



## **CITY ATTORNEY'S OFFICE**

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## **CITY COUNCIL STAFF REPORT**

Meeting: June 21, 2023

### **Subject**

Consider a Joint Policy Framework Agreement Regarding the Restoration and Potential Future Development of the Lehigh Quarry Property between the City of Cupertino and Santa Clara County.

### **Recommended Action**

Authorize the City Manager to execute a Joint Policy Framework Agreement Regarding the Restoration and Potential Future Development of the Lehigh Quarry Property between the City of Cupertino and Santa Clara County.

### **Reasons for Recommendation**

The Permanente Quarry (Lehigh) is a limestone and aggregate mining operation located in the unincorporated foothills of Santa Clara County, with a portion of the property located at the western edge of Cupertino (see [Attachment A](#)). The Lehigh quarry is a “vested mine” operation. A vested mine is a mine that was established legally within the regulations in place at that time and is allowed to continue until the use ceases. The Lehigh cement plant is adjacent to the quarry and is operated under a use permit issued by Santa Clara County in 1939.

The mine contains a single large pit where limestone and aggregate have been quarried. West of the quarry pit is a stockpile area where overburden has historically been placed. Mining overburden has also been placed east of the pit. The crusher and support area, surge pile, and rock plant are located southeast of the pit.

A Reclamation Plan, showing how the quarried lands will be restored pursuant to the Surface Mining and Reclamation Act (SMARA), was originally approved by Santa Clara County in 1984 and was amended in 2012. The mined lands covered by the Reclamation Plan comprise approximately 1,238 acres of the 3,510-acre Lehigh property. The cement plant is located outside the Reclamation Plan area. Under the approved 2012 Reclamation Plan, reclamation activities include stabilization of mined slopes, revegetation, installation of storm water detention, and removal of mining material from the Permanente Creek corridor. The reclamation activities are scheduled to be implemented in three phases over a 20-year period (ending in approximately 2030).

Lehigh has recently stated its intent to permanently cease cement production at the Lehigh Property. The cement kiln has not been operational since April 2020. Lehigh informed Santa Clara County in November 2022 that the kiln would not resume operations and confirmed that decision in writing in March 2023.

In addition, the County anticipates that Lehigh will submit an application for a Reclamation Plan amendment as soon as June 2023. In advance of submitting the application, Lehigh has informed the County that it does not intend to quarry new material from the pit or elsewhere on the Lehigh property, although it may continue to process and sell previously quarried material. Based on these representations, the County anticipates that the planning process for the Lehigh property will focus on the reclamation, restoration, environmental remediation, and the future use of the property.

While the majority of the Lehigh property (including the quarry pit) is located within unincorporated Santa Clara County, portions of the property are located within the City of Cupertino, the City's urban service area, and/or the City's sphere of influence under the Cortese-Knox-Hertzberg Local Government Reorganization Act.<sup>1</sup> To address the need for coordination between the City and the County, the Board of Supervisors voted on April 18, 2023 to direct the County Counsel to report to the Board's Housing, Land Use, Environment, and Transportation Committee by August 2023 regarding a policy framework for cooperation with the City of Cupertino that sets forth joint planning principles that guide both jurisdictions when considering restoration and potential future development of the Lehigh site.

Following the Board of Supervisors' referral, the County Counsel and City Attorney's Offices developed a proposed Joint Policy Framework Agreement for restoration and potential future development at the Lehigh property (Attachment B). The proposed Agreement would establish a process for coordinating County and City planning efforts regarding the restoration and future use of the property. The Agreement sets forth high-level principles for restoration and potential future development of the property. In particular, the Agreement provides that:

- Lehigh and any future owners of the Lehigh property shall be required to prevent and eliminate any conditions that constitute a nuisance or could pose a danger to the public health, safety or welfare or the environment.
- The timing of any development of the Lehigh property shall not outpace the reclamation, restoration, and environmental remediation of the Lehigh property.
- No portion of the Lehigh property shall be developed for any purpose other than very low-density residential use without first being annexed to Cupertino or another city.
- If either party to the Agreement receives any application to develop the Lehigh property for any use, that party shall consult with the other party regarding whether the application is consistent with the Joint Planning Principles in the proposed Agreement.

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<sup>1</sup> A sphere of influence is a planning boundary outside of an agency's legal boundary (such as the city limit line) that designates the agency's probable future boundary and service area.

Staff recommends that Council authorize the City Manager to execute the proposed Joint Policy Framework Agreement to facilitate and establish governing principles for collaboration between the City and County as planning for the restoration, remediation, and future use of the Lehigh property proceeds forward.

The Board of Supervisors is expected to consider approval of the proposed Agreement at its June 27 meeting. If the City Council and Board of Supervisors approve the Agreement, staff anticipates returning to the City Council to report on the planning process in Fall 2023.

**Sustainability Impact**

Not applicable.

**Fiscal Impact**

No fiscal impact.

**California Environmental Quality Act**

Any required CEQA review will be conducted prior to future agency actions that may have a significant effect on the environment, including any decision regarding the anticipated Reclamation Plan amendment application.

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Prepared by: Christopher D. Jensen, City Attorney

Approved for Submission by: Pamela Wu, City Manager

**Attachments:**

A – Lehigh Quarry Parcel Map

B – Joint Policy Framework Agreement Regarding the Restoration and Potential Future Development of the Lehigh Quarry Property