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Dear Mr. Salisbury,

The City of Cupertino appreciates the County's referral of the application for a use permit and major reclamation plan amendment ("Application") recently submitted by Stevens Creek Quarry ("SCQ"). SCQ acknowledges that its onsite reserves are dwindling. This should lead to reclamation of the property under the Surface Mining and Reclamation Act and County Code "at the earliest possible time on those portions of the mined lands that will not be subject to further disturbance by the surface mining operation." Pub. Res. Code § 2772(c)(6). Instead, and as the City noted in its July 2, 2019 comments on SCQ's pre-application for the same approvals, the Application seeks to expand and extend activities that already violate standards for water quality protection and slope stability, and that have significant impacts on City roads and infrastructure. SCQ now asks to open a major new area that SCQ does not even own for mining in order to keep operating as its own resources run out. This proposal appears inconsistent with both City and County policies that seek, among other things, to minimize impacts of vehicular use on the local community and infrastructure, local and regional air quality, and global climate change. These policies also protect resources such as water quality and provide for reclamation and restoration of mining properties once resources are depleted. The City looks forward to working with the County on revisions to bring any use permit and reclamation plan into compliance with these and other authorities.

Please note that, in addition to the concerns about the Application identified below, many of the issues that the City has raised related to the reclamation plan amendment and other activities proposed by Lehigh Southwest Cement Company ("Lehigh") also apply to SCQ. In particular, the City opposes export of aggregate from Lehigh's quarry to SCQ, which would expand operations at both properties, add an

estimated 400 truck trips each day between the properties, extend the life of SCQ's processing operation, and thereby extend and increase impacts of SCQ's operations. Neither quarry has any vested right or entitlement to engage in new activities such as export of materials from Lehigh to SCQ. Likewise, the City has serious concerns about both quarries' proposals to truck millions of cubic yards to their properties for reclamation, through City streets. At a minimum, the County must consider the common and cumulative impacts of both the expanded operations and the approach to reclamation for which these two large, adjacent businesses now seek approval. Together, they would impose significant and lasting impacts on the environment and the surrounding community.

I. The Application is inconsistent with City and County policies.

The County General Plan allows the Planning Commission to approve a use permit if it makes findings including that the proposed use will not be detrimental to the adjacent area, substantially worsen traffic congestion affecting the surrounding area, or adversely affect water quality, and that it will control erosion and adequately manage stormwater and runoff. County General Plan § 5.65.030(D). When considering applications to renew or extend a use permit, the Planning Commission must consider whether the new application seeks to intensify use, whether the existing permit and conditions were adequate to control the use, and whether a greater degree of control by the County is needed. *Id.* § 5.65.040. SCQ's existing impacts and history of noncompliance support denial of any expansion and imposition of meaningful controls in a new use permit.

The County also prioritizes coordination with cities such as Cupertino about impacts of traffic and transportation, especially from activities and properties such as SCQ that are located within the city's sphere of influence. The City's General Plan specifically identifies trucks from SCQ as a problem in Policy HS-8.7. In particular, the City's policy is to minimize impacts of quarry-related trucking with "measures [that] include regulation of truck speed, the volume of truck activity, and trucking activity hours to avoid late evening and early morning. Alternatives to truck transport, specifically rail, are strongly encouraged when feasible." Policy HS-8.7. To this end, the City will "coordinate with the County to restrict the number of trucks, their speed and noise levels along Foothill and Stevens Creek Boulevards, to the extent allowed in the Use Permit" and "ensure that restrictions are monitored and enforced by the County." It also identifies "road improvements to reduce [quarry] truck impacts" as a priority. As described in greater detail below, the current limit of 1,300 truck trips each day is far too lax to protect the City, its residents, its air quality and noise levels, and its infrastructure. A meaningful, enforceable truck plan will be an essential condition on any use permit.

At a more general level, the City works to minimize stormwater runoff, and has expressed particular concern about material from quarry trucks that is deposited on City streets and that reaches its storm drain system. The City already pays for extra street

sweeping to mitigate impacts from trucks leaving SCQ, even though such work is assigned to SCQ under the Mediated Conditions described below. The City also has goals to reduce greenhouse gases and other air pollutants. Continuation of current, high levels of quarry-related trucking, plus additional trucking in the future to bring backfill materials to the site, both run contrary to those goals. Each of these policies further reinforces the need for stringent controls on trucking to and from SCQ.

Overall, extension and expansion of SCQ's mining and aggregate processing operations will prolong and exacerbate impacts that quarry-related activities already impose on the City, its residents, and its infrastructure unless any use permit adds meaningful limits on quarry-related operations, especially transportation. The City looks forward to working with the County to craft an appropriate limit on daily truck trips as part of a truck plan that addresses these impacts.

II. Stevens Creek Quarry has no vested right to engage in the activities proposed in the Application.

The City notes several inaccuracies and key omissions in the Application. In particular, SCQ has never established a vested right to mine on its property, including its northern "Parcel B." In fact, and although SCQ fails to acknowledge this anywhere in the Application, SCQ has been operating under a set of mandatory conditions since 2002 that were negotiated with neighbors and approved by the Board of Supervisors ("Mediated Conditions"). Those conditions limit operations in a manner equivalent to the conditions provided in a use permit. They regulate hours and days of operation, number of truck trips per day, loading and managing truck loads to prevent spills, maintenance of local roads, noise and light conditions, and reclamation, among other things. Likewise, SCQ does not—and cannot—assert rights to expand mining onto Lehigh's property. The record is clear that SCQ has no existing entitlements. It has operated under an outdated use permit, set of conditions, and reclamation plan for years, followed by a compliance agreement. All prospective approvals and associated conditions are entirely within the County's discretion.

III. SCQ proposes to expand mining beyond its own property, into an area of significant instability, without adequate analysis or mitigation.

SCQ seeks a use permit to extend mining onto 85 acres owned by Lehigh, located west of Parcel B. This is a proposal for purely new extractive operations expressly intended to extend the life of its operations instead of winding down as soon as possible once its resources are depleted, as intended by SMARA. Pub. Res. Code § 2772(c)(6). Such an expansion and extension of its operations is inappropriate and unwarranted. SCQ's request for a 30-year use permit essentially seeks to restart the clock on its operations. The County should not accept the proposed expansion and associated impacts.

This proposal is problematic for the additional reason that it seeks to expand operations into an area of significant, known instability, without any analysis. SCQ's reclamation plan amendment claims that a "memo prepared by Norfleet Consultants support[s] the slope design" it proposes for this new area, but it does not provide the referenced (and required, 14 CCR § 3502(b)(3)) Slope Stability Memorandum.¹ Instead, other portions of the Application glibly state that "[s]everal geotechnical evaluations have been prepared for the site previously. A geotechnical investigation to support the current mine and reclamation design is ongoing." Application p. 5.

In fact, the City's geotechnical consultants, Cotton Shires and Associates, Inc., have identified a large, active, deep-seated landslide extending off the northwest corner of Parcel B into the Lehigh property near the location of Lehigh's proposed new Rock Plant Reserve pit. This landslide is failing into SCQ's existing upper pit. It has pushed through the quarry cut and does not appear to be a cutslope failure from cutting too steeply. Cotton Shires identified an additional landslide at the northern perimeter of Parcel B (again, adjacent to Lehigh's proposed new pit) that appears to have been active since at least 2011 and continues to show instability despite installation of a toe buttress and wall upslope. In addition to these two landslides, Lehigh has proposed to excavate its new Rock Plant Reserve pit in a location that backs up to the north wall of SCQ's existing pit. In other words, SCQ and Lehigh both propose to mine toward unstable material without adequate information or slope stability analyses.

The County should not allow SCQ's proposed expansion. Were the County to consider it, the County should require coordination between geotechnical consultants for both quarries to ensure consistent and adequate characterization and analysis of geologic conditions in this unstable area. Only then can the County hope to understand and obtain mitigation to address the impacts of further excavation at either site, much less in both locations.

IV. The Application would result in significant impacts from quarry-related truck traffic.

SCQ's operations already impact both traffic and infrastructure, with significant expense and disruption to the City and its residents. The quarry's current hauling contributes to congestion, excessive queuing of trucks, deposit of debris, and traffic violations along its Stevens Canyon Road/Foothill Boulevard truck route. Likewise, that stretch of road in the City's jurisdiction is in poor condition, largely due to hauling associated with the quarry's operations. The City has had to invest in substantial and expensive improvements to that stretch of City streets, simply to address the impacts of existing operations. These operations have also required the City to expend resources on

¹ Interestingly, SCQ provides a geotechnical analysis, including a slope stability analysis, for the new *settling pond* proposed in the Application, but not for the new *quarry pit* and area of excavation. See Project Description, Appendix A.

extra street sweeping and enforcement by the County sheriff. Accordingly, any use permit and reclamation plan amendment must both address and impose meaningful limits on quarry-related traffic and must require mitigation of the significant offsite impacts caused by trucks travelling to and from SCQ. These activities and impacts are supposed to—and should—sunset with the end of SCQ’s resources. Any decision to extend and increase the material that SCQ can process beyond these current expectations must minimize the associated impacts that would not otherwise occur.

Similarly, the Quarry’s proposal to import roughly 1 million tons of aggregate from neighboring Lehigh Permanente Quarry for processing and sale remains underdeveloped and under-analyzed. The City previously pointed out that the proposed off-road haul route between the two quarries violates the Mediated Conditions governing operations on Parcel B; raises significant concerns related to emissions, seismic stability, and ridgeline protections and views; and raises unaddressed permitting issues. The County also noted that it could not support the use of this haul route until existing violations are corrected. Rather than address these concerns, the Application states only that the use of this route will depend on City and County approvals, and defers to Lehigh’s pending reclamation plan for the haul road. However, SCQ confuses the issue by also contending that it will develop a “new off-highway roadway” to facilitate the transfer of material from Lehigh to SCQ. As the City has previously explained, this alternative route only exacerbates impacts by climbing higher over the ridge. The County should reject the proposed transfer of aggregate between businesses for processing. At a minimum, SCQ should be required to clarify its proposed route for importing aggregate, and to obtain the requisite permits for that route before its use permit is approved. Under no circumstances, however, should SCQ use City streets to import aggregate from Lehigh.

Finally, SCQ proposes a major reclamation plan amendment that compounds the problems described above by proposing to import two million tons of fill with which to reclaim the quarry property.² The Application does not acknowledge the additional impacts on City streets and residents associated with adding even more hauling to already overburdened routes. It also does not explain why onsite materials are inadequate to complete reclamation, but suggests that imported fill may be “superior” to minimize water quality impacts without meaningful discussion or analysis. SCQ is also entirely silent about the recent reclamation plan amendment submitted by Lehigh, that proposes to import millions of additional tons of fill. The cumulative effects of these projects are obvious and must be addressed, including alternatives that rely on onsite material for reclamation.

V. The Application does not adequately address water quality.

² Note that the Mediated Conditions expressly require retention of onsite overburden for use in the reclamation and revegetation process.

SCQ's approach to water quality protection is similarly cavalier. The Application seeks to expand operations without undertaking a sufficient analysis of protections for Rattlesnake Creek and Swiss Creek, which merge within the facility and discharge to Stevens Creek Reservoir. The County noted that the pre-application project description failed to show the location of proposed Best Management Practices ("BMPs"). Here, while the Application includes maps showing proposed BMP locations throughout much of the SCQ property, there is no information on BMPs for the 85-acre area SCQ proposes to lease from Lehigh. Similarly, the quarry's Stormwater Pollution Prevention Plan and Spill Prevention Control and Countermeasure Plan do not appear to account for either the additional, leased 85-acre parcel, or the proposed expansion of operations to process imported aggregate. The County should require SCQ to document, construct, and maintain adequate protections for the full scope of its operations.

VI. Conclusion

The City looks forward to working with the County to address the scope and impacts of any use permit and reclamation plan amendment to bring them into conformity with City and County policies and to address significant impacts that they will have on the City and the surrounding community. However, as briefly summarized above, the City finds SCQ's proposed expansion inappropriate and highly detrimental to its residents and resources.

Sincerely,



Deborah Feng
City Manager

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