

County of Santa Clara Department of Planning and Development




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DATE: March 17, 2011

TO: Supervisor Mike Wasserman, Chairperson
Supervisor Liz Kniss, Vice Chair
Housing, Land Use, Environment, & Transportation Committee (HLUET)

FROM: 
Jody Hall Esser
Director of Planning and Development

SUBJECT: Bi-Annual Santa Clara County SMARA Program Update Report

RECOMMENDED ACTION

Accept report relating to implementation of the Surface Mine and Reclamation Act (SMARA) program.

FISCAL IMPLICATIONS

There are no fiscal implications to accepting this report.

REASONS FOR RECOMMENDATION

This report is a bi-annual informational update requested by and presented to the HLUET Committee.

BACKGROUND

The Surface Mine and Reclamation Act (SMARA) is a state statute that requires all operators of surface mines to have and implement approved plans that provide for the reclamation of mined land, following completion of mining activities. The County currently has eight surface mine sites that are subject to SMARA. By its design, SMARA is implemented by local jurisdictions such as the County. This report to the Housing, Land Use, Transportation, and Environment Committee is submitted biannually to update the committee on the status of the County's SMARA program, the status of each of the mines, efforts made by staff, and to reestablish goals for the program.

In 2010 staff continued to use an outside consultant to assist internal technical staff to conduct field inspections of each the five operating surface mines, prepare inspection reports, and review financial assurance cost estimates. Staff alone conducted inspections of the three remaining mines that are no longer operating. The County expects to use the same consultant during 2011 to inspect only two mines, Lexington and Permanente; staff alone will conduct the inspections of the remaining six mines, without the assistance of outside technical consultants.

The following pages provide a description of the current status of all mines, specific activities undertaken by staff in implementing the County's SMARA program, a list of goals for the calendar year, and the 2011 SMARA inspection schedule.

STATUS OF SURFACE MINES

Curtner Quarry (County File 1988) (State Mine ID 91-43-0001)

The Curtner Quarry is an operating surface mine in good standing under SMARA located northeast of the City of Milpitas (east of Highway 680, off Scott Creek Road). The County issued an NOV September 1, 2006, because a portion of the site that continued to be used as part of normal operations was identified in the reclamation plan as reclaimed. The NOV required the mine operator to amend the existing reclamation plan and clarify those areas within the mine that would remain disturbed during ongoing mine operations, and those that would not. The ASA Committee approved the reclamation plan amendment on August 14, 2008, thus abating the NOV. The quarry has continued to operate to date without further incident.

The annual SMARA inspection took place on August 19, 2010. The County submitted its final inspection report on September 29, 2010, to the Office of Mine Reclamation (OMR). The County reviewed the financial assurance cost estimates and required revisions in a letter to the operator dated October 13, 2010. The County received a revised FACE, reviewed the calculations, certified them and forwarded a copy to OMR on October 27, 2010. The County in turn received comments from OMR in a letter dated December 16, 2010, indicating additional information was required. The mine operator submitted the additional information on January 12, 2011, in response to the OMR letter, and after reviewing the material the County forwarded the information on February 9, 2011, to OMR so it may complete its review. If staff does not hear back from OMR by March 28, 2011 staff will approve the FACE and require the operator increase the financial assurance posted for the quarry by an additional \$35,000.00.

Serpa Quarry (County File 2071) (State Mine ID 91-43-0002)

The Serpa Quarry is an inactive mine located east of Milpitas, off Old Calaveras Road. The property owners hope to develop the land for residential uses. For this reason, the owner served notice to the mine operator to cease operations. The operator filed for a reclamation plan amendment because it would not be possible to reclaim the site consistent with the final slopes envisioned in the original reclamation plan, which was approved in 1983. The County Architecture and Site Approval Committee convened a public hearing on March 11, 2010, and approved the reclamation plan amendment.

Raisch Products, the mine operator, is no longer in business. The property owner of the quarry site, however, accepted responsibility for implementing the amended reclamation plan. Staff learned that during October and November 2010 the property owner was in negotiations with a new mine operator who would be willing to take over the responsibility as

the mine operator and implement the reclamation plan. Representatives of Granite Rock Company approached staff requesting information regarding the site and its amended reclamation plan. Staff provided the information as requested. In January 2011 Granite Rock Company advised staff it is the mine operator responsible for reclamation related work on the site. Staff conducted an inspection of Serpa Quarry with the new mine operator on January 18, 2011, with Granite Rock representatives attending. A final inspection report will be submitted by March 18, 2011.

Azevedo Quarry (County File 4728) (State Mine ID 91-43-0003)

The Azevedo Quarry is surrounded by the City of San Jose on property commonly known as Communications Hill. Raisch Products operated this quarry from 1971 when the County issued a Use Permit for mining operations, until 2010 when the County determined the operator is no longer financially capable of completing the reclamation of Azevedo Quarry. The mine site is largely reclaimed, consistent with its approved reclamation plan; however some work remains to be completed. Raisch Products unfortunately closed for business, and is no longer actively reclaiming the quarry. For this reason, on September 20, 2010, under the authority provided by SMARA and in keeping with those requirements, the County held a public hearing pursuant to Public Resources Code section 2773.1 and determined the mine operator is no longer capable of completing reclamation. The County notified the operator that the County intends to take appropriate action to forfeit the Quarry's financial assurances and commence reclamation of the Quarry. The operator had 60 calendar days to commence, or cause the commencement of reclamation of Azevedo Quarry. This 60-day period expired in November 2010. The County also advised the bondholder, Liberty Mutual, it did not expect the operator to complete reclamation and that it would seek forfeiture of the \$249,980.00 bond after the required 60-day period SMARA expired.

Staff inspected the quarry in December 2010 and at the same time provided a tour of the mine to a consultant who represents the insurance company that holds the financial assurance. The insurance company has advised the County it is considering its legal obligations and rights, and in so doing may contract to complete the reclamation of Azevedo Quarry, rather than provide the funds to the County. The County is working cooperatively with the insurance company to prepare a list of tasks that must be completed. The insurance company will use this list to obtain estimates appropriate technical specialists and contractors to complete the work required.

A list of tasks required to complete reclamation has been drafted by staff in consultation with the County Geologist and Land Development Engineering. It will be provided to the insurance company representative by March 11, 2011, and will provide 30 days within which the insurance company must respond. If they fail to respond staff will consult with County Counsel regarding potential next steps to force compliance with the County's demand for forfeiture of the bond. Staff has been and remains in communication with the property owner, who is aware of the status of the Quarry and the requirement to complete reclamation of the site.

Permanente Quarry (County File 2250) (State Mine ID 91-43-0004)

The Permanente Quarry, operated by Lehigh Southwest Cement Co., is located west of the City of Cupertino at the end of Stevens Creek Boulevard. (This quarry was previously known as the Kaiser Permanente Quarry, and later known as the Hanson Permanente Quarry.) This is the largest operating surface mine within Santa Clara County. The mine operator has two SMARA Notices of Violation (NOV) issued by the County requiring abatement. One affects a portion of the land known as the East Materials Storage Area (EMSA). The second affects all the quarry property that has land disturbed due to mining operations.

The EMSA related NOV requires the mine operator address the deposition of overburden material from the mine pit in this area, which is outside the approved reclamation plan boundary. The NOV required the operator to submit an application for an amendment to the reclamation plan that would address storing the material in this location, provide for reclamation of the area, and include all the technical details required under SMARA for such a plan. Following receipt of the EMSA NOV, the mine operator met with staff and explained that use of this area is necessary for operational

reasons: it needs the space to permanently store overburden material from the mine pit.

The mine operator further explained that without access to the EMSA the operator would not be able to manage the overburden without affecting its ability to continue extracting minerals from the mine pit. For this reason, following consultation with the State Office of Mine Reclamation, staff entered an agreement with the operator that provides access to the EMSA area while an application for a reclamation plan amendment is prepared, submitted, and processed.

The operator submitted a proposed reclamation plan amendment (RPA) for the EMSA in April 2009. Following one resubmittal the application was deemed complete in July 2009 and staff commenced the CEQA review of the application.

The County held a public outreach meeting in June 2009 during which staff presented the proposed reclamation plan amendment intended to address the EMSA. Staff also attended a study session in January 2010 held by the Cupertino City Council and responded to questions from the Council regarding the reclamation plan process and SMARA. Staff attended a similar meeting in July 2010. Staff held a public scoping meeting in Cupertino on April 28, 2010, to receive comments from the public regarding the issues to be analyzed as part of the CEQA review for the EMSA amendment. The work on the CEQA document for the EMSA RPA is underway and a Draft Environmental Impact Report will be published in the summer of this year.

SMARA requires the Office of Mine Reclamation review proposals for reclamation plan amendments. The state law requires this review take place when the CEQA document is complete. Because the project is detailed and the application materials are extensive, staff hand delivered a copy of the EMSA application to OMR staff in June 2010 and requested a preliminary review. OMR did not provide any comments regarding the application; however, OMR will have one more opportunity to comment when the Draft Environmental Impact Report is published.

The second violation must be abated through a Comprehensive Reclamation Plan Amendment (Comprehensive RPA), one that encompasses all the areas of land disturbance including the EMSA. The operator first submitted an application for this Comprehensive RPA in January 2007. Following one resubmittal, the County deemed the first submittal complete in April 2008 and commenced CEQA review. During CEQA review it was determined that additional detailed geology analysis was required. The operator provided a schedule to complete the geology analysis, which showed two years (24 months) would be required. Following consultation with OMR regarding the amount of time needed to complete the analysis, the County revised the schedule it established for abating the NOV, and allowed the operator until February 2010 to submit the geology analysis and a revised reclamation plan amendment proposal. The EMSA agreement described above changed this deadline to the end of May 2010.

The operator submitted the Comprehensive RPA on May 28, 2010. Staff deemed the application incomplete on July 26, 2010, and required additional information. Following a resubmittal, staff subsequently deemed the application complete September 24, 2010, and commenced the CEQA review process.

The Comprehensive RPA application includes an expansion of the area subject to mineral extraction; it proposes to include a second pit located just south of the existing pit, and across from Permanente Creek. This second pit requires a Use Permit as well as a Reclamation Plan Amendment. The proposed Comprehensive RPA would also address slope stability issues within the existing mine pit by importing material from the second pit, buttressing the existing slopes, and creating final slopes that are less steep than the current reclamation plan allows.

The Office of Mine Reclamation provided comments in December 2010 regarding the Comprehensive RPA. Staff will provide responses to the comments from OMR in March 2011. OMR will have another opportunity to comment on the two reclamation plan amendments described above when their respective Draft Environmental Impact Reports are published and distributed for comment. The Permanente Quarry has been acknowledged by Santa Clara County as a "vested mine" for many years; however, while processing the reclamation plan amendments staff found that the

geographic extent of the Quarry's vested rights were unclear. Consequently, the County determined that it was necessary to conduct an exhaustive analysis of the extent the land encompassed by the mine is in fact vested. As part of this process the County held a legally noticed public hearing and the Board of Supervisors made a determination regarding the extent of vested rights at Permanente Quarry on February 8, 2011. The Board subsequently adopted a Resolution of Findings on March 1, 2011.

As noted above, because processing the two proposed reclamation plan amendments associated with the Permanente Quarry is time consuming, and because the issues associated with these projects are complex, the County keeps the Office of Mine Reclamation advised of the status to each proposed amendment by providing monthly status reports.

On August 20, 2010, the County conducted its annual SMARA inspection of the Permanente Quarry. The County submitted its final inspection report to OMR on September 29, 2010. Staff completed review of the mine operator's financial assurance calculations and forwarded the calculations to OMR on October 15, 2010. Having received no comments from OMR concerning the FACE, Santa Clara County approved the calculations and required the operator to increase its financial assurances (FA) to \$11,439,992.00. The County received additional bonds to increase the FA as required on February 1, 2011.

Lexington Quarry (County File 3690) (State Mine ID 91-43-0006)

The Lexington Quarry is an active mine in good standing under SMARA located east of the Lexington Reservoir, in the Santa Cruz Mountains above the City of Los Gatos. The mine operator submitted an application for renewal and expansion of its Use Permit and Reclamation Plan in November 2000. The mine operator later modified the application as directed by the County under a Notice of Violation (NOV) issued in October 2006 to encompass additional land within the permit and reclamation plan boundary. The operator submitted revised plans in 2007 to incorporate the areas of disturbance, as well as address slope stability issues. Staff continued to process the Use Permit, Reclamation Plan, and environmental review as required under CEQA.

On May 24, 2010, the Planning Office published a Final Environmental Impact Report (FEIR) related to the proposed renewal and expansion of the quarry's Use Permit and Reclamation Plan; the Planning Commission certified the FEIR on June 3, 2010. On the same date the Commission also approved the Use Permit, the Reclamation Plan, and a Lot Line Adjustment, which is necessary to allow for work to stabilize one of the slopes above the quarry. Approval of the use permit and reclamation plan fully abated the 2006 NOV issued by the County.

On August 20, 2010, the County conducted its annual SMARA inspection of the Lexington Quarry. The County submitted its final inspection report to OMR on September 29, 2010. Staff completed review of the mine operator's financial assurance calculations and required revised calculations in a letter dated October 13, 2010. The County subsequently corresponded with the mine operator and its consultant reiterating the required re-submittal of this FACE. The operator submitted a revised FACE on March 3, 2011, and is under review. If the FACE is found to be sufficient staff will forward the calculations to OMR for its review.

Stevens Creek Quarry (County File 1253) (State Mine ID 91-43-0007)

The Stevens Creek Quarry is an active mine operation in good standing under SMARA located in the foothills west of the City of Cupertino. The quarry obtained approval of an amendment to its reclamation plan in May 2009, which was necessary to abate a Notice of Violation/Order to Comply (NOV/OTC) issued by the County in 2006. This amendment brought the quarry into compliance with SMARA standards.

On August 19, 2010, the County conducted its annual SMARA inspection of the Stevens Creek Quarry. The County submitted its final inspection report to OMR on September 29, 2010. Staff completed review of the mine operator's financial assurance calculations and forwarded a copy to OMR for its review on October 27, 2010. Having received no

comments from OMR the County approved the FACE on January 4, 2011. No adjustment of the financial assurance posted by the operator is required.

Calaveras Quarry (County File 2066) (State Mine ID 91-43-0008)

The Calaveras Quarry is located east of the City of Milpitas, adjacent to Ed Levin County Park abutting Calaveras Road. This mine has not been active and has not produced any material for more than 18 years. For a period of ten years management of the mine was covered by an Interim Management Plan (IMP), which was approved by the County in keeping with SMARA.

The IMP expired in 2003 and, because the operator took no further action, despite communication from County staff both in writing and telephone calls, the County issued a Notice of Violation (NOV) on April 12, 2006. In order to abate this violation the mine operator was required (1) to commence reclamation of the property to the extent possible in keeping with the plan approved in 1983 (which was done and verified as reported in the annual SMARA inspection reports for this quarry); and (2) to submit an application to amend the existing reclamation plan to provide for a reduction in the amount of grading necessary to complete reclamation, protect existing biological habitat on the site, and change the re-vegetation plan to a mix more compatible with native species.

The County Architecture and Site Approval Committee approved the reclamation plan amendment on July 8, 2010. This approval abated the NOV. Calaveras Quarry is now required to comply with the amended reclamation plan, including compliance with all the new conditions of approval.

In keeping with the new requirements, the property owner submitted revised plans as required. The owner also contacted the Regional Water Quality Control Board for directions on how to satisfy a condition of approval that requires the operator to obtain all necessary permits for the grading work necessary to complete slope stabilization work on the old quarry site. The RWQCB found the reclamation work to qualify for an Erosivity Waiver for exclusion from the Storm Water Construction General Permit and issued a certification to that effect. The owner completed the grading, hydro-seeded the disturbed areas, and installed erosion control during November and December 2010. The property owner has implemented the conditions of approval and documented compliance with those conditions thus far. The quarry remains subject to annual inspections, however, until reclamation of the site is complete. Staff conducted an inspection of the quarry in January 2011 and will submit a final inspection report to OMR by March 18, 2011.

Freeman Quarry (County File 6538) (State Mine ID 91-43-0010)

The Freeman Quarry is an active mining operation in good standing with SMARA located south of Gilroy and west of Highway 101. In response to a Notice of Violation issued by the County in June 2007, and a subsequent Order to Comply issued in September 2007, the operator submitted an application to amend the quarry's reclamation plan in March 2008. The purpose of the application was to provide consistency between the drawings depicting the boundary of the reclamation area and the area covered by the use permit that authorized the surface mine and all accessory uses (including an access road, office building, and scales), thereby encompassing all areas of disturbance associated with mining operations. The County Architecture and Site Approval Committee approved the amendment on June 12, 2008.

The most recent annual SMARA inspection took place on August 18, 2010. The County submitted its final inspection report on September 29, 2010, to the Office of Mine Reclamation. The County reviewed the financial assurance cost estimates and required revisions to the calculations in a letter dated October 13, 2010. The County received a revised FACE, reviewed the calculations and forwarded a copy to OMR on October 29, 2010. The County received comments from OMR in a letter dated December 20, 2010, indicating additional information was required. The mine operator provided a comment letter dated January 19, 2010, and the County provided comments and additional information to OMR on March 2, 2011. The OMR has 45 days in which to respond again to the FACE. The deadline for this review is April 21, 2011.

The County received an application in July 2010 for a proposal to expand the Freeman Quarry. The expansion would provide additional area to permanently store and reclaim overburden from the quarry, and enlarge the existing mine footprint for mineral extraction. The application was deemed incomplete August 27, 2010. The County received a resubmittal in January 2011 and found some of the information regarding drainage to be either unclear or insufficient. The mine operator requested a meeting with staff to discuss the unresolved drainage issues before the County issues another letter deeming the application incomplete. One such meeting was held on March 7, 2011, and a follow up conference call with the mine operator's consultant is scheduled for March 8, 2011. When the application is deemed complete the County will forward a copy to OMR and request it conduct a preliminary review. The County will also commence preparation of an environmental impact report as required under CEQA.

ACTIVITIES BY STAFF

Annual SMARA Inspections

The annual SMARA inspections begin with a review of the previous year's inspection reports for all the mines. The field inspections take place in August of each year. The tentative inspection schedule for 2011 is attached at the end of this report. Every mine is inspected by a team of County staff, which is supplemented in some cases by a consultant from a firm with experience in conducting both annual field inspections and review of financial assurance calculations. The County staff team includes one planner, one inspector from Land Development Engineering division (LDE). In addition, the County Geologist will participate in the inspections of all five active surface mines. The inspection in August is followed by a winterization inspection by staff of LDE. These inspectors have experience inspecting projects where land disturbances have taken place due to grading or construction, and ensure proper erosion control measures are selected and installed. If necessary, the LDE inspectors conduct follow up inspections if and when erosion control or pond maintenance is not sufficient and requires immediate attention.

The County complies with SMARA and provides full inspection reports to the Office of Mine Reclamation. These reports include a completed MRRC-1 form and a separate written report that summarized the site conditions found during the inspection, the status of the reclamation efforts where appropriate, itemizes issues that should be monitored in future inspections, and provides directions to the mine operator of issues that should be addressed before the next inspection. Signatures include a planner in charge of inspection management, the County geologist, and a Senior Civil Engineer.

The County reviews the financial assurance cost estimates (FACE) prepared by the mine operators. The FACE is required to be provided at the time the field inspection is scheduled to take place. Following the field inspection, the FACE is reviewed for compliance with the guidelines set forth by the SMGB and made available from the Department of Conservation web site. The County-retained consultant also reviews the FACE and provides advisory comments regarding the adequacy of the calculations. As required under SMARA, after the County completes its review of an FACE the calculations are forwarded to OMR for its 45-day review.

Reclamation Plan Amendments

As described above, staff is processing two RPAs for the Permanente Quarry, and one for the Freeman Quarry. Staff expects to complete the CEQA review for both Permanente Quarry RPAs in 2011, and expects to bring one of the proposed amendments to the Planning Commission for an action this year. Staff expects to commence the CEQA review for the Freeman Quarry in March or April 2011.

Processing the two proposed reclamation plan amendments associated with the Permanente Quarry in particular is time consuming and the issues associated with these projects are complex. For this reason, and because the amendments are required to abate two Notices of Violation, Santa Clara County keeps the Office of Mine Reclamation (OMR) advised of the status of each proposed amendment by providing monthly status reports addressed to Mr. Jim Pompy, Manager,

Reclamation Program. Copies of these reports are also provided to the Executive Officer of the State Mining and Geology Board, and Dennis O'Bryant, Assistant Director of OMR.

Staff Training

Training County staff in SMARA is continuous. Training during 2010 consisted of in-house training, particularly of LDE staff, both in the field (the experience shared by the County retained consultant was instrumental in this respect) and during preparation of all SMARA inspection reports. The County seeks opportunities for staff to obtain training from outside resources, as well as through project management and internal meetings. The County is hosting a two-day training session provided by OMR at the Santa Clara County Training and Conference Center on March 22, and 23, 2011. Several County staff will attend this workshop.

Public Outreach

As the County processed reclamation plan amendments where neighboring property owners and residents expressed concern about specific quarries staff convened meetings, or attended meetings as requested by city officials, and discuss the status of the respective projects. In addition, the County convenes public scoping meetings prior to commencing work on draft environmental impact reports (DEIR). These are followed by subsequent hearings that are held to receive comments regarding a DEIR. Most recently, the County held a legal non-conforming use (vested rights) determination hearing regarding the Permanente Quarry. This hearing addressed whether and to what extent the Quarry's operations were vested with respect to the County's land use and zoning regulations, not SMARA.

The Planning Office maintains a robust web page with information that is frequently updated and provides useful information to the general public, particularly as project review continues for active reclamation plan amendments and their associated CEQA documents. Staff also promptly responds to questions addressed to the Board of Supervisors during Public Comment portions of their regular meetings regarding the Permanente Quarry. These responses are posted on the Planning Office web site and provide factual information regarding issues of concern as expressed by the speakers during the meetings.

GOALS FOR 2011

The goals for the SMARA program for 2011 include the following:

- Complete field inspections in August, the month during which SMARA field inspections shall take place every year, and submit inspection reports to the State Office of Mine Reclamation in October.
- Complete environmental review of the Permanente Quarry East Materials Storage Area and circulate the report for public review, and schedule the project for public hearing regarding the CEQA document, and schedule a public hearing before the Planning Commission for an action regarding the amendment.
- Commence the CEQA process for the Permanente Quarry Comprehensive Reclamation Plan, and publish a Draft Environmental Impact Report for public review.
- Commence the CEQA process for the proposed expansion of the Freeman Quarry.
- Continue on-going cooperation and consultation with the State Office of Mine Reclamation to ensure all staff efforts are in keeping with the standards contained in SMARA for review and approval of reclamation plans, conducting annual inspections,

and annually reviewing financial assurance cost estimates.

- Continue to develop and enhance staff skills in implementing SMARA.

2011 SMARA INSPECTION SCHEDULE

The County of Santa Clara plans to commence the 2011 SMARA inspections in August, which will include the annual FACE review. The schedule proposed for this year for both of these tasks is described below:

1. Field Inspection and Reporting

- Field Inspections: Week of August 15 through 19, 2011.
- Inspection Report Preparation: Complete by September 30, 2011.
- Final Inspection Report Mailed to OMR: October 14, 2011.

2. Review of Financial Assurance Cost Estimates:

- Revised FACE submitted by Operators to County by August 19, 2011.
- Review of FACE by County and Consultant: August 29 through September 16, 2011.
- Comment letter by the County to mine operator regarding any corrections or revisions by September 23, 2011. (If no revisions to FACE are required, the County will forward FACE to OMR for 45-day review.)
- Any FACE that requires revision should be submitted by the mine operator by October 21, 2011.
- Revised FACE to be reviewed by County and Consultant October 24 through November 4, 2011.
- Revised FACE, if found complete, submitted to OMR for 45-day review November 14, 2011.
- Final approval of FACE by County will be made following receipt of comments from OMR, or following close of the 45-day review period.

