



**MITCHELL
CHADWICK**

Patrick G. Mitchell
pmitchell@mitchellchadwick.com
916-462-8887
916-788-0290 Fax

December 11, 2020

VIA EMAIL AND U.S. MAIL

Robert Salisbury
Senior Planner
Santa Clara County Department of Planning and Development
County Government Center
East Wing, 7th Floor
70 West Hedding Street
San Jose, CA 95110

Re: Stevens Creek Quarry – UP and RPA Application Resubmittal

Dear Mr. Salisbury:

As you are aware, I represent Stevens Creek Quarry (“SCQ”) regarding SCQ’s mining operations located in Santa Clara County (“County”). On September 21, 2020, SCQ submitted a Use Permit (“UP”) and Reclamation Plan Amendment (“RPA”) application prepared by Benchmark Resources. The County subsequently deemed the application incomplete. Thus, the purpose of this letter is to discuss the resubmittal of the application and to provide additional documents relating to SCQ’s application for a UP and RPA. To this end, I have attached the following application submittals prepared by Benchmark Resources and the SCQ team on behalf of SCQ:

1. Mine plan revisions;
2. Reclamation plan revisions;
3. Operations elements, including an import request and recycle operations;
4. Incomplete Letter Task List;
5. Application for Zoning Code Use Interpretation; and
6. Deeds, Certificates of Compliance, and Record of Survey.

In addition to enclosing the documents enumerated above, this letter is intended to address various issues, which have been expressed by the County during our on-going discussions regarding SCQ’s UP and RPA application.

SCQ continues to reserve the right to assert a vested right as to Parcel B, if necessary.

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A. Application for a Zoning Code Use Interpretation to allow import of aggregate from the Lehigh Permanente Quarry

In addition to the revised UP and RPA application attached hereto, we have attached SCQ's application for a use interpretation pursuant to Section 2.10.020A.2 of the Santa Clara County Zoning Ordinance ("Zoning Ordinance"). In addition, SCQ is hand delivering a check today to the County Department of Planning and Development for the amount of \$2,589.42, which is the fee required for a zoning code use interpretation application per our recent calls with you. As you are aware, SCQ's quarry is located within the Santa Clara County area zoned as Hillside. SCQ desires to import aggregate material from the neighboring Lehigh Permanente Quarry. However, the Zoning Ordinance does not expressly address whether the importation of aggregate is permissible within the Hillside zone. Thus, SCQ is requesting that the County make a determination that the importation of aggregate material from the Lehigh Permanente Quarry to SCQ's quarry is a permissible use under the applicable Zoning Ordinance for the reasons set forth below.

The Zoning Ordinance authorizes the zoning administrator,¹ upon receipt of a formal application for interpretation, to determine whether a particular use is within the scope of an existing use classification. (Zoning Ordinance, § 2.10.020A.)

The zoning administrator may deem a use to be a permitted use that is not listed on the table of uses if such use is substantially similar in nature and intensity to at least one listed permitted use, and the use is clearly compatible with both the intent of the applicable district and the applicable land use designation of the general plan. The zoning administrator shall also determine the nature of the permitting process, based on the nature and intensity of the use and that use to which it is substantially similar.

(Zoning Ordinance, § 2.10.020A.1, underlines added.)

The proposed import of aggregate from the Lehigh site and processing and sale from the SCQ site would be substantially similar in nature and intensity to the long-term mining of aggregate, haul road use, and processing operations at both sites, as well as the recycling import activities at the SCQ site. The aggregate import and processing would also be consistent with the county General Plan and zoning which allow mining and processing in the Hillside zone.

¹ We understand from our recent call that County staff would expect this decision to be at the Planning Commission level, as compared to the zoning administrator.

The purpose of the Hillside zone is “to promote those uses ... which protect and promote the wise use of natural resources.” (Zoning Ordinance, § 2.20.010C, underline added.) The Zoning Ordinance expressly states that mineral and other resource extraction is a permitted use, with a use permit, within the Hillside zone. (Zoning Ordinance, § 2.20.010C; Table 2.20-2.) Likewise, the County’s General Plan expressly allows mineral extraction on land designated as Hillside. (County General Plan, p. Q-3.) SCQ’s proposed use involves the importation of aggregate material that has already been mined as part of mining for limestone, from the neighboring Lehigh Permanente Quarry. In addition, SCQ would import aggregate material from the neighboring Lehigh Permanente Quarry that is mined in the future as part of Lehigh’s limestone mining operations. SCQ utilizing this mined aggregate material would be consistent with the purpose of the Hillside zone as it would increase the utilization of and reduce the waste of natural resources. It would also avoid the need to permit a new mine in another area of Santa Clara County. Thus, SCQ’s proposed use is consistent with the purpose of the County Hillside zone and the General Plan land use designation.

Further, importing aggregate material from the adjacent Lehigh Permanente Quarry is similar to Lehigh’s and SCQ’s current operations and to other currently permitted and allowed uses within the Hillside zone. Lehigh and SCQ have mined for and produced from their adjacent mines for 100 years and 70 years, respectively. Currently, SCQ is allowed to and does import material for the purpose of recycling at SCQ’s site. Importing aggregate material is substantially similar to importing recyclable material and is only differentiated by the type of material being imported – not the act of importing. Given that importing aggregate material is substantially similar to importing recyclable material, which has historically been allowed by the County, this is another reason why the Zoning Ordinance should be interpreted so as to allow SCQ’s proposed use of importing aggregate. In addition, Lehigh’s sales out their front gate are substantially similar to the proposed Lehigh’s sales out of their proposed back gate.

The importation of aggregate material would be ancillary to the primary use of SCQ’s existing quarry operations, namely, the mining and processing of aggregate materials. More specifically, importing aggregate material facilitates SCQ’s operations by enabling SCQ to process such materials and promotes the wise use of natural resources. Thus, importing aggregate material should not be viewed as a separate and distinct activity when determining whether such use is permissible within the Hillside zone, but should instead be viewed as a use ancillary to SCQ’s current decades-long operations. Accordingly, the importation of aggregate material should be classified as a permissible use within the Hillside zone.

Finally, if one company owned both the SCQ and Lehigh sites this import issue would not even exist, and the proposed activity would clearly be a permitted use in the zone. This evidences that the proposed underlying activity is substantially similar (if not almost identical to) permitted uses.

SCQ's proposed use is aptly characterized as an activity incidental to SCQ's current operations. The Zoning Ordinance allows incidental uses, which are not expressly identified by the Zoning Ordinance, if it is determined by the applicable decision-making authority that such use is "appropriately ancillary to the primary use, and generally compatible in nature with the uses permitted by the applicable zoning designation." (Zoning Ordinance, § 2.10.020B.) Such are the circumstances here.

B. Grant Deeds and Proof of Lot Legality

Enclosed herewith are the following Deeds for SCQ's four (4) parcels (see attached map) on which continued mining activities are proposed, which Deeds evidence SCQ's ownership of these parcels:

Book 6436, Page 428: Grant Deed recorded March 24, 1964, from Anthony and Vida Voss to Stevens Creek Quarry Inc. for APNs 351-10-019 (see Parcel II in Grant Deed) and 351-10-044 (see Parcel I in Grant Deed) – ***This is the current SCQ grant deed for APN 351-10-019 and also serves as proof of lot legality since this was the deed of record as of June 25, 1969.***

Book 8869, Page 706: Deed recorded March 26, 1970, from Kaiser Cement & Gypsum Corporation to Stevens Creek Quarry Inc. for APNs 351-10-019, 351-10-040, and 351-10-044 – ***This is the current SCQ vesting deed for APN 351-10-040.***

Doc. No. 23701181: Grant Deed recorded July 19, 2017, from Stevens Creek Quarry Inc. to Stevens Creek Quarry Inc. for APN 351-10-044 – ***This is the current SCQ grant deed for APN 351-10-044.***

Doc. No. 21782654: Grant Deed recorded August 9, 2012, from Stevens Creek Quarry Inc. to Stevens Creek Quarry Inc. for APN 351-18-048 – ***This is the current SCQ grant deed for APN 351-10-048.***

Doc. No 21227129: Grant Deed recorded July 6, 2011, from Richard and Denise Voss to Stevens Creek Quarry Inc. for portion of APN 351-18-048.

Book 8435, Page 475: Grant Deed recorded February 14, 1969, from Anthony and Vida Voss to Stevens Creek Quarry Inc. for portion of APN 351-18-048.

Book 3247, Page 382: Grant Deed recorded August 8, 1955, from Anthony and Vida Voss to Stevens Creek Quarry Inc. for portion of APN 351-18-048.

Book 3073, Page 162: Grant Deed recorded February 17, 1955, from Santa Clara Valley Water Conservation District to Stevens Creek Quarry Inc. for portion of APN 351-18-048.

The following Certificates of Compliance are also enclosed to prove lot legality for APNS 351-10-044 and 351-10-048:

Doc. No. 23404073: Certificate of Compliance recorded August 18, 2016, for APN 351-10-044 – *This Certificate proves lot legality for APN 351-10-044.*

Doc. No. 21752061: Certificate of Compliance recorded July 17, 2012, for APN 351-18-048 – *This Certificate proves lot legality for APN 351-18-048.*

The following Record of Survey dated November 1969 and recorded February 10, 1970, in **Book 264, Page 23, of Maps** is enclosed to prove lot legality for APN 351-10-040.

APN 351-10-040 is within the jurisdiction of the City of Cupertino (the “City”) and is a legal parcel pursuant to Section 18.08.010 of the City’s Municipal Code, which defines a “Lot” as: “a parcel or portion of land separated from other parcels or portions by description, as on a subdivision *or record of survey map*, or by metes and bounds for purpose of sale, lease or separate use.” (Emphasis added.) As evidenced by the Record of Survey referenced above, APN 351-10-040 is a legal lot and could be sold or leased as such in accordance with the City’s Municipal Code.²

C. It is premature in this application for SCQ to address comments from CDFW or RWQCB regarding stream restoration and SMARA does not require reclamation to a pre-mine condition

SCQ has not addressed the comment letters sent from the California Department of Fish and Wildlife (“CDFW”) or the Regional Water Quality Control Board (“RWQCB”) regarding stream restoration relating to the artificial ponds located on the SCQ quarry site because the three instream retention berms used to create these ponds were constructed prior to the enactment of

² The City of Cupertino was incorporated on October 10, 1955, prior to the County’s establishment of procedures requiring lot splits occurring on or after June 25, 1969, to comply with the same requirements as other minor subdivisions. Additionally, the Subdivision Map Act did not become effective until March 1, 1975.

the federal Clean Water Act and the CDFW streambed alteration laws (i.e., the Section 1600 program).

RWQCB Comment on Section 4.5.1

The RWQCB was not requiring stream restoration as recently as two years ago. Thus, SCQ questions the validity of such a requirement and is engaged in discussions with the RWQCB regarding whether such a requirement is even applicable to the ponds located on the SCQ quarry site. If, during SCQ's discussions with the RWQCB, it is ultimately determined that stream restoration is required and that an amendment to SCQ's existing reclamation plan is necessary, or the impoundments remain and there are long-term stability issues that need addressed, SCQ will apply to the County for a reclamation plan amendment addressing stream restoration at that time.

CDFW Comments on Pages 9 and 12 and Figures 10 and 11

SCQ would agree that the impoundments could be operated for the benefit of downstream habitat. The impoundments are not subject to the Streambed Alteration Agreement program as they predate those CDFW requirements.

In addition, the comments from CDFW state that the site should be reclaimed to the pre-mining condition. (See CDFW comments to Sections 4.1.1 and 4.3 and Figures 10 and 11 of the RPA.) This position is inaccurate. SMARA does not require reclamation to a "pre-mine" condition. Nor could such a condition be achieved at this site. Rather, SMARA requires reclamation consistent with the proposed end use. (See 14 CCR § 3700(b).) Here, that end use is open space. The Reclamation Plan Amendment requirements fulfill that SMARA requirement.

Finally, as a matter of law, we do not believe that state agency comments on an application to the county control whether a county application is complete. Such state agency comments are more properly considered as part of the process after the submittal of a complete application. Most California counties do not even notify state agencies until after an application is deemed complete.

D. Traffic Impact Study is not necessary for SCQ's resubmittal

SCQ was informed of the County's rejection of SCQ's UP and RPA application by way of your letter dated October 21, 2020. In that letter, the County required SCQ to submit the information requested therein less than two months later, on December 11, 2020. Through no fault of its own, SCQ was unable to complete a traffic impact study in time for this re-submittal. However, the data necessary to complete a traffic study as part of the County's CEQA environmental review process has been provided. Further, SCQ has been informed by Santa Clara County

Public Works that a traffic impact study is not necessary. This has been reiterated by Leo Camacho, a Santa Clara County Roads and Airports official, in a discussion with Andrew White, a representative of Benchmark Resources, which occurred on December 7, 2020, regarding SCQ's resubmittal.

E. SCQ and Lehigh license agreement for reclamation

SCQ and Lehigh entered into a license agreement on May 7, 2009, whereby Lehigh granted SCQ a non-exclusive license to enter a portion of Lehigh's property for reclamation purposes. (See attached.) The area subject to the license agreement included 9.5 acres (about 5% of the reclamation plan area) within the property identified as APNs 351-10-017, 351-10-033, 351-10-039, and 351-11-001. The license agreement has since expired pursuant to its terms. SCQ will renew the license agreement in the near term.

F. SCQ will provide the County with a stormwater memorandum

The stormwater pollution prevention plan ("SWPPP") prepared by Geosyntec in 2020 properly addresses stormwater control during mining. In addition, SCQ is having consultants prepare a stormwater analysis applicable to post-mining operations. This information complies with the SMARA requirements at 14 CCR § 3706(d).

G. City of Cupertino's position on SCQ's current permitting status is inaccurate and irrelevant to application completeness

The City of Cupertino's position is inaccurate because a vested rights determination has never been reached by Santa Clara County. Instead a mediated agreement was entered to resolve those issues. In addition, the CUP for Parcel A was applied for by SCQ prior to its expiration and was never acted on by Santa Clara County. Regarding SCQ's vested rights to Parcel B, those are not relevant to the current application because SCQ is submitting a conditional use permit application for Parcels A and B, which if granted, removes the need for a vested right determination for Parcel B. Thus, the City of Cupertino's vested rights assertions are, in our opinion, inaccurate and irrelevant for the current application.

Please contact Andrew White at Benchmark or me if you have any questions or require additional information. We look forward to continuing to work with the County on this matter.

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Sincerely yours,

MITCHELL CHADWICK LLP

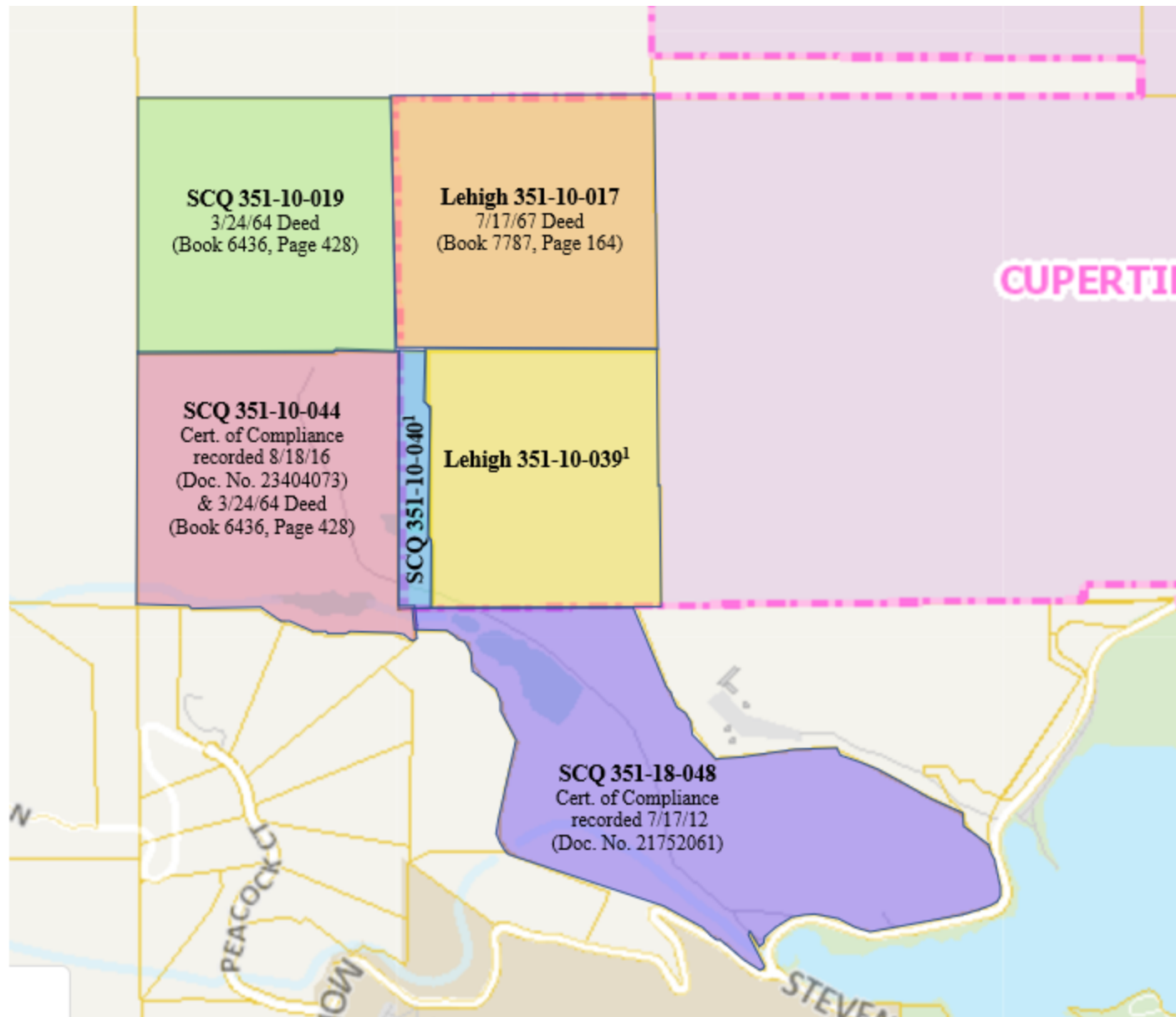


Patrick G. Mitchell

Enclosures:

1. Mine plan revisions
2. Reclamation Plan Revisions
3. Operations Elements
4. Incomplete Letter Task List
5. Application for Zoning Code Use Interpretation
6. Deeds, Certificates of Compliance, and Record of Survey

cc: Elizabeth Pianca, Santa Clara County
Jacqueline Onciano, Santa Clara County
Rob Eastwood, Santa Clara County
Jason Voss, Stevens Creek Quarry
Dan Boyle, Stevens Creek Quarry
David Brown, Benchmark Resources
Andrew White, Benchmark Resources



¹ The yellow and blue parcels were conveyed as one parcel from Kaiser Cement & Gypsum Corp. to Kaiser Cement & Gypsum Corporation via a deed recorded 7/17/67 in Book 7787, Page 163. The blue parcel was then conveyed from Kaiser to SCQ via a 12/11/69 Deed that was recorded 3/26/70 in Book 8869, Page 706. Pursuant to the November 1969 Record of Survey recorded 2/10/70 in Book 264, Page 23, of Maps, and the definition of a "lot" per Section 18.08.010 of the City of Cupertino's Municipal Code, the blue parcel is a legal lot.

STEVENS CREEK QUARRY
RECLAMATION PLAN AMENDMENT INCOMPLETENESS LETTER
RESPONSE MATRIX

Comment #	Comment	Response
PROJECT DESCRIPTION		
1	Use Permit for Surface Mining to apply to Parcel A and Parcel B (Assessor's Parcel Number[s] 351-10-017, 351-10-019, 351-10-033, 351-10-039, 351-10-040, 351-10-044, 351-11-001, and 351-18-048) for a term of 30 years for the following activities:	The project has been revised and parcels 351-10-033 and 351-11-001 have been removed from the site boundary. Please see the Stevens Creek Quarry Mine and Reclamation Plan Description (December 2020) (Project Description).
1(a)	<u>Surface Mining</u> : Expansion of the mining operation along the western face of Parcel B highwall to capture new mineral reserves, new benches in the main pit, and extraction of 2.6 million tons of Franciscan-aged greenstone rock for aggregate production annually crusher feed of 2 million tons per year. Excavation, crushing, processing, and hauling of materials - Monday through Friday; between 6:30 a.m. and 5:00 p.m. except on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Stacking, loading, and hauling of materials Monday through Friday; between 6:00 a.m. and 5:00 p.m. Saturday and no more than 15 Saturday's per year; from 7:00 a.m. to 3:00 p.m.; no more than one Saturday per month from May 15 to October 15, inclusive. Evening work for special circumstances would occur only 30 work evenings per year, no longer than 5:00 p.m. to 8:00 p.m. The total workforce would include up to 75 employees.	The project has been revised and only proposes mining within Parcel B and lowering the existing floor of the quarry to additional depth. A maximum annual production and sales of 2 million tons per a year is proposed. No changes in hours and days of operation are proposed. See sections 5 and 6 of the Project Description.
1(b)	<u>Import of Aggregate</u> : Import up to 1 million tons of greenstone per year from Lehigh Permanente Quarry ("Lehigh") for processing. Native greenstone mined at Lehigh Permanente Quarry would be purchased by SCQ and transported to Parcel B along a newly constructed Haul Road between SCQ and Lehigh Hanson for processing.	This aspect of the project has not been modified. See section 5.3 of the Project Description.
1(c)	<u>Construction of a New Haul Road for Aggregate Importation</u> : Construction of a new Haul Road to connect SCQ to Lehigh to allow the importation of greenstone for processing.	This aspect of the project has not been modified. See section 5.3 and 6.4 of the Project Description.
2	Amend the 2009 Reclamation Plan to include:	No response required.
2(a)	<u>Update Reclamation Plan Boundary</u> : Expand the Reclamation Plan boundary to include portions of adjacent parcels (Assessor Parcel Numbers 351-10-017, 351-10-033, 351-10-039, 351-11-011) located directly to the east and west of Parcel B, currently owned by Lehigh Hansen, Inc.	The project has been revised and parcels 351-10-033 and 351-11-001 have been removed from the site boundary. A revised Stevens Creek Quarry Reclamation Plan Amendment (December 2020) (Reclamation Plan) is included with this submittal.
2(b)	<u>Expansion of Mining Operation and Correct Slope Instability Issues</u> : SCQ plans to expand mining operations along the western face of the existing Parcel B highwall by constructing new benches to a bottom elevation of 860 feet medium sea level (msl) in the northern portion of the pit, and 700 feet msl in the center and southern portion of the pit. The quarry floor is planned to have a maximum depth of 700 feet msl, with gently sloping floors that drain southerly and westerly. The bottom of the pit would then be backfilled to 900-feet msl.	The project has been revised and only proposes mining within Parcel B and lowering the existing floor of the quarry to additional depth. See section 5 of the Project Description.
2(c)	<u>Reclamation of Haul Road</u> : conversion of the illegally improved Haul Road (Item 1c above) to a Utility (Pacific, Gas and Electric) Access Road.	The project proposes to use this road to import greenstone from the adjacent Permanente Quarry. See section 5.3 and 6.4 of the Project Description.
2(d)	<u>Import of Fill</u> : Import a maximum of 2 million cubic yards of backfill material over a 30-year period for reclamation.	Import of additional fill is proposed as the result of a revised reclamation design. Estimated imported fill volumes range between approximately 3.7 - 12.5 million cubic yards. See section 4 of the Reclamation Plan.
2(e)	<u>Drainage Modifications and New Settling Basin</u> : SCQ proposes to implement best management practices (BMPs) to direct offsite and non- industrial run-on away from industrial areas and erodible surfaces in compliance with the National Pollutant Discharge Elimination System (NPDES) General Permit for stormwater discharges. The run-off from the quarry would be redirected from the existing in-creek Upper Settling Basin to a new settling basin designed and engineered by Bay Area Geotechnical Group (BAGG Engineering) to be consistent with design storm standards in the Industrial General Permit for the expanded mining areas as well as Compliance Agreement and Stipulated Order to Comply and Regional Water Quality Control Board requirements.	This aspect of the project has not been modified. Please see section 6.5 of the project description.

Comment #	Comment	Response
INCOMPLETENESS COMMENTS		
PLANNING		
Contact Robert Salisbury (408) 299-5785 / robert.salisbury@pln.sccgov.org and Patrick Angell (916) 764-0108) / Pat.Angell@ascentenvironmental.com		
USE PERMIT SUBMITTAL		
1	The Use Permit and RPA proposes to expand the mining and RPA boundary to include portions of parcels (Assessor Parcel Numbers 351-10-017, 351-10-033, 351-10-039, 351-11-011) that are currently owned by Lehigh Hansen Inc. The Application materials reference an agreement between Lehigh and SCQ allowing this expansion, but the required written authorization was not submitted. Written authorization from Lehigh authorizing SCQ to apply for surface mining and reclamation on these parcels, along with a letter of intent to enter into a lease agreement between Lehigh and SCQ or similar agreement that allows for surface mining and reclamation in this area must be submitted. In addition, the area designated as "Area to Remain Under Permanente Quarry Reclamation Plan Until Needed by Stevens Creek Quarry" will need to have some clarification of its status under both RPAs. All such other-owner agreements must convey the right to conduct reclamation by the County in the event that the quarry defaults on its responsibilities under SMARA.	The project has been revised and parcels 351-10-033 and 351-11-001 owned by Lehigh have been removed from the site boundary therefore no new agreement is necessary. The previous license agreement between SCQ and Lehigh authorizing SCQ to perform the necessary reclamation work on preexisting minor areas on Lehigh's property is being renewed.
2	The Project Description and RPA documents include conflicting references to the total acreage of the project. For example, Section 4.1 of the Project Description cites 167 acres, but Section 4.3 cites 147 acres. Please correct this discrepancy.	The project description has been revised to maintain consistent acreages. The site boundary is 170 acres and the limits of surface disturbance is 147 acres.
3	Multiple items on the Use Permit submittal checklist were not included with the submitted application and these items must be included with the resubmittal. These include:	See below.
3a	Current grant deed(s) for all four legal parcels on which mining activities are proposed. Appendix D includes Grant Deeds for three parcels but does not clearly identify the assessor parcel numbers for parcels owned by SCQ.	Grant deeds have been provided for all parcels within the site boundary. See Section B of cover letter and Appendix D of the Reclamation Plan.
3b	Proof of lot legality for each parcel on which mining activities are proposed, including those owned by Lehigh Quarry. Please see Attachment 5.	Proof of lot legality has been included with the grant deeds. See Section B of cover letter and Appendix D of the Reclamation Plan.
3c	Site Plan drawn to scale which shows the location of all existing and proposed buildings, mining equipment, and other improvements. The site plan must also show setbacks to property lines and must clearly state whether the buildings and improvements are existing or proposed.	The Existing conditions Aerial Photograph has been revised to included the requested detail. See Figure 5 and Sheet 1 of the Reclamation Plan.
3d	Floor plans and elevations for existing and proposed buildings. As an alternative for existing buildings, adequately labeled photographs in lieu of elevations would also suffice. Because these required items were not included with the Application, additional incomplete comments may be forthcoming after these items have been submitted and reviewed by the Department. Given the timelines in the compliance agreement we recommend early consultation on the items listed above to ensure a complete resubmittal.	Photos of existing buildings have been provided in Figure 8 of the Project Description.
4	The County's Early Public Outreach policy requires that SCQ install project notification signs onsite within 30-days of Application submittal. The sign must remain on the project site during the time the application is actively being processed and must be removed after an action to approve or deny the application has become effective. Please print the sign included as Attachment 6, install onsite, and provide a photo of the sign to the Department within 30-days of receipt of this letter, on or before November 19, 2020 , to confirm this requirement is satisfied.	Project notification signs have been installed onsite. A photograph of the project notification signs are enclosed.
5	The Project Description and Environmental Information Form (EIF) is incomplete. Please address the following:	See below.
5(a)	Number of visitors in addition to employees expected on site.	The average number of visitors to the site is included in section 6.4 and 6.5 of the Project Description.
5(b)	Truck Trips: clarify the number of truck trips that would result from proposed mining operations, importation of greenstone from Lehigh, and any other associated operation.	Vehicle truck trip from sales of material, importation of greenstone from Lehigh, and other trips (e.g. deliveries, visitors) is included in section 6.4 of the Project Description.
5(c)	Tree Disposition Plan: provide a tree removal plan specifying the height, species, and location under the proposed mining expansion.	The project has revised to eliminate disturbance on adjacent undisturbed parcels.
5(d)	Provide daily and annual maximum tonnage of aggregate proposed to be processed in the aggregate plant and what percentage of the annual output being process is expected to come from Lehigh.	Section 5.4 of the Project Description provides anticipated annual site production and sales.

Comment #	Comment	Response
5(e)	Rick Voss Trucking Company – this use was permitted by the Planning Commission as an ancillary use under the 1996 Use Permit Amendment that is now expired. If you like to continue this use, revise the project description and plans to specify this ancillary use as a component of the requested Use Permit. In addition, please provide the following information:	The project description has been revised to include a description of this use. Please see section 6.2.
5(e.i)	Name of existing and proposed trucking operation(s).	
5(e.ii)	Inventory of trucks and other equipment related to this operation.	
5(e.iii)	Number of truck trips per day generated by this use.	
5(e.iv)	Number of employees.	
5(e.v)	Purpose of trucking operation(s).	
RECLAMATION PLAN AMENDMENT SUBMITTAL		
6	Provide a map that shows the difference between the existing and the proposed reclamation plan boundary.	The project has been revised and no longer proposes to expand to adjacent parcels. The existing approved reclamation plan boundary does not change.
7	The RPA needs to be revised to identify the exact acreage of each parcel that SCQ plans to incorporate into the RPA boundary.	See Reclamation Plan section 2.5.
8	Pursuant to County Code Section 4.10.370 Part II A.3, Noise and Vibration, please revise RPA to include noise attenuation measures and revise figures to identify the nearest property line and the distance between loading points and the closest property line.	A description of noise attenuation measures implemented by Stevens Creek Quarry is included in Project Description section 6.10. The distance from loading points to the nearest property line is shown on Figure 3 and Sheet 1 in the Project Description.
9	Pursuant to County Code Section 4.10.370 Part II A.4, Traffic Safety, please revise RPA to clearly identify how and where trucks will park and queue onsite during loading and unloading of materials. Identify the number of parking spaces, including those available to employees, in the RPA. <i>Note: A minimum of 1 parking space per employee and adequate accessible spaces and spaces for company vehicles must be provided pursuant to Chapter 4.30 of the County Zoning Ordinance. The parking and access design must also comply with the requirements within this chapter.</i>	A discussion of internal traffic circulation, queuing, and parking is provided in section 6.4 and shown in Figures 9 and 10 in the Project Description.
10	Pursuant to County Code Section 4.10.370 Part II A.6.a, Setbacks from Property Lines, please revise RPA figures to clearly identify surrounding property lines and public right-of-way and their distance from cut slopes.	Reclamation Plan Figure 9 and Sheet 2 show the distance of cut slopes from surrounding parcel lines.
11	Pursuant to County Code Section 4.10.17. Part II A.6.b, Ridgeline Setbacks, please revise RPA figures to clearly identify that the top uppermost cut area which abuts a ridgeline is not less than 50 feet from the top of the ridge prior to excavation.	The project has been revised and eliminates mining on adjacent parcels. Proposed mining will lower the existing quarry floor and extend closer to a ridgeline.
12	Revise RPA Section 2.7.4 to describe slope failures on Parcel B. This will lead into the justification of the proposed slope modifications later in the RPA.	Additional discussion of the western slope failure is included in section 2.7 and Appendix E of the Reclamation Plan.
13	RPA Section 2.7.5 and Appendix E must include the LSA survey conducted in 2018.	The LSA Approved Jurisdictional Determination has been included as Appendix G of the Reclamation Plan.
14	Expand RPA Appendix A (Index to Required Content) to demonstrate compliance with County Code SMARA requirements.	A table demonstrating consistency with the County code has been enclosed with the revised application.
15	In RPA Appendix A (Index to Required Content) page A-1, please note the following for Public Resources Code (PRC) Section 2772(c)(5)(A-F):	These revisions have been integrated into the Appendix A, Index to required Content, table included with the Revised Reclamation Plan.
15(a)	Section 2 of the RPA should also be referenced under “Source or Explanation” in the first two rows.	
15(b)	Sheet 2 of the RPA should also be referenced under “Source or Explanation” in the fourth row.	
15(c)	Figure 5 of the RPA should also be referenced under “Source or Explanation” in the sixth row.	
16	In RPA Appendix A (Index to Required Content) page A-2, the outstanding lease agreement with Lehigh needs to be identified under the “Source or Explanation” for PRC Section 2772(c)(6).	The project has been revised to eliminate this expansion eastward into adjacent Lehigh-owned property.
17	Responses to SMARA requirements regarding geologic/slope stability under California Code of Regulations (CCR) Sections 3502(b)(3), 3704(d), 3704(e), and 3704(f) cannot be reviewed until updated geotechnical/slope analysis (future RPA Appendix F) is provided.	An updated slope stability analysis was provided to the County on September 22, 2020. Slope stability analysis is included as Appendix E in the Reclamation Plan.
18	Provide an analysis of impacts to surrounding land uses in the RPA, as required under CCR Section 3502(b)(1).	See section 4.1 of the Reclamation Plan for a discussion of reclamation impacts to surrounding land uses.

Comment #	Comment	Response
19	Clearly address within the RPA, how the proposed reclamation will comply with CCR Section 3703(b) regarding wildlife habitat. The RPA identifies that the site would be reclaimed as open space.	The site will be reclaimed to an open space condition with no specific actions to establish or promote wildlife habitat. See section 4.5 of the Reclamation Plan.
GEOLOGY Contact Jim Baker at (408) 299-5785 / jim.baker@pln.sccgov.org		
20	Benchmark's Reclamation Plan Amendment (RPA) document (dated September 2020) indicates the proposed eastward extension of the quarry pit into the adjacent Lehigh-owned parcel in the form of a 2:1 cut slope ("layback") with 25-foot wide benches every 50 vertical feet intended to mitigate the slope failure that has occurred on the steeper highwall of the west side of the current pit. However, the plan shows proposed finished cut slopes on the north and east sides of the main pit that are not labeled but appear to be steeper than 2H:1V. Add labels to the plan that indicate the proposed gradient(s) of these slopes.	The project has been revised to eliminate the expansion eastward into adjacent Lehigh-owned property.
21	Analysis of the stability of all proposed cut slopes is required. The plan document refers to a memo prepared by Norfleet Consultants supporting the slope design is included as Appendix F, "Slope Stability Memo", however, that Appendix has not been included with the initial submittal. This information must be included in the resubmittal in order to determine the completeness of the application relative to slope stability.	An updated slope stability analysis was provided to the County on September 22,2020. Slope stability analysis is included as Appendix E in the Reclamation Plan.
22	Figure 5 and Sheet 1 in Benchmark's Reclamation Plan Amendment document (dated September 2020) show current mining-related ground disturbances extending beyond the site boundaries on the north and east sides of the main pit. (See attached diagrams.) The proposed reclamation boundaries must be modified so as to include those disturbed areas. Also, the existing property lines must be shown on Figures 3 through 12 and Sheets 1 through 5. The required written authorization from Lehigh for SCQ noted under comment II-2 above must include these areas. Please be aware that a portion of these identified ground disturbances is located within the jurisdiction of the City of Cupertino and is not covered by the existing agreement between Cupertino and the County of Santa Clara regarding SMARA enforcement.	The project has been revised to eliminate the expansion eastward into adjacent Lehigh-owned property. An existing License Agreements between Lehigh and Stevens Creek Quarry authorizes existing disturbance on Lehigh parcels. A Memorandum of Understanding between the County and City of Cupertino existing that provides SMARA lead agency authority to the County.
23	The submitted RPA proposes to construct BMPs such as berms, drainage ditches, drop inlets, sediment traps, silt fences, check dams, and straw wattles along the quarry roads and throughout the 147-acre site. The Project Description figures do not show the location of the proposed BMPs. Please revise all figures to clearly identify the location of the proposed BMPs.	The Stormwater Pollution Prevention Plan was updated in December and included as Appendix H in the Reclamation Plan.
24	The Mining and Reclamation Plan shows the gradient of cut slopes north and east of the proposed new settling pond (designated as Stormwater Pond on Sheet 2 and Sheet 4 of the Mining and Reclamation Plan) at 1H:1V. However, the BAGG report (dated April 17, 2019 and titled "Engineering Geologic and Geotechnical Investigation - New Settling Pond") concluded that the slope gradient needs to be 2H:1V. Revise the Mining and Reclamation Plan to conform to this recommendation, or provide additional geologic analysis that proves that the indicated 1H:1V cut slope will be stable under both static and pseudo-static conditions.	The revised settling pond is shown on Figure 9 and Sheet 2 in the Reclamation Plan and designed consistent with the slope angles and volumes provided in the BAGG report (see Project Description Attachment B).
LAND DEVELOPMENT AND ENGINEERING Contacts: Ed Duazo at (408) 299-5733 / ed.duazo@pln.sccgov.org		
25	The second paragraph in the subsection "Groundwater" under Section 4.5.1 (Water Quality Protections) is unclear. The paragraph describes the use of detention basins and existing settling basins prior to discharging into the natural watercourse, but also indicates full containment with no offsite discharge. Please clarify.	Section 2.7 and 4.5 of the Reclamation Plan has been updated to clarify the use of sediment control basins and offsite discharge.
26	Figure 12 depicts the Drainage Plan upon completion of reclamation, however, the directional drainage arrows and v-ditch flow in directions not consistent with the contours shown. For example, the v-ditch in the middle of Parcel B, conveying run-off from west to east down the 2:1 cut slope appears to be on a ridgeline. The drainage arrows conveying slope run-off to the v-ditches are shown flowing along contour and not downhill. The drainage arrows at the far east of the reclamation area indicate flows being directed toward the monitoring location. However, based on the contours, this run-off would flow to Stevens Canyon Road and by-pass the monitoring location. Clarify how these proposed drainage patterns will work given the contours shown on the reclamation plan.	This figure has been removed from the Reclamation Plan. An analysis of drainage upon site reclamation will be forthcoming.

Comment #	Comment	Response
27	Clarify the purpose of the concrete drainage box and if it is intended to remain after reclamation of the project site. Please specify whether this drainage structure require on-going maintenance.	Concrete boxes are lined with check dams and intended to facilitate settlement of sediments prior to discharge into the sediment pond located in drainage area 4 of the site. Periodic monitoring and maintenance is conducted. See Appendix H in the Reclamation Plan for additional detail.
28	The previous Use Permit Application included a technical stormwater memorandum. Provide an update to the memorandum that includes the expanded reclamation area.	An analysis of drainage upon site reclamation will be forthcoming. Please see Section F of the cover letter included with the submittal of the revised application for a discussion of this issue.
ROADS AND AIRPORTS Contact: Leo Camacho at (408) 573-2464 / leo.camacho@rda.sccgov.gov		
29	Provide a Traffic Circulation Report identifying the public road routes.	Section 6.4 of the Project Description has been updated to include a description of vehicle trips, haul routes, and project trip distribution. Stevens Creek quarry does not anticipate haul trucks ton use routes substantially different than currently used to deliver materials to customers.
ENVIRONMENTAL HEALTH Contact: Darrin Lee at (408) 918-3435 / darrin.lee@cep.sccgov.gov		
30	Submitted plans show numerous chemical/portable toilets.	The location of portable bathroom facilities is shown on Figure 3 and Sheet 1 in the Project Description.
30(a)	For buildings with plumbing fixtures, where does the wastewater go? Show on the required Use Permit site plan the location of all existing and proposed septic systems serving the project site.	All bathroom facilities are portable and no septic systems are used onsite.
30(b)	Per the County's Onsite Wastewater Treatment Systems Ordinance, Sec B11-76, portable toilets have limited use. Please be aware that an administrative permit from DEH is required if portable toilets are proposed to be in use onsite for more than three consecutive days. Contact Darrin Lee at (408) 918-3435 / Darrin.lee@cep.sccgov.org for more information about the required permit and application process.	A portable toilet permit will be obtained if applicable.
31	For the portable toilets, identify septage pumper, frequency of pumping, and septage disposal location.	See section 6.4 of the Project Description.
32	Clarify source of potable water.	See section 6.4 of the Project Description.
33	On the required site plan, show the location of all flammable and hazardous materials and any containment devices or similar equipment.	See Figure 3 and Sheet 1 in the Project Description showing the location of all hazardous materials. In addition, see section 6.9 and Attachment C of the Project Description providing a detailed description of onsite hazardous materials and the Hazardous Materials Business Plan.
SAN FRANCISCO BAY REGIONAL WATER BOARD Contact: Lisa Horowitz McCann, Assistant Executive Officer, San Francisco Bay Regional Water Board at (510) 622-2441 or Lisa.mccann@waterboards.ca.gov		
34	Section 4.3.3, Revegetation Success Criteria, lacks sufficient detail with respect to methodologies to be used in assessing revegetation. This section proposes to use "species richness" as a performance criterion. However, this section does not specify the protocol that will be used to assess species richness. Section 4.3.3 must be revised to describe how the metric of species richness will be assessed.Species richness at the closed facility is proposed to be compared to species richness at a reference location. This section must be revised to describe the requirements for an appropriate reference location and to propose specific reference locations that may be used to track the successful revegetation of the facility.	A revegetation plan prepared by WRA, Inc. is included as Attachment I in the Reclamation Plan. A summary of the revegetation plan is included in Reclamation Plan section 4.3. The revegetation plan provides specific success criteria for the proposed seed and shrub planting palette.
35	Section 4.3.6, Monitoring and Maintenance, does not include sufficient detail with respect to monitoring protocols. The first sentence of this section states that monitoring may be conducted by "a qualified biologist, restoration ecologist, or landscape architect." Unless a landscape architect has specialized training in native habitat restoration, a landscape architect is not likely to be an appropriate monitor for restoration of the facility. This section proposes to use random sampling plots to assess plant cover at the restored facility. This section must be revised to specify the sampling protocol that is to be used to assess plant cover at the restored site. This protocol must include the method to be used to confirm that a sufficient number of plots have been sampled to sufficiently characterize the condition of vegetation at the restored facility. The second paragraph of this section states that maintenance will be conducted "as necessary". This section must be revised to include an actual maintenance schedule and a list of parameters that will be used to determine when maintenance is necessary.	A revegetation plan prepared by WRA, Inc. is included as Attachment I in the Reclamation Plan. A summary of the revegetation plan is included in Reclamation Plan section 4.3. The revegetation plan provides specific monitoring and maintenance provisions to ensure revegetation success.

Comment #	Comment	Response
36	<p>Section 4.5.1, Water Quality Protections, Surface Water and Erosion Control, does not include the restoration of stream channels at the facility and the removal of in- channel sediment basins. This section must be revised to include the removal of in- stream sediment ponds from Rattlesnake Creek and the restoration of stable creek channels along and through the facility or must be revised to indicate that the in- stream sediment ponds left in place will return the creek to a stable, hydrological/geomorphological functioning creek without water quality impacts from sediment or other process chemicals that have been or might be captured and concentrated in the ponds. Such an indication that the in-stream sediment ponds can be left in place, must be based on a technologically-sound hydrologic and geomorphologic analysis (conducted by a qualified professional fluvial geomorphologist) that justifies how the in-stream ponds will function to maintain the stability of the creek, the habitat and clean water quality after closure. Without regular maintenance, in-stream sediment ponds typically silt in and the berms that create the ponds erode from flows that overtop the berms. Eventually the berms fail, and the stream channels will establish new equilibrium dimensions within the context of their watershed. Berm failure may occur gradually or in sudden catastrophic failures that send large amounts of water and sediment downhill; such flows can damage property and pose a risk to human safety. Furthermore, to adequately address all beneficial use impacts of Rattlesnake Creek and protect downstream waterbodies to which Rattlesnake Creek is a tributary, the Quarry must evaluate sediment quality and habitat conditions in the reaches through and downstream of the facility to insure that creek reaches between and downstream of in-stream ponds and propose adequate restoration of and protection of water quality and beneficial uses from past discharges, erosion and facility practices that may have caused waste discharges to the creek overtime.</p> <p>Relatedly, to protect the creek, the plan must include maintenance of any and all containment structures used to prevent post-closure discharges of stormwater impacted by former mining operations to waters of the State, and the potential need for post-closure BMPs and/or treatment of such post-closure discharges to waters of the State.</p> <p>This section must be revised to describe the removal of all in-channel ponds, the restoration of stable channels that are in dynamic equilibrium with the watershed, and the above mentioned maintenance of existing containment structures and an evaluation and inclusion, as needed, of additional BMPs and/or treatment of post- closure discharges. The restoration plan for the stream channels at the facility must be designed by an experienced fluvial geomorphologist.</p>	<p>As explained in the cover letter, the reclamation plan does not propose restoration of onsite stream channels and the removal of in-channel sediment basins. Please see Section C of the cover letter accompanying the application for a detailed explanation.</p>
CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE		
The California Department of Fish and Wildlife (CDFW) submitted comments on the Application on October 19, see Attachment 8 . Contact Kristin Garrison, Environmental Scientist, CDFW at Kristin.Garrison@wildlife.ca.gov for information regarding CDFW comments.		
COUNTY COMMENT LETTER ATTACHMENT 8—CDFW COMMENT LETTER, OCTOBER 19, 2020		
8.1	<p><i>Appendix E—Special Status Species with Potential to Occur On-Site (TOC).</i></p> <p>This Appendix is only a list of species observed. It is not an analysis of what special-status species could be on site.</p>	<p>WRA, Inc. prepared a biological constraints report that identified potential special status species that could be onsite. A summary is included in section 2.7.6 of the Reclamation Plan and the full report is provided in Appendix F.</p>
8.2	<p><i>Surface Waters and Drainage (pg. 7).</i></p> <p>There are 4 man-made ponds within Rattlesnake Creek that include impoundments through water control structures and culverts. The operations of this creek and ponds should be clearly described. Impoundments/ponds should be operated to benefit downstream wildlife species habitat. Operations and any diversion for use may require a Streambed Alteration Agreement.</p>	<p>The project no longer uses the in-channel sediment basins. As explained in the cover letter, the reclamation plan does not propose restoration of onsite stream channels or removal of in-channel sediment basins. Please see the Section C of the cover letter accompanying the application for a detailed explanation.</p>
8.3	<p><i>4.1.1 Subsequent Use and Approach (pg. 9).</i></p> <p>This is vague and does not specifically mention Rattlesnake and Swiss Creek. Both creeks should be returned to pre-mine condition.</p>	<p>As explained in the cover letter, the reclamation plan does not propose restoration of onsite stream channels or removal of in-channel sediment basins. Please see Section C of the cover letter accompanying the application for a detailed explanation.</p>

Comment #	Comment	Response
8.4	<p>4.3 <i>Revegetation</i> (pg. 12).</p> <p>The EIR for the Amendment should mitigate habitat loss.</p> <p>At closure, the mining will have removed approximately 200 acres of various habitats (e.g. bay woodland, oak woodland, chaparral, riparian). Grass is not a sufficient replacement for trees, shrubs, vines, herbaceous vegetation that was removed. Review of historical aerials, maps, and other information should be conducted to ascertain the habitat and species present prior to the start of mining. Revegetation should attempt to mimic the pre-mine conditions.</p>	<p>A revegetation plan prepared by WRA, Inc. is included as Attachment I in the Reclamation Plan. A summary of the revegetation plan is included in Reclamation Plan section 4.3. The proposed end of the site is open space. The revegetation plan does not propose mimicking pre-mining vegetation conditions.</p> <p>The County will undertake the environmental review process consistent with the California Environmental Quality Act and conduct a comprehensive impact analysis of the proposed projects potential environmental impacts.</p>
8.5	<p>4.3.6 <i>Monitoring and Maintenance</i> (pg. 14)<i>Monitoring: A qualified biologist, restoration ecologist, or landscape architect will monitor general site conditions following revegetation to ensure that performance standards have been met. Improvements and repairs will be made for a period of at least five (5) years following revegetation.</i></p> <p>Tree, shrub, vine, etc. vegetation should also be planted, see comment above. Trees and woody slow growing shrubs should be monitored for 10 years.</p>	<p>A revegetation plan prepared by WRA, Inc. is included as Attachment I in the Reclamation Plan. A summary of the revegetation plan is included in Reclamation Plan section 4.3. The revegetation plan provides specific monitoring and maintenance provisions to ensure revegetation success.</p>
8.6	<p>4.5.2 <i>Sensitive Species and Habitat</i> (pg. 16)</p> <p>This section should clearly explain what special status species may be present, what activities my impact those species, and how impacts will be avoided, minimized, and mitigated for each special-status species.</p>	<p>WRA, Inc. prepared a biological constraints report that identified potential special status species that could be onsite. A summary is included in section 2.7.6 of the Reclamation Plan and the full report is provided in Appendix F.</p> <p>The County will undertake the environmental review process consistent with the California Environmental Quality Act and conduct a comprehensive impact analysis of the proposed projects potential environmental impacts.</p>
8.7	<p><i>Preconstruction Surveys</i> (pg. 16)</p> <p>Although this is a good first step, it is feasible that sensitive species may reenter the area. If this is feasible (e.g. work is occurring adjacent to known habitat), either exclusion fencing should be used or a qualified biologist should monitor work.</p>	<p>The County will undertake the environmental review process consistent with the California Environmental Quality Act and conduct a comprehensive impact analysis of the proposed projects potential environmental impacts. If potential significant impacts are identified, mitigation measures will be recommended, that may include such measures as preconstruction surveys, state and federal agency permitting, setback or avoidance, and other similar measures to reduce potential impacts to biological species.</p>
8.8	<p><i>State and/or Federal Permitting</i> (pg. 17)</p> <p>The buffers for each special status species should be specified. This works for areas not to be impacted, but does not address what to do in the event that special-status species are present within areas where impacts would occur. Measures should be developed to address this.</p>	<p>See above.</p>
8.9	<p><i>Figure 10, "Reclamation Plan"</i></p> <p>This figure shows Upper, Middle, and Lower pond being present post-reclamation. See comments above, Rattlesnake and Swiss creeks should be returned to pre-mine condition.</p>	<p>As explained in the cover letter, the reclamation plan does not propose restoration of onsite stream channels or removal of in-channel sediment basins. Please see Section C of the cover letter accompanying the application for a detailed explanation.</p>
8.10	<p><i>Figure 11, "Reclamation Plan Cross-Section"</i></p> <p>Rattlesnake and Swiss Creeks should be restored to pre-mining condition. Cross sections should be sufficient placement and number to be able to demonstrate that return to pre-mine condition is considered in designs. At minimum, cross sections at each pond should be shown.</p>	<p>See above.</p>
8.11	<p><i>Figure 12, "Drainage Plan"</i></p> <p>See comments above, Rattlesnake and Swiss Creeks should be returned to pre-mine condition. If settlement ponds are needed, it may be better to create off-stream ponds that would then drain into the creek. However, ponds may become habitat for special status species (e.g. CRLF) through time and should be designed for the appropriate depth and hydroperiod for such species or ponds should be designed so that habitat is not provided so that the ponds do not become a population sink.</p>	<p>See above.</p>
8.12	<p><i>Figure 12, "Drainage Plan"</i></p> <p>Sediment should be trapped and monitored prior to entering Rattlesnake or Swiss Creeks.</p>	<p>The Stormwater Pollution Prevention Plan was updated in December and included as Appendix H in the Reclamation Plan.</p>

Comment #	Comment	Response
CITY OF CUPERTINO		
The City of Cupertino (City) submitted comments on the Application to the County on October 8, see Attachment 9 . Contact Deborah Feng, City Manager, City of Cupertino at (408) 622-2441 / manager@cupertino.org for information regarding the City’s comments.		
COUNTY COMMENT LETTER ATTACHMENT 9—CITY OF CUPERTINO COMMENT LETTER, OCTOBER 8, 2020		
9.1	<p>I. The Application is inconsistent with City and County policies.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p>	<p>The County will undertake the environmental review process consistent with the California Environmental Quality Act and conduct a comprehensive impact analysis of the proposed projects potential environmental impacts. If potentially significant impacts are identified mitigation measures will be recommended. The city will have several opportunities as part of this public process to comment on the scope and conclusions of the environmental evaluations. Additionally, please see Section D of the cover letter included with the submittal of the revised application for a discussion of this issue.</p>
9.2	<p>II. Stevens Creek Quarry has no vested right to engage in the activities proposed in the Application.</p> <p>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</p>	<p>Please see the cover letter included with the submittal of the revised application for a discussion of this issue.</p>

Comment #	Comment	Response
	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.	
9.3	<p>III. SCQ proposes to expand mining beyond its own property, into an area of significant instability, without adequate analysis or mitigation.</p> <p>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.</p> <p>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. (<i>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.</i>) 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.</p> <p>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 cut slope 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.</p> <p>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.</p>	
9.4	<p>IV. The Application would result in significant impacts from quarry-related truck traffic.</p> <p>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 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</p>	<p>The County will undertake the environmental review process consistent with the California Environmental Quality Act and conduct a comprehensive impact analysis of the proposed projects potential environmental impacts. If potentially significant impacts are identified mitigation measures will be recommended. The city will have several opportunities as part of this public process to comment on the scope and conclusions of the environmental evaluations. Additionally, please see Section D of the cover letter included with the submittal of the revised application for a discussion of this issue.</p>

Comment #	Comment	Response
	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⁾ <i>Note that the Mediated Conditions expressly require retention of onsite overburden for use in the reclamation and revegetation process.</i>) 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.	
9.5	V. The Application does not adequately address water quality. 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.	The project has been revised to remove the eastward expansion into the adjacent Lehigh owned parcels. An updated SWPPP (December 2020) is included as Appendix H to the Reclamation Plan.
CONCLUDING COMMENTS		
	In addition to the incomplete items listed above, the County has identified the following key issues where the proposed Use Permit and Reclamation Plan Amendment conflicts with applicable County policies and standards or adjacent land uses These issues need to be carefully considered and addressed within the resubmitted application including the Environmental Information Form, Project Description, and RPA.	See below.
	<ul style="list-style-type: none">The proposed Mining and Reclamation Plan included with this Application is significantly different from the Mining and Reclamation Plan submitted with the pre-application, and the required in-depth geologic investigation and associated detailed quantitative slope stability analysis, required under Section 4 and Exhibit A of the Compliance Agreement and Stipulated Order to Comply, was not provided. As a result, the prior geotechnical review comments provided by the County geologist in response to the pre-application are no longer applicable.	An updated slope stability analysis was provided to the County on September 22,2020. Slope stability analysis is included as Appendix E in the Reclamation Plan.
	<ul style="list-style-type: none">As noted above, the Use Permit and RPA proposes to expand the mining and RPA boundary to include portions of parcels (Assessor Parcel Numbers 351-10-017, 351-10-033, 351-10-039, 351-11-011) that are currently owned by Lehigh in compliance with Section 5 and Exhibits A and B of the Compliance Agreement and Stipulated Order to Comply. The RPA needs be revised to identify the exact acreage of each parcel that SCQ plans to incorporate	The project has been revised and parcels 351-10-033 and 351-11-001 owned by Lehigh have been removed from the site boundary therefore no new agreement is necessary.

Comment #	Comment	Response
	into the RPA boundary. Also, as stated previously in the pre-application letter for this project, written authorization from Lehigh for SCQ to apply for surface mining and reclamation on these parcels is required, along with an intent to enter into a lease agreement or similar agreement between Lehigh and SCQ that authorized SCQ to conduct surface mining and reclamation in this area.	
	<ul style="list-style-type: none">The Application specifies that SCQ is proposing to import 1 million cubic yards of unprocessed greenstone annually from Lehigh to process the material onsite at its aggregate plant, and then sell that processed material. This proposed use falls under the non-residential land use classification of Manufacturing/Industry – Intensive as defined in the County Zoning Ordinance. The Zoning Ordinance specifies that this type of use is only allowed on properties with an Industrial base zoning district. The SCQ property is zoned Hillsides (HS-d1-sr); therefore, uses defined as Manufacturing/Industry – Intensive are not allowed.	Stevens Creek Quarry has requested Zoning Ordinance use interpretation as part of this use permit and reclamation plan amendment application resubmittal to allow import of material from Permanente Quarry. Please see the associated County application form and Section A of the cover letter that accompanied the resubmittal for a comprehensive discussion of this issue.
	<ul style="list-style-type: none">The NOV issued to SCQ on February 15, 2019 identified that the importation of materials from Lehigh Quarry was not an allowed use (Attachment 4). Please also note that there was a Notice of Violation issued to Lehigh on August 17, 2018 pursuant to Zoning Ordinance Code Section 4.10.370, Part III(C) and Public Resources Code section 2774.1 requiring Lehigh to cease the use of the Utility Haul Road between Lehigh and SCQ properties (Attachment 3).	Acknowledged.
	<ul style="list-style-type: none">SCQ should be aware that the Department has requested that the County Board of Supervisors (“Board”) conduct an evidentiary hearing to determine if Lehigh’s proposal for the offsite sale of unprocessed aggregate and intensification in production are consistent with Lehigh’s vested right to conduct surface mining operations at the Lehigh Quarry. Please see the August 5, 2020 Memorandum to the Board (Attachment 2).	Acknowledged.

SANTA CLARA COUNTY
ZONING ORDINANCE SECTION 4.10.370
PART II: COUNTY REGULATIONS

County Ordinance	Consistency
<p>A. County Standards for Surface Mining Operations: The County has local land use authority regarding surface mining operations with the power to establish and enforce local regulations distinct from but consistent with SMARA and the State regulations. As to non-vested sites, the following standard conditions shall apply to all sites obtaining a use permit, unless the Planning Commission approves a deviation from one or more of these standards, and subject to any requirements or limitations imposed by other regulatory agencies:</p>	
<p>1. Hours and Days of Operation</p> <p>a. The daily hours for the excavation, processing, and sales shall be between 6:00 A.M. and 8:00 P.M. No commercial excavation shall be operated on Sundays or the following holidays: New Year's Day, Independence Day, Labor Day, Thanksgiving, and Christmas Day; however, the Planning Commission may permit or restrict operations to a different number of hours and days, where conditions warrant such permission or restriction.</p>	<p>Project Description (PD) section 6.5</p>
<p>b. In cases of public emergency, these restrictions may be released by the Planning Director. In cases of a private emergency, reasonable and necessary repairs to the equipment and limited operations required to restore normal operation may be permitted by obtaining a temporary permit for periods up to and including 56 hours from the Planning Director. Such temporary permits for private emergency operations may be renewed by the Director for similar periods but not to exceed one week in total.</p>	<p>PD section 6.5</p>
<p>2. Appearance. Surface mines shall be operated in a neat and orderly manner, free from junk, trash, or unnecessary debris. Buildings shall be maintained in a sound condition, in good repair and appearance. Weeds shall be cut as frequently as necessary to eliminate fire hazards. Salvageable equipment stored in a nonoperating condition shall be suitably screened or garaged where normally visible from public view.</p>	<p>PD section 4.3, Figure 3, and Sheet 1</p>
<p>3. Noise and Vibration</p> <p>a. Noise and ground vibration shall be mitigated to a level of insignificance in the absence of an approved Statement of Overriding Considerations pursuant to CEQA. To achieve this, loading points shall not be located closer than 30 feet to any property line, unless otherwise permitted by the Planning Commission.</p>	<p>PD section 6.10, Figure 3, and Sheet 1</p>

County Ordinance	Consistency
b. Noise attenuation measures shall be installed where necessary to reduce noise levels in order to comply with noise standards of the County General Plan and noise ordinance.	PD section 6.10, Figure 3, and Sheet 1
c. Use of explosives (blasting) in operations shall be noted on the permit application and subject to Planning Commission conditioning, and shall comply with the noise and vibration standards of the County Noise Ordinance.	Not Applicable. Blasting does not occur at Stevens Creek Quarry.
4. Traffic Safety	PD section 6.4 and Figure 9.
a. The site shall provide adequate space for the parking, queuing and loading of trucks, as well as parking of employee vehicles to minimize the traffic problem to residents on neighboring streets.	
b. Internal haul roads shall be located away from property lines where reasonably practicable.	PD section 6.4 and Figure 9.
c. Haul routes on public roads shall be specified in the use permit conditions.	PD section 6.4 and Figure 10.
d. Number and location of access points shall be specified. Such entrance shall be subject to approval by the agency having jurisdiction. If required, acceleration and deceleration lanes shall be provided which meet County Department of Roads and Airports Standards.	PD section 6.4.
e. A paved surface, or equivalent alternative, may be required where reasonably practicable for a distance of not less than 100 feet from right of way line into the area of operation in order to minimize the deposit of dirt and gravel from trucks onto the public highway. During hauling operations, any spillage or materials on public roads shall be promptly and completely removed by quarry operators.	PD section 6.4, Figure 3, and Sheet 1.
5. Control of Dust. Surface mines shall be operated so as to limit dust and in compliance with all necessary permits from the Bay Area Air Quality Management District, San Francisco, California.	PD section 6.10.
6. Setbacks from Property Lines	PD section 5 and Sheets 6 and 7.
a. <i>Cut Slope Setbacks.</i> Cut slopes shall be no closer than 25 feet distant from any adjoining property line, except where adjoining property is being mined; nor 50 feet to any right-of-way of any public street, or official plan line or future width line of a public road.	
b. <i>Ridgeline Setbacks.</i> When surface mining occurs in a canyon area which abuts an urban area or the ridgeline is visible from the valley floor, the top of the uppermost cut area shall be as shown in an approved reclamation plan, or in the absence of an approved plan, not less than 50	PD section 5 and Sheets 6 and 7.

County Ordinance	Consistency
feet from the top of the ridge existing prior to excavation.	
7. Fencing and Posting a. It is the intent of this subsection that fencing will be required only for those portions of an excavation needing fencing for purposes of public safety; other portions may need posting only. Where excavation is authorized to proceed in stages, only the area excavated plus the area of the stage currently being excavated need be fenced. Adequate fencing shall be provided to exclude unauthorized dumping.	PD section 6.11 and Figure 12.
b. The Planning Commission may require the enclosure of all or a portion of an excavation by an approved fence either along the property line or the periphery of the excavation where deemed necessary for public safety by the Planning Commission. Such fence shall not be closer than ten feet to the top edge of any cut slope. All fences shall have suitable gates at accessways. Gates to be securely locked during hours and days of nonoperation.	Acknowledged.
c. Fencing type shall be determined by the Planning Commission.	Acknowledged.
d. Signs shall be conspicuously posted along the periphery of the property. The signs shall be posted in such a manner and at such intervals as will give reasonable notice to passersby of the matter contained in such notice by stating in letters not less than four (4) inches in height. WARNING: COMMERCIAL QUARRY ON THESE LANDS: Santa Clara County Use Permit No: _____ In addition, the signs shall be pictorial in the nature of information being disclosed for non-English readers.	PD section 6.11 and Figure 12.
8. Screening a. Screening shall be required for excavations in urbanized and scenic corridors or locations at the time of excavation so that the screening will provide a reasonable means of securing use and enjoyment of nearby properties.	PD section 4.3.1, Figure 3, and Sheet 1.
b. The screening by means of installation of berms, fences, plantings of suitable shrubs and trees. They shall be placed and maintained in order to	PD section 4.3.1, Figure 3, and Sheet 1.

County Ordinance	Consistency
minimize visibility from public view of cut slopes or mining operations and equipment.	
c. Such screening when required by the Planning Commission may be along the streets and exterior property lines or the perimeter of the visible portions of the site being operated.	Acknowledged.
9. Protection of Streams and Water-Bearing Aquifers	PD section 6.8 and Attachment A.
a. Surface mining operations shall be conducted in a manner so as to keep adjacent streams, percolation ponds, or water bearing strata reasonably free from undesirable obstruction, silting, contamination, or pollution of any kind. The objective is to prevent discharges, which would result in higher concentrations of silt than existed in off-site water prior to mining operations.	
b. The removal of vegetation and overburden in advance of surface mining shall be kept to the minimum practicable.	Reclamation Plan (RP) section 4.2.
c. Stockpiles shall be managed to limit water and wind erosion.	RP sections 4.2 and 4.5.
d. Permits: Applicants shall comply with those applicable requirements of federal, state, and local law, including any permit requirements administered by the U. S. Environmental Protection Agency, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, National Marine Fisheries Service, Regional Water Quality Control Boards, State Department of Fish and Game, and local flood control and water distribution agencies regarding all matters which are within the jurisdiction of those agencies, including but not limited to:	Acknowledged.
i. Excavation in the natural or artificially enlarged channel of any river, creek, stream or natural or artificial drainage channel when such excavation may result in the deposit of silt therein;	Not applicable.
ii. Maximum depth of excavation shall not be below existing streambed or groundwater table except in such cases where the reclamation plan indicates that a lake or lakes will be part of the final use of the land or where such plan indicates that adequate fill to be used to refill such excavation to conform to the approved reclamation plan; and	RP sections 4.1 and 4.2.
iii. Erosion control facilities, such as detention basins, settling ponds, desilting or energy dissipater ditches, stream bank	PD section 6.8, Figure 11, and Attachment A and RP sections 2.7 and 4.5, Figure 8, and Appendix H.

County Ordinance	Consistency
stabilization, and diking necessary to control erosion.	
e. Excavations, which may penetrate near or into usable water-bearing strata, will not reduce the transmissivity or area through which water may flow unless approved equivalent transmissivity or area has been provided elsewhere, nor subject such groundwater basin or sub-basin to pollution or contamination.	Not applicable.
10. Approved Plans Must Be Maintained by the Operator. One copy of the approved plans and conditions of operations approved by the Planning Commission as a condition for granting the use permit must be maintained at the principal Santa Clara County office of the mine operator at all times.	Acknowledged.
B. Vested Rights: No person who has obtained a vested right to conduct surface mining operations shall be required to secure a use permit as long as such vested right continues.	
1. Any proposed expansion of any existing surface mining operation that constitutes a substantial change in such operation by exceeding the terms and conditions of a previously granted use permit for the operation, or by exceeding the extent of a vested right to such use, shall be subject to the provisions of Chapter 5.65 and a use permit and reclamation plan shall be required for such activity.	Acknowledged. SCQ continues to reserve the right to assert a vested right as to Parcel B, if necessary.
2. These standards do not apply to commercial excavations that terminated prior to January 1, 1976, and where no further mining has taken place since that date.	Acknowledged. SCQ continues to reserve the right to assert a vested right as to Parcel B, if necessary.



IMAGE 1



IMAGE 2