement Company dated January 27, 2020 regarding Permanente Quarry**

This memorandum responds to the January 27, 2020 letter from Mark Harrison, on behalf of Lehigh Southwest Cement Company ("Lehigh"), addressed to the members of the Housing, Land Use, Environment and Transportation (HLUET) Committee regarding statements made during the December 19, 2019 HLUET meeting (Item No. 6). The January 27, 2020 letter is attached to this off-agenda memorandum for reference.

Lehigh's letter asserts that it has worked diligently towards resolving the Notice of Violation (NOV) issued by the County to Lehigh on June 23, 2019, and identifies the dates of communications between Lehigh and the County evidencing Lehigh's engagement in the NOV and Stipulated Order to Comply.

While Lehigh's letter identifies many communications between Lehigh and the County, it does not acknowledge the County's responses to Lehigh and the County's repeated request that Lehigh abate the NOV through compliance with a Stipulated Order to Comply. The communications also do not acknowledge Lehigh's appeal filed with the State Mining and Geology Board (SMGB) or its complaint with Santa Clara County Superior Court concerning the County's NOV and the processing of Lehigh's Reclamation Plan Amendment.

Lehigh's letter asserts that it has abated the underlying violations giving rise to the June 23, 2019 Notice of Violation. However, as documented within the amended Stipulated Order to Comply issued by the County to Lehigh on February 19, 2020, Lehigh remains in violation of certain 2012 Reclamation Plan Conditions of Approval and has been directed

to install erosion control measures to address ongoing sedimentation impacting Permanente Creek.

Attached to this memorandum is a table that provides a summary of communications between Lehigh and the County relative to the County's June 23, 2019 NOV and Stipulated Order to Comply.

Attachments:

- 1) January 27, 2020 letter from Lehigh's attorney
- 2) Table listing communication between County staff and Lehigh

January 27, 2020

VIA ELECTRONIC MAIL: peggy.doyle@cob.sccgov.org

Mike Wasserman, Chairperson
Housing, Land Use, Environment, and
Transportation Committee
County of Santa Clara
70 West Hedding Street, 1st Floor
San Jose, CA 95110

Re: *Permanente Quarry*
December 19, 2019 HLUET Committee, Agenda Item No. 6

Dear Chairperson Wasserman and Members of the Committee:

We write on behalf of Lehigh Southwest Cement Company (“Lehigh”), operator of the Permanente Quarry. The purpose of this letter is to clarify certain statements made during the December 19, 2019 meeting of the County of Santa Clara’s Housing, Land Use, Environment and Transportation (“HLUET”) Committee.

During the portion of the meeting devoted to Agenda Item No. 6 involving the Permanente Quarry, Supervisor Simitian stated that, based on the information that he possessed, Lehigh had refused to engage the County regarding the June 13, 2019 Notice of Violation (“NOV”) or proposed “stipulated order to comply” shared with Lehigh on November 8, 2019.

This information was incorrect and contrary to the facts. We note the following communications between Lehigh and the County concerning the NOV and stipulated order to comply:

- On June 28, 2019, Lehigh asked to meet with the County to discuss the resolution of the NOV, and to request that the County extend a “stipulated order to comply” pursuant to the enforcement provisions of the Surface Mining and Reclamation Act (“SMARA”). (Pub. Resources Code, § 2774.1.) The County did not respond.
- On July 12, 2019, Lehigh sent a follow-up meeting request to the County. The County did not respond.

- On July 24, 2019, in a telephone call with Planning Department staff, Lehigh reiterated its request for a meeting to discuss the NOV. Staff promised to inquire internally regarding the status of Lehigh's request.
- On October 22, 2019, Lehigh met with County staff to discuss resolving the NOV and to confirm that the County intended to follow the SMARA compliance process. Staff attempted to hold an "appeal hearing," which did not occur. Lehigh took the opportunity to re-request that the County issue a stipulated order to comply, and to advise staff that it had completed all of the corrective actions in the NOV.
- On October 23, 2019, Lehigh wrote to County staff, reiterating its request that the County close the NOV through the SMARA process.
- On October 24, 2019, in a meeting onsite at the quarry, staff indicated that the County intended, as Lehigh requested, to close the NOV following SMARA.
- On October 29, 2019, Lehigh provided the County with a proposed stipulated order to comply.
- On November 20, 2019, in a telephone call, County's attorneys advised that the County would send a letter confirming that the County intended to resolve the NOV pursuant to the SMARA process.
- On November 22, 2019, Lehigh's counsel wrote to County counsel, asking when Lehigh would receive the confirming letter.
- On November 26, 2019, Lehigh's counsel wrote again to the County to ask when Lehigh would receive the confirming letter.
- On December 2, 2019, Lehigh's counsel wrote again to ask about the status of the confirming letter, and to request a meeting with staff to discuss a final resolution of the NOV.
- On December 3, 2019, Lehigh's counsel wrote again to inquire about the confirming letter and request a meeting.
- On December 5, 2019, in response to County counsel's request, Lehigh forwarded three mid-December dates for a meeting with the County staff to discuss the NOV.
- On December 9, 2019, Lehigh's counsel wrote to again ask about the confirming letter, and to follow up on its request for a meeting with County staff.
- On December 18, 2019, attorneys for Lehigh and the County spoke by telephone. The County's attorneys indicated that they were continuing to evaluate the County's position.

- On December 30, 2019, Lehigh wrote again asking the County to meet regarding the NOV, and Lehigh proposed meeting dates in mid-January. The County accepted the invitation and the meeting was set for January 14, 2020, which eventually took place.

These communications make it abundantly clear that Lehigh has worked diligently towards a resolution with the County regarding the NOV and stipulated order to comply. Indeed, Lehigh has been the party endeavoring to drive these discussions forward.

This letter also reiterates that Lehigh has completed all of the corrective actions listed in the NOV, as stated in our December 18, 2019 letter to this Committee. To date, the County has not disputed this nor identified any corrective action in the NOV that remains outstanding. It remains incumbent on the County to close the NOV using the appropriate SMARA process.

Lehigh continues to engage the County in this regard and is hopeful of reaching a resolution in short order. We trust that this corrects the record with respect to the matters discussed at the December 19, 2019 HLUET Committee meeting.

Sincerely,

HARRISON, TEMBLADOR, HUNGERFORD & JOHNSON



By

Sean Hungerford, Esq.

cc: Supervisor S. Joseph Simitian, Vice Chairperson, HULET Committee
Erika Guerra, Lehigh Southwest Cement Company

LEHIGH STATEMENT IN 1/27 LETTER TO HLUET	COUNTY RESPONSE
<p>On June 28, 2019, Lehigh asked to meet with the County to discuss the resolution of the NOV, and to request that the County extend a “stipulated order to comply” pursuant to the enforcement provisions of the Surface Mining and Reclamation Act (SMARA). (Pub. Resources Code, § 2774.1.) The County did not respond.</p>	<p><i>In response to Lehigh's June 28th request, County administrative staff attempted several times via telephone to coordinate with Lehigh to schedule a meeting but was unsuccessful. On July 31st, the County sent an invitation to Lehigh to meet on August 12, 2019, Lehigh did not respond. Throughout September, the County coordinated with Lehigh regarding a hearing date, that was ultimately set for October 22, 2019.</i></p>
<p>On July 12, 2019, Lehigh sent a follow-up meeting request to the County. The County did not respond.</p>	
<p>On July 24, 2019, in a telephone call with Planning Department staff, Lehigh reiterated its request for a meeting to discuss the NOV. Staff promised to inquire internally regarding the status of Lehigh’s request.</p>	
<p>On October 22, 2019, Lehigh met with County staff to discuss resolving the NOV and to confirm that the County intended to follow the SMARA compliance process. Staff attempted to hold an “appeal hearing,” which did not occur. Lehigh took the opportunity to re-request that the County issue a stipulated order to comply, and to advise staff that it had completed all of the corrective actions in the NOV.</p>	<p><i>The October 22, 2109 meeting was conducted as an administrative appeal hearing, a process acknowledged in the June 13, 2019 Notice of Violation the County sent to Lehigh, and was conducted in response to Lehigh's June 28, 2019 request.</i></p>
<p>On October 23, 2019, Lehigh wrote to County staff, reiterating its request that the County close the NOV through the SMARA process.</p>	<p><i>The County received the October 23 and October 29 communications from Lehigh requesting closure of the NOV and submittal of a draft stipulated order to comply. On November 8, 2019, the County sent to Lehigh a proposed Stipulated Order to Comply outlining the steps required for Lehigh to abate the violation.</i></p>
<p>On October 24, 2019, in a meeting onsite at the quarry, staff indicated that the County intended, as Lehigh requested, to close the NOV following SMARA.</p>	
<p>On October 29, 2019, Lehigh provided the County with a proposed stipulated order to comply.</p>	

<p>On November 20, 2019, in a telephone call, County's attorneys advised that the County would send a letter confirming that the County intended to resolve the NOV pursuant to the SMARA process.</p>	<p><i>The County received the November 20 telephone call and subsequent November 22 and 26 letters. On November 22, Lehigh notified the County that it intended to present an appeal to the State Mining and Geology Board regarding the County's processing of Lehigh's Reclamation Plan. On November 26, 2019, County Counsel responded to Lehigh's letter. Lehigh filed the appeal with the State Mining and Geology Board on November 27, 2019.</i></p>
<p>On November 22, 2019, Lehigh's counsel wrote to County Counsel, asking when Lehigh would receive the confirming letter.</p>	
<p>On November 26, 2019, Lehigh's counsel wrote again to the County to ask when Lehigh would receive the confirming letter.</p>	
<p>On December 2, 2019, Lehigh's counsel wrote again to ask about the status of the confirming letter, and to request a meeting with staff to discuss a final resolution of the NOV.</p>	<p><i>The County received the December 2 and 3 communications from Lehigh and County Counsel responded on December 4 and December 5. On December 2, 2020, Lehigh filed a writ in Superior Court against the County regarding the Notice of Violation the County issued to Lehigh. The County received the December 9, 2019 communication from Lehigh and responded, stating that the County could not meet until internal discussion occurred in light of Lehigh's litigation.</i></p>
<p>On December 3, 2019, Lehigh's counsel wrote again to inquire about the confirming letter and request a meeting.</p>	
<p>On December 5, 2019, in response to County Counsel's request, Lehigh forwarded three mid-December dates for a meeting with the County staff to discuss the NOV.</p>	
<p>On December 9, 2019, Lehigh's counsel wrote to again ask about the confirming letter, and to follow up on its request for a meeting with County staff.</p>	
<p>On December 18, 2019, attorneys for Lehigh and the County spoke by telephone. The County's attorneys indicated that they were continuing to evaluate the County's position.</p>	
<p>On December 30, 2019, Lehigh wrote again asking the County to meet regarding the NOV, and Lehigh proposed meeting dates in mid-January. The County accepted the invitation and the meeting was set for January 14, 2020, which eventually took place.</p>	<p><i>In response to Lehigh's December 30th request, the County responded on December 31st with meeting dates and ultimately set a meeting with Lehigh for January 14, 2020.</i></p>