

## 4—RESPONSE TO COMMENTS

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### 4.1 INTRODUCTION

This section of the Final Subsequent Environmental Impact Report (Final SEIR) for the Eliot Quarry (Surface Mining Permit 23 [SMP-23]) Reclamation Plan Amendment Project (proposed project) provides specific responses to each issue raised in comments on the Draft SEIR. Comment letters are ordered as received from agencies, organizations, and individuals. Each comment letter has been assigned a number and the individual comments/issues within each letter are assigned sequential subnumbers (e.g., 1-1, 1-2). An index that lists each commenter and the number assigned to the comment letter is provided on the following pages.

The text of each comment/issue is reproduced using `courier new font` and is followed by the County's response numbered to correspond with each respective comment. All comment letters are also provided in the SEIR original form in Appendix A, "Comments on Draft SEIR," where the comment letters are numbered in the upper right corner of the first page to correspond to the numbering used in this section. Note that the reproduction of comments in this section is intended to reflect the text of the comment letters. Formatting; font emphases (e.g., underline, bold, all capital); and graphics, tables, and other attachments are not necessarily reflected in the reproduced text here and are noted in brackets in certain instances in this section. The County has reviewed all original comment letters on the SEIR with original formatting, font emphasis, graphics, tables, and other attachments. Reviewers interested in the content of a specific comment letter should see Appendix A for a reproduction of the original letter.

The County has provided a response to all comments received during public circulation of the Draft SEIR. In every instance, each comment was carefully considered for its contribution of information regarding environmental impacts and other issues relevant to the County's CEQA review of the project. In general, all comments concerning an environmental issue pertaining to analysis in the Draft SEIR receive a response that either (1) summarizes the information provided in the SEIR and directs the commenter to the section(s) of the SEIR providing that information or (2) provides additional clarifying information concerning the environmental issue raised by the commenter.

In some instances, information in comments was incorporated into the Final SEIR to amplify the impact analysis or mitigation measures, or to otherwise clarify the information presented. In none of these instances did the additional information incorporated to this Final SEIR result in identifying a new significant impact or an increase in the severity of a significant impact identified in the Draft SEIR. Thus, while these revisions amplify and clarify information based on certain comments, these revisions do not result in requiring the County to recirculate the SEIR for public review and comment before certification.

If the comment did not address an environmental issue (e.g., opposition or support of the project), a response is provided noting that this comment does not pertain to an environmental issue. All comments will be considered by County decision makers for the SEIR deliberations in approval or denial of the entitlements requested for the project.

### 4.2 COMMENT LETTERS

Table 4-1, "Comment Letters," lists the comment letters and provides the numbering and order used to organize the comment letters received.

**TABLE 4-1**  
**COMMENT LETTERS**

Commenter	Comment Letter No.
<b>AGENCIES</b>	
Alameda County Flood Control and Water Conservation District, Zone 7, Elke Rank	1
City of Livermore, Steve Stewart, Planning Manager	2
Dublin San Ramon Services District, Daniel McIntyre, General Manager	3
<b>ORGANIZATIONS</b>	
Pacific Gas and Electric Company, Plan Review Team	4
Pleasanton Chamber of Commerce, Steve Van Dorn	5
Livermore Valley Chamber of Commerce, Keith Carson	6
Alameda Creek Alliance, Jeff Miller	7
Dublin Chamber of Commerce, Inge Houston	8
California Water Service	9
Associated Builders and Contractors, Inc., Northern California Chapter, Nicole Goehring	10
<b>INDIVIDUALS</b>	
Fabian Moreno	11

### 4.3 AGENCIES

#### **Alameda County Flood Control and Water Conservation District, Zone 7, Elke Rank; March 3, 2021**

##### **Comment 1-1**

Zone 7 Water Agency (Zone 7, or Zone 7 of the Alameda County Flood Control and Water Conservation District) has reviewed the referenced document in the context of Zone 7's mission to provide water supply, flood protection, and groundwater and stream management within the Livermore-Amador Valley. As you know, we have offered comments on SMP-23 in the past. We appreciate the County's engagement on those comments, which are incorporated by reference here. Additional comments on 2021 Draft SEIR are attached for (sic) your consideration.

##### **Response 1-1**

The County appreciates Zone 7's review and input throughout the life of the proposed project. The responses to comments in this Final SEIR are limited to comments provided on the adequacy of the Draft SEIR. Furthermore, this Final SEIR supersedes prior Notices of Availability (NOAs) and Notices of Preparation (NOPs). Comments on prior NOAs and NOPs were considered in the environmental analysis and included in Appendix A, "Initial Study and NOC/NOP," of the Draft SEIR. Therefore, no further response is required.

##### **Comment 1-2**

###### 1. LAVQAR AND ZONE 7/QUARRY AGREEMENTS

a. Consistency with LAVQAR. As a general matter, Zone 7 agrees with the County's conclusion that all elements of the proposed project must be consistent with the provisions of the Livermore-Amador Valley Quarry Area Reclamation (LAVQAR) Specific Plan. There are a number of provisions in LAVQAR indicating that mining operations must be consistent with the long-term use of the Chain of Lakes for water management purposes. Zone 7 is pleased that these provisions of LAVQAR are incorporated in the proposed project. Zone 7 notes that the provisions of

the agreements between Zone 7 and the quarry operators, which implement the directives in LAVQAR, should also be used to define the proposed project, for all mining and reclamation activities must be consistent with those agreements.

### **Response 1-2**

The responses to comments in this Final SEIR are limited to comments provided on the adequacy of the Draft SEIR. The comment that Zone 7 agrees that the proposed project must be consistent with LAVQAR is noted. This is not a comment on the adequacy of the Draft SEIR, and no further response is required. However, the County also notes that existing Condition of Approval (COA) 4 currently requires CEMEX to comply with LAVQAR. Regarding Zone 7's comment that its private agreement between CEMEX and Zone 7 should be used to define the proposed project has been defined based on the Permittee's application, technical reports, and subsequent environmental evaluations, which is appropriate for the purposes of CEQA.

### **Comment 1-3**

b. Adequacy of Alternatives. It should be noted that Alternative 4 does not abide by LAVQAR or the Zone 7/CEMEX agreement.

### **Response 1-3**

The Draft SEIR notes that the current version of LAVQAR, the approved reclamation plan, and contract between CEMEX and Zone 7 call for diverting 500 cubic feet per second (cfs) (Draft SEIR pp. 2-17; 6-10). In addition, the Draft SEIR acknowledges that Alternative 4 may not meet all of the proposed project objectives, particularly Objective 6, which provides: "Carry out the objectives of the LAVQAR and Zone 7 Agreement for implementation of the Chain of Lakes on the portions of land controlled by CEMEX." (Draft SEIR p. 6-10). As a result, consistency of Alternative 4 with this objective would require negotiations between Zone 7, CEMEX, and the Community Development Agency of Alameda County. Therefore, Alternative 4 would not be able to achieve Objective 6. However, for clarification, the approved reclamation plan calls for the re-routing of the Arroyo Del Valle (ADV) through Lake A. The 1988 Zone 7 agreement and the LAVQAR 500 cfs requirement are for the pipeline from the ADV at Lake A into Lake C (LAVQAR p. 4; Zone 7 Agreement p. 4). Thus, the proposed project diversion structure from the *separated* ADV is not the same diversion as described in the 1988 Zone 7 agreement or LAVQAR.

### **Comment 1-4**

#### **2. GROUNDWATER BASIN MANAGEMENT AND SLOPE STABILITY**

a. Groundwater Sustainability Plan. The project area lies over the Main Basin portion of Livermore Valley Groundwater Basin; as such, the underlying groundwater is subject to the management provisions of the basin's Alternative Groundwater Sustainability Plan (GSP), which was prepared by Zone 7 Water Agency and approved by the State Department of Water Resources pursuant to the Sustainable Groundwater Management Act of 2014 (SGMA). As the designated Groundwater Sustainability Agency (GSA), Zone 7 manages the basin pursuant to the GSP to ensure sufficient groundwater supplies and good groundwater quality within the groundwater basin. The groundwater basin is to be managed in such a manner as to avoid six SGMA-designated undesirable results, which include significant and unreasonable impacts to: (1) groundwater storage, (2) chronic lowering of groundwater levels, (3) surface water depletion, (4) seawater intrusion, (5) water quality and (6) land subsidence. As the GSA, Zone 7 looks forward to working with the County and with CEMEX on the proposed project and protecting the groundwater basin from any of these undesirable results.

**Response 1-4**

The comment notes that the proposed project area lies over the Main Basin portion of the Livermore Valley Groundwater Basin, which is subject to the Alternative Sustainable Groundwater Management Plan. The Draft SEIR acknowledges that the Chain of Lakes must comply with the Alternative Groundwater Sustainability Plan and the proposed reclamation plan is a component of the implementation of the Chain of Lakes. In addition, the proposed project would continue to adhere to all applicable plans, permits, and regulations, including the Sustainable Groundwater Management Plan (Draft SEIR p. 4.6-109).

**Comment 1-5**

b. Localized Lowering of Water Levels. The document should acknowledge that the evaluated impacts only refer to site specific analysis. The impacts of mining activities on the whole of the groundwater basin were not evaluated as a part of this analysis and could result in temporal impacts to the Amador Subarea, such as significant, localized drawdown of water levels. This drawdown has already exceeded the historic low water levels identified as a minimum threshold in the Alternative GSP and is being closely monitored by Zone 7.

i). Recommended mitigation: The document should acknowledge that, in the event that Zone 7's monitoring detects potential impacts resulting from localized drawdown, steps will be taken to mitigate the situation through a course of action to be negotiated among Zone 7, CEMEX, and Alameda County.

**Response 1-5**

The comment states that the impacts of mining activities on the whole of the groundwater basin were not evaluated. As the Draft SEIR explains, mining and processing at the project site are subject to vested rights. Therefore, these activities are not subject to discretionary decisions by the County (Draft SEIR p. 2-1). Rather, the proposed project is limited to analyzing the potential impacts associated with revisions to the approved reclamation plan (Draft SEIR pp. 2-1 to 2-2). In addition, the proposed project would comply with Zone 7's Alternative Sustainable Groundwater Management Plan. The Draft SEIR also evaluated the potential for reclamation to deplete groundwater supplies (Impacts 4.6-2a through 4.6-2d). The Draft SEIR concluded that these potential impacts would be less than significant (Draft SEIR pp. 4.6-93 to 4.6-100). Thus, the proposed project would have a less than significant impact as a result of conflict with a sustainable groundwater management plan (Draft SEIR p. 4.6-109). Therefore, no further mitigation is required.

In addition, while Zone 7 has the responsibility for ensuring safe drinking water, the County also has responsibility of ensuring the health, safety, and welfare of the community. Towards that end, the County has included Mitigation Measures 4.6-2, "Implementation of Adaptive Management Program for Iron," which includes groundwater monitoring (see Appendix F-6, "Adaptive Management Program for Water Quality Regarding Iron," of the Draft SEIR), and 4.6-3, "Install Lake B Groundwater Monitoring Wells," which requires installation of up to three groundwater monitoring wells and consultation with Zone 7 regarding the location and specifications of these wells. Mitigation Measure 4.6-3 (Draft SEIR p. 4.6-93; Final SEIR Chapter 3, "Draft SEIR Errata," Section 3.2.15).

**Comment 1-6**

c. Aquifer Recharge. With regard to Impact 4.6-2 in the SEIR relating to interference with groundwater recharge, it is imperative that all recharge slopes maintain their capabilities to recharge the aquifer including the banks of the Arroyo Valle, which is a critical reach for Zone 7's recharge operations.

Any decrease in the transmissivity (based on field samples and field inspections) of Lake A, Lake B, or Arroyo Valle should be mitigated by a similar increase in recharge capacity elsewhere.

i). Recommended mitigation: CEMEX should collect field samples of the active mining slopes and the arroyo at regular spatial intervals and during periodic inspections during mining, to be negotiated with Zone 7, to assess existing aquifer characteristics. If, during final design or during construction, an inspection of the slopes and verification samples determine a significant loss or a degradation of transmissivity, CEMEX will work with Zone 7 to identify a suitable alternative recharge capacity.

### **Response 1-6**

As noted in Impact 4.6-2a through 4.6-2d, the proposed project would not result in significant impacts related to the depletion of groundwater supplies or interference with groundwater recharge as a result of revisions to the approved reclamation plan (Draft SEIR pp. 4.6-93 to 4.6-99). Furthermore, the Water Supply Assessment states that the proposed project is anticipated to enhance recharge of the groundwater aquifers in the region and reduce evaporative loss of groundwater (Draft SEIR, Appendix F-7, "Water Supply Assessment," p. 6). In addition, the proposed project would continue to adhere to all applicable plans, permits, and regulations, including the Sustainable Groundwater Management Plan (Draft SEIR p. 4.6-109). No further mitigation is required.

### **Comment 1-7**

d. Mining Depth. Previous mining activities in this pit have resulted in mining depths that exceeded LAVQAR and reclamation plans prior to corrective actions. Exceedance of mining depths may result in slope stabilities outside of what has been analyzed to date.

i). Recommended mitigation: In addition to the annual report submitted to the County, CEMEX should semi-annually survey mining pits/lakes (dry and ponded areas) and prepare a map (i.e., bathymetry map) and compare this map to the final approved extent of mining for each mining pit/lake. If these survey maps indicate mining at any location deeper than approved, CEMEX should highlight this area and stop mining in the pit/lake until a mitigation plan acceptable to County and Zone 7 is implemented.

### **Response 1-7**

As noted on the Draft SEIR, the proposed project would conform to LAVQAR, the County General Plan, seismic safety standards, and other applicable plans and regulations (Draft SEIR p. 4.4-16). In addition, proposed slopes would achieve the required factors of safety under static and seismic conditions (Draft SEIR pp. 4.4-19 to 4.4-20; Appendix E-1, "Geotechnical Investigation SMP-23 Reclamation," pp. 6 to 12). The County will add a condition of approval that CEMEX survey the bottom of the dry mining pits on a semi-annual basis (see Chapter 3, Sections 3.2.11 and 3.2.12 of this Final SEIR). A bathymetric survey would not be meaningful as the active mining pits are mined in a dry (temporarily dewatered) condition. No further mitigation is required, as the potential impacts are already less than significant.

### **Comment 1-8**

e. Slope Stability at Lakes A and B. Zone 7 is concerned about the slope stability at the east end of Lake B, and in particular evidence of roadway buckling. Installation of inclinometers to a depth of at least 200 feet is

warranted to monitor potential slope movement. Past inclinometers for the Hwy 84 construction were much shallower than the clay layer. Mining and reclamation activities should be conducted in a way that doesn't reactivate Lake A/Lakeside Circle instability or create a new similar instability at Lake B. There are no lithologic data from the Lake B side along Isabel to show the presence or absence of the clay layer.

i). Recommended mitigation: CEMEX will install inclinometers to a depth of at least 200 feet to monitor potential slope movement, to be in place during mining and reclamation. The depth of the inclinometer should at least intersect with where the clay layer at Lake A/Lakeside Circle would be expected under Isabel and at the east side of Lake B. Following reclamation, Zone 7 may request they remain in place and take ownership of this monitoring equipment.

### **Response 1-8**

As noted in the Draft SEIR, a Factor of Safety analysis was used to determine slope stability (Draft SEIR p. 4.4-16). The proposed slopes would achieve the required factors of safety under static and seismic conditions (Draft SEIR pp. 4.4-19 to 4.4-20; Appendix E-1, pp. 6 to 12). A recent investigation by CEMEX and PG&E has determined a slope instability issue adjacent to the western slope of Lake B. While it is generally agreed the instability is not related to mining or reclamation at the project Site, CEMEX is engineering and constructing a buttress to address this issue. In addition, the reclamation plan design also calls for a significant backfill of the east end of Lake B to elevation 340 mean sea level (msl), which would further buttress and significantly reduce the height of the slope at the east end of Lake B as compared to existing conditions. A condition of approval requiring installation of an inclinometer to a depth, as requested by Zone 7, that extends to at least the proposed mining depth shall be required to ensure the health, safety, and welfare of users of State Route (SR) 84 and neighbors that live in Livermore. In addition, a condition of approval shall be added to the project approval that prior to final reclamation sign-off by the County, CEMEX shall have a geotechnical report prepared to establish that the final reclamation slope on the east wall of Lake B meets the Factors of Safety required by SMARA.

### **Comment 1-9**

f. Well Records. Our records indicate there are 79 wells within the project boundaries including 2 single and 2 nested wells that are in Zone 7's groundwater monitoring program (see attached table and map). Please notify Zone 7 immediately if any other wells exist in the project area. All well locations should be field verified and noted on the plans. If any wells are to be decommissioned, a well destruction permit must be obtained from Zone 7 before starting the work. A Zone 7 drilling permit is also needed for any other water well or soil boring work that may be planned for this project. Drilling permit applications and the permit fee schedule can be downloaded from our website: [www.zone7water.com](http://www.zone7water.com), or requested by email sent to [wellpermits@zone7water.com](mailto:wellpermits@zone7water.com).

### **Response 1-9**

The comment that Zone 7 is requesting notification of any other existing wells in the project area is noted. In addition, the proposed project would comply with applicable regulatory requirements, including permit applications required by Zone 7. The proposed project would be conditioned to require that all known wells within the reclamation plan boundary be added to a reclamation plan map that would be incorporated into the final approved reclamation plan for the site.



### **Comment 1-10**

#### **3. WATER QUALITY ASSESSMENT, MONITORING, AND REPORTING**

a. Sentinel Wells. Zone 7 agrees that the proposed sentinel wells are important to ensure proper groundwater quality management. As the Groundwater Sustainability Agency, Zone 7 should be consulted when determining their location, depth, and construction. As noted above, the driller must also contact Zone 7 prior to construction to obtain the proper well permits.

### **Response 1-10**

The comment that Zone 7 agrees that the proposed sentinel wells are important is noted. In addition, the proposed project would comply with applicable regulatory requirements, including permit applications required by Zone 7, which would provide the opportunity for Zone 7 to review proposed locations, depths, and constructed parameters.

### **Comment 1-11**

b. Water Quality Assessment. Zone 7 has concerns about the methodology used to assess certain constituents of concern. The water quality assessment recommends iron mitigation but does not address other metals or constituents of concern, such as Hexavalent Chromium (Cr6). For example, the report uses 10ug/l as the Cr6 target to assess the impacts. Cr6 maximum contaminant level (MCL) of 10 ug/l was rescinded and that State is in the process of establishing new MCL, which could potentially be lower. Similarly, Zone 7's monitoring shows PFAS detections in groundwater and the State has yet to establish what the MCL will be for PFAS.

The water quality assessment was performed based on "average" concentrations of constituents of concern, without giving any consideration to maximum detected concentrations in the area. For example, utilizing average concentrations for Hexavalent Chromium (Cr6) indicates no need for any mitigation measures. But examples from where active mining has taken place, the maximum concentrations for location R24 is 17 ug/l and P42 is 9.6 ug/l. These indicate that some mitigation/monitoring is necessary in active pits - likely due to the release of metals such as chromium, iron, and manganese from the scraping of the surface of soils and rocks during mining.

Therefore, we have the following recommendations for additional mitigation measures:

i). Recommended mitigation: Flexibility should be built into the mitigation measures to address changes in MCLs and/or to address contaminants of emerging concern, such as Per- and Polyfluoroalkyl Substances (PFAS) and Hexavalent Chromium (Cr6).

ii). Recommended mitigation: CEMEX to prepare an updated water quality assessment every five years to incorporate Zone 7 Groundwater Sustainability Plan updates and/or new or revised drinking water MCLs and mitigate any associated impacts.

iii). Recommended mitigation: CEMEX to prepare a plan to monitor and remediate, pit-water or mining spoils that exceed the State's maximum contaminant levels. Zone 7 staff notes that in some cases, the remediation options benefit multiple metals, for example iron and chromium removal.

iv). Recommended mitigation: When the State adopts a new MCLs or identifies constituents of concern, CEMEX to prepare an updated water quality assessment and mitigation plan.

v). Recommended mitigation: Zone 7 currently samples existing monitoring wells and ponds at the project site annually for metals and minerals (and PFAS as needed) and CEMEX should adopt the same sampling schedule and parameters for the new sentinel monitoring wells.

### Response 1-11

To address Zone 7's concerns regarding the constituents of concern, the County first points to the Draft SEIR, which includes data collected for maximum concentrations of total chromium (Draft SEIR pp. 4.6-59 to 61). As noted in Appendix F-3, "Focused Water Quality Assessment for Lake B," of the Draft SEIR, the average chromium concentration was 2.6 µg/L for the 1980-2019 period, and no sampling locations had an average concentration above the minimum threshold for potential undesirable results, as defined by the Alternative Sustainable Groundwater Plan (10 µg/L) (Draft SEIR, Appendix F-3, pp. 18-19). In addition, all on-site wells maximum concentrations for total chromium were below 10 µg/L (Draft SEIR Tables 4.6-5, 4.6-6). Wells R3, R24, 19D7, and 29F4 are all located offsite, which means that readings from these locations are not relevant to the proposed project because on-site wells are more representative of the hydrologic conditions at the project site (Draft SEIR Figure 4.6-22, "Well Sampling Locations"). This sampling also conservatively assumes that all detected chromium is hexavalent chromium (Draft SEIR p. 4.6-65).

Second, Figure 2 of Zone 7's 2020 PFAS Potential Source Investigation contains a map showing no exceeded PFAS response levels in the Lake B area (Jacobs 2020). Third, on April 16, 2021, Kleinfelder took focused water quality samples at Lake B to test specifically for both PFAS and Chromium 6. The samples were collected from two locations near dewatering pumps at the base of the pit (i.e., where groundwater is present). PFAS and Chromium 6 were not detected in laboratory results, as shown in the Kleinfelder memorandum and laboratory results provided in Appendix C, "Laboratory Results for PFAS and Cr6."

The current State maximum contaminant level (MCL) for total chromium is 50 parts per billion (California Water Boards 2021). There are no sampling locations on the project site or in the vicinity that are near the State MCL (Draft SEIR p. 4.6-91). Finally, Chromium 6 would not persist in a natural groundwater environment (Wilbur et. al. 2012). As a result, the potential impact would be less than significant after the incorporation of mitigation, and no additional mitigation is required. However, CEMEX has agreed to abide by a condition of approval that would require CEMEX to adopt the same sampling schedule and parameters used by Zone 7 for the proposed sentinel monitoring wells until such time as reclamation is complete and Lakes A and B are transferred to Zone 7. See revisions in Section 3.2.15 of this Final SEIR.

### Comment 1-12

#### 4. FLOOD PROTECTION AND WATERSHED MANAGEMENT

a. Arroyo Valle realignment design. The reclamation activities and realignment of Arroyo Valle should not result in lessening of the current flood control capacity of Arroyo Valle and the berms/levees should provide appropriate flood protection. Zone 7 has concerns about details of the draft designs related to the levee meeting a certain elevation. For example, it has not been analyzed how wide the levee needs to be between Arroyo Valle and Lake B under both static and dynamic conditions, including the downstream consequences resulting from a levee failure. Zone 7 looks forward to working with CEMEX to refine the final designs to address these concerns. In addition to slope stability, the final

design should provide enough flexibility to incorporate any change in Lake del Valle operations due to climate change.

- i). Recommended mitigation - CEMEX should continue working with Zone 7 Staff to finalize and receive approval of the designs that address any Zone 7 concerns, which should include the realignment of Arroyo Valle and proposed climate change operations at Lake Del Valle.

### **Response 1-12**

The Draft SEIR acknowledges the existing flow regime and floodplain. This includes an analysis of peak discharges for a range of conditions (Draft SEIR pp. 4.6-45 to 4.6-51). A Hydrologic Engineering Centers River Analysis System (HEC-RAS) model was peer reviewed by the County and incorporated in the Draft SEIR analysis of the potential for the proposed project to result in flooding on or offsite (Draft SEIR p. 4.6-69). Impact 4.6-3 considers the potential for the proposed project to cause impacts due to flooding or redirecting flood flows (Draft SEIR pp. 4.6-100 to 4.6-106). As explained in Impact 4.6-3b, potential impacts due to additional runoff or impeding or redirecting flood flows would be less than significant after implementation of Mitigation Measure 4.6-1 and compliance with regulatory permits. No further mitigation is required.

Regarding climate change, the system is designed with freeboard following Alameda County's Hydrology and Hydraulics Manual, Code of Federal Regulations, Title 44, Section 65.10(b) Chapter I (10-1-2002 edition), which calls for a minimum of 3 feet above the water surface of the base flood. The sufficiency of freeboard is described throughout the Hydraulic Design Study, which is included as Appendix F-1, "Hydraulic Design Study," of the Draft SEIR. Table 3-2 of the Hydraulic Design Study shows that 100-year storm (base flood for floodplain management) peak discharge from Del Valle Reservoir is 4,500 cfs. The channel has been designed to convey 7,000 cfs (55 percent greater capacity than the existing peak discharge to convey flood flows).

Climate change is expected to reduce flows over time, not to increase them. Precipitation over California is expected to decrease by as much as 15 percent within 20 to 30 years (Halper 2017). Thus, any freeboard, and therefore ADV capacity, would increase. However, scientific data indicates that climate change may cause the increase in intensity of short-term storm events. To the extent that climate change affects operations at the Del Valle Reservoir, the ADV design is expected to handle these changes and, as required by County flood conveyance and SMARA's 20-year, one hour standard, the proposed channel design can accommodate additional short-term intense storm events, as supported by Appendix D, "Brown and Caldwell Technical Memorandum, October 12, 2020."

### **Comment 1-13**

b. Water Diversion Facility from Arroyo Valle into future Chain-of Lakes via Lake A - The reclamation activities include a draft design of the proposed water diversion from Arroyo Valle into Lake A and pipelines for connecting Lake A to Lake B and Lake C for water management purpose. CEMEX should continue collaborating with Zone 7 to finalize the designs and obtain required regulatory permits for the diversion facility and pipelines connecting Lakes A, B and C.

- i). Recommended mitigation - CEMEX should continue working with Zone 7 Staff to finalize design and obtain regulatory permits for the water diversion facility and the connecting pipeline.

**Response 1-13**

The recommended mitigation is not an enforceable action. Furthermore, COA-7f already requires CEMEX to file an application to amend the approved reclamation plan (such as the proposed project) that addresses 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.” Also, existing COA-15 requires CEMEX to file an annual report on compliance with COAs, changed circumstances at the site, and efforts to address any issues of non-compliance with the County and Zone 7. Finally, potential impacts associated with the water diversion facility from the ADV to Lake A and for connecting Lake A to Lake B and Lake C would be reduced to less than significant levels after incorporation of mitigation measures (See Draft SEIR pp. 4.6-76 to 4.6-80; 4.6-100). No further mitigation is required.

**Comment 1-14**

c. Bald Eagles. Zone 7 has confirmed the presence of bald eagle nests in the Chain of Lakes area. The data has been reported to the California Natural Diversity Database.

**Response 1-14**

The comment that Zone 7 has confirmed the presence of bald eagle nests in the Chain of Lakes area is noted. The Draft SEIR acknowledges that ruderal grassland mapped at the project site provides foraging habitat for raptors and nesting birds, including bald eagle (Draft SEIR p. 4.3-8). In addition, the Draft SEIR acknowledges that bald eagles are known to be present or have a high potential to occur at the project site (Draft SEIR pp. 4.3-15 and 4.3-34). As a result, the Draft SEIR included Mitigation Measure 4.3-1c to avoid and minimize potential reclamation impacts to nesting raptors, including bald eagle (Draft SEIR p. 4.3-40).

**Comment 1-15**

d. Locally Appropriate Landscaping. Zone 7 encourages the use of sustainable, climate-appropriate, and drought tolerant plants, trees and grasses that thrive in the Tri-Valley area. Find more information at: <http://www.trivalleywaterwise.com>.

**Response 1-15**

The comment that Zone 7 encourages the use of sustainable, climate-appropriate, and drought tolerant plants is noted. The Draft SEIR describes the implementation of a landscape plan that would feature California native drought tolerant tree, shrub, and grass species that are well-adapted to Alameda County (Draft SEIR pp. 4.3-36 and 4.3-39; Draft SEIR Appendix B-2, “Lake A Landscape Plan”).

**Comment 1-16**

e. Riparian Restoration. Zone 7 encourages trees and shrubs uses in restoration efforts be propagated from locally sourced seeds, as close to the planting areas as possible. Density goals for mature trees should be consistent with local reference reaches and should not result in a reduction of flow capacity (near- or long-term) in the flood control channel.

**Response 1-16**

The comment that Zone 7 encourages trees and shrubs used in restoration efforts be propagated from locally sourced seeds is noted. The Draft SEIR explains that restoration associated with the realignment of

the ADV would include removal of invasive species and replanting with native riparian species (Draft SEIR pp. 4.3-44 to 4.3-45). In addition, see Response 1-12, above, regarding flow capacity of the realigned ADV.

### **Comment 1-17**

f. Phytophthora Concerns. Care should be given to avoid introduction of the Phytophthora pathogen to the area.

*\*Note: The Alameda County Flood Control and Water Conservation District, Zone 7 letter also included two attachments, one a graphic and the second being a well data table, which provided no comments regarding the proposed project and can be viewed in-full via Appendix A, "Comments on the Draft SEIR."*

### **Response 1-17**

The comment that introduction of the Phytophthora pathogen to the area should be avoided is noted. In addition, addressing the Phytophthora pathogen is a typical requirement in Streambed Alteration Agreements, one of which would be required for the ADV realignment under Mitigation Measures 4.3-1a, 4.3-1b, 4.3-1c, 4.3-1e, 4.3-1f, 4.3-1g, 4.3-2a, and 4.3-2b (Draft SEIR pp. ES-6, 2-42, 4.3-55 to 57).

### **City of Livermore, Steve Stewart; March 12, 2021**

#### **Comment 2-1**

##### 1. Slope Stability and Residential Safety

As stated in the project description, land uses adjacent to the project site include transportation corridors and residential development. Specifically, residential uses are also located in the city of Livermore north of Lake A. The nearest residential neighborhoods are contiguous to the northern boundary of Lake A, with the nearest home approximately 35 feet from the northwest corner of the Lake A property.

SEIR Section 4.4-Geology and Soils further acknowledges adjacent sanative (sic) uses and residential neighborhoods, as well as the past damages resulting from mining activities, and the corrective actions taken by CEMEX to remedy the situation. However, the SEIR classifies Impact 4.4-3: "Exposure of People or Structures to Seismic-Related Ground Failure, Including Liquefaction, or Landslides" as No Impact and no mitigations measures are required or identified.

The City understands the methodology used to make this determination (i.e. modeling and technical analysis), as described in the SEIR. However, the City has documented substantial evidence of damage to private property and public infrastructure experienced as a result of liquefaction and landslide caused by mining and ground disturbances in and around Lake A. Specifically, this damage occurred on the northern side of Lake A in the proximity of Lakeside Circle. Recently, the City has observed and documented damage to Isabel Avenue and adjacent sound walls.

Therefore, the City contends the SEIR should find the impact "Less than Significant with Mitigation" and the SEIR should outline a mitigation program to ensure that reclamation activities do not undermine previous corrective action and/or cause additional damage. A mitigation program should:

- Establish a short-, mid-, and long-term monitoring program

- Describe actions necessary to address potential damages resulting from liquefaction and landslide caused by reclamation activities
- Identify the parties, either CEMEX or Alameda County, responsible for implementing actions including repair or replacement and/or compensation in the event damage occurs in adjacent neighborhoods to private property or to nearby public property or infrastructure as a result of liquefaction and landslide

### Response 2-1

As noted in the Draft SEIR, mining in Lake A was discontinued in 2005 and construction activities to address potential Lake A slope stability issues were completed in 2008 pursuant to a County reviewed and approved Corrective Action Plan (Draft SEIR p. 4.4-19). The proposed project does not include additional mining in Lake A. Thus, the Draft SEIR analysis is limited to the potential impacts resulting from revisions to the Reclamation Plan and associated reclamation-related construction impacts. Proposed revisions to the previously approved reclamation plan include reducing the final surface area of Lake A from 208-acres to 81-acres with limited earthmoving (Draft SEIR p. 4.4-18).

Separately, Caltrans has acknowledged the following in a memorandum dated April 17, 2020, and signed by Caltrans' Chief for the Branch C Office of Geotechnical Design (Momenzadeh and Nesbitt, pers. comm., 2020):

“It is our opinion that the settlement in the north bound lane of Route 84 may be the result of poor compaction of the underground utilities. The settlement of the south bound lanes may be due to poor compaction during construction.”

In their memorandum, Caltrans recommended repair for the observed roadway settlements by injecting polyurethane foam into the subgrade to strengthen the supporting foundation soils and lift the roadway.

In addition, potential slope failure was evaluated under static and seismic conditions in the Draft SEIR, which incorporates reports by Geocon Consulting (Draft SEIR p. 4.4-16). The County retained Questa Engineering Corporation to peer review those geotechnical reports (Draft SEIR pp. 4.4-1 and 4.4-17). The proposed slopes on-site as part of the reclamation plan revisions would achieve the required factors of safety under static and seismic conditions (Draft SEIR p. 4.4-20). Thus, the Draft SEIR no-impact conclusion is supported by substantial evidence, and no additional mitigation is required (14 CCR § 15126.4, subd. (a)(3); *Parker Shattuck Neighbors v. Berkeley City Council* (2013) 222 Cal.App.4th 768, 778).

As noted above, no mining will take place in Lake A. Therefore, it is not reasonably foreseeable that there will be a potentially significant impact necessitating a mitigation program as recommended. However, the CEMEX has agreed to be subject to a condition of approval that requires installation of an inclinometer to a depth that extends to at least the proposed mining depth in area adjacent to the eastern end of Lake B to ensure for the health, safety, and welfare of users of State Route (SR) 84 and neighbors that live in Livermore. See also Response 1-8, above.

### Comment 2-2

#### 2. Impacts and Mitigations Resulting from Reclamation Activities

The SEIR identifies mitigations in response to air quality, noise, and lighting. However, the City requests CEMEX modify the mitigations measures and include additional measures to further address community concerns.

### Dust Control

SEIR Section 4.2-Air Quality acknowledges the harmful and hazardous effects of off road equipment including particulate matter (PM), such as dust. Further, the SEIR states in a footnote to Tables 4.2-3 and 4.2-4: “The Applicant would be required to implement BAAQMD’s best management practices for construction related fugitive dust emission controls”. The City request an additional mitigation measure requiring the preparation and approval of a Reclamation Dust Control Plan demonstrating compliance with BAAQMD’s best practices. In addition, the City requests the mitigation measure allow the City of Livermore an opportunity to review and accept the plan to ensure minimal impact to nearby and adjacent neighborhoods and other sensitive uses.

### **Response 2-2**

The proposed project would not exceed the Bay Area Air Quality Management District (BAAQMD) emission thresholds for dust (i.e., particulate matter [PM]) (Draft SEIR Tables 4.2-3 and 4.2-4). Thus, as discussed in Impact 4.2-2b, the proposed project would have a less-than-significant impact resulting from PM emissions (Draft SEIR p. 4.2-22). While additional mitigation is not legally required for a less-than-significant impact (14 CCR § 15126.4, subd. (a)(3)), an additional mitigation measure will be added that requires the applicant to update its 2015 Fugitive Dust Control Plan for the facility to specifically address project reclamation activities. See revisions in Sections 3.2.2, 3.2.4, 3.2.5, 3.2.21, and 3.2.22 of this Final SEIR. The 2015 Fugitive Dust Control Plan can be found at the following link:

<http://nps.acgov.org/npsdust.page?>

### **Comment 2-3**

#### Noise and Lighting

3a SEIR Section 4.8-Noise establishes Mitigation Measure 4.1-1: “Daily Limitation of Construction Hours. All construction activities shall be limited to the hours of 7 am - 7 pm Monday through Friday, and 8 am - 5 pm on Saturday and Sunday”.

The City requests additional operational limits to reduce noise and light impacts to nearby homes and residents. The City proposes limiting activities consistent with the City of Livermore Municipal Code, Chapter 9.36 Noise, which limits excess noise of heavy machinery on Saturdays from 9am to 6 pm and prohibits such activities, which generate substantial noise, on Sunday.

### **Response 2-3**

Since the proposed project is not located in the City of Livermore, city requirements do not apply. As noted in the Draft SEIR, the proposed revisions to the approved reclamation plan would fall under the category of temporary construction (Draft SEIR pp. 4.8-16 and 4.8-20). Pursuant to the City of Livermore General Plan, temporary construction activities are exempt from noise standards described in Policy N-1.5 if conducted between the hours of 7:00 a.m. and 8:00 p.m. In addition, the Draft SEIR considered median and maximum noise levels as a result of temporary construction activities (Draft SEIR Table 4.8-8). Construction noise impacts relative to existing ambient conditions would be less than significant with mitigation incorporated (Draft SEIR pp. 4.8-22 to 4.8-23). Regardless of the above, Mitigation Measure 4.1-1 will be revised to limit reclamation-related construction activities to the hours of 9 a.m. to 6 p.m. on Saturdays and prohibit such activities on Sundays. See revisions in Sections 3.2.2, 3.2.3, and 3.2.19 of this Final SEIR.

**Comment 2-4**

3b SEIR Section 4.8-Noise establishes Mitigation Measure 4.8-1a: "Notice of Activities. All residences within 500 feet of the conduit and pipeline installation components of the proposed project should be provided notice of the pipeline installation schedule and informed that short-term periods of elevated daytime ambient noise levels could occur during that period".

The City recommends the mitigation measure establishes a required notice timeframe; for example, "one week prior to construction activities". In addition, the City requests the County and/or the applicant provide notice to the City of Livermore Community Development Department.

**Response 2-4**

See Response 2-3, above. In addition, although the potential noise impacts would already be less than significant with mitigation incorporated, the applicant has agreed to a revision to Mitigation Measure 4.8-1a to specify that notice to residences within 500 feet of the conduit and pipeline installation components and the City of Livermore Community Development Department would occur one week prior to construction activities. See revisions in Sections 3.2.2 and 3.2.20 of this Final SEIR.

**Comment 2-5****3. Community Amenities and Trail Connectivity**

The SEIR describes the recent completion of a segment of the Shadow Cliffs to Del Valle Regional Trail (known as the Lake A Trail) by CEMEX in coordination with East Bay Regional Park District (EBRPD). The Lake A Trail is identified as T-11 in the Livermore Active Transportation Plan and the Livermore Area Recreation and Park District (LARPD) Master Plan. The City supports the extension of this trail along the southern portions of Lake B to Shadow Cliffs Regional Park as part of the Reclamation Plan Amendment and project description.

In addition to the Lake A Trail, Trail T-11, the Livermore Active Transportation Plan, LARPD Master Plan identify the South Livermore Valley Wine Trail alignment (Trail T-10) on the north side of Lake A. A portion of Trail T-10 is complete between Isabel Avenue (SR 84) and private property. The trail is incomplete from this private property eastward, approximately 2,400 linear feet, to Vallecitos Road. From Vallecitos Road, the existing trail follows Wetmore Rd through the South Livermore Valley. Trail T-10, when completed, will extend eight miles and provide numerous connections within the trail system. The Reclamation Plan Amendment process provides an opportunity to complete a significant gap in the existing local trail network, provide a substantial community benefit, and increase connectivity within the Tri-Valley consistent with the proposed post-reclamation land use, the project objectives and County recreational policy 101.

The SEIR Project Description includes: "incorporate a public use pedestrian and bike trail, consistent with the Specific Plan for Livermore-Amador Valley Quarry Area Reclamation (LAVQAR) (Alameda County 1981), along the southern boundary of Lakes A and B near Vineyard Avenue". The City's position is that this element of the project description should be expanded to include" ... and trail T-10 on the north side of Lake A consistent with the Livermore Active Transportation Plan and LARPD Master Plan".



Further, the project Description includes the objective: “Reduce Vehicle Miles Traveled (VMT) and the related air emissions by retaining a local source of aggregate.” The City maintains that this objective should be broadened to include trail connectivity as alternative means of travel and include both the Lake A Trail to the south and Trail T-10 to the north.

In addition, SEIR Section 4.7 - Land Use and Planning, Table 4.7-1 Project Consistency with Local Planning Documents omits the City of Livermore Active Transportation Plan and the Livermore Area Recreation and Park Master Plan. The City recommends that these plans be included in the analysis because Lake A is within the recreational service area. Both plans identify trail T-10 on the north side of Lake A. The table further evaluates to project’s consistency with the East Alameda County Area Plan Policy 101, which states:

“The County shall encourage public water management agencies to explore recreational opportunities on watershed lands, particularly reclaimed quarries, where recreational use would not conflict with watershed protection objectives”.

Trail T-10 is also consistent with County Policy 101 and should be included in the Reclamation Plan Amendments and SEIR project description.

For the reasons stated above, the City requests Alameda County include the construction and use of Trail T-10 on the north side of Lake A, including any modification or removal of earthen berms to accommodate the trail design and based on community input, in the Reclamation Plan Amendment and SEIR. Additionally, the applicant should amend Appendix C-Lake A Landscape Plan and Attachment 7 Improvement Plans of the application to include the Trail T-10 alignment from its current terminus to Vallecitos Road.

## Response 2-5

The comment that the city supports the extension of the Lake A Trail is noted.

The project site is located in unincorporated Alameda County and subject to the East County Area Plan and LAVQAR (Draft SEIR p. 4.7-2). In addition, as noted in the comment, a primary objective for the proposed project is to comply with the requirements of LAVQAR (Draft SEIR pp. 2-13 to 2-14, Objective 6). In addition, Objective 6, which aims to reduce Vehicle Miles Traveled (VMT) by retaining a local source of aggregate addresses potential impacts, relates to the implementation of the LAVQAR. The proposed project revisions do not introduce new or increased sources of VMT (Draft SEIR, Appendix A-1, “Initial Study,” pp. 41 to 42, 45 to 46). Increasing alternative means of travel is not a project objective requested by the applicant. Finally, the proposed revisions to the approved reclamation plan do not implicate any potentially significant impacts regarding recreation (Draft SEIR, Appendix A-1, pp. 43 to 44). Thus, requiring completion of a recreational trail on the north side of Lake A as part of the revisions to the approved reclamation plan would be contrary to legal requirements that mitigation have a nexus and rough proportionality to project impacts (*Nollan v. California Coastal Commission* [1987] 483 U.S. 825; *Dolan v. City of Tigard* [1994] 512 U.S. 374; 14 CCR § 15126.4, subs. [a][3]-[4]). No further revisions to the project objectives are required, as the northerly trail is not part of the proposed project.

Although the proposed project is located within the Livermore Area Recreation and Park Master Plan, which identifies a proposed trail segment north of Lake A, the location of the trail extension is not on CEMEX property. CEMEX cannot include in a reclamation plan work on lands that it does not own, control, or otherwise have a right to encumber by a reclamation entitlement. However, subject to project approval,

and not as a requirement of the County approval, CEMEX intends to make an approximately 630-linear foot segment to connect trail between Lakeside Circle and Travis Circle, around the horse ranch North of Lake A.

### **Dublin San Ramon Services District; April 7, 2021**

#### **Comment 3-1**

The Dublin San Ramon Services District (DSRSD) supports the proposed CEMEX Reclamation Plan Amendment for the Eliot Quarry Facility provided that the comments submitted by the Zone 7 Water Agency (attached) are adequately addressed. DSRSD is one of four retailers in the Tri-Valley that purchases treated water from Zone 7 Water Agency.

#### **Response 3-1**

The County appreciates the input provided by the DSRSD. The comment supporting the proposed project is noted. The attached comments from Zone 7 have been responded to as shown Responses 1-1 through 1-17, above.

#### **Comment 3-2**

DSRSD has long supported regional efforts to convert reclaimed gravel quarry pits located in the Livermore-Amador Valley into a "Chain of Lakes" that can be used for water storage, conveyance, and groundwater recharge management. The CEMEX Reclamation Plan for the Eliot Quarry Facility includes the conversion of Lakes A and B, which would be dedicated to the Zone 7 Water Agency once mining and reclamation activities are completed. These lakes are critical to achieving the long-term water supply benefits envisioned with the creation of a Chain of Lakes.

Founded in 1953, DSRSD serves 188,000 people, providing potable and recycled water service to Dublin and the Dougherty Valley area of San Ramon, wastewater collection and treatment to Dublin and south San Ramon, and wastewater treatment to Pleasanton (by contract). DSRSD also operates the Jeffrey G. Hansen Water Recycling Plant and the backbone recycled water distribution system on behalf of the San Ramon Valley Recycled Water Program. For more information about DSRSD, visit [www.dsrdsd.com](http://www.dsrdsd.com).

#### **Response 3-2**

The comment describing DSRSD's reasoning for support of the proposed project is noted.

## **4.4 ORGANIZATIONS**

### **Pacific Gas and Electric Company, Plan Review Team; February 1, 2021**

#### **Comment 4-1**

Thank you for submitting the SMP-23 plans for our review. PG&E will review the submitted plans in relationship to any existing Gas and Electric facilities within the project area. If the proposed project is adjacent/or within PG&E owned property and/or easements, we will be working with you to ensure compatible uses and activities near our facilities.

Attached you will find information and requirements as it relates to Gas facilities (Attachment 1) and Electric facilities (Attachment 2). Please review

these in detail, as it is critical to ensure your safety and to protect PG&E's facilities and its existing rights.

Below is additional information for your review:

1. This plan review process does not replace the application process for PG&E gas or electric service your project may require. For these requests, please continue to work with PG&E Service Planning: [https://www.pge.com/en\\_US/business/services/building-and-renovation/overview/overview.page](https://www.pge.com/en_US/business/services/building-and-renovation/overview/overview.page).

#### **Response 4-1**

The additional information regarding the PG&E's application process is noted and has been forwarded to CEMEX representatives.

#### **Comment 4-2**

2. If the project being submitted is part of a larger project, please include the entire scope of your project, and not just a portion of it. PG&E's facilities are to be incorporated within any CEQA document. PG&E needs to verify that the CEQA document will identify any required future PG&E services.

#### **Response 4-2**

Electrical power from PG&E would be needed for operating the flow control diversion gate. It is assumed that electrical power is available at the east boundary of the project site from a pole or manhole. CEMEX would request PG&E to provide electrical power for the following loads: (a) actuator for the 84-inch slide gate, and (b) flow measurement and/or water level instruments. Controls for the diversion would consist of simple buttons and indicators; there would not need to be a control panel that provides functions such as automatic control or remote control via telemetry. All electrical and control equipment would be suitable for outdoor and mounted on a rack that would be raised to an elevation above the 100-year flood level (See Draft SEIR Appendix F-1, p. 5-6). In addition, as noted on page 7-6 of the Draft SEIR, "Energy use related to the proposed project would be similar to the use under the approved reclamation plan. In addition, reclamation activities would use less energy than the mining and processing activities currently occurring on-site. Thus, no impact would occur related to this issue."

#### **Comment 4-3**

3. An engineering deposit may be required to review plans for a project depending on the size, scope, and location of the project and as it relates to any rearrangement or new installation of PG&E facilities.

Any proposed uses within the PG&E fee strip and/or easement, may include a California Public Utility Commission (CPUC) Section 851 filing. This requires the CPUC to render approval for a conveyance of rights for specific uses on PG&E's fee strip or easement. PG&E will advise if the necessity to incorporate a CPUC Section 851 filing is required.

This letter does not constitute PG&E's consent to use any portion of its easement for any purpose not previously conveyed. PG&E will provide a project specific response as required.

*\*Note: The PG&E letter also included two attachments, Attachment 1—Gas Facilities and Attachment 2—Electronic Facilities, which provided no comments regarding the project and can be viewed in-full via Appendix A, “Comments on the Draft SEIR.”*

### **Response 4-3**

The comment that an engineering deposit and CPUC Section 851 filing may be required is noted. These requirements have been forwarded to Applicant team.

### **Pleasanton Chamber of Commerce, Steve Van Dorn; February 26, 2021**

#### **Comment 5-1**

The Pleasanton Chamber of Commerce is writing in support of the CEMEX Reclamation Plan Amendment for the Eliot Facility in the Tri-Valley communities of Alameda County, with the caveat that we would like to see increased efforts to mitigate the NO<sub>x</sub> emissions associated with the construction of the reclamation project as outlined in the EIR.

This long-term plan will ensure no mining adjacent to local residents, at the same time providing amenities such as open space, wildlife habitat restoration, pedestrian walking and bike trails. A world-class water conveyance system will be constructed to increase desperately needed water storage, flood protection and groundwater recharge which will then be owned and managed by the local Zone 7 water agency. CEMEX has profited from the use of Pleasanton’s natural resources, and we are pleased to see a reinvestment of nearly \$32 million in our community for the reclamation of the Eliot Facility mining site.

Given the many public and private benefits associated with this project for our region, we support the County’s approval of the CEMEX application with every effort being made to protect surrounding neighborhoods from unnecessarily high exposure to NO<sub>x</sub> emissions. Thank you for your attention to our request.

#### **Response 5-1**

The County appreciates the Pleasanton Chamber of Commerce’s review and input on the proposed project. The Draft SEIR determined oxides of nitrogen (NO<sub>x</sub>) emissions would result in significant and unavoidable impacts because reducing these emissions to a less than significant level would require operations to be limited to shorter windows compared to typical 8 to 10 hour days, which would extend the life of reclamation, thereby also potentially increasing emissions over an extended life of the project (pp. 4.2-19 through 4.2-22, 5-11, and 5-12).

The Draft SEIR analyzed two alternatives aimed at further reducing NO<sub>x</sub> emissions. The Reduced Daily Reclamation Activity Alternative, which would alter the schedule as discussed in the paragraph above, was considered but rejected because the alternative would be infeasible and ineffective (Draft SEIR Section 6.4.2.4, p. 6-7). The Revised ADV Construction Phasing Alternative (Alternative 3), which would alter the reclamation schedule of the ADV realignment and restoration (Draft SEIR Section 6.4.3.3, p. 6-9) to reduce NO<sub>x</sub> emissions. The Draft SEIR determined this to be the environmentally superior alternative (Draft SEIR Section 6.6, p. 6-21). Further, as noted in Response 2-3, above, Mitigation Measure 4.1-1 will be revised to limit reclamation-related construction activities which generate substantial noise to the hours of 9 a.m. to 6 p.m. on Saturdays and prohibit such activities on Sundays. Although NO<sub>x</sub> emissions would still occur outside of these hours as the measure does not prohibit all activity, limiting larger, noisier equipment would likely result in a slight reduction in NO<sub>x</sub> emissions as well. These reductions would reduce NO<sub>x</sub> emissions to the maximum extent feasible.

## **Livermore Valley Chamber of Commerce, Dawn Argula; March 1, 2021**

### **Comment 6-1**

On behalf of the Livermore Valley Chamber of Commerce, I am writing to express support of the CEMEX Reclamation Plan Amendment for the Eliot Facility located in the Livermore Valley in eastern Alameda County.

The Livermore Valley Chamber of Commerce, a business advocacy organization represents nearly 500 members from a cross-section of private/public and the non-profit sectors that employ nearly 20,000 workers. LVCC policy priorities include support for all infrastructure sufficient for a growing, vibrant and resilient economy. LVCC is a strong proponent of local jurisdictions - city and county- leading the region in adopting and executing policies that prepare and strengthen our communities for a 21st Century Economy.

The mining of natural resources, gravel mining in particular, has operated in the Livermore Valley region for generations, as long as the ranching and viticulture industries. In recent history, the materials mined at the Eliot Quarry have gone into construction in many major local and regional projects. This includes our I-580 and SR 84 highway improvements; the new Oakland Bay Bridge; and many local commercial zones, giving true meaning to "keeping it local"- providing jobs, revenues and minimizing impacts from greenhouse gas emissions and traffic that would otherwise result from suppliers coming from outside Alameda County and the SF Bay Area region.

CEMEX has developed a comprehensive and long-term plan with protections, enhancements and benefits to the environment and to local communities. At an estimated cost of \$32 million, CEMEX is making an unprecedented investment in the community. Most importantly, the plan includes a world-class water conveyance system to increase urgently needed water storage, flood protection and groundwater recharge, with ownership and management eventually transferred to the local Zone 7 Alameda County Flood Control and Water Conservation District (known as Zone 7 Water Agency). This will result in improved local water supply and flood control reliability for generations to come.

This plan ensures no mining adjacent to local residents; and provides amenities such as open space, wildlife habitat restoration, pedestrian walking and bike trails. CEMEX has taken extraordinary steps to ensure that the amended plan is environmentally superior to the existing 1987 plan. CEMEX has demonstrated its commitment to restore its property with early implementation of a trail segment along Lake A, improving access for pedestrians and bicyclists, and helping to close gaps in the regional trail system network.

This plan will result in closing the gap through the Vineyard Avenue corridor connection between the cities of Livermore and Pleasanton and the Livermore Valley wine region, a popular and highly desirable amenity by locals and visitors.

CEMEX is requesting approval for the Reclamation Plan Amendment and is prepared to immediately begin implementing these amenities. Given the many public and private benefits associated with this project for our region, LVCC urges your approval of the CEMEX application as proposed.

Thank you for your considered deliberation and swift action on this matter. You are welcome to contact me with questions or comments.

**Response 6-1**

The County appreciates the input received from the Livermore Valley Chamber of Comment. The comment supporting the proposed project is noted.

**Alameda Creek Alliance, Jeff Miller; March 12, 2021****Comment 7-1**

Please include these comments from the Alameda Creek Alliance on the SMP-23 Reclamation Plan Amendment SEIR. The Alameda Creek Alliance is a community watershed group with more than 2,000 members, dedicated to protecting and restoring the natural ecosystems of the Alameda Creek watershed. Our organization has been working to protect and restore streams in the Livermore-Amador Valley, including Arroyo del Valle, since 1997.

Arroyo del Valle Realignment and Enhancement the Alameda Creek Alliance generally concurs that the realigned Arroyo del Valle stream channel, with a design maximizing diverse habitat features and plantings of native vegetation, will enhance and improve stream function and habitat values.

**Arroyo del Valle Diversion Structure**

The SEIR (2.5.10.1) describes the proposed Arroyo del Valle diversion structure as an "environmentally sensitive" in-channel, concrete grade-control structure, covered with rocks, to control grade to support diversion of surface flows into Lake A, through an infiltration bed. Calling a diversion system environmentally sensitive does not make it so. It includes a diversion dam, which can block and divert natural stream flow and impound water, which will have attendant impacts on stream hydrology and aquatic habitat.

**Response 7-1**

The County appreciates the review and input provided by the Alameda Creek Alliance (ACA). Section 4.3, "Biological Resources," of the Draft SEIR specifically addresses the Arroyo del Valle Diversion Structure and potential impacts on species and aquatic habitat (Draft SEIR Section 4.3.4.2, Impacts 4.3-1a, 4.3-2a). While the diversion structure would include a low-head diversion dam, an infiltration bed and bypass structure for fish passage would also be included as part of the structure (Draft SEIR p. 4.3-35). The structure design would support steelhead and trout recovery and passage that would otherwise not occur if the proposed project were not implemented (Draft SEIR p. 4.3-46). As noted in the Draft SEIR, the currently approved reclamation plan envisions two 40-foot-high concrete spillways and the rerouting of the ADV through Lakes A and B, which would prevent fish passage (Draft SEIR p. 2-29). Furthermore, the applicant would be required to obtain regulatory entitlements and authorizations from a variety of agencies (Mitigation Measure 4.3-1a), including from the United States Army Corps of Engineers (USACE), United States Fish and Wildlife Service (USFWS), National Marine Fisheries Service (NMFS), Regional Water Quality Control Board (RWQCB), and California Department of Fish and Wildlife (CDFW). Compliance with regulatory permits and requirements is a well-accepted CEQA mitigation measure (14 CCR § 15126.4, subd. [a][1][B]; *Oakland Heritage Alliance v. City of Oakland* [2011] 195 Cal.App.4th 884, 906 ["a condition requiring compliance with regulations is a common and reasonable mitigation measure"]).

**Comment 7-2**

Our scoping comments asked that the SEIR to evaluate how the diversion structure and its operation would alter the hydrology, surface flow, water quality, and

habitat values of Arroyo del Valle in the project area, and further downstream in Arroyo de la Laguna and Alameda Creek. We asked that the SEIR discuss whether the diversion operation would be consistent with Regional Water Quality Control Board policies regarding impairment of natural stream flows. We asked for disclosure of the water rights (or any lack thereof) regarding proposed water diversions and storage at this facility. We also asked that the SEIR evaluate the potential for the diversion structure's water impoundment to create habitat conditions favorable for invasive predators of native fish and wildlife. It is not clear that the SEIR has fully evaluated these issues.

## Response 7-2

The comment states that “[I]t is not clear that the SEIR has fully evaluated” the issue regarding the ADV diversion structure. However, the comment does not identify specific deficiencies in the Draft SEIR or analysis. As noted above, the diversion and screening structure would be subject to several regulatory requirements and authorizations (Mitigation Measure 4.3-1a), and Section 4.3 of the Draft SEIR specifically addresses potential impacts on species and aquatic habitat (Draft SEIR Section 4.3.4.2, Impacts 4.3-1a, 4.3-2a, pp. 4.3-34 to 4.3-43 and 4.3-51 to 4.3-56).

The Draft SEIR also addresses sensitive habitats within the project site and the ADV. In its current condition, the ADV “is a highly degraded and disturbed system that hosts an abundance of non-native invasive species” (Draft SEIR p. 4.3-12). In addition, the reclaimed surface area of Lake A will be reduced to 81-acres, as compared to 208-acres in the approved reclamation plan, and the final surface area of Lake B will be reduced from a final surface area of 208-acres compared to 243-acres in the approved reclamation plan. (Draft SEIR pp. 2-1 to 2-2.) Thus, the proposed project would reduce the potential to create habitat conditions favorable for invasive species compared to existing conditions and those that would occur under the approved reclamation plan conditions.

Section 4.6, “Hydrology and Water Quality,” also addresses the ADV Diversion Structure and its potential impacts on surface and groundwater resources (Draft SEIR Section 4.6.5.2, Impacts 4.6-1a and 4.6-2a). The infiltration gallery has been designed to create a low flow channel to ensure that at least 8 cfs of water stays in the ADV to ensure a minimum flow is retained within the ADV; it would also contain a gravel bed to screen out potential sedimentation that could otherwise be discharged from the ADV to Lake A (Draft SEIR p. 4.6-79). Regarding potential violation of water quality standards or potential degradation of surface or groundwater quality, the Draft SEIR concludes that potential impacts to water quality standards or waste discharge requirements or substantial degradation to surface water or groundwater quality would be reduced to a level of less than significant by adherence to requirements of a construction SWPPP and implementation of erosion control measures (Mitigation Measures 4.4-1 and 4.6-1; see Draft SEIR p. 4.6-80). In addition, there would be no substantial depletion of groundwater supplies or interference with groundwater recharge associated with the Lake A diversion structure. (Draft SEIR p. 4.6-93).

Following completion of the proposed project, Zone 7 would take control of Lake A, Lake B, Pond C, Pond D and the related levees, conduits, and diversion structures (Draft SEIR p. 2-29). As a result, the proposed project would still achieve prior commitments to provide for water storage and water conveyance under reclaimed conditions (Draft SEIR p. 2-2).

The comment also notes ACA's scoping comment requesting information regarding water rights. Diversions would be subject to the water rights of Zone 7. ACWD and Zone 7 share rights to storm water in the ADV (Draft SEIR p. 4.6-72). Zone 7 jointly holds water rights to divert up to 60,000 acre-feet per year (Draft SEIR, Appendix F-7, p. 12). In addition, a routing study would be required to show how water would

be routed through the chain of lakes and how the system would be operated under various conditions, such as wet year, dry year, flood, and drought (Draft SEIR p. 4.6-67).

Whether Zone 7 has water rights is a legal issue that a CEQA analysis does not evaluate or determine as CEQA analysis is limited to the physical conditions that exist within the area which will be affected by the proposed project (Cal. Pub. Res. Code § 21060.5). The environmental impacts of the proposed diversion structure have been analyzed as required by CEQA, regardless of Zone 7's water rights.

### **Comment 7-3**

#### Fish Passage

The SEIR acknowledges and discusses the potential for return of anadromous fish to the watershed, including Arroyo del Valle in the vicinity of the project area. The proposed project would allow for some fish passage that would otherwise not occur, and the SEIR states that the diversion system was designed to meet CDFW requirements for anadromous fish passage and screening. However, the SEIR acknowledges that the proposed project involves some interference with the possibility for fish to pass. The SEIR presumes that the diversion structure will need to meet state and federal requirements for anadromous fish passage and screening. The project proposes a fish bypass structure around the diversion dam and return flow channels from off-channel flow diversions to avoid trapping and stranding fish.

The SEIR states that under LAVQAR and the approved reclamation plan, the permittee is required to divert the first 500 cfs from Arroyo del Valle into Lake A. Yet the SEIR does not disclose whether this diversion will be conducted under a legal water right.

### **Response 7-3**

As noted in Response 7-2, above, diversions would be subject to the water rights of Zone 7. Furthermore, whether Zone 7 has water rights is a legal issue that a CEQA analysis does not evaluate or determine. The environmental impacts of the proposed diversion structure have been analyzed as required by CEQA, regardless of Zone 7's water rights.

### **Comment 7-4**

The SEIR acknowledges that the diversion structure could reduce or eliminate flows downstream, with adverse impacts to aquatic habitat. The project description requires a minimum flow bypass, and the design will include the ability to control diversion bypass flows of up to 40 cfs in winter/spring and 15 cfs in summer/fall. The SEIR explains that Zone 7 Water Agency asked for this specific bypass flow capability, but does not explain how the flow criteria were developed, or whether they are adequate to reduce impacts to aquatic life downstream or meet CDFW and NMFS passage criteria for anadromous fish.

### **Response 7-4**

Fish passage and exclusion design criteria are described in Section 5.1.1 of the *Hydraulic Design Study*, included as Appendix F-1 of the Draft SEIR. Specific criteria are described in the study as follows:

- Fish passage: Cross-channel structures should include a passable flow bypass structure, and off channel flow diversions should include return flow channels to avoid trapping.



- Bypass flows: Zone 7 requested that the ADV diversion allow for controlled diversion bypass flows of up to 40 cfs in winter/spring and 15 cfs in summer/fall (Winey, pers. comm., 2013).
- Fish screening: CDFW criteria require fish screens to be sized such that the approach velocity entering the screen does not exceed 0.33 foot per second (ft/s) for all self-cleaning screens located in on-stream installations. For screens without automatic cleaning, the approach velocity is limited to one-fourth of the self-cleaning screens. Fish screens are typically sized by dividing the desired diversion flow (e.g., 500 cfs) and the limiting approach velocity (e.g., 0.33 ft/s), which results in the minimum area of fish screen required. For example, a 500 cfs diversion limited to 0.33 ft/s approach velocity would require at least 1,515 square feet (ft<sup>2</sup>) of fish screen. The U.S. Bureau of Reclamation (USBR) recommends the use of a 10 percent safety factor, which would increase the required area in this example to 1,667 ft<sup>2</sup> (USBR 2006).

Brown and Caldwell, the engineering consultant, recognizes that design criteria would be reviewed as part of consultation with CDFW and NMFS. It may be feasible to request a variance from CDFW for the approach velocity restrictions during certain times of year when fish fry are not present. The consultant investigated several options for diversion, screening, and conveyance and evaluated potential options with respect to feasibility, cost, and performance. They found that the fish exclusion mechanism is the key differentiating feature among the alternatives because that component is the primary driver for the diversion system size, flow capacity, and construction and maintenance costs. The selected alternative uses a wide gravel bed with an infiltration gallery to meet fish screening requirements. In addition, the edge of the infiltration bed nearest to the ADV would be set at an elevation of 434 feet, or approximately 1 foot above the channel bottom to allow for sedimentation. The top surface of the gravel infiltration bed would be sloped at 0.5 percent, sloping down toward ADV so that fish would move back toward the mainstream channel as water levels drop and not be entrapped (Draft SEIR Appendix F-1, pp. 5-3 to 5-6).

The applicant also sought input from CDFW regarding the proposed design concept for the fish bypass. On January 13, 2016, the applicant received an email from Marcia Grefsrud, Environmental Scientist, of CDFW stating: "Requiring fish passage is not necessary at this time, but the currently proposed rocky ramp/chute should be a satisfactory option should fish passage become viable in the future." (Grefsrud, pers. comm., 2016). Nevertheless, the details of the bypass will be submitted to CDFW for formal review as part of a Notification package for a Lake and Streambed Alteration, as required by Mitigation Measure 4.3-1a (Draft SEIR p. 4.3-9).

### **Comment 7-5**

The SEIR explains that the diversion will have fish screening in accordance with CDFW criteria, but that a variance may be requested for approach velocity restrictions during times of year when fish fry are not likely to be present (summer and fall). The SEIR states that fish screen criteria will be revisited during detailed design as part of consultation with CDFW and, if necessary, the National Marine Fisheries Service. It is absolutely necessary for NMFS and CDFW to have input on the fish screen criteria, design of the fish bypass structure, and bypass flows needed for anadromous fish, so that the project does not result in foreclosure of future potential for anadromous fish to utilize and migrate through the project area.

### **Response 7-5**

As stated in Response 7-1, above, the proposed diversion structure would be subject to several regulatory requirements and authorizations (Mitigation Measure 4.3-1a), including from the USACE, USFWS, NMFS, RWQCB, and CDFW. Compliance with regulatory permits and requirements is a well-accepted CEQA

mitigation measure (14 CCR § 15126.4, subd. [a][1][B]; *Oakland Heritage Alliance v. City of Oakland* [2011] 195 Cal.App.4th 884, 906 [“a condition requiring compliance with regulations is a common and reasonable mitigation measure”]).

Also, as stated in Response 7-4, the applicant sought input from CDFW regarding the proposed design concept for the fish bypass. On January 13, 2016, the applicant received an email from Marcia Grefsrud of CDFW stating: “Requiring fish passage is not necessary at this time, but the currently proposed rocky ramp/chute should be a satisfactory option should fish passage become viable in the future.” Nevertheless, the details of the bypass will be submitted to CDFW for formal review as part of a Notification package for a Lake and Streambed Alteration, as required by Mitigation Measure 4.3-1a (Draft SEIR p. 4.3-39).

### **Comment 7-6**

#### Agency Approvals Required

The SEIR notes that the following agency approvals may be required for the project: San Francisco Bay Regional Water Quality Control Board (Section 401 certification and Waste Discharge Requirements, as applicable); CDFW (a lake or streambed alteration agreement and possibly a California Endangered Species Act permit); National Marine Fisheries Service (Section 7 consultation; incidental take statement); U.S. Fish and Wildlife Service (Section 7 consultation; incidental take statement); and U.S. Army Corps of Engineers (Section 404 permit and NEPA compliance). The ACA concurs that approval and permits will be required from all of these agencies, due to presence of and impacts to state and federally listed species, impacts to jurisdictional waters and wetlands, and impacts to water quality.

### **Response 7-6**

The comment stating that the ACA concurs approval and permits from the RWQCB, CDFW, NMFS, USFWS, and USACOE are required is noted.

### **Comment 7-7**

The SEIR acknowledges that that ESA Section 7 consultation with NMFS will be required for this project once steelhead trout access to the upper watershed has been restored in 2021. The SEIR states that as part of the USACE 404 permit process, the permittee would undergo consultation with NMFS relating to potential listed fisheries. Yet elsewhere the SEIR says that consultation will occur “if determined to be necessary” and that the applicant will “potentially” obtain an incidental take statement for work associated with the Lake A diversion structure. The SEIR should explicitly state whether NMFS has determined that ESA Section 7 consultation is required.

### **Response 7-7**

Clean Water Act permitting under Section 404 would trigger consultation with NMFS under Section 7 of the Endangered Species Act (ESA) (See *North Coast Rivers Alliance v. Marin Municipal Water Dist. Bd. of Directors* (2013) 216 Cal.App.4th 614, 647). The Draft SEIR acknowledges that special status anadromous fish could return to the upper Alameda Creek watershed by 2021 (Draft SEIR p. 4.3-15). The County and Applicant understand that consultation with NMFS is required. See revisions in Section 3.2.6 of this Final SEIR.

### **Comment 7-8**

The ACA submitted with our project comment a 2016 letter from NMFS stating formal ESA consultation was not required at that time for the nearby Lehigh Hanson Arroyo Mocho Diversion Structure project regarding potential impacts to steelhead trout, but noted that consultation will be required once steelhead access to the upper watershed has been restored in 2021. As noted in the ACA comments and in the SEIR, volitional fish passage for steelhead trout into the watershed will indeed be completed by the end of 2021.

### **Response 7-8**

See Response 7-7, above. The County and Applicant understand that consultation with NMFS is required.

### **Comment 7-9**

Deferred Mitigation Measures

Under the California Environmental Quality Act (CEQA), the purpose of an EIR is to provide public agencies and the public with detailed information about the likely significant environmental effects of a proposed project, and identify feasible mitigation measures to avoid or substantially lessen significant effects. An EIR is inadequate if mitigation efforts largely depend upon management plans that have not yet been formulated, and have not been subject to analysis and review within the EIR. Under CEQA, an agency cannot defer the formulation of mitigation measures without committing to specific performance criteria for judging the efficacy of the future mitigation measures.

### **Response 7-9**

The mitigation measures contained in this Final SEIR are feasible and contain performance standards and measurable standards that allow for the judging of the efficacy of mitigation measures that would be fully implemented in the future. Compliance with regulatory permits and requirements is a well-accepted CEQA mitigation measure (14 CCR § 15126.4, subd. [a][1][B]; *Oakland Heritage Alliance v. City of Oakland* [2011] 195 Cal.App.4th 884, 906 [“a condition requiring compliance with regulations is a common and reasonable mitigation measure”]). Therefore, the mitigation measures contained in this Final SEIR are legally adequate.

### **Comment 7-10**

The SEIR states that for feasible mitigation measures, the County would adopt a mitigation monitoring and reporting program (MMRP) at the time it certifies the EIR, 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. This is improper deferral of mitigation measures. The MMRP should be completed before certification of the EIR, and included with the SEIR, so that the public and regulatory agencies can determine whether proposed mitigation measures are adequate to avoid or substantially lessen significant effects, and will actually be implemented. For example, much of the mitigation for riparian habitat impacts will be accomplished by planting and establishing native plants in the realigned Arroyo del Valle creek reach. An MMRP is needed as part of the EIR so the public can evaluate the likely success of proposed riparian plantings in the realigned stream channel, and a detailed plan describing proposed monitoring of survival

of plantings (especially during extended drought conditions), a watering program, and mitigation requirements should plantings fail.

### **Response 7-10**

All proposed mitigation measures for the project are set forth in the Draft SEIR. CEQA does require the lead agency to adopt a reporting or monitoring program upon project approval (Cal. Pub. Res. Code § 21081.6). However, as the MMRP should reflect any revisions in the Final EIR, there is no requirement that the MMRP be made available for public review before project approval. (*Christward Ministry v. County of San Diego* (1993) 13 Cal.App.4th 31, 49 [“Nothing in CEQA or the Guidelines requires the mitigation monitoring plan to be in the EIR”].) Despite no requirement to circulate the MMRP prior to project approval, the County has included a draft MMRP to this Final SEIR as Appendix E, “Mitigation Monitoring and Reporting Program.” The MMRP is subject to change prior to project approval, but revisions to mitigation measures as outlined in Chapter 3 of this Final SEIR have been incorporated into Appendix E.

### **Comment 7-11**

Some of the specific mitigation measures for potentially significant impacts to biological resources are deferred. One of the mitigation measures in the SEIR for potential impacts to fish passage is Mitigation Measure 4.3-1a, Obtain Regulatory Entitlements and Authorizations. This consists of the applicant obtaining regulatory authorizations from the USACE, USFWS, NMFS, RWQCB, and CDFW. Mitigation Measures 4.3-1b for impacts to amphibians and reptiles, and 4.3-1b for impacts to raptors include, along with pre-construction surveys and other take avoidance measures, compliance with the mitigation requirements and conditions of any Section 1600 Lake and Streambed Alteration Agreement with CDFW. These regulatory agencies may require additional design elements and avoidance or mitigation measures as part of their permits, measures that are not currently included in the project. The SEIR even states that to the extent that regulatory permits require additional or different mitigation, those permits and associated conditions of approval would take precedence.

### **Response 7-11**

As the comment notes, regulatory authorizations would be required from several agencies to implement the proposed project (see Mitigation Measure 4.3-1a in the Draft SEIR). As explained in Responses 7-1, 7-5, and 7-9, above, compliance with regulatory requirements is a well-accepted CEQA mitigation measure and does not constitute improper deferral of mitigation (*North Coast Rivers Alliance v. Marin Municipal Water Dist. Bd. of Directors* [2013] 216 Cal.App.4th 614, 647). “[W]hen a public agency has evaluated the potentially significant impacts of a project and has identified measures that will mitigate those impacts, the agency does not have to commit to any particular mitigation measure in the EIR, as long as it commits to mitigating the significant impacts of the project” (*Oakland Heritage Alliance v. City of Oakland* [2011] 195 Cal.App.4th 884, 906). All potentially significant impacts associated with the revisions to the approved reclamation plan would be reduced to less than significant after the incorporation of mitigation, except for potential impacts associated with daily NOx emissions. In addition, the County is requiring biological mitigation at a minimum 1:1 ratio (Draft SEIR p. 4.3-58; Final SEIR Section 3.2.10 and 3.2.11). Wetland habitats would be re-established or restored at a ratio of 2.26:1 (Draft SEIR p. 4.3-52). If the other agencies require higher ratios, those would control (Draft SEIR p. 4.3-55).

### **Comment 7-12**

Increased Mitigation Needed for Riparian and Sycamore Woodland Impacts

The SEIR notes that the East Alameda County Conservation Strategy provides guidance for project-level permits, and that federal and state resource agencies participating in the EACCS intend it to be the blueprint for all mitigation and conservation in the study area, which includes the current project. As a general guideline, the EACCS standard for mitigation of sensitive habitats is protection of the same land cover type at a 3:1 ratio. That mitigation ratio can vary depending on the quality of habitat being lost and the rarity of the habitat type in the particular conservation zone, but reductions in the mitigation ratio would need to be justified through the CEQA process and in coordination with regulatory agencies.

CDFW and the Alameda Creek Alliance commented on the current project that impacts to special-status species should be mitigated, at a minimum, according to the EACCS mitigation standards. The SEIR calculates that 22.41 acres of wetland vegetation communities will be impacted by the project, primarily seasonal marsh and willow riparian habitats. The proposed mitigation ratio in the SEIR (Table 4.3-7, "Proposed Wetland Community Re-Establishment and Restoration Acreage") is only a 2:1 ratio, or 50.71 acres of restored or reestablished wetland vegetation habitat.

The project should include an additional 10 acres of restored or established riparian habitat. This could potentially be accomplished by extending riparian restoration downstream and upstream of the project area, removing non-native invasive species such as giant reed and pampas grass and planting native riparian plants such as willows and sycamores. If this type of additional restoration adjacent to the project area is not feasible, the increased mitigation could instead be achieved by coordinating with Zone 7 Water Agency to remove or remediate concrete structures in Arroyo del Valle downstream of the project area which Zone 7 has identified as full or partial fish passage barriers.

### **Response 7-12**

The County has not adopted the East Alameda County Conservation Strategy (EACCS), and thus the EACCS is not binding on the County or the proposed project. Furthermore, as the comment notes, the EACCS guidance recognizes that mitigation ratios can vary, depending on the quality of habitat being lost. The current condition of the ADV is "a highly degraded and disturbed system that hosts an abundance of nonnative invasive species" (Draft SEIR p. 4.3-12). Furthermore, the Draft SEIR analyzes the potential loss of riparian habitat and reaches a finding that potential impacts would be less-than-significant, with mitigation incorporated (Draft SEIR pp. 4.3-56 to 58). Thus, no further mitigation is required for a less-than-significant impact.

### **Comment 7-13**

The SEIR notes that 6.5 acres of sycamore woodland, identified by CDFW as a sensitive habitat type, occur in the project area. However, the SEIR does not appear to quantify the loss of sycamore woodland habitat in the project area resulting from the project or provide a sycamore replacement mitigation ratio. Sycamores should be replaced at a 3:1 mitigation ratio, given the rarity of the habitat type and the importance of sycamores for native wildlife such as trout, birds, and bats, and considering the benefits of streamside sycamores for aquatic habitat diversity and stream bank stabilization. The mitigation ratio should be 3:1 for sycamores regardless of the current status of sycamore trees, since as the SEIR notes, old and dying sycamore trees provide important roosting and nesting habitat for bats and birds. The SEIR does contain mitigation

measures for special-status bat species, but these measures are designed only for avoidance of take; they do not mitigate for potential loss of bat roosting sites. Replacement of impacted sycamore trees at a 3:1 ratio could help mitigate for potential loss of bat roosting sites.

### **Response 7-13**

Regarding sycamore woodland impacts, a total of 6.50 acres of sycamore woodland were mapped within the Lake A area (See Draft SEIR Figure 4.3-1, “Revised Biological Communities,” and Appendix D-2, “BRA Addendum,” at Attachment A, p. C-3). This community is comprised of small, isolated patches of sycamores in varying degrees of health (with the majority of the trees being in poor health) that appear to be located in the vicinity of previous alignments of the ADV (Draft SEIR p. 4.3-10). Other than placement of a 50-linear foot portion of berm to be constructed along the ADV at Lake A near Vallecitos Road, project reclamation activities would not occur in the sycamore woodland area.

The Draft SEIR recognizes these potential impacts and includes numerous mitigation measures to protect the special status species that may utilize sycamore and other trees for nesting purposes (Draft SEIR Section 4.3.4.2, Impact 4.3-1a, Table 4.3-5, at p. 4.3-34; and Mitigation Measures 4.3-1a thru 4.3-1h at pp. 4.3-39 thru 4.3-43). Moreover, the proposed Lake A Landscape Plan (Draft SEIR Appendix B-2, “Lake A Landscape Plan”), which is a component of the proposed project design, specifies the planting of 49 new sycamore trees in the Lake A area as part of reclamation.

The proposed project would impact approximately 0.045-acre of sycamore woodland and include 49 replacement sycamore trees (See Draft SEIR Appendix B-1, “Proposed Reclamation Plan Amendment,” at Sheet R-4, Lake A Reclamation Plan). The proposed ratio of replacement sycamore acreage (at maturity) to acreage impacted can be calculated using the canopy spread of a mature sycamore, which ranges from 40 to 70 feet in diameter (Arbor Day Foundation 2021). To be conservative, the calculation will use a radius of 20 feet (half the diameter of lowest in the range), which would result in an area of 1,256 square feet per tree. When multiplied by 49, the number of proposed replacement trees, the result is 61,544 square feet, or 1.41 acres. The ratio of the proposed replacement tree acreage of 1.41 acres (at minimum) to the impacted 0.045-acre of existing sycamore woodland could therefore be simplified to approximately 634:1. Therefore, no revisions to mitigation measures are required. However, Section 4.3, “Biological Resources,” of the SEIR has been revised to clarify the details discussed above, as shown in Sections 3.2.7 and 3.2.8 of this Final SEIR.

### **Comment 7-14**

#### Alternatives Analysis

The SEIR evaluates and dismisses Alternative 4, Reduced Capacity of Lake A Diversion Structure Alternative. This alternative was designed to reduce potential impacts to biological resources by reducing the amount of water being diverted from Arroyo del Valle into Lake A. Under Alternative 4, the diversion structure capacity would be reduced from 500 cfs to 200 cfs, allowing significantly more water to be retained in Arroyo del Valle, which would be beneficial to biological resources in the restored Arroyo del Valle. While the proposed project has a low flow channel to ensure that at least 9 cfs are retained, Alternative 4 would allow for an additional 300 cfs of water (during higher water flows) to be retained in the Arroyo del Valle than envisioned in the proposed project. The SEIR acknowledges that the current version of the LAVQAR Specific Plan, the approved reclamation plan, and the contract between the Applicant and Zone 7, which call for a diversion structure of 500 cfs, could

potentially be modified to facilitate additional water to be retained in Arroyo del Valle under Alternative 4. The diversion structure would be smaller than the proposed project, with fewer impacts to biological resources by ensuring that additional water is available for fish and aquatic wildlife for feeding or migration. Alternative 4 would also result in less impacts to waters of the U.S. than the proposed project because the design for the diversion structure infiltration bed would be smaller. The SEIR concludes that Alternative 4 would not meet all of the objectives of the proposed project, particularly the objectives of the LAVQAR and Zone 7 Agreement for implementation of the Chain of Lakes on the portions of land controlled by CEMEX. However, the SEIR acknowledges that these objectives could be met or altered through negotiations between Zone 7, the Applicant, and the Community Development Agency of Alameda County.

### **Response 7-14**

The proposed project involves revisions to the approved reclamation plan, which is subject to LAVQAR. Thus, meeting the requirements of the LAVQAR is a critical objective of the project (Draft SEIR p. 2-13 to 2-14). Zone 7 submitted a comment letter on the Draft SEIR dated March 10, 2021 (see Comment 1-2, above), which addresses the proposed project's consistency with the LAVQAR:

Zone 7 notes that the provisions of the agreements between Zone 7 and the quarry operators, which implement the directives in LAVQAR, should also be used to define the proposed project, for all mining and reclamation activities must be consistent with those agreements.

In addition, the Zone 7 comment letter states: "It should be noted that Alternative 4 does not abide by LAVQAR or the Zone 7/CEMEX agreement." The approved reclamation plan calls for the removal of the ADV, which would be routed through Lake A. The 1988 Zone 7 agreement and LAVQAR call for a diversion structure from the ADV at Lake A into Lake C capable of diverting 500 cfs of flow. Zone 7 has apparently extrapolated the Lake A to Lake C pipeline 500 cfs to the ADV diversion structure. The approved reclamation plan has no diversion structure because the ADV was designed to run through Lake A and not be separate. The Zone 7 interpretation of LAVQAR is incorrect. The biological benefits of Alternative 4 are described in the Draft SEIR and County decisionmakers will decide to include Alternative 3 and/or 4 as part of the decision-making process.

### **Comment 7-15**

Environmentally Superior Alternative

The SEIR concluded that Alternative 3, the Revised ADV Construction Phasing Alternative, is the environmentally superior alternative for the project. However, this is not supported by the analysis in the SEIR. Alternative 3 would have essentially similar impacts to the proposed project with regards to biological resources, greenhouse gas, geology and soils, hydrology and water quality. The SEIR notes that Alternative 4, the Reduced Capacity of Lake A Diversion Structure Alternative, would reduce the impacts on aesthetics, air quality, biological resources, geology and soils, greenhouse gas, hydrology and water quality, and noise. Alternative 4 is clearly the environmentally superior alternative. Alternative 4 would reduce impacts on biological resources and allow increased stream flow in Arroyo del Valle, as discussed above. The SEIR states that Alternative 4 would not meet all of the objectives of the proposed project, particularly Objective 6, "carry out the objectives of the LAVQAR and Zone 7 Agreement for implementation of the Chain of Lakes on the portions of land controlled by CEMEX." The SEIR notes that Alternative 4 could be consistent

with this objective, but would require negotiations between Zone 7, the Applicant and the Community Development Agency of Alameda County, and it is unclear whether Alternative 4 would be able to achieve Objective 6. The SEIR further states that alternatives analysis and conclusions reached regarding the environmentally superior alternative do not determine the ability of Alternative 4 to be an economically viable option for the Applicant. The alternatives analysis and conclusions seem flawed.

### **Response 7-15**

All potential proposed project impacts would be less than significant, or less than significant with mitigation incorporated, with the exception of impacts related to NOx emissions (Draft SEIR Table 6-1). Alternative 4 does not reduce potentially significant and unavoidable NOx impacts, whereas Alternative 3 results in reduced daily NOx impacts (14 CCR § 15126.6). In addition, as noted in the responses to comment regarding alternatives analysis (Responses 1-3 and 8-14, above), Zone 7 has indicated that it does not support Alternative 4 and Alternative 4 is inconsistent with LAVQAR. However, the County acknowledges that although Alternative 3 is the Environmentally Superior Alternative, Alternative 4 also is more environmentally sensitive than the proposed project. The biological benefits of Alternative 4 are described in the Draft SEIR, and County decisionmakers will decide to include Alternative 3 and/or 4 as part of the decision-making process.

### **Dublin Chamber of Commerce, Inge Houston; March 17, 2021**

#### **Comment 8-1**

On behalf of the Dublin Chamber of Commerce, I am writing in support of the CEMEX Reclamation Plan Amendment for the Eliot Facility in the Tri-Valley communities of Alameda County.

This long-term plan will provide amenities such as open space, wildlife habitat restoration, and pedestrian and bike trails. A water conveyance system will be constructed to increase desperately needed water storage, flood protection and groundwater recharge which will then be owned and managed by the local Zone 7 Water Agency. CEMEX has taken steps to ensure the amended plan is environmentally superior to the existing plan.

CEMEX and the Eliot Facility have been a critical part of the infrastructure and economic activity in the Bay Area for more than one hundred years. Aggregate material from Pleasanton has supplied the Bay Bridge, BART and businesses, homes, roads and schools found in most of the Bay Area. Demand for new construction is projected to grow, and this demand should be met locally as opposed to being trucked and shipped from outside the region which increases costs and adds negative environmental impacts such as air pollution, greenhouse gas emissions, traffic congestion and added road maintenance.

CEMEX is requesting approval for the Reclamation Plan Amendment so they can immediately start implementing these amenities. At an estimated cost of \$32 million, CEMEX is investing in the community and we support CEMEX's efforts. Any delays in the approval process will only prevent implementation of these amenities.

Given the many public and private benefits associated with this project for our region, I urge the County to approve the CEMEX application as proposed. Thank you for your attention to this request.



### **Response 8-1**

The County appreciates the review and input provided by the Dublin Chamber of Commerce. The comment in support of the proposed project is noted and will be provided to the decisionmakers (the Planning Commission and/or the Board of Supervisors).

### **California Water Service; Justin Skarb, April 13, 2021**

#### **Comment 9-1**

I am writing on behalf of California Water Service (Cal Water) in support of the CEMEX Reclamation Plan Amendment for the Eliot Facility in the Tri-Valley communities of Alameda County.

This plan will ensure that no mining will occur adjacent to residents; while simultaneously providing amenities such as open space, wildlife habitat restoration, and pedestrian walking and bike trails. A world-class water conveyance system will be constructed to increase needed water storage, flood protection, and groundwater recharge. CEMEX has taken extraordinary steps to ensure that the amended plan is environmentally superior to the existing plan. All at no cost to the Tri-Valley communities.

CEMEX and the Eliot Facility have been a critical part of the infrastructure and economic activity in the Bay Area for over 100 years. Aggregate material from Pleasanton has supplied the Bay Bridge, BART, and businesses, homes, roads, and schools found in most of the Bay Area. Demand for new construction is projected to grow, and this demand should be met locally as opposed to being trucked and shipped from outside the region, which increases costs and adds negative environmental impacts such as air pollution, greenhouse gas emissions, traffic congestion, and added road maintenance.

CEMEX is requesting approval for the Reclamation Plan Amendment so they can immediately start implementing these amenities. At an estimated cost of \$32 million, CEMEX is making an unprecedented investment in the community. Any delays in the approval process will only prevent implementation of these amenities.

Given the many public and private benefits associated with this project for our region, I urge the County to approve the CEMEX application as proposed. Thank you for your attention to this request.

### **Response 9-1**

The County appreciates the input provided by the California Water Agency. The comment supporting the proposed project is noted and will be provided to the decision makers.

### **Associated Builders and Contractors, Inc., Northern California Chapter, Nicole Goehring, April 29, 2021**

#### **Comment 10-1**

As you are well aware, in the coming weeks the Commission will be considering CEMEX's amended reclamation plan. On behalf of the Associated Builders and Contractors Northern California Chapter (ABC NorCal) and its nearly 500 construction and construction related firms representing 21,000 essential merit shop construction workers and over 800 essential apprentices who have performed

public works jobs throughout Northern California and predominately in the Bay Area for forty-five years, we are asking for your favorable consideration.

Having a local and affordable source of construction aggregate is an important consideration for businesses when they choose to expand or locate to Alameda County or when public agencies invest taxpayer dollars in public infrastructure. The demand for new construction in the Bay Area region is projected to grow, requiring over 2 billion tons of construction aggregate per year for the next 50 years. This demand should be supplied locally, as opposed to being trucked and shipped in from outside the region, including from other countries.

Transporting aggregate from distant sources results in increased construction costs, fuel consumption, greenhouse gas emissions, air pollution, traffic congestion and road maintenance. Transportation costs alone can increase 22 cents per ton for every additional mile traveled. As a consequence, these higher construction costs are passed on to businesses, homeowners and county taxpayers.

CEMEX has been an invaluable partner in providing the building material needed to grow the region's economy and the county's investments in public infrastructure. Aggregate from their Pleasanton Eliot Quarry has served the businesses, homes, roads and schools found in most neighborhoods.

Perhaps most importantly, CEMEX's amended reclamation plan is far superior to the current plan. CEMEX is devoting considerable resources to wildlife and habitat protection, a water conveyance system that will serve local ratepayers, and an expanded pedestrian and bicycle trail that will benefit their residential neighbors in Pleasanton and Livermore.

Essentially, CEMEX has developed a constructive and thoughtful plan that serves the region's building, water, environmental and recreational needs, all the while being mindful of being a good corporate citizen and responsible neighbor.

Thank you for recognizing the benefits of having a quarry located in your community.

### **Response 10-1**

The County appreciates the input provided by ABC NorCal. The comment supporting the proposed project is noted and will be provided to the decision makers.

## **4.5 INDIVIDUALS**

### **Fabian Moreno; February 25, 2021**

#### **Comment 11-1**

We are homeowners on the side of Lake A. We would like to bring to the attention of the planning department two things that we would like to see considered moving forward.

1. We need a little bridge for pedestrians to cross safely on vallecitos because the bridge is dangerous currently.

### **Response 11-1**

The County appreciates the input provided by the commenter. The comment requesting a pedestrian bridge on Vallecitos Road falls outside of the permitting process for the proposed project. The County recommends working with CEMEX directly. However, the County notes the commenter's opinion that there is a need for a pedestrian bridge at Vallecitos Road in the project vicinity.

### **Comment 11-2**

2. The city, I believe maintains portion of the perimeter (sic) of Lake A, specifically the little berm or hill that backs to the homes on Lake A is in need of attention. The erosion of the slope and the dead trees should be addressed. We would also like to have access to the lake if possible as residents.

### **Response 11-2**

The comment requesting addressing of erosion and dead trees in the vicinity of Lake A is noted and will be forwarded to the City of Livermore for its consideration.

### **Comment 11-3**

3. Would be nice if the trails had some low lighting incorporated either solar or into the path itself---<https://www.coregravel.ca/core-glow/products/>

We are in full support of the plan and look forward to seeing it completed.

### **Response 11-3**

The comment expressing neighbor interest in trail lighting and support for the proposed project is noted.

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