MITCHELL CHADWICK

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

June 11, 2021

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 December 11, 2020, SCQ re-submitted a Use Permit and Reclamation Plan Amendment application (the "December 2020 Revised Application") in response to the County deeming SCQ's prior submittal as incomplete. On January 11, 2021, the County deemed the December 2020 Revised Application incomplete ("January 2021 Incomplete Letter") and requested additional information from SCQ.

This letter and the enclosed documents respond to the County's January 2021 Incomplete Letter. In addition to enclosing responses to the County's comments, this letter also addresses various issued that have been raised by the County and other agencies during on-going discussions regarding SCQ's operations in the past several months.

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

A. Responses to the County's January 2021 Incomplete Letter

The enclosed Response Matrix provides a response to the comments contained in the County's January 2021 Incomplete Letter. Based on these responses, SCQ believes that its Use Permit and Reclamation Plan application is complete and the County should proceed with processing the application.

B. Building Code and Onsite Wastewater Treatment System Ordinance

The County's January 2021 Incomplete Letter alleges that there are buildings and a sewage holding tank on site that are not properly permitted. The County has requested that SCQ provide proof of legal establishment of all existing structures on the site and to either remove or obtain permits for any unpermitted structures. Based on our call on May 20, 2011 with the County, we understand that the County plans to issue a notice of violation for unpermitted structures at the SCQ site.

The permitting status of these structures is not properly addressed through the County's process for reviewing the Use Permit and Reclamation Plan application for completeness because these structures are a part of the existing environmental setting and there is no pending application for these structures. In addition, all of the structures have been there for years or even decades and have been there during numerous prior County inspections during which no issues were raised by the County regarding those structures. Further, in 1995 during a Planning Commission hearing, the County recognized that SCQ was in compliance with the County Building Code when a local resident questioned whether SCQ had building permits. (See the enclosed Staff Report, dated January 24, 1996, at p.3.)

SCQ will address County allegations pertaining to existing structures if and when the County provides the detailed notice of violation to SCQ.

C. Comments From Other Agencies

The California Department of Fish and Wildlife ("CDFW") commented that the former sedimentation ponds located in Rattlesnake creek should be restored to pre-mining conditions. The San Francisco Bay Regional Water Quality Control Board ("RWQCB") has also previously commented that there should be further analysis of potential water quality impacts if the former sedimentation ponds remain in place. The enclosed letters to CDFW and the RWQCB respond to these comments.

The City of Cupertino also provided comments related to SCQ's zoning interpretation request and traffic and water quality issues in a letter dated December 30, 2021. The enclosed letter from Mitchell Chadwick responds to the City's comments on SCQ's zoning interpretation request, while the enclosed Response Matrix responds to the City's other comments on traffic and water quality issues.

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.

Sincerely yours,

MITCHELL CHADWICK LLP

Patrick G. Mitchell

Enclosures:

1. SCQ June 11, 2021 Response Matrix to January 11, 2021 County Incomplete Letter
2. Revised Drainage Report prepared by Chang Consultants (June 2021)
3. Letter to the California Department of Fish and Wildlife, June 11, 2021
4. Letter to the San Francisco Bay Regional Water Quality Control Board, June 11, 2021
5. Letter regarding City of Cupertino's Comments on Zoning Use Interpretation, June 11, 2021
6. January 24, 1996 County Staff Report
7. May 20, 2021 License Agreement with Lehigh

cc: Elizabeth Pianca, Santa Clara County Counsel's Office
Jacqueline Onciano, Santa Clara County
Manira Sandhir, Santa Clara County
Jim Baker, Santa Clara County
Michael Rossi, Santa Clara County Counsel's Office
Kristina Loquist, Santa Clara County
Jason Voss, Stevens Creek Quarry
Dan Boyle, Stevens Creek Quarry
David Brown, Benchmark Resources
Andrew White, Benchmark Resources
Chris Powell, Mitchell Chadwick LLP
Michael Sherman, Mitchell Chadwick LLP

Enclosure to Mitchell Chadwick Cover Letter, June 11, 2021
SCQ June 11, 2021 Response Matrix to January 11, 2021 County Incomplete Letter

STEVENS CREEK QUARRY

SCQ June 11, 2021 Response Matrix to January 11, 2021 County Incomplete Letter

Comment #	Comment	Response
I.	**COUNTY INCOMPLETE COMMENTS**	
PLANNING		
1	There are multiple structures on the project site that appear to be constructed without required building permits, such as the office, scale house, quarry maintenance shed, and Voss Trucking buildings. Please submit a list of all existing structures with the approximate date of construction and, if available, the permit number or proof of legal establishment. For buildings without prior approvals that are proposed to remain, provide floor plans to indicate usage, and elevations including the height, design, materials, and color of structures. Labeled photographs may suffice in lieu of elevations for existing structures. The Building Inspection Office and Code Enforcement staff will contact you to schedule an inspection to identify buildings that were constructed without permits. Any unpermitted structures and buildings will either need to be removed or permitted through obtaining appropriate retroactive approvals and permits.	See the response in the attached cover letter from Mitchell Chadwick dated June 11, 2021. The pending application is not an application to construct any buildings. Site inspections of the property were conducted by the County on February 9, April 14, and April 20, 2021. County departments that attended these various site inspections included Code Enforcement, Building Inspection, Fire Marshall, Planning and Development, and Environmental Health. SCQ personnel provided County staff a site inspection of the property including access to all buildings, structures, and facilities that County staff requested to view/inspect. In response to the April 14, 2021, inspection, SCQ provided requested documentation including emergency response plans, inspection forms, maps with location of various hazardous materials and storage areas, training records, and written responses for violations. SCQ is waiting for the County report regarding the inspections.
2	The lease agreement with Hanson Permanente, Inc. that allows SCQ to access and reclaim the portions of parcels owned by Hanson Permanente, Inc. has expired. A copy of a new lease agreement with Hansen Permanente, Inc. or their successor in interest that grants SCQ the legal right to use and reclaim the portions of APNs 351-10-017, -033, -039, and 351-11-001 within the existing Reclamation Plan boundary must be submitted to the Department of Planning and Development.	SCQ and Lehigh previously entered into a license agreement on May 7, 2009, which granted SCQ a non-exclusive license to enter a portion of Lehigh's property for reclamation purposes. SCQ and Lehigh renewed the license agreement on May 20, 2021. A copy of the fully executed license agreement is attached.
LAND DEVELOPMENT AND ENGINEERING		
3	Both reclamation plans (Option A and Option B) generally show reclaimed contours perpendicular to overland flow paths with no discernable swale or channel to convey drainage through the reclaimed areas. Topographic maps indicate that the upstream watershed is generally conveyed via swales that discharge concentrated flow into the reclaimed areas. Without any discernable swales/channels to convey drainage through the reclaimed areas, clarify how the upstream, concentrated flows will not create drainage and erosion/sediment problems.	The enclosed revised June 2021 Drainage Report prepared by Chang Consultants addresses this comment.
4	The drainage study notes that, *"The analyses in this report modeled overall drainage basins as initial subareas without the need to model downstream routing."* Why hasn't the downstream routing been analyzed? It is unclear whether existing downstream swales, creeks/tributaries, culverts, etc., have sufficient capacity to accommodate the calculated flows? Provide additional information to demonstrate that the drainage flows from the reclaimed areas will not create downstream drainage and erosion/sediment problems.	The enclosed revised June 2021 Drainage Report prepared by Chang Consultants addresses this comment.
5	The drainage study notes that desiltation basins may be placed at the "downstream end of the reclaimed areas to control runoff and sedimentation…" However, desiltation basins require on-going maintenance and the sizing methodologies referenced in the drainage study are not applicable. The Santa Clara Valley Urban Runoff Pollution Prevention Plan (SCVURPPP) sizing method is intended for sizing stormwater treatment Best Management Practices (BMP)	The enclosed revised June 2021 Drainage Report prepared by Chang Consultants addresses this comment.

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	that reduce pollutants from impervious area runoff. The State Water Resources Control Board (SWRCB) sizing method is for temporary basins used during construction.	
ENVIRONMENTAL HEALTH		
6	For the existing, potentially unpermitted, office trailers, wastewater is reportedly held/stored onsite via a holding tank. For the purposes of onsite sewage disposal, Sec B11.65 (a) and (b) of County of Santa Clara Onsite Wastewater Treatment System Ordinance requires the office trailers to utilize an onsite wastewater treatment system (OWTS) for sewage disposal and treatment. Therefore, contact the Department of Environmental Health to conduct the following activities to determine OWTS feasibility: site assessment, soil profiles, and percolation tests. These activities are subject to completion of a separate service application and fees payable to the Department of Environmental Health. For additional information regarding OWTS requirements, please refer to County of Santa Clara Onsite Manual: https://www.sccgov.org/sites/cpd/programs/LU/Documents/LU_Onsite_Systems_Manual.pdf This manual provides procedural and technical specifications for an OWTS design. Per County code, holding tanks (trailer) are deemed a public nuisance and prohibited. (Refer to B11.76 (a) of County of Santa Clara Onsite Wastewater Treatment System Ordinance).	See the response in the attached Mitchell Chadwick cover letter dated June 11, 2021. The office trailers are not unpermitted as they are within the jurisdiction of the State of California, not Santa Clara County. The wastewater issues were discussed at length between SCQ and County EHS at a site visit on April 14, 2021.
7	For the office trailer, clarify the source of water utilized for the flush toilets and urinals. Clarify the water source used for purposes of handwashing within the restroom facility. Clarify the source of water used for dishwashing and handwashing activities within a break room setting.	Water for the flush toilets, urinals, handwashing with the restroom facility, and dishwashing is provided by the City of Cupertino.
8	Reportedly the quarry receives 600-800 gallons (twice per month) of potable water through a third-party vendor. Clarify its use and how/where is the delivered water stored.	As discussed in section 6.7 of the Project Description, Alhambra Water Company provides potable water for employee consumption. Water is delivered in 5-gallon containers and distributed throughout the existing buildings and site. The 5-gallon water containers are stored in each building where the water is used.
II. OTHER AGENCY COMMENTS		
CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE The California Department of Fish and Wildlife (CDFW) submitted comments on the resubmittal Application on December 31, 2020, see Attachment 1. Contact Kristin Garrison, Environmental Scientist, CDFW at Kristin.Garrison@wildlife.ca.gov for information regarding CDFW comments.		
	Appendix F – Biological Constraints Report, and Appendix I – Revegetation Plan Appendi[ces] F and I are not included in this Amendment document and are not posted to the County website. Please append.	The "Plan Amendment" document under the "Resubmitted Project Materials (resubmitted 12/11/2020)" section on the County's website for this project (https://www.sccgov.org/sites/dpd/Programs/SMARA/Pages/StevensCreek.aspx) includes: (1) Appendix F - Biological Constraints Report, dated Dec. 9, 2020, prepared by WRA Environmental Consultants; and (2) Appendix I - Revegetation Plan, dated December 2020, prepared by WRA Environmental Consultants.
	4.1.1 Subsequent Use and Approach (Reclamation Plan Amendment, p. 13) This is vague and does not specifically mention Rattlesnake and Swiss Creek[s]. Both creeks should be returned to pre-mine condition. Please also see comments in 6 figures below.	This comment appears to state that reclaiming the site to "an open space condition" is vague. The California Surface Mining and Reclamation Act ("SMARA") requires reclamation of a site to a "usable condition." (Cal. Pub. Resources Code § 2712(a).) Reclaiming to open space is a common usable post-mining condition for mine sites subject to SMARA. The comment on returning creeks to pre-mine conditions, along with the comments on the figures, refer to restoring the three former sedimentation ponds that were constructed in Rattlesnake Creek. As discussed further in the enclosed response letter to CDFW from Mitchell Chadwick dated June 11, 2021, SCQ has no obligation under either SMARA or the California Fish and Game Code to restore Rattlesnake Creek to its pre-mine condition.

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	4.3 Revegetation (Reclamation Plan Amendment, p. 16) Revegetation should include trees suitable to habitats present prior to mining. Trees listed in section above include bay, coast live oak, bue [sic] oak, sycamore, and others. Revegetation of Rattlesnake Creek riparian vegetation should be specifically included in this document. Revegetation should return the creek to pre-mine condition. Swiss Creek may be a good example of riparian species that should be planted in the lower (settlement pond) area of Rattlesnake Creek, if the restored hydrology can support such species.	The standards for revegetation in SMARA regulations require vegetation cover to be "suitable for the proposed end use" and "similar to naturally occurring habitats in the surrounding area." (14 Cal. Code Regs., § 3705(a).) Section 4.3 in the Reclamation Plan Amendment provides a summary of the Revegetation Plan, which provides that revegetation will include the use of native plant seeds and native shrub species consistent with naturally occurring habitats near the site. The use of native plants and shrubs will be suitable for the proposed open space end use. Further, as discussed in the enclosed response letter to CDFW, SCQ has no obligation under SMARA or the California Fish and Game Code to revegetate Rattlesnake Creek to its pre-mine condition.
	Table 6, "Performance Standards for Revegetated Areas" (Reclamation Plan Amendment, p. 18) Success criteria for trees, including riparian trees along Rattlesnake Creek, should not only include these standards. Trees should be evaluated for health and vigor and height.	Success criteria for trees are not applicable because SMARA does not require the Revegetation Plan to include the planting of trees as discussed above.
	4.3.6 Monitoring (Reclamation Plan Amendment, p. 19) The number of years of monitoring should be included here. I recommend 5 years for shrubs and 10 years for trees.	As discussed above, SMARA does not require the Revegetation Plan to include trees. For shrubs and plant seeding, the Revegetation Plan anticipates that performance standards will be met five years after installation. Further, consistent with SMARA regulations, monitoring would occur until performance standards are met for two consecutive years without significant human intervention. (14 Cal. Code Regs., § 3705(m).)
	4.5.2 Sensitive Species and Habitat (Reclamation Plan Amendment, p. 21) This section should clearly explain what special status species may be present, what activities m[a]y impact those species, and how impacts will be avoided, minimized, and mitigated for each special-status species.	Appendix F to the Reclamation Plan Amendment contains a Biological Constraints Report providing an assessment of special status species and other sensitive biological resources potentially present at the SCQ site. Potential impacts to species and, if required, measures to avoid, minimize and mitigate for impacts to special status species will be analyzed during the CEQA process for the Use Permit and Reclamation Plan Amendment application.
	4.5.2 Preconstruction Surveys (Reclamation Plan Amendment, p. 22) 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.	Additional measures to avoid, minimize and mitigate for impacts to special status species, if necessary, will be analyzed during the CEQA process for the Use Permit and Reclamation Plan Amendment application.
	4.5.2 State and/or Federal Permitting (Reclamation Plan Amendment, p. 22) [T]he 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.	Potential impacts to species and, if required, measures to avoid, minimize and mitigate for impacts to special status species will be analyzed during the CEQA process for the Use Permit and Reclamation Plan Amendment application.
	Sheet 4 "Reclamation Plan—Option A" This figure shows Upper, Middle, and Lower pond being present post-reclamation. Rattlesnake and Swiss creeks should be returned to pre-mined condition.	As discussed in the enclosed response letter to CDFW, SCQ has no obligation under SMARA or the California Fish and Game Code to revegetate Rattlesnake Creek to its pre-mine condition.
	Sheet 4 "Reclamation Plan—Option B" This figure shows Upper, Middle, and Lower pond being present post-reclamation. Rattlesnake and Swiss creeks should be returned to pre-mined condition.	As discussed in the enclosed response letter to CDFW, SCQ has no obligation under SMARA or the California Fish and Game Code to revegetate Rattlesnake Creek to its pre-mine condition.
	Sheet 6 "Reclamation Plan Cross Sections" 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.	As discussed in the enclosed response letter to CDFW, SCQ has no obligation under SMARA or the California Fish and Game Code to revegetate Rattlesnake Creek to its pre-mine condition.

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	Figure 12b "Reclamation Plan—Option B" This figure shows Upper, Middle, and Lower pond being present post-reclamation. Rattlesnake and Swiss creeks should be returned to pre-mined condition.	As discussed in the enclosed response letter to CDFW, SCQ has no obligation under SMARA or the California Fish and Game Code to revegetate Rattlesnake Creek to its pre-mine condition.
	Figure 13 "Reclamation Plan Cross Sections" 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.	As discussed in the enclosed response letter to CDFW, SCQ has no obligation under SMARA or the California Fish and Game Code to revegetate Rattlesnake Creek to its pre-mine condition.
CITY OF CUPERTINO The City of Cupertino (City) submitted comments on the resubmittal Application to the County on December 30, 2020, see Attachment 2. Contact Roger Lee, Director of Public Works, City of Cupertino at (408) 777-3354 Ext 3350 / RogerL@cupertino.org for information regarding the City's comments.		
	SCQ seeks to expand operations beyond historical practice or entitlement by importing aggregate from the neighboring property owned by Lehigh Southwest Cement Company ("Lehigh") for processing and sale, SCQ provides no truck plan or other meaningful limit on local impacts from truck traffic during quarrying and processing operations, and both SCQ and Lehigh propose to import millions of tons of material to backfill their pits as part of reclamation, again without addressing traffic, infrastructure, emissions, and other impacts of hauling massive quantities of material through City streets.	The responses below address this summary of the City's comments. The proposed import and processing is entirely consistent with historic practices on the SCQ and Lehigh sites, i.e. aggregate mining, processing, and sales. SCQ already has a truck limit in its CUP, which would continue.
	I. Import of aggregate is inconsistent with the County's Hillside zoning designation. SCQ's quarry is located within the County area zoned as Hillside District. The entire quarry property also falls within the Santa Clara Valley Viewshed design review combining district and the southeastern portion of the property falls within the additional overlay of the Scenic Roads combining district. The County's Zoning Ordinance does not expressly address whether the import of aggregate is permissible within the Hillside Zone. SCQ's Revised Application requests that the County determine that the import of aggregate material from Lehigh's quarry to SCQ is a permissible use under the Santa Clara County Zoning Ordinance. The County should deny this request. A direct reading of the County's Zoning Ordinance reveals zones where the import and processing of aggregate is clearly allowed. The Hillside zoning category is not one of these zones. Rather, the import, processing, and sale of aggregate from Lehigh falls under the non-residential land use classification of Manufacturing/Industry – Intensive as defined in the County Zoning Ordinance. Zoning Ordinance § 2.10.040 (Non-residential Use Classification). The Manufacturing/Industry – Intensive category includes any industrial use that generates noise, odor, vibration, illumination, or particulates that may be offensive or obnoxious to adjacent land uses. *Id*. Because the SCQ property is zoned Hillside District, uses defines as Manufacturing/Industry – Intensive are not allowed on it. Furthermore, the County should reject SCQ's request for a use interpretation because the import of aggregate would not be compatible with the intent of the Hillside District, the Santa Clara Valley Viewshed or Scenic Roads combining districts, or the County General Plan. The purpose of the Hillside District is to preserve mountainous lands unplanned or unsuited for urban development primarily in open space and to promote those uses which support and enhance a rural character, which protect and promote wise use of natural resources, and	See the enclosed Mitchell Chadwick response letter dated June 11, 2021 to the County for a detailed response to the City of Cupertino's December 30, 2020 Zoning Interpretation Comments.

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	which avoid the risks imposed by natural hazards found in these areas. Zoning Ordinance § 2.20.010. Although mineral and resource extraction is a permitted use in the Hillside zone, these uses do not include—and should not be interpreted to encompass—hauling offsite materials for processing. The Hillside zone generally, and especially the Santa Clara Valley Viewshed or Scenic Roads overlays, protects the environment, watershed, ridgelines and viewshed, and surrounding low density community. Regardless of whether SCQ's activities are subject to the specific design review provided by the overlays, their requirements only reinforce that the larger Hillside zone, and this property in particular, are subject to limits that minimize visual impacts rather than expanding industrial uses. It is important to note that SCQ has been operating for more than 80 years while Lehigh has been operating for approximately 100 years. Almost certainly, the County approved these highly impactful mining operations as appropriate for their remote setting. Now that the area surrounding the quarries has urbanized, any proposal that would extend their operations would perpetuate serious land use conflicts. Aggregate import and processing would also not be consistent with the County General Plan's land use designation. The County General Plan classifies the SCQ site as "Hillside." The General Plan recognizes that lands designated Hillside may contain mineral deposits and the land use designation identifies mineral extraction as an allowable use. *See* General Plan Lan Use Chapter Rural Unincorporated Area Issues and Policies[] at Q-3. Mineral Extraction has and will continue to occur at both quarries until their resources are depleted. Yet importing aggregate as a new source of revenue will result in environmental impacts and threaten residents' quality of life, as described in Cupertino's October 8, 2020 [letter]. For each of these reasons, the County should reject SCQ's request for a use interpretation to allow import of aggregate from Lehigh Quarry.	
	II. The Application would result in significant impacts from quarry-related truck traffic. As the City has noted repeatedly, SCQ's operations already impact the City's traffic and infrastructure, causing congestion, excessive queuing, emissions, deposit of debris, and traffic violations along its Stevens Canyon Road/Foothill Boulevard truck route. The Revised Application exacerbates these concerns by expanding operations to include processing and sale of approximately one million tons of imported aggregate each year, rather than instead of winding down as soon as possible once its resources are depleted, as intended by SMARA. Pub. Res. Code § 2772(c)(6). And now it proposes to deepen the already unstable quarry pit, and then to import 3.7 to 12.5 million cubic yards of material from offsite to backfill the pit during reclamation, up from the 2 million cubic yards previously proposed. Contrary to SCQ's response to comments (comments 5(b), 29), and despite this huge increase in trucking and the obvious impact that the trucks would have on City and County residents and infrastructure, the Revised Application still does not quantify either current o[r] projected future truck trips. Instead, Section 6.4.3 of the Project Description simply states that the existing upper limit of 1,300 on-road trips per day will be sufficient to accommodate its proposed plans. But that upper limit is irrelevant to both the County's consideration of appropriate conditions associated with a new discretionary use permit and its analysis of the impacts of SCQ's proposal. *See Communities for a Better Environment v. South Coast Air*	The proposed import of raw aggregate from Lehigh would be capped at 645,787 tons per year, not one million tons per year. Traffic from SCQ's existing operations would be considered part of the baseline for CEQA review purposes. As the California Supreme Court has explained, baseline for CEQA documents "must ordinarily be the actually existing physical conditions." (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 448, underline added.) Furthermore, "[w]here a project involves ongoing operations or a continuation of past activity, the established levels of a particular use and the physical impacts thereof are considered to be part of the existing environmental baseline." (*North Coast Rivers Alliance v. Westlands Water Dist.* (2014) 227 Cal.App.4th 832, 872, underline added; *World Business Academy v. California State Lands Commission* (2018) 24 Cal.App.5th 476, 498 ["[t]he baseline must reflect the existing conditions at the time of the analysis…"].) SCQ's proposal does not expand operations at the site. Production methods and annual production rates would remain the same, even with importing aggregate from the adjacent Lehigh site. Further, material from the Lehigh site would only be imported via trucks on an internal haul road, not on City or County roads. Accordingly, SCQ's proposal to import aggregate would not change existing physical conditions and importing aggregate would not change traffic impacts on public roads.

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	Quality Management Dist. (2010) 48 Cal.4th 310, 322 (maximum permitted level of operation not proper baseline for environmental review). [Footnote omitted.] SCQ is also entirely silent about the recent reclamation plan amendment submitted by Lehigh, which proposes to import similarly vast quantities of additional fill to reclaim the neighboring property. Any use permit and reclamation plan amendment must impose meaningful limits on quarry-related traffic, and must require mitigation of the significant offsite impacts caused by trucks travelling to and from SCQ as well as the cumulative impacts of the proposed backfilling of quarry pits on the neighboring SCQ and Lehigh properties.	SCQ is not required to quantify current or project future truck trips as a part its application materials. In fact, the County already has information on current truck trips because SCQ reports truck trips to the County as required by SCQ's current use permit. Further, as noted in SCQ's December 2020 re-submittal, the County has already determined that SCQ is not required to submit a traffic impacts analysis with its application. Review of potential impacts on traffic and cumulative impacts associated with the reclamation plan amendment submitted by Lehigh, and mitigation if necessary, will be examined when the County undertakes environmental review consistent with CEQA. Consequently, the City's comments on potential traffic impacts are premature and should be addressed through the CEQA process.
	III. The Revised Application does not adequately address water quality. Previously, the City commented on SCQ's Application that SCQ's approach to water quality protection was cavalier as the Application sought 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 also requested that SCQ update the technical stormwater memorandum. Rather than provide this information and an updated memorandum, the Revised Applications simply asserts that an analysis of drainage issues upon site reclamation will be forthcoming. The Revised Application refers to section F of the Revised Application cover letter but this section simply states that SCQ is having consultants prepare a stormwater analysis and it will comply with SMARA. SCQ's processing of stormwater has the potential to impact water quality. As such, the County should require SCQ to explain how its stormwater plan will protect water quality and otherwise comply with SMARA. Regarding stream restoration, SCQ takes the position that it is unclear whether stream restoration is required for ponds located on this property. The Revised Application cover letter explains that if, during discussions with RWQCB, it is ultimately determined that stream restoration is required or if there are long-term stability issues, SCQ will amend the existing reclamation plan. It is imperative that SCQ conduct[s] technologically-sound hydrologic and geomorphologic analyses to determine that the Rattlesnake Creek's stability will be protected and that water quality is protected. These analyses should have been included in the Revised Application. The Revised Application includes several reclamation elements that have the potential to impact water quality. These include: • Information has been removed on the depth of mining as it relates to the depth to groundwater. Previously depth to groundwater was below 300 msl. Because SCQ now proposes to lower the pit by approximately 300 feet, the potential exists for groundwater interaction. There is no explanation as to why the Revised Application has excluded information on the depth of mining and groundwater depths or its implications on groundwater interaction. • The Revised Application includes seven surface water drainage areas, up from two. The Revised Application does not describe the reasons for the increase in drainage areas o[r] the implications of the plan revision.	SCQ submitted a Drainage Report, dated December 17, 2020, to the County on December 18, 2020 to satisfy the County's request for an updated technical stormwater memorandum. This Drainage Report analyzes erosion and sedimentation control measures related to stormwater, which will apply during mining and reclamation to protect water quality. Per the County's request SCQ is submitting an additional Drainage Report dated June 2021 with this June 11, 2021 resubmittal. The need for stream restoration is addressed in the attached letters to CDFW and the RWCQB. SCQ has not proposed any changes to the current reclamation plan or operations with regard to the former sedimentation ponds. Those ponds will not be used for operations and the ponds will remain in place per the current approved reclamation plan. Accordingly, SCQ is not required to submit any additional analysis related to the protection of Rattlesnake Creek's stability and water quality. As disclosed in previous submittals by SCQ, groundwater depth appears to be below 300 msl. (See SCQ Project Description (Sept. 2020), p. 8.) Potential impacts to groundwater, if any, resulting from reclamation will be studied during the CEQA process for SCQ's proposed Project. Further, drainages areas have not changed. Instead, the revised Project Description submitted in December 2020 provided substantially more detail regarding existing stormwater management. Section 6.8 of the revised Project Description documented existing stormwater management and facilities based the Stormwater Pollution Prevention Plan included as Attachment A to that Project Description. The potential impacts to water quality resulting from a relocated recycling plant will be studied by the County during the CEQA process; however, these types of impacts are currently and would in the future be addressed through the BMPs implemented by SCQ under a SWPPP for the mine site. In addition, water quality issues at the site have been extensively reviewed and permitted by the RWQCB including new RWQCB permits issued in May 2021.

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	• The Revised Application calls for moving the recycling plant to Parcel B to a location near the aggregate processing facilities. The County should require that SCQ evaluate the potential for water quality impacts from this relocation.	
III. AREAS OF CONCERN		
	In addition to the incomplete items listed above, the County has identified the following issue(s). Where necessary, these issues need to be addressed and submittal materials revised accordingly. • The proposed importation of unprocessed material from Lehigh Permanente was identified as an area of concern in the first incomplete letter dated October 21, 2020. This use is considered a Manufacturing-Intensive Use, which is not allowed within the Hillsides zoning designation of the subject site. In response, SCQ submitted a request for a Zoning Interpretation that will be scheduled for consideration by the Planning Commission over the next few months. Depending on the decision of the Planning Commission, SCQ can choose to revise the application as appropriate.	On May 20, 2021, in a Zoom meeting between County Staff, SCQ and SCQ's counsel, County Staff informed SCQ that Staff will recommend denial of SCQ's Zoning Interpretation request. Further, County Staff planned to schedule the Planning Commission hearing for July 22, 2021 even though SCQ's counsel is not available on that date. In that Zoom meeting SCQ counsel, Patrick Mitchell, requested that the July 2021 Planning Commission hearing be rescheduled and that the County provide written reasons to support the County's proposed recommendation of denial, without SCQ needing to wait two months for a staff report. By a letter from SCQ's counsel on May 24, 2021, SCQ formally requested that the Planning Commission hearing be rescheduled to August 2021 to allow SCQ's counsel to attend. Further, by a letter from SCQ's counsel on May 25, 2021, SCQ requested that the County provide a written explanation of County Staff's recommendation to deny SCQ's Zoning Interpretation request.
	Pursuant to the Amended Compliance Agreement and Stipulated Order to Comply (Attachment 1) under Public Resources Code Section 2774.1 between the County and SCQ, effective September 3, 2020, SCQ must obtain a complete determination for the Application by January 11, 2021. However, some of these are new issues that have recently been identified by County staff, and therefore, in order to provide SCQ with sufficient time to comply with the requirements outlined in this incomplete letter, the Department agrees to extend the January 11, 2021 deadline to Monday, July 12, 2021.	The County has not provided a revised Compliance Agreement and Stipulated Order to Comply for SCQ to review. In addition, the County has provided no report to SCQ related to the County's building permit review and site visits. Regardless, SCQ is submitting this response in compliance with the deadline noted in this comment.

Enclosure to Mitchell Chadwick Cover Letter, June 11, 2021
Revised Drainage Report prepared by Chang Consultants (June 2021)

DRAINAGE REPORT

FOR THE

STEVENS CREEK QUARRY

MINE AND RECLAMATION

(CA MINE ID 91-43-0007)

June 9, 2021

Wayne W. Chang, MS, PE 46548

ChangConsultants

Civil Engineering ◦ Hydrology ◦ Hydraulics ◦ Sedimentation

P.O. Box 9496
Rancho Santa Fe, CA 92067
(858) 692-0760

FOR REVIEW ONLY

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APPENDICES

INTRODUCTION

Stevens Creek Quarry (SCQ) is an existing mining and processing operation located in southwestern Santa Clara County (see Figure 1, "Regional Location," and Figure 2, "Site Location"). SCQ and its predecessors have continuously mined aggregates at the quarry for more than 70 years. A use permit is being processed for the entire site with a related amendment to the reclamation plan. The use permit will provide for a term of 30 years, amend SCQ's existing use permit issued for Parcel A and extend the use permit coverage to Parcel B (see Figure 3, "Existing Conditions Aerial Photograph" for Parcels A and B), allow import of recycle to Parcel B consistent with recycle activities on Parcel A, and allow the import of native greenstone from an adjacent vested and permitted mine site. The reclamation plan amendment includes a revised slope design to correct the potential slope instability identified in the western pit slope, updated plans for stormwater flow, and proposes a combination of backfilling the quarry using on-site materials and importing fill materials to meet the final reclaimed site elevations. Santa Clara County is the lead agency for the quarry under the California Surface Mining and Reclamation Act (SMARA) and California Environmental Quality Act (CEQA).

Th use permit includes a revised mine plan by Benchmark Resources that will continue mining operations within the central, southern, and eastern portions of Parcel B. Continued mining involves lowering the previously planned quarry floor an additional approximately 300 feet. Consistent with existing mining methods, the quarry will be developed by continuing to mine new benches to a bottom elevation between 550 and 600 feet mean sea level (msl) in the central, southern, and eastern portion of Parcel B. The highwall will be developed by stripping and transporting materials to the processing facilities for crushing and stockpiling. Cut slopes are planned to be 1.5H:1V. The quarry floor is planned to have an upper pad with a maximum elevation of 600 feet msl and a lower pad with a maximum elevation of 550 feet msl prior to final reclamation.

The quarry floor will be backfilled during reclamation to a maximum elevation between 1,100 and 1,200 feet msl with fill slopes not to exceed 2H:1V overall. SCQ proposes to continue to use a combination of on-site material and surplus clean soil available from regional construction projects. Two reclamation options (Option A and Option B) have been prepared by Benchmark Resources. Based on the revised reclamation design, a total volume of approximately 11.7 to 20.5 million cubic yards is required to fill the quarry floor to its final design elevation. Approximately 8 million cubic yards of backfill will be generated on-site from the proposed mining. It is anticipated that approximately 3.7 to 12.5 million cubic yards of backfill material will be imported fill generated from off-site sources.

This report contains drainage analyses for the mine plan and both reclamation plan options. The grading has been provided by Benchmark Resources and is based on their submitted Mine Plan, Reclamation Plan - Option A, and Reclamation Plan - Option B drawings. Santa Clara County's 2007 *Drainage Manual* indicates that new storm drain systems and channels shall be designed to convey the 10-year storm without surcharge, and a safe release shall be provided for the 100-year flow. Drainage systems and channels are not proposed. The 100-year flow will be conveyed over the ground surface.

Furthermore, the Surface Mining and Reclamation Act (SMARA) states that erosion control methods shall be designed for the 20-year storm, and shall control erosion and sedimentation during operations as well as after reclamation is complete (see *California Code of Regulations*, Title 14, Section 3706). The County *Drainage Manual* provides parameters for the 25-year storm event, but not the 20-year event. The 25-year event was analyzed in this report in order to satisfy the requirements for the 10- and 20-year events. Since the 25-year event is greater than these two events, the 25-year results will provide a greater factor-of-safety in the drainage design.

HYDROLOGIC ANALYSES

Hydrologic analyses were performed for the mining and both reclamation conditions. The Santa Clara County 2007 *Drainage Manual* allows the rational method for drainage areas smaller than 200 acres (with no detention, no substantial surface storage effect, and no large areas of pervious soils) and the unit hydrograph method for areas greater than 200 acres. The rational method was used since the overall drainage area is 119.46 acres.

Rational Method

The rational method input parameters are summarized below, and the supporting data is included in Appendix A:

- Rainfall Intensity: The 25-year intensity-duration-frequency curves were established using the Return Period-Duration-Specific (TDS) Regional Equation. The mean annual precipitation value used in the TDS equation is 25 inches.

- Drainage basins: The mining and reclamation drainage basins were delineated from the 2-foot contour interval topographic mapping as well as Benchmark Resources proposed grading for the Mine Plan and Reclamation Plan - Option A and B. The overall drainage basin tributary to the mining area on the Mine Plan was delineated first. The same overall drainage basin was used for Reclamation Plan Option - A and B to allow a comparison of results.

  Under the Mine Plan, the tributary storm runoff will be captured and stored at the bottom of the pit until it evaporates or infiltrates. Under Reclamation Plan - Option A, the storm runoff will surface flow towards the southeasterly corner of the drainage basin where it can ultimately be conveyed to Stevens Creek Reservoir just southeast of the site. Under Option B, the southerly portion of the storm runoff will flow to the southeasterly corner of the drainage basin and then to Stevens Creek Reservoir, while the northerly portion will be conveyed by natural drainages to Stevens Creek just downstream of the reservoir.

  The Rational Method Work Maps in the map pocket at the back of this report contain the existing topography, proposed grading, drainage basin boundaries, rational method node numbers, and drainage basin areas.

- Runoff coefficients: The existing and proposed areas within each drainage basin contain negligible impervious surfaces and a surface condition representative of the natural

surrounding hillsides or of a mineral extraction site. The County *Drainage Manual* provides a table (Table 3-1) of runoff coefficients for various land uses ranging from natural cover (parks, agricultural, open space, and shrub land) to development types (residential, commercial, industrial, and paved/impervious surfaces). The mining and reclamation areas do not specifically fall within any of the *Drainage Manual's* land use categories. The undisturbed area contains hilly terrain with exposed rock/gravel surfaces, limited vegetal cover, and little surface storage. The post-project site will contain moderate to steeply sloping terrain, gravel/rock and revegetated surfaces, and little surface storage. Since the *Drainage Manual* does not specifically address the pre- and post-project conditions, Santa Clara County Land Development Engineering provided Table 4 from the County's previous drainage manual as a guideline to develop a runoff coefficient for mined areas.

For the Mine Plan, the selected values from Table 4 are a relief of 0.40, soil infiltration of 0.15, vegetal cover of 0.20, and surface storage of 0.20. This yields a runoff coefficient of 0.95. For Reclamation Plan - Option A, the selected values are a relief of 0.40, soil infiltration of 0.15, vegetal cover of 0.15, and surface storage of 0.20. This yields a runoff coefficient of 0.90. For Reclamation Plan Option - B, the selected values are a relief of 0.35, soil infiltration of 0.15, vegetal cover of 0.20, and surface storage of 0.20. This yields a runoff coefficient of 0.90. The soil infiltration and surface storage values are the same for all scenarios. The relief of Option B is lower than the Mine Plan and Option A because the reclamation grading will result in less overall ground slope. The vegetal cover of Option A is lower than the Mine Plan and Option B because the mining area will be partially vegetated.

It should be noted that the runoff coefficients from Table 4 can be higher than runoff coefficients based on the *Drainage Manual.*

- Flow lengths and elevations: The flow lengths and elevations were delineated and obtained from the topographic mapping and grading. The initial time of concentration for each initial subarea was calculated using a spreadsheet based on the Kirpich equation from the *Drainage Manual.*

  The flow lengths in an initial subarea start at the most hydraulically distant (or highest) point in a drainage basin in accordance with the typical rational method procedure (this is discussed on page 17 of the *Drainage Manual)*.

The rational method analyses were performed using the CivilDesign Universal Rational Method Hydrology Program. This program was customized to meet the Santa Clara County hydrologic criteria. The County's 25-year intensity-duration data was input into the program. The times of concentration for initial subareas were calculated using a spreadsheet of the Kirpich equation, which is included in Appendix A. The initial time of concentration values from the spreadsheet were entered as user-specified data in the program. After the initial subarea is modeled, the program can route the flow in channels, streets, pipes, etc. The analyses in this report modeled the overall drainage basins as initial subareas. The following Erosion and Sedimentation Control section discusses downstream routing of the calculated flows.

The CivilDesign program requires a land use to be entered (e.g., undeveloped dense cover, etc.). However, the runoff coefficients used by the program were based on user-defined values defined above, rather than the program specified land use and soil group. Therefore, while the land uses listed in the output provide a general description of the land use, they were not used for determination of the runoff coefficients.

The 25-year rational method results are included in Appendix A and summarized in Table 1. The overall flow rate under the Mine Plan, Option A, and Option B are similar.

Condition	Area, acres	25-Year Flow, cfs[1]
Mine Plan	119.46	213
Reclamation Plan - Option A	119.46	197
Reclamation Plan - Option B (northerly area)	54.36	93
Reclamation Plan - Option B (southerly area)	65.10	108
Reclamation Plan - Option B (total area)	119.46	201

[1]cubic feet per second

Table 1. Rational Method Results

EROSION AND SEDIMENTATION CONTROL

SMARA requires erosion and sedimentation to be controlled "during all phases of construction, operation, reclamation, and closure of a surface mining operation to minimize siltation of lakes and watercourses. . . ." Downstream sedimentation and erosion will not occur under the Mine Plan since the tributary stormwater will be entirely captured within the pit and not be discharged downstream.

On the other hand, stormwater will be conveyed downstream under Reclamation Plan - Option A and Reclamation Plan - Option B, so erosion and sedimentation control measures shall be implemented. Temporary best management practices (BMPs) as reclamation progresses can include berms, silt fences, hay bales, straw waddles, matting, or other erosion control measures. These BMPs shall be documented in the Industrial SWPPP and designed to handle runoff from not less than the 20-year, 1-hour intensity storm event. The final reclaimed surfaces will be revegetated for permanent erosion and sedimentation control. Revegetation is intended to not require maintenance following an establishment period.

Under Option A, all of the storm runoff from the reclamation area will be directed to the lower portion of the site and ultimately enter Stevens Creek Reservoir immediately east of the site. Under Option B, the southerly reclamation area will flow through the lower portion of the site to Stevens Creek Reservoir. Per Table 1, the 25-year flow rates under Option A and the southerly area of Option B are 197 and 108 cfs, respectively. Normal depth analyses were performed to estimate the pipe sizes needed to convey these flows from the respective reclamation areas to the reservoir. The average slope along the path is approximately 4 percent from the project's topographic mapping. The normal depth analyses are included in Appendix B and show that a

42-inch pipe is needed convey flow from Option A and a 36-inch pipe is needed to convey flow from the southerly area of Option B. Existing ponds are located between the reclamation areas and reservoir. The pipe sizes could be reduced if the ponds are used to detain flows or if overland flow is accepted. In addition, other options such as drainage swales or channels could be used in lieu of a pipe to convey flows.

Storm runoff from the northerly area of Option B will flow over 5,800 feet in a natural hillside ravine to Stevens Creek approximately 2,300 feet downstream of the reservoir. Drainage improvements are not proposed along the natural hillside ravine.

The proposed mining and reclamation will not create impervious surfaces and permanent revegetation will be installed on the final reclaimed surfaces. As a result, stormwater treatment measures from the Santa Clara Valley Urban Runoff Pollution Prevent Program's June 2016, *C.3. Stormwater Handbook*, are not required.

Temporary desiltation basins can be implemented during construction, if needed. The State Water Resources Control Board (SWRCB) Water Quality Order 99-08-DWQ (as amended by 2010-0014-DWQ and 2012-0006-DWQ) provides sediment basin sizing criteria. The SWRCB procedure is recommended for construction sites with exposed surfaces, which is appropriate for the project. Their procedure is based on the equation:

$A_S = 1.2Q / V_S$ where A_S is the minimum surface area for trapping soil particles of a certain size, sf
Q is the discharge, cfs
V_S is the settling velocity, fps

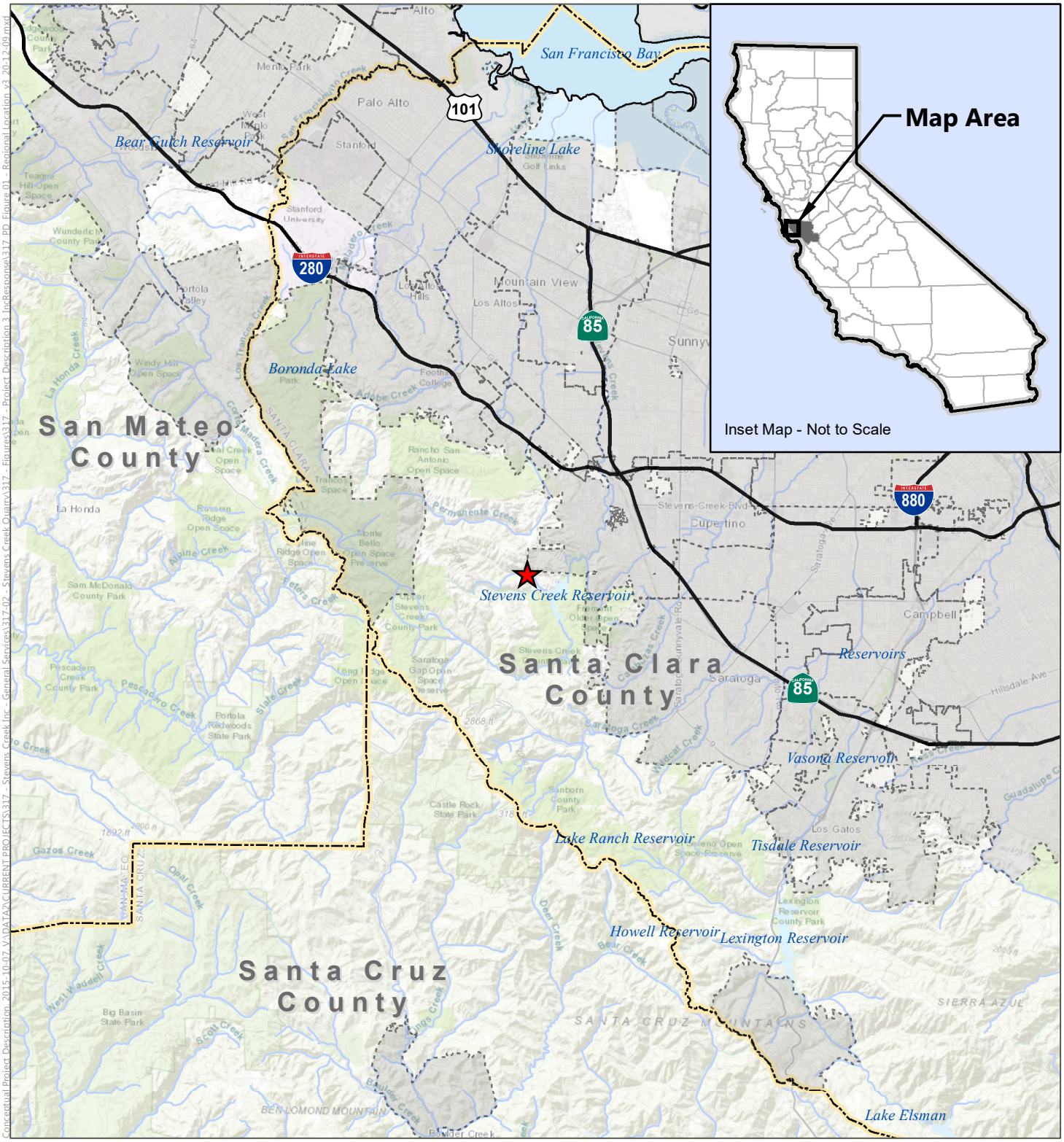
SWRCB recommends that Q be based on the 10-year event. However, the 25-year event can be used in order to meet the Surface Mining and Reclamation Act's 20-year event requirement for erosion control. The 25-year discharge will depend on the size of the drainage area. The results in Table 1 show an average discharge of 1.7 cfs per acre. A particle size distribution for the surrounding area is included in Appendix B and shows that nearly 93 percent of the material will be larger than 0.074 mm (No. 200 sieve size). Sediment smaller than the No. 200 sieve typically occur in suspension and are less prone to settling. The Regional Water Quality Control Board, San Francisco Bay Region's 1999, *Erosion and Sediment Control Field Manual,* provides settling velocities for several particle sizes. The settling velocity for a particle size of 0.05 mm (0.0062 feet per second) was selected because this size is smaller than 0.074 mm. Entering the settling velocity and 25-year discharge per acre value into the equation yields an estimated surface area of 329 square feet per acre of tributary drainage area. The SWRCB recommends that the basin length be twice the width, and the storage depth be between 3 to 5 feet with at least one-foot of freeboard. If temporary desiltation basins are implemented during construction, they shall be sized per the SWRCB procedure. More detailed 25-year hydrologic analyses can be performed for the sizing based on the actual tributary drainage area, as needed.

CONCLUSION

Drainage analyses have been performed for the Stevens Creek Quarry. The analyses were based on the County's 25-year storm, which will yield slightly conservative (higher) results than the SMARA 20-year event. The overall flow rates for the Mine Plan, Reclamation Plan - Option 1, and Reclamation Plan - Option 2 are similar because none of the scenarios propose impervious surfaces and the flow paths are relatively consistent. Following reclamation, storm runoff will be conveyed to Stevens Creek Reservoir and/or Stevens Creek.

Option A and Option B propose reclamation that will restore the hillside within and west of the mining area. The reclaimed slopes have been designed with proposed contours perpendicular to overland flow paths to create a uniformly sloping hillside. Storm runoff from the upstream watershed tributary to either the Option A or Option B reclamation areas primarily occurs as sheet flow over the existing natural hillside. The sheet flow enters ravines within the existing hillside and the ravines will direct concentrated flow towards the proposed reclaimed slopes. The operator shall collect and convey the concentrated flow during and post-reclamation to prevent erosion of the reclaimed slopes. During reclamation, the slopes will be continuously changing as grading proceeds. The operator shall implement measures to prevent erosion and convey the upper ravine flows within or around the active reclamation area throughout the rainy season. The measures can include erosion control blankets, mulch, soil binders, geotextiles, silt fencing, fiber rolls, gravel bags, berming, swales/ditches/channels, pipes, etc. The operator shall update the erosion controls and drainage conveyances, as needed, throughout the reclamation process. Following reclamation, drainage swales and/or channels shall be graded within the reclaimed slopes to convey storm flows from the ravines to the lower portion of the reclaimed slopes. Vegetation or other measures shall be installed to stabilize the drainage swales and/or channels in order to avoid erosion and sedimentation issues.

The project reclamation shall implement temporary and permanent erosion and sediment control measures. The temporary measures will be documented in the Stevens Creek Quarry's Industrial SWPPP. The Industrial SWPPP also addresses water quality and BMP requirements throughout the remainder of the operations area. Permanent revegetation will be selected to avoid long-term maintenance. These measures will satisfy the drainage, erosion, and sediment control requirements of Santa Clara County and SMARA.



SOURCE: ESRI World Shaded Relief accessed Sept. 2020, ESRI World Topographic Map accessed Sept. 2020; ESRI World Streetmap, 2009; compiled by Benchmark Resources in 2020

NOTES: This figure was prepared for land use planning and informational purposes only. The info shown and its accuracy are refelctive of the date the data was accessed or produced.

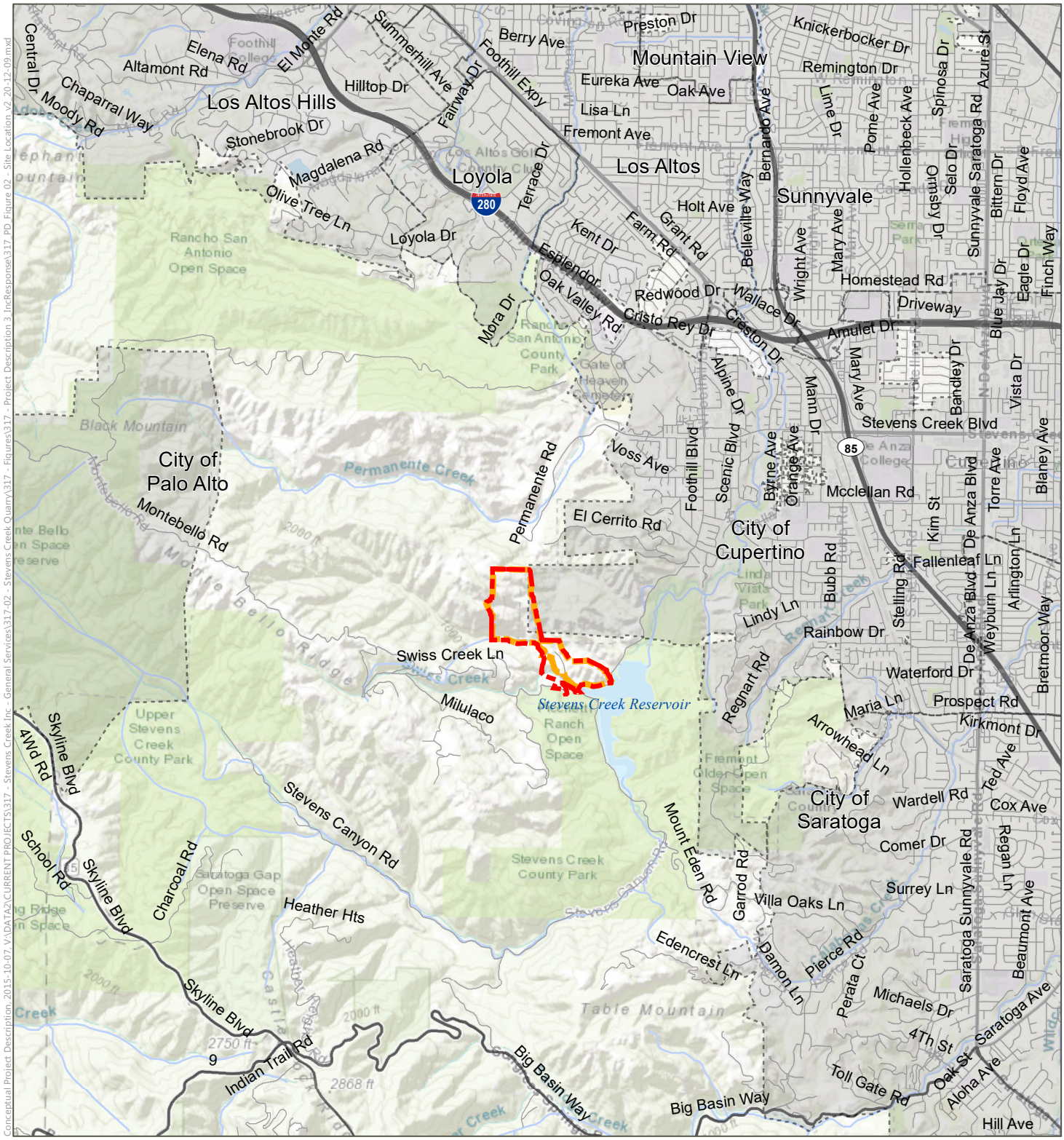
Site Location
City Boundary
County Boundary
Major Highway
Waterway
Water Body

BENCHMARK RESOURCES

N

0 1.5 3 6 Miles

Regional Location
STEVENS CREEK QUARRY
PROJECT DESCRIPTION
Figure 1



SOURCE: ESRI World Shaded Relief accessed Sept. 2020, ESRI World Topographic Map accessed Sept. 2020; ESRI World Streetmap, 2009; adapted by Benchmark Resources in 2020

NOTES:

1. Property boundary for illustrative purposes only.
2. This figure was prepared for land use planning and informational purposes only. The information shown and its accuracy are refelctive of the date the data was accessed or produced.

Site Boundary
Reclamation Plan Boundary
City Boundary
Water Body

Major Highway
Street
Waterway

BENCHMARK RESOURCES

N

0 0.5 1 2 Mile

Site Location
STEVENS CREEK QUARRY
PROJECT DESCRIPTION
Figure 2

SOURCE: Aerial & Site Parcel Lines–Muir Consulting Inc, flown and surveyed 8-13-2020; Other Parcel Lines–Parcel Quest, accessed December 2020 & Santa Clara Interactive Map, accessed December 2020; compiled by Benchmark Resources in 2020

NOTES:
1. Material reviewed and utilized to prepare reclamation plan boundary was informed by orthophotography and sruvey data prepared by Muir Consulting, Inc., flown on 6-18-2020.
2. See Appendix # and # forstampedand signed Professional Surveyor boundaryand topography.

- Site Boundary ±156 acres
- Reclamation Plan Boundary ±147 acres
- Parcel Line & Assessor's Parcel Number
- 100-foot Power Line Easement
- Existing Building/Mining Equipment/Other Facilities (See list below for for callouts shown)

1. Top Soil Plan
2. Main Office
3. Lower Scale House
4. Recycle Plant
5. Tractor Shop
6. Tractor Shop Office
7. Truck Shop
8. Maintenance Shop
9. Upper Scale
10. Maintenance Shop Office
11. Rock Plant
12. Wash Plant (Press)
13. Radio Tower
14. Equipment Storage

- Porta Potty Location
- Diesel Fuel Storage
- Hazardess Material Storage
- Distance from Loading Point to nearest Parcel Line
- Dirt Road
- Asphalt Road
- Access Road
- Water Border
- Swiss Creek
- Cross Section

BENCHMARK RESOURCES

N

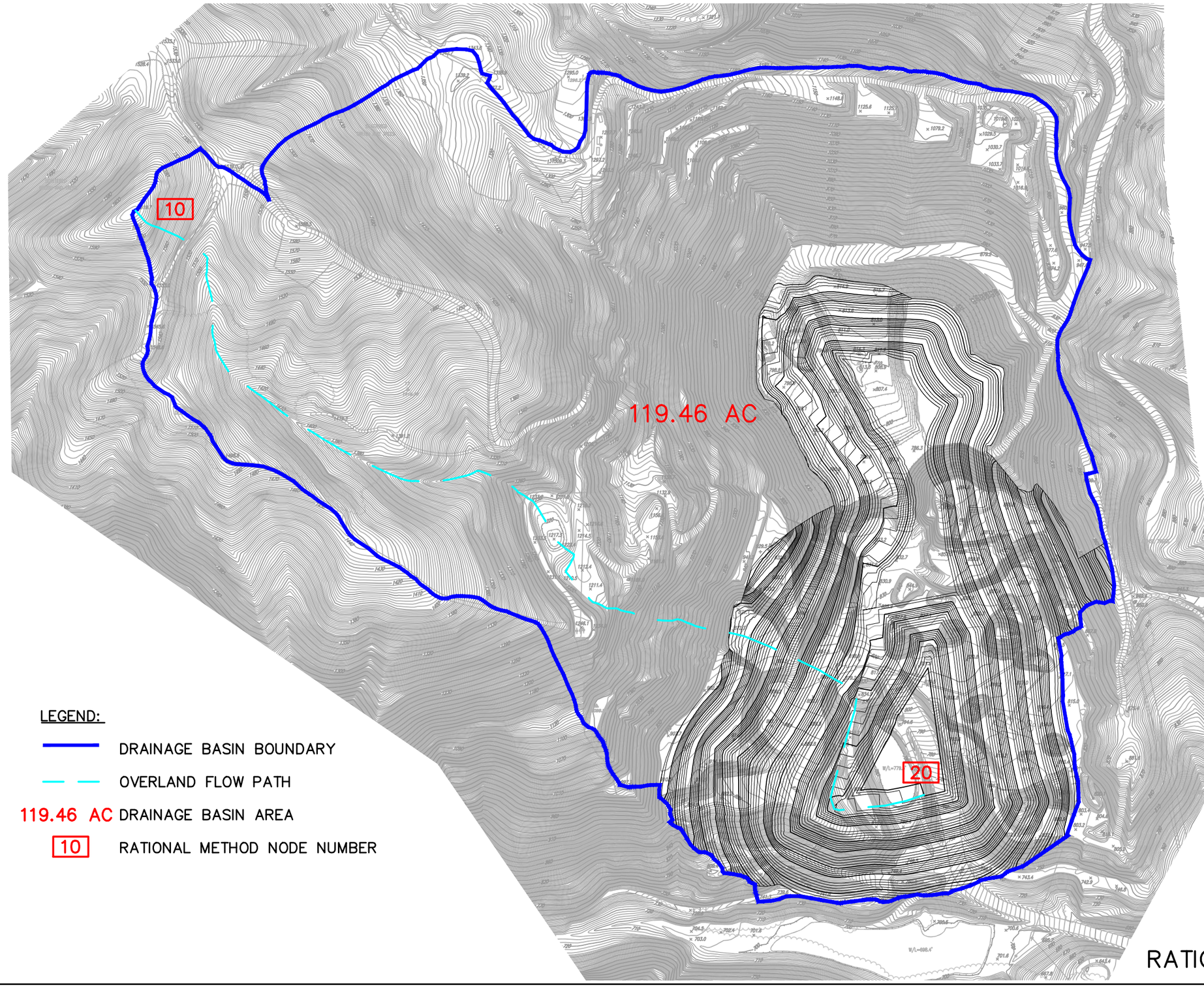
0 150 300 600 1,200

Existing Conditions Aerial Photograph
STEVENS CREEK QUARRY
USE PERMIT & RECLAMATION PLAN AMENDMENT

Figure 3

APPENDIX A

HYDROLOGIC INPUT DATA AND ANALYSES



1" = 300'

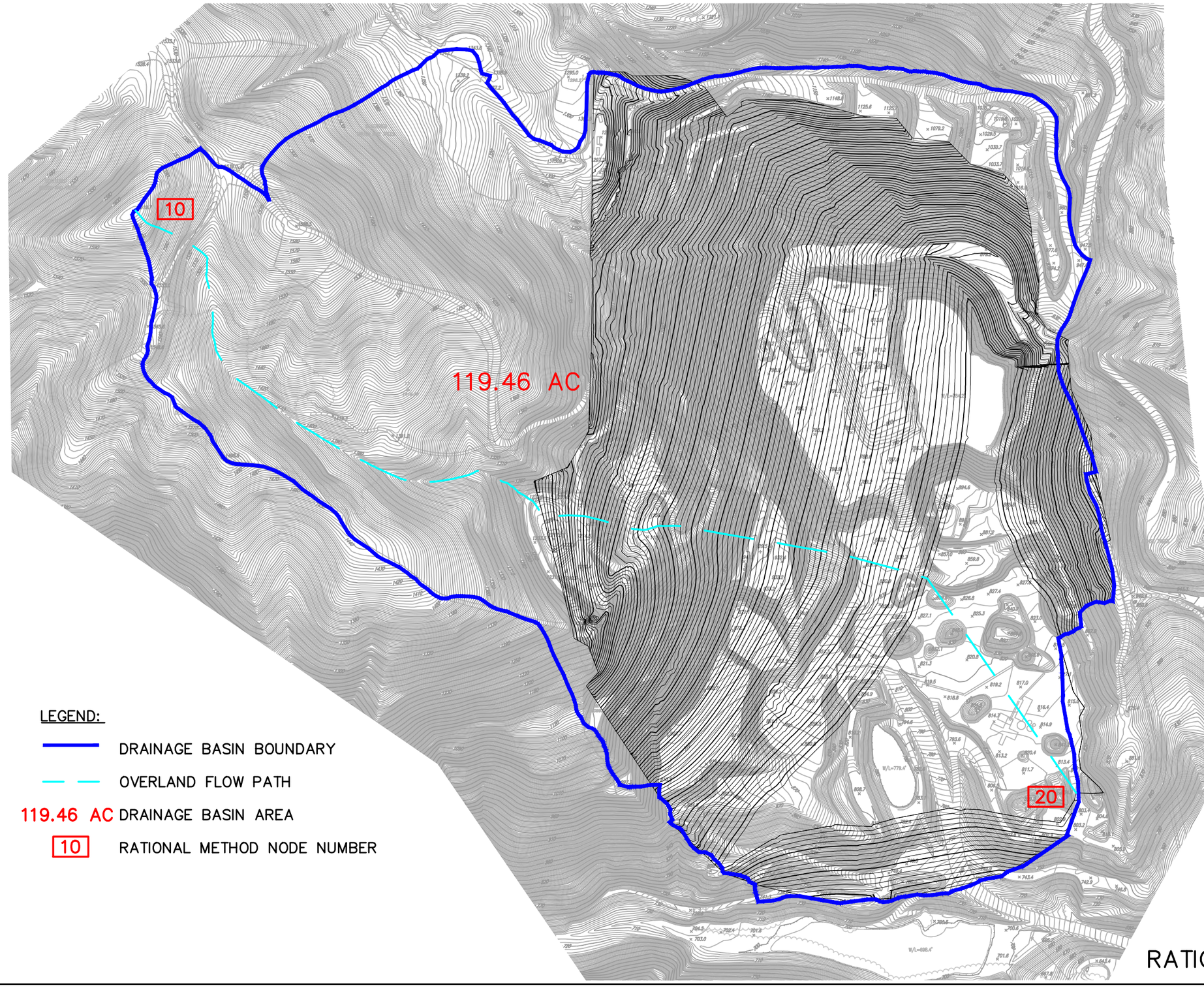
0 300

LEGEND:

- DRAINAGE BASIN BOUNDARY
- OVERLAND FLOW PATH
- 119.46 AC DRAINAGE BASIN AREA
- 10 RATIONAL METHOD NODE NUMBER

MINE PLAN

RATIONAL METHOD WORK MAP



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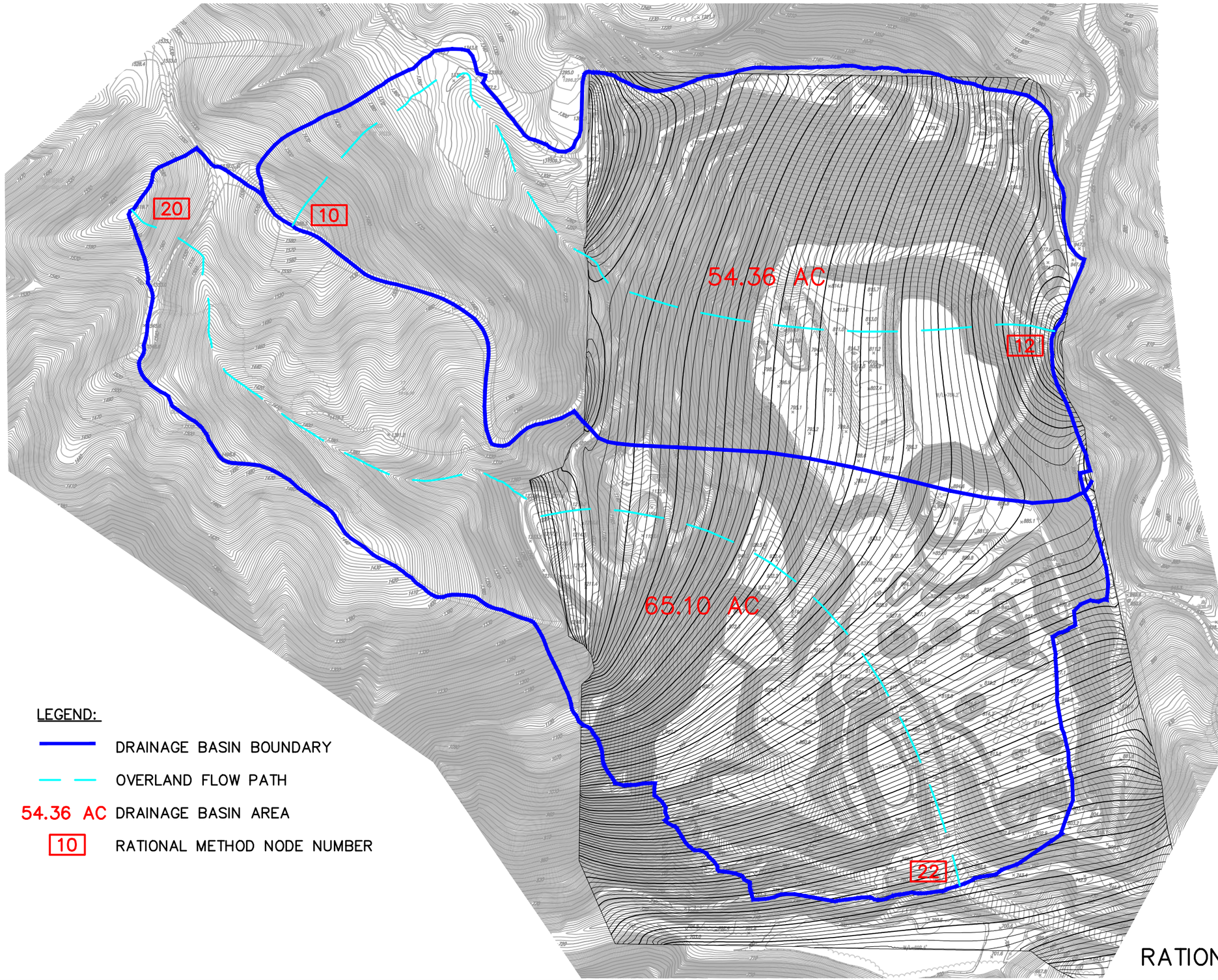
OPTION A

RATIONAL METHOD WORK MAP



1" = 300'

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LEGEND:

DRAINAGE BASIN BOUNDARY

OVERLAND FLOW PATH

54.36 AC DRAINAGE BASIN AREA

10 RATIONAL METHOD NODE NUMBER

OPTION B

RATIONAL METHOD WORK MAP

RATIONAL METHOD INPUT DATA

25-Year Return Period

Duration	A	B	MAP, in	x, in	I, in/hr
5	0.230641	0.002691	25	0.2979	3.575
10	0.287566	0.004930	25	0.4108	2.465
15	0.348021	0.005594	25	0.4879	1.951
30	0.443761	0.008719	25	0.6617	1.323
60	0.508791	0.016680	25	0.9258	0.926
120	0.612629	0.031025	25	1.3883	0.694
180	0.689252	0.044264	25	1.7959	0.599
360	0.693566	0.083195	25	2.7734	0.462

KIRPICH EQUATION FOR INITIAL SUBAREAS

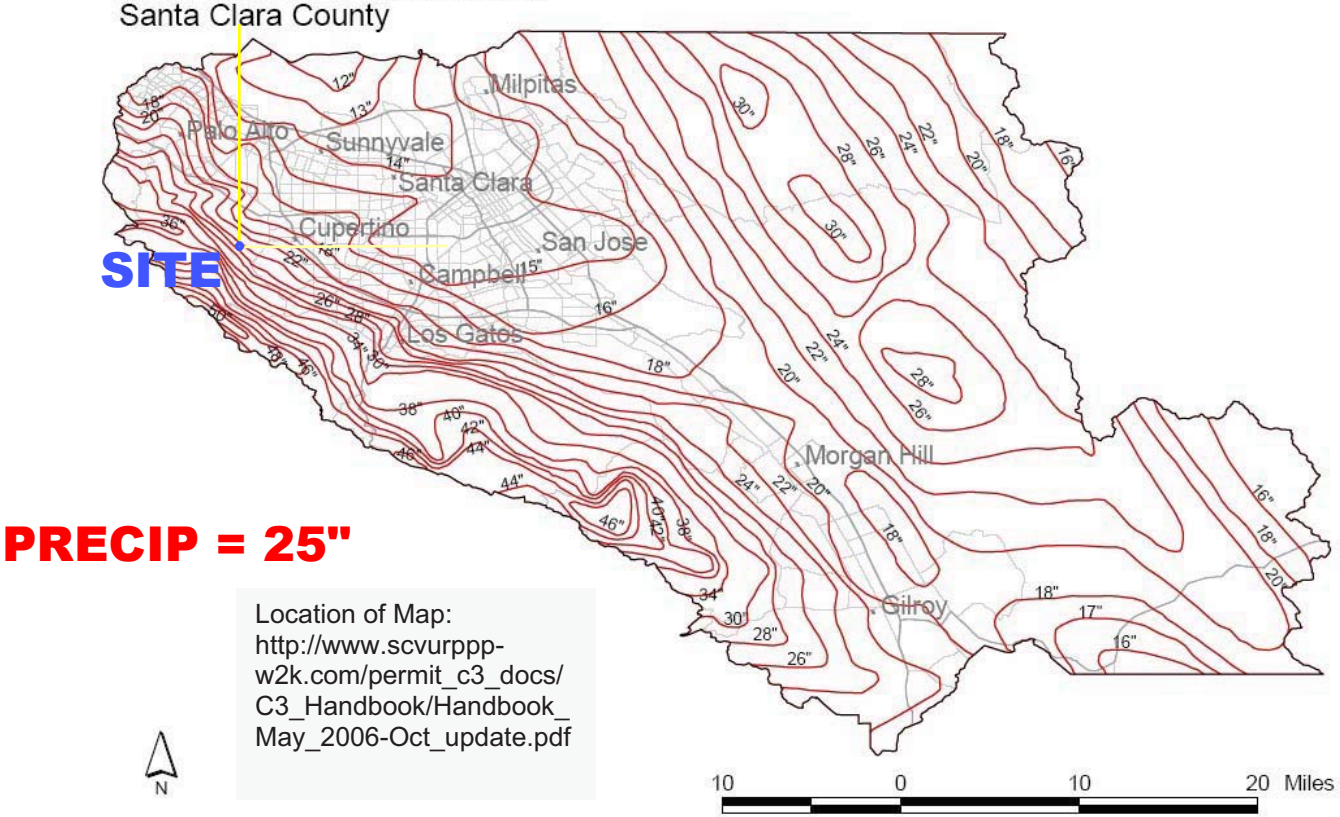
Proposed Conditions

Drainage Basin	Nodes	Up Elev., ft	Down Elev., ft	L, feet	S, ft/ft	Tc, min
Mine Plan	10-12	1,619.7	550.0	3,572	0.30	16.8
Option A	10-12	1,619.7	820.0	3,717	0.22	17.9
Option B - North	10-12	1,588.5	898.0	2,912	0.24	16.3
Option B - South	20-22	1,619.7	735.0	3,636	0.24	17.4

Table B-2: Parameters $A_{T,D}$ and $B_{T,D}$ for TDS Equation

Return Period/Duration	$A_{T,D}$	$B_{T,D}$
25-YR RETURN PERIOD		
5-min	0.230641	0.002691
10-min	0.287566	0.004930
15-min	0.348021	0.005594
30-min	0.443761	0.008719
1-hr	0.508791	0.016680
2-hr	0.612629	0.031025
3-hr	0.689252	0.044264
6-hr	0.693566	0.083195
12-hr	0.725892	0.132326
24-hr	0.675008	0.195496
48-hr	0.989588	0.264703
72-hr	0.967854	0.316424
50-YR RETURN PERIOD		
5-min	0.249324	0.003241
10-min	0.300971	0.006161
15-min	0.384016	0.006315
30-min	0.496301	0.009417
1-hr	0.568345	0.017953
2-hr	0.672662	0.033694
3-hr	0.754661	0.048157
6-hr	0.740666	0.092105
12-hr	0.779967	0.147303
24-hr	0.747121	0.219673
48-hr	1.108358	0.295510
72-hr	1.075643	0.353143
100-YR RETURN PERIOD		
5-min	0.269993	0.003580
10-min	0.315263	0.007312
15-min	0.421360	0.006957
30-min	0.553934	0.009857
1-hr	0.626608	0.019201
2-hr	0.732944	0.036193
3-hr	0.816471	0.051981
6-hr	0.776677	0.101053
12-hr	0.821859	0.162184
24-hr	0.814046	0.243391
48-hr	1.210895	0.325943
72-hr	1.175000	0.389038

Figure A-2
Mean Annual Precipitation Map
Santa Clara County



SOURCE: Santa Clara Valley Water District, Mean Annual Precipitation Map, San Francisco & Monterey Bay Region, 1998

Figure A-2: Mean Annual Precipitation, Santa Clara County

Table 4

Runoff Coefficients for Agricultural and Open Areas *

RUNOFF PRODUCING CHARACTERISTICS	WATERSHED CHARACTERISTICS			
	A RELIEF	B SOIL INFILTRATION	C VEGETAL COVER	D SURFACE STORAGE
EXTREME	0.40 Steep rugged terrain average slopes greater than 30%	0.20 No effective soil cover; either rock or thin soil mantle negligible infiltration capacity	0.20 No effective plant cover; bare or very sparse soil cover	0.20 Negligible; surface depression few and shallow; drainage ways steep and small, no ponds or marshes
HIGH	0.30 Hilly with average slopes of 10 to 30%	0.15 Slow to take up water; clay or other soil of low infiltration capacity such as heavy gumbo	0.15 Poor to fair; clean cultivated crops or poor natural cover; less than 10% of area under good cover	0.15 Low; well defined system of small drainage ways; no ponds or marshes
NORMAL	0.20 Rolling with average slopes of 5 to 10%	0.10 Normal, deep loam	0.10 Fair to good; about 50% of area in good grass land, woodland or equivalent cover	0.10 Normal; considerable surface depression storage; typical of prairie lands; lakes, ponds and marshes less than 20% of area
LOW	0.10 Relatively flat land average slopes 0 to 5%	0.05 High; deep sand or other soil that takes up water readily and rapidly	0.05 Good to excellent; about 90% of area in good grass land, woodland or equivalent cover	0.05 High; surface depression storage high; drainage system not sharply defined, Lg. flood plain storage; large number of ponds and marshes

NOTE: Runoff coefficient is equal to sum of coefficients from the appropriate block in Rows A, B, C and D.

* After H. L. Cook, as published in Engineering for Agricultural Drainage, by Harry B. Roe and Quincy C. Ayres, McGraw-Hill Book Co., Inc., New York, 1954, p. 105.

UNIVERSAL RATIONAL METHOD HYDROLOGY PROGRAM

CIVILCADD/CIVILDESIGN Engineering Software, (c) 1989- 2005 Version 7.1
Rational Hydrology Study Date: 12/16/20

Stevens Creek Quarry
Mine Plan
25-Year Flow Rate
County of Santa Clara Rational Method

********* Hydrology Study Control Information **********

Program License Serial Number 4028

Rational hydrology study storm event year is 25.0
Number of [time,intensity] data pairs = 8

No.	Time	-	Intensity
1	5.000		3.575(In.)
2	10.000		2.465(In.)
3	15.000		1.951(In.)
4	30.000		1.323(In.)
5	60.000		0.926(In.)
6	120.000		0.694(In.)
7	180.000		0.599(In.)
8	360.000		0.462(In.)

English Input Units Used
English Output Units Used:
Area = acres, Distance = feet, Flow q = ft^3/s, Pipe diam. = inches
Runoff coefficient method used:
Runoff coefficient 'C' value calculated for the
equation Q=KCIA [K=unit constant(1 if English Units, 1/360 if SI Units),
I=rainfall intensity, A=area];
by the following method:
Manual entry of 'C' values

Rational Hydrology Method used:

The rational hydrology method is used where the area
of each subarea in a stream, subarea 'C' value, and rain-
fall intensity for each subarea is used to determine the
subarea flow rate q, of which values are summed for total Q

Stream flow confluence option used:

Stream flow confluence method of 2 - 5 streams:
Note: in all cases, if the time of concentration
or TC of all streams are identical, then q = sum of stream flows

```
Variables p=peak; i=intensity; Fm=loss rate; a=area; 1...n flows
q = flow rate, t = time in minutes
Stream flows summed; qp = q1 + q2 + ..... qn
TC = t of stream with largest q


++++++++++++++++++++++++++++++++++++++++++++++++++++++++++++++++++++++++
Process from Point/Station       10.000 to Point/Station       12.000
**** INITIAL AREA EVALUATION ****
________________________________________________________________________
UNDEVELOPED (average cover) subarea
Initial subarea data:
Equations shown use english units, converted if necessary to (SI)
Initial area flow distance =  3572.000(Ft.)
Top (of initial area) elevation =  1619.700(Ft.)
Bottom (of initial area) elevation =   550.000(Ft.)
Difference in elevation =  1069.700(Ft.)
Slope =    0.29947  s(%)=      29.95
Manual entry of initial area time of concentration, TC
Initial area time of concentration =   16.800 min.
Rainfall intensity =      1.876(In/Hr) for a    25.0 year storm
Effective runoff coefficient used for area (Q=KCIA) is C = 0.950
Subarea runoff =    212.861(CFS)
Total initial stream area =      119.460(Ac.)
End of computations, total study area =         119.460 (Ac.)
```

UNIVERSAL RATIONAL METHOD HYDROLOGY PROGRAM

CIVILCADD/CIVILDESIGN Engineering Software, (c) 1989- 2005 Version 7.1
Rational Hydrology Study Date: 12/16/20

Stevens Creek Quarry
Reclamation Plan - Option A
25-Year Flow Rate
County of Santa Clara Rational Method

********* Hydrology Study Control Information **********

Program License Serial Number 4028

Rational hydrology study storm event year is 25.0
Number of [time,intensity] data pairs = 8

No.	Time	-	Intensity
1	5.000		3.575(In.)
2	10.000		2.465(In.)
3	15.000		1.951(In.)
4	30.000		1.323(In.)
5	60.000		0.926(In.)
6	120.000		0.694(In.)
7	180.000		0.599(In.)
8	360.000		0.462(In.)

English Input Units Used
English Output Units Used:
Area = acres, Distance = feet, Flow q = ft^3/s, Pipe diam. = inches
Runoff coefficient method used:
Runoff coefficient 'C' value calculated for the
equation Q=KCIA [K=unit constant(1 if English Units, 1/360 if SI Units),
I=rainfall intensity, A=area];
by the following method:
Manual entry of 'C' values

Rational Hydrology Method used:

The rational hydrology method is used where the area
of each subarea in a stream, subarea 'C' value, and rain-
fall intensity for each subarea is used to determine the
subarea flow rate q, of which values are summed for total Q

Stream flow confluence option used:

Stream flow confluence method of 2 - 5 streams:
Note: in all cases, if the time of concentration
or TC of all streams are identical, then q = sum of stream flows

```
Variables p=peak; i=intensity; Fm=loss rate; a=area; 1...n flows
q = flow rate, t = time in minutes
Stream flows summed; qp = q1 + q2 + ..... qn
TC = t of stream with largest q


++++++++++++++++++++++++++++++++++++++++++++++++++++++++++++++++++++++++
Process from Point/Station       10.000 to Point/Station       12.000
**** INITIAL AREA EVALUATION ****
________________________________________________________________________
UNDEVELOPED (average cover) subarea
Initial subarea data:
Equations shown use english units, converted if necessary to (SI)
Initial area flow distance =  3717.000(Ft.)
Top (of initial area) elevation =  1619.700(Ft.)
Bottom (of initial area) elevation =   820.000(Ft.)
Difference in elevation =   799.700(Ft.)
Slope =    0.21515  s(%)=      21.51
Manual entry of initial area time of concentration, TC
Initial area time of concentration =   17.900 min.
Rainfall intensity =      1.830(In/Hr) for a    25.0 year storm
Effective runoff coefficient used for area (Q=KCIA) is C = 0.900
Subarea runoff =    196.706(CFS)
Total initial stream area =      119.460(Ac.)
End of computations, total study area =         119.460 (Ac.)
```

UNIVERSAL RATIONAL METHOD HYDROLOGY PROGRAM

CIVILCADD/CIVILDESIGN Engineering Software, (c) 1989- 2005 Version 7.1
Rational Hydrology Study Date: 12/16/20

Stevens Creek Quarry
Reclamation Plan - Option B
25-Year Flow Rate
County of Santa Clara Rational Method

********* Hydrology Study Control Information **********

Program License Serial Number 4028

Rational hydrology study storm event year is 25.0
Number of [time,intensity] data pairs = 8

No.	Time	-	Intensity
1	5.000		3.575(In.)
2	10.000		2.465(In.)
3	15.000		1.951(In.)
4	30.000		1.323(In.)
5	60.000		0.926(In.)
6	120.000		0.694(In.)
7	180.000		0.599(In.)
8	360.000		0.462(In.)

English Input Units Used
English Output Units Used:
Area = acres, Distance = feet, Flow q = ft^3/s, Pipe diam. = inches
Runoff coefficient method used:
Runoff coefficient 'C' value calculated for the
equation Q=KCIA [K=unit constant(1 if English Units, 1/360 if SI Units),
I=rainfall intensity, A=area];
by the following method:
Manual entry of 'C' values

Rational Hydrology Method used:

The rational hydrology method is used where the area
of each subarea in a stream, subarea 'C' value, and rain-
fall intensity for each subarea is used to determine the
subarea flow rate q, of which values are summed for total Q

Stream flow confluence option used:

Stream flow confluence method of 2 - 5 streams:
Note: in all cases, if the time of concentration
or TC of all streams are identical, then q = sum of stream flows

```
Variables p=peak; i=intensity; Fm=loss rate; a=area; 1...n flows
q = flow rate, t = time in minutes
Stream flows summed; qp = q1 + q2 + ..... qn
TC = t of stream with largest q


++++++++++++++++++++++++++++++++++++++++++++++++++++++++++++++++++++++++++++++
Process from Point/Station       10.000 to Point/Station       12.000
**** INITIAL AREA EVALUATION ****
______________________________________________________________________________
UNDEVELOPED (average cover) subarea
Initial subarea data:
Equations shown use english units, converted if necessary to (SI)
Initial area flow distance =  2912.000(Ft.)
Top (of initial area) elevation =  1588.500(Ft.)
Bottom (of initial area) elevation =   898.000(Ft.)
Difference in elevation =   690.500(Ft.)
Slope =    0.23712  s(%)=      23.71
Manual entry of initial area time of concentration, TC
Initial area time of concentration =   16.300 min.
Rainfall intensity =      1.897(In/Hr) for a    25.0 year storm
Effective runoff coefficient used for area (Q=KCIA) is C = 0.900
Subarea runoff =     92.788(CFS)
Total initial stream area =       54.360(Ac.)


++++++++++++++++++++++++++++++++++++++++++++++++++++++++++++++++++++++++++++++
Process from Point/Station       20.000 to Point/Station       22.000
**** INITIAL AREA EVALUATION ****
______________________________________________________________________________
UNDEVELOPED (average cover) subarea
Initial subarea data:
Equations shown use english units, converted if necessary to (SI)
Initial area flow distance =  3636.000(Ft.)
Top (of initial area) elevation =  1619.700(Ft.)
Bottom (of initial area) elevation =   735.000(Ft.)
Difference in elevation =   884.700(Ft.)
Slope =    0.24332  s(%)=      24.33
Manual entry of initial area time of concentration, TC
Initial area time of concentration =   17.400 min.
Rainfall intensity =      1.851(In/Hr) for a    25.0 year storm
Effective runoff coefficient used for area (Q=KCIA) is C = 0.900
Subarea runoff =    108.422(CFS)
Total initial stream area =       65.100(Ac.)
End of computations, total study area =         119.460 (Ac.)
```

APPENDIX B

NORMAL DEPTH ANALYSES
AND
PARTICLE SIZE DISTRIBUTION

Worksheet for Circular Pipe - Option A

Project Description

Friction Method	Manning Formula
Solve For	Full Flow Diameter

Input Data

Roughness Coefficient	0.013	
Channel Slope	0.04000	ft/ft
Normal Depth	3.47	ft
Diameter	3.47	ft
Discharge	197.00	ft³/s

Results

Diameter	3.47	ft
Normal Depth	3.47	ft
Flow Area	9.47	ft²
Wetted Perimeter	10.91	ft
Hydraulic Radius	0.87	ft
Top Width	0.00	ft
Critical Depth	3.44	ft
Percent Full	100.0	%
Critical Slope	0.03680	ft/ft
Velocity	20.80	ft/s
Velocity Head	6.73	ft
Specific Energy	10.20	ft
Froude Number	0.00	
Maximum Discharge	211.92	ft³/s
Discharge Full	197.00	ft³/s
Slope Full	0.04000	ft/ft
Flow Type	SubCritical	

GVF Input Data

Downstream Depth	0.00	ft
Length	0.00	ft
Number Of Steps	0	

GVF Output Data

Upstream Depth	0.00	ft
Profile Description		
Profile Headloss	0.00	ft
Average End Depth Over Rise	0.00	%

Worksheet for Circular Pipe - Option B (southerly area)

Project Description

Friction Method	Manning Formula
Solve For	Full Flow Diameter

Input Data

Roughness Coefficient	0.013	
Channel Slope	0.04000	ft/ft
Normal Depth	2.77	ft
Diameter	2.77	ft
Discharge	108.00	ft³/s

Results

Diameter	2.77	ft
Normal Depth	2.77	ft
Flow Area	6.03	ft²
Wetted Perimeter	8.71	ft
Hydraulic Radius	0.69	ft
Top Width	0.00	ft
Critical Depth	2.74	ft
Percent Full	100.0	%
Critical Slope	0.03659	ft/ft
Velocity	17.90	ft/s
Velocity Head	4.98	ft
Specific Energy	7.75	ft
Froude Number	0.00	
Maximum Discharge	116.18	ft³/s
Discharge Full	108.00	ft³/s
Slope Full	0.04000	ft/ft
Flow Type	SubCritical	

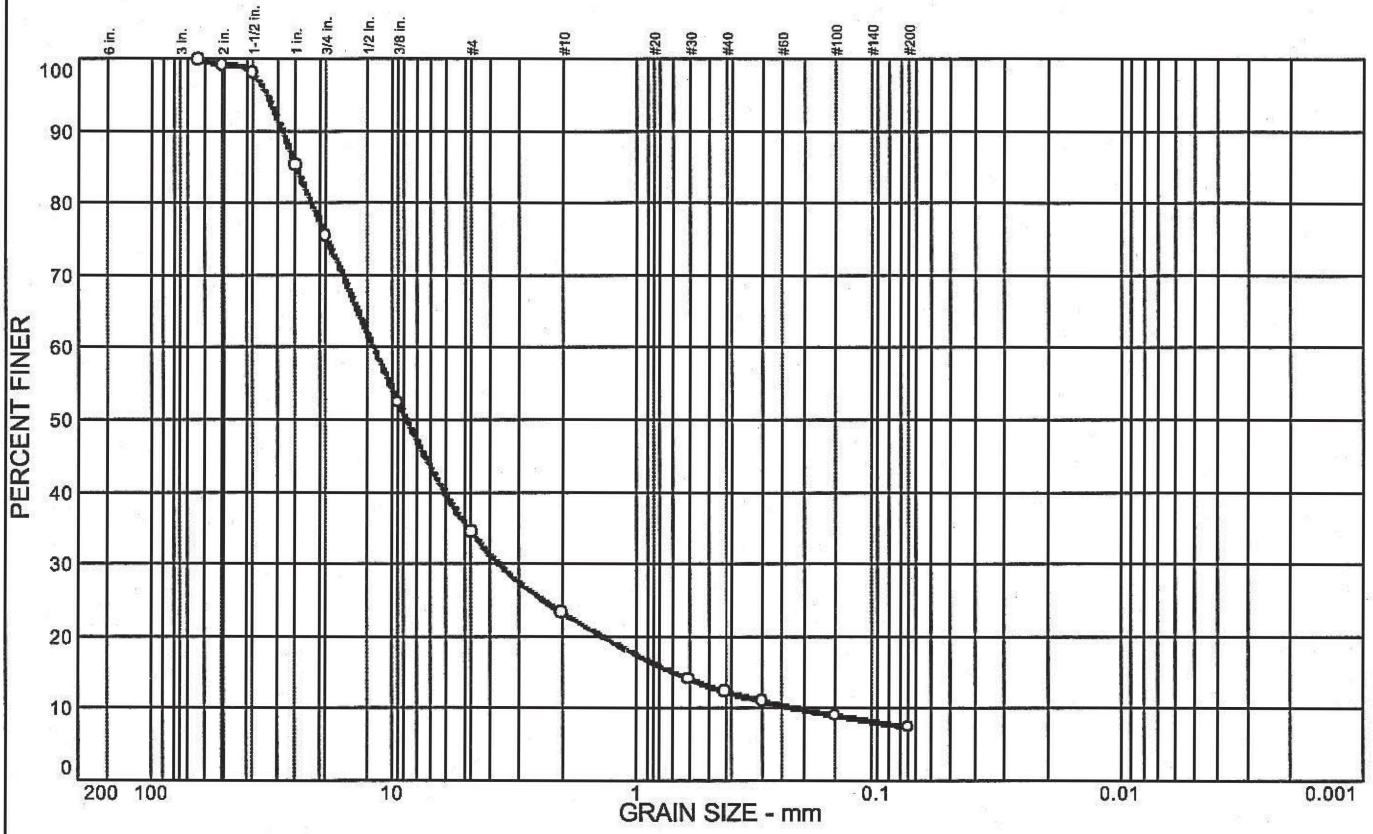
GVF Input Data

Downstream Depth	0.00	ft
Length	0.00	ft
Number Of Steps	0	

GVF Output Data

Upstream Depth	0.00	ft
Profile Description		
Profile Headloss	0.00	ft
Average End Depth Over Rise	0.00	%

Particle Size Distribution Report



	% COBBLES	% GRAVEL	% SAND	% SILT	% CLAY	USCS	AASHTO	PL	LL
o		65.6	27.0	7.4					

SIEVE inches size	PERCENT FINER o		
2.5	100.0		
2	99.2		
1.5	98.0		
1	85.3		
3/4	75.5		
3/8	52.4		

	GRAIN SIZE		
D_{60}	12.0		
D_{30}	3.65		
D_{10}	0.220		

	COEFFICIENTS		
C_c	5.05		
C_u	54.84		

SIEVE number size	PERCENT FINER o		
#4	34.4		
#10	23.3		
#30	14.1		
#40	12.4		
#50	11.0		
#100	9.0		
#200	7.4		

SOIL DESCRIPTION

o Gray Poorly Graded GRAVEL w/ Silt & Sand

REMARKS:

o

o Source: TC-1

COOPER TESTING LABORATORY

Enclosure to Mitchell Chadwick Cover Letter, June 11, 2021
Letter to the California Department of Fish and Wildlife, June 11, 2021

MITCHELL CHADWICK

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

June 11, 2021

VIA U.S. MAIL AND ELECTRONIC MAIL

Kristin Garrison, Environmental Scientist
California Department of Fish and Wildlife, Bay Delta Region
2825 Cordelia Rd., Suite 100
Fairfield, CA 94534
Kristin.Garrison@wildlife.ca.gov

Re: Stevens Creek Quarry Use Permit and Reclamation Plan Amendment Application – CDFW Comment on Pond Restoration

Dear Ms. Garrison:

I represent Stevens Creek Quarry, Inc. ("SCQ"), which operates the Stevens Creek Quarry (the "SCQ Quarry") located in Santa Clara County (the "County"), California. On December 11, 2020, SCQ submitted a revised application for a Use Permit and Reclamation Plan Amendment to the County. The California Department of Fish and Wildlife ("CDFW") provided comments on SCQ's proposed Reclamation Plan Amendment, including several comments that SCQ should restore three sediment ponds located in the Rattlesnake and Swiss Creeks to their pre-mining conditions.[1] This letter responds to that CDFW position.

The California Surface Mining and Reclamation Act (Cal Pub. Resources Code §§ 2710 et seq. ("SMARA")) and the streambed alteration program established by the California Fish and Game Code (Cal. Fish & Game Code §§ 1600 et seq.) do not require SCQ to restore these creeks to their pre-mining conditions. Instead, SMARA only requires SCQ to reclaim the SCQ Quarry to a "usable condition" as discussed further below. Further, the instream retention berms used to create the ponds were constructed prior to the enactment of California's streambed alteration laws. Consequently, SCQ is not required under the California Fish and Game Code to restore the ponds to their pre-mining conditions as discussed further below.

[1] The Upper Pond, Middle Pond and Lower Pond as shown on the Site Plan from the Reclamation Plan Amendment, attached as Exhibit A to this letter. While CDFW's comment refers to restoring Swiss Creek, these ponds are all located along Rattlesnake Creek. There are no SCQ ponds located on Swiss Creek.

A. SMARA Does Not Require Reclamation of the Sediment Ponds to Pre-Mining Conditions.

One of SMARA's primary goals is for mined lands to be "reclaimed to a usable condition." (Cal. Pub. Resources Code § 2712(a).) The definition of "reclamation" under SMARA provides further guidance regarding reclaiming a site to a "usable condition:"

> "Reclamation" means the combined process of land treatment that minimizes water degradation, air pollution, damage to aquatic or wildlife habitat, flooding, erosion, and other adverse effects from surface mining operations, including adverse surface effects incidental to underground mines, so that mined lands are reclaimed to a usable condition that is readily adaptable for alternate land uses and create no danger to public health or safety.

(*Id.* § 2733 (emphasis added).) Further, state regulations implementing SMARA require reclamation consistent with the proposed end use of the mine site. (14 Cal. Code Regs. § 3700(b).)

Here, the SCQ Quarry will be reclaimed "to an open space condition suitable for future development as allowed under the County Zoning Ordinance at reclamation." (SCQ Reclamation Plan Amendment, § 1.3.) Ponds are consistent with an open space end use and do not create a danger to public health or safety. Nothing in SMARA requires SCQ to reclaim the three sediment ponds to pre-mining conditions.

B. California Streambed Alteration Laws Do Not Apply to Ponds Constructed Prior to the Enactment of Those Laws.

The aerial photograph attached as Exhibit B to this letter shows that the three sediment ponds existed as early as 1956. Consequently, the three sediment ponds were constructed at least 5 years prior to the enactment of California's streambed alteration laws, which occurred in 1961. (Cal. Fish and Game Code § 1602 (1961), Stats.1961, c. 909 § 2, eff. Sept. 15, 1961.) Those streambed alteration laws do not apply to ponds constructed prior to the enactment of those laws as discussed further below.

In 1961, the California Legislature adopted the precursor to the current streambed alteration program established in California Fish and Game Code Section 1600 et seq. This first streambed alteration law required notification for the alteration of streams:

> Any person who substantially diverts or obstructs the natural flow or substantially changes the bed, channel or bank of any river, stream or lake, or uses any materials from the streambeds, shall notify the department of such operations

> except when the department has been notified pursuant to Section 1601. The department within 30 days of receipt of such notice, or within the time determined by mutual written agreement, shall submit to the person its recommendations as to measures necessary to protect fish and wildlife.

(Cal. Fish and Game Code § 1602 (1961), Stats.1961, c. 909 § 2, eff. Sept. 15, 1961.) This 1961 law only sets forth a notification requirement where CDFW had the opportunity to make *recommendations* to protect fish and wildlife as noted in the language cited above. The 1961 law did not and does not require the restoration of historical alterations to streams and, in particular, would not even require a person to adopt CDFW's recommendations to restore a stream if CDFW had made such a recommendation.

Although later amendments to the Fish and Game Code in 1970 (over 15 years after the stream berms were built) required a person to implement CDFW's recommendations through a negotiated streambed alteration agreement,[2] the Fish and Game Code does not retroactively apply the streambed alteration laws. Generally, laws apply prospectively and "retroactive application is impermissible unless there is an express intent of the Legislature to do so." (*Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal. 4th 828, 840.) Here, the California Fish and Game Code contains no express language stating that the laws apply to streams altered before the enactment of the streambed alteration requirements. Instead, the Fish and Game Code applies to future activities, i.e. an entity will give notice prior to altering a stream and then would only commence the activity upon entering into an agreement with CDFW or receiving notice that an agreement is not required.[3] Consequently, the California Fish and Game Code does not require SCQ to restore the three sediment ponds to pre-mining conditions.

C. Conclusion

The Reclamation Plan Amendment submitted by SCQ to the County on December 11, 2020 adequately addresses the reclamation of the SCQ Quarry to an open space end use, as required under SMARA. SCQ is not required to submit a notification and enter into a streambed

---

[2] *See* Cal. Fish and Game Code § 1602 (1970), Stats. 1970, c. 1357, § 2 (requiring incorporation of department's proposals or decision of panel of arbitrators into project before commencement); § 1603 (1976), Stats.1976, c. 603, § 2 (requiring incorporation of department's proposals or decision of panel of arbitrators into project before commencement, unless the department fails to act within 30 days of receipt of notice); 1602(a)(4) (2003), Stats. 2003, c. 736, § 2 (requiring an agreement issued by CDFW or panel of arbitrators, unless CDFW otherwise determines an agreement is not required).

[3] *See* Cal. Fish and Game Code § 1602(a)(4)(2021) (alterations shall not occur unless CDFW provides notice that the "entity may commence the activity without an agreement" or CDFW "issues a final agreement to the entity that includes reasonable measures necessary to protect the resource, and the entity conducts the activity in accordance with the agreement.").

alteration agreement to restore the three sediment ponds because those ponds pre-date the enactment of the streambed alteration laws in the California Fish and Game Code.

Sincerely yours,

MITCHELL CHADWICK LLP

Patrick G. Mitchell

cc: Robert Salisbury, Santa Clara County
Elizabeth Pianca, Santa Clara County
Jacqueline Onciano, Santa Clara County
Manira Sandhir, Santa Clara County
Jim Baker, Santa Clara County
Michael Rossi, Santa Clara County
Kristina Loquist, Santa Clara County
Jason Voss, Stevens Creek Quarry
Dan Boyle, Stevens Creek Quarry
David Brown, Benchmark Resources
Andrew White, Benchmark Resources
Chris Powell, Mitchell Chadwick LLP
Michael Sherman, Mitchell Chadwick LLP

Exhibit A
Site Plan

SOURCE: Aerial & Site Parcel Lines–Muir Consulting Inc, flown and surveyed 8-13-2020; Other Parcel Lines–Parcel Quest, accessed December 2020 & Santa Clara Interactive Map, accessed December 2020; compiled by Benchmark Resources in 2020

NOTES:
1. Parcel boundaries, orthophotography and topographic survey data prepared by Muir Consulting, Inc. Aerial survey date: 6-18-2020.
2. See Appendix D for stamped and signed Professional Land Surveyor stamped drawings.

- Site Boundary — ±170 acres
- Reclamation Plan Boundary — ±147 acres
- Parcel Line & Assessor's Parcel Number
- 100-foot Power Line Easement
- Existing Building/Mining Equipment/Other Facilities (See list below for for callouts shown)

1. Top Soil Plant
2. Main Office
3. Lower Scale House
4. Recycle Plant
5. Tractor Shop
6. Tractor Shop Office
7. Truck Shop
8. Maintenance Shop
9. Upper Scale
10. Maintenance Shop Office
11. Rock Plant
12. Wash Plant (Press)
13. Radio Tower
14. Equipment Storage

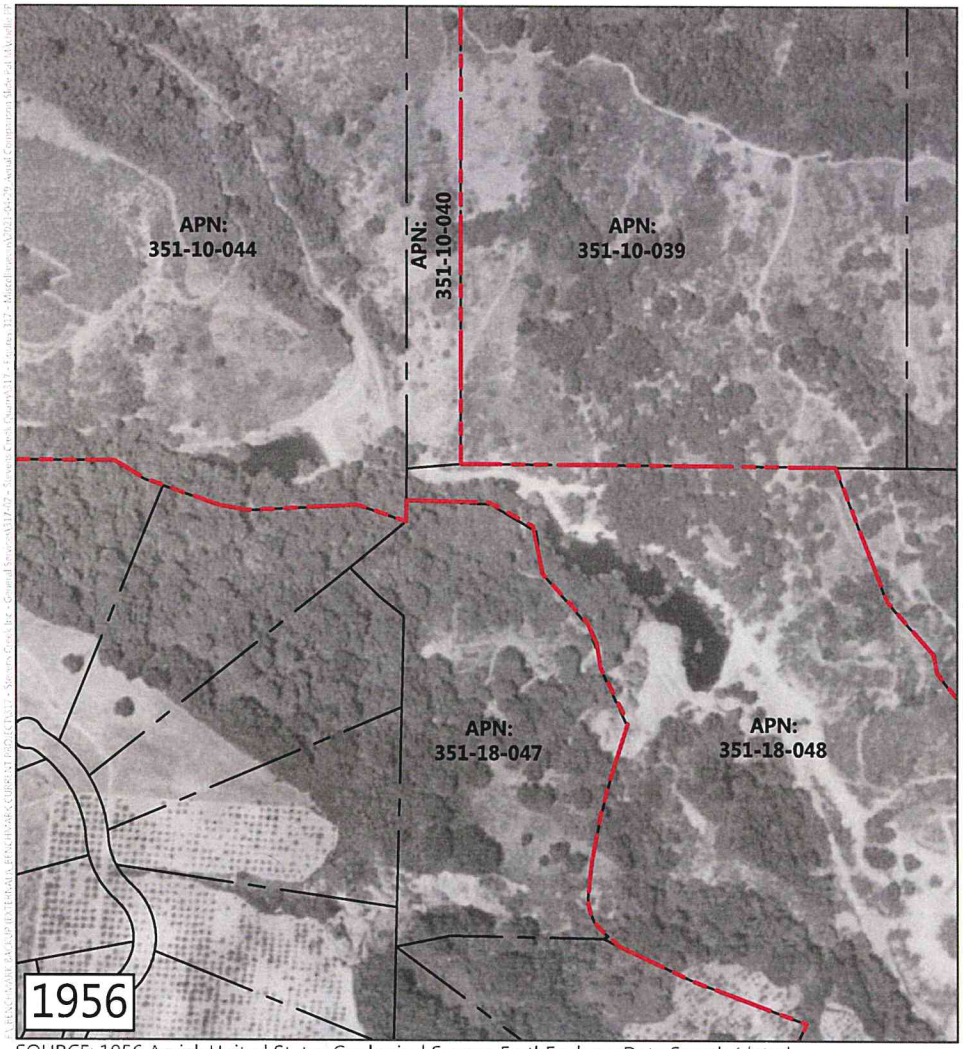
- Portable Bathroom Facilities (no onsite septic)
- Above Ground Diesel Fuel Storage with Secondary Containment
- Hazardous Materials Storage
- 806' Distance from Loading Point to nearest Parcel Line
- Dirt Road
- Asphalt Road
- Access Road
- Water Border
- Swiss Creek
- Cross Section

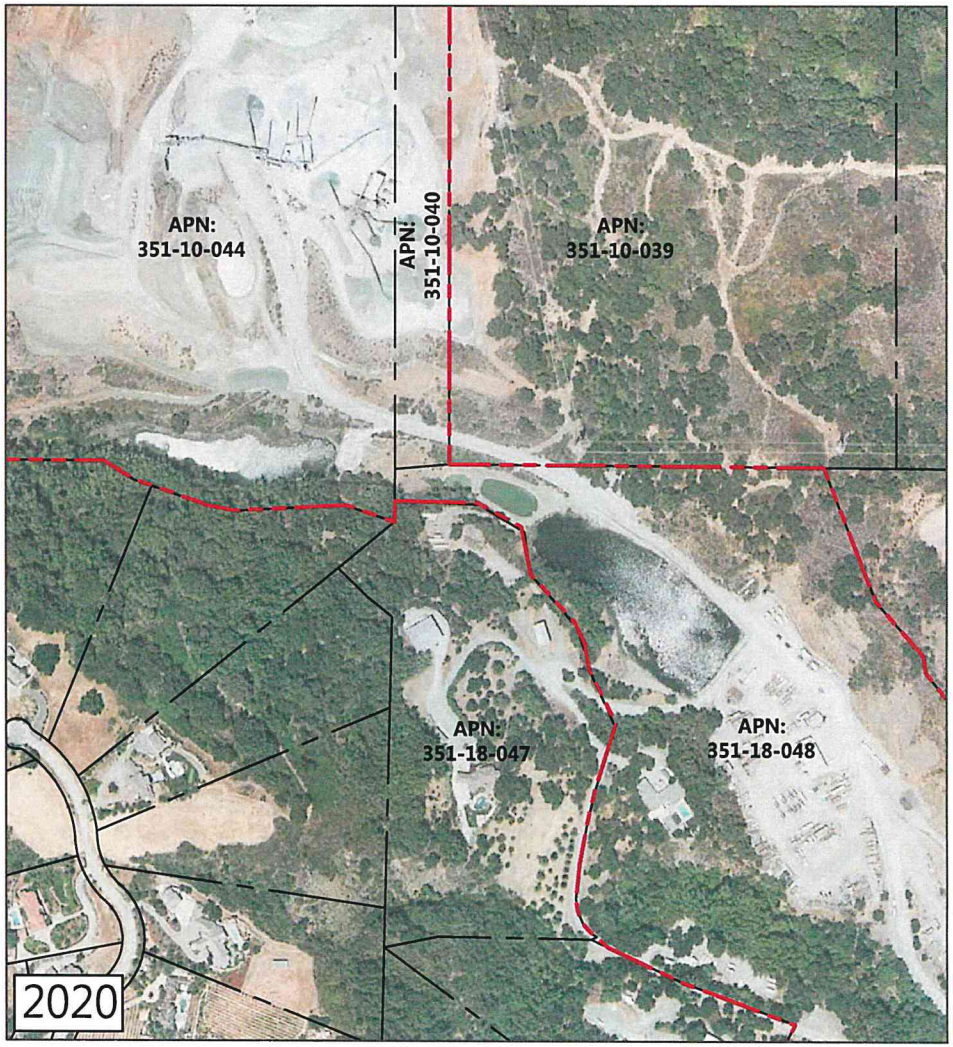
BENCHMARK RESOURCES

0 150 300 600 1,200

Existing Conditions Aerial Photograph
STEVENS CREEK QUARRY
PROJECT DESCRIPTION
Figure 3

Exhibit B
1956 Aerial Photograph





SOURCE: 1956 Aerial–United States Geological Survey, EarthExplorer Data Search (dated 7-2-1956); 2020 Aerial–PoinT Co. Photogrammetric Services (flown 6-18-2020); Parcels–Muir Consulting, Inc. (surveyed 12-9-2020); compiled by Benchmark Resources in 2021

NOTES: Surface disturbance approximated from photograph interpretation for annual inspection report only. Actual field conditions (acreages) may vary.

Site Boundary
Parcel Line

BENCHMARK RESOURCES

N

0 250 500 1,000 Feet

Historical 1956 Aerial vs. Current Conditions Aerial
STEVENS CREEK QUARRY
Figure 1

Enclosure to Mitchell Chadwick Cover Letter, June 11, 2021
Letter to the San Francisco Bay Regional Water Quality Control Board, June 11, 2021

MITCHELL CHADWICK

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

June 11, 2021

VIA EMAIL AND U.S. MAIL

Lisa Horowitz McCann
Assistant Executive Officer
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Re: RWQCB Comments on Stevens Creek Quarry's County Use Permit and Reclamation Plan Amendment Application

Dear Ms. McCann:

As you know, my law firm represents Stevens Creek Quarry ("SCQ"). On September 21, 2020, SCQ submitted a Use Permit and Reclamation Plan Amendment application to Santa Clara County. The San Francisco Bay Regional Water Quality Control Board ("Regional Board") provided comments to the County on the Use Permit and Reclamation Plan Amendment application, which the County provided to SCQ along with other comments on the application. In response to comments provided by the County, SCQ resubmitted the Use Permit and Reclamation Plan Amendment application on December 11, 2020 (the "December 2020 Revised Application").

This letter provides responses to the Regional Board's comments on SCQ's Use Permit and Reclamation Plan Amendment application. The Regional Board's comments are set forth below, followed by SCQ's response.

A. Reclamation Plan Section 4.3.3

Regional Board Comment: 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.[1] 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

[1] Regarding this comment and the next several comments, it is unclear whether the Regional Board has legal authority and subject matter expertise to comment on upland revegetation issues at a mine site.

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.

> **SCQ Response:** The December 2020 Revised Application included a Revegetation Plan, dated December 2020, prepared by WRA Environmental Consultants (the "December 2020 Revegetation Plan"). Section 6.2 in the December 2020 Revegetation Plan describes the methodology and protocol used to assess whether revegetation successfully achieves performance criteria, including the species richness criterion. Further, as stated in Section 6.4 in the December 2020 Revegetation Plan, reference locations will be located adjacent to the SCQ property and will be surveyed to assess native and non-native species richness and cover. Accordingly, the December 2020 Revegetation Plan adequately addresses the Regional Board's comments related to assessment methodologies and reference locations.

B. Reclamation Plan Section 4.3.6

Regional Board Comment: 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.

> **SCQ Response:** Section 6.2 in the December 2020 Revegetation Plan states that a qualified biologist with experience in plant identification will conduct monitoring.

Regional Board Comment: 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.

> **SCQ Response:** Section 6.2 in the December 2020 Revegetation Plan describes the methodology and protocol used to assess whether revegetation successfully achieves performance criteria, including the plant (canopy) cover criterion. The number of plots sampled will be suitable to attain 80 percent confidence in data results.

Regional Board Comment: The second paragraph of this section [4.3.6] 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.

SCQ Response: As stated in Section 4.3.6 of the Reclamation Plan Amendment, maintenance occurs based on monitoring. Monitoring will occur in the late spring or early summer per Section 6.2 of the December 2020 Revegetation Plan. The parameters for maintenance include reseeding or replanting unsuccessful revegetation efforts, weed control to limit the extent of noxious weeds, and repair of erosion damage as discussed in Section 7.0 in the December 2020 Revegetation Plan.

C. Reclamation Plan Section 4.5.1

Regional Board Comment: 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 inchannel sediment basins. This section must be revised to include the removal of instream 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 instream 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.

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.

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 postclosure discharges. The restoration plan for the stream channels at the facility must be designed by an experienced fluvial geomorphologist.

SCQ Response: SCQ is not required to remove the former sedimentation ponds[2] located in Rattlesnake Creek because the ponds pre-date the enactment of the Federal Clean Water Act and the Porter Cologne Act as discussed further below. Further, nothing in the California Surface Mining and Reclamation Act ("SMARA") would require removal and restoration of the former sedimentation ponds as discussed further below.

A. The Federal Clean Water Act and Porter Cologne Act Do Not Apply to Ponds Constructed Prior to the Enactment of Those Laws

The Federal Clean Water Act and Porter Cologne Act do not require SCQ to remove, restore or maintain the former sedimentation ponds because those ponds were constructed prior to the adoption of those laws as discussed further below.[3] As shown on the aerial photograph attached as Exhibit B to this letter, the former sedimentation ponds were constructed sometime prior to 1956.

Clean Water Act requirements to obtain discharge permits first occurred in 1972. (See Pub.L. 92-500, § 2, Oct. 18, 1972, 86 Stat. 880.[4]) The Porter Cologne Act was enacted in 1969 and went into effect on January 1, 1970., (Cal. Stats.1969, c. 482, p. 1051, § 18, operative Jan. 1, 1970.) Neither the Clean Water Act nor the Porter Cologne Act apply retroactively to discharges that occurred prior to the adoption of those laws. In general, a statute will not be given retrospective operation unless it clearly appears that retrospective application was the legislative intent. (*Bowen v. Georgetown University Hosp.* (1988) 488 U.S. 204, 208; see also *Aetna Cas. & Sur. Co. v. Industrial Acc. Commission* (1947) 30 Cal.2d 388, 393.) Nothing in the Clean Water Act nor Porter Cologne Act evidences an intent by the U.S. Congress or the California Legislature, respectively, to apply the Clean Water Act or the Porter Cologne Act to structures existing prior to the enactment of those laws.

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[2] The former settlement ponds are referred to as the Upper Pond, Middle Pond and Lower Pond as shown on the Site Plan from the Reclamation Plan Amendment, attached as Exhibit A to this letter.

[3] California's state streambed alteration laws also would not require removal and restoration of the ponds because the ponds were constructed prior to the adoption of California's state streambed alteration laws in 1961. (Cal. Fish and Game Code § 1602 (1961), Stats.1961, c. 909 § 2, eff. Sept. 15, 1961.)

[4] The Clean Water Act generally refers to 1972 amendments to a federal law known as the "Federal Water Pollution Control Act," which was adopted in 1948. The Federal Water Pollution Control Act as adopted in 1948 did not require discharge permits, but instead classified the pollution of interstate waters as a public nuisance that could be abated after notice and an opportunity to cure. (62 Stat. 1155, c. 758, § 2(d).)

B. SMARA Only Requires Reclamation to a "Usable Condition", Which Includes Open Space Uses

One of the California Surface Mining and Reclamation Act's ("SMARA") primary goals is for mined lands to be "reclaimed to a usable condition." (Cal. Pub. Resources Code § 2712(a).) The definition of "reclamation" under SMARA provides further guidance regarding reclaiming a site to a "usable condition:"

> "Reclamation" means the combined process of land treatment that minimizes water degradation, air pollution, damage to aquatic or wildlife habitat, flooding, erosion, and other adverse effects from surface mining operations, including adverse surface effects incidental to underground mines, so that mined lands are reclaimed to a usable condition that is readily adaptable for alternate land uses and create no danger to public health or safety.

(*Id.* § 2733 (emphasis added).) Further, state regulations implementing SMARA require reclamation consistent with the proposed end use of the mine site. (14 Cal. Code Regs. § 3700(b).)

Here, the SCQ Quarry will be reclaimed "to an open space condition suitable for future development as allowed under the County Zoning Ordinance at reclamation." (Reclamation Plan Amendment, § 1.3.) Ponds are consistent with an open space end use and do not create a danger to public health or safety. Accordingly, nothing in SMARA requires SCQ to reclaim the three sediment ponds to pre-mining conditions.

Sincerely yours,

MITCHELL CHADWICK LLP

Patrick G. Mitchell

cc: Robert Salisbury, Santa Clara County
Elizabeth Pianca, Santa Clara County
Jacqueline Onciano, Santa Clara County
Manira Sandhir, Santa Clara County
Jim Baker, Santa Clara County
Michael Rossi, Santa Clara County
Kristina Loquist, Santa Clara County
Jason Voss, Stevens Creek Quarry
Dan Boyle, Stevens Creek Quarry
David Brown, Benchmark Resources
Andrew White, Benchmark Resources
Chris Powell, Mitchell Chadwick LLP
Michael Sherman, Mitchell Chadwick LLP

Exhibit A
Site Plan

SOURCE: Aerial & Site Parcel Lines–Muir Consulting Inc, flown and surveyed 8-13-2020; Other Parcel Lines–Parcel Quest, accessed December 2020 & Santa Clara Interactive Map, accessed December 2020; compiled by Benchmark Resources in 2020

NOTES:
1. Parcel boundaries, orthophotography and topographic survey data prepared by Muir Consulting, Inc. Aerial survey date: 6-18-2020.
2. See Appendix D for stamped and signed Professional Land Surveyor stamped drawings.

- Site Boundary ±170 acres
- Reclamation Plan Boundary ±147 acres
- Parcel Line & Assessor's Parcel Number
- 100-foot Power Line Easement
- Existing Building/Mining Equipment/Other Facilities (See list below for for callouts shown)

1. Top Soil Plant
2. Main Office
3. Lower Scale House
4. Recycle Plant
5. Tractor Shop
6. Tractor Shop Office
7. Truck Shop
8. Maintenance Shop
9. Upper Scale
10. Maintenance Shop Office
11. Rock Plant
12. Wash Plant (Press)
13. Radio Tower
14. Equipment Storage

- Portable Bathroom Facilities (no onsite septic)
- Above Ground Diesel Fuel Storage with Secondary Containment
- Hazardous Materials Storage
- 800' Distance from Loading Point to nearest Parcel Line
- Dirt Road
- Asphalt Road
- Access Road
- Water Border
- Swiss Creek
- A — A' Cross Section

BENCHMARK RESOURCES

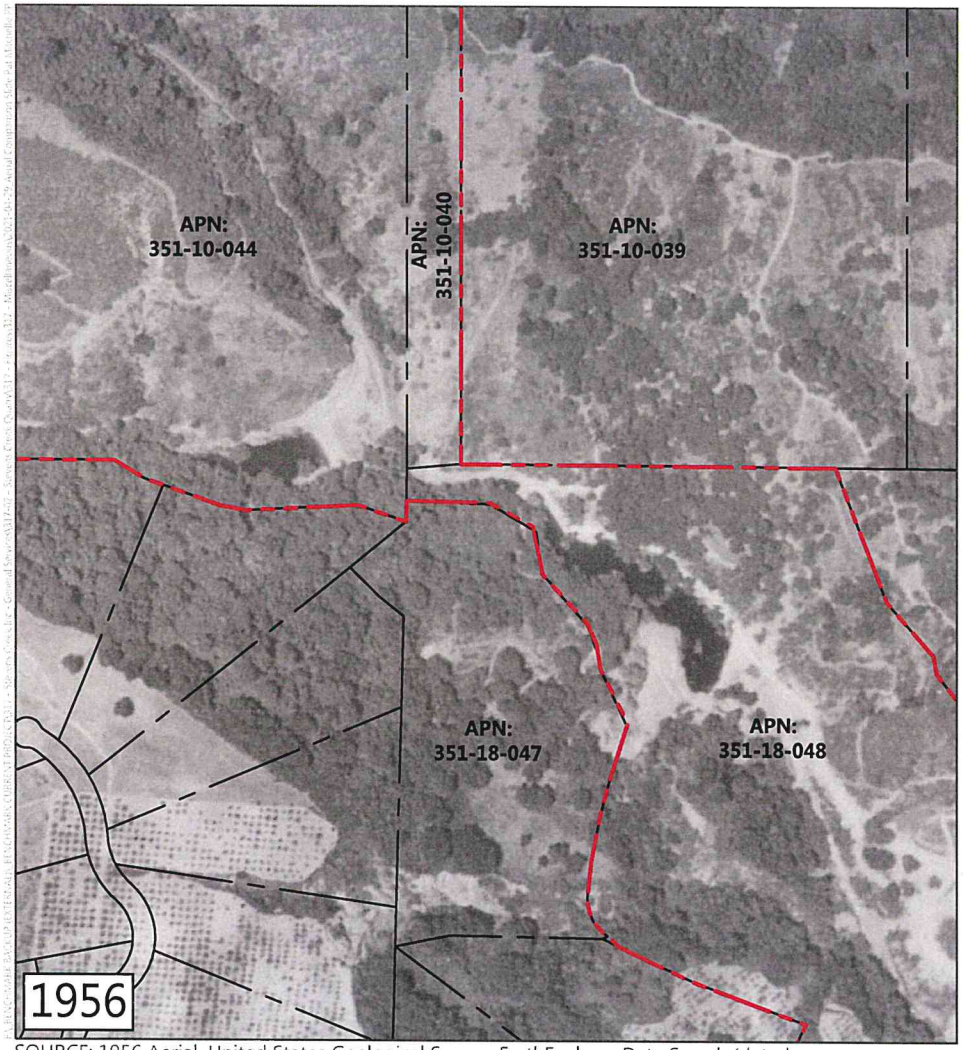
N

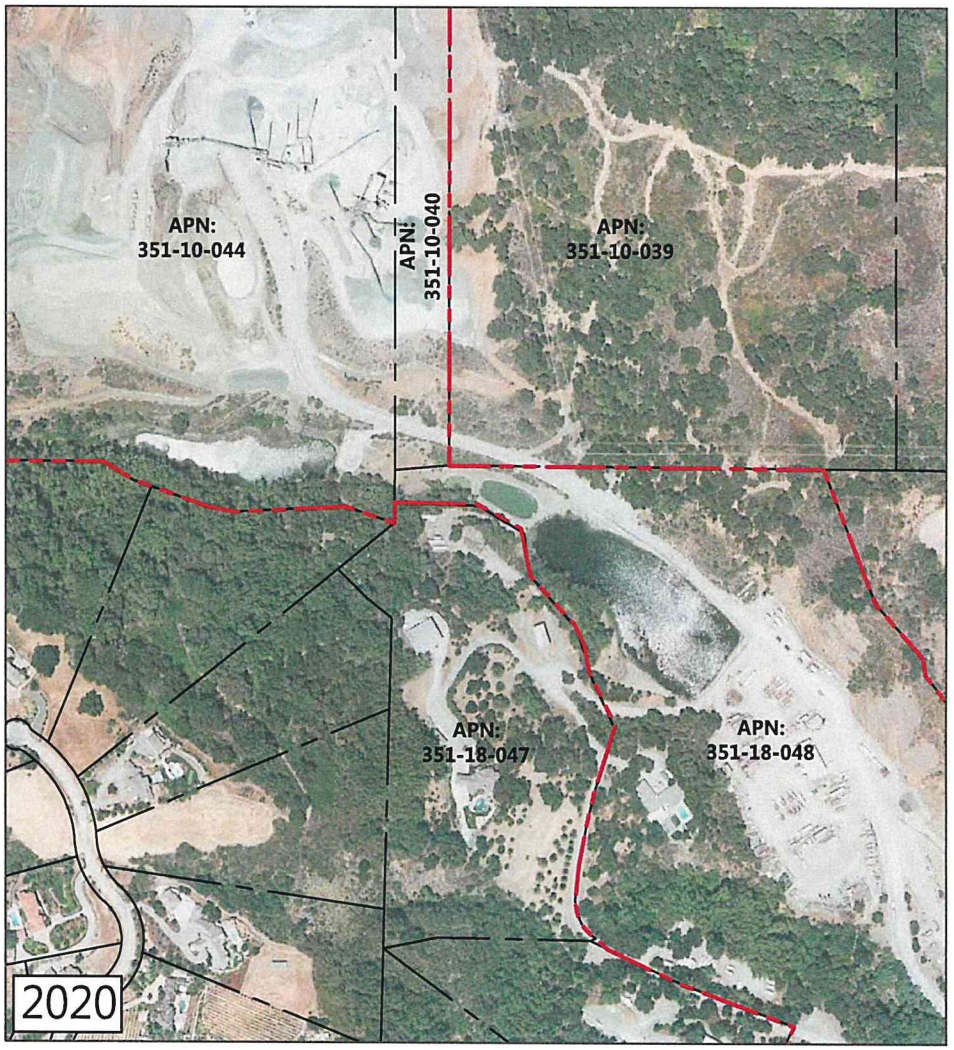
0 150 300 600 1,200

Existing Conditions Aerial Photograph

STEVENS CREEK QUARRY
PROJECT DESCRIPTION
Figure 3

Exhibit B
1956 Aerial Photograph





SOURCE: 1956 Aerial–United States Geological Survey, EarthExplorer Data Search (dated 7-2-1956); 2020 Aerial–PoinT Co. Photogrammetric Services (flown 6-18-2020); Parcels–Muir Consulting, Inc. (surveyed 12-9-2020); compiled by Benchmark Resources in 2021

NOTES: Surface disturbance approximated from photograph interpretation for annual inspection report only. Actual field conditions (acreages) may vary.

Site Boundary
Parcel Line

BENCHMARK RESOURCES

N

0 250 500 1,000 Feet

Historical 1956 Aerial vs. Current Conditions Aerial
STEVENS CREEK QUARRY
Figure 1

Enclosure to Mitchell Chadwick Cover Letter, June 11, 2021
Letter regarding City of Cupertino's Comments on Zoning Use Interpretation, June 11, 2021

MITCHELL CHADWICK

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

June 11, 2021

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 – Response to the City of Cupertino's Zoning Interpretation Comments

Dear Mr. Salisbury:

As you are aware, I represent Stevens Creek Quarry, Inc. ("SCQ") regarding SCQ's mining operations located in Santa Clara County ("County"). On December 11, 2020, SCQ submitted a revised application for a Use Permit and Reclamation Plan Amendment, which included a request for a zoning interpretation related to importing aggregate from the adjacent Lehigh Permanente Quarry ("Permanente Quarry"). The City of Cupertino ("City") commented on the revised application in a letter dated December 30, 2020.

I am writing in response to the City's comments on SCQ's request for a zoning interpretation.[1] As discussed further below, the City fails to correctly apply the standard for determining whether a use may be allowed under the County's Zoning Ordinance. Further, the City prematurely raises concerns about the potential environmental impacts of processing aggregate from the Permanente Quarry.

I. The County Zoning Ordinance Allows Substantially Similar Uses that Are Not Specifically Permitted or Prohibited by the Zoning Ordinance Table of Uses.

The City claims that importing and processing aggregate falls within the definition of the Manufacturing/Industry – Intensive use classification, which is not specifically included as a permitted use in the Hillsides zoning district as shown on the table of uses in the Zoning

[1] SCQ has separately addressed the City's other comments related to traffic and water quality impacts in SCQ's response to the County's comments on the revised application.

Ordinance. This argument, however, fails to recognize that the Zoning Ordinance also does not specifically prohibit Manufacturing/Industry – Intensive uses in the Hillsides zoning district. Further, the County's Zoning Ordinance recognizes that "descriptions of the classifications do not list every use or activity that would be appropriate within the classification, but instead give a general description of the type of uses that are included."[2]

When a use is not specifically prohibited or allowed, the Zoning Administrator can determine whether a particular use is "within the scope of an existing use classification."[3] A use will be within the scope of an existing use classification 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."[4]

As discussed further below, the City's comments ignore the similarities between SCQ's proposal to process imported aggregate and the surface mining and recycling facility uses that already occur at the SCQ Quarry. Those existing uses are clearly compatible with the intent of the Hillsides General Plan land use designation and zoning district, which means a similar use such as processing imported aggregate should also be a permitted use in the Hillsides zoning district.

A. Processing aggregate imported from an adjacent mine is substantially similar in nature and intensity to surface mining and recycling facilities.

Contrary to the City's assertions, the Zoning Ordinance does not prohibit industrial uses in the Hillsides zoning district if those uses generate noise, odor, vibration, illumination, or particulates. Instead, the Zoning Ordinance's table of uses expressly allows industrial uses in the Hillsides zoning district such as surface mining and recycling facilities for concrete, asphalt and soil recycling.[5]

Both SCQ and Lehigh engage in industrial uses by extracting materials, transporting those materials via internal haul roads and processing those materials at facilities located on their respective sites. Processing of aggregate mined from the SCQ Quarry is a permitted use at the SCQ Quarry.[6] Processing of aggregate also occurs at the Permanente Quarry, which also

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[2] Santa Clara County Zoning Ordinance ("Zoning Ordinance"), §2.10.010.

[3] Zoning Ordinance, §2.10.010.A.1.

[4] Zoning Ordinance, § 2.10.020A.1, emphasis added.

[5] Zoning Ordinance, § 2.20.020, Table 2.20-2 (listing "surface mining" and "recycling facilities" as permitted uses in the Hillsides zoning district with a use permit.).

[6] The Zoning Ordinance expressly authorizes incidental activities where such activities are not addressed by the Zoning Ordinance. (Zoning Ordinance, § 2.10.020B.) The Zoning Ordinance defines an incidental activity to be one that is "carried out as part of a primary use, which is not expressly identified by the Zoning Ordinance as part of the primary use classification ...." (Zoning Ordinance, § 2.10.020B.) Processing aggregate is carried out as a part of

includes parcels in the Hillsides zoning district. In fact, if one company owned both the SCQ Quarry and Permanente Quarry, then processing aggregate would be a permitted use regardless of where the aggregate originated from on the combined properties and which severely undercuts the City's position on this point. This fact alone proves the point that the proposed use is consistent with the zoning. Therefore, transporting aggregate from the Permanente Quarry to the SCQ Quarry is substantially similar – if not identical – to internally transporting and processing material that has been mined from either of these adjacent sites for decades.

Importing and processing aggregate from an adjacent quarry would also be substantially similar to recycling facilities that are also a permitted use in the Hillsides zoning district. The County has already determined that SCQ's existing recycling facility can be located in the Hillsides zoning district and this use is compatible with surrounding land uses and will not significantly impact neighbors.[7] Similar to the existing recycling facility, importing aggregate from the Permanente Quarry would involve transporting material via truck for processing at a facility located in the Hillsides zoning district.

The type of material being transported – aggregate instead of concrete and asphalt for recycling – does not change the nature and intensity of the use. As recognized in the County's General Plan, "[i]ncreased truck traffic resulting from the transportation of recyclable materials to the site for processing would be the primary environmental impact of recycling centers."[8] Here, importing aggregate from the Permanente Quarry would create fewer traffic impacts than a recycling facility because transporting aggregate from one quarry to the other would not occur on County roads.

Accordingly, the County should determine that SCQ's proposed use is substantially similar to the surface mining and recycling facilities use classifications that are permitted in the Hillsides zoning district because all of these uses involve similar activities (i.e., transporting and processing materials).

B. Processing aggregate imported from an adjacent mine is clearly compatible with the intent of the Hillsides zoning district.

The City inaccurately describes the purpose of the Hillsides zoning district by suggesting that this district only protects the environment, watershed, ridgelines and viewshed, and surrounding

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surface mining (a permitted use in the Hillsides zoning district) and is, therefore, classified as a permitted incidental activity.

[7] County Staff Report, July 5, 1990, regarding modification of SCQ use permit to allow a recycling facility.

[8] General Plan, p. O-40.

low density environment. The Zoning Ordinance actually describes the purpose of the Hillsides zoning district as:

> The purpose of the Hillside[s] district, also known as the HS district, is to preserve mountainous lands unplanned or unsuited for urban development primarily in open space **and to promote those uses** which support and enhance a rural character, **which protect and promote wise use of natural resources**, and which avoid the risks imposed by natural hazards found in these areas. These lands are watersheds and **may also provide such important resources as minerals**, forests, animal habitat, rare or locally unique plant and animal communities, historic and archeological sites, scenic beauty, grazing lands, and recreational areas.[9]

As demonstrated by this quoted language from the Zoning Ordinance, the purpose of the Hillsides zoning district is not limited to protecting only certain natural resources such as watersheds and viewsheds. Instead, the purpose also includes promoting the development and wise use of mineral resources. The County cannot ignore this codified purpose that is expressly stated in the Zoning Ordinance.

Allowing SCQ to process aggregate mined from the Permanente Quarry is clearly compatible with this intent to promote the wise use of natural resources. SCQ's proposal would utilize aggregate material already on the Lehigh site and create another source of locally produced construction aggregate, without the need to create a new mine site elsewhere in the County.

C. The Santa Clara Valley Viewshed and Scenic Roads combining districts are not relevant to SCQ's zoning interpretation request.

The City concludes – without any evidence – that SCQ's proposed activities would somehow impact the viewsheds protected by the Santa Clara Valley Viewshed and Scenic Roads combining districts. To the contrary, there would be no change in visual impacts associated with processing imported aggregate because imported aggregate would be processed at an existing facility located at the SCQ Quarry.

Regardless, these combining districts do not describe specific use classifications that are permitted (or not) in areas subject to those combining districts. Instead, the Zoning Ordinance sets forth permitted uses for rural base districts such as the Hillsides zoning district.[10] A

[9] Zoning Ordinance, § 2.20.010C, emphasis added.

[10] Zoning Ordinance, § 2.20.020 ("The following tables, Tables 2.20-1 and 2.20-2, specify the allowable land uses for the rural base districts, listed by use classification as defined in Chapter 2.10.").

combining district could overlay a parcel with a rural base district, in which case development on that parcel would require a design review to "mitigate adverse visual impacts of development and encourag[e] quality design."[11] Accordingly, these combining districts only provide a process for mitigating visual impacts on a project specific basis and do not prohibit certain uses.

D. Processing local aggregate imported from an adjacent mine is compatible with the intent of the County General Plan and policies promoting the wise use of local mineral resources.

The City does not point to any County General Plan policies that would prohibit SCQ's proposal to process imported aggregate. The City, instead, claims that processing aggregate from the Permanente Quarry has very different impacts than mineral extraction, which the General Plan specifically allows in the Hillsides designation. This argument ignores that processing of aggregate already occurs at the SCQ Quarry, in compliance with the County Zoning Ordinance and General Plan. In fact, every aggregate mine in the state (hundreds of mines) includes a related aggregate processing plant. Processing aggregate imported from an adjacent mine does not change the nature of the processing activities already occurring at the SCQ Quarry and, instead, would have similar impacts as discussed above.

Further, SCQ's proposal to process aggregate from the Permanente Quarry is clearly compatible with the intent of the General Plan policies related to mineral development in the Hillsides designation. Part of the intent of the Hillsides designation includes "promot[ing] wise management of natural resources," including mineral resources.[12] The General Plan also allows commercial and industrial uses in the Hillsides designation where such uses support the "productive use … of the natural environment."[13] Processing imported aggregate is a wise and productive use of mineral resources because this activity reduces the amount of aggregate that would otherwise remain at the Permanente Quarry as a waste material, and without this import would otherwise eventually require development of a new mine site elsewhere in the County.

Aggregate from the Permanente Quarry would also create another source of local aggregate, which the County has already recognized as an important resource to protect. For example, when previously authorizing concrete and asphalt recycling facilities as a permitted use, the County recognized that "[t]he extraction of mineral resources, specifically construction aggregate, is essential to the continued economic well being of Santa Clara County."[14] The General Plan also

[11] Zoning Ordinance, §§ 3.20.010 (purpose of combining districts); 3.20.030 (design review required).

[12] General Plan, Policies R-LU 16 and R-LU 18, p. Q-3.

[13] General Plan, Policy R-LU 18, p. Q-3.

[14] County Staff Report, March 22, 1988 re "An ordinance to amend the Zoning Ordinance of the County of Santa Clara relating to concrete, asphalt and soil recycling and reprocessing facilities."

embodies this goal by recognizing that a local source of construction aggregate "is of fundamental importance to the economy of the county and region."[15] Allowing SCQ to process aggregate from the Permanente Quarry furthers this important goal, and is consistent with the policies already adopted by the County in the General Plan to promote the development of local mineral resources. This is not surprising as virtually every County General Plan in California[16] contains similar language because in fact aggregate is critical to maintain and develop infrastructure including roads, freeways, bridges, hospitals, schools, offices, solar and wind facility foundations, and homes. The Apple complex in Cupertino is one recent well-known example, as are every road and highway repair or improvement project in the County.

Likewise, State law also strongly encourages local aggregate production in order to reduce VMTs and GHGs.

> The Legislature further finds that the production and development of local mineral resources that help maintain a strong economy and that are necessary to build the state's infrastructure are vital to reducing transportation emissions that result from the distribution of hundreds of millions of tons of construction aggregates that are used annually in building and maintaining the state.

(See Cal. Public Resources Code § 2711(d), underline added.)

II. Concerns About Environmental Impacts Should Be Regulated Through the Use Permit and Environmental Review Process.

The City raises concerns about potential environmental impacts from processing imported aggregate, but it would be premature for the County to consider environmental impacts during the zoning interpretation process. Instead, as part of the zoning interpretation process, the County "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 most similar."[17] Here, the appropriate permitting process would be the use permit process required for the surface mining and recycling facilities use classifications. Accordingly, the County should review potential environmental impacts from processing imported aggregate during the EIR process for SCQ's application for a Use Permit and Reclamation Plan Amendment.[18]

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[15] General Plan, p. O-39, underline added.

[16] See, e.g., Amador County General Plan, p. E-28; San Diego County General Plan, p. 5-20; Los Angeles County General Plan, p. 154; Contra Costa County General Plan, Goal 8-M; Marin County General Plan, p. 8.7-4.

[17] Zoning Ordinance, § 2.10.020.A.1.

[18] See, e.g., *Wollmer v. City of Berkeley* (2009) 179 Cal.App.4th 933, 948 [city attorney's memorandum interpreting and applying state law as giving local agencies discretion to grant a greater density bonus to residential

The City also alleges that processing imported aggregate would perpetuate serious land use conflicts with nearby urban uses but fails to recognize that it is the SCQ Quarry– and not the surrounding urbanized areas – that under the County General Plan should be protected from incompatible land uses. As stated in the General Plan, "Existing sites and access routes for regionally significant [mineral] resources should be protected from incompatible land uses and development that would preclude or unnecessarily limit resource availability."[19] Further, under the General Plan, mineral resource sites "are a necessary use that must be accommodated with a minimum of disruption."[20] Under these policies, the County has an obligation to protect the SCQ Quarry from incompatible urban uses. These County policies are consistent with state law on the subject.[21] In addition, the City's letter appears to raise equity and environmental justice issues as the City proposes to reduce or eliminate blue-collar employment and mining in the area in order to reduce impacts on the City of Cupertino's wealthy, white-collar citizens.

III. Conclusion

Transporting aggregate via an internal haul road from the Permanente Quarry for processing at SCQ's existing processing facility is substantially similar to the surface mining and recycling facilities use classifications that are permitted uses in the Hillsides zoning district. This proposed use is clearly compatible with the intent of the County Hillsides zoning district and the County General Plan designation by promoting the wise use of a local source of aggregate, and is obvious by decades-long mining and aggregate processing at both the Lehigh and SCQ sites. In fact, not allowing the requested import would be an unwise waste of an existing resource in an already heavily disturbed setting in violation of County General Plan policies. In addition, such aggregate material is necessary for the entire County, including the City of Cupertino, to build, maintain and repair its roads, and construct its solar arrays and tech buildings. Accordingly, the County should interpret the Zoning Ordinance as allowing SCQ's proposal to process aggregate imported from the Permanente Quarry in the Hillsides zoning district.

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developments pursuant to the California Density Bonus Law is not a "project," as that term is defined by the California Environmental Quality Act ("CEQA"), and thus does not require environmental review pursuant to CEQA].

[19] General Plan, Policy C-RC 46, emphasis added.

[20] General Plan, p. O-42, emphasis added.

[21] See Cal. Pub. Res. Code § 2762 (incorporate mineral resource management policies in general plan that emphasize the conservation and development of identified mineral resources; additional review of uses that threaten extraction of minerals); see also 14 CCR § 3676 (mineral resource management policies required to restrict encroachment of incompatible land uses on identified mineral deposits and to impose conditions upon incompatible land uses to mitigate significant land use conflicts).

Sincerely yours,

MITCHELL CHADWICK LLP

Patrick G. Mitchell

cc: Roger Lee, City of Cupertino
Elizabeth Pianca, Santa Clara County
Jacqueline Onciano, Santa Clara County
Manira Sandhir, Santa Clara County
Jim Baker, Santa Clara County
Michael Rossi, Santa Clara County
Kristina Loquist, Santa Clara County
Jason Voss, Stevens Creek Quarry
Dan Boyle, Stevens Creek Quarry
David Brown, Benchmark Resources
Andrew White, Benchmark Resources
Chris Powell, Mitchell Chadwick LLP
Michael Sherman, Mitchell Chadwick LLP

Enclosure to Mitchell Chadwick Cover Letter, June 11, 2021
January 24, 1996 County Staff Report

County of Santa Clara

Environmental Resources Agency
Planning Office

County Government Center, East Wing
70 West Hedding Street
San Jose, California 95110
(408) 299-2454

STAFF REPORT

Date: January 24, 1996
P/C Meeting: February 8, 1996
Prepared by: Ransom Bratton
Reviewed by: Michael Lopez

File No: 1253-16-62-83P-83A-94P
Owner (Applicant): Stevens Creek Quarry, Inc.
Property Address: 12100 Stevens Canyon Road
Current Zoning: HS
GP Designation: Hillsides
Property Size: Parcel A: 62.43 Gr. Acres, Parcel B: 80.00 Acres
Current Land Uses: Existing quarry with reclamation plan, and ancillary truck and equipment rental/storage use. The quarry includes facilities for recycling of concrete, dirt, asphalt, native materials, and the City of Cupertino, community recycling, staging and composting storage area. A horse boarding stable is also located on the site and is conditioned under a separate use permit.
Supervisorial District: 5

Recommended Action:

Based upon the memorandum from Jim Lewis, Deputy County Counsel, dated January 24, 1996, it is recommended that the Planning Commission continue this item to its regular meeting of April 4, 1996, in order to receive evidence and argument relative to specific factual issues as outlined in the attached Exhibit "A".

Project/Proposal Description:

On October 6, 1983, the Planning Commission granted a modification to an existing use permit and approval of a reclamation plan for a portion of an existing quarry, Parcel A, and an approval of a reclamation plan for Parcel B of an existing quarry, (see vicinity map, Exhibit "B"). The use permit modification included an enlargement of the area covered by a use permit originally issued on September 20, 1950, to Anthony and Vida Voss. Subsequently on September 28, 1955, the Planning Commission then granted a name change for the subject permit to Stevens Creek Quarry, Inc. Both the applicant and City of Cupertino appealed the decision of the Planning Commission to the Board of Supervisors.

At the Board of Supervisors hearing of December 6, 1983, there was discussion between the applicant's attorney and Board members for the need of coordination of the quarry operations on

the two portions of the property, Parcels A and B, see letter from James Lewis to John Taylor, dated January 17, 1996 and accompanying transcript of proceedings, (Exhibit "C").

On January 10, 1984, the Board of Supervisors, on appeals by both the applicant and City of Cupertino, upheld the granting of the use permit and its reclamation plan, for Parcel A portion of the Stevens Creek Quarry with changes in the conditions of approval, most noticeably the hours of operations. At the same time the Board of Supervisors granted the reclamation plan approval for the Parcel B portion of the quarry.

On September 11, 1984, the Board of Supervisors modified the use permit's hours and days of operation by incorporating a "Good Neighbor Committee's" recommendations, see condition #13 of the use permit in a memo dated April 7, 1986, see Exhibit "D" of December 7, 1995 staff report.

Since that date the use permit has been modified and renewed a number of times by both the Planning Commission and the Board of Supervisors. See the memorandum from James Lewis, Deputy County Counsel of October 28, 1995, for a more complete historical summary of public hearings and issues concerning the quarry's operation over the past twelve years.

One of the more important issues addressed during that times that of the traffic generated by the trucking and equipment rental/storage use on the property. This issue was resolved by the Planning Commission and Board of Supervisors as being an ancillary use, and subject to the conditioning authority of the Commission as any other aspect of the activities authorized by the use permit, see the memorandum of October 28, 1995 by James Lewis on the deliberations and resolution of this issue by the Board of Supervisors and Planning Commission, Exhibit "D" of December 7, 1995 staff report.

On July 5, 1990, the Planning Commission granted a renewal of the use permit for 20 additional years subject to original conditions with modifications, deleted a 20 acre portion of the property from the use permit, and modified the use permit to allow the recycling of materials such as natural earth, asphalt and concrete at the quarry, subject the applicant obtaining an ASA permit. The City of Cupertino appealed the Planning Commission's decision for the length of the time extension.

On August 28, 1990, the Board of Supervisors denied the appeal of the City of Cupertino but renewed the use permit for a 5 year period rather than the 20 years as originally requested by the applicant. The Board also requested that the property owner submit an annual report of the number of trucks being serviced by the quarry. Subsequently the applicant maintained that he had a problem with this request because it directly revealed to his competitors the volumes of business he was generating. Consequently staff never received specific annual reports on truck trips.

On November 8, 1990, following resolution of the issues of the appeal of this use permit, an Architectural and Site Approval Permit with conditions was issued to the applicant, see Exhibit "D" , conditions of the use permit in the December 7, 1995 staff report.

Sometime in October 1993, the City of Cupertino made an agreement with the property owner to use a 1.1 acres portion of the site, in the designated recycling area, for its composting program and a staging area for the recycling program. Since the time of the agreement the area has ceased to be a staging area for recycling goods, and only the compost pick-up program remains on the site. It is currently located behind the perimeter berm adjacent to Stevens Canyon Road.

On October 12, 1994, the applicant made an application for renewal of the use permit for an additional twenty-five year time period. The current use permit was due to expire on October

2, 1995. The applicant stated that the reason he filed an early renewal application was because he needed to have at least a 25 year life on the quarry's use permit in order to obtain a surety bond for the a quarry reclamation plan's financial assurance. The financial assurance was made a requirement by a 1991 amendment of the State Surface Mining and Reclamation Act, as well as County ordinance.

On February 18, 1995, the Planning Commission granted a renewal for a period of 20 additional years, renewable, subject to the original conditions of approval dated January 10, 1984, and all subsequent modifications, including the ASA conditions for recycling, and subject to a number of modifications an/or additions to the permit; see Exhibit "D", staff report for December 7, 1995 meeting. One of the conditions added to the permit was for a status report to be submitted to the Planning Commission on compliance with the conditions at the September 1995 meeting, see Exhibit "D", conditions of use permit added on February 18, 1995. One condition added was condition "a" which was the requirement for the applicant to supply monthly vehicle traffic reports of trucks serviced by the quarry, (see Condition a. of the February 18, 1995 use permit document for the specific wording of the condition.) Subsequently the applicant and staff agreed that the applicant would submit vehicular (truck) totals at six-month reporting intervals by a method proposed by the applicant. The permit's stipulated that only percentages of increase and decrease was to be available to the public with the totals to be remain as propriety information. Again this request was an effort to accommodate the applicant's desire not to reveal to the competition his volume of production and sales. The condition for the traffic report was made by the Planning Commission in response to request by residents living along the haul route between the quarry and US 280.

At its regular meeting of September 7, 1995, the Planning Commission, following the reception of a status report relating to compliance with use permit conditions, voted to agendize the use permit for reaffirmation, modification or revocation at its meeting of December 7, 1995. At that meeting the Commission heard an oral report Staff along with a letter from the applicant's representatives regarding compliance with conditions. In addition the Commission received both oral and written testimony from neighboring residents of the site expressing concerns regarding certain activities on the site. The majority of the neighbors reside in a subdivision located along the southerly border of Parcel B area of the quarry. This subdivision was developed since the time of the use permit hearings during the 1980s and early 1990s. The Commission heard evidence from the neighbors about a significant rise in the level of quarrying activity in Parcel B portion of the quarry. The mains concerns of the neighboring residents were related to the increased duration and intensity of activity Their main concerns dealt with 1) days and hours of activity on the Parcel B portion of the site, 2) noise, 3) dust, and 4) lighting. In addition, one resident questioned whether the permittee obtained necessary building permits for the installation of additional modular units at the office and truck weighing location at the quarry's entrance and at the rock crushing facility. (Subsequently the Chief Building Official, Tom Shih, visited the site and determined that the modular units were mobile and subject to California Vehicular Code and not regulated by the Uniform Building Code, and that the rock crushing facility was mechanical equipment and not subject to building codes.)

At the September meeting the Planning Commission directed the permittee to work with the "Good Neighbor Committee" in the interim time between then and December 7th to resolve issues of concern including hours of operation, dust, noise, and bright lights. At the December 7, 1995 meeting, John Gibbs, land use aide for Supervisor McKenna, who has acted as the coordinator for the Committee, reported that little progress had been made towards resolution of the concerns between the permittee and neighbors. The Committee had met on two occasions, both meetings were devoted to identification of the problems. A subsequent meeting was held on January 23, 1996 on the issues.

At its meeting of December 7, 1995, following hearing testimony by Staff and members of the public living in the vicinity of the quarry the Planning Commission voted to interpret that the legal non-conforming use had substantially expanded beyond its historical scale and nature. The Commission also reaffirmed that the use permit hours of operation applied to the entire site, meaning both Parcels A and B, and all functions of the operation located there on. The Commission then continued the revocation, modification or reaffirmation hearing to this date. The minutes of the December 7, 1995 meeting are attached to this report as Exhibit "E".

At a subsequent public hearing staff will be recommending a number of permit condition modifications such as those contained in the staff recommendation of report for the December 7, 1995 meeting, along with recommendations for reinstallation of screening landscaping along the site perimeter berms and reduction in height of the recycling storage piles.

Included with this report are the following attachments:

EXHIBIT "A" - Memorandum from Jim Lewis dated January 24, 1996, with attached appellate report of January 10, 1996, relating to Supreme Court case of Hansen Brothers Ent. vs. the Board of Supervisors of Nevada County.

EXHIBIT "B" - Vicinity Map.

EXHIBIT "C" - Letter from Jim Lewis to John Taylor dated January 17, 1996, with attached transcript of the December 6, 1983 hearing regarding the Superior Court Case of City of Cupertino vs. Santa Clara County Board of Supervisors.

EXHIBIT "D"- Staff report submitted for the December 7, 1995, Planning Commission meeting with attached exhibits.

EXHIBIT "E" - Minutes of the December 7, 1995, Planning Commission meeting relating to the Stevens Creek Quarry item.

Enclosure to Mitchell Chadwick Cover Letter, June 11, 2021
May 20, 2021 License Agreement with Lehigh

LICENSE AGREEMENT

This License Agreement (hereinafter, this "**Agreement**") is made by and between **Lehigh Southwest Cement Company**, a California corporation ("**Licensor**") and **Stevens Creek Quarry, Inc.**, a California corporation ("**Licensee**," and collectively with Licensor, the "**Parties**," and each individually, a "**Party**").

RECITALS

A. Licensor and Hanson Permanente Cement, Inc. entered into that certain *Master Agreement Regarding Permanente Cement Plant, Quarry, and Rock Plant*, and that certain *Quarry Mineral Lease Agreement*, each of which was dated July 1, 2008 (the "**HPC Agreements**").

B. Pursuant to the HPC Agreements, Licensor is the lessee and authorized operator of the real property and improvements located at approximately **12100 Stevens Canyon Road, Cupertino, CA 95014** and consisting of Assessor Parcel Numbers **351-10-017, 351-10-033, 351-10-039**, and **351-11-001** in Santa Clara County (the "**Property**"). Within the Property is an open pit mine area commonly referred to as the Permanente Quarry (the "**Quarry**").

C. An area consisting of approximately nine and one-half (9.5) acres of the Property is subject to Licensee's continuing mining reclamation obligations pursuant to the *Stevens Creek Quarry Amended Reclamation Plan* adopted in May 2007, and revised in January 2008 (the "**Reclamation Plan**").

D. Licensor desires to grant to Licensee, and Licensee desires to accept from Licensor, a non-exclusive, limited license for Licensee's use of that portion of the Property subject to the Reclamation Plan , as more fully described on **Exhibit A** (the "**License Property),** for the purpose of Licensee's performance of its obligations under the Reclamation Plan (the "**Permitted Purpose**").

NOW, THEREFORE, subject to the conditions contained in this Agreement, and for and in consideration of the mutual agreements herein, and other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the parties, intending to be legally bound by this Agreement, hereby agree as follows:

1. License. Licensor grants to Licensee the non-exclusive limited license for use of the License Property (the "**License**").

2. Term. The term of the license granted hereby ("**Term**") shall commence on May 1, 2010 ("**Commencement Date**") and shall continue thereafter for a period of one hundred sixty-eight (168) months, after which the Term shall automatically terminate on April 30, 2024 ("**Expiration Date**").

3. Termination. Licensor shall at all times have the right to terminate this Agreement, in Licensee's sole and absolute discretion, upon thirty (30) days' prior written notice to Licensee.

4. Nonassignability. The License is personal to the Licensee. Licensee shall not assign the License to any other person or entity. Any attempted assignment of the License shall be null and void, shall terminate this Agreement and the License, and shall put Licensee in default of this Agreement. Licensee shall not permit any other party, excepting Licensee's employees and agents, to enter or use the License Property.

5. Licensee License Fee.

(a) In exchange for Licensor's grant of the License, the Licensee shall pay to Licensor a license fee in the amount of $0.00 per month ("**License Fee**"), which shall be payable in advance on the first day of each calendar month throughout the Term. If the Commencement Date occurs on a day other than the first day of a calendar month, the License Fee for the first partial month shall be prorated on a basis of a 30-day month and shall be paid on or before the Commencement Date. [consider whether to add an annual adjustment to License Fee provision] On January 1 of each year during the Term, the License Fee shall increase by Three Percent (3.0%) of the prior year's License Fee.

(b) Licensee's failure to pay the License Fee promptly when due will cause Licensor to incur unanticipated costs. The exact amount of such costs is impractical or extremely difficult to ascertain. If Licensor does not receive any monthly License Fee within ten (10) days after it becomes due, Licensee shall pay Licensor a late charge in an amount equal to ten percent (10%) of the overdue amount. The parties agree that such late charge represents a fair and reasonable estimate of the costs Licensor will incur by reason of any such late payment. Acceptance of such late charges by Licensor shall in no event constitute a waiver of Licensee's default with respect to such overdue amount, nor prevent Licensor from exercising any of the other rights and remedies granted hereunder.

(c) If Licensee fails to pay within ten (10) days of the date due the License Fee or any other amounts which Licensee is obligated to pay under this Agreement, the unpaid amounts shall bear interest at rate of 18% per annum, not to exceed the maximum rate then allowed by law.

6. **Security Deposit**. Licensee shall deliver to Licensor, on or before the Commencement Date and prior to Licensee's occupancy of any portion of the License Property, a security deposit in the amount of $0.00 ("**Security Deposit**") for the performance by Licensee of its obligations hereunder. If Licensee defaults with respect to any provision of the Agreement, Licensor may (but shall not be required to) use, apply or retain all or any part of the Security Deposit for the payment of any License Fee or any other sum in default, or for the payment of any other amount which Licensor may spend or become obligated to spend by reason of Licensee's default or to compensate Licensor for any other loss or damage which Licensor may suffer by reason of Licensee's default.

7. **Utilities**. Licensee acknowledges that Licensor makes no representation as to availability of utilities at the License Property. Upon prior written approval by Licensor, Licensee may install or extend additional utilities to the License Property. Unless otherwise stipulated in this Agreement, all charges and fees for installation, activation, and use of any utility by Licensee at the License Property, including but not limited to gas, electricity, water, sewer, and telephone, shall be at Licensee's sole cost and expense.

8. **Personal Property Taxes**. Licensee shall pay all taxes and license fees levied, assessed or imposed by reason of Licensee's use of the License Property, and all taxes on Licensee's personal property located on the License Property.

9. **Entity**. Licensee represents and warrants to Licensor that it is a corporation duly organized and validly existing and in good standing under the laws of the State of California., and Licensee is duly qualified to do business and is in good standing in the State of California.

10. **Covenants of Licensee**. Licensee covenants and agrees as follows:

(a) **Use**. Licensee shall only use the License Property and Access Route for the Permitted Purpose. Licensee shall at all times keep the License Property in a neat and clean condition. Licensee shall not, during the Term: (i) commit any waste or suffer any waste to be committed upon the License Property or other portions of the Property; (ii) commit any public or private nuisance; or (iii) burn refuse or other materials in or about the License Property.

(b) **License Applicable to Reclamation Only**. Licensee acknowledges and agrees that the License shall authorize Licensee's use of the License Property for reclamation activities only pursuant to the Reclamation Plan, and shall not authorize Licensee to mine, extract, or otherwise exploit the in-place natural resources at the License Property. Any such resources extracted as a result of Licensee's performance of its obligations under the Reclamation Plan shall at all times remain the property of Licensor, and Licensee shall not remove any such resources from the License Property without the advance written consent of Licensor.

(c) **Permits**. Licensee shall hold all permits and approvals required to operate Licensee's business that is related to the Permitted Purpose, and Licensee represents that all such permits are current and in good standing. Upon request from Licensor, Licensee shall promptly deliver to Licensor copies of all such permits and approvals.

(d) Conditional/Major Use Permit. Licensee acknowledges the existence of the Reclamation Plan, as amended, that is applicable to the License Property, as such was prepared for and authorized by the County of Santa Clara, and agrees to conform to all applicable conditions contained therein.

(e) Compliance with Laws. Licensee shall comply with all applicable laws, regulations, orders, judgments and decrees applicable to the Licensee's business.

(f) Continue Representations and Warranties. Licensee agrees that its representations and warranties in this Agreement shall continue to be true and accurate for all periods during the Term of this Agreement.

(g) Mechanics' Liens. Licensee shall not suffer or allow to be enforced against the Property, or any part thereof, any mechanic's, materialman's, contractor's or subcontractor's lien arising from, or any claim for damages growing out of the work of any construction, repair, restoration, replacement or improvement, or any other claim or demand against the Property (or any portion thereof) arising out of or related to Licensee's entry upon or use of the License Property. Licensee agrees that it shall promptly pay or cause to be paid, and cause to be removed all of such liens, claims or demands before any action is brought to enforce the same against said Property. Licensee agrees to fully indemnify and hold Licensor and said Property free and harmless from all liability for any and all such liens, liabilities, damages, claims and demands, together with reasonable attorneys' fees and all costs and expenses in connection therewith.

(h) Governmental Claims. Licensee shall supply to Licensor as promptly as possible, and in any event within five (5) business days after Licensee first receives the same from any governmental agency, with copies of all claims, reports, complaints, notices, warnings, enforcement actions or asserted violations relating in any way to the License Property or Licensee's use thereof.

(i) Hazardous Materials.

(1) "**Hazardous Materials**" as used in this Agreement means any one or more pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, solvent or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, the Federal Clean Water Act, as amended, or any other Federal, State or local environmental law, regulation, ordinance, or rule, whether existing as of the Effective Date or subsequently enacted.

(2) Licensee shall not generate, use, discharge, treat, store or transport any Hazardous Materials on, to or from the Property, including without limitation the License Property. Notwithstanding the foregoing, Licensee may transport and store motor oils, fuels, greases, and other materials approved in writing in advance by Licensor but only if such materials are stored in secondary containment.

(j) [Fire Prevention. Licensee shall be obligated to water the Road prior to entry, and continue to water the Road while Licensee Parties are using the Road, in an amount reasonably sufficient to limit the potential for fire. Licensee and its agents and employees shall not conduct any Hot Work in, on, or near the Road. "**Hot Work**" means cutting, welding, soldering, grinding, or any other similar activities producing a spark, flame, or heat.]

(k) [MSHA Compliance. Prior to accessing the License Property or Access Route, all employees and agents of Licensee who intend to access the License Property or Access Route must complete MSHA Site Specific Training with Licensor plant management.]

(l) Non-Interference. While using the License pursuant to this Agreement, Licensee shall not unreasonably interfere with Licensor's business or use of the Property.

(m) **Insurance**. Licensee shall obtain prior to the Commencement Date and shall maintain during the Term, at its own expense, the following insurance coverage: (i) commercial general liability insurance with coverage limits of not less than $1,000,000 per occurrence and $1,000,000 in the aggregate insuring against personal injury, death and property damage, and $1,000,000 for broad form contractual liability and completed operations; (ii) comprehensive business automobile, truck and vehicle liability insurance covering all owned, hired or non-owned vehicles used in connection with its access hereunder with coverage limits of not less than $1,000,000 per occurrence; (iii) workers' compensation as required by statute and employers' liability insurance with limits of not less than $1,000,000 per accident; (iv) environmental insurance applying to its use of the License Property with a minimum combined single limit of at least One Million Dollars ($1,000,000.00) and shall include broad form contractual liability insurance coverage insuring all of Licensee's environmental indemnity obligations under this Agreement; and (v) Excess or umbrella liability insurance in an amount not less than $5,000,000, written on an occurrence basis providing coverage limits in excess of the insurance limits required under. Licensor shall be listed as an additional insured on all such insurance policies (except workers compensation). All policies of insurance to be provided for herein by Licensee shall be issued by companies having not less than Best's A rating/Class IX or approved by Licensor in its business judgment. Prior to Licensee's access to the Property, Licensee shall furnish Licensor a certificate from a reputable broker which evidences the kinds of insurance and the limits specified hereunder, provides that such insurance shall not be cancelled except on 30 days' prior written notice to Licensor, and identifies Licensor as an additional insured as to the commercial general and auto liability coverage.

Commented [REM1]: Ana said $5 - $10 million for umbrella coverage

(n) Maintenance and Repairs. Licensee shall immediately, at Licensee's sole cost and expense, repair any and all damages to the Property caused directly or indirectly by Licensee, or any of its employees, agents, or sublicensees/invitees. Licensee shall maintain the License Property in a condition that is at least as good as when it was received. In addition to its other remedies under this Agreement or available under law or equity, Licensor may, upon Licensee's breach of any provision of this subsection which is not completely cured within three (3) days after Licensor's notice thereof to Licensee, enter onto the License Property and exercise all reasonable self-help remedies to cure that breach and charge Licensee the costs therefor, which Licensee shall pay on demand.

(o) Alterations. Licensee shall not make any alterations to the License Property, other than those alterations set forth in the Reclamation Plan, without first obtaining the prior written consent of Licensor, which may be withheld in its sole discretion. All such alterations shall be at Licensee's sole cost and expense.

11. License Property. Licensee has inspected the License Property and agrees to maintain the same in said condition. Licensor makes no representation or warranty regarding the condition of the License Property, and Licensor shall not be required to perform any work or furnish any materials in order to prepare the License Property for Licensee's occupancy and use. Licensor makes no representation or warranty of merchantability or fitness for a particular purpose concerning the License Property, including any routes of ingress or egress. Licensee accepts the License Property as-is, where-is, and with all faults as of the Commencement Date.

12. **LIMITATION OF LIABILITY. IN NO EVENT SHALL LICENSOR BE LIABLE TO LICENSEE FOR ANY PUNITIVE, INDIRECT, CONSEQUENTIAL, SPECIAL, OR INCIDENTAL DAMAGES, INCLUDING LOSS OF GOODWILL OR LOSS OF PROFITS. LICENSEE ACKNOWLEDGES AND AGREES THAT, WHILE LICENSOR MAY (BUT SHALL NOT BE OBLIGATED TO) PATROL THE PROPERTY, LICENSOR IS NOT PROVIDING ANY SECURITY SERVICES FOR LICENSEE'S BENEFIT WITH RESPECT TO THE PROPERTY, LICENSE PROPERTY, OR ACCESS ROUTE, AND THAT LICENSOR SHALL NOT BE LIABLE TO LICENSEE FOR, AND LICENSEE WAIVES ANY CLAIM AGAINST LICENSOR WITH RESPECT TO, ANY LOSS BY THEFT OR ANY OTHER DAMAGE SUFFERED OR INCURRED BY LICENSEE IN CONNECTION WITH ANY UNAUTHORIZED ENTRY INTO THE PROPERTY, THE LICENSE PROPERTY, OR ANY OTHER BREACH OF SECURITY WITH RESPECT TO THE PROPERTY, LICENSE PROPERTY, OR ACCESS ROUTE.**

13. Site Relocation. Licensor shall maintain the right to relocate Licensee, at Licensee's expense, to another location reasonably comparable to the License Property, upon thirty (30) days prior written notice to Licensee by Licensor. Nothing herein shall limit Licensor's right to terminate this Agreement pursuant to Section 3 above.

14. Entry by Licensor. Licensor shall be entitled, at all reasonable times and without prior notice, to go on the License Property for any purpose whatsoever, including for the purpose of inspecting the License Property, or for the purpose of inspecting the performance by Licensee of the terms and conditions of this Agreement, or for the purpose of posting and keeping posted thereon notices of non-responsibility for any construction, alteration or repair thereof, as required or permitted by any governmental authority.

15. Relationship of the Parties. The parties intend by the foregoing grant only to afford Licensee certain restricted contractual rights to use the License Property and Access Route as set forth herein, and not to create the relationship of landlord and tenant. This Agreement is not a lease of the License Property or Access Route and shall not be deemed or construed as such. This Agreement shall not be construed to constitute any form of partnership or joint venture between Licensor and Licensee.

16. Damage and Destruction. Licensor shall have no responsibility in the event of any damage to or theft of any equipment or property of Licensee. If the License Property or Access Route is destroyed or damaged by fire or other casualty, (i) the License Fee shall be abated entirely if all or substantially all of the License Property is damaged and rendered entirely un-useable for the Permitted Purpose under the limits set forth in the License, (ii) the License Fee shall be abated proportionately if a portion of the License Property is damaged and rendered un-useable for the Permitted Purpose under the limits set forth in the License, , and (iii) the License Fee shall be abated entirely if the Access Route is rendered entirely un-useable to access the License Property, provided however that if the Access Route is rendered un-useable to access the License Property, in Licensor's sole discretion, Licensor may grant Licensee alternative access to the License Property ("Alternative Access"). Such rent abatement shall start from the date of the casualty to the date by which Licensor shall have repaired and restored the License Property or Access Route to substantially the same condition it was in prior to the occurrence of such casualty, or, with respect to the Access Route, Licensor grants Licensee Alternative Access.

17. Condition on Expiration or Termination. Upon the expiration or termination of the Agreement, Licensee shall immediately remove any improvements made to, and any of Licensee's property from, the License Property, and restore the License Property to a condition that is at least as good as when it was received. Licensee shall be obligated to pay Licensor the monthly License Fee until such time as Licensee has satisfied this provision. If Licensee's property is not removed prior to the expiration or termination of the Agreement, such property shall be deemed abandoned to Licensor. Licensee shall be obligated to pay for the cost of Licensor's disposal of such property. Nothing in this provision shall affect Licensor's rights to obtain any further damages for Licensee's breach of this provision.

18. Indemnity. Licensee agrees to indemnify, defend and hold harmless Licensor and its affiliates, and their respective officers, directors, employees, and agents from and against all suits, liabilities, expenses (including attorney's fees and costs), demand, damages (to person or property and including consequential damages), claims, and actions of every kind by reason of: (a) any breach, violation, or nonperformance of any terms or conditions on the part of the Licensee hereunder; (b) use or occupancy of the Property, whether negligent or not or whether proximate or remote, by Licensee, its invitees, or their respective employees or agents whether by expressed or implied invitation of Licensee and their employees and agents; (c) any Hazardous Materials generated, discharged, used, treated, stored, or transported by Licensee, its invitees, or their respective employees or agents, on, to, or from the Property, License Property, and Access Route, and (d) the failure to comply with any Hazardous Materials law by Licensee, its invitees, or their respective employees or agents. Licensee, as a material part of the consideration to Licensor, hereby assumes all risk of damage to or theft of property or injury to persons, in, upon or about the License Property or the Property arising from any cause, and Licensee hereby waives all claims in respect thereof against Licensor. Licensor shall not be liable at any time for any loss, damage or injury to the property or person of any person whomsoever at any time occasioned by or arising out of any act or omission of Licensee, or of anyone holding under Licensee or the use of the License Property or Access Route by or under Licensee, or directly or indirectly from any state or condition of the License Property or any part during the Term, other than arising from

the willful misconduct of Licensor. This Indemnity section shall survive completion, expiration, or termination of this Agreement.

19. Miscellaneous.

(a) Notices. Any notice or other communication required or permitted pursuant to this Agreement shall be in writing, addressed as set forth below, and shall be either (i) personally delivered, (ii) sent by a nationally-recognized overnight delivery service, or (iii) sent by certified or registered mail, postage prepaid, return receipt requested. Notices shall be deemed to occur on the earlier of the date of actual delivery to addressee if delivered personally or by overnight delivery service, or three (3) business days from the date the notice was deposited in the United States mail.

The monthly License Fee and all other sums payable by Licensee to Licensor hereunder shall be paid to Licensor as follows:

Lehigh Hanson, Inc.
ATTN: Mineral Resources
PO Box 660225
Dallas, TX 75266

All other notices, demands or requests from Licensee to Licensor shall be given to Licensor addressed as follows:

Lehigh Southwest Cement Company
ATTN: Keith Krugh
3000 Executive Parkway, Suite 240
San Ramon, CA 94583

All notices, demands or requests from Licensor to Licensee shall be given to Licensee addressed as follows:

Stevens Creek Quarry, Inc.
ATTN: Jason Voss
12100 Stevens Canyon Road
Cupertino, CA 95014-5415
Tel: (408) 253-2512
Fax: (408) 257-4614

Either party may change its address for notice pursuant to this Agreement upon providing written notice to the other party.

(b) Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the subject matter in this Agreement and supersedes all prior discussions and agreements, written or oral, with respect to such matters.

(c) Bankruptcy. The occurrence of any of the following shall constitute a default by Licensee: Licensee's making a general assignment or general arrangement for the benefit of creditors or initiating or becoming the subject of a case or proceeding under any law, either now in effect or hereafter enacted, relating to bankruptcy, insolvency, reorganization or other debtor relief that is not dismissed within thirty (30) days.

(d) Brokers. Each party represents and warrants that it has not had any dealings with any realtors, brokers or agents in connection with the negotiation of this Agreement, and each party agrees to indemnify, defend, and to hold the other harmless from, any cost, expense or liability for any compensation, commission or charge claimed by any other realtors, brokers or agents claiming by, through or on behalf of it with respect to this Agreement.

(e) Successors in Interest. If the License Property or Property are sold, or the ownership interest is otherwise transferred, the successor-in-interest of Licensor shall be deemed the assignee of all rights arising hereunder, and shall be entitled to enforce the provisions of this License as against Licensee.

(f) Authority. Each of persons signing this Agreement on behalf of the respective parties expressly warrant and represent that he or she has the full and complete authority to execute the Agreement on behalf of that party.

(g) No Waiver. No failure by either Licensor or Licensee to insist upon the strict performance by the other of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy consequent upon a default or breach thereof, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, condition, agreement and term of this Agreement shall continue in full force and effect with respect to any other than existing or subsequent breach.

(h) Amendment. No change or modification of this Agreement shall be valid unless the modification is in writing and signed by all of the parties. Each party shall be given written notice of any amendment of any section of this Agreement.

(i) Force Majeure. The obligations of each of the parties under this Agreement (other than the obligations to pay money) shall be temporarily excused if such party is prevented or delayed in performing such obligations by reason of any cause that is beyond its reasonable control and is reasonably unforeseeable, including strikes, lockouts or labor disputes; government restrictions, regulations, controls, action or inaction; civil commotion; pandemics/epidemics, and extraordinary weather, fire or other acts of God.

(j) Choice of Law and Venue. This Agreement shall be governed by, and construed in accordance with the internal laws (as opposed to conflict of law provisions) of the State of California. The parties submit to the jurisdiction and venue of any dispute to the California courts. Each party irrevocably waives any objection to venue.

(k) Attorney's Fees and Costs. If any action at law or in equity is necessary to enforce or interpret any of the rights and obligations under this Agreement, the prevailing party in such action shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which the prevailing party may be entitled. For purposes of this Section, the "Prevailing Party" shall be that Party who, in light of the issues litigated and the court's decision on those issues, was determined by the court to be more successful in the action, but need not be the Party who actually received a judgment.

(l) Dispute Resolution. The Parties agree that it is in their best interest to resolve any dispute without litigation. Therefore, any Party who has a dispute under this Agreement must notify the other Party in writing of the nature of the dispute and the damages which the Party is seeking. Either Party has a right to make reasonable requests for documentation to support the facts which are alleged by a Party. If the Parties cannot resolve the dispute within thirty (30) days of receipt of written notice of the dispute, then the dispute shall be referred to a mutually agreeable mediator for non-binding mediation. If the Parties cannot resolve the dispute during non-binding mediation, then either Party may file a lawsuit.

(m) Headings. The section and subsection headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

(n) Counterparts. The parties may execute this Agreement simultaneously in two (2) or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument. Facsimile and electronically scanned signatures shall be sufficient as an original signature.

(o) Drafting of Agreement. This Agreement shall be deemed jointly drafted by all parties, and the provisions of California Civil Code section 1654 shall not apply.

This Agreement is executed on this, the 20th day of May, 2021.

LICENSOR

LEHIGH SOUTHWEST CEMENT COMPANY

By: Keith A. Krugh

Title: Dir. of Sustainable Manufacturing_

LICENSEE

STEVENS CREEK QUARRY, INC.

By: Jason Voss

Title: Op. Manager

Exhibit A

License Property

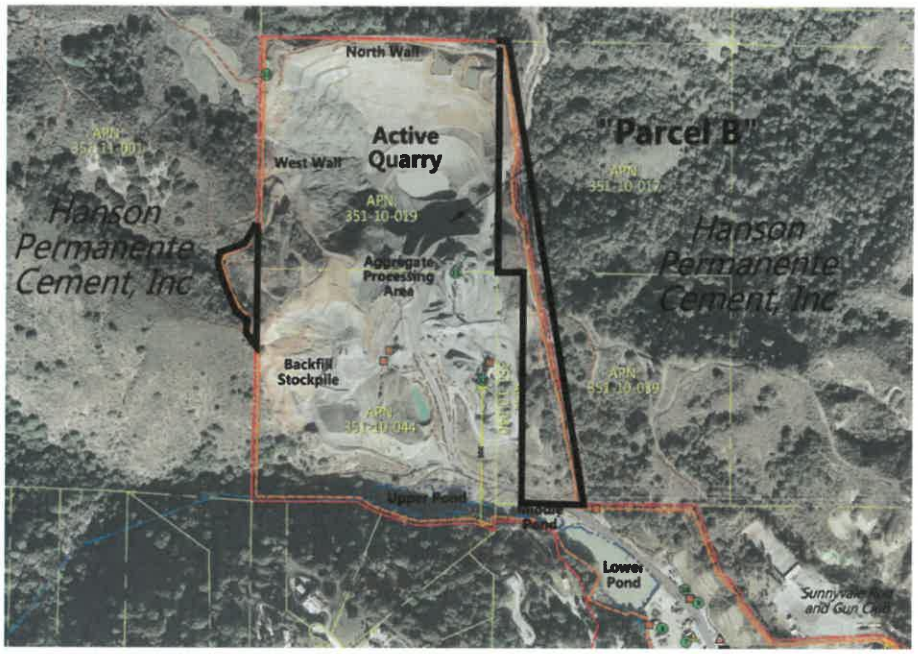

Exhibit B

Description of Access Route

Access to the Hanson Permanente Cement, Inc. (HPCI) property sites outlined in heavy black on Exhibit A, will be via the Stevens Creek Quarry Roadways which connect to HPCI property roadways, to which access is also granted under the conditions of this agreement.