



CITY MANAGER'S OFFICE

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July 3, 2019

Robert Salisbury
County of Santa Clara
70 West Hedding Street
East Wing, Seventh Floor
San Jose, CA 95110
Robert.Salisbury@pln.sccgov.org

Dear Mr. Salisbury,

Lehigh Southwest Cement Company (“Lehigh”) recently submitted an application for a Major Reclamation Plan Amendment for the Permanente Quarry (“Application”), which proposes significant departures from past approvals and raises grave concerns for the City.

In its Application, Lehigh proposes to transfer aggregate from its own property, located just west of Cupertino, to the neighboring Stevens Creek Quarry (“SCQ”). Lehigh proposes to do so either by resuming use of an internal “Utility Road” that it improved illegally last year, without permits from the City or County, or via an alternative “Rock Plant Haul Road” that would climb an even steeper route over the ridge between the two properties. Such activity is not encompassed in Lehigh’s vested rights, which the County defined as “continued surface mining operations.” Instead, shipping aggregate offsite is a distinct activity for which Lehigh has no legal precedent, much less a vested right. Accordingly, the County should require the Lehigh apply for a use permit and conduct a full environmental review for this expansion of both its and SCQ’s operations.

As the City explained in its January 31, 2019 letter to the County objecting to SCQ’s and Lehigh’s unpermitted and illegal hauling operations, the proposed Utility Road raises significant concerns, including those related to emissions, seismic stability, and ridgeline protections and views. The proposed route also crosses into the City (and the alternative Rock Plant Haul Road only exacerbates each of the City’s concerns by climbing higher over the ridge). In considering whether Lehigh should be permitted to haul its aggregate to SCQ, the County should also assess the extent to which doing so will extend the useful life of the both Lehigh’s operations and SCQ beyond what was contemplated when Lehigh obtained its vested rights determination.

The Application also includes a drastic departure from the Quarry’s existing reclamation plan. Rather than backfilling the North Quarry with material available onsite

in the West Materials Storage Area, as set forth in the 2012 Reclamation Plan, the Application proposes to import up to *1 million cubic yards* of soil each year to backfill the North Quarry. Despite its study's acknowledgment that transporting 1 million cubic yards of soil will require 200,000 trips to and from the Quarry annually, Lehigh fails to acknowledge the significant local impacts of this truck traffic. Roughly 548 truck trips to and from the Quarry *per day* (if operations ran every day of the year) will have an extraordinary and wholly unacceptable impact on the City's residents, streets, and infrastructure. These will include, at a minimum, exacerbating traffic concerns related to congestion, queuing, spilling of debris, pedestrian and bike safety, and blocking of intersections; degrading air and water quality; and causing significant deterioration of City streets and infrastructure.

Both the enormous increase in truck traffic related to the proposed reclamation of the North Quarry and the traffic that will result from SCQ's expanded sales of Lehigh's aggregate highlight the need for a truck plan setting meaningful limits on daily trips, time of operations, queuing, and enforcement problems. The County should ensure that any consideration of Lehigh's Application includes meaningful conditions and recourse for the City, which has borne the brunt of both quarries' recent illegal hauling operation, as recognized in the County's February 15, 2019 Notice of Violation to SCQ and its February 20, 2019 Draft Notice regarding Lehigh's Haul Road Reclamation Plan Amendment.

Lehigh's Application is entirely silent about the pre-application for a Use Permit and Major Reclamation Plan Amendment submitted by SCQ, which proposes to import up to 1 million tons of material from Lehigh each year for processing and sale, along with an additional six to seven million tons of fill with which to reclaim that quarry. The cumulative effects of these projects are obvious and must be addressed, including by carefully evaluating any alternative that uses onsite material for reclamation.

Lehigh's Application also includes a worrying proposal to alter the 1972 Ridgeline Easement between Lehigh and the County to significantly change the Permanente Ridge. Though Lehigh attempts to mask its proposal as necessary to prevent natural erosion of the ridgeline, this proposal appears designed to increase production from the North Highwall Reserve of the Quarry. The 1972 Easement prohibits Lehigh from reducing the ridgeline below specified elevations. It has already violated that mandate. Nonetheless, Lehigh asks the County to not only endorse its past violations, but also to approve further departures from the Easement. Lehigh's proposal would reduce the height of the ridgeline by an average of 100 feet, which Lehigh refers to as "a slightly lower crest elevation." Lehigh reveals its intent to further develop this area when it notes that analysis conducted in 2018 "has revealed options for extending North Quarry production," and that the 1972 Easement inhibits "production of highwall reserves." As Lehigh acknowledges, "[t]he 1972 Easement has been effective in maintaining the northeast slope such that views of mining operations are obscured." The County should not accept further deviation from the binding terms of the Easement merely to enable Lehigh to increase its production from this area. Instead, it should deny Lehigh's request to modify the 1972 Easement or to reduce the height of the ridgeline in this area.

Additionally, the City urges the County to deny Lehigh's Application entirely until Lehigh comes into compliance with its various outstanding violations. These violations include the County's August 17, 2018 Notice of Violation for Lehigh's illegally grading the utility haul road outside the boundaries of its 2012 reclamation plan amendment. As noted above, Lehigh is prohibited from shipping its aggregate offsite via this or other roads without first obtaining a use permit from the County and undergoing environmental review. Additionally, the City issued an Administrative Citation and Notice of Violation on May 28, 2019 for Lehigh's illegal expansion of the utility road without City permission. Finally, as recently as June 13, 2019, the County issued a Notice of Violation related to Lehigh's discharging sediments into Permanente Creek. Lehigh should not receive further approvals until it has corrected all of its outstanding violations.

As revealed by the specific concerns highlighted here, Lehigh's Application is also inconsistent with the County's General Plan. General Plan Policy C-RC 47 requires that potentially adverse environmental impacts from the extraction and transport of mineral resources be minimized to the greatest extent possible, including disruption and damage to topography and increased traffic volumes and damage to road surfaces. For the reasons discussed here, rather than minimizing these impacts, Lehigh's Application compounds them.

Thus, as briefly summarized above based on a preliminary review, the City finds Lehigh's Reclamation Plan Amendment Application inappropriate and likely highly detrimental to the City's residents and resources. The City thus requests that the County scrutinize Lehigh's proposal to expand its operations via increased hauling between Lehigh and SCQ, to materially alter the terms of long-standing Ridgeline Easement, and to increase truck traffic by more than 550 trips per day, with a focus on identifying alternatives that will avoid the resulting impacts on the City and the surrounding community.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Deborah L. Feng', is written over the typed name.

Deborah L. Feng
City Manager