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June 22, 2021

VIA U.S. MAIL AND EMAIL

Santa Clara County Planning Commission
70 W. Hedding Street, 7th Floor
San Jose, CA 95110
planning.commission@pln.sccgov.org

Re: Stevens Creek Quarry Zoning Interpretation Request

Dear Planning Commissioners:

I represent Stevens Creek Quarry, Inc. (“SCQ”) regarding SCQ’s mining operations located in Santa Clara County (“County”). On behalf of SCQ, I am writing to comment on SCQ’s request for a zoning interpretation related to SCQ’s proposal to import aggregate from the adjacent Lehigh Permanente Quarry (“Permanente Quarry”). Further, I am writing to request a continuance of the Planning Commission hearing scheduled for June 24, 2021 regarding the zoning interpretation.

SCQ has been operating for over eight decades as a family-owned business and is an integral part of the surrounding community and this County. The owners of SCQ currently live and have lived adjacent to the site for decades, in your County. SCQ provides jobs to 90 employees and is a major supplier of aggregate for many of the most well-known projects in the region; including hospitals, roads, bridges, freeways, tech buildings, stadiums, and water treatment plants. See the attached tables for examples of how SCQ helps build and maintain the County.

Further, the SCQ Quarry is critical to meeting the demand for aggregate in Santa Clara County and the surrounding region, which only has enough permitted aggregate reserves to meet 38 percent of demand for the next 50 years according to a recent study by the State of California Geological Survey.¹

¹ See “Map Sheet 52 (Updated 2018), Aggregate Sustainability in California” prepared by the State of California Geological Survey, at p. 4 (discussing demand in the South San Francisco Bay area); p. 5, Table 1 (aggregate demand for South San Francisco Bay P-C Region).

{00052522;6 }

I would normally provide this type of request and written comments much further in advance of a hearing, but County Staff did not timely inform me of this hearing. In fact, the County did not forward official notice of this hearing to me until June 17, 2021 despite knowing for over three years that I am SCQ's counsel on these issues and knowing that I have previously requested in writing on May 26, 2021 (see the attached email and letter) that this hearing be scheduled for August 2021. Further, despite several requests from SCQ and me, the County did not even inform us of the full hearing process (specifically, the amount of time to present and the submission deadline for the presentation) until June 21, 2021 (only three days prior to the hearing).

Scheduling the hearing on June 24, 2021 violates SCQ's due process rights as discussed further below in Section I of this letter because the County has failed to provide sufficient opportunity for SCQ to prepare for this hearing. **Accordingly, SCQ requests that the Planning Commission continue this hearing until August 2021.**

County Planning Staff has also recommended denying SCQ's zoning interpretation. As discussed further below, the recommendation by Planning Staff fails to properly consider numerous County General Plan policies supporting mineral development and requiring local aggregate sources and incorrectly applies policies from the California Surface Mining and Reclamation Act ("SMARA"). SCQ's proposal to import aggregate from the adjacent Permanente Quarry is a permissible, non-listed use as discussed further in Section II below, or alternatively, is a permissible ancillary use in the Hillside zoning district as discussed in Section III below.

I. The County Has Violated SCQ's Due Process Rights by Scheduling A Hearing Without Sufficient Opportunity for SCQ to Prepare for the Hearing.

The Planning Commission's hearing on June 24, 2021 violates SCQ's due process right to be heard. "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" (*Mathews v. Eldridge* (1976) 424 U.S. 319, 333; see also *Horn v. County of Ventura* (1979) 24 Cal.3d 605, 612 ["[d]ue process principles require **reasonable** notice and opportunity to be heard before governmental deprivation of a significant property interest"], emphasis added.)

The County has failed to provide reasonable notice and opportunity for SCQ to provide comments to the Planning Commission or prepare for a meaningful presentation at the hearing. More specifically, the hearing was originally tentatively scheduled to occur on July 22, 2021. On behalf of SCQ, I requested during a call with County officials on May 20, 2021 and by a letter on May 26, 2021 that this hearing be delayed until August 2021 because I was unavailable for a hearing on July 22nd. Rather than postponing the hearing date, the County instead moved the hearing date up one full month to June 24, 2021. However, the County did

not send a notice of the modified hearing date to SCQ until June 10th—just fourteen days before the hearing date. Fourteen days is clearly not a sufficient amount of time to provide SCQ with an opportunity to adequately prepare a meaningful presentation, in particular, when SCQ originally had over two months to prepare for a hearing that was originally scheduled in July 2021.

In addition, County Counsel and County Planning Staff both stated in a call with SCQ on June 17, 2021, that the Planning Commission's determination will be final and cannot be appealed to the County Board of Supervisors. This hearing will absolutely require sufficient time—more than two weeks—to adequately prepare for an unappealable action by the Planning Commission.

Lastly, the County has deprived SCQ of a meaningful opportunity to be heard by failing to provide all documents relevant to the zoning interpretation request to the Planning Commission. More specifically, County Planning Staff attached the following documents to its Staff Report for the Planning Commission hearing:

- 1) SCQ's initial December 2020 application for a zoning interpretation hearing;
- 2) A December 30, 2021 letter from the City of Cupertino opposing SCQ's proposed zoning interpretation; and
- 3) Negative public comments opposing SCQ's zoning interpretation request.

County Planning Staff failed to include a detailed letter sent by SCQ to the County on June 11, 2021, whereby SCQ rebutted the City of Cupertino's December 30, 2021 letter. County Planning Staff are clearly favoring opponents of SCQ's request and preventing the Planning Commission from fully considering SCQ's arguments.

The current County process is the antithesis of due process. Typically, county staff would call or email and work out a date that works for everyone. That is a fair and standard practice in this State.

The only remedy for these due process violations is to grant a continuance to August 2021 (or later) as requested by SCQ.

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

The SCQ Quarry is located in the Hillside zoning district. The County's Zoning Ordinance does not explicitly provide that importing material is permissible nor does the Zoning Ordinance explicitly prohibit this type of use in the Hillside zoning district.² However, the Zoning

² See Zoning Ordinance, Table 2.20-2.

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.”³

When a use is not specifically prohibited or allowed, the Zoning Administrator⁴ can determine whether a particular use is “within the scope of an existing use classification.”⁵ 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.”⁶

Notably, the Staff Report does not even mention this standard that applies to a zoning interpretation request. Further, the Staff Report does not analyze whether SCQ’s proposed use is substantially similar in nature and intensity to surface mining and recycling facility uses as identified in SCQ’s zoning interpretation application.⁷

As discussed further below, SCQ’s proposal to process imported aggregate is substantially similar to surface mining and recycling facility uses, which are listed permitted uses and also already occur at the SCQ Quarry and the Lehigh Permanente Quarry. These existing uses are clearly compatible with the intent of the Hillside 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 Hillside zoning district.

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

The Zoning Ordinance’s table of uses expressly allows industrial uses in the Hillside zoning district such as surface mining and recycling facilities for concrete, asphalt and soil recycling.⁸ Both SCQ and Lehigh engage in industrial uses by extracting materials, transporting those

³ Zoning Ordinance, §2.10.010.

⁴ The County Planning Department has determined that this matter should instead be decided by the Planning Commission.

⁵ Zoning Ordinance, §2.10.020.A.1.

⁶ Zoning Ordinance, § 2.10.020A.1, emphasis added.

⁷ The Staff Report frames SCQ’s request as interpreting the Zoning Ordinance to determine if importing and processing aggregate is an allowed use pursuant to the definition of surface mining (Zoning Ordinance Section 2.10.040.) SCQ’s request, however, also stated that importing aggregate is substantially similar to importing recyclable material. (See Attachment A to the Staff Report, Dec. 11, 2020 Letter from Mitchell Chadwick to the County, p. 3, ¶ 2.)

⁸ Zoning Ordinance, § 2.20.020, Table 2.20-2 (listing “surface mining” and “recycling facilities” as permitted uses in the Hillside zoning district with a use permit.)

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.⁹ Processing of aggregate also occurs at the Permanente Quarry, which also includes parcels in the Hillside 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. 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 as a part of the surface mining use identified as a listed permitted use in the Hillside zoning district.

Importing and processing aggregate from an adjacent quarry would also be substantially similar to recycling facilities that are also a listed permitted use in the Hillside zoning district. The County has already determined that SCQ's existing recycling facility can be located in the Hillside zoning district and this use is compatible with surrounding land uses and will not significantly impact neighbors.¹⁰ 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 Hillside 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."¹¹ 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.

Contrary to Staff's statements in the Staff Report, SCQ's application would not allow mining operations to continue into perpetuity.¹² Similar to surface mining and recycling facilities uses, importing aggregate would be subject to a CUP with a fixed duration, e.g., 30 years.¹³

⁹ 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 surface mining (a permitted use in the Hillside zoning district) and is, therefore, classified as a permitted incidental activity.

¹⁰ County Staff Report, July 5, 1990, regarding modification of SCQ use permit to allow a recycling facility.

¹¹ General Plan, p. O-40.

¹² See County Staff Report, p. 2, 2nd bullet point.

Accordingly, the Planning Commission should determine that SCQ's proposed use is substantially similar to the surface mining and recycling facilities use classifications that are already permitted in the Hillside zoning district (and ongoing for decades) 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 Hillside zoning district.

The purpose of the Hillside zoning district includes protecting and promoting the wise use of a range of resources, including natural resources. More specifically, the Zoning Ordinance describes the purpose of the Hillside 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.¹⁴

As demonstrated by this quoted language from the Zoning Ordinance, the purpose of the Hillside zoning district 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.

Permitting 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 continue to utilize another source of locally produced construction aggregate, without the need to create a new mine site elsewhere in the County.

¹³ As noted in Zoning Ordinance Section 2.10.020.A.1, "[t]he zoning administrator shall also determine the nature of the permitting process, based on the nature and intensity of the use and that use to which it is substantially most similar."

¹⁴ Zoning Ordinance, § 2.20.010C, emphasis added.

C. 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 SCQ Quarry is located within the General Plan Hillside designation. County General Plan policies allow SCQ to process imported aggregate in the Hillside designation. Importantly, the General Plan specifically allows mineral extraction in the Hillside designation, and implicitly allows processing aggregate in the Hillside designation. In fact, processing of aggregate already occurs at the SCQ Quarry, in compliance with the Zoning Ordinance and General Plan. Moreover, every aggregate mine in the state (hundreds of mines) include related aggregate processing plants. 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. Processing imported aggregate also would not permit a new industrial use “in rural areas even where no minerals are present” as suggested by County Staff.¹⁵ SCQ’s proposal is limited to only importing aggregate from an adjacent existing mine for processing at SCQ’s existing aggregate processing plant.

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 Hillside designation. Part of the intent of the Hillside designation includes “promot[ing] wise management of natural resources,” including mineral resources.¹⁶ The General Plan also allows commercial and industrial uses in the Hillside designation where such uses support the “productive use ... of the natural environment.”¹⁷ 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 or even farther away.

Aggregate from the Permanente Quarry would continue a 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.”¹⁸ SMARA similarly

¹⁵ See County Staff Report, p. 5, first paragraph.

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

¹⁷ General Plan, Policy R-LU 18, p. Q-3.

¹⁸ 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.”

recognizes the importance of aggregate to the economic well-being of the State.¹⁹ The General Plan also embodies this goal by recognizing that a local source of construction aggregate “is of fundamental importance to the economy of the county and region.”²⁰ Moreover, General Plan Policy C-RC 44 requires the County to ensure the availability of local sources of aggregate:

Local supplies of mineral resources should be recognized for their importance to the local, regional, and state economy. Countywide strategies for preserving and managing mineral resources include: a. ensuring continued availability of mineral resources to meet long term demand²¹

Virtually every County General Plan in California²² 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.

Permitting 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. In fact, County Staff’s recommendation of denial fails to acknowledge the shortage of permitted local aggregate sources²³ and that recommendation is inconsistent with the County General Plan. Such General Plan inconsistency violates state law. (See, e.g., *Merritt v. City of Pleasanton*, 89 Cal. App. 4th 1032 (2001) (“any zoning decision—whether made by the local governing body or by the local electorate—must be consistent with the relevant general plan, and if it is not consistent with the general plan, it is invalid when passed”), emphasis added).)

¹⁹ “The Legislature hereby finds and declares that the extraction of minerals is essential to the continued economic well-being of the state and to the needs of society.” (Cal. Public Resources Code § 2711(a), emphasis added.)

²⁰ General Plan, p. H-32, underline added.

²¹ General Plan, p. H-34.

²² 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.

²³ The SCQ Quarry is located in the South San Francisco Bay Production-Consumption (“P-C”) Region as designated by the California Department of Conservation. (“Update of Mineral Land Classification: Aggregate Materials in the South San Francisco Bay Production Consumption Region”, dated 1996, Cal. Department of Conservation, Division of Mines and Geology Open File Report 96-03, Figure 7.) The South San Francisco Bay P-C Region only has enough permitted reserves to meet 38 percent of the 50-year demand for aggregate in this region. (Map Sheet 52 (Updated 2018), *supra* fn. 1, Table 1.)

Although in the County Staff Report, Staff refers to the General Plan requirement for local aggregate sources (interestingly, without quoting or citing the General Plan source which we do above), Staff utterly fails to address:

- (1) The need for local aggregate to the County's economy; and
- (2) The additional environmental impacts of Staff's proposed approach in traffic, vehicle miles traveled ("VMTs") and greenhouse gas ("GHG") emissions caused by shutting down local aggregate sources.

County Staff is proposing that the Planning Commission ignore the County's own General Plan, which the Planning Commission cannot legally do.

Environmental justice issues alone are another reason to reject the Staff recommendation, which recommendation will shut down local mining sooner here, and instead, transport those impacts presumably to some poorer neighborhood or county.

State law also strongly encourages local aggregate production in order to reduce VMTs and GHG emissions:

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.²⁴

If the County shuts down their local aggregate sources, even more aggregate will be hauled in long distances from Livermore, Vernalis and other far away sites adding additional significant VMTs/traffic and GHG emissions, in direct conflict with the County's alleged environmental ethos.

Thus, SCQ's proposal to import and process aggregate material from the Permanente Quarry is a permissible, non-listed use because it is substantially similar in nature and intensity to surface mining and recycling facilities, and is clearly compatible with the intent of the Hillside zoning district and the County General Plan and policies promoting the wise use of local mineral resources.

²⁴ See Cal. Public Resources Code § 2711(d), underline added.

III. The Importation of Aggregate is an Ancillary Use and is Thus Permissible Pursuant to the County Zoning Ordinance.

Even if the Planning Commission were to determine that the importation and processing of aggregate from the Permanente Quarry to the SCQ Quarry is not a permissible use pursuant to Zoning Ordinance, Section 2.10.020A.1,²⁵ such use should be considered a permissible incidental activity pursuant to the Zoning Ordinance.²⁶ The processing of material imported from the Permanente Quarry would be accessory to SCQ's current processing operations, which are permitted as an integral part of SCQ's surface mining operations.²⁷ More specifically, SCQ's proposed processing of material from the Permanente Quarry would be substantially the same as, and would be subordinate to, SCQ's processing of native materials. The only difference between SCQ's current operations and its proposed operations is the location from which the aggregate material is mined. **The Staff Report's few sentence dismissal of this issue indicates that Staff's argument is weak and unsupported by the County General Plan, County Zoning Ordinance or logic.²⁸ Surely, the livelihoods of 90 blue collar workers and their families, for a site in operation for over 70 years deserves more than 1 or 2 sentences in a Staff Report.**

The Zoning Ordinance expressly allows:

An incidental activity carried out as part of a primary use, which is not expressly identified by the Zoning Ordinance as part of the primary use classification, ... if [it is] determined by the applicable decision-making authority to be appropriately ancillary to the primary use, and generally compatible in nature with the uses permitted by the applicable zoning designation.²⁹

²⁵ Section 2.10.020A.1 governs use interpretations for uses not explicitly listed in the Zoning Ordinance, and is discussed above.

²⁶ An incidental activity is permissible when it is carried out as part of a primary use, is appropriately ancillary to the primary use, and is generally compatible in nature with the uses permitted by the applicable zoning designation. (Santa Clara County Code, § 2.10.020B.)

²⁷ Alternatively, it is SCQ's position that although not specifically listed as a permissible use within the Hillside zone, the importation of such material is similar to other listed uses permitted within the Hillside zone, and is therefore permissible pursuant to Section 2.10.020A.1. of the Zoning Ordinance.

²⁸ See County Staff Report, p. 6, ¶ 4.

²⁹ Zoning Ordinance, § 2.10.020B., underline added.

Importing aggregate is generally compatible in nature with the uses permitted in the Hillside zoning district as discussed above, i.e. importing aggregate is substantially similar to the existing surface mining and recycling uses that are permitted uses in the Hillside zoning district.

The Zoning Ordinance does not define “incidental activity” or “ancillary” uses. However, the Zoning Ordinance defines an “accessory use” as “[a] use related to, but auxiliary and subordinate to the primary use on a lot.”³⁰ Notably, the Staff Report fails to note that the Zoning Ordinance omits any language limiting an ancillary use to a certain percentage of the primary use.

The Zoning Ordinance’s definition of “accessory use” is substantially the same as the definition of “ancillary,” which is defined by Black’s Law Dictionary as being “[a]uxiliary or subordinate.”³¹ “Subordinate” is defined as: “[p]laced in a lower order, class, or rank; ... inferior in order, nature, dignity, power, importance, or the like”³² Further, “auxiliary” is defined as: “[a]iding; attendant on; ancillary”³³ When taken together and applied in the context of permissible uses, these definitions support a finding that the only quantitative limitation imposed on an accessory use is that it must be less than the primary use (i.e., when taken together, the accessory use must be less than 50% of the total use and the primary use must be more than 50% of the total use).

The amount of imported material that SCQ would process would be substantially less than the processing of native material mined from the SCQ Quarry. SCQ’s 5-year average of native production for 2016-2020 was approximately 1,317,326 tons per year. Consistent with the County’s and the other relevant definitions of accessory and ancillary uses cited above, SCQ should be permitted to process a maximum of 645,787 tons of material imported from the Permanente Quarry per year, which is approximately 49% of the 5-year average of the current native production at the SCQ Quarry. Thus, SCQ’s proposed processing of imported material would satisfy the requirements prescribed by the Zoning Ordinance and should therefore be determined by the County to be a permissible accessory use.

In addition, the Staff Report states that 33% percent would be too much of a percentage for an ancillary use, which as noted above is not given the common definitions of the term. Regardless, even if Staff is correct that 33% is too much, this is not the same as saying importing is not a proper ancillary use. For example, what if the number is 20%? Staff entirely fails to address that possibility.

³⁰ Zoning Ordinance, § 1.30.030, underline added.

³¹ Black’s Law Dictionary 85 (6th Ed. 1990).

³² Black’s Law Dictionary 1426 (6th Ed. 1990).

³³ Black’s Law Dictionary 134 (6th Ed. 1990).

County Staff had also previously informed SCQ that if the Planning Commission determines that SCQ's proposed use is an incidental activity, the County will nonetheless restrict SCQ's processing of aggregate from the Permanente Quarry to ten to fifteen percent (10%-15%) of the amount of native material currently processed at the SCQ Quarry. The County's position on this issue is contrary to other counties' interpretations of their respective definitions of accessory use, which are substantially similar to the County's definition. Generally, other counties determine that a use is ancillary by comparing the characteristics of the proposed ancillary use with the primary use.³⁴ Counties do not generally require that an accessory use be below a certain threshold when compared to the principal use. Instead, like Santa Clara County, other counties' respective zoning ordinances generally require that the accessory use must only be customarily associated with, and incidental and subordinate to, the principal use.³⁵

Thus, for the aforementioned reasons, SCQ's proposed use consisting of processing aggregate material imported from the Permanente Quarry is a permissible incidental activity. Further, a decision by the County to impose a limitation on incidental activities (e.g., a cap of 10-15% of the primary use) would be arbitrary and contrary to the Zoning Ordinance, and would be inconsistent with other counties' interpretation of their respective zoning ordinances.

IV. Conclusion

As discussed further above, the Planning Commission should approve SCQ's zoning interpretation request and allow SCQ to process aggregate imported from the adjacent Lehigh Permanente Quarry for the following reasons:

- Processing imported aggregate extracted from adjacent rural lands is substantially similar to surface mining and recycling uses that are listed permitted uses in the Hillside General Plan and zoning designations. The source of aggregate does not change the nature or intensity of aggregate processing that already occurs at the SCQ Quarry as allowed in the Hillside General Plan and zoning designations.

³⁴ See, e.g., Monterey County Board of Supervisors Meeting Agenda, Item 16.1 regarding appeal of Administrative Interpretation 965157 ZA & PLN990138, Attachment A (March 17, 2015) (omitting any discussion on the size or volume of the accessory or principal uses when determining that a public assemblage is an accessory use to a winery); County of Ventura Planning Division Letter to the Board of Supervisors (June 26, 2012), regarding public hearing related to privately-initiated text amendment ZN12-0001 (omitting any quantitative comparison between the proposed accessory use and the principal use, and instead determining that the proposed use was an accessory use if such use was sufficiently linked to the primary use).

³⁵ See, e.g., Amador County Zoning Ordinance, § 19.08.820; Calaveras County Zoning Ordinance, § 17.06.0080A; El Dorado County Zoning Ordinance, § 130.80.020; Humboldt County Zoning Ordinance, § 313-43.1.2.

- Processing imported aggregate is clearly compatible with and furthers the intent of the Hillside General Plan and zoning designations, which seek to wisely develop natural resources and ensure the availability of local sources of aggregate. Permitting SCQ to process imported aggregate provides a local source of aggregate that will help reduce the shortage of permitted aggregate, without the need to create a new mine site elsewhere in the County.
- Alternatively, the Planning Commission should allow SCQ to process imported aggregate as an ancillary use. SCQ's proposal is compatible with the existing surface mining and recycling uses allowed by the Hillside zoning designation. Further, processing imported aggregate would be substantially the same as, and subordinate to, SCQ's processing of native materials.

I appreciate the Planning Commission's attention to this matter.

Sincerely yours,

MITCHELL CHADWICK LLP



Patrick G. Mitchell

cc: Elizabeth Pianca, Santa Clara County Counsel's Office
Jacqueline Onciano, Santa Clara County
Manira Sandhir, Santa Clara County
Jim Baker, Santa Clara County
Robert Salisbury, Santa Clara County
Michael Rossi, Santa Clara County Counsel's Office
Kristina Loquist, Santa Clara County
Peggy Doyle, 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

Notable Projects Served by SCQ

Transportation

- Caltrans Hwy 101/Willow Road Interchange
- Caltrans Hwy 280/Homestead Apple Ramps
- Caltrans Hwy 680 Widening Project
- Caltrans Hwy 92 Grade Separation
- Santa Clara Valley Transportation Authority (“SCVTA”) Mathilda Ave Improvements at Hwy 101 and Hwy 237
- Santa Clara County San Tomas Expressway Improvements
- Santa Clara County Montague Expressway Improvements
- Santa Clara County Lawrence Expressway Improvements
- Santa Clara County Monterey Hwy Improvements
- SCVTA BART Warm Springs Extension
- SFO Infrastructure Project, San Francisco
- San Jose International Airport Expansion

Office and Campus

- Apple Park Campus, Cupertino
- Facebook Campus, Menlo Park
- Google Campus, Bay View
- Microsoft, Mountain View
- LinkedIn Sunnyvale
- Intuit, Mountain View
- Workday Headquarters, Pleasanton
- Thermo Fischer Scientific – Fremont
- Tesla – Fremont

Public and Private Agencies

- PG&E Rule 20 Projects
- Santa Clara County Park System Projects
- Mid Peninsula Open Space
- San Jose Water
- Cal Water
- Purissima Hills Water District
- Alameda County Water District
- Union Sanitary District
- West Bay Sanitary

Water and Flood Control

- Silicon Valley Clean Water Plant – Redwood City
- Penetencia Water Treatment Plant – Los Gatos
- Harry Tracy Water Treatment Plant
- San Jose Water Treatment Plant
- Rinconada Water Treatment Plant
- San Teresa Water Treatment Plant – San Jose
- SCVWD Canoas Creek
- SCVWD Berryessa Creek
- SCVWD Guadalupe River

Community Outreach

- Camp Constanoan – Cupertino
- Boy Scouts of America – Multiple Camps
- The Marianist Center – Cupertino
- Jasper Ridge Farm – Portola Valley
- San Jose Police Department
- Habitat for Humanity – Multiple Projects

Recreation and Venues

- Levi Stadium, Santa Clara
- Avaya Stadium, San Jose
- San Jose State University Stadium, San Jose
- Chase Center, San Francisco
- Stanford Stadium
- Stanford Shopping Center

Hospitals and Health

- Sequoia Hospital, Redwood City
- El Camino Hospital, Mountain View
- Lucielle Packard Children’s Hospital, Palo Alto
- Stanford Hospital, Stanford
- Kaiser, San Leandro
- Good Samaritan Hospital, San Jose
- VA Palo Alto

May 26, 2021 Email with Letter Requesting August 2021 Hearing Date

From: Erin Delman
Sent: Wednesday, May 26, 2021 4:34 PM
To: 'robert.salisbury@pln.sccgov.org'
Cc: 'Rob.Eastwood@PLN.SCCGOV.ORG'; 'Elizabeth.Pianca@cco.sccgov.org';
'jacqueline.onciano@pln.sccgov.org'; 'Manira.Sandhir@pln.sccgov.org'; 'Jim.Baker@pln.sccgov.org';
'michael.rossi@cco.sccgov.org'; 'Kristina.Loquist@bos.sccgov.org'; 'JVoss@scqinc.com';
'DBoyle@scqinc.com'; 'dbrown@benchmarkresources.com'; 'awhite@benchmarkresources.com';
Michael Sherman
Subject: Request to Reschedule Santa Clara County Planning Commission Hearing Regarding Stevens Creek
Quarry's Request for a Zoning Code Use Interpretation
Attachments: Letter re Moving the Stevens Creek Quarry Zoning Use Hearing to August 2021.pdf

Dear Mr. Salisbury:

I hope this email finds you well. I have attached a letter from Patrick Mitchell requesting the Santa Clara County Planning Commission Hearing regarding Stevens Creek Quarry's request for a zoning code use interpretation be rescheduled to August 2021. A signed and dated letter was also mailed to you on May 24, 2021.

Please let me know if you have any questions.

Best regards,

Erin Delman

Erin M. Delman



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May 24, 2021

VIA U.S. MAIL AND ELECTRONIC MAIL

Robert Salisbury, Senior Planner
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County Government Center
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San Jose, CA 95110
Robert.Salisbury@pln.sccgov.org

**Re: Request to Reschedule Santa Clara County Planning Commission Hearing
Regarding Stevens Creek Quarry's Request for a Zoning Code Use Interpretation**

Dear Mr. Salisbury:

As you are aware, I represent Stevens Creek Quarry, Inc. ("SCQ") regarding SCQ's mining and recycling operations located in Santa Clara County ("County"). I was informed by County staff during a May 20, 2021 call that the County's Planning Commission has tentatively scheduled a hearing regarding SCQ's request for a use interpretation for July 22, 2021. As I stated during the May 20, 2021 call, I will be unable to attend the hearing on this date due to a conflict in my schedule as I will be out of state on vacation. I am therefore writing you to respectfully request that the Planning Commission reschedule the hearing to any date in August 2021 so as to ensure I am able to attend and represent SCQ's interests.

I appreciate the County's fair consideration in this matter.

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Sincerely yours,

MITCHELL CHADWICK LLP



Patrick G. Mitchell

cc: Robert Eastwood, Santa Clara County
Elizabeth Pianca, Santa Clara County
Jacqueline Onciano, Santa Clara County
Manira Sandhir, Santa Clara County
Jim Baker, Santa Clara County
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Jason Voss, Stevens Creek Quarry
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