

## 3—TERMINOLOGY, APPROACH, AND ASSUMPTION

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This section provides an overview of the terminology, approaches, and assumptions underlying the topic-specific sections of this subsequent environmental impact report (SEIR) that follow. Included in this section is an overview of the terminology used, project analysis, organization of the sections, and methods for determining what impacts are significant.

### 3.1 TERMINOLOGY

To assist reviewers in understanding this SEIR, the following terms are defined:

- *Project* means the whole of an action that has the potential for resulting in a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.
- *Environment* means the physical conditions that exist in the area and that will be affected by a proposed project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historical or aesthetic significance. The area involved is where significant direct or indirect impacts would occur as a result of the project. The environment includes both natural and human-made (artificial) conditions.
- *Impacts* analyzed under the California Environmental Quality Act (CEQA) must be related to a physical change. Impacts are:
  - direct or primary impacts that would be caused by a proposed project and would occur at the same time and place; or
  - indirect or secondary impacts that would be caused by a proposed project and would be later in time or farther removed in distance but would still be reasonably foreseeable. Indirect or secondary impacts may include growth-inducing impacts and other effects related to induced changes in the pattern of land use; population density or growth rate; and related effects on air and water and other natural systems, including ecosystems.
- *Significant impact on the environment* means a substantial, or potentially substantial, adverse change in any of the physical conditions in the area affected by a proposed project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historical or aesthetic significance. An economic or social change by itself is not considered a significant impact on the environment. A social or economic change related to a physical change may be considered in determining whether the physical change is significant.
- *Mitigation* consists of measures that avoid or substantially reduce a proposed project's significant environmental impacts by:
  - avoiding the impact altogether by not taking a certain action or parts of an action;
  - minimizing impacts by limiting the degree or magnitude of the action and its implementation;
  - rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
  - reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; or
  - compensating for the impact by replacing or providing substitute resources or environments.
- *Cumulative impacts* are two or more individual impacts that, when considered together, are considerable or that compound or increase other environmental impacts. The following statements also apply when considering cumulative impacts:

- The individual impacts may be changes resulting from a single project or separate projects.
- The cumulative impact from several projects is the change in the environment that results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over time.
- *Threshold of significance* is a criterion established by the lead agency to identify at what level an impact would be considered significant. A criterion is defined by a lead agency based on examples found in CEQA or the CEQA Guidelines, scientific and factual data relative to the lead agency jurisdiction, views of the public in affected areas, the policy/regulatory environment of affected jurisdictions, and other factors.

This SEIR uses a variety of terms to describe the level of significance of adverse impacts. These terms are defined as follows:

- *No impact*. The project would have no direct or indirect effects on the environmental resource issue.
- *Less than significant*. An impact that is adverse but that does not exceed the defined thresholds of significance. Less than significant impacts do not require mitigation.
- *Potentially significant*. An impact that would be considered a significant impact as described above; however, the occurrence of the impact cannot be immediately determined with certainty. For CEQA purposes, a potentially significant impact is treated in this SEIR as if it were a significant impact and mitigation measures are recommended, when feasible, to avoid or reduce potentially significant impacts.
- *Significant*. An impact that exceeds the defined thresholds of significance and would or could cause a substantial adverse change in the environment. When available, mitigation measures are recommended to avoid the impact or reduce it to a less-than-significant level.
- *Significant and unavoidable*. An impact that exceeds the defined thresholds of significance and cannot be eliminated or reduced to a less-than-significant level through the implementation of feasible mitigation measures.

### **3.2 APPROACH TO THE ENVIRONMENTAL ANALYSIS**

CEQA Guidelines require analysis of environmental impacts caused by a proposed project. All phases of a proposed project, including planning, development, and implementation, are evaluated in the analysis. CEQA Guidelines Section 15126.2 states that:

An EIR shall identify and focus on the significant environmental effects of the proposed project. In assessing the impact of a proposed project on the environment, the Lead Agency should normally limit its examination to changes in the existing physical conditions in the affected area as they exist at the time the notice of preparation is published, or where no notice of preparation is published, at the time environmental analysis is commenced. Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects. The discussion should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, and changes induced in population distribution, population concentration, and the human use of the land (including commercial and residential development), health and safety problems caused by the physical changes, and other aspects of the resource base such as water, historical resources, scenic

quality, and public services. The EIR shall also analyze any significant environmental effects the project might cause by bringing development and people into the area affected.

According to CEQA Guidelines Section 15126.4, an EIR should describe feasible measures that could minimize significant adverse impacts (Section 15126.4[a][1]) and measures that are fully enforceable through permit conditions, agreements, or other legally binding process (Section 15126.4[a][2]). Mitigation measures are not required for effects that are found to be less than significant.

As discussed in Chapter 1, “Introduction,” and Appendix A, “Initial Study and NOC/NOP,” the County determined, through preliminary analysis of the project and public and agency comments received on the notice of preparation (NOP) and initial study (IS), that the project would have no impact on agricultural resources, cultural resources, energy, hazards and hazardous materials, mineral resources, population and housing, public services, recreation, transportation, tribal cultural resources, utilities and service systems, or wildfire. Therefore, these issues are not addressed further in this SEIR.

### **3.3 APPROACH TO SUBSEQUENT ENVIRONMENTAL IMPACT REPORT**

#### **3.3.1 Scope of Environmental Review**

CEQA only applies to discretionary approvals by public agencies. (14 California Code of Regulations Section 15352[a].) CEMEX’s mining activities at the project site are subject to vested rights and do not require any new permits or other approvals from the County. Accordingly, no discretionary approval would trigger CEQA review of the mining component of the applicant’s operations at the project site.

In contrast, pursuant to SMARA and County Code, an amendment to the applicant’s reclamation plan and surface mining permit (together referenced as Surface Mining Permit 23 [SMP-23]) requires the County’s discretionary approval, which subjects the proposed reclamation plan amendment to CEQA compliance. (Public Resources Code [PRC] Section 2776[a].) Therefore, this SEIR limits environmental review to potential environmental impacts associated with the proposed changes to the reclamation plan only. Other aspects of the applicant’s existing surface mining operations at the project site are not part of the discretionary approval and thus, are not part of the project subject to CEQA review. (See, e.g., *City of Ukiah v. County of Mendocino* (1987) 196 Cal.App.3d 47; *El Dorado County Taxpayers for Quality Growth v. County of El Dorado* (2004) 122 Cal.App.4th 1591.)

#### **3.3.2 Use of an SEIR to Evaluate Environmental Impacts**

The applicant and its predecessors-in-interest have been continuously mining for sand and gravel at the project site since 1906 or earlier. The County published a EIR for a master reclamation plan covering the Livermore-Amador Valley quarry area (Quarry Area) in 1979, followed by an addendum to this master reclamation plan in 1980 (*Livermore-Amador Valley Quarry Area Reclamation Specific Plan Environmental Impact Report* [LAVQAR EIR] [Alameda County 1980]). The project site is included within the boundaries of the Quarry Area. The County Planning Commission certified the EIR in 1981. In November 1981, the County also adopted the *Specific Plan for the Livermore-Amador Valley Quarry Area Reclamation* (LAVQAR) (Alameda County 1981). In 1987, the County approved SMP-23 for the Eliot facility via a negative declaration, which relied on the LAVQAR EIR’s CEQA analysis. Since then, two corrective action plans and several conditions from 5-year periodic reviews have modified the approved 1987 reclamation plan for the Eliot Quarry (the “approved reclamation plan”) (Lone Star Industries, Inc. 1986).

The proposed project contains revisions to the project that were not analyzed in the LAVQAR EIR. The California Supreme Court concluded in *Friends of the College of San Mateo Gardens v. San Mateo County*

*Community College District* (2016) that a lead agency has broad discretion to utilize CEQA’s subsequent review provisions if “at least some of the environmental impacts of the modified project were considered in the original document, such that the original document retains some relevance to the ongoing decision-making process.” (1 Cal.5th 937, 951.) In this case, a SEIR is appropriate to evaluate the environmental impacts resulting from the proposed project because numerous portions of the 1981 EIR remain relevant to the proposed revisions to SMP-23.

The SEIR will review and update some portions of the LAVQAR EIR because of project revisions, changed circumstances, and availability of new information that was not available in 1981. As a result, the relevant LAVQAR EIR sections will be reevaluated and expanded considering project revisions, new information and changed circumstances, as required by CEQA. In addition, the SEIR would only replace and update portions of the LAVQAR EIR that pertain to the proposed project area. Other LAVQAR EIR analysis and mitigation for the larger LAVQAR Specific Plan area are not addressed in this EIR and will therefore remain in place.

### **3.3.3 Statutory and Regulatory SEIR Provisions**

When an EIR has been prepared for a project, CEQA establishes a presumption against requiring further environmental review. In summary, “no [supplemental or subsequent EIR] is required unless there are substantial changes in the project or the circumstances surrounding the project, or if new information becomes available.” (*Santa Teresa Citizen Action Group v. City of San Jose* (2003) 114 Cal.App.4th 689, 703.) The lead agency has determined that preparation of an SEIR, pursuant to CEQA Section 21166, is necessary, given that substantial changes to the project are proposed and new information has become available since 1981.

California Public Resources Code Section 21166 provides:

When an [EIR] has been prepared for a project..., no subsequent or supplemental [EIR] shall be required by the lead agency...unless one or more of the following events occurs:

- (a) Substantial changes are proposed in the project which will require major revisions of the [EIR].
- (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the [EIR].
- (c) New information, which was not known and could not have been known at the time the [EIR] was certified as complete, becomes available.

CEQA Guidelines Section 15162, subdivision (a), expands on the three circumstances listed in Section 21166:

- (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR...due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
  - (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR...due to the involvement of new significant, environmental effects or a substantial increase in the severity of previously identified significant effects;
- or

(3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete..., shows any of the following:

(A) The project will have one or more significant effects not discussed in the previous EIR ...;

(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

(C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

For certain resource areas, all four of the above conditions apply to the proposed project; therefore, the County has determined that an SEIR will be required for this project. This 2020 SEIR is subsequent to the LAVQAR EIR.

When an agency evaluates a proposed change or modification to a previously reviewed project, the scope of subsequent environmental review is limited. The subsequent review standards apply whether or not the project has actually been constructed. (*Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 326; *Fairview Neighbors v. County of Ventura* (1999) 70 Cal.App.4th 238, 240-241.)

### **3.3.4 Age of the LAVQAR EIR**

The age of the original EIR (1981) does not affect the County's ability to use an SEIR here. CEQA establishes no rules regarding the expiration of prior environmental review. For example, the appellate court in *Mani Brothers Real Estate Group v. City of Los Angeles* (2007) upheld the city's decision to rely on an addendum prepared in 2005 for an EIR certified in 1989—a 16-year gap, except as to the issue of police services. (153 Cal.App.4th 1385, 1390–1391, 1397–1398.) On the topic of police services, the court required the county to prepare an SEIR, pursuant to section 21166. (*Id.* at pp. 1403–1404.) Indeed, *Mani Brothers* noted that courts have upheld even the use of an addendum (a much lesser degree of environmental review than an SEIR) under Section 21166 in “numerous contexts,” including “in cases where many years had elapsed between the original EIR and later project revisions...and where the project's appearance had changed fairly dramatically.” (*Id.* at p. 1398.) In another case, the court endorsed the use of an SEIR, rather than a new EIR, when considering modifications to a conditional use permit (CUP) for mining operations in 1996, where that CUP had been previously studied in a 1976 EIR—20 years prior. (*Fairview Neighbors, supra*, 70 Cal.App.4th at p. 243.)

### **3.3.5 Project Description and Impacts Previously Considered in the LAVQAR EIR**

The LAVQAR EIR evaluated numerous design features to coordinate reclamation of the Quarry Area. Several major project features considered in the LAVQAR EIR are relevant to the 2020 SEIR, including:

- creation of the chain of lakes, including Lakes A and B (LAVQAR EIR p. 3);
- use of the pits to store high-quality groundwater and imported water with which to recharge the groundwater basin, with the aim of improving water quality (LAVQAR EIR p. 4);

- use of the chain of lakes for water storage, flood control, recreation, and water quality enhancement (LAVQAR EIR p. 26);
- retention or construction of a channel for Arroyo del Valle along the southern perimeter of the Quarry Area, to help convey water (LAVQAR EIR p. 3); and
- conduits connecting water-filled pits, which could transmit or block water flow through the area (LAVQAR EIR p. 3).

The LAVQAR EIR analyzed several features and impacts relevant to the proposed project. The following excerpts are from the LAVQAR EIR and list impacts that are applicable to the 2020 SEIR.

### ***Aesthetics***

- The Reclamation Plan is intended, in part, to restore the Quarry Area landscape to an attractive condition. Pits will either be backfilled or filled with water. In most areas, the net result will not deteriorate current aesthetics and may enhance visual quality in some cases. (LAVQAR EIR p. 45.)
- One identifiable adverse impact is potential for degradation of visual quality of the Arroyo del Valle area. (LAVQAR EIR p. 45.)

### ***Biological Resources***

- No rare or endangered plant or animal species is known to exist in the area. The area exhibits a mix of vegetation and habitat including cultivated fields, settling ponds and other lakes, and barren areas devoted to active quarrying<sup>1</sup>. (LAVQAR EIR p. 39.)
- Livermore-Amador Valley is part of the hunting area of the Southern Bald Eagle and the American Peregrine Falcon, which have been classified as endangered by the State. However, neither is endemic to the region and their primary hunting area would lie outside the Quarry Area. (LAVQAR EIR p. 39.)
- The most significant adverse impact of the Plan on biota would result from replacing the existing Arroyo del Valle channel with an artificial channel. (LAVQAR EIR p. 39.)
- The best mitigation of loss of the natural Arroyo del Valle channel is to construct the new channel as close in appearance and function to the natural existing channel as is feasible. (LAVQAR EIR p. 40.)

### ***Cultural Resources***

- No archaeological sites have been recorded within the Quarry Area. The quarrying has the potential to both reveal and destroy archaeological sites. The Reclamation Plan does not address the possible discovery of artifacts or methods of action to respond to the possibility. (LAVQAR EIR p. 48.)

### ***Geology and Soils***

- Areas termed “capped settlement ponds,” in which 5 to 10 feet of overburden material is proposed to be placed over water saturated fine sand and silt, may not be suitable for building construction. (LAVQAR EIR p. 8.)
- Typical backfilled areas would be below original surface elevations. Drainage problems may result. (LAVQAR EIR p. 8.)

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<sup>1</sup> This biological resource area requires additional review in the 2020 SEIR.

### **Climate and Atmospheric Conditions**

- No adverse impacts foreseeable. No other impacts on climate are identifiable at this time. (LAVQAR EIR p. 41.)<sup>2</sup>

### **Hydrology and Water Quality**

- A channel for Arroyo del Valle is to be retained or constructed along the southern perimeter of the Quarry Area so that Arroyo del Valle flow could pass through the area without first going into the gravel pit lakes. (LAVQAR EIR p. 3; LAVQAR p. 1.)
- Conduits to transmit water between the gravel pit lakes as shown in Figure 4D attached to the LAVQAR Specific Plan EIR. (LAVQAR EIR p. 23.)
- The natural transmission function of the upper aquifer would be replaced with pipes, canals and the lakes (LAVQAR EIR p. 25).
- Considered the relocation of the Arroyo Del Valle Channel. (LAVQAR EIR p. 33.)

### **Land Use and Planning**

- As quarrying continues...agricultural and open space uses will decline while land used for quarrying increases. (LAVQAR EIR p. 42.)
- To mitigate impacts of untimely or illogical development on reclaimed lands, policies should be adopted in the LAVQAR to implement the Reclamation Plan as part of the *Livermore-Amador Valley General Plan* to guide such uses during the Plan period. To avoid impacts of commitment to intensive land uses, an assumption could be made in the Specific Plan that open space and mining related industrial uses of reclaimed lands are appropriate as a present designation until it can be demonstrated that agricultural, industrial, or residential uses would not conflict with other land uses, policies, plans, and environmental quality existing at that future time. (LAVQAR EIR p. 43.)
- Sand and gravel mining is consistent with the General Plan, as is the concept of reclamation and reuse of land in the Quarry Area. (LAVQAR EIR p. 51.)
- No impacts on zoning or impacts of zoning upon the Reclamation Plan are evident. (LAVQAR EIR p. 51.)
- The consistency of the Reclamation Plan as submitted with the Alameda County Surface Mining Ordinance (ACSMO) must be evaluated by the Planning Commission,...this EIR, and other elements comprising the record on this matter. Specific requirements of the ACSMO are relied upon...to mitigate impacts which would otherwise occur. (LAVQAR EIR p. 54.)

### **Noise**

- High noise levels would be generated in excavation and backfilling processes. Reduction of noise at the source can be accomplished by proper maintenance of equipment and usage of newer equipment. (LAVQAR EIR p. 49.)

### **Transportation/Traffic**

- Approval of the Reclamation Plan would have no significant effect on traffic levels on area streets for the duration of the interim period while quarrying is still taking place. Urban or recreational development of the area would generate significant amounts of traffic; meaningful analysis cannot

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<sup>2</sup> GHG emissions require additional review in this 2020 SEIR.



be accomplished at this time, but would occur in detailed environmental review for any specific proposal. (LAVQAR EIR p. 44)

### **Utilities and Service Systems**

- Sand and gravel excavation and reclamation activities are self-contained and have little need for community facilities and services. (LAVQAR EIR p. 44)

### **Energy**

- Energy would be consumed to construct the Reclamation Plan facilities. The Plan, if followed, would indirectly cause an increase in energy needed to supply water to the Livermore Valley from the State Water Project. More of this import water would be needed if groundwater levels are kept low so as not to interfere with mining. After completion of mining, some energy would be required to transmit water through the area. (LAVQAR EIR p. 47.)
- Consumption of energy is but one factor to be taken into account in planning for a water management plan for the Quarry Area. Public benefits of increased water supply, flood control, and conservation may outweigh costs of increased energy consumption. (LAVQAR EIR p. 48.)

### **Health and Safety**

- Potentially hazardous areas exist within the Quarry Area. Large ponds are present with near vertical sides. Steep slopes abound. (LAVQAR EIR p. 49.)
- The Reclamation Plan calls for 1:1 final cut slopes as the norm for water-filled pits. Slopes this steep are difficult to grab onto to pull ones' self out of the water in an emergency. Such slopes also have a tendency to crumble underfoot if walked upon, and they make rescue operations difficult. (LAVQAR EIR p. 49.)
- Mitigation of safety hazards of steep slopes can be accomplished by adhering to the 2:1 slope requirements of the ACSMO. (LAVQAR EIR p. 49.)
- Mitigation of mosquito production includes the following measures: proper grading and reformation of land to allow proper drainage and prevent standing water; avoiding extensive shallow areas in permanent ponds, minimization of vegetation near the edge of ponds; establishment of access roads to allow inspections and control activities; and coordination of planning and project management with the Alameda County Mosquito Abatement District to provide information and mosquito control materials. (LAVQAR EIR p. 50.)

### **3.3.6 New Impacts to Be Considered in the SEIR**

The proposed project contains features that were not analyzed in the LAVQAR EIR (see Chapter 2, "Project Description"). These features will undergo environmental review in this SEIR. Additionally, some portions of the LAVQAR EIR will be reviewed and updated in this SEIR, because circumstances have changed and new information has become available since 1981. As a result, the relevant EIR sections will be reevaluated and expanded to consider new information and changed circumstances, as required by CEQA.

### **3.4 RESOURCE SECTION FORMAT**

Each resource section follows the same format and includes the following primary subsections:

- The "Environmental Setting" subsections provide an overview of the existing physical environmental conditions at the time this analysis was prepared, as relevant to each resource topic. When relevant to the analysis, the "Environmental Setting" subsection also provides the

environmental conditions approved under the existing reclamation plan to provide a benchmark for the impact analysis of conditions with the project.

- The **“Regulatory Setting”** subsections identify the plans, policies, laws, regulations, and ordinances that are relevant to each resource subject. This subsection describes required permits and other approvals necessary to implement the project.
- The **“Significance Criteria and Analysis Methodology”** subsections provide criteria that define when an impact would be considered significant. Criteria are based on CEQA Guidelines, scientific and factual data, views of the public in affected area(s) where appropriate, the policy/regulatory environment of affected jurisdictions, or other factors. The methodology for the impact analysis is also provided as relevant to each resource topic.
- The **“Project Impacts and Mitigation Measures”** subsections provide an assessment of the potential impacts of the project and specify why impacts are found to be significant and unavoidable, significant, potentially significant, or less than significant, or why there is no environmental impact. Feasible mitigation measures to avoid or reduce the severity of identified impacts follow the impact discussions. Where feasible mitigation and feasible alternatives cannot reduce impacts to a less-than-significant level, the impacts are identified as significant and unavoidable. The analysis of cumulative impacts is provided in Chapter 6, “Other CEQA Topics.”

### 3.5 MITIGATION MEASURES

In most cases, implementation of recommended mitigation measures would either result in complete avoidance of impacts or reduce impacts to less than significant. However, impacts that cannot be reduced to a less-than-significant level after application of feasible mitigation measures and alternatives are considered significant and unavoidable. As a condition of project approval, the applicant for the proposed project would be required to implement all of the feasible mitigation measures identified in this EIR and adopted by the County.

In accordance with PRC Section 21081.6(a), the County would adopt a mitigation monitoring and reporting program (MMRP) at the time it certifies the EIR. The purpose of the MMRP is to ensure that the applicant would comply with the adopted mitigation measures when the project is implemented. The MMRP would identify each of the mitigation measures and describe the party responsible for monitoring, the time frame for implementation, and the program for monitoring compliance.

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