

February 24, 2020

VIA ELECTRONIC MAIL

Jacqueline R. Onciano
Director of Planning and Development
County of Santa Clara
70 West Hedding Street, 7th Floor
San Jose, CA 95110

***Re: Permanente Quarry, California Mine ID No. 91-43-0004
Reclamation Plan Processing***

Dear Ms. Onciano:

We are writing on behalf of Lehigh Southwest Cement Company (“Lehigh”).

The purpose of this letter is to document the County of Santa Clara’s (“County”) delay in processing Lehigh’s May 2019 application for a reclamation plan amendment (File No. PLN19-0106) in the time required by law.

We note the following timeline of events:

- On May 22, 2019, Lehigh applied to the County for a major reclamation plan amendment (County File No. PLN19-0106.)
- On November 8, 2019, the County issued a letter determining the application to be “complete.” The letter also stated that the County would not process the application until Lehigh agreed to enter into a compliance agreement.
- On December 19, 2019, in a public meeting of the County’s Housing, Land Use, Environment and Transportation Committee, County staff stated that it was actively processing the application.
- On January 14, 2020, Lehigh met with County staff. At that meeting, staff represented that the County was actively processing the application.
- On January 28, 2020, Lehigh wrote to the County, requesting confirmation that the County was actually processing the application. To date, the County has not replied.

It has been three and one-half months since the County deemed the application “complete.” County staff has in the interim made public and private statements that the County is actively processing the application. Lehigh has received no evidence, however, that the County is advancing the application in a meaningful way.

Staff has not, for instance, provided a consultant scope of work for Lehigh’s review and approval, as the County’s own procedures require in order to initiate the environmental review.¹ Further, staff has not provided a processing schedule, set a kickoff meeting, or engaged in other steps that outwardly signify any progress.

Under the Surface Mining and Reclamation Act (“SMARA”) and its implementing regulations, a lead agency must process a complete application for a reclamation plan amendment in a reasonable period of time. (Code of Regulations, tit. 14, § 3650(c)(3).) A reasonable time means that “the interval between successive review steps shall not exceed 60 days.” (Id.) More than 60 days has elapsed since the application was complete, without progress.

Also, the California Environmental Quality Act (“CEQA”) requires a lead agency to complete and to certify an Environmental Impact Report (“EIR”) within one year of an application being accepted as complete. (Pub. Resources Code, § 21100.2, subd. (a)(1)(A); Code of Regs., tit. 14, § 15108.) The County may be unable to meet this deadline considering the time that has elapsed since the application was accepted as complete on November 8, 2019. We also observe that, in the nine months since Lehigh filed the application, an EIR could have been largely completed.

The delay is damaging to Lehigh and frustrates its ability to bring important construction materials to the market. The quarry is a “designated” resource (see Pub. Resources Code, § 2726) which supplies the raw material for 80 percent of the cement used in the County. Lehigh can maintain this supply only by timely processing reclamation plan amendments to keep pace with its mining operations.

Sincerely,

HARRISON, TEMBLADOR, HUNGERFORD & JOHNSON



By

Mark D. Harrison, Esq.

cc: Rob Salisbury, Senior Planner, 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

¹ *Procedures for Consultants to Prepare Environmental Documents for Private Projects in Santa Clara County*, December 8, 2015 version, pp. 8-9.

Jacqueline R. Onciano, Santa Clara County
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Erika Guerra, Lehigh Southwest Cement Company