DATE: May 12, 2020
TO: Board of Supervisors
FROM: Jacqueline R. Onciano, Director, Dept. of Planning and Development
SUBJECT: Status Report on June 23, 2019 Lehigh Notice of Violation

RECOMMENDED ACTION
Under advisement from March 24, 2020 (Item No. 10): Receive report from the Department of Planning and Development relating to the status of the June 23, 2019 Notice of Violation issued to Lehigh Permanente Quarry.

REASONS FOR RECOMMENDATION
This report responds to the March 24, 2020 Referral by the Board of Supervisors (linked Legislative File 100797; Supervisor Simitian). The Referral requests the Administration to report to the Board on May 12, 2020 (or as soon as practicable thereafter) with an update on the status of the Notice of Violation (NOV) issued to Lehigh Southwest Cement Company by the County on June 23, 2019. As further explained in this report, after several months of the County working with Lehigh to abate the violation, the County has determined that the NOV has been successfully abated.

Background
Lehigh Permanente Quarry (“Lehigh Quarry”), operated by Lehigh Southwest Cement Company (“Lehigh”), is an active surface mining quarry located in the foothills of the Santa Cruz Mountains, west of the City of Cupertino, at the western terminus of Stevens Creek Boulevard. Lehigh Quarry mines limestone used in the manufacturing of cement at its on-site cement plant. On February 2, 2011, the Board determined Lehigh Quarry to have vested surface mining rights, as defined within a specified geographic area. Lehigh Quarry therefore currently conducts surface mining, as determined by the Board within the defined area, without a Use Permit. Subsequent to the Board’s vested rights determination, the Board approved a Reclamation Plan Amendment to update the reclamation scope and requirements for Lehigh Quarry. A Reclamation Plan Amendment, approved by the Board on June 26, 2012, requires reclamation/restoration of the disturbed area of Lehigh Quarry following cessation of surface mining, in accordance with the Surface Mining and Reclamation Act (SMARA).
Permanente Creek Sediment Discharge Notice of Violation

On June 23, 2019, the County issued a NOV to Lehigh for allowing sediment discharge into Permanente Creek associated with on-site surface mining operations in the area referred to as “Yeager Yard.” The sediment discharge was a violation of 14 California Code of Regulations § 3706 and County Zoning Ordinance § 4.10.340 III (C)(1) (failure to control sedimentation and failure to comply with approved Reclamation Plan Conditions of Approval Nos. 78D, 78F). The sediment discharge also formed the basis for a violation issued to Lehigh by the San Francisco Bay Area Regional Water Quality Control Board (RWQCB) on July 9, 2019.

Lehigh submitted a letter to the County on June 29, 2019 disputing the County’s violation and requesting a hearing before the County Code Enforcement Manager, which was held on October 22, 2019. As a result of discussions at this hearing, Lehigh and the County agreed that a Stipulated Order to Comply (SOTC) should be drafted and signed, and which, if effectuated, would serve to abate the violation, in accordance with SMARA. Lehigh provided a draft SOTC on October 29, 2019, and the Department responded with a revised draft SOTC on November 8, 2019.

On January 14, 2020, a meeting with the Department and Lehigh was held to discuss the status of the NOV and SOTC. At the meeting Lehigh agreed to the following: (a) additional inspections to confirm compliance with corrective actions identified in the SOTC, (b) provide additional data and materials to the County Geologist to evaluate the near-term stability of the Yeager Yard area, and (c) facilitate a meeting with the County Geologist to discuss geotechnical information regarding slope stability within the Yeager Yard area. On January 28, 2020, Lehigh submitted a letter to the Department stating they had complied with all corrective actions listed in the NOV, and that the NOV should be discharged.

Following on-site inspections conducted December 21, 2019 and January 17, 2020 by County Inspection Staff and the County’s third party inspector Michael Baker International (MBI), the County issued Lehigh a revised SOTC (Exhibit A) on February 21, 2020, along with an Inspection Report prepared by MBI (Exhibit B). The revised SOTC, in conjunction with the MBI Inspection Report, specified further recommended actions needed to satisfy the June 23, 2019 NOV and to prevent further sediment discharge in the Yeager Yard area. These recommendations included (a) extending a drainage discharge pipeline to the water treatment plant, (b) armoring of a basin near Permanente Creek designed to capture eroded material before it could enter the creek, (c) filling tension cracks in benches and roads, (d) installing other features to prevent water infiltration into tension cracks, (e) repairing silt fencing, (f) frequent groundwater monitoring at Yeager Yard, and (g) monthly monitoring of GPS survey stations for movement with submittal of monitoring reports to the County.

On March 13, 2020, Lehigh replied to the revised SOTC and the MBI Inspection Report by submitting a letter stating that Lehigh had followed the recommendations listed in MBI’s Inspection Report and had implemented the corrective measures specified in the revised SOTC, and stating that the NOV should therefore be abated.

In order to verify compliance with the recommendations in the MBI Inspection Report and implementation of the corrective actions required in the SOTC, County staff conducted an inspection of the Yeager Yard on April 10, 2020. During this inspection, County staff
confirmed that Lehigh had followed the majority of the recommendations listed in the MBI Inspection Report and had implemented the corrective actions specified in the SOTC. As a result, the Department has determined that the NOV has been abated. The County prepared an inspection report that summarized and documented the observations made by County staff during the inspection (“County’s Inspection Report;” attached within Exhibit C).

On April 27, 2020, the County sent Lehigh a letter informing Lehigh that the NOV had been successfully abated and included a copy of the County’s Inspection Report (please refer to Exhibit C). The County is continuing to monitor the maintenance of the silt fencing and the other implemented erosion and sediment control devices through regular inspections as recommended in the MBI Inspection Report, and is continuing to monitor the slope stability of the Yeager Yard. In addition, the County continues to coordinate with the RWQCB regarding ongoing monitoring of the Yeager Yard slide area and potential water quality impacts to Permanente Creek, including monthly conference calls to share information.

CHILD IMPACT
The recommended action will have no/neutral impact on children and youth.

SENIOR IMPACT
The recommended action will have no/neutral impact on seniors.

SUSTAINABILITY IMPLICATIONS
The recommended action will have no/neutral sustainability implications.

BACKGROUND
Please refer to Background subsection in the Reasons for Recommendation section. For additional background and past public comments, please refer to the linked legislative files concerning recent activities at Lehigh Quarry and its most recent annual report.

CONSEQUENCES OF NEGATIVE ACTION
The Board would not receive the requested status update regarding the NOV for Lehigh Quarry.

STEPS FOLLOWING APPROVAL
The Department requests no follow-up steps of the Clerk of the Board.

LINKS:
- Linked To: 100797 : 100797
- Linked To: 97484 : 97484
- Linked To: 96132 : 96132
- Linked To: 95334 : 95334
- Linked To: 99570 : 99570
ATTACHMENTS:

- Exhibit A - FINAL DRAFT Lehigh Sediment Stipulated Order to Comply   (PDF)
- Exhibit B - MBI Monthly Inspection for Lehigh Permanente Quarry 2.18.2020 (PDF)
- Exhibit C - Letter to Lehigh and 4-10-20 Inspection Report   (PDF)