

**THE COUNTY PLANNING COMMISSION OF ALAMEDA COUNTY
HAYWARD, CALIFORNIA**

RESOLUTION NO. 12-20 - AT MEETING HELD DECEMBER 17, 2012

SURFACE MINING PERMIT AND RECLAMATION PLAN

CASE NO. SMP-23

**Introduced by Commissioner Imhof
Seconded by Commissioner Loisel**

WHEREAS Surface Mining Permit and Reclamation Plan No. SMP-23 (“SMP-23”) was approved by the Planning Commission on April 6, 1987 by Resolution 87-18, and that same permit was subsequently amended by the Planning Commission on many occasions; and

WHEREAS SMP-23 concerns land located south of Stanley Boulevard, including lands both west and east of Isabel Avenue/State Route 84 and including the Arroyo del Valle, in unincorporated Alameda County between the Cities of Pleasanton and Livermore, at Assessor’s Parcel Numbers (“APNs”) 946-1350-9-19, 946-1350-9-12, 946-1350-10-5, 904-6-1-18, 904-6-2 (part), 904-8-1-2, 904-8-1-3, 950-6-1-5, 950-6-3-9, 946-4598-19 and 99-290-11-7.

WHEREAS Quarry Permit No. 1 (“Q-1”), approved by the Board of Supervisors on January 31, 1957, concerns the same land which is subject to SMP-23; and

WHEREAS Cemex Construction Materials Pacific, LLC (“Permittee”) has filed with the Alameda County Neighborhood Preservation and Sustainability Department a Periodic Review Report dated September 2011 and which is intended to facilitate the completion of a Periodic Review of SMP-23 in conformance with Alameda County Surface Mining Ordinance (“ACSMO”) §6.80.190 and Condition No. 12 of SMP-23; and

WHEREAS Condition No. 12 of SMP-23 requires the Planning Commission to review compliance with conditions of the Surface Mining Permit and Reclamation Plan, considering any new or changed circumstances within the general area of mining operations that should be accommodated by the plan, as stipulated by ACSMO §6.80.190; and

WHEREAS the Planning Commission is designated as the decision-making body for Surface Mining Permits and Reclamation Plans, including the periodic review requirements of ACSMO §6.80.190, subject to appeal to the Board of Supervisors; and

WHEREAS this Planning Commission accepted and reviewed the Periodic Review Report by Permittee, dated September 2011, the 2011 SMARA Inspection Report by County staff, with an inspection date of April 21, 2011, and the Planning Commission staff report dated December 17, 2012, all of which are collectively referred to herein as the “Review Documents;” and

WHEREAS this Planning Commission held a duly noticed public hearing to conduct a Five Year Review of SMP -23 at the hour of 4:00 p.m. on Monday, the 17th day of December 17, 2012, in the Auditorium of the Alameda County Building, 224 Winton Avenue, Hayward, California. Said public hearing was preceded by a site visit to SMP-23 by the Planning Commission, including any interested members of the public; and

WHEREAS the action resulting from the Periodic Review of SMP-23, as reflected by the conditions of approval attached hereto as Exhibit A, has been reviewed in accordance with the provisions of the California Environmental Quality Act, and found to be Categorically Exempt pursuant to California Environmental Quality Act Guidelines Section 15309 (Inspections) since it consists of an activity limited entirely to the inspection of the subject mining operation; and

WHEREAS the Review Documents, testimony submitted in writing and at the public hearing and other items in the public record have been considered by the Planning Commission prior to this action; and

WHEREAS this Planning Commission does find that under the conditions of approval listed in Exhibit A attached hereto, the Surface Mining Permit and Reclamation Plan SMP-23, as modified below, conforms to requirements of:

- (a) the Surface Mining and Reclamation Act, including its companion regulations;
- (b) the Alameda County Surface Mining Ordinance;
- (b) the Livermore-Amador Valley Quarry Area Reclamation Specific Plan;
- (b) the Alameda County General Plan;
- (c) the public health, safety, and welfare; and

WHEREAS it is the finding of this Commission that the operation of an asphalt batch plant was always and remains an accessory use to the surface mine and is consistent with ACSMO §6.80.060(D); and

WHEREAS it is the finding of this Commission, based upon said review, that, for the reasons stated in the Planning Commission staff report dated December 17, 2012, that Surface Mining and Reclamation Act (“SMARA”) Regulations §3502(e) requires the Permittee to submit to the County of Alameda proposed amended reclamation plans since mining activities have resulted in physical conditions at the mine site which preclude the ability of the mine site to be reclaimed in conformance with the presently approved reclamation plans; and

WHEREAS it is the finding of the Planning Commission that time is of the essence and that an amended reclamation plan should be prepared with all due haste, within six (6) months, so that the requirements of SMARA Regulations §3502(e) are properly and timely adhered to; and

WHEREAS there are a number of conditions of approval that require revision, some due to conditions previously fulfilled by the Permittee, some to reflect requirements consistent with the current ACSMO, and some which result in new requirements to fulfill the requirements of ACSMO §6.80.190 by addressing changed circumstances as well as the requirements of SMARA Regulations §3502(e); and

WHEREAS it is the finding of this Commission that the continuation of SMP-23, with amended conditions, is in the public interest for the reason that it is consistent with County plans, policies and ordinances for surface mines in Alameda County; and

WHEREAS this Planning Commission finds it appropriate and necessary to modify several conditions of approval, in light of the above, as enumerated in Exhibit A and identified as follows: ~~strikethrough~~ text denotes deletions, underline text denotes additions; and

WHEREAS that this Planning Commission does hereby approve the conditions of approval for SMP-23, as set forth in Exhibit A to this Resolution; and

WHEREAS this resolution and its accompanying Exhibit A supersede and shall replace all prior resolutions relating to SMP-23; and

WHEREAS the Planning Commission finds that, should the Permittee not to adhere to the conditions of approval of Exhibit A including, in particular, Condition No. 7 requiring the submittal of an amended reclamation plan in conformance with SMARA Regulations §3502(e), the Community Development Agency Director or designee should initiate enforcement proceedings in accordance with the California Surface Mining and Reclamation Act (“SMARA”) and County of Alameda Surface Mining Ordinance (“SMO”); and

WHEREAS the documents and other materials which constitute the record of proceedings upon which this decision is based are located at the Alameda County Neighborhood Preservation and Sustainability Department, 224 W. Winton Avenue, Room 205, Hayward, California, 94544, under the supervision of the Neighborhood Preservation and Sustainability Director; and

NOW, THEREFORE,

BE IT RESOLVED that this Planning Commission does hereby approve the conditions of approval for SMP-23, as set forth in Exhibit A; and

BE IT FURTHER RESOLVED that this Planning Commission accepts and approves the Section 15309 Categorical Exemption as the valid environmental review documentation for the Periodic Review of SMP-23; and

BE IT FURTHER RESOLVED that this Planning Commission does hereby direct County staff to promptly file an appropriate Notice of Determination with the County Clerk.

EXHIBIT A

ALAMEDA COUNTY PLANNING COMMISSION RESOLUTION NO. 12-20

COMPLETE CONDITIONS OF APPROVAL

SURFACE MINING PERMIT & RECLAMATION PLAN No. 23 ("SMP-23")

CEMEX, INC.

Administration

1. The Permittee and Operator of Surface Mining Permit & Reclamation Plan No. 23 ("SMP-23") is Cemex Construction Materials Pacific, LLC ("Cemex").
2. Until the requirements of Condition No. 7 are fulfilled and revised reclamation plans are approved, surface mining operations and reclamation shall be in substantial conformance with the conditions contained herein as well as the following maps, information, and reports, as approved by the Planning Commission on April 6, 1987 or, as is the case with item 2(e) and 2(f) below, the Community Development Agency Director,
 - a) "Exhibit B (including Figure 2, Mining Plan and Figure 3, Reclamation Plan, Former Q-76)" dated October, 1994 including the application form, dated October 15, 1986;
 - b) Reclamation Plan sheets, prepared by Bissell and Karn, Inc., dated October 13, 1986;
 - c) Slope Stability Analyses, Lone Star Industries, Inc. Sand and Gravel Pits, Pleasanton, California," by Shannon and Wilson, Inc., dated January 14, 1987;
 - d) Letter from Peter H. Cotter, Regional Resources Manager of Lone Star Industries, Inc., amending SMP-23 application, dated March 10, 1987.
 - e) RMC Lonestar Lake 'A' Reclamation Plan, East Isabel Avenue Property, Alameda County, California, nineteen (19) sheets (1-title, 6-layout and grading, 6-irrigation, 6-planting), prepared by David L. Gates & Associates and dated August 1993.

Surface mining operations and reclamation for the quarrying of the Lake A and Lake A water management areas shall additionally be in substantial conformance with:

- a) the Cotton Shires Corrective Action Plan dated August 8, 2007 until the requirements of Condition No. 3 are fulfilled; and
 - b) the various maps and information labeled "Conceptual Final Master Plan, RMC Lonestar, Lakes A and B, East Isabel Avenue Property, Alameda County, CA, 13 sheets, dated October 5, 1992.
3. All aspects of the Lakeside Circle Corrective Action Plan prepared by Cotton, Shires & Associates and dated August 31, 2007, and approved by the Planning Director on November 9, 2007, including, but not limited to, the grading plan, depressurization wells, monitoring instruments and activities, reporting, and triggers for responsive action, shall remain in effect until the earlier of:
 - a) June 30, 2014, including the continued monitoring of piezometers in Groups A, B and C; or
 - b) The revised mining and reclamation plans required by Condition No. 7 are established.

4. Mining and reclamation shall additionally conform to the:
 - a) Specific Plan for Livermore-Amador Valley Quarry Area Reclamation, as adopted by the County of Alameda on November 5, 1981, and as may be amended from time to time.
 - b) Alameda County Surface Mining Ordinance (ACSMO); and
 - c) State Surface Mining and Reclamation Act (SMARA).
5. Permittee shall defend, indemnify and hold harmless Alameda County or its agents, officers or employees from any claim, action or proceeding against Alameda County, or its agents, officers or employees to attach, set aside, void, or annul this Surface Mining Permit, including any amendments thereto, or underlying environmental documents and actions taken pursuant to the California Environmental Quality Act, Alameda County Surface Mining Ordinance, the California Surface Mining and Reclamation Act, other County ordinance requirements and any combination thereof. Such indemnification shall include but not be limited to any such proceeding. If Permittee shall fail to adequately defend the County of Alameda, the County may provide its own legal defense and Permittee shall be responsible for the County's reasonable attorneys' fees. This indemnity provision shall not apply to litigation directly between Alameda County and Operator.
6. Within sixty (60) days of this resolution being approved, the Permittee shall provide evidence that a notice required by SMARA §2772.7 has been recorded. If no notice was previously recorded, the Permittee shall provide a draft notice to the Community Development Agency within sixty (60) days of this resolution being approved and shall subsequently assist the Community Development Agency with recordation of the notice, including the payment all fees associated with recordation.

Requirements Resulting from Current Periodic Review (ACSMO §6.80.190)

7. Permittee shall file an application to amend SMP-23, for review in accordance with ACSMO, Article II (Application Procedure), within six months of this action and which addresses the following issues and provides for their resolution, as well as any other issues applicant desires to address:
 - a) The need for mining and reclamation plans and corresponding documents to reflect the current boundaries of SMP-23 as referenced by lands both presently owned by the Permittee and previously authorized for mining operations and reclamation activities.
 - b) As to Lake A, the need for long-term mining and reclamation plans to address geologic hazards associated with and remedied by the Lakeside Circle Corrective Action Plan.
 - c) As to Lake B, the need for long-term mining and reclamation plans to address a depth and configuration which, due to recent and ongoing mining activities, are inconsistent with the approved reclamation plans.
 - d) The need for SMP-23 to include provisions for the management of water flows, during both the pre- and post-reclamation conditions, between the groundwater basin, the Arroyo del Valle, and Lakes A, B and C of the Specific Plan for Livermore-Amador Valley Quarry Area Reclamation.
 - e) The need for revised plans for all water conveyance facilities that: (i) reflect existing topographic conditions and desired future topographic conditions of the Permittee; (ii) fulfill the requirements and intent of the water management objectives of the Specific Plan for Livermore-Amador Valley Quarry Area Reclamation; and (iii) may be constructed in conformance with all laws and regulations.
 - f) The need to coordinate the planning, design, and construction of all water conveyance structures

between Lakes A, B, and C with adjacent mine operator, property owners and the Zone 7 Water Agency.

- g) The geographic locations of approved end uses over the entire site once reclaimed.
- h) Relative to public roadways, the need to specify, in plan and text format, authorized vehicular access points and haul routes.
- i) The need to establish an estimated schedule which correlates the timing of completion for reclamation components to specific stages in the mining plan.
- j) The need to establish reclamation plans that accommodate a trail, as depicted in the Specific Plan for Livermore-Amador Valley Quarry Area Reclamation, along the entire southern boundary of SMP-23 in the vicinity of Vineyard Avenue.

In addition to addressing the issues and topics identified above, the application shall be accompanied by the forms promulgated under ACSMO §6.80.090, as well as the information required under SMARA §§2772 and 2773.

- 8. Once the application required by Condition No. 7 is filed, the Community Development Agency shall work diligently and be timely in its processing to completion. Similarly, in accordance with the requirements of SMARA Regulations §3502(e), the Permittee shall work diligently with the Community Development Agency in the processing of the application to completion, including fulfillment of all necessary and reasonable requests for information or tasks necessary to do so.
- 9. After the Community Development Agency determines the application required by Condition No. 7 as complete, in accordance with the Permit Streamlining Act (Public Resources Code §§65920 et seq), an environmental review shall be prepared pursuant to the California Environmental Quality Act (Public Resources Code §§ 21000 et seq).
- 10. Irrespective of any language within Condition No. 2, mining shall not resume east of Isabel Avenue/State Route 84 (i.e., within Lake A) until it is demonstrated to the satisfaction of the Community Development Agency Director that it:
 - a) Can occur without resulting in slope instability or other geologic instability resulting in harm to persons and property; and
 - b) Will not conflict with the Specific Plan for Livermore-Amador Valley Area Reclamation including, in particular, those provisions relating to the Chain-of-Lakes; namely, Lake A and its' corresponding water conveyance facilities.

Should the Permittee seek approval in accordance with this condition, the Community Development Agency Director shall conduct at least one (1) community meeting prior to rendering a decision.

- 11. In accordance with ACSMO § 6.80.120, Operator shall obtain approval from the County for any proposed amendments to Surface Mining Permit and Reclamation Plan No. 23 ("SMP-23") resulting from the Route 84 Expressway Project, including, but not limited to, the reclamation plan boundary, vehicular access points, setbacks required by ACSMO §6.80.210(C), haul routes, or access or routes required for future operations, maintenance, and inspections. The Operator shall seek approval from the County of any proposed amendments to SMP-23 before commencement of construction of any Route 84 Expressway Project improvements that are located within the current reclamation plan boundary if feasible, otherwise Operator shall seek approval within a reasonable time period. Prior to County approval of any amendment to SMP-23, the Community Development Agency Director or designee shall consult with the Zone 7 Water Agency.

Financial Assurances and Fees

12. The Permittee shall provide a financial assurance in accordance with ACSMO §6.80.241 and all applicable provisions of SMARA, including any regulations or guidelines promulgated thereunder.
13. The Permittee shall annually pay the administrative fee required by ACSMO §6.80.242. Costs incurred by the County under Article 5 (Enforcement) of the ACSMO shall be borne by the Permittee. Additionally, the Community Development Director is expressly authorized to utilize his or her own employees, other agencies, and/or private consultants, as necessary, to conduct and carry out third-party review(s) of operator-generated technical reports (e.g., geotechnical, groundwater). Costs associated with such third-party reviews shall be borne by the Permittee. Should the Permittee cease mining activity and, as a result, not incur administrative fee debt in accordance with ACSMO §6.80.242, all costs associated with the County's Lead Agency responsibilities under SMARA, including those associated with the ACSMO, shall be borne the Permittee.

Monitoring of Surface Mining and Reclamation Activities

14. Within one hundred and twenty (120) days of this resolution being approved and with regard to Lake A, the Permittee shall evaluate the minimum lake level and maximum piezometric surface elevation needed to maintain acceptable factors of safety for static and pseudostatic conditions. The results of that evaluation shall include a proposed monitoring program and operation plan to maintain said factors of safety and be submitted to the Community Development Agency Director or designee for review and approval. The Community Development Agency or designee shall obtain an independent third-party review of the Permittee's proposed evaluation.
15. Permittee shall furnish the Community Development Agency Director or designee and Zone 7 Water Agency, by July 1 of each year, with a report describing: (a) compliance with these conditions; (b) changed circumstances over the reporting period; and, where applicable, (c) efforts to address issues of non-compliance with these conditions, the ACSMO, or SMARA - in a format prescribed by the Community Development Agency Director or designee. Beginning July 1, 2013 the report shall be submitted and cover the period between January 1 and December 31 of the previous year. With each report, Permittee shall provide a map at the same scale as the approved mining and reclamation plans, showing current progress of mining and reclamation, drainage, erosion, and sedimentation control facilities to be provided and those in place, and as built landscaping status of all prior landscaping.

The Community Development Agency Director or designee shall review the report and inspect the mining operations, reclamation activities, and condition of Stanley Boulevard east to Isabel Avenue/Highway 84, all to determine and assure continuing compliance with the regulations of the ACSMO and policies of the Specific Plan for Livermore-Amador Valley Quarry Area Reclamation. The Community Development Agency Director or designee shall invite staff from the Zone 7 Water Agency to attend said inspections.

Permittee shall make available to the Community Development Agency Director or designee such information as necessary for determination of compliance. The Community Development Agency Director or designee shall state the findings of the inspection in a final report which shall be made available to the public. One copy of said report shall be sent to the Planning Commission for information purposes only.

16. Within five years from the date of completing this periodic review in accordance with ACSMO §6.80.190, and at five year intervals thereafter, the Planning Commission shall review again SMP-23 in accordance with ACSMO §6.80.190.
17. In accordance with ACSMO §6.80.250, the Permittee, Operator, property owner and their authorized

agents, and any other person in control of the property subject to SMP-23, individually or collectively, are responsible for the observation and compliance with all the provisions of the ACSMO and SMARA. Such responsibility shall include adherence to the conditions of approval applicable to SMP-23, the correction of any unsafe condition, and the construction and continued maintenance of all fences and other protective devices required.

Surface Mining Activities

18. All accessory uses shall be established and operated in accordance with ACSMO §6.80.060. In the event an accessory use is established, the annual report required by Condition No. 15 shall address compliance with ACSMO §6.80.060.
19. The Permittee shall routinely control exotic, invasive plants upon areas disturbed by mining activities, including vegetation which poses a fire hazard. The results of exotic, invasive plant removal shall be described in the annual report required by Condition No. 15.
20. No stockpiling of overburden or aggregate material shall occur within 80' of Stanley Boulevard.
21. Except as otherwise approved by the Community Development Agency Director or designee for boundaries common with lands of other gravel companies or otherwise provided in Quarry Permit Q-1, Permittee shall maintain standard quarry permit fencing along all boundaries of the area covered by SMP-23 with adjacent lands not owned by Permittee.
22. Permittee shall operate trucks to and from the quarry operation only along public truck haulage routes approved under Quarry Permits Q-1 and Surface Mining Permit SMP-23, and which are already in use for Permittee's operations in the area.
23. Mining and hauling operations shall not impose public maintenance burdens on county roads. As part of the regular inspections of the quarry required under the Surface Mining Permit, the Community Development Agency will annually inspect the pavement or surface condition of Stanley Boulevard, Isabel Avenue between the quarry access and Interstate 580, and will identify required repairs. Permittee shall contribute to the cost of maintaining, repairing, strengthening or reconstructing the subject segments of these roadways, if the County inspection shows a need for pavement or surface improvements. Participation by Permittee in the cost of the improvements shall be in proportion to the percentage of heavy truck traffic volumes on the identified roadway segment(s) contributed by the quarry operation and 100 percent toward any road damage directly attributable to the SMP-23 operations, which shall be repaired promptly. The method of calculating proportionate share shall take into account the level of use (vehicle-miles) and the length of time the Permittee will continue using the routes for operations of the quarry or reclamation.
24. Dewatering activities shall not cause erosion or flooding, shall not result in the discharge of sediment, and shall, as required by ACSMO §6.80.210(M), be conducted using accurate record keeping and reporting methods.
25. No explosives shall be used for mining.

Reclamation Activities

26. All overburden shall be retained on site for use in reclamation. Overburden shall be considered as the natural material which lies above natural mineral deposits routinely processed through the plant to obtain aggregate.
27. The end use of the site upon complete reclamation is hereby assumed to be for water management, wildlife habitat, and/or recreation (pits and surrounding support areas dedicated to Zone 7) and

agriculture (land areas not to be dedicated to Zone 7). Any other use must be approved by the County of Alameda. Uses permitted shall be compatible with water management and quality.

28. Upon completion of mining operations, all sand and gravel processing equipment and the gravel plant shall be removed from the site, including any previously authorized accessory uses. As mining-related auxiliary operations cease, batch plants, asphalt plants, maintenance buildings, and other structures and equipment shall also be removed, including any structures and equipment associated with a previously authorized accessory land use. However, mining related equipment and structures in direct support of reclamation activities may remain on site up to three (3) months after reclamation activities have been completed.
29. Within two (2) years after expiration of SMP-23, all stockpiles and equipment shall have been removed and the site shall have been brought into conformance with the reclamation plan, except any stockpiles of saleable materials that are not needed for reclamation activities may remain on site, along with any mechanical equipment necessary for the movement of such saleable materials.
30. This reclamation plan shall be in effect as long as underlying quarry permit Q-1 remains active.
31. Permittee shall reclaim, restore or maintain the north shoreline of Lake "A" as wildlife habitat. The south shoreline of Lake "A" shall be reclaimed for purposes of recreation.
32. The Permittee shall coordinate with County Community Development Agency and Public Works Agency staff to develop and execute a mutually acceptable Agreement with the County, to be approved by the Board of Supervisors, to provide and maintain County-approved visual attenuation landscaping along Stanley Boulevard.

California Environmental Quality Act Mitigation Measures

33. If the Army Corps of Engineers identifies jurisdictional wetlands at the project site, regulatory requirements for wetland mitigation shall be incorporated into the proposed quarry and reclamation activities. Feasibility of long-term wetlands shall be based on a comparison of competing benefits to be derived from limited water and land resources. Any wetland management plan proposed and adopted shall, to the extent possible, incorporate or complement features of the Specific Plan for Livermore-Amador Valley Quarry Area Reclamation Plan.
34. Operations shall cease in the vicinity of any suspected archaeological resource until an archaeologist is consulted and his or her recommendations followed, subject to approval by the ~~Planning Director~~ Community Development Agency Director or designee.
35. Permittee shall conduct quarrying operations in a manner that shall not cause or result in pollution of the ground water basin or surface water bodies. Permittee shall conform to all requirements of the San Francisco Bay Regional Water Quality Control Board with respect to discharge of silt-laden water and waste materials.

ADOPTED BY THE FOLLOWING VOTE:

AYES: Chair Jacobs, Vice Chair Ready, Commissioners Imhof, Loisel and Rhodes
NOE: None
EXCUSED: Commissioner Ratto
ABSENT: None
ABSTAINED: None