

**THE PLANNING COMMISSION OF THE COUNTY OF ALAMEDA  
HAYWARD, CALIFORNIA  
RESOLUTION NO. Z-21-04 AT MEETING HELD JUNE 21, 2021  
SURFACE MINING PERMIT AND RECLAMATION PLAN  
SMP-23**

**Introduced by Commissioner Moore**

**Seconded by Commissioner Gin**

**WHEREAS** RMC PACIFIC MATERIALS, LLC (CEMEX) (“Applicant”) has filed an application for a reclamation plan amendment to their approved reclamation plan and modification to Surface Mining Permit and Reclamation Plan 23 (SMP-23) to incorporate the revised plan at the Eliot Quarry, in the A (Agricultural), U (Unclassified), and PD (Planned Development) Districts, between the cities of Pleasanton and Livermore, south of Interstate 580 and Stanley Boulevard in the Livermore-Amador Valley, north of Vineyard Avenue, and both east and west of Isabel Avenue (State Route 84 [SR 84]), altogether bearing Assessor’s Parcel Numbers 904-6-1-18, 904-6-2 (part), 904-8-1-3 (part), 904-8-1-2, 904-8-2-5, 946-1350-9-12, 946-1350-9-19, 946-1350-10-5, 946-4598-19, 950-6-3-9, 950-6-1-5, and 99-290-11-7, representing a combined parcel area of approximately 920 acres; and

**WHEREAS** the Alameda County Surface Mining Ordinance (ACSMO) designates the Planning Commission as the decision-making body for surface mining permits and reclamation plans, subject to appeal to the Board of Supervisors; and

**WHEREAS** mining operations at the Eliot Quarry are vested by the continuation of pre-1957 mining activities and Alameda County Quarry Permits Q-1 (1957), Q-4 (1975), and Q-76 (1969), and SMP-23 was approved by the Planning Commission on April 6, 1987, by Resolution 87-18; and

**WHEREAS** on December 17, 2012, the Planning Commission completed a scheduled periodic review of the Eliot Quarry as prescribed by the ACSMO and a condition of approval (COA) of SMP-23 and adopted Resolution 2012-10, at which time the Planning Commission determined that changes in circumstances at the site and in applicable regulatory requirements necessitated the preparation of an amended reclamation plan that would address these changes and provide reclamation objectives that could be feasibly accomplished and permitted by regulatory agencies; and

**WHEREAS** Resolution 2012-10 imposed new COAs on SMP-23, including a requirement for CEMEX to file a reclamation plan amendment application within 6 months of the adoption date of the resolution and a prohibition on the resumption of mining at Lake A (suspended in 2003) until it is demonstrated to the satisfaction of the County Community Development Agency (CDA) Director that mining can occur without resulting in slope or geologic instability resulting in harm to persons or property and would not conflict with the Livermore-Amador Valley Quarry Area Reclamation Specific Plan (LAVQAR); and

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**WHEREAS** a project application was first submitted in June 13, 2012, which included a proposal to resume mining in Lake A, and after which the proposed project application underwent revisions in August, 22, 2014, December 22, 2016, and March 4, 2019;

**WHEREAS** the March 4, 2019 project application, which does not include mining in Lake A, is the proposed project and was deemed complete on April 1, 2019, a Notice of Preparation for a Subsequent EIR was circulated for 30 days between June 18 and July 18, 2019, and a public scoping meeting was held at the hour of 7:00 p.m. on the 26th day of June 2019 at 7986 Tesla Road in Livermore, California 94550; and

**WHEREAS** SMP-23 is subject to LAVQAR;

**WHEREAS** the LAVQAR EIR, which was certified by the County in 1981, evaluated the project site and contains information still relevant to the current CEQA review, resulting in a determination that the County would prepare a Subsequent Environmental Impact Report (SEIR) to the LAVQAR EIR; and

**WHEREAS** the Draft SEIR was prepared and circulated for 45 days between January 27 and March 12, 2021, and the CDA did hold a virtual public hearing to take comments on the Draft EIR at the hour of 6:30 p.m. on the 3<sup>rd</sup> day of March 2021; and

**WHEREAS** this Planning Commission held a duly noticed public hearing to consider approval of the Eliot Quarry (SMP-23) Reclamation Plan Amendment Final SEIR and conditions of approval, attached herein as in Exhibit A, "Conditions of Approval," at the hour of 3:00 p.m. on Monday, the 21<sup>st</sup> day of June 2021, on Zoom at an address provided in the Planning Commission's agenda at <https://www.acgov.org/cda/planning/agendas.htm>; and

**WHEREAS** in compliance with Section 15091 of the CEQA Guidelines, the Planning Department prepared Written Findings of Significant Effects and Statement of Overriding Considerations, attached herein as Exhibit B, "Written Findings of Significant Effects and Statement of Overriding Considerations," to provide a brief explanation of the rationale for each finding, supported by substantial evidence in the record, that changes or alterations have been required in or incorporated into the proposed project, including by identified mitigation measures that would avoid or substantially lessen some but not all identified significant environmental effects, and furthermore that certain mitigation measures or project alternatives identified in the Final SEIR are infeasible due to specified economic, legal, social, technological, or other considerations; and

**WHEREAS**, further in compliance with Section 15091(d) of the CEQA Guidelines, the Planning Department has prepared a Mitigation Monitoring and Reporting Program (MMRP) for the project, attached herein as Exhibit C, "MMRP," which is required to be implemented by the Permittee and by the County as conditions of approval of the proposed project and that are fully enforceable through permit conditions, agreements, or other measures; and

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**WHEREAS** the Final SEIR indicates that activities associated with the proposed project would result in significant and unavoidable adverse impacts to air quality because the project would exceed daily emissions standards for oxides of nitrogen (NO<sub>x</sub>), conflict with the applicable air plan, and contribute to a cumulatively considerable impacts on air quality and a conflict with the aforementioned air plan; and

**WHEREAS**, further in compliance with Section 15093 of the CEQA Guidelines the Planning Department has prepared a Statement of Overriding Considerations, attached herein as Exhibit B, which states specific reasons, supported by substantial evidence in the record, why the Planning Department and the Planning Commission would certify the SEIR and approve the proposed project although certain significant adverse environmental effects of the project would not be avoided or substantially lessened by the identified mitigation measures; and

**WHEREAS**, further in compliance with Alameda County Surface Mining Ordinance Section 6.80.160 the Planning Department has prepared Surface Mining Ordinance Findings, attached herein as Exhibit D, "Surface Mining and Reclamation Act Findings," which outlines the rationale of why the Planning Commission should approve the proposed reclamation plan amendment; and

**WHEREAS**, the Planning Commission has determined that approval of the project as conditioned herein, including the implementation of the MMRP attached herein as Exhibit C, would provide for all of the significant effects on the environment to have been eliminated or substantially lessened where feasible, as indicated in the Written Findings of Significant Effects, attached herein as Exhibit B, and that there are certain significant effects on the environment found to be unavoidable which are acceptable due to overriding considerations as indicated in the Statement of Overriding Considerations attached herein as Exhibit B; and

**WHEREAS** the project in the form of the "Revised ADV Construction Phasing Alternative" as described in the Final SEIR is the Project Alternative that best allows the project to achieve the main objectives of the Applicant while avoiding the greatest number and severity of adverse effects on the environment as described in the Final SEIR; and

**WHEREAS** public comments were submitted on the project and the Draft SEIR during the indicated 45-day comment period including those of state and local agencies, districts, non-governmental organizations, opponents to and advocates for the project, and responses to the comments received during this period are included with the Final SEIR that was made available for public review the minimum of ten (10) days before the current hearing; and

**WHEREAS** it satisfactorily appears from affidavits on file that proper notice of said public hearing was given in all respects as required by law; and

**WHEREAS** a Pre-Hearing Analysis was submitted recommending certification of the Final SEIR, and that the reclamation plan amendment application be approved, modified to conform to the Revised ADV Construction Phasing Alternative as described in the Final SEIR; and

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**WHEREAS** the applicant did appear at said virtual hearing and provided testimony in favor of the project, and members of the public did appear also virtually and provided testimony both in opposition to and in support of the application; and

**WHEREAS** after deliberation on the reclamation plan amendment and review of the Final SEIR, the Planning Commission determined that the Final SEIR complies with CEQA and reflects the independent judgment and analysis of the Planning Department, and the Planning Commission certified the Final SEIR as reflected in this Resolution; and

**WHEREAS** the Planning Commission accepted the renumbering of conditions of approval; and

**WHEREAS**, the Planning Commission has reviewed and accepted the general conditions that will assist the County in administering the Surface Mining and Reclamation Act (SMARA) and the ACSMO and their incorporation into SMP-23; and

**WHEREAS** a number of conditions of approval require revision, some due to conditions previously fulfilled by the Permittee, some to reflect current requirements of Alameda County Community Development Agency Departments, some to address comments and concerns submitted by the public, agencies, and organizations in response to the SEIR, some to incorporate required mitigation measures from the SEIR pursuant to CEQA, and some to address changed circumstances at the site; and

**WHEREAS** the Planning Commission has reviewed and accepted new site-specific conditions to address changed circumstances at the Eliot Quarry site and incorporate mitigation measures from the Final SEIR as required by CEQA;

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

**WHEREAS** this Planning Commission does find that under conditions of approval listed below, SMP-23, as modified below, conforms to requirements of:

- (a) the ACSMO;
- (b) the Livermore Valley Amador Valley Quarry Area Reclamation Specific Plan
- (c) the Alameda County General Plan's East County Area Plan;
- (d) the public health, safety, and welfare; and
- (e) SMARA; and

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

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**WHEREAS** this Planning Commission finds that permit condition changes are identified as follows below: ~~strike through~~ text denotes deletions, underline text denotes additions

**NOW THEREFORE**

**BE IT RESOLVED** that this Planning Commission accepts, certifies, and approves the SEIR to the previously certified LAVQAR EIR as the valid environmental review documentation for the Eliot Quarry (SMP-23) Reclamation Plan Amendment in accordance with CEQA Guidelines §15164; and

**BE IT RESOLVED** that this Planning Commission hereby adopts and makes the findings contained in the Written Findings of Significant Effects and Statement of Overriding Considerations, attached herein as Exhibit B, in compliance with Section 15091 of the CEQA Guidelines, providing a brief explanation of the rationale for each finding, supported by substantial evidence in the record, that changes or alterations have been required in or incorporated into the proposed project, including by identified mitigation measures which would avoid or substantially lessen some but not all identified significant environmental effects, and furthermore that certain mitigation measures or project alternatives identified in the Final SEIR are infeasible due to specified economic, legal, social, technological, or other considerations.

**BE IT FURTHER RESOLVED** that the Planning Commission hereby adopts the MMRP for the project, attached herein as Exhibit C, which is required to be implemented by the Permittee and by the County as conditions of approval of the proposed project and that are fully enforceable through permit conditions, agreements, or other measures.

**BE IT FURTHER RESOLVED** that the Planning Commission hereby adopts and makes the findings contained in the Statement of Overriding Considerations, attached herein as Exhibit B, in compliance with Section 15093 of the CEQA Guidelines, which states specific reasons, supported by substantial evidence in the record, why the Planning Department and the Planning Commission would approve the proposed project although certain significant adverse environmental effects of the project would not be avoided or substantially lessened by the identified mitigation measures.

**BE IT FURTHER RESOLVED** that the Planning Commission hereby adopts and makes the findings contained in the Alameda County Surface Mining Ordinance Findings, attached herein as Exhibit D, in compliance with Section 6.80.160 of the Alameda County Surface Mining which outlines the rationale of why the Planning Commission approves the proposed reclamation plan amendment; and

**BE IT FURTHER RESOLVED** that this Planning Commission does hereby approve the Eliot Quarry Reclamation Plan Amendment and modification to Surface Mining Permit-23 (SMP-23) to permit the reclamation of a vested mining operation, consistent with the "Revised ADV Construction Phasing Alternative" as described in the Final SEIR dated June 2021, the project MMRP, on file with the Alameda County Planning Department as amended herein by the

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conditions of approval showing added language underlined and deleted language ~~struck-out~~, as set forth in Exhibit A.

**ADOPTED BY THE FOLLOWING VOTE:**

**AYES:** Commissioners: Crawford, Goff, Gin, Kelley, Kastriotis, Moore, Ratto

**NOE:** None.

**EXCUSED:** None.

**ABSENT:** None.

**ABSTAINED:** None.

**ALBERT LOPEZ—PLANNING DIRECTOR & SECRETARY**  
**ALAMEDA COUNTY PLANNING COMMISSION**

**EXHIBIT A**  
**ALAMEDA COUNTY PLANNING COMMISSION**  
**RESOLUTION NO. Z-21-04**  
**CONDITIONS OF APPROVAL**

**EXHIBIT A**  
**ALAMEDA COUNTY PLANNING COMMISSION RESOLUTION NO. Z-21-04**  
**CONDITIONS OF APPROVAL**  
**SURFACE MINING PERMIT AND RECLAMATION PLAN**  
**SMP-23**

**GENERAL CONDITIONS**

**GENERAL ADMINISTRATIVE**

**Condition G-1:** The surface mining permit and the approved reclamation plan are separate land use entitlements. These collected conditions of approval apply to the surface mining permit and/or reclamation plan, which control surface mining operation, as appropriate.

**Condition G-2:** The County of Alameda Grading ordinance exempts grading that is in accordance with plans incorporated in an approved surface mining permit and/or reclamation plan. If explicitly addressed in the approved reclamation plan or plans incorporated therein, no grading permit for reclamation-related grading activities or facilities necessary to implement reclamation plan and surface mining permit requirements are required, unless the County has other permitting requirements above and beyond the grading ordinance. The Permittee shall obtain any necessary building permits or public works permits prior to the construction of any buildings or structures.

**Condition G-3:** Within sixty (60) days of approval of any modification or amendment to the reclamation plan, the Permittee shall update the reclamation plan for Surface Mining Permit 23 to incorporate any changes in the conditions of approval. The updated reclamation plan shall supersede previous versions of the reclamation plan.

**Condition G-4:** Mining and reclamation shall conform to the County of Alameda Surface Mining Ordinance and Surface Mining and Reclamation Act as amended, except as hereinafter more specifically provided.

**Condition G-5:** Within sixty (60) days of this resolution being approved, the County is required to file a notice of approval of the reclamation plan approval, as required by Surface Mining and Reclamation Act Section 2772.7. The Permittee shall provide a draft notice to the Community Development Agency (CDA) within thirty (30) days of this resolution being approved and shall subsequently assist the CDA with recordation of the notice, including the payment of all fees associated with recordation.

**Condition G-6:** If the Permittee fails to comply with conditions of approval of the surface mining permit, reclamation plan or the requirements of Surface Mining and Reclamation Act and/or the County of Alameda Surface Mining Ordinance, as may be determined by the Community Development Agency (CDA) Director or Designee, the Permittee shall take corrective action with all due haste and in good faith. The Permittee shall implement solutions as approved by the CDA Director or Designee.

**Condition G-7:** The Permittee shall defend, indemnify, release and hold harmless the County of Alameda and/or its agents, officers or employees from any claim, action or proceeding against

the County of Alameda, or its agents, officers or employees to attach, set aside, void, or annul SMP-23 including any amendments thereto, or underlying environmental documents and actions taken pursuant to the California Environmental Quality Act, County of Alameda Surface Mining Ordinance, the California Surface Mining and Reclamation Act, other County ordinance requirements, and any combination thereof. Such indemnification shall include but not be limited to any such proceeding. If the Permittee shall fail to adequately defend the County of Alameda, the County may provide its own legal defense and the Permittee shall be responsible for the County's reasonable attorneys' fees.

**Condition G-8:** The Permittee and all lessees shall provide and, if necessary, shall update written statement(s) that they accept responsibility for reclaiming the site as indicated on the Specific Plan for Livermore-Amador Valley Quarry Area Reclamation and this mining and reclamation plan and shall guarantee all reclamation in accordance with said plans. Said responsibility shall run with the land under permit as a covenant thereupon until release of the covenant is recorded by the County of Alameda.

**Condition G-9:** The Permittee shall comply with Public Resources Code Section 2773.1(c) if the surface mining operation is sold or ownership is transferred to another person. The new Permittee and or operator, as defined in Public Resources Code Section 2731, as amended, shall not commence operations until they have submitted the required statement of responsibility and the County has approved new financial assurances in accordance with the Surface Mining and Reclamation Act and the County of Alameda Surface Mining Ordinance. The Permittee shall maintain on file with the (Community Development Agency) CDA Director or Designee the name and phone number of the person responsible for compliance with the SMP and reclamation plan. A backup name shall be provided, and a phone number for 24-hour emergency contact shall also be on file. The Permittee shall update the CDA Director or Designee as to any changes in this contact information immediately upon staffing or contact information changes and confirmed as part of its annual conditions of approval report.

**Condition G-10:**

**Condition G-10(a):** The Permittee shall comply with the Surface Mining and Reclamation Act regulations pertaining to idle mines and the County of Alameda Surface Mining Ordinance if surface mining operations are suspended.

**Condition G-10(b):** If surface mining operations are suspended for longer than one hundred eighty (180) days, the Permittee will notify the Community Development Agency Director or Designee. Such notice shall provide an explanation of why operations are suspended and how the site will be maintained while operations are suspended. If suspension is longer than twelve (12) months, the Permittee shall file a report documenting compliance with SMARA, the County of Alameda Surface Mining Ordinance Section 6.80.230, as amended, and its surface mining permit and reclamation plan with the Community Development Agency Director or Designee.

**Condition G-11:** The Permittee shall make available to the Community Development Agency (CDA) Director or Designee such information as necessary to determine compliance with the Surface Mining Permit (SMP), reclamation plan and Specific Plan for Livermore-Amador Valley Quarry Area Reclamation. The Permittee shall respond to such information requests within

thirty (30) days or other time period specified by the CDA Director or Designee. The Permittee shall also furnish the CDA Director or Designee with a report describing compliance with these conditions by July 1 of each year, beginning July 1 from June 21, 2021. The report shall include compliance with these conditions for all areas covered by SMP-23. The report shall also describe changed circumstances over the reporting period; and, where applicable, efforts to address issues of non-compliance with these conditions, the ACSMO, and the requirements of the *Specific Plan for Livermore-Amador Valley Quarry Area Reclamation*. With each report, the Permittee shall provide a map at the same scale as the approved mining and reclamation plans showing current progress of mining and reclamation; drainage, erosion, and sedimentation control facilities in place; and built landscaping, including status of all prior landscaping. A monthly breakdown of tonnage removed from the site during the 12-month reporting period shall be included in the report. The CDA Director or Designee shall review the report and inspect the mining operations to determine and ensure continuing compliance with the regulations of the County of Alameda Surface Mining Ordinance and policies of the Specific Plan for Livermore-Amador Valley Quarry Area Reclamation. The CDA Director or Designee shall state the findings of the inspection in a final report, which shall be made available to the public. One copy of said report shall be sent to the Permittee within 45 days after the inspection. Copies shall be furnished to the Planning Commission for review.

**Condition G-12:** During or before June 21, 2021, and at 5-year intervals thereafter, County staff shall review compliance with the permit and reclamation plan and consider any new or changed circumstances within the general area of the mining operations that should be accommodated by the permit or plans. The results of the review shall be presented to the County Planning Commission at a public hearing. The Permittee shall pay any fees associated with the cost of reviews. As a result of this process, the Planning Commission may modify the reclamation plan or guarantees thereof to conform to the County of Alameda Surface Mining Ordinance and *Specific Plan for Livermore-Amador Valley Quarry Area Reclamation*.

**Condition G-13:** If the Permittee wishes to terminate its mining operations prior to the completion of mining and reclamation as specified in the approved reclamation plan and surface mining permit, the Permittee shall submit an application to the Community Development Agency (CDA) Director or Designee for revisions to the reclamation plan and shall submit a revised reclamation plan that reflects site conditions accurate as of the date of the termination request. If the proposed revisions to the reclamation plan are found to be substantially consistent with the Surface Mining and Reclamation Act and the provisions of these conditions of approval, and are deemed minor modifications, the CDA Director or Designee may approve or conditionally approve the revised reclamation plan. If proposed revisions to the plan are not considered minor, a modification to this surface mining permit and reclamation plan is required pursuant to Section 6.80.120 of the County of Alameda Surface Mining Ordinance.

**Condition G-14:** Prior to commencing surface mining operations related to this surface mining permit, the Permittee shall provide a financial assurance in accordance with County of Alameda Surface Mining Ordinance (SMO) Section 6.80.241 and all applicable provisions of the Surface Mining and Reclamation Act (SMARA), including any regulations or guidelines promulgated thereunder, and these conditions of approval by providing a mechanism for financial assurance of reclamation as described in, and in accordance with, SMARA (as amended), and the SMO (as amended).

**Condition G-15:** The Permittee shall annually pay the cost of the County's implementation and administration of the County of Alameda Surface Mining Ordinance (SMO) for this surface mining permit (SMP) by fees required by SMO Sections 6.80.100 and 6.80.242. Should the Permittee cease mining activity and, as a result, not incur administrative fee liability in accordance with SMO Section 6.80.242, and/or pay an administrative fee that is less than all costs associated with the County's lead agency responsibilities for this SMP under the Surface Mining and Reclamation Act (SMARA), reasonable costs, including those associated with the SMO, shall be borne by the Permittee, and, as required by SMO Section 6.80.100 and SMARA. Costs incurred by the County regarding new permits, modifications to permits and/or reclamation plans, periodic reviews, inspections, administration and enforcement related to this SMP shall be borne by the Permittee. While implementing the SMO and/or SMARA the Community Development Agency Director or Designee is expressly authorized to utilize his or her own employees, other agencies, and/or private consultants, as necessary, to assist with the County's lead agency responsibilities and to conduct and carry out third-party review(s) of operator-generated technical reports (e.g., geotechnical, groundwater). Reasonable costs associated with such third-party consultants shall be borne by the Permittee.

## **OPERATIONAL REQUIREMENTS**

**Condition G-16:** Permittees shall, at their own expense, keep streets in the vicinity of the quarry on which hauling is done, swept clean of quarry materials.

**Condition G-17:** Permittees shall repair promptly, at their own expense, as to their pro rata share of traffic on the road, any damage to County streets caused by operation of trucks and equipment from the quarry or by any other operation of the quarry.

**Condition G-18:** Fugitive Dust Control Plan: The Permittee shall prepare, keep updated, and implement a plan for controlling dust on-site in compliance with the surface mining permit conditions of approval and applicable Bay Area Air Quality Management District requirements. The dust control plan shall apply to the entire site (e.g., excavation areas, processing plants, concrete batch plants, the recycling plant, roadways on-site, and parking lots). The Permittee shall provide the most current dust control plan to the County.

**Condition G-19:** All surface mining and processing operations emitting smoke, vapors, dust, and other airborne contaminants shall be provided with all necessary control measures and devices as required by the Alameda County Health Department and the Bay Area Air Quality Management District to prevent the occurrence of nuisance and undue pollution of the air.

**Condition G-20:** Operations shall cease in the vicinity of any suspected archaeological or paleontological resource until an archaeologist is consulted and his or her recommendations are followed, subject to approval by the Community Development Agency Director or Designee.

### **Condition G-21:**

**Condition G-21(a):** Fencing: Fencing for surface mines shall be designed and installed in order to preserve the health, safety, and welfare of the public, including pedestrians, motor vehicles on public and private ways, and all persons and uses on adjacent lands. In areas where surface mine operations are located within wildlife movement corridors, fences shall

be designed to permit passage of wildlife with minimal hazard. Fences may be of any reasonable description that fit these criteria. The fence type proposed for the surface mine shall be submitted with the mining plan for review and approval by the planning commission. Gates shall be the same height and type as the approved fence, shall be installed at all points of vehicular or pedestrian ingress and egress, and shall be kept locked when not in regular use.

**Condition G-21(b):** Screening of Operations: All mining and reclamation activities shall be in accordance with Section 6.80.210(D) of the County of Alameda Surface Mining Ordinance, as amended.

**Condition G-22:** The Permittee shall conform to all regulations and requirements of California Occupational Safety and Health Administration, Alameda County Environment Health and Alameda County Health Care Services Agency, which includes the provision of a potable water supply and adequate toilet facilities, shall be provided for employees during periods of active mining and reclamation operations. Facilities may be removed from the site when mining is inactive.

**Condition G-23:** Engines on dirt-moving equipment used for surface mining operations shall be equipped with mufflers, and no muffler or exhaust system shall be equipped with a cutout, bypass, or similar device.

**Condition G-24:** The driver of a weighed vehicle loaded beyond current State of California maximum legal weight limits shall be notified and requested to reduce the load to the legal weight. If loaded material is subject to dust generation, drivers shall either: (1) ensure loads are kept a minimum of six (6) inches below freeboard or (2) cover their loads with tarps prior to departure from the quarry. All loaded vehicles shall be required to cross over a material shakedown area with berms, bumpers, or ditches provided. Haul roads and loading areas shall be paved, oiled, or watered to maintain a dust-free condition.

**Condition G-25:**

Unless more site-specific conditions have been required by an approved surface mining permit or other binding document approved by the County, mine operations in the County must comply with the following specifications:

- a) The Permittee shall replace old lighting with only full cutoff-shielded lights for general illumination of areas of the plant sites areas and shall simultaneously replace all existing nonshielded lighting with full-cutoff fixtures. The lowest wattage lamps reasonable for illumination of the area of concern shall be used.
- b) Security lighting shall be installed no higher than necessary to illuminate the area of concern for security, safety, or visual comfort, and lighting shall be directed toward the area of concern, and always below the horizontal angle of light.
- c) Permittee shall not position night lighting to illuminate areas beyond the site boundaries, nor shall the Permittee position general lighting to radiate above the horizontal angle of light, but shall place lights or install shielded lights to illuminate only the area of concern.

- d) For any lighting on areas nonessential for safety, security, or active operations, the Permittee shall place new lights on a motion detector circuit so illumination only occurs when required for occasional visibility.
- e) Permittee shall utilize lights that do not exceed levels compatible with the site and adjacent land uses, as required by the County of Alameda Surface Mining Ordinance Section 6.80.210.

**Condition G-26:** Any final reports, studies, surveys, or analysis required as a condition of approval and/or required to be made public by a related legal settlement that are submitted to the Community Development Agency shall be made publicly available via the processes prescribed by the California Public Records Act, as amended, unless those items are proprietary and/or exempt from disclosure under the California Public Records Act and Section 2778 of the Public Resources Code.

**Condition G-27:** Within sixty (60) days of approval, and by July 1 thereafter, the Permittee shall submit a description of materials processed at the recycling plant, including annual volume, how they are used, annual sales and absorption, and sales and administrative fees paid to the Community Development Agency Director or Designee. In addition, the Permittee shall document compliance for use and storage of inert construction debris as regulated by requirements of the Alameda County Waste Management Authority and Alameda County Environmental Health Department and document that it is operating the recycling facility in compliance with the applicable exemption for the Inert Debris Solid Water Permit requirements as provided in California Code of Regulations Title 14, Section 17380, et seq., as may be amended.

## **LIVERMORE-AMADOR VALLEY QUARRY AREA RECLAMATION PLAN**

**Condition G-28:** The surface mining permit, reclamation plan, mine plan, and related activities contained therein shall conform to the *Specific Plan for Livermore-Amador Valley Quarry Area Reclamation*, as adopted by the County of Alameda, November 5, 1981, and as may be amended.

*[General Conditions G-29, G-30, and G-31 were redundant with G-8, G-11, and G-12 and, in part, no longer relevant. Therefore, the six general conditions have been merged, and G-29, G-30, and G-31 are no longer needed.]*

## **SITE-SPECIFIC CONDITIONS**

*[Some existing conditions have removed, revised, or merged because they have been superseded by General Conditions or they contained redundancies or language that is no longer relevant or needed. Reasoning for each edit or deletion is provided in the staff report dated June 21, 2021.]*

## **GENERAL ADMINISTRATIVE**

~~COA~~**Condition S-1:** The Permittee and Operator of Surface Mining Permit & Reclamation Plan No. 23 (“SMP-23”) is Cemex Construction Materials Pacific, LLC (“Cemex”).

~~COA~~**2:** Until the requirements of Condition No. 7 are fulfilled and revised reclamation plans

~~are approved, surface mining operations and reclamation shall be in substantial conformance with conditions contained herein as well as the following maps, information, and reports as approved by the Planning Commission on April 6, 1987 or, as is the case with item 2(e) and 2(f) below, the Community Development Agency Director,~~

- ~~a) "Exhibit B (including Figure 2, Mining Plan and Figure 33, Reclamation Plan, Former Q-76)" dated, 1994 included the application form. Dated October 15, 1986;~~
- ~~b) Reclamation Plan sheets, prepared by Bissell and Karn, Inc., dated October 13, 1986;~~
- ~~c) Slope Stability Analysis, Lone Star Industries, Inc. Sand and Gravel Pits, Pleasanton, California, by Shannon Wilson, Inc., dated January 14, 1987;~~
- ~~d) Letter from Peter H. Cotter, Regional Resources Manager of Lone Star Industries, Inc., amending SMP-23 application, dated March 10, 1987.~~
- ~~e) RMC Lonestar Lake 'A' Reclamation Plan, East Isabel Avenue Property, Alameda County, California, nineteen (19) sheets (1 title, 6 layout and grading, 6 irrigation, 6 planting), prepared by David L. Gates & Associates and dated August 1993.~~

~~In the event CEMEX applies to mine in Lake A, sSurface mining operations and reclamation for quarrying of the Lake A and Lake A water management areas shall additionally be in substantial conformance with:~~

- ~~a) The Cotton Shire Corrective Action Plan dated August 8, 2007 until the requirements of Condition No. 3 are fulfilled; and~~
- ~~b) The various maps and information labeled "Conceptual Final Master Plan, RMC Lonestar, Lakes A and B, East Isabel Avenue Property, Alameda County, CA, 13 sheets, dated October 5, 1992.~~

~~COA-3: All aspects of the Lakeside Circle Corrective Action Plan prepared by Cotton, Shires & Associates and dated August 31, 2007, and approved by the Planning Director on November 9, 2007, including, but not limited to, the grading plan, depressurization wells, monitoring instruments and activities, reporting, and triggers for responsive action, shall remain in effect until the earlier of:~~

- ~~a) June 30, 2014, including the continued monitoring of piezometers in Groups A, B and C; or~~
- ~~b) The revised mining and reclamation plan required by Condition No. 7 are established.~~

~~COA-4: Mining and reclamation shall additionally conform to the:~~

- ~~a) Specific Plan for Livermore-Amador Valley Quarry Area Reclamation, as adopted by the County of Alameda on November 5, 1981, and as may be amended from time to time.~~
- ~~b) Alameda County Surface Mining Ordinance (ACSMO); and~~
- ~~c) State Surface Mining and Reclamation Act (SMARA).~~

~~COA-5: Permittee shall defend, indemnify and hold harmless Alameda County or its agents, officers or employees from any claim, action or proceeding against Alameda County, or its~~

~~agents, officers or employees to attach, set aside, void, or annul this Surface Mining Permit, including any amendments thereto, or underlying environmental documents and actions taken pursuant to the California Environmental Quality Act, other County ordinance requirements and any combination thereof. Such indemnification shall include but not limited to any such proceeding. If Permittee shall fail to adequately defend the County of Alameda, the county may provide its own legal defense and Permittee shall be responsible for the County's reasonable attorney's fees. This indemnity provision shall not apply to litigation directly between Alameda County and Operator.~~

~~COA 6: Within sixty (60) days of this resolution being approved, the Permittee shall provide evidence that a notice required by SMARA §2772.7 has been recorded. If no notice was previously recorded, the Permittee shall provide a draft notice to the Community Development Agency within sixty (60) days of this resolution being approved and shall subsequently assist the Community Development Agency with recordation of the notice, including the payment of all fees associated with recordation.~~

~~COA 7: Permittee shall file an application to amend SMP 23, for review in accordance with ACSMO, Article II (Application Procedure), within six months of this action and which addresses the following issues and provides for their resolution, as well as any other issues applicant desires to address:~~

- ~~a) The need for mining and reclamation plans and corresponding documents to reflect the current boundaries of SMP 23 as referenced lands both presently owned by Permittee and previously authorized for mining operations and reclamation activities.~~
- ~~b) As to Lake A, the need for long term mining and reclamation plans to address geologic hazards associated with and remedied by the Lakeside Circle Corrective Action Plan.~~
- ~~c) As to Lake B, the need for long term mining and reclamation plans to address a depth and configuration which, due to recent and ongoing mining activities, are inconsistent with the approved reclamation plans.~~
- ~~d) The need for SMP 23 to include provisions for the management of water flows, during both the pre and post reclamation conditions, between the groundwater basins, the Arroyo del Valle, and Lakes A, B and C of the Specific Plan for Livermore Amador Valley Area Reclamation.~~
- ~~e) The need for revised plans for all water conveyance facilities that: (i) reflect existing topographic conditions and desired future topographic conditions of the Permittee; (ii) fulfill the requirements and intent of the water management objectives of the Specific Plan for Livermore Amador Valley Quarry Area Reclamation; and (iii) may be constructed in conformance with all laws and regulations.~~
- ~~f) The need to coordinate the planning, design, and construction of all water conveyance structures between Lakes A, B and C with adjacent mine operator, property owners and the Zone 7 Water Agency.~~
- ~~g) The geographic locations of approved end uses over the entire site once reclaimed.~~
- ~~h) Relative to public roadways, the need to specify, in plan and text format, authorized vehicular access points and haul routes.~~
- ~~i) The need to establish an estimated schedule which correlates the timing of completion~~

~~for the reclamation components to specific stages in the mining plan.~~

- ~~j) The need to establish reclamation plans that accommodate a trail, as depicted in the Specific Plan for Livermore-Amador Valley Quarry Area Reclamation, along the entire southern boundary of SMP in the vicinity of Vineyard Avenue.~~

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

~~COA-8: Once the application required by Condition No. 7 is filed, the Community Development Agency shall work diligently and be timely in its processing to completion. Similarly, in accordance with the requirements of SMARA Regulations §3502(e), the Permittee shall work diligently with the Community Development Agency in the processing of the application to completion, including fulfillment of all necessary and reasonable requests for information or tasks necessary to do so.~~

~~COA-9: After the Community Development Agency determines the application required by Condition No. 7 as complete, in accordance with the Permit Streamlining Act (Public Resources Code §§65920 et seq), an environmental review shall be prepared pursuant to the California Environmental Quality Act (Public Resources Code §§ 21000 et seq).~~

**COA-Condition S -102:** In the event CEMEX applies to mine in Lake A, sSurface mining operations and reclamation for quarrying of the Lake A and Lake A water management areas shall additionally be in substantial conformance with:

- a) The Cotton Shire Corrective Action Plan dated August 8, 2007 until the requirements of Condition No. 3 are fulfilled; and
- b) The various maps and information labeled: “Eliot Facility SMP-23 Reclamation Plan,” CEMEX and Spinardi Associates, Alameda County, CA, 9 sheets, dated January 2019. Conceptual Final Master Plan, RMC Lonestar, Lakes A and B, East Isabel Avenue Property, Alameda County, CA, 13 sheets, dated October 5, 1992.
- c) The various maps and information labeled: “Lake ‘A’ Landscape Planting and Restoration Plans,” CEMEX and Cunningham Engineers, 24 sheets, dated May 14, 2018.

Irrespective of whether or not CEMEX applies to mine in Lake A, mining shall not resume east of Isabel Avenue/State Route 84 (i.e., within Lake A) until it is demonstrated to the satisfaction of the Community Development Agency Director that it:

- a) Can occur without resulting in slope instability or other geologic instability resulting in harm to persons and property; and
- b) Will not conflict with the Specific Plan for Livermore-Amador Valley Area Reclamation including, in particular, those provisions relating to the Chain-of-Lakes; namely, Lake A and its' corresponding water conveyance facilities.

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

rendering a decision.

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

~~COA 12: The Permittee shall provide a financial assurance in accordance with ACSMO §6.80.241 and all applicable provisions of SMARA, including any regulations or guidelines promulgated thereunder.~~

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

~~COA 14: Within one hundred and twenty (120) days of this resolution being approved and with regard to Lake A, the Permittee shall evaluate the minimum lake level and maximum piezometric surface elevation needed to maintain acceptable factors of safety for static and pseudostatic conditions. The results of that evaluation shall include a proposed monitoring program and operation plan to maintain said factors of safety and be submitted to the Community Development Agency Director or designee for review and approval. The Community Development Agency or designee shall obtain an independent third-party review of the Permittee's proposed evaluation.~~

~~COA 15: Permittee shall furnish the Community Development Agency Director or designee and Zone 7 Water Agency, by July 1 of each year, with a report describing: (a) compliance with these conditions; (b) changed circumstances over the reporting period; and, where applicable, (c) efforts to address issues of non-compliance with these conditions, the ACSMO, or SMARA in a format prescribed by the Community Development Agency Director or designee. Beginning July 1, 2013 the report shall be submitted and cover the period between January 1 and December 31 of the previous year. With each report, Permittee shall provide a map at the same scale as the approved mining and reclamation plans, showing current progress of mining and reclamation, drainage, erosion, and sedimentation control facilities to be provided and those in place, and as~~

~~built landscaping status of all prior landscaping.~~

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

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

~~COA-16: Within five years from the date of completing this periodic review in accordance with ACSMO §6.80.190, and at five year intervals thereafter, the Planning Commission shall review again SMP-23 in accordance with ACSMO §6.80.190.~~

~~COA-17: In accordance with ACSMO §6.80.250, the Permittee, Operator, property owner and their authorized agents, and any other person in control of the property subject to SMP-23, individually or collectively, are responsible for the observation and compliance with all the provisions of the ACSMO and SMARA. Such responsibility shall include adherence to the conditions of approval applicable to SMP-23, the correction of any unsafe condition, and the construction and continued maintenance of all fences and other protective devices required.~~

~~**COA Condition S-183:** All accessory uses shall be established and operated in accordance with ACSMO §6.80.060. In the event an accessory use is established, the annual report required by Condition G-11 shall address compliance with ACSMO §6.80.060.~~

~~**COA Condition S-194:** The Permittee shall routinely control exotic, invasive plants upon areas disturbed by mining activities, including vegetation which poses a fire hazard. The results of exotic, invasive plant removal shall be described in the annual report required by Condition G-11.~~

~~**COA Condition S-205:** No stockpiling of overburden or aggregate material shall occur within 80' of Stanley Boulevard.~~

~~**COA Condition S-216:** Except as otherwise approved by the Community Development Agency Director or designee for boundaries common with lands of other gravel companies or otherwise provided in Quarry Permit Q-1, Permittee shall maintain standard quarry permit fencing along all boundaries of the area covered by SMP-23 with adjacent lands not owned by Permittee.~~

~~**COA Condition S-227:** Permittee shall operate trucks to and from the quarry operation only along public truck haulage routes approved under Quarry Permits Q-1 and Surface Mining Permit SMP-23, and which are already in use for Permittee's operations in the area.~~

~~**COA Condition S-238:** Mining and hauling operations shall not impose public maintenance~~

burdens on county roads. As part of the regular inspections of the quarry required under the Surface Mining Permit, the Community Development Agency will annually inspect the pavement or surface condition of Stanley Boulevard, Isabel Avenue between the quarry access and Interstate 580, and will identify required repairs. Permittee shall contribute to the cost of maintaining, repairing, strengthening or reconstructing the subject segments of these roadways, if the County inspection shows a need for pavement or surface improvements. Participation by Permittee in the cost of the improvements shall be in proportion to the percentage of heavy truck traffic volumes on the identified roadway segment(s) contributed by the quarry operation and 100 percent toward any road damage directly attributable to the SMP-23 operations, which shall be repaired promptly. The method of calculating proportionate share shall take into account the level of use (vehicle-miles) and the length of time the Permittee will continue using the routes for operations of the quarry or reclamation.

**COA Condition S-249**: Dewatering activities shall not cause erosion or flooding, shall not result in the discharge of sediment, and shall, as required by ACSMO §6.80.210(M), be conducted using accurate record keeping and reporting methods.

**COA Condition S-2510**: No explosives shall be used for mining.

**COA Condition S-2611**: All overburden shall be retained on site for use in reclamation. Overburden shall be considered as the natural material which lies above natural mineral deposits routinely processed through the plant to obtain aggregate.

**COA Condition S-2712**: The end use of the site upon complete reclamation is hereby assumed to be for water management, wildlife habitat, and/or recreation (pits and surrounding support areas dedicated to Zone 7) and agriculture (land areas not to be dedicated to Zone 7). Any other use must be approved by the County of Alameda. Uses permitted shall be compatible with water management and quality.

**COA Condition S-2813**: Upon completion of mining operations, all sand and gravel processing equipment and the gravel plant shall be removed from the site, including any previously authorized accessory uses. As mining-related auxiliary operations cease, batch plants, asphalt plants, maintenance buildings, and other structures and equipment shall also be removed, including any structures and equipment associated with a previously authorized accessory land use. However, mining related equipment and structures in direct support of reclamation activities may remain on site up to three (3) months after reclamation activities have been completed.

**COA Condition S-2914**: Within two (2) years after expiration of SMP-23, all stockpiles and equipment shall have been removed and the site shall have been brought into conformance with the reclamation plan, except any stockpiles of saleable materials that are not needed for reclamation activities may remain on site, along with any mechanical equipment necessary for the movement of such saleable materials.

**COA Condition S-3015**: This reclamation plan, as amended, shall be in effect as long as underlying quarry permit Q-1 remains active.

~~COA-31: Permittee shall reclaim, restore or maintain the north shoreline of Lake "A" as wildlife~~

~~habitat. The south shoreline of Lake "A" shall be reclaimed for purposes of recreation.~~

~~COA 32: The Permittee shall coordinate with County Community Development Agency and Public Works Agency staff to develop and execute a mutually acceptable Agreement with the County, to be approved by the Board of Supervisors, to provide and maintain County approved visual attenuation landscaping along Stanley Boulevard.~~

**COA Condition S-3316:** If the Army Corps of Engineers identifies jurisdictional wetlands at the project site, regulatory requirements for wetland mitigation shall be incorporated into the proposed quarry and reclamation activities. Feasibility of long-term wetlands shall be based on a comparison of competing benefits to be derived from limited water and land resources. Any wetland management plan proposed and adopted shall, to the extent possible, incorporate or complement features of the Specific Plan for Livermore-Amador Valley Quarry Area Reclamation Plan.

~~COA 34: Operations shall cease in the vicinity of any suspected archaeological resource until an archaeologist is consulted and his or her recommendations followed, subject to approval by the Planning Director Community Development Agency Director or designee.~~

**COA Condition S-3517:** Permittee shall conduct quarrying operations in a manner that shall not cause or result in pollution of the ground water basin or surface water bodies. Permittee shall conform to all requirements of the San Francisco Bay Regional Water Quality Control Board with respect to discharge of silt-laden water and waste materials.

**Condition S-18:** During mining and reclamation, Permittee shall install an inclinometer to a depth that extends to at least a depth of 200 feet at the east end of Lake B to monitor slope stability. The depth of the inclinometer should at least intersect with where the clay layer at Lake A/Lakeside Circle would be expected under Isabel Avenue and at the east side of Lake B to the depth of mining in the relevant location, whichever comes first. Permittee shall provide results of the monitoring as part of its annual review report. A copy of these reports shall also be supplied to the City of Livermore and Zone 7. In addition, Permittee 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 prior to final reclamation sign-off by the County.

**Condition S-19:** Permittee shall conduct a survey of the bottom of the dry mining pits on a semi-annual basis to ensure approved mining depths are not exceeded. Results of the survey shall be included in its annual review report and be provided to Zone 7.

**Condition S-20:** Until such time as reclamation is complete and both Lakes A and B are transferred to Zone 7, Permittee shall adopt and maintain a sentinel monitoring well sampling schedule and parameters that match those used by Zone 7. Results of the monitoring shall be included in its annual review report and be provided to Zone 7.

**Condition S-21:** Until such time as reclamation is complete and both Lakes A and B are transferred to Zone 7, Permittee shall implement the document entitled, "Adaptive Management Program for Iron," by EMKO Environmental, Inc., dated July 6, 2020.

## **AESTHETICS AND VISUAL RESOURCES**

**Condition S-22:** [Mitigation Measure 4.1-1] Daily Limitation of Construction Hours. All reclamation-related construction activities shall be limited to the 7 a.m. – 7 p.m. Monday through Friday, and 9 a.m. – 6 p.m. on Saturday. Reclamation construction activity shall be prohibited on Sundays. This condition does not apply to vested mining and processing activities.

### **Air Quality**

**Condition S-23:** [Mitigation Measure 4.2-1] Off-road Equipment Plan. The Permittee shall implement the following to reduce project NOx emissions:

- a) Develop a plan demonstrating that the off-road equipment (more than 50 horsepower) to be used in Lake A reclamation and the Lake B realignment of the Arroyo del Valle would achieve a fleet-average 20 percent NOx reduction compared to the most recent ARB fleet average for the duration of these reclamation activities. Acceptable options for reducing emissions include the use of late model engines, low-emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, and/or other options as such become available. The plan shall be submitted to the County within 90 days of project approval.

The Alameda County Community Development Agency would be responsible for ensuring compliance.

**Condition S-24:** [Mitigation Measure 4.2-2] Update Dust Control Plan. Within 90 days of proposed project approval, the Permittee shall update its existing 2015 Dust Control Plan to address changes that would occur as a result of the proposed project. The new plan shall comply with BAAQMD best practices and be approved by the County.

## **BIOLOGICAL RESOURCES**

**Condition S-25:** [Mitigation Measure 4.3-1a] Obtain Regulatory Entitlements and Authorizations. The Permittee shall obtain regulatory entitlements and authorizations from the US Army Corps of Engineers (“USACE”), U.S. Fish and Wildlife Service (“USFWS”), National Marine Fisheries Service (“NMFS”), California Regional Water Quality Control Board (“RWQCB”), and California Department of Fish and Wildlife (“CDFW”).

**Condition S-26:** [Mitigation Measure 4.3-1b] Special Status Amphibian and Reptile Species. To avoid and minimize impacts to special status amphibian and reptile species, including western pond turtle, Alameda whipsnake (striped racer), California red-legged frog, California tiger salamander, coast horned lizard, San Joaquin whipsnake, and western spadefoot, the following shall apply:

- a) No more than 48 hours prior to the commencement of reclamation-related ground disturbing activity (i.e. clearing, grubbing, or grading) associated with the construction of the Lake A diversion structure, realigned Arroyo del Valle, or other areas, a qualified biologist shall conduct a pre-construction survey of suitable habitat in the project reclamation area. The survey shall include aquatic habitat and adjacent uplands surrounding aquatic habitat within the project reclamation area. Adjacent parcels under

different land ownership will be surveyed only if access is granted or if the parcels are visible from authorized areas.

- b) The biologist shall supply a brief written report (including date, time of survey, survey method, name of surveyor and survey results) to the Planning Department prior to the commencement of ground disturbing activity.
- c) Construction personnel shall receive worker environmental awareness training prior to the commencement of ground disturbing activity. This training instructs workers how to recognize special status amphibian and reptiles species and their habitat.
- d) If a special status amphibian or reptile species is encountered during construction, then all construction shall cease until the animal has moved out of the construction area on its own or has been relocated by a qualified biologist in coordination with the California Department of Fish and Wildlife (CDFW). If the animal is injured or trapped, a qualified biologist shall move the animal out of the construction area and into a suitable habitat area. CDFW shall be notified within 24-hours that a special status amphibian or reptile species was encountered.
- e) Comply with the mitigation requirements and conditions of any Section 1600 Lake and Streambed Alteration Agreement (Agreement) with CDFW for project reclamation activities, as applicable to amphibian and reptile species. If there is a conflict between the terms of mitigation items 1 through 4 above and the Agreement, then the Permittee shall abide by the terms of the Agreement.

**Condition S-27:** [Mitigation Measure 4.3-1c] Nesting Raptors. To avoid and minimize impacts to nesting raptors, including bald eagle, golden eagle, American peregrine falcon, prairie falcon, white-tailed kite, Cooper's hawk, ferruginous hawk, and northern harrier, the following shall apply:

- a) If reclamation-related ground disturbing activity (which includes clearing, grubbing, or grading) is to commence within 500 feet of suitable nesting habitat during the nesting season (e.g., March 1-Sept. 15), then a qualified biologist shall conduct a pre-construction survey for raptor nests. The survey shall cover all potential tree and ground nesting habitat on-site and off-site up to a distance of 500 feet from the construction activity. The survey shall occur within 30 days of the date that reclamation/construction would encroach within 500 feet of suitable habitat. Adjacent parcels under different land ownership will be surveyed only if access is granted or if the parcels are visible from authorized areas.
- b) The biologist shall supply a brief written report (including date, time of survey, survey method, name of surveyor and survey results) to the Planning Department prior to the commencement of ground disturbing activity. If no active nests are found during the survey, then no further mitigation would be required.
- c) If any active nests are found, then the Planning Department and the California Department of Fish and Wildlife (CDFW) shall be contacted to determine appropriate avoidance and minimization measures. The avoidance and minimization measures shall be implemented prior to the commencement of construction within 500 feet of an identified nest.
- d) Comply with the mitigation requirements and conditions of any Section 1600 Lake and

Streambed Alteration Agreement (Agreement) with CDFW for project reclamation activities, as applicable to nesting raptors. If there is a conflict between the terms of mitigation items 1, 2, or 3 above and the Agreement, then the Permittee shall abide by the terms of the Agreement.

**Condition S-28:** [Mitigation Measure 4.3-1d] Nesting Birds. To avoid and minimize impacts to migratory nesting birds, the following shall apply:

- a) If reclamation-related ground disturbing activity (which includes clearing, grubbing, or grading) is to commence within 50 feet of nesting habitat between February 1 and August 31, then a qualified biologist shall conduct a pre-construction survey for active migratory nests within 14 days prior to the commencement of ground disturbing activity. Adjacent parcels under different land ownership will be surveyed only if access is granted or if the parcels are visible from authorized areas.
- b) The biologist shall supply a brief written report (including date, time of survey, survey method, name of surveyor and survey results) to the Planning Department prior to the commencement of ground disturbing activity. If no active nests are found during the survey, then no further mitigation would be required.
- c) If active nests are found in the survey area, then a non-disturbance buffer of a size determined by a qualified biologist shall be established and maintained around the nest to prevent nest failure. All construction activities shall be avoided within this buffer area until a qualified biologist determines that nestlings have fledged, or until September 1, unless otherwise approved by the Planning Department and CDFW.

**Condition S-29:** [Mitigation Measure 4.3-1e] Loggerhead Shrike. To avoid and minimize potential impacts to loggerhead shrike, the following shall apply:

- a) If reclamation-related ground disturbing activity (which includes clearing, grubbing, or grading) is to commence within 200 feet of suitable nesting habitat during the nesting season (February 15-August 31), then a qualified biologist shall conduct a pre-construction survey for loggerhead shrike nests in all suitable shrubs and trees that are within 200 feet from the construction activities. The survey shall occur within 30 days prior to the commencement of ground disturbing activities. Adjacent parcels under different land ownership will be surveyed only if access is granted or if the parcels are visible from authorized areas.
- b) The biologist shall supply a brief written report (including date, time of survey, survey method, name of surveyor and survey results) to the Planning Department prior to the commencement of ground disturbing activity. If no active nests are found during the survey, then no further mitigation would be required.
- c) If nesting individuals are found, then an exclusion zone shall be established within 200 feet of the active nest(s) until a qualified biologist determines that the young of the year are no longer reliant upon the nest.
- d) Comply with the mitigation requirements and conditions of any Section 1600 Lake and Streambed Alteration Agreement (Agreement) with the California Department of Fish and Wildlife for project reclamation activities, as applicable to the loggerhead shrike. If there is a conflict between the terms of mitigation items 1, 2, or 3 above and the

Agreement, then the Permittee shall abide by the terms of the Agreement.

**Condition S-30:** [Mitigation Measure 4.3-1f] Tricolored Blackbird. To avoid and minimize potential impacts to tricolored blackbird, the following shall apply:

1. If reclamation-related ground disturbing activity (which includes clearing, grubbing, or grading) is to commence within 300 feet of suitable nesting habitat during the nesting season (March 1-July 31), then a qualified biologist shall conduct a pre-construction survey for nesting tricolored blackbirds in suitable habitats that are within 300 feet from the project activities. The survey shall occur within 30 days prior to the commencement of ground disturbing activities. Adjacent parcels under different land ownership will be surveyed only if access is granted or if the parcels are visible from authorized areas.
2. The biologist shall supply a brief written report (including date, time of survey, survey method, name of surveyor and survey results) to the Planning Department prior to the commencement of ground disturbing activity. If no tricolored blackbirds are found during the survey, then no further mitigation would be required.
3. If an active tricolored blackbird colony is found within 300 feet of reclamation activity, the Permittee may avoid impacts to tricolored blackbird by establishing a 300-foot temporary setback, with fencing that prevents any project activity within 300 feet of the colony. A qualified biologist shall verify that setbacks and fencing are adequate and will determine when the colonies are no longer dependent on the nesting habitat (i.e. nestling have fledged and are no longer using habitat). The breeding season typically ends in July.
4. Comply with the mitigation requirements and conditions of any Section 1600 Lake and Streambed Alteration Agreement (Agreement) with CDFW for project reclamation activities, as applicable to tricolored blackbird. If there is a conflict between the terms of mitigation items 1, 2, or 3 above and the Agreement, then the Permittee shall abide by the terms of the Agreement.

**Condition S-31:** [Mitigation Measure 4.3-1g] Burrowing Owl. To avoid and minimize potential impacts to western burrowing owl, the following shall apply:

1. If reclamation-related ground disturbing activity (which includes clearing, grubbing, or grading) is to commence within 500 feet of suitable owl burrow habitat, then a qualified biologist shall conduct a pre-construction survey for burrowing owl. The survey shall occur within 30 days prior to the date that reclamation activities will encroach within 500 feet of suitable habitat. Adjacent parcels under different land ownership will be surveyed only if access is granted or if the parcels are visible from authorized areas. Surveys shall be conducted in accordance with the following:
  - a. A survey for burrows and owls shall be conducted by walking through suitable habitat over the entire reclamation construction site and in areas within 500 feet of the project disturbance area.
  - b. Pedestrian survey transects should be spaced to allow 100 percent visual coverage of the ground surface. The distance between transect center lines should be no more than 30 meters, and should be reduced to account for differences in terrain, vegetation density, and ground surface visibility. Surveyors should maintain a

- minimum distance of 50 meters from any owls or occupied burrows.
- c. If no occupied burrows or burrowing owls are found in the survey area, then the biologist shall supply a brief written report (including date, time of survey, survey method, name of surveyor and survey results) to the Planning Department and no further mitigation is necessary.
  - d. If occupied burrows or burrowing owls are found, then a complete burrowing owl survey is required. This consists of a minimum of four site visits conducted on four separate days, which must also be consistent with the Survey Method, Weather Conditions, and Time of Day sections of Appendix D of the California Department of Fish and Wildlife (CDFW) “Staff Report on Burrowing Owl Mitigation” (March 2012). The Permittee shall then submit a survey report to the Planning Department which is consistent with the CDFW 2012 Report.
  - e. If occupied burrows or burrowing owls are found during the complete burrowing owl survey, then the Permittee shall contact the Planning Department and consult with CDFW prior to construction and will be required to submit a Burrowing Owl Mitigation Plan (subject to the approval of the Planning Department and CDFW). This plan must document all proposed measures, including avoidance, minimization, exclusion, relocation, or other measures, and include a plan to monitor mitigation success. The CDFW “Staff Report on Burrowing Owl Mitigation” (March 2012) should be used in the development of the mitigation plan.
2. Comply with the mitigation requirements and conditions of any Section 1600 Lake and Streambed Alteration Agreement (Agreement) with CDFW for project reclamation activities, as applicable to burrowing owl. If there is a conflict between the terms of mitigation item 1 above and the Agreement, then the Permittee shall abide by the terms of the Agreement.

**Condition S-32:** [Mitigation Measure 4.3-1h] Special Status Bats. To avoid and minimize potential impacts to special status bats, including hoary bat, pallid bat, and Yuma myotis, the following shall apply:

1. If reclamation-related ground disturbing activity (which includes clearing, grubbing, or grading) is to commence within 300 feet of suitable bat habitat during the winter hibernaculum season (e.g., November 1 through March 31), then a qualified biologist shall conduct a pre-construction survey within 300 feet of the reclamation project footprint on the CEMEX property to determine if a potential winter hibernaculum is present, and to identify and map potential hibernaculum sites.
2. The biologist shall supply a brief written report (including date, time of survey, survey method, name of surveyor and survey results) to the Planning Department prior to the commencement of ground disturbing activity. If no winter hibernaculum sites are found during the survey, then no further mitigation would be required.

If potential hibernaculum sites are found, then the Permittee shall avoid all areas within a 300-foot buffer around the potential hibernaculum sites until bats have vacated the hibernaculum. Winter hibernaculum habitat shall be considered fully avoided if reclamation-related activities do not impinge on a 300-foot buffer established by the qualified biologist around an existing or potential winter hibernaculum site. The qualified biologist will determine if non-maternity and

nonhibernaculum day and night roosts are present on the project site. If necessary, a qualified biologist will use safe eviction methods to remove bats if direct impacts to non-maternity and non-hibernaculum day and night roosts cannot be avoided. If a winter hibernaculum site is present, then reclamation activities shall not occur until the hibernaculum is vacated, or, if necessary, safely evicted using methods acceptable to CDFW.

**Condition S-33:** [Mitigation Measure 4.3-2a] Special Status Plants. To avoid and minimize potential impacts to special status plants, including Congdon's tarplant, Mt. Diablo buckwheat, and Mt. Diablo fairy-lantern, the following shall apply:

1. Prior to the commencement of reclamation-related ground disturbing activity (which includes clearing, grubbing, or grading) in areas identified as having potential special status plant species in the project biological resources assessment report, a qualified botanist or biologist shall conduct a pre-construction survey for special status rare plant occurrences. The survey shall occur within 30 days prior to commencement of ground-disturbing activity.
2. If rare plant occurrences that are listed under the ESA or CESA are found and avoidance is not feasible, then the Permittee shall notify the California Department of Fish and Wildlife (CDFW) and/or (as applicable) the U.S. Fish and Wildlife Service (USFWS) for any federally-listed species and comply with any permit or mitigation requirements stipulated by those agencies.
3. Comply with the mitigation requirements and conditions of any Section 1600 Lake and Streambed Alteration Agreement (Agreement) with CDFW for project reclamation activities, as applicable to rare plant occurrences. If there is a conflict between the terms of mitigation items 1 and 2 above and the Agreement, then the Permittee shall abide by the terms of the Agreement.

**Condition S-34:** [Mitigation Measure 4.3-2b] Riparian Habitat. Within one year of the commencement of reclamation-related ground disturbing activity (which includes clearing, grubbing, or grading) associated with the construction of the Lake A diversion structure, realigned Arroyo del Valle, or other areas identified as riparian habitat in the project biological resources assessment report, the Permittee shall mitigate for any permanent riparian impacts at a minimum 1:1 ratio, unless the regulatory permit process results in a different ratio. The implementation of mitigation for the loss of riparian habitat may be addressed separately for each phase of reclamation (e.g., Lake A diversion structure or realigned Arroyo del Valle). Exact acreage per phase shall be determined in consultation with CDFW and other applicable regulatory requirements. Mitigation shall be accomplished by complying with the following:

1. Enter into and comply with the mitigation requirements and conditions of a Section 1600 Lake and Streambed Alteration Agreement (Agreement) with CDFW.
2. If the Agreement results in less than a 1:1 mitigation ratio for loss of riparian habitat, then the Permittee shall demonstrate that the riparian habitat which went unmitigated/uncompensated as a result of permitting has been mitigated through other means. Acceptable methods include purchase of credits from a mitigation bank or creation/preservation of on-site or off-site riparian habitats through the establishment of a permanent conservation easement, subject to the approval of the Planning Department.

**Condition S-35:** [Mitigation Measure 4.3-3] 1:1 Wetland Compensation Ratio. Prior to the commencement of reclamation-related ground disturbing activity (which includes clearing, grubbing, or grading) associated with the construction of the Lake A diversion structure, realigned Arroyo del Valle, or in other areas identified as containing wetlands in the project aquatic resource delineation report, the Permittee shall mitigate for direct and indirect wetland impacts at a 1:1 ratio, unless the regulatory permit process results in a different ratio. The implementation of mitigation for the loss of wetlands may be addressed separately for each phase of reclamation (e.g., Lake A diversion structure or realigned Arroyo del Valle). Exact acreage per phase shall be determined prior to initiating that phase based on the verification of the preliminary jurisdictional determination by the USACE and other applicable regulatory requirements. Mitigation shall be accomplished by complying with the following:

1. Obtain and comply with the mitigation requirements and conditions of a Section 404 Permit(s) and Section 401 Water Quality Certification(s) for reclamation activities, as applicable.
2. If regulatory permitting processes result in less than a 1:1 compensation ratio for loss of wetlands, then the Permittee shall demonstrate that the wetlands which went unmitigated/uncompensated as a result of permitting have been mitigated through other means. Acceptable methods include purchase of credits from a mitigation bank or creation/preservation of on-site or off-site wetlands through the establishment of a permanent conservation easement, subject to the approval of the Planning Department.

## **GEOLOGY AND SOILS**

**Condition S-36:** [Mitigation Measure 4.4-1] Erosion Control Plan. The Permittee, and its contractors shall adhere to the Erosion Control Plan for the ADV realignment prepared by Brown and Caldwell in 2019, which shall be incorporated by reference into the conditions of approval for the project.

**Condition S-37:** [Mitigation Measure 4.4-2] Berm and Embankment Grading. The Permittee shall implement the following measures to control erosion related to berm and embankment grading before ground disturbing activities:

1. All earthwork operations shall be observed, and all fills tested for recommended compaction and moisture content by a representative from a County-approved geotechnical specialist.
2. Prior to commencing grading, a pre-construction conference with representatives from the Permittee, its grading contractor, if applicable, and County-approved geotechnical specialist shall be held at the site. Site preparation, soil handling and/or the grading plans shall be discussed at the pre-construction conference.
3. Prior to commencing grading within embankment and slope areas, surface vegetation shall be removed by stripping to a sufficient depth (2 to 4 inches) to remove roots and organic-rich topsoil. Material generated during stripping that is not suitable for use as embankment or reclamation slope fill shall be stockpiled for future use as topsoil. Any existing trees and associated root systems shall be removed. Roots larger than 1 inch in diameter shall be completely removed. Smaller roots may be left in-place as conditions warrant and at the discretion of on-site field monitor.

4. To increase stability and to provide a stable foundation for the berm embankments, the full length of the embankments shall be provided with embankment-width keyways. The keyways shall have a minimum embedment depth of 3 feet into firm, competent, undisturbed soil. The actual depth of the keyway shall be evaluated during construction by a County-approved geotechnical specialist. Keyway back-slopes shall be no flatter than 1 horizontal (H):1 vertical (V).
5. Where fill is placed on sloping ground steeper than 5H:1V, the fill shall be benched into the adjacent native materials as the fill is placed. Benches shall roughly parallel slope contours and extend at least 2 feet into competent material. In addition, a keyway shall be cut into the slope at the base of the fill. Keyways shall be at least 15 feet wide and extend at least 2 feet into competent material. Bench and keyway criteria may need revision during construction based on the actual materials encountered and grading performed in the field.
6. Pipe penetrations through the planned berms and embankments shall be avoided, if feasible. If pipe penetrations are unavoidable, the Permittee shall provide concrete cut-off collars at the penetration point to reduce potential for seepage. Reinforced concrete cut-off collars shall completely encircle the pipe and should be sized such that they are 12 to 18 inches larger than the nominal outside diameter of the pipe. Thickness shall be at least 6 inches. Water-tight filler shall be used between collars and pipes.
7. Bottoms of keyways and areas to receive fill shall be scarified 12 inches, uniformly moisture conditioned at or above optimum moisture content and compacted to at least 90% relative compaction. Scarification and recompaction operations shall be performed in the presence of a County-approved geotechnical specialist to evaluate performance of the subgrade under compaction equipment loading.
8. Engineered fill consisting of onsite or approved import materials shall be compacted in horizontal lifts not exceeding 8 inches (loose thickness) and brought to final subgrade elevations. Each lift shall be moisture-conditioned at or above optimum and compacted to at least 90% relative compaction at least 2% above optimum moisture content. Fills for the eastern Lake B fill embankments and Pond C/D separation shall be compacted to at least 95% relative compaction above optimum moisture content.
9. Fill slopes shall be built such that soils are uniformly compacted to at least 90% relative compaction at least 2% above optimum moisture content to the finished face of the completed slope. Fill slopes for the eastern Lake B fill embankments and Pond C/D separation shall be compacted to at least 95% relative compaction above optimum moisture content.

The Alameda County Community Development Agency shall be responsible for ensuring compliance.

**Condition S-38:** [Mitigation Measure 4.4-3] Embankment Fill Slope Geometry. Fill slopes for the proposed embankment between Silt Pond C and Silt Pond D, the embankment for overburden and silt storage at the east end of Lake B, and the “shark’s fin” embankment of Lake B should be constructed at an inclination of 2:1 or flatter. Mid-height bench(es) should be considered for fill slopes exceeding 50 feet in height to provide access for slope maintenance.

**Condition S-39:** [Mitigation Measure 4.4-4] Cut Slope of Lake B Adjacent to Realigned ADV. The Permittee, or its contractor, shall implement one of the following two configurations for the cut slope of Lake B below and adjacent to the realigned ADV:

1. 2 ¼:1 slope
2. 40-foot horizontal bench at elevation 260 feet msl within a 2:1 slope.

## **GREENHOUSE GAS EMISSIONS**

**Condition S-40:** [Mitigation Measure 4.5-1a] Idling Times. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all project access points. Measure applies to idling times for all equipment.

**Condition S-41:** [Mitigation Measure 4.5-1b] Idling Times for Diesel-powered Equipment. Minimize the idling time of diesel-powered construction equipment to two minutes. Measure applies to idling times for diesel-powered equipment only.

**Condition S-42:** [Mitigation Measure 4.5-1c] Equipment Maintenance. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications.

**Condition S-43:** [Mitigation Measure 4.5-1d] Alternative Fuel Plan. Prior to construction, develop a plan demonstrating that alternative fueled (e.g., biodiesel, electric) construction vehicles/equipment will represent at least 15 percent of the construction fleet if commercially available.

**Condition S-44:** [Mitigation Measure 4.5-1e] Local Building Materials. Use at least 10 percent local building materials in construction (e.g., construction aggregates, concrete pipe).

**Condition S-45:** [Mitigation Measure 4.5-1f] Recycle or Reuse Construction and Demolition Materials. Recycle or reuse at least 50 percent of construction waste or demolition materials (e.g., during decommissioning and removal of processing plant facilities).

**Condition S-46:** [Mitigation Measure 4.5-1g] On-site Material Hauling. Perform on-site material hauling with trucks equipped with on-road engines (if less emissive of GHG emissions than off-road engines), if commercially available.

**Condition S-47:** [Mitigation Measure 4.5-1h] Generator Alternative Fuel. Use alternative fuels for generators at construction sites such as propane or solar, or use electrical power, as feasible for each construction site.

## **HYDROLOGY AND WATER QUALITY**

**Condition S-48:** [Mitigation Measure 4.6-1] Development of SWPPP. The Permittee, and its contractors, shall conduct activities consistent with the General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, which would require development of a stormwater pollution prevention plan (SWPPP) for the reclamation

construction activities. The SWPPP and Notice of Intent to comply with the General Permit shall be prepared and filed with the RWQCB before commencement of construction activities.

**Condition S-49:** [Mitigation Measure 4.6-2] Implementation of Adaptive Management Program for Iron. The Permittee shall implement the Adaptive Management Program for Iron (see Appendix F-6 to the SEIR), which will be incorporated into conditions of approval.

**Condition S-50:** [Mitigation Measure 4.6-3] Install Lake B Groundwater Monitoring Wells. The Permittee shall install up to three groundwater monitoring wells on Lake B perimeter. Permittee shall consult with Zone 7 regarding the location and specifications of these wells. The Permittee shall provide documentation to the County that they have conducted a good faith effort of coordinating with Zone 7 regarding the amount and location of the groundwater monitoring wells.

**Condition S-51:** [Mitigation Measure 4.6-4] Conveyance to Avoid Lake B Silt Storage Area. The Permittee, or its contractor, shall implement one of the following two water conveyance options from the end of Lake A to Lake B:

1. Install a high-density polyethylene (HDPE) pipe, connected to the Lake B pipeline turnout, that will be capable of conveying the flow from the end of the Lake A to Lake B pipeline around the silt storage area located in the eastern end of Lake B.
2. Compact the backfill surface of the silt storage facility in the eastern end of Lake B and construct a lined channel across the top of the Lake B fill that will be capable of conveying the flow from the end of Lake A to Lake B pipeline around the silt storage area. This channel shall be lined with gravel or cobbles to minimize the potential for erosion or sediment transport.

## **NOISE**

**Condition S-52:** [Mitigation Measure 4.8-1a] Notice of Activities. All residences within 500 feet of the conduit and pipeline installation components of the proposed project and the City of Livermore Community Development Department 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 notice shall be sent no less than one week prior to construction activities.

**Condition S-53:** [Mitigation Measure 4.8-1b] Mufflers. All mobile equipment shall be fitted with mufflers consistent with manufacturers recommendations & shall be well maintained.

**EXHIBIT B**  
**WRITTEN FINDINGS OF SIGNIFICANT EFFECTS AND**  
**STATEMENT OF OVERRIDING CONSIDERATIONS**

**BEFORE THE PLANNING COMMISSION OF THE COUNTY OF ALAMEDA**

**CEQA FINDINGS OF FACT, STATEMENT OF OVERRIDING CONSIDERATIONS  
AND GENERAL PLAN, AND OTHER PLAN CONSISTENCY FINDINGS**

**Application of RMC Pacific Materials, LLC, dba CEMEX, for a Project Known as the *Eliot Mining Reclamation Plan and SMP-23 Amendment*:**

**I. INTRODUCTION**

RMC Pacific Materials, LLC. (“CEMEX”) has applied to Alameda County (County) for an amendment to CEMEX’s approved 1987 reclamation plan (“approved reclamation plan”) and a modification to Reclamation Plan and Surface Mining Permit No. 23 (SMP-23) for the Eliot Quarry site (“Project”). The Eliot Quarry site was previously evaluated in the 1981 Livermore-Amador Valley Quarry Area Reclamation Specific Plan Environmental Impact Report (LAVQAR EIR). The Project is the proposed revisions to CEMEX’s 1987 reclamation plan that were not previously analyzed in the LAVQAR EIR. The 1981 LAVQAR EIR contains information still relevant to the proposed reclamation plan amendment. Therefore, the County determined that preparation of a subsequent environmental impact report (“SEIR”) would be appropriate for the purposes of the California Environmental Quality Act (“CEQA”).

The County released a Draft SEIR (“DSEIR”) for public review and comment on January 27, 2021. This public review and comment period ran through March 12, 2021. In addition, the County held a public meeting for receiving comments on the DSEIR on March 3, 2021. The County received several comment letters during the public review period. The County then prepared a Final Subsequent Environmental Impact Report (“FSEIR”), which includes responses to comments received on the DSEIR, and revisions to the DSEIR with clarifying information.

These Findings of Fact, Statement of Overriding Considerations, and Plan Consistency Findings (“Findings”) have been prepared for the County of Alameda Planning Commission (“Commission”) to comply with the requirements of CEQA (California Public Resources Code section 21000 et seq.) and the CEQA Guidelines (California Code of Regulations, title 14, section 15000 et seq.).

**II. DEFINITIONS**

“APN” means Assessor’s Parcel Number.

“Applicant” means RMC Pacific Materials, LLC, dba CEMEX

“ACA” means Alameda Creek Alliance

“ACWD” means Alameda County Water District

“ADV” means Arroyo del Valle

“ARB” means Air Resources Board

“ATCM” means Airborne Toxic Control Measure

“BAAQMD” means Bay Area Air Quality Management District

“BMPs” means best management practices

“Cal. App.” means California Appellate Decision

“CCR” means California Code of Regulations

“CDFW” means California Department of Fish and Wildlife

“CEQA” means California Environmental Quality Act

“CESA” means California Endangered Species Act

“cfs” means cubic feet per second

“Chain of Lakes” means a series of reclaimed gravel quarry pits converted into nine lakes used to store and convey seasonal and flood water and recharge groundwater.

“Clean Air Plan” means BAAQMD’s 2017 Clean Air Plan

“CO” means carbon monoxide

“County” means Alameda County

“CPUC” means California Public Utilities Commission

“dB” means decibels

“EACCS” means East Alameda County Conservation Strategy

“ECAP” means Alameda County General Plan, East County Area Plan

“EFH” means Essential Fish Habitat

“EIR” means Environmental Impact Report

“ESA” means Federal Endangered Species Act

“FAR” mean floor area ratio

“ft<sup>2</sup>” means Square feet

“ft/s” means feet per second

“GSA” means Groundwater Sustainability Agency

“HDPE” means High-density polyethylene

“HEC-RAS” means Hydrologic Engineering Centers River Analysis System

“LAVQAR” means the Livermore-Amador Valley Quarry Area Reclamation Specific Plan

“LAVQAR EIR” means Livermore-Amador Valley Quarry Area Reclamation Specific Plan Environmental Impact Report

“lb” means pounds

“Lmax” means maximum noise level

“MM” means mitigation measure

“MMRP” means mitigation monitoring and reporting plan

“msl” means mean sea level

“NEPA” means National Environmental Policy Act

“NMFS” means National Marine Fisheries Service

“NOx” means oxides of nitrogen

“NOA” means notice of availability

“NOP” means notice of preparation

“NPDES” means National Pollutant Discharge Elimination System

“PCC” means Portland Cement Concrete

“Permittee” means RMC Pacific Materials, LLC, dba CEMEX

“PG&E” means Pacific Gas and Electric Company

“PM<sub>10</sub>” means respirable particulate matter with an aerodynamic diameter less than or equal to 10 micrometers (µm)

“PM<sub>2.5</sub>” means particulate matter with an aerodynamic diameter less than or equal to 10 µm and greater than 2.5 µm

“PRC” means Public Resources Code

“ROG” means reactive organic gases

“RWQCB” means Regional Water Quality Control Board

“SEIR” means Subsequent Environmental Impact Report

“SFBAAB” means San Francisco Bay Area Air Basin

“SGMA” means Sustainable Groundwater Management Act

“SMARA” means Surface Mining and Reclamation Act

“SMO” means surface mining ordinance

“SMP” means surface mining permit

“SO<sub>x</sub>” means sulfur oxides

“SR” means State Route

“Subd.” means subdivision

“SWPPP” means Stormwater Pollution Prevention Plan

“SWRCB” means State Water Resources Control Board

“TAC” means toxic air contaminant

“USACE” or “USACOE” means U.S. Army Corps of Engineers

“USFWS” means U.S. Fish and Wildlife Service

“VMT” means vehicle-miles traveled

“Zone 7” means Alameda County Flood Control and Water Conservation District, Zone 7

### **III. PROJECT DESCRIPTION**

#### **A. Project Location and Setting**

The proposed Project site is an existing sand and gravel surface mine operation located on an approximately 920-acre parcel located in unincorporated Alameda County, between the cities of Livermore and Pleasanton. (FSEIR p. 1-1.) The Project is located south of Interstate 580 and Stanley Boulevard in the Livermore-Amador Valley, north of Vineyard Avenue, and both east and west of Isabel Avenue (State Route 85). (DSEIR p. ES-2.)

#### **B. Project Description**

CEMEX currently operates the Eliot Quarry. CEMEX and its predecessors-in-interest have been continuously mining for sand and gravel at the Eliot Quarry since at least 1906. (DSEIR p. 2-1.) CEMEX acquired the Eliot Quarry in 2005. (DSEIR p. 2-1.) In addition to mining and reclamation, existing permitted and accessory uses at the Eliot Quarry include aggregate, asphalt, and ready-mix concrete processing, as well as ancillary uses such as aggregate stockpiling, load-out, sales, construction materials recycling, and equipment storage and maintenance. (DSEIR p. 2-1.)

CEMEX's mining operation at Eliot Quarry is vested under pre-1957 mining and as documented in County Quarry Permit Q-1 (1957), Q-4 (1957), and Q-76 (1969), as well as subsequent County documents. (DSEIR p. 2-1.) Therefore, mining and processing at the site are not subject to the discretionary decisions that the County will make regarding the Project; only site reclamation is at issue. (DSEIR p. 2-1.) In 1987, the County approved SMP-23 for a reclamation plan covering the Eliot facility, and that plan is the "approved reclamation plan" currently applicable to the site. (DSEIR p. 2-1.) Surface mine operators in California are required by State law to have an approved reclamation plan if they operate after January 1, 1976. (Cal. Pub. Res. Code § 2770; DSEIR p. 2-1.)

Changes in circumstances at the site and in applicable regulatory requirements necessitated the preparation of an amended reclamation plan that addresses these changes and provides reclamation objectives that can be feasibly accomplished and permitted by regulatory agencies. (DSEIR p. 2-1.) CEMEX has therefore applied to the County for a reclamation plan amendment. In considering the application and the discretionary action of approving the Project, the County is required to conduct environmental review pursuant to CEQA. (DSEIR p. 2-1.)

The Project would:

- adjust reclamation boundaries and contours;
- enhance drainage and water conveyance facilities;
- incorporate a public use pedestrian and bike trail, consistent with the LAVQAR, along the southern boundary of Lakes A and B near Vineyard Avenue;
- achieve current surface mining reclamation standards;
- realign and restore an approximately 5,800-linear-foot reach of the Arroyo del Valle ("ADV") to flow around, rather than through (as currently anticipated in SMP-23), Lake B;
- reclaim Lake A with limited earthmoving, which shall include:
  - installation of a surface water diversion from the ADV to Lake A,
  - conversion of a berm currently located in Lake A into a small island to allow water to flow across the lake,
  - installation of a water conveyance pipeline from Lake A to future Lake C (located off-site to the northwest),
  - installation of an overflow outlet to allow water to flow back into ADV when Lake A water levels are high to prevent flooding in the localized area,
  - a final surface area of 81 acres as compared to 208 acres in SMP-23, and
  - no further mining of Lake A;
- reclaim Lake B, which shall include:
  - installation of a pipeline turn-out from Lake A,

- installation of a water pipeline conduit to future Lake C,
- installation of an overflow outlet to allow water to flow back into ADV when Lake B water levels are high;
- a final bottom elevation at 150 feet mean sea level (“msl”); and
- a final surface area of 208 acres as compared to 243 acres in SMP-23; and
- reclaim the Lake J excavation (not part of the Chain of Lakes), processing plant sites, process water ponds, and Ponds C and D, referenced as the “North Reclamation Area,” which shall include:
  - backfilling with overburden and process wash fines during the course of mining elsewhere at the site,
  - revegetation,
  - a return to open space and/or agriculture.

(DSEIR pp. 2-1, 2-2.)

Upon reclamation, Lake A, Lake B, Pond C, and Pond D, along with their appurtenant water conveyance facilities, will be dedicated to Zone 7 for water storage, conveyance, and recharge management. (DSEIR p. 2-2.) The Project would still achieve prior commitments to provide for water storage and water conveyance under reclaimed conditions. (DSEIR p. 2-2.) Except as outlined above, CEMEX proposes no change to any fundamental element of the existing operation (e.g., mining methods, processing operations, production levels, truck traffic, or hours of operation). (DSEIR p. 2-2.)

### **C. Project Objectives and Justification**

- 1) Address the requirements of Condition 7 of County Resolution No. 12-20.
- 2) Realign and restore an approximately 5,800-foot reach of the Arroyo del Valle (“ADV”) resulting in an enhanced riparian corridor that flows south of, rather than through (as currently anticipated in SMP-23), Lake B.
- 3) Maximize the extraction of the remaining available on-site sand and gravel resources through the anticipated reclamation end date of 2056, including a change in the final bottom elevation of excavation in Lake B to 150 feet msl.
- 4) Continue to supply the regional demands for Portland Cement Concrete grade aggregate.
- 5) Reduce VMT and the related air emissions by retaining a local source of aggregate.
- 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.
- 7) Implement a public use pedestrian and bike trail on the southern perimeter of the CEMEX property.

- 8) Implement the proposed reclamation plan amendment to establish end uses of water management, open space, and nonprime agriculture in accordance with SMARA (Public Resources Code 2710, et seq.).
- 9) (FSEIR pp. 3-1, 3-2.)

**D. Requested Entitlement**

Requested entitlements from the County include amendments to SMP-23 to facilitate changes that are more sensitive to the environment and the surrounding community while fulfilling the intent of the LAVQAR, adjustments to the reclamation boundaries and contours, enhancements to drainage and water conveyance facilities, incorporation of a pedestrian and bike trail, and achievement of current surface mining reclamation standards. (DSEIR p. ES-6.)

**IV. BACKGROUND**

CEMEX and its predecessors-in-interest (e.g., Pacific Cement and Aggregates, Inc. and Lonestar Industries) have been continuously mining for sand and gravel at the Project site since 1906 or earlier. (DSEIR p. 2-15.) In September 2005, CEMEX acquired RMC Pacific, including all land, leases, and permits. (DSEIR p. 2-15.)

After decades of operations, CEMEX's predecessor obtained Quarry Permit Q-1 from the County in January of 1957, following the County's 1956 passage of Ordinance 181 N.S. governing quarries and gravel pits. (DSEIR p. 2-15.) In 1969, CEMEX's predecessor obtained Q-76 from the County via Resolution 129465, which authorized sand and gravel pit operations on an additional 165 acres of the site, 110 acres of which CEMEX owned. (DSEIR p. 2-15.)

In compliance with SMARA, which became effective on January 1, 1976, the County adopted the Alameda County Surface Mining Ordinance ("SMO") in July 1977. (DSEIR p. 2-15.) In 1981, the County adopted the LAVQAR. (DSEIR p. 2-15.) As part of the LAVQAR, quarry operators in the Livermore-Amador Valley, including CEMEX, would excavate basins for Zone 7's future operation of water storage, conveyance, and recharge facilities, known as the "Chain of Lakes." (DSEIR p. 2-15.) The potential environmental impacts of the LAVQAR were analyzed in the LAVQAR EIR, which was certified by the County in 1981. (DSEIR p. 2-15.)

On April 6, 1987, via County Resolution 87-18, CEMEX's predecessor obtained SMP-23, a reclamation plan for the Project site located on the areas of CEMEX's existing permitted rights under Q-1 and Q-76. (DSEIR p. 2-15.) SMP-23 is not a conditional use permit for mining; rather, it is the reclamation plan for the site as required by SMARA and the SMO. (DSEIR p. 2-15.) The County prepared and approved a negative declaration for the SMP-23 reclamation plan on the basis that SMP-23 was consistent with the LAVQAR. (DSEIR p. 2-15.) The SMP-23 reclamation plan has been modified several times since its initial approval. (DSEIR p. 2-15.)

In 1989–1992, CEMEX's predecessor purchased four parcels of land from Pleasanton Gravel Co. and Jamieson Co. in the north-central portion of the CEMEX Eliot site, which

parcels are herein collectively referred to as the Jamieson Parcels. (DSEIR p. 2-15.) Jamieson Parcels 1 and 2 were within the scope of Q-76, while Jamieson Parcels 3 and 4 were within the scope of Q-4, which were initially granted to California Rock and Gravel Company in 1957. (DSEIR p. 2-15.) The Jamieson Parcels also have vested mining rights. (DSEIR p. 2-15.) The Jamieson Parcels were acquired by CEMEX's predecessors after the County had approved SMP-23 in 1987; therefore, those parcels were not included within the currently approved SMP-23 reclamation plan boundary. (DSEIR p. 2-15.) Instead, CEMEX conducted surface mining operations at the Jamieson Parcels in accordance with Surface Mining Permit and Reclamation Plan No. 16 (SMP-16), which applies to the surface mining operation adjoining the Project site's eastern and northern boundary (operated by Vulcan Materials Company, leased from Pleasanton Gravel Co.). (DSEIR p. 2-15.)

The following list is a chronological summary of approved permits and other relevant regulatory actions for the Project site:

- 1957 Q-1 and Q-4 mining permits
- 1969 Q-76 mining permit, Resolution 129465
- 1975 Q-76 reclamation plan approval and EIR certification, Resolution 11145
- 1981 LAVQAR adopted
- 1987 SMP-23 reclamation plan and negative declaration, Resolution 87-18
- 1988 Agreement between Zone 7 and RMC Lonestar
- 1992 SMP-23 periodic review, Resolution 92-29 (20 conditions)
- 1995 Q-76 permit time extension and incorporation into SMP-23, Resolution 95-34
- 1996 SMP-23 amendment to add signage to Lake A (five new conditions)
- 2007 *Lakeside Circle Corrective Action Plan for Lake A* approved by the Planning Director on November 9, 2007
- 2010 SMP-23 amendment to Condition 29 (Stanley Boulevard landscaping conditions), Resolution 10-09
- 2012 SMP-23 periodic review, Resolution 12-20 (35 conditions)
- 2013 *Lake B Corrective Action Plan*, administrative approval pursuant to SMO Section 6.80.120; initial application for SMP-23 amendment
- 2014 Notice of reclamation plan approval recorded with the County recorder's office pursuant to California Public Resources Code Section 2772.7

(DSEIR pp. 2-15 to 2-16.)

In addition, in 2016 (superseded) and then in 2019, CEMEX submitted applications to revise the SMP-23 Reclamation Plan. (DSEIR p. 2-16.) CEMEX continues to operate the Eliot Quarry pursuant to vested rights and the Q-1, Q-4, Q-76, and SMP-23 (as amended) entitlements. (DSEIR p. 2-16.) The Project does not propose modifying the existing Q-1, Q-4, or Q-76 entitlements. (DSEIR p. 2-16.)

## V. **RECORD OF PROCEEDINGS**

The record of proceedings for the Commission's decision on the Project consists of the following documents, at a minimum:

- 1) The Project application package (and any revisions thereto), including written documentation, technical information and studies, maps and all attachments;
- 2) The Initial Study prepared for the Project;
- 3) The Notice of Preparation and other public notices issues by the County in connection with the Project and all hearings held by any public bodies to consider the Project;
- 4) The DSEIR for the Project (dated January 2021);
- 5) All comments submitted by agencies or members of the public during the comment period on the Draft SEIR and responses to those comments;
- 6) The FSEIR for the Project (dated June 2021), including timely comments received on the DSEIR and responses to those comments;
- 7) All comments and correspondence submitted to the County with respect to the Project, in addition to the timely comments on the Draft SEIR;
- 8) The Mitigation, Monitoring and Reporting Program for the Project;
- 9) All findings and resolutions adopted by the County in connection with the Project, and all documents cited or referred to therein;
- 10) All reports, studies, memoranda, maps, staff reports, or other planning documents relating to the Project prepared by or for the County, consultants to the County, or responsible or trustee agencies with respect to the County's compliance with the requirements of CEQA and with respect to the County's environmental review and action on the Project;
- 11) Any minutes and/or verbatim transcripts of all information sessions, scoping meetings, public meetings, and public hearings held by the County, the Community Development Agency, or the Planning Commission in connection with the Project;
- 12) Any documentary or other evidence submitted to the County at such information sessions, public meetings and public hearings;
- 13) Matters of common knowledge to the Planning Commission, including but not limited to the following:
  - a) Federal, state and local laws and regulations;
  - b) The County General Plan;
  - c) The County Zoning Code;
  - d) The Alameda County Code;
  - e) The LAVQAR; and
  - f) Other formally adopted plans, policies, resolutions and ordinances;
- 14) Any documents expressly cited in these findings, in addition to those cited above;

and

- 15) Any other materials required for the record of proceedings by the Public Resources Code section 21167.6(c).

The official custodian of the record is the Clerk of the Alameda County Board of Supervisors, 1221 Oak Street, Suite 536, Oakland, California 94612.

## **VI. FINDINGS REQUIRED UNDER CEQA**

Pursuant to sections 21002, 21002.1, and 21081 of the Public Resources Code, no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless both of the following occur:

- (a) The public agency makes one or more of the following findings with respect to each significant effect:
  - (1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.
  - (2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.
  - (3) Specific economic, legal, social, technological or other considerations, including the considerations for provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.
- (b) With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that the specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.

CEQA Guidelines section 15091 requires the following:

- (a) No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:
  - (1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.
  - (2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such agency.
  - (3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers,

make infeasible the mitigation measures or project alternatives identified in the final EIR.

Accordingly, for each significant impact identified herein, a finding has been made as to one or more of the following, as appropriate in accordance with Public Resources Code section 21081 and CEQA Guidelines section 15091:

- A. Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the SEIR. Such changes or alterations reduce the significant environmental effect identified in the SEIR to a level of less than significant;
- B. Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the County. Such changes have been adopted by such other agency or can and should be adopted by such other agency; and/or
- C. Specific economic, legal, social, technological or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the SEIR.

A narrative of supporting facts follows the appropriate finding below. For many of the impacts, one or more of the findings have been made. Finding (B) appears because, although the County is the lead agency, it has limitations on its power to require or enforce certain mitigation. Whenever finding (B) occurs, agencies with jurisdiction to impose certain mitigation measures have been identified. It is these agencies, within their respective scopes of authority, which would have the ultimate responsibilities to adopt, implement and enforce the mitigation discussed within each type of impact that could result from Project implementation.

Whenever finding (C) was made, the County has determined that there would be, even after mitigation, an unavoidable significant level of impact due to the Project, and sufficient mitigation and alternatives are not feasible to reduce the impact to a level of less than significant. Such impacts are always specifically identified in the supporting discussions. The Statement of Overriding Considerations applies to all such unavoidable significant impacts, as required by sections 15092 and 15093 of the CEQA Guidelines.

The concept of “feasibility” also encompasses the question of whether a particular alternative or mitigation measure promotes the underlying goals and objectives of a project. (*City of Del Mar v. City of San Diego*, 133 Cal.App.3d 401, 417 (1982).) “Feasibility” under CEQA encompasses ‘desirability’ to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, and technological factors.” (*Id.*; see also *Sequoyah Hills Homeowners Ass’n v. City of Oakland*, 23 Cal.App.4th 704, 715 (1993).)

The CEQA Guidelines do not define the difference between “avoiding” a significant environmental effect and merely “substantially lessening” such an effect. The County must therefore glean the meaning of these terms from the other context in which the terms are used. Public Resources Code section 21081, on which CEQA Guidelines section 15091 is

based, uses the term “mitigate” rather than “substantially lessen.” The CEQA Guidelines therefore equate “mitigating” with “substantially lessening.” Such an understanding of the statutory term is consistent with the policies underlying CEQA, which include the policy that “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects.” (Public Resources Code section 21002.)

For purposes of these findings, the term “avoid” refers to the effectiveness of one or more mitigation measures to reduce an otherwise significant effect to a less than significant level. In contrast, the term “substantially lessen” refers to the effectiveness of such measure or measures to substantially reduce the severity of a significant effect, but not to reduce the effect to a less than significant level. These interpretations appear to be mandated by a holding in *Laurel Hills Homeowners Ass’n v. City Council*, 83 Cal. App. 3d 515, 519-21 (1978), in which the Court of Appeal held that an agency had satisfied its obligation to substantially lessen or avoid significant effects by adopting numerous mitigation measures, not all of which rendered the significant impacts in question less than significant.

Although CEQA Guidelines section 15091 requires only that the approving agencies specify that a particular significant effect is “avoid(ed) or substantially lessen(ed),” these Findings, for purposes of clarity, in each case will specify whether the effect in question has been reduced to a less than significant level or has simply been substantially lessened but remains significant.

Additionally, although section 15091, read literally, does not require findings to address environmental effects that an EIR identifies as merely “potentially significant,” these Findings nevertheless fully account for all such potentially significant effects identified in the SEIR.

CEQA requires that the lead agency adopt mitigation measures or alternatives, where feasible, to substantially lessen or avoid significant environmental impacts that would otherwise occur. However, project modification or alternatives are not required where such changes are infeasible or where the responsibility for modifying the project lies with some other agency. (CEQA Guidelines section 15091(a),(b).)

With respect to a project for which significant impacts are not avoided or substantially lessened, a public agency, after adopting proper findings, may nevertheless approve the project if the agency first adopts a statement of overriding considerations setting forth the specific reasons why the agency found that the project’s “benefits” rendered “acceptable” the project’s “unavoidable adverse environmental effects.” (CEQA Guidelines sections 15043, 15093; see also Public Resources Code section 21080(b).) The California Supreme Court has stated “[t]he wisdom of approving...any development project, a delicate task which requires the balancing of interests, is necessarily left to the sound discretion of the local officials and their constituents who are responsible for such decisions. The law as we interpret and apply it simply requires that those decisions be informed, and therefore balanced.” (*Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal. 3d 553, 576 (1990).)

These Findings constitute the County's best efforts to set forth the evidentiary and policy basis for its decision to approve the Project in a manner consistent with the requirements of CEQA. To the extent that these findings conclude that various proposed mitigation measures outlined in the SEIR are feasible and have not been modified, superseded or withdrawn, the County hereby binds itself to implement these measures. These Findings, in other words, are not merely informational, but constitute a binding set of obligations that would come into effect if the County adopts a resolution approving the Project.

## **VII. MITIGATION MONITORING AND REPORTING PROGRAM**

An MMRP was prepared for the Project and approved by the Planning Commission by the same resolution that has adopted these Findings. (See PRC section 21081.6(a)(1); CEQA Guidelines section 15097.) The County would use the MMRP to track compliance with the Project's mitigation measures. The MMRP would remain available for public review during the compliance period.

## **VIII. SIGNIFICANT EFFECTS AND MITIGATION MEASURES**

### **A. Impacts that are Less than Significant.**

These Findings do not address impacts that are considered less than significant or beneficial prior to mitigation. Therefore, these Findings do not address the following impacts because they were determined to be either less than significant or beneficial in the SEIR:

#### **1. *Aesthetics/Visual Resources***

Impact 4.1-1: Substantial degradation of the approved visual character or quality of the site and its surroundings. (DSEIR p. ES-11.)

#### **2. *Air Quality***

Impact 4.2-3: Expose sensitive receptors to substantial pollutant concentrations. (DSEIR p. ES-12.)

Impact 4.2-4: Result in other emissions adversely affecting a substantial number of people. (DSEIR, p. ES-12.)

#### **3. *Biological Resources***

Impact 4.3-1d: The Project could result in direct effects or loss of habitat for special-status wildlife species: Northern Reclamation Area. (DSEIR p. ES-19.)

Impact 4.3-2d: The Project could result in loss of riparian habitat or sensitive natural community: Northern Reclamation Area. (DSEIR p. ES-21.)

Impact 4.3-3b: The Project could have a substantial adverse effect on state or federally protected wetlands: ADV realignment and the construction of berms and overflow outlet between ADV and Lake B. (DSEIR p. ES-22.)

Impact 4.3-3c: The Project could have a substantial adverse effect on state or

federally protected wetlands: Northern Reclamation Area. (DSEIR p. ES-22.)

Impact 4.3-5: The Project could conflict with local policies or ordinances protecting biological resources. (DSEIR p. ES-22.)

#### **4. *Geology and Soils***

Impact 4.4-1: Exposure of people or structures to potential substantial adverse effects, including the risk of loss, injury, or death as a result of rupture of known fault. (DSEIR p. ES-22.)

Impact 4.4-2: Exposure of people or structures to potential substantial adverse effects, including the risk of loss, injury, or death as a result of strong seismic ground shaking. (DSEIR p. ES-22.)

Impact 4.4-3: Exposure of people or structures to seismic-related ground failure, including liquefaction, or landslides. (DSEIR p. ES-22.)

Impact 4.4-5: Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the Project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction, or collapse. (DSEIR p. ES-25.)

Impact 4.4-6: Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property. (DSEIR p. ES-25.)

Impact 4.4-7: Directly or indirectly destroy a unique paleontological resource or site or unique geological feature. (DSEIR p. ES-25.)

#### **5. *Greenhouse Gas Emissions***

Impact 4.5-2: Consistency with applicable GHG plans, policies, or regulations. (DSEIR p. ES-26.)

#### **6. *Hydrology and Water Quality***

Impact 4.6-1c: Violation of water quality standards or waste discharge requirements or substantial degradation of surface water or groundwater quality at the Northern Reclamation Area. (DSEIR p. ES-27.)

Impact 4.6-2a: Substantial depletion of Groundwater Supplies or Interference with Groundwater Recharge Regarding Lake A Reclamation and Diversion Structure Construction. (DSEIR p. ES-27.)

Impact 4.6-2b: Substantial depletion of groundwater supplies or interference with groundwater recharge regarding the ADV realignment. (DSEIR p. ES-27.)

Impact 4.6-2c: Substantial depletion of groundwater supplies or interference

with groundwater recharge at the Northern Reclamation Area. (DSEIR p. ES-27.)

Impact 4.6-2d: Substantial depletion of groundwater supplies or interference with groundwater recharge regarding reclamation of Lake B. (DSEIR p. ES-27.)

Impact 4.6-3a: Substantially alter drainage patterns causing erosion or siltation, increase surface runoff that would result in flooding, provide substantial additional sources of polluted runoff, or impede or redirect flood flows regarding Lake A reclamation and diversion structure construction, construction of the infiltration gallery, and construction of conduit from Lake A to Lake C with a turnout to Lake B. (DSEIR pp. ES-27-28.)

Impact 4.6-4a: Release of pollutants in flood hazard, tsunami, or seiche zones due to Project inundation regarding Lake A reclamation and diversion structure construction, construction of the infiltration gallery, and construction of conduit from Lake A to Lake C with a turnout to Lake B. (DSEIR p. ES-28.)

Impact 4.6-4b: Release of pollutants in flood hazard, tsunami, or seiche zones due to Project inundation regarding the ADV realignment. (DSEIR p. ES-29.)

Impact 4.6-4c: Release of pollutants in flood hazard, tsunami, or seiche zones due to Project inundation at the Northern Reclamation Area. (DSEIR p. ES-29.)

Impact 4.6-4d: Release of pollutants in flood hazard, tsunami, or seiche zones due to Project inundation regarding reclamation of Lake B. (DSEIR p. ES-29.)

## **7. *Land Use and Planning***

Impact 4.7-1: Physically divide an established community. (DSEIR p. ES-29.)

Impact 4.7-2: Conflict with land use plans, policies, and regulations. (DSEIR p. ES-29.)

## **8. *Noise***

Impact 4.8-3: Construction vibration impacts relative to existing ambient conditions. (DSEIR p. ES-30.)

The Project's impacts to these above listed environmental issues are less than significant. Therefore, the SEIR did not identify or require mitigation measures for the above issues.

## **B. Impacts that are Less than Significant with Mitigation**

The SEIR identified some significant or potentially significant environmental effects (or “impacts”) that the Project would or could cause. Some of these significant effects can be fully avoided through the adoption of feasible mitigation measures. Other effects cannot be substantially lessened or avoided by the adoption of feasible mitigation measures or alternatives and are, therefore, considered significant and unavoidable.

The Project would result in significant or potentially significant environmental effects with respect to the following issues or resources:

### **1. *Aesthetics/Visual Resources***

Impact 4.1-2: Creation of a new source of substantial light and glare that would adversely affect day or nighttime views in the area. (DSEIR p. ES-11.)

### **2. *Air Quality***

Impact 4.2-1: Conflict with or obstruct implementation of the applicable air quality plan. (DSEIR p. ES-11.)

Impact 4.2-2b: Result in cumulatively considerable net increase of any criteria pollutant for which the Project region is non-attainment under an applicable federal or state ambient air quality standard: ROG, CO, SO<sub>x</sub>, PM<sub>10</sub>, and PM<sub>2.5</sub>. (DSEIR p. ES-12; FSEIR Table ES-2.)

### **3. *Biological Resources***

Impact 4.3-1a: The Project could result in direct effects or loss of habitat for special-status wildlife species: Lake A reclamation and diversion structure construction. (DSEIR p. ES-12.)

Impact 4.3-1b: The Project could result in direct effects or loss of habitat for special-status wildlife species: ADV realignment. (DSEIR p. ES-19.)

Impact 4.3-1c: The Project could result in direct effects or loss of habitat for special-status wildlife species: berms and outflow between ADV and Lake B. (DSEIR p. ES-19.)

Impact 4.3-2a: The Project could result in loss of riparian habitat or sensitive natural community: Lake A reclamation and diversion structure construction. (DSEIR p. ES-19.)

Impact 4.3-2b: The Project could result in loss of riparian habitat or sensitive natural community: ADV realignment. (DSEIR p. ES-21.)

Impact 4.3-2c: The Project could result in loss of riparian habitat or sensitive natural community: berms and outflow between ADV and Lake B. (DSEIR p. ES-21.)

Impact 4.3-3a: The Project could have a substantial adverse effect on state or federally protected wetlands: Lake A reclamation and diversion structure construction. (DSEIR p. ES-21.)

Impact 4.3-4: The Project could interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites. (DSEIR p. ES-22.)

**4. *Geology and Soils***

Impact 4.4-4: Result in substantial soil erosion or the loss of topsoil. (DSEIR p. ES-22.)

**5. *Greenhouse Gas Emissions***

Impact 4.5-1: Greenhouse gas emissions generated by reclamation activities could have a significant impact on global climate change. (DSEIR p. ES-25.)

**6. *Hydrology and Water Quality***

Impact 4.6-1a: Violation of water quality standards or waste discharge requirements or substantial degradation of surface water or groundwater quality regarding Lake A reclamation and diversion structure construction. (DSEIR p. ES-26.)

Impact 4.6-1b: Violation of water quality standards or waste discharge requirements or substantial degradation of surface water or groundwater quality regarding the ADV realignment. (DSEIR p. ES-27.)

Impact 4.6-1d: Violation of water quality standards or waste discharge requirements or substantial degradation of surface water or groundwater quality regarding reclamation of Lake B. (DSEIR p. ES-27.)

Impact 4.6-3b: Substantially alter drainage patterns causing erosion or siltation, increase surface runoff that would result in flooding, provide substantial additional sources of polluted runoff, or impede or redirect flood flows regarding ADV realignment. (DSEIR p. ES-28.)

Impact 4.6-3c: Substantially alter drainage patterns causing erosion or siltation, increase surface runoff that would result in flooding, provide substantial additional sources of polluted runoff, or impede or redirect flood flows regarding the Northern Reclamation Area. (DSEIR p. ES-28.)

Impact 4.6-3d: Substantially alter drainage patterns causing erosion or siltation, increase surface runoff that would result in flooding, provide substantial additional sources of polluted runoff, or impede or redirect flood flows regarding reclamation of Lake B. (DSEIR p. ES-28.)

Impact 4.6-5: Conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan. (DSEIR p. ES-29.)

**7. *Noise***

Impact 4.8-1: Construction noise impacts relative to locally adopted noise standards. (DSEIR p. ES-29.)

Impact 4.8-2: Construction noise impacts relative to existing ambient conditions. (DSEIR p. ES-29.)

**8. *Other CEQA Topics***

Impact 7-1: Substantially degrade the quality of the environment, reduce habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, substantially reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory. (DSEIR p. ES-30.)

Impact 7-2a: Impacts that are individually limited but cumulatively considerable: conflict with air quality plan. (DSEIR p. ES-30.)

Impact 7-2b: Impacts that are individually limited but cumulatively considerable: criteria pollutants ROG, CO, SO<sub>x</sub>, PM<sub>10</sub>, and PM<sub>2.5</sub>. (DSEIR p. ES-30; FSEIR Table ES-2.)

Impact 7-2c: Impacts that are individually limited but cumulatively considerable: criteria pollutant NO<sub>x</sub>. (DSEIR p. ES-30.)

Impact 7-3: Environmental effects which will cause substantial adverse effects on human beings. (DSEIR p. ES-30.)

As summarized below in these Findings, the DSEIR identified mitigation measures to reduce the above Section VIII.B. impacts to a less-than-significant level.

**C. Significant and Unavoidable Impacts.**

For the reasons set forth in these Findings, the Planning Commission has determined that the significant, unavoidable effects of the Project are outweighed by overriding economic, social and other considerations. The Project would result in significant and unavoidable environmental effects with respect to the following impacts:

**1. *Air Quality***

Impact 4.2-1: Conflict with or obstruct implementation of the applicable air quality plan. (DSEIR p. ES-9.)

Impact 4.2-2a: Result in a cumulatively considerable net increase of any

criteria pollutant for which the Project region is non-attainment under an applicable federal or state ambient air quality standard: NO<sub>x</sub>. (DSEIR p. ES-10.)

**2. *Cumulative Impacts***

Impact 7-2a: Impacts that are individually limited but cumulatively considerable: conflict with air quality plan. (DSEIR p. ES-10.)

Impact 7-2b: Impacts that are individually limited but cumulatively considerable: criteria pollutant NO<sub>x</sub>. (DSEIR p. ES-10.)

**D. Summary of Impacts, Findings, and Mitigation Measures.**

**1. *Aesthetics***

**Impact 4.1-2: Creation of a new source of substantial light and glare that would adversely affect day or nighttime views in the area. (Potentially Significant)**

No reclamation activities would occur at night and the completed Project would not include lighting. The Permittee has agreed to mitigation measures that limit reclamation operations to daytime hours and prohibits reclamation on Sundays. Mitigation Measure 4.1-1 below, as modified by the FSEIR, would be made a condition of approval. Construction equipment related to reclamation activities, ADV realignment, and security lighting may introduce glare and or light levels that could adversely affect day or nighttime views in the area; however, these elements exist under current operations and would not create a new source of substantial light and glare. Vehicles and structures would be removed from the site upon the completion of reclamation activities. Therefore, the Project's potential for creation of a new source of substantial light and glare that would adversely affect day or nighttime views in the area would be less than significant. (DSEIR pp. 4.1-23, 4.1-24.)

**Finding:** Changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the SEIR. (DSEIR pp. 4.1-23, 4.1-24; FSEIR p. 3-2 [Table ES-2].)

**Mitigation:** The following mitigation measures or agency recommendations/requirements have been incorporated into the Project as conditions of approval to reduce this impact to less than significant:

**Mitigation Measure 4.1-1**

All reclamation-related construction activities shall be limited to the hours of 7 a.m. – 7 p.m. Monday through Friday, and 9 a.m. – 6 p.m. on Saturday. Reclamation construction activity shall be prohibited on Sundays. (FSEIR p. 3-3 [Table ES-2].)

**Level of Significance after Mitigation:** Less than significant. (DSEIR p. 4.1-

24; FSEIR Table ES-2.)

## 2. *Air Quality*

### **Impact 4.2-1: Conflict with or obstruct implementation of the applicable air quality plan. (Significant)**

BAAQMD's 2017 Clean Air Plan ("Clean Air Plan") is the applicable air quality plan for the Project and the County. Consistency with the Clean Air Plan is determined by whether the Project would hinder implementation of control measures identified in the air quality plan or result in growth of population or employment that is not accounted for in local and regional planning. (DSEIR p. 4.2-19.)

The Project would not result in population growth in the County, as the number of employees for the Project would not substantially increase compared to existing conditions and, therefore, would represent an inconsequential growth in County employment and not exceed the employment growth accounted for in the County General Plan and the ECAP. (DSEIR p. 4.2-19.)

The Clean Air Plan requires consistency with ATCMs for idling trucks and on- and off-road diesel using vehicles. Mitigation Measure 4.2-1, below, provides for adherence to these ATCMs. (DSEIR p. 4.2-19.)

The Project would result in a cumulatively considerable impact due to daily NO<sub>x</sub> emissions in year 2022. Therefore, the Project's emissions would hinder the air district in its goals for reducing significant air pollutants in the air basin in the short-term. However, the daily NO<sub>x</sub> exceedances are related to construction activities required for the reclamation of Lake A and the realignment of the ADV. As such, the emissions are only temporary in nature. Furthermore, the annual NO<sub>x</sub> emissions in year 2022 would not exceed the annual thresholds. The remainder of the model years are below the applicable thresholds for all criteria pollutants. Furthermore, reducing emissions to a less than significant level would require daily operations to be limited to shorter windows compared to typical 8-10-hour days, which would extend the life of reclamation, thereby also potentially increasing emissions over an extended life of the reclamation activities. Therefore, the Project's estimated NO<sub>x</sub> emissions would constitute a significant and unavoidable impact on consistency of this portion of the Clean Air Plan in the short term. (DSEIR p. 4.2-20.)

**Finding:** The environmentally superior Alternative 3 shall be adopted to reduce significant impacts associated with daily NO<sub>x</sub> emissions in year 2022. While Alternative 3 would reduce daily NO<sub>x</sub> emissions, the daily NO<sub>x</sub> exceedance would remain, and the impact would remain significant and unavoidable. (DSEIR pp. 6-9 to 6-10.) However, specific economic, legal, social, technological, or other considerations make infeasible additional

mitigation measures or other Project alternatives which would further avoid or substantially lessen the significant environmental daily NO<sub>x</sub> effect as identified in the SEIR.

**Mitigation:** The following mitigation measures or agency recommendations/requirements have been incorporated into the Project as conditions of approval to reduce this impact, but not to a less-than-significant level:

**Mitigation Measure 4.2-1**

The Permittee shall implement the following to reduce project NO<sub>x</sub> emissions:

- a) Develop a plan demonstrating that the off-road equipment (more than 50 horsepower) to be used in Lake A reclamation and the Lake B realignment of the Arroyo del Valle would achieve a fleet-average 20 percent NO<sub>x</sub> reduction compared to the most recent ARB fleet average for the duration of these reclamation activities. Acceptable options for reducing emissions include the use of late model engines, low-emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, and/or other options as such become available. The plan shall be submitted to the County within 90 days of project approval.

The Alameda County Community Development Agency would be responsible for ensuring compliance. (DSEIR p. 4.2-20, FSEIR p. 3-3.)

**Level of Significance after Mitigation:** Significant and unavoidable. (DSEIR p. 4.2-20.)

**Impact 4.2-2a: Result in a Cumulatively Considerable Net Increase of Any Criteria Pollutant for which the Project region is non-attainment under applicable federal or state ambient air quality standard: NO<sub>x</sub>. (Significant)**

Project operations associated with reclamation would emit criteria air pollutants, including ROG, NO<sub>x</sub>, CO, SO<sub>x</sub>, PM<sub>10</sub>, and PM<sub>2.5</sub>, from construction equipment and from mobile equipment and motor vehicles associated with excavation, grading/fill, and construction of water management facilities at Lakes A and B. (DSEIR p. 4.2-20.)

The modeling results from the Air and Greenhouse Gas Emissions Study (Appendix C-1 of the SEIR) indicate that project criteria pollutant emissions are below applicable BAAQMD thresholds of significance for CEQA except for daily emissions of NO<sub>x</sub>. Daily emissions of NO<sub>x</sub> are exceeded only in model year 2022, when Lake A reclamation activity and the Lake B realignment of the ADV are assumed to occur simultaneously. Even if evaluated separately, the year 2022 Lake A reclamation activities and the year

2022 Lake B realignment of the ADV would exceed the daily NO<sub>x</sub> thresholds, but to a lesser degree. However, these daily NO<sub>x</sub> exceedances are related to construction activities required for the reclamation of Lake A and the realignment of the ADV. As such, they are only temporary in nature. In 2022, the annual NO<sub>x</sub> emissions would not exceed the annual thresholds. The remainder of the model years are below the applicable thresholds for all criteria pollutants. (DSEIR pp. 4.2-20, 4.2-21.)

Based on the results presented in Table 4.2-3 of the SEIR, NO<sub>x</sub> emissions are estimated to exceed BAAQMD CEQA significance thresholds by approximately 425 percent in model year 2022. Mitigation Measure 4.2-1 would reduce daily NO<sub>x</sub> emissions during Lake A reclamation and the Lake B realignment of the ADV by approximately 20 percent; however, NO<sub>x</sub> emissions would remain well above the threshold during this period of time. In addition, because of the necessity to mobilize equipment each day, NO<sub>x</sub> emissions would be increased over the life of the Project should additional daily reductions be implemented. Therefore, the Project's estimated NO<sub>x</sub> emissions would constitute a significant and unavoidable impact. (DSEIR pp. 4.2-21, 4.2-22.)

**Finding:** The environmentally superior Alternative 3 shall be adopted to reduce significant impacts associated with daily NO<sub>x</sub> emissions in year 2022. While Alternative 3 would reduce daily NO<sub>x</sub> emissions, the daily NO<sub>x</sub> exceedance would remain, and the impact would remain significant and unavoidable. (DSEIR pp. 6-9 to 6-10.) However, specific economic, legal, social, technological, or other considerations make infeasible additional mitigation measures or other Project alternatives which would further avoid or substantially lessen the significant environmental daily NO<sub>x</sub> effect as identified in the SEIR.

**Mitigation:** The following mitigation measures or agency recommendations/ requirements have been incorporated into the Project as conditions of approval to reduce this impact, but not to a less-than-significant level:

**Mitigation Measure 4.2-1**

The applicant shall implement Mitigation Measure 4.2-1, "Off-road Equipment Plan" (see Impact 4.2-1, above). (DSEIR p. 4.3-22.)

**Level of Significance after Mitigation:** Significant and unavoidable. (DSEIR p. 4.2-22.)

**Impact 4.2-2b: Result in a cumulatively considerable net increase of any criteria pollutant for which the Project region is non-attainment under an applicable federal or state ambient air quality standard: ROG, CO, SO<sub>x</sub>, PM<sub>10</sub>, and PM<sub>2.5</sub>. (Less than Significant)**

Project operations associated with reclamation would emit criteria air

pollutants, including ROG, NO<sub>x</sub>, CO, SO<sub>x</sub>, PM<sub>10</sub>, and PM<sub>2.5</sub>, from construction equipment and from mobile equipment and motor vehicles associated with excavation, grading/fill, and construction of water management facilities at Lakes A and B. (DSEIR p. 4.2-22.)

Table 4.2-3 of the DSEIR presents the daily criteria air pollutants and ozone precursor emissions analysis. Table 4.2-4 of the DSEIR presents the annual criteria air pollutants and ozone precursor emissions analysis. The modeling results from the Air and Greenhouse Gas Emissions Study (Appendix C-1 of the DSEIR) indicate that project criteria pollutant emissions are below applicable BAAQMD thresholds of significance for CEQA for ROG, CO, SO<sub>x</sub>, PM<sub>10</sub>, and PM<sub>2.5</sub>. Therefore, the Project's estimated ROG, CO, SO<sub>x</sub>, PM<sub>10</sub>, and PM<sub>2.5</sub> emissions would constitute a less than significant impact. (DSEIR p. 4.2-22.)

**Finding:** Changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the SEIR.

**Mitigation:** None required, but the following Mitigation Measure 4.2-2 has been added at the request of the City of Livermore. (DSEIR p. 4.2-22; FSEIR Table ES-2.)

**Mitigation Measure 4.2-2**

Within 90 days of proposed project approval, the Permittee shall update its existing 2015 Dust Control Plan to address changes that would occur as a result of the proposed project. The new plan shall comply with BAAQMD best practices and be approved by the County. (FSEIR Table ES-2.)

**3. *Biological Resources***

**Impact 4.3-1a: The Project could result in direct effects or loss of habitat for special-status species: Lake A reclamation and diversion structure construction. (Potentially Significant)**

Known or potential biological habitat for threatened, endangered, proposed threatened, proposed endangered, candidate species, sensitive species, and species of concern exist in the Project area. (DSEIR p. 4.3-34.) However, since the preparation of the LAVQAR EIR, the invasion of non-native species (e.g., arundo donax) has reduced the biological value of the ADV, constituting a changed circumstance. (DSEIR p. 4.3-35.) The Project reintroduces native species, as the LAVQAR envisions, but the baseline is much more degraded than at the time of the LAVQAR EIR. (DSEIR p. 4.3-35.)

Table 4.3-5 of the DSEIR notes which existing biological communities would be impacted by Lake A reclamation activities. Many of these impacted

communities provide habitat for numerous wildlife species including various amphibians and reptiles and provide potential foraging habitat for raptors. (DSEIR p. 4.3-36.)

Vegetation within this community also provides potential nesting habitat for various bird species (Foothill Associates 2019). Therefore, Lake A reclamation activities would result in a loss of habitat for special-status species which potentially reside in these communities. (DSEIR p. 4.3-39.)

Although these Project elements would result in some habitat and surface disturbance, the disturbance or removal would overall enhance wildlife habitat by providing substantial new landscaping with native species to compensate for any existing habitat removal, the majority of which is comprised of non-native species. Furthermore, the diversion structure, including the intake (fitted with a screen to prevent fish capture or trapping), a low-head diversion dam to control water levels in the channel, a bypass structure for fish passage, a flow control structure, a conduit into Lake A, and the infiltration bed would be subject to Mitigation Measure 4.3-1a, which requires the Permittee to obtain regulatory entitlements and authorizations from the USACE, USFWS, NMFS, California RWQCB, and CDFW. Finally, impacts on special status wildlife and plant species resulting from reclamation activities would be further reduced to a less than significant level with Mitigation Measures 4.3-1b through 4.3-1h, each of which provide more than one avoidance or minimization measure specific to the group of species or habitat in question. Therefore, this impact would be less than significant with mitigation incorporated. (DSEIR p. 4.3-39.)

**Finding:** Changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the SEIR. (DSEIR pp. 4.3-39 to 4.3-43.)

**Mitigation:** The following mitigation measures or agency recommendations/ requirements have been incorporated into the Project as conditions of approval to reduce this impact to less than significant:

**Mitigation Measure 4.3-1a: Obtain Regulatory Entitlements and Authorizations**

The Permittee shall obtain regulatory entitlements and authorizations from the USACE, USFWS, NMFS, RWQCB, and CDFW as needed for reclamation activity. (DSEIR p. 4.3-39.)

**Mitigation Measure 4.3-1b: Special Status Amphibian and Reptile Species**

To avoid and minimize impacts to special status amphibian and reptile species, including western pond turtle, Alameda whipsnake (striped racer), California red-legged frog, California tiger salamander, coast horned lizard, San Joaquin whipsnake, and western spadefoot, the

following shall apply:

1. No more than 48 hours prior to the commencement of reclamation-related ground disturbing activity (i.e., clearing, grubbing, or grading) associated with the construction of the Lake A diversion structure, realigned Arroyo del Valle, or other areas, a qualified biologist shall conduct a pre-construction survey of suitable habitat in the Project reclamation area. The survey shall include aquatic habitat and adjacent uplands surrounding aquatic habitat within the Project reclamation area. Adjacent parcels under different land ownership will be surveyed only if access is granted or if the parcels are visible from authorized areas.
2. The biologist shall supply a brief written report (including date, time of survey, survey method, name of surveyor and survey results) to the Planning Department prior to the commencement of ground disturbing activity.
3. Construction personnel shall receive worker environmental awareness training prior to the commencement of ground disturbing activity. This training instructs workers how to recognize special status amphibian and reptile species and their habitat.
4. If a special status amphibian or reptile species is encountered during construction, then all construction shall cease until the animal has moved out of the construction area on its own or has been relocated by a qualified biologist in coordination with the CDFW. If the animal is injured or trapped, a qualified biologist shall move the animal out of the construction area and into a suitable habitat area. CDFW shall be notified within 24-hours that a special status amphibian or reptile species was encountered.
5. Comply with the mitigation requirements and conditions of any Section 1600 Lake and Streambed Alteration Agreement (Agreement) with CDFW for Project reclamation activities, as applicable to amphibian and reptile species. If there is a conflict between the terms of mitigation items 1 through 4 above and the Agreement, then the Permittee shall abide by the terms of the Agreement.

(DSEIR pp. 4.3-39, 4.3-40.)

**Mitigation Measure 4.3-1c: Nesting Raptors**

To avoid and minimize impacts to nesting raptors, including bald eagle, golden eagle, American peregrine falcon, prairie falcon, white-tailed kite, Cooper's hawk, ferruginous hawk, and northern harrier, the following shall apply:

1. If reclamation-related ground disturbing activity (which includes clearing, grubbing, or grading) is to commence within 500 feet of suitable nesting habitat during the nesting season (e.g., March 1-Sept. 15), then a qualified biologist shall conduct a pre-construction survey for raptor nests. The survey shall cover all potential tree and ground nesting habitat on-site and off-site up to a distance of 500 feet from the construction activity. The survey shall occur within 30 days of the date that reclamation/construction would encroach within 500 feet of suitable habitat. Adjacent parcels under different land ownership will be surveyed only if access is granted or if the parcels are visible from authorized areas.
2. The biologist shall supply a brief written report (including date, time of survey, survey method, name of surveyor and survey results) to the Planning Department prior to the commencement of ground disturbing activity. If no active nests are found during the survey, then no further mitigation would be required.
3. If any active nests are found, then the Planning Department and the CDFW shall be contacted to determine appropriate avoidance and minimization measures. The avoidance and minimization measures shall be implemented prior to the commencement of construction within 500 feet of an identified nest.
4. Comply with the mitigation requirements and conditions of any Section 1600 Lake and Streambed Alteration Agreement (Agreement) with CDFW for Project reclamation activities, as applicable to nesting raptors. If there is a conflict between the terms of mitigation items 1, 2, or 3 above and the Agreement, then the Permittee shall abide by the terms of the Agreement.

(DSEIR p. 4.3-40.)

**Mitigation Measure 4.3-1d: Nesting Birds**

To avoid and minimize impacts to great blue heron and other migratory nesting birds, the following shall apply:

1. If reclamation-related ground disturbing activity (which includes clearing, grubbing, or grading) is to commence within 50 feet of nesting habitat between February 1 and August 31, then a qualified biologist shall conduct a pre-construction survey for active migratory nests within 14 days prior to the commencement of ground disturbing activity. Adjacent parcels under different land ownership will be surveyed only if access is granted or if the parcels are visible from authorized areas.
2. The biologist shall supply a brief written report (including date, time of survey, survey method, name of surveyor and survey

results) to the Planning Department prior to the commencement of ground disturbing activity. If no active nests are found during the survey, then no further mitigation would be required.

3. If active nests are found in the survey area, then a non-disturbance buffer of a size determined by a qualified biologist shall be established and maintained around the nest to prevent nest failure. All construction activities shall be avoided within this buffer area until a qualified biologist determines that nestlings have fledged, or until September 1, unless otherwise approved by the Planning Department and CDFW.

(DSEIR pp. 4.3-40, 4.3-41.)

**Mitigation Measure 4.3-1e: Loggerhead Shrike**

To avoid and minimize potential impacts to loggerhead shrike, the following shall apply:

1. If reclamation-related ground disturbing activity (which includes clearing, grubbing, or grading) is to commence within 200 feet of suitable nesting habitat during the nesting season (February 15-August 31), then a qualified biologist shall conduct a pre-construction survey for loggerhead shrike nests in all suitable shrubs and trees that are within 200 feet from the construction activities. The survey shall occur within 30 days prior to the commencement of ground disturbing activities. Adjacent parcels under different land ownership will be surveyed only if access is granted or if the parcels are visible from authorized areas.
2. The biologist shall supply a brief written report (including date, time of survey, survey method, name of surveyor and survey results) to the Planning Department prior to the commencement of ground disturbing activity. If no active nests are found during the survey, then no further mitigation would be required.
3. If nesting individuals are found, then an exclusion zone shall be established within 200 feet of the active nest(s) until a qualified biologist determines that the young of the year are no longer reliant upon the nest.
4. Comply with the mitigation requirements and conditions of any Section 1600 Lake and Streambed Alteration Agreement (Agreement) with the California Department of Fish and Wildlife for Project reclamation activities, as applicable to the loggerhead shrike. If there is a conflict between the terms of mitigation items 1, 2, or 3 above and the Agreement, then the Permittee shall abide by the terms of the Agreement.

(DSEIR p. 4.3-41.)

**Mitigation Measure 4.3-1f: Tricolored Blackbird**

To avoid and minimize potential impacts to tricolored blackbird, the following shall apply:

1. If reclamation-related ground disturbing activity (which includes clearing, grubbing, or grading) is to commence within 300 feet of suitable nesting habitat during the nesting season (March 1-July 31), then a qualified biologist shall conduct a pre-construction survey for nesting tricolored blackbirds in suitable habitats that are within 300 feet from the Project activities. The survey shall occur within 30 days prior to the commencement of ground disturbing activities. Adjacent parcels under different land ownership will be surveyed only if access is granted or if the parcels are visible from authorized areas.
2. The biologist shall supply a brief written report (including date, time of survey, survey method, name of surveyor and survey results) to the Planning Department prior to the commencement of ground disturbing activity. If no tricolored blackbirds are found during the survey, then no further mitigation would be required.
3. If an active tricolored blackbird colony is found within 300 feet of reclamation activity, the Permittee may avoid impacts to tricolored blackbird by establishing a 300-foot temporary setback, with fencing that prevents any Project activity within 300 feet of the colony. A qualified biologist shall verify that setbacks and fencing are adequate and will determine when the colonies are no longer dependent on the nesting habitat (i.e., nestling have fledged and are no longer using habitat). The breeding season typically ends in July.
4. Comply with the mitigation requirements and conditions of any Section 1600 Lake and Streambed Alteration Agreement (Agreement) with CDFW for Project reclamation activities, as applicable to tricolored blackbird. If there is a conflict between the terms of mitigation items 1, 2, or 3 above and the Agreement, then the Permittee shall abide by the terms of the Agreement.

(DSEIR pp. 4.3-41, 4.3-42.)

**Mitigation Measure 4.3-1g: Burrowing Owl**

To avoid and minimize potential impacts to western burrowing owl, the following shall apply:

1. If reclamation-related ground disturbing activity (which includes clearing, grubbing, or grading) is to commence within 500 feet of suitable burrowing owl habitat, then a qualified biologist shall conduct a pre-construction survey for burrowing

owl. The survey shall occur within 30 days prior to the date that reclamation activities will encroach within 500 feet of suitable habitat. Adjacent parcels under different land ownership will be surveyed only if access is granted or if the parcels are visible from authorized areas. Surveys shall be conducted in accordance with the following:

- a. A survey for burrows and owls shall be conducted by walking through suitable habitat over the entire reclamation construction site and in areas within 500 feet of the Project disturbance area.
- b. Pedestrian survey transects should be spaced to allow 100 percent visual coverage of the ground surface. The distance between transect center lines should be no more than 30 meters, and should be reduced to account for differences in terrain, vegetation density, and ground surface visibility. Surveyors should maintain a minimum distance of 50 meters from any owls or occupied burrows.
- c. If no occupied burrows or burrowing owls are found in the survey area, then the biologist shall supply a brief written report (including date, time of survey, survey method, name of surveyor and survey results) to the Planning Department and no further mitigation is necessary.
- d. If occupied burrows or burrowing owls are found, then a complete burrowing owl survey is required. This consists of a minimum of four site visits conducted on four separate days, which must also be consistent with the Survey Method, Weather Conditions, and Time of Day sections of Appendix D of the California Department of Fish and Wildlife (CDFW) “Staff Report on Burrowing Owl Mitigation” (March 2012). The Permittee shall then submit a survey report to the Planning Department which is consistent with the CDFW 2012 Report.
- e. If occupied burrows or burrowing owls are found during the complete burrowing owl survey, then the Permittee shall contact the Planning Department and consult with CDFW prior to construction, and will be required to submit a Burrowing Owl Mitigation Plan (subject to the approval of the Planning Department and CDFW). This plan must document all proposed measures, including avoidance, minimization, exclusion, relocation, or other measures, and include a plan to monitor mitigation success. The CDFW “Staff Report on Burrowing Owl

Mitigation” (March 2012) should be used in the development of the mitigation plan.

2. Comply with the mitigation requirements and conditions of any Section 1600 Lake and Streambed Alteration Agreement (Agreement) with CDFW for Project reclamation activities, as applicable to burrowing owl. If there is a conflict between the terms of mitigation item 1 above and the Agreement, then the Permittee shall abide by the terms of the Agreement.

(DSEIR pp. 4.3-42 to -43.)

**Mitigation Measure 4.3-1h: Special Status Bats**

To avoid and minimize potential impacts to special status bats, including hoary bat, pallid bat, and Yuma myotis, the following shall apply:

1. If reclamation-related ground disturbing activity (which includes clearing, grubbing, or grading) is to commence within 300 feet of suitable bat habitat during the winter hibernaculum season (e.g., November 1 through March 31), then a qualified biologist shall conduct a pre-construction survey within 300 feet of the reclamation Project footprint on the CEMEX property to determine if a potential winter hibernaculum is present, and to identify and map potential hibernaculum sites.
2. The biologist shall supply a brief written report (including date, time of survey, survey method, name of surveyor and survey results) to the Planning Department prior to the commencement of ground disturbing activity. If no winter hibernaculum sites are found during the survey, then no further mitigation would be required.
3. If potential hibernaculum sites are found, then the Permittee shall avoid all areas within a 300-foot buffer around the potential hibernaculum sites until bats have vacated the hibernaculum. Winter hibernaculum habitat shall be considered fully avoided if reclamation-related activities do not impinge on a 300-foot buffer established by the qualified biologist around an existing or potential winter hibernaculum site. The qualified biologist will determine if non-maternity and nonhibernaculum day and night roosts are present on the Project site. If necessary, a qualified biologist will use safe eviction methods to remove bats if direct impacts to non-maternity and non-hibernaculum day and night roosts cannot be avoided. If a winter hibernaculum site is present, then reclamation activities shall not occur until the hibernaculum is vacated, or, if necessary, safely evicted using methods acceptable to CDFW.

(DSEIR p. 4.3-43.)

**Level of Significance after Mitigation:** Less than significant. (DSEIR p. 4.3-43.)

**Impact 4.3-1b: The Project Could Result in Direct Effects to Loss of Habitat for Special-Status Species: ADV Realignment. (Potentially Significant)**

Construction activity and direct removal of existing vegetation and soil associated with the realignment of the ADV at Lake B and Lake A reclamation would result in a loss of existing habitat on the site. While the existing habitat in the Project area, including the ADV, is highly disturbed due to non-native species takeover, urban development, gravel extraction, and operations of Del Valle Dam, the Project impacts would be potentially significant. (DSEIR pp. 4.3-43, 4.3-44.)

Mitigation Measures 4.3-1a through 4.3-1h would reduce the impacts to a less than significant level. Specifically, the ADV realignment would be subject to Mitigation Measure 4.3-1a, which requires the Permittee to obtain regulatory entitlements and authorizations from the USACE, USFWS, NMFS, RWQCB, and CDFW. In addition, impacts resulting from reclamation activities on special-status wildlife and plant species would be further reduced to a less than significant level with the implementation of Mitigation Measures 4.3-1b through 4.3-1h, each of which provide more than one avoidance or minimization measure specific to the group of species in question. Therefore, this impact would be less than significant with mitigation incorporated. (DSEIR p. 4.3-46.)

Furthermore, based on the Project design and requirement to implement resource agency permit conditions during the implementation of the ADV realignment, the habitat improvements of the ADV after implementation of the Project would result in a beneficial impact when comparing the Project to the existing conditions of the ADV. (DSEIR p. 4.3-45.)

**Finding:** Changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the SEIR. (DSEIR p. 4.3-46.)

**Mitigation:** The following mitigation measures or agency recommendations/requirements have been incorporated into the Project as conditions of approval to reduce this impact to less than significant:

**Mitigation Measure:** Implement Mitigation Measures 4.3-1a, 4.3-1b, 4.3-1c, 4.3-1d, 4.3-1e, 4.3-1f, 4.3-1g, and 4.3-1h (see Impact 4.3-1a). (DSEIR p. 4.3-46.)

**Level of Significance after Mitigation:** Less than significant. (DSEIR p. 4.3-46.)

**Impact 4.3-1c: The Project Could Result in Direct Effects or Loss of Habitat for Special-Status Species: Berms and Outflow Between ADV and Lake B. (Potentially Significant)**

Berms would be installed between Lake B and the ADV to reduce the potential for the ADV to overtop and for flood waters to flow into Lake B during reclamation operations and in future reclaimed conditions. The grade along the existing berm alignments would be raised where necessary to prevent overtopping of the ADV into the lake during a 100-year flood. In addition, an overflow outlet would be created in the crest of the berm installed along the west end of Lake B to allow water to flow back into ADV through a controlled and stable pathway. The outlet would consist of an armored trapezoidal weir and chute, with an armored outlet apron. The outlet crest would be 60 feet wide perpendicular to the flow with 4H:1V side slopes, and the trapezoid would be at least 5 feet deep, thus resulting in a top width of 60 feet for the trapezoidal section. The outlet crest is 120 feet wide in the direction of the flow. The outlet flow path would be lined with riprap to mitigate the potential for erosion to occur (see Figure 2-3 and Appendix B-2 of the DSEIR). (DSEIR p. 4.3-50.)

Impacts to habitat for special-status species resulting from berms and Lake B overflow outlet along the ADV would be similar to those discussed in 4.3-1b, above. The Lake B overflow outlet and berms along the ADV would be subject to Mitigation Measure 4.3-1a, which requires the Permittee to obtain regulatory entitlements and authorizations from the USACE, USFWS, NMFS, RWQCB, and CDFW. In addition, impacts resulting from reclamation activities on special status wildlife and plant species would be further reduced to a less than significant level with Mitigation Measures 4.3-1b through 4.3-1h, each of which provide more than one avoidance or minimization measure specific to the group of species in question. Therefore, this impact would be less than significant with mitigation incorporated. (DSEIR p. 4.3-50.)

**Finding:** Changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the SEIR. (DSEIR p. 4.3-50.)

**Mitigation:** The following mitigation measures or agency recommendations/requirements have been incorporated into the Project as conditions of approval to reduce this impact to less than significant:

**Mitigation Measure:** Implement Mitigation Measures 4.3-1a, 4.3-1b, 4.3-1c, 4.3-1d, 4.3-1e, 4.3-1f, 4.3-1g, and 4.3-1h (see Impact 4.3-1a). (DSEIR p. 4.3-50.)

**Level of Significance after Mitigation:** Less than significant. (DSEIR p. 4.3-50.)

**Impact 4.3-2a: The Project Could Result in Loss of Riparian Habitat or Sensitive Natural Community: Lake A Reclamation and Diversion Structure Construction. (Potentially Significant)**

Some loss of riparian habitat would occur with installation of the berm and diversion structure at Lake A. However, any existing riparian habitat lost in the Lake A area as a result of the Project would be replaced and improved as a result of the Project's revegetation and landscaping plans, resulting in a more diverse and native habitat than existing invasive-choked conditions (DSEIR pp. 4.3-52, FSEIR pp. 3-9, 3-10). Furthermore, the incorporation of Mitigation Measures 4.3-1a, 4.3-2a and 4.3-2b would reduce potential impacts related to the loss of riparian habitat or a sensitive natural community to a less than significant level by enforcing avoidance and minimization of impacts on special status plants and riparian habitat.

**Finding:** Changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the SEIR. (DSEIR pp. 4.3-51 to 4.3-56.)

**Mitigation:** The following mitigation measures or agency recommendations/requirements have been incorporated into the Project as conditions of approval to reduce this impact to less than significant:

**Mitigation Measure:** Implement Mitigation Measure 4.3-1a, "Obtain Regulatory Entitlements and Authorizations." (DSEIR p. 4.3-55.)

**Mitigation Measure 4.3-2a: Special Status Plants**

To avoid and minimize potential impacts to special-status plants, including Congdon's tarplant, Mt. Diablo buckwheat, and Mt. Diablo fairy-lantern, the following shall apply:

1. Prior to the commencement of reclamation-related ground disturbing activity (which includes clearing, grubbing, or grading) in areas identified as having potential special-status plant species in the Project biological resources assessment report, a qualified botanist or biologist shall conduct a pre-construction survey for special status rare plant occurrences. The survey shall occur within 30 days prior to commencement of ground disturbing activity.
2. If rare plant occurrences that are listed under the ESA or CESA are found and avoidance is not feasible, then the Permittee shall notify the CDFW and/or (as applicable) the USFWS for any federally-listed species and comply with any permit or

mitigation requirements stipulated by those agencies.

3. Comply with the mitigation requirements and conditions of any Section 1600 Lake and Streambed Alteration Agreement (Agreement) with CDFW for Project reclamation activities, as applicable to rare plant occurrences. If there is a conflict between the terms of mitigation items 1 and 2 above and the Agreement, then the Permittee shall abide by the terms of the Agreement.

(DSEIR p. 4.3-55.)

**Mitigation Measure 4.3-2b: Riparian Habitat**

Within one year of the commencement of reclamation-related ground disturbing activity (which includes clearing, grubbing, or grading) associated with the construction of the Lake A diversion structure, realigned ADV, or other areas identified as riparian habitat in the Project biological resources assessment report, the Permittee shall mitigate for any permanent riparian impacts at a minimum 1:1 ratio, unless the regulatory permit process results in a different ratio. The implementation of mitigation for the loss of riparian habitat may be addressed separately for each phase of reclamation (e.g., the Lake A diversion structure or the realigned ADV). Exact acreage per phase shall be determined in consultation with CDFW and other regulatory requirements. Mitigation shall be accomplished by complying with the following:

1. Enter into and comply with the mitigation requirements and conditions of a Section 1600 Lake and Streambed Alteration Agreement (Agreement) with CDFW.
2. If the Agreement results in less than a 1:1 mitigation ratio for loss of riparian habitat, then the Permittee shall demonstrate that the riparian habitat which went unmitigated/uncompensated as a result of permitting has been mitigated through other means. Acceptable methods include purchase of credits from a mitigation bank or creation/preservation of on-site or off-site riparian habitats through the establishment of a permanent conservation easement, subject to the approval of the Planning Department.

(DSEIR pp. 4.3-55, 4.3-56.)

**Level of Significance after Mitigation:** Less than significant. (DSEIR p. 4.3-56.)

**Impact 4.3-2b: The Project Could Result in Loss of Riparian Habitat or Sensitive Natural Community: ADV Realignment. (Potentially Significant)**

No special-status plant species were documented or considered to have a high potential to occur within the Project site. However, three plant species (Congdon's tarplant, Mt. Diablo buckwheat, and Mt. Diablo fairy-lantern) are considered to have a low potential to occur within the Project site. Some loss of riparian habitat would occur with the southerly progression of Lake B into the existing ADV alignment. However, any existing riparian habitat lost as a result of the Project would be replaced and improved as a result of the Project's revegetation and landscaping plans resulting in more diverse and native habitat than existing invasive-choked conditions. (DSEIR p. 4.3-56.)

Furthermore, modification of the ADV requires 404/401 and streambed alteration permits issued by the USACE, USFWS, NMFS, RWQCB, and CDFW. In addition, Mitigation Measures 4.3-1a, 4.3-2a, and 4.3-2b, are recommended to reduce any potentially significant impacts to a less than significant level. With mitigation requiring compliance with permits and relevant conditions of approval and implementing avoidance and minimization of impacts on special-status plants and riparian habitat, impacts to riparian habitat and other sensitive natural communities resulting from the Project would be less than significant. (DSEIR pp. 4.3-56 to 4.3-57.)

**Finding:** Changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the SEIR. (DSEIR pp. 4.3-56 to 4.3-57.)

**Mitigation:** The following mitigation measures or agency recommendations/requirements have been incorporated into the Project as conditions of approval to reduce this impact to less than significant:

**Mitigation Measure:** Implement Mitigation Measures 4.3-1a, 4.3-1a, 4.3-1b, 4.3-1c, 4.3-1d, 4.3-1e, 4.3-1f, 4.3-1g, 4.3-1h, 4.3-2a, and 4.3-2b. (DSEIR p. 4.3-57.)

**Level of Significance after Mitigation:** Less than significant. (DSEIR p. 4.3-57.)

**Impact 4.3-2c: The Project Could Result in Loss of Riparian Habitat or Sensitive Natural Community: Berms and Overflow Outlet Between ADV and Lake B. (Significant)**

No special-status plant species were documented or considered to have high potential to occur within the Project site. However, three plant species (Congdon's tarplant, Mt. Diablo buckwheat, and Mt. Diablo fairy-lantern) are considered to have a low potential to occur. (DSEIR p. 4.3-57.)

Despite the loss of habitat associated with the realignment of the ADV, the

Project's revegetation and landscaping plans would result in more diverse and native habitat than existing conditions. Furthermore, construction of berms and the Lake B overflow outlet along the ADV requires 404/401 and streambed alteration permits issued by the USACOE, RWQCB, and CDFW. The Permittee has and would continue to consult with these agencies relating to the realignment of the ADV to ensure that adverse impacts of stream alteration on fish and wildlife would be less than significant. Mitigation Measures 4.3-1a, 4.3-2a, and 4.3-2b, are recommended to reduce any potentially significant impacts to a less than significant level. With mitigation requiring compliance with permits and relevant conditions of approval and implementing avoidance and minimization of impacts on special-status plants and riparian, impacts to riparian habitat and other sensitive natural communities resulting from the Project would be less than significant. (DSEIR p. 4.3-57.)

**Finding:** Changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the SEIR. (DSEIR p. 4.3-57.)

**Mitigation:** The following mitigation measures or agency recommendations/requirements have been incorporated into the Project as conditions of approval to reduce this impact to less than significant:

**Mitigation Measure:** Implement Mitigation Measures 4.3-1a, 4.3-1a, 4.3-1b, 4.3-1c, 4.3-1d, 4.3-1e, 4.3-1f, 4.3-1g, 4.3-1h, 4.3-2a, and 4.3-2b. (DSEIR p. 4.3-57.)

**Level of Significance after Mitigation:** Less than significant. (DSEIR p. 4.3-57.)

**Impact 4.3-3a: The Project Would Have a Substantial Adverse Effect on State or Federally Protected Wetlands: Lake A Reclamation and Diversion Structure Construction. (Potentially Significant)**

Wetlands delineated within the Project area include depression seasonal marsh, riverine seasonal marsh, willow riparian wetland, and seasonal excavated basin. Other aquatic resources mapped within the Project area include intermittent streams, perennial stream, ephemeral drainage, breached quarry pond, quarry ponds, silt ponds, percolation ponds, and excavated basin. The U.S. Fish and Wildlife Wetland Inventory Mapper has mapped five (5) wetland communities within the Project area, including Freshwater Forested/Shrub Wetland, Riverine habitat, Lake, Freshwater Pond, and Freshwater Emergent Wetland. A total of 318.98 acres of aquatic resources were mapped within the Project area. Table 4.3-2 of the SEIR characterizes aquatic resources in the Project area. (DSEIR p. 4.3-58.)

Of the 318.98 acres of aquatic resources delineated in the Project area, 0.06,

0.09, and 2.69 acres are potentially jurisdictional depressional seasonal marsh, riverine seasonal marsh, and willow riparian wetland, respectively. All three of these protected wetland areas are located at the southern end of Lake A, in the vicinity of the proposed diversion structure. Therefore, construction of the diversion structure at Lake A would constitute a potentially significant impact to state and federally protected wetlands. (DSEIR p. 4.3-58.) Implementation of Mitigation Measure 4.3-3 would reduce these potential impacts to a less than significant level by replacing directly and indirectly impacted wetlands at a 1:1 ratio. With mitigation, impacts to state or federally protected wetlands would be less than significant. (DSEIR p. 4.3-58.)

**Finding:** Changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the SEIR. (DSEIR p. 4.3-58.)

**Mitigation:** The following mitigation measures or agency recommendations/requirements have been incorporated into the Project as conditions of approval to reduce this impact to less than significant:

**Mitigation Measure 4.3-3: 1:1 Wetland Compensation Ratio**

Prior to the commencement of reclamation-related ground disturbing activity (which includes clearing, grubbing, or grading) associated with the construction of the Lake A diversion structure, the realigned ADV, or in other areas identified as containing wetlands in the Project aquatic resource delineation report, the Permittee shall mitigate for direct and indirect wetland impacts at a 1:1 ratio, unless the regulatory permit process results in a different ratio. The implementation of mitigation for the loss of wetlands may be addressed separately for each phase of reclamation (e.g., the Lake A diversion structure or the realigned ADV). Exact acreage per phase shall be determined prior to initiating that phase based on the verification of the preliminary jurisdictional determination by the USACE and other applicable regulatory requirements. Mitigation shall be accomplished by complying with the following:

- a) Obtain and comply with the mitigation requirements and conditions of a Section 404 Permit(s) and Section 401 Water Quality Certification(s) for reclamation activities, as applicable.
- b) If regulatory permitting processes result in less than a 1:1 compensation ratio for loss of wetlands, then the Permittee shall demonstrate that the wetlands which went unmitigated/uncompensated as a result of permitting have been mitigated through other means. Acceptable methods include purchase of credits from a mitigation bank or creation/preservation of on-site or off-site wetlands through the establishment of a permanent conservation easement, subject to the approval of the Planning Department.

(DSEIR pp. 4.3-58, 4.3-59.)

**Level of Significance after Mitigation:** Less than significant. (DSEIR p. 4.3-59.)

**Impact 4.3-4: The Project Could Interfere Substantially with the Movement of Any Native Resident or Migratory Fish or Wildlife Species or With Established Native Resident or Migratory Wildlife Corridors, or Impede the Use of Native Wildlife Nursery Sites. (Potentially Significant)**

This impact evaluates whether the Project as a whole could substantially interfere with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites.

#### **Fish, Amphibian, and Reptile Passage**

The ADV is a wildlife movement corridor that would be considered significant on a regional basis. It is a tributary stream to Alameda Creek, which has historically been a spawning area for fish species, including central California coastal rainbow trout/steelhead (*Oncorhynchus mykiss*) and coho salmon (*Oncorhynchus kisutch*). Fish barriers currently exist on the ADV downstream of the Project site; however, in recent years numerous fish passage projects were constructed on Alameda Creek and its tributaries to remove barriers to, and encourage anadromous fish migration into, the upper creek system. As part of its 404 Permit process, the Permittee would also undergo consultation with the NMFS (through the USACE) relating to potential listed fisheries. (DSEIR pp. 4.3-60, 4.3-61.)

The ADV diversion system would consist of the following interrelated components: intake and fish exclusion; hydraulic grade control; fish passage and/or bypass; diverted flow control structure; conduit into Lake A; and conduit from Lake A to Lake C. The Project would allow for fish passage that would otherwise not occur. However, the Project involves some interference with the possibility for fish to pass. (DSEIR pp. 4.3-60, 4.3-61.) Therefore, Mitigation Measures 4.3-1a, which requires the Permittee to obtain agency permits and comply with any conditions of approval required by those permits, and 4.3-1b, which protects amphibian and reptile movement, must be implemented to reduce any potential impacts on the movement of migratory or resident wildlife and fish to less than significant levels. (DSEIR p. 4.3-61.)

#### **Nesting Birds**

Table 4.3-5 of the DSEIR notes which existing biological communities would be impacted by the Project. Many of these impacted communities

include wetland vegetation provides potential nesting habitat for various bird species (Foothill Associates 2019). (DSEIR p. 4.3-61.) The Project would result in a loss of habitat for special-status species residing in these communities. However, with the implementation of Mitigation Measures 4.3-1c and 4.3-1d, potential project impacts would be less than significant. (DSEIR p. 4.3-61.)

### **Diversion Structure**

Under the LAVQAR and the approved reclamation plan, the permittee is required to be able to divert 500 cfs from Lake A into Lake C. Absent the ability to keep a low flow channel that ensures that a minimum amount of water is retained in the ADV, there could be adverse impacts to habitat by reducing or eliminating flows in the ADV downstream of the diversion structure. (DSEIR p. 4.3-61.) The Project requires that a minimum flow of 9 cfs be retained in the ADV, so the first 500 cfs of diversion would only occur from the ADV if the minimum flow is retained in the ADV. (DSEIR pp. 4.3-61, 4.3-79.) In addition, Mitigation Measure 4.3-1a requires the Permittee to obtain agency permits. Resource agencies would require conditions of approval that would ensure that any impacts to wildlife and fisheries be reduced to a less than significant level. (DSEIR p. 4.3-61.)

**Finding:** Changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the SEIR. (DSEIR pp. 4.3-59 to 4.3-61.)

**Mitigation:** The following mitigation measures or agency recommendations/requirements have been incorporated into the Project as conditions of approval to reduce this impact to less than significant:

**Mitigation Measure:** Implement Mitigation Measures 4.3-1a, 4.3-1b, 4.3-1c, and 4.3-1d. (DSEIR p. 4.3-61.)

**Level of Significance after Mitigation:** Less than significant. (DSEIR p. 4.3-61.)

## **4. *Geology and Soils***

### **Impact 4.4-4: Result in Substantial Soil Erosion or the Loss of Topsoil (Potentially Significant)**

Erosion on-site is controlled through compliance with the requirements of the County's stormwater quality management plan.

Slopes in the mining areas and along the Project and alignment of the ADV would be susceptible to erosion and surficial degradation when exposed to rain and surface runoff. Thus, soil erosion in the realigned ADV and at Lake B would be potentially significant. (DSEIR p. 4.4-20.)

However, this impact would be reduced to a less than significant level with implementation of Mitigation Measures 4.4-1, 4.4-2, 4.4-3, and 4.4-4. Mitigation Measure 4.4-1 implements an erosion control plan to prevent significant erosion or loss of topsoil relating to the realignment of the ADV. Mitigation Measure 4.4-2 calls for proper surface drainage facilities directing runoff away from slopes, vegetation, additional erosion control measures, and BMP devices to be maintained to reduce long-term slope degradation from erosion. Periodic inspections would be performed on a regular basis to identify and address maintenance needs under Mitigation Measure 4.4-2. Mitigation Measure 4.4-3 would require embankment fill slopes to be constructed with an inclination of 2:1 or flatter. Mitigation Measure 4.4-4 would require implementation of one of two options for cut slopes at Lake B adjacent to the ADV. Impacts to erosion and loss of topsoil as a result of the Project would be less than significant with mitigation incorporated. (DSEIR p. 4.4-21.)

**Finding:** Changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the SEIR. (DSEIR p. 4.4-20.)

**Mitigation:** The following mitigation measures or agency recommendations/requirements have been incorporated into the Project as conditions of approval to reduce this impact to less than significant:

**Mitigation Measure 4.4-1**

The Permittee, and its contractors shall adhere to the Erosion Control Plan for the ADV realignment and Lake A diversion structure prepared by Brown and Caldwell, which shall be incorporated by reference into the conditions of approval for the Project. (DSEIR p. 4.4-21.)

**Mitigation Measure 4.4-2**

The Permittee shall implement the following measures to control erosion related to berm and embankment grading:

- a) All earthwork operations shall be observed, and all fills tested, for recommended compaction and moisture content by a representative from a County-approved geotechnical specialist.
- b) Prior to commencing grading, a pre-construction conference with representatives from the Permittee, its grading contractor, if applicable, and a County-approved geotechnical specialist shall be held at the site. Site preparation, soil handling and/or the grading plans shall be discussed at the pre-construction conference.
- c) Prior to commencing grading within embankment and slope areas, surface vegetation shall be removed by stripping to a sufficient depth (2 to 4 inches) to remove roots and organic-rich

topsoil. Material generated during stripping that is not suitable for use as embankment or reclamation slope fill shall be stockpiled for future use as topsoil. Any existing trees and associated root systems shall be removed. Roots larger than 1 inch in diameter shall be completely removed. Smaller roots may be left in-place as conditions warrant and at the discretion of an on-site field monitor.

- d) To increase stability and to provide a stable foundation for the berm embankments, the full length of the embankments shall be provided with embankment-width keyways. The keyways shall have a minimum embedment depth of 3 feet into firm, competent, undisturbed soil. The actual depth of the keyway shall be evaluated during construction by a County-approved geotechnical specialist. Keyway back-slopes shall be no flatter than 1 horizontal (H):1 vertical (V).
- e) Where fill is placed on sloping ground steeper than 5H:1V, the fill shall be benched into the adjacent native materials as the fill is placed. Benches shall roughly parallel slope contours and extend at least 2 feet into competent material. In addition, a keyway shall be cut into the slope at the base of the fill. Keyways shall be at least 15 feet wide and extend at least 2 feet into competent material. Bench and keyway criteria may need revision during construction based on the actual materials encountered and grading performed in the field.
- f) Pipe penetrations through the planned berms and embankments shall be avoided, if feasible. If pipe penetrations are unavoidable, the Permittee shall provide concrete cut-off collars at the penetration point to reduce potential for seepage. Reinforced concrete cut-off collars shall completely encircle the pipe and should be sized such that they are 12 to 18 inches larger than the nominal outside diameter of the pipe. Thickness shall be at least 6 inches. Water-tight filler shall be used between collars and pipes.
- g) Bottoms of keyways and areas to receive fill shall be scarified 12 inches, uniformly moisture conditioned at or above optimum moisture content and compacted to at least 90% relative compaction. Scarification and recompaction operations shall be performed in the presence of a County-approved geotechnical specialist to evaluate performance of the subgrade under compaction equipment loading.
- h) Engineered fill consisting of onsite or approved import materials shall be compacted in horizontal lifts not exceeding 8 inches (loose thickness) and brought to final subgrade elevations. Each lift shall be moisture-conditioned at or above optimum and compacted to at least 90% relative compaction at least 2% above

optimum moisture content. Fills for the eastern Lake B fill embankments and Pond C/D separation shall be compacted to at least 95% relative compaction above optimum moisture content.

- i) Fill slopes shall be built such that soils are uniformly compacted to at least 90% relative compaction at least 2% above optimum moisture content to the finished face of the completed slope. Fill slopes for the eastern Lake B fill embankments and Pond C/D separation shall be compacted to at least 95% relative compaction above optimum moisture content.

The Alameda County Community Development Agency shall be responsible for ensuring compliance. (DSEIR pp. 4.4-21, 4.4-22.)

#### **Mitigation Measure 4.4-3**

Fill slopes for the proposed embankment between Silt Pond C and Silt Pond D, the embankment for overburden and silt storage at the east end of Lake B, and the “shark’s fin” embankment of Lake B should be constructed at an inclination of 2:1 or flatter. Mid-height bench(es) should be considered for fill slopes exceeding 50 feet in height to provide access for slope maintenance. (DSEIR p. 4.4-22.)

#### **Mitigation Measure 4.4-4**

The Permittee, or its contractor, shall implement one of the following two configurations for the cut slope of Lake B below and adjacent to the realigned ADV:

- 1) 2.25:1 slope; or
- 2) 40-foot horizontal bench at elevation 260 feet msl within a 2:1 slope.

(DSEIR p. 4.4-22.)

**Level of Significance after Mitigation:** Less than significant. (DSEIR p. 4.4-23.)

### **5. *Greenhouse Gas Emissions***

#### **Impact 4.5-1: Gas Emissions Generated by Reclamation Activities could have a Significant Impact on Global Climate Change. (Potentially Significant)**

BAAQMD does not have an adopted threshold of significance for construction-related GHG emissions. In the absence of a BAAQMD-adopted construction GHG threshold, the Air and Greenhouse Gas Emissions Study prepared for the Project compared Project emissions to BAAQMD’s operational threshold as a reasonable proxy for furthering AB 32 GHG reduction goals. BAAQMD’s operational thresholds are used to determine significance of long-term operation of land uses and developments, often with

far greater GHG emissions potentials than that of the Project. In contrast to operational GHG emissions, Project GHG emissions are temporary in nature and would cease when reclamation is complete. (DSEIR pp. 4.5-21, 4.5-22.) However, given that modeled GHG emissions are at about 97 percent of the operational threshold, it is possible that the Project could result in a cumulatively considerable contribution of GHG emissions. As a result, the Project's greenhouse gas emissions constitute a potentially significant impact. Mitigation Measures 4.5-1a through 4.5-1h are provided to reduce the impacts to a less than significant level. (DSEIR p. 4.5-21.)

**Finding:** Changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the SEIR. (DSEIR pp. 4.5-21 to 4.5-22.)

**Mitigation:** The following mitigation measures or agency recommendations/requirements have been incorporated into the Project as conditions of approval to reduce this impact to less than significant:

**Mitigation Measure 4.5-1a**

Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure, Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all Project access points. [Measure applies to idling times for all equipment]. (DSEIR p. 4.5-21.)

**Mitigation Measure 4.5-1b**

Minimize the idling time of diesel-powered construction equipment to two minutes. [Measure applies to idling times for diesel-powered equipment only]. (DSEIR p. 4.5-21.)

**Mitigation Measure 4.5-1c**

All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. (DSEIR p. 4.5-22.)

**Mitigation Measure 4.5-1d**

Prior to construction, develop a plan demonstrating that alternative fueled (e.g., biodiesel, electric) construction vehicles/equipment will represent at least 15 percent of the construction fleet if commercially available. (DSEIR p. 4.5-22.)

**Mitigation Measure 4.5-1e**

Use at least 10 percent local building materials in construction (e.g., construction aggregates, concrete pipe). (DSEIR p. 4.5-22.)

**Mitigation Measure 4.5-1f**

Recycle or reuse at least 50 percent of construction waste or demolition materials (e.g., during decommissioning and removal of processing plant facilities). (DSEIR p. 4.5-22.)

**Mitigation Measure 4.5-1g**

Perform on-site material hauling with trucks equipped with on-road engines (if less emissive of GHG emissions than off-road engines), if commercially available. (DSEIR p. 4.5-22.)

**Mitigation Measure 4.5-1h**

Use alternative fuels for generators at construction sites such as propane or solar, or use electrical power, as feasible for each construction site. (DSEIR p. 4.5-22.)

**Level of Significance after Mitigation:** Less than significant. (DSEIR p. 4.5-22.)

**6. *Hydrology and Water Quality***

**Impact 4.6-1a: Violation of Water Quality Standards or Waste Discharge Requirements or Substantial Degradation of Surface Water or Groundwater Quality Regarding Lake A Reclamation and Diversion Structure Construction. (Potentially Significant)**

Lake A Reclamation and Diversion Structure Construction would consist of the installation of a surface water diversion from the ADV to Lake A; conversion of a berm that is currently located in Lake A that blocks water to a small island to allow water to flow across the lake; installation of a water conveyance pipeline from Lake A to future Lake C (located off-site to the northwest); and an overflow outlet to allow water to flow back into ADV when Lake A water levels are high to prevent flooding in the localized area. (DSEIR p. 4.6-76.)

**Infiltration Gallery and Diversion from ADV to Lake A**

The diversion from ADV to Lake A would consist of an intake and fish screen, a lowhead diversion dam to control water levels in the channel, a bypass structure for fish passage, a flow control structure, and a conduit into Lake A. The diversion would feature an infiltration bed concept that includes a 100-foot-wide (extending in the horizontal direction perpendicular to the stream bank) by 200-foot-long gravel infiltration bed to be constructed along the north bank of ADV. The diversion structure would convey up to 500 cfs through an 84-inch-diameter pipe into Lake A. (DSEIR p. 4.6-79.)

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 insignificance by adherence to requirements of a construction SWPPP and implementation of erosion control measures in Mitigation Measure 4.6-1 and 4.4-1, respectively. (DSEIR p. 4.6-79.)

### **Conduit from Lake A to Lake C**

The Permittee, or its contractors, would conduct necessary grading and excavation to install the water pipeline under Isabel Avenue to connect Lake A to future Lake C. Pursuant to a request from the end user of the facilities (Zone 7) a turnout to Lake B would also be included in the conveyance structure. (DSEIR p. 4.6-79.) The grading and excavation activities would adhere to Mitigation Measure 4.6-1 to eliminate or reduce any impacts to water quality standards or waste discharge requirements. As a result, substantial degradation to surface water or groundwater quality would be reduced to a less than significant level. (DSEIR p. 4.6-79.)

### **Convert Lake A Berm to Small Island**

The existing berm blocks the efficient flow of water. The Project would convert this berm into small island in the middle of Lake A, allowing water to more efficiently flow across the lake. The Permittee, or its contractors, would excavate two small drainage slots at the western end of Lake A. Based on input from EMKO, the excavations would be conducted to a bottom elevation of 405 feet msl (about 12 feet below existing ground surface) with a bottom excavation width of approximately 80 feet. (DSEIR p. 4.6-80.) The excavation activities would adhere to Mitigation Measure 4.6-1 to eliminate or reduce any impacts to water quality standards or waste discharge requirements. As a result, substantial degradation to surface water or groundwater quality would be reduced to a less than significant level. (DSEIR p. 4.6-80.)

### **Overflow from Lake A back into ADV**

The Permittee, or its contractors would install an earth- and rock-lined structure to collect overflow water from Lake A to allow water to flow back into the ADV when Lake A water levels are high to prevent flooding in the localized area. The rock lined outflow would consist of a 270-ft wide shallow spillway lined with pit run gravel that slopes south toward the ADV at 3 horizontal to 1 vertical, designed to eliminate or reduce erosion potential that could be caused by water flowing from Lake A back into the ADV. The construction activities associated with establishing the overflow structure would adhere to Mitigation Measure 4.6-1, which would eliminate or reduce any impacts to water quality standards or waste discharge requirements or substantial degradation to surface water or groundwater quality, and would thus be reduced to a less than significant level. (DSEIR p. 4.6-80.)

**Finding:** Changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the SEIR. (DSEIR pp. 4.6-79 to 80.)

**Mitigation:** The following mitigation measures or agency recommendations/ requirements have been incorporated into the Project as conditions of approval to reduce this impact to less than significant:

**Mitigation Measure 4.6-1: Development of SWPPP**

The Permittee, and its contractors, shall conduct activities consistent with the General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, which would require development of a SWPPP for the reclamation construction activities. The SWPPP and Notice of Intent to comply with the General Permit shall be prepared and filed with the RWQCB before commencement of construction activities. This mitigation may be fulfilled through one or more separate Notices of Intent. (DSEIR p. 4.6-80.)

**Mitigation Measure 4.4-1: Erosion Control Plan**

The Permittee, and its contractors shall adhere to the Erosion Control Plan for the ADV realignment and Lake A diversion structure prepared by Brown and Caldwell, which shall be incorporated by reference into the conditions of approval for the Project. (DSEIR p. 4.6-80.)

**Level of Significance after Mitigation:** Less than significant. (DSEIR p. 4.6-80.)

**Impact 4.6-1b: Violation of Water Quality Standards or Waste Discharge Requirements or Substantial Degradation of Surface Water or Groundwater Quality Regarding the ADV Realignment. (Potentially Significant)**

To facilitate the southerly progression of mining of Lake B, the Project includes realignment and restoration of an approximately 5,800-linear-foot reach of the ADV. The planned ADV realignment would result in a riparian corridor that flows around, rather than through (as originally anticipated in SMP-23), Lake B. (DSEIR pp. 4.6-80 to 4.6-81.)

The Permittee, or its contractors, would grade transitions at the upstream and downstream ends of the realignment to provide smooth and gradual connections between the designed channel and the existing geometry. In addition to these design considerations and permitting requirements, the construction activities associated with constructing the ADV realignment shall adhere to Mitigation Measure 4.6-1 and 4.4-1, which would eliminate or reduce any impacts to water quality standards or waste discharge requirements or substantial degradation to surface water or groundwater

quality to a less than significant level. (DSEIR p. 4.6-81.)

**Finding:** Changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the SEIR. (DSEIR pp. 4.6-80 to 4.6-81.)

**Mitigation:** The following mitigation measures or agency recommendations/requirements have been incorporated into the Project as conditions of approval to reduce this impact to less than significant:

**Mitigation Measures:** Implement Mitigation Measures 4.6-1 and 4.4-1. (DSEIR p. 4.6-81.)

**Level of Significance after Mitigation:** Less than significant. (DSEIR p. 4.6-81.)

**Impact 4.6-1d: Violation of Water Quality Standards or Waste Discharge Requirements or Substantial Degradation of Surface Water or Groundwater Quality Regarding Reclamation of Lake B. (Potentially Significant)**

Lake B reclamation would include installation of a pipeline turn-out from Lake A, a water pipeline conduit to future Lake C, and an overflow outlet to allow water to flow back into the ADV when Lake B water levels are high. The final bottom elevation of Lake B is proposed at 150 feet msl, in order to maximize the available aggregate resource. The final surface area of Lake B would be 208 acres as compared to 243 acres in the approved reclamation plan. Reclamation would be conducted in accordance with the General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, which would require development of a SWPPP for the reclamation construction activities. A SWPPP would identify the potential sources of sediment and other pollutants that could affect the quality of stormwater discharges from the site. The SWPPP would also identify site-specific measures (e.g., BMPs) that would eliminate or reduce to acceptable levels sediment and other pollutants in stormwater discharges from the site. (DSEIR p. 4.6-88.)

Mitigation Measure 4.6-1 shall be implemented to protect groundwater quality from potential stormwater pollution. The mitigation measure requires the General Permit and SWPPP, which further require CEMEX to file a Notice of Intent to comply with the stormwater regulations with both the State Water Resources Control Board and the Regional Water Quality Control Board. In addition, Mitigation Measure 4.6-2 must be implemented to protect groundwater quality from potential impacts due to elevated levels of iron. Thus, impacts to groundwater quality would be less than significant with mitigation incorporated. (DSEIR p. 4.6-88.)

**Finding:** Changes or alterations have been required in, or incorporated into,

the Project which avoid or substantially lessen the significant environmental effect as identified in the SEIR. (DSEIR p. 4.6-88.)

**Mitigation:** The following mitigation measures or agency recommendations/requirements have been incorporated into the Project as conditions of approval to reduce this impact to less than significant:

**Mitigation Measures:** Implement Mitigation Measure 4.6-1 (see Impact 4.6-1a, above). (DSEIR p. 4.6-93.)

**Mitigation Measure 4.6-2: Implementation of Adaptive Management Program for Iron**

The Permittee shall implement the Adaptive Management Program for Iron (see Appendix F-6 to the SEIR), which AMP will be incorporated into the conditions of approval. (DSEIR p. 4.6-93.)

**Mitigation Measure 4.6-3: Install Lake B Groundwater Monitoring Wells**

The Permittee shall install up to three groundwater monitoring wells on Lake B perimeter based on consultation on locations with Zone 7 to inform Mitigation Measure 4.6-2 actions. The Permittee shall provide documentation to the County that Zone 7 concurs with the amount and location of the groundwater monitoring wells. (DSEIR p. 4.6-93; FSEIR Table ES-2.)

**Level of Significance after Mitigation:** Less than significant. (DSEIR p. 4.6-93; FSEIR Table ES-2.)

**Impact 4.6-3b: Substantially Alter Drainage Patterns Causing Erosion or Siltation, Increase Surface Runoff that would result in Flooding, Provide Substantial Additional Sources of Polluted Runoff, or Impede or Redirect Flood Flows Regarding ADV Realignment. (Potentially Significant)**

The potential impacts regarding the ADV realignment are described in Impact 4.6-1b of the SEIR, and discussed in these Findings, above. Compliance with Mitigation Measure 4.6-1 and obtaining and complying with regulatory permits would ensure that impacts such as surface runoff that would result in flooding, additional sources of runoff, or impeding or directing flood flows would be reduced to a less than significant level. (DSEIR p. 4.6-103.)

**Finding:** Changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the SEIR. (DSEIR p. 4.6-103.)

**Mitigation:** The following mitigation measures or agency recommendations/requirements have been incorporated into the Project as conditions of approval to reduce this impact to less than significant:

**Mitigation Measure:** Implement Mitigation Measure 4.6-1. (DSEIR p. 4.6-103.) See Findings at page 40.

**Level of Significance after Mitigation:** Less than significant. (DSEIR p. 4.6-103.)

**Impact 4.6-3c: Substantially Alter Drainage Patterns Causing Erosion or Siltation, Increase Surface Runoff that would result in Flooding, Provide Substantial Additional Sources of Polluted Runoff, or Impede or Redirect Flood Flows Regarding the Northern Reclamation Area. (Potentially Significant)**

Reclamation would be conducted in accordance with the General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, which would require development of a SWPPP for the reclamation construction activities. A SWPPP would identify the potential erosion issues and sources of sediment and other pollutants that could affect the quality of stormwater discharges from the site. The SWPPP would also identify BMPs that would eliminate or reduce to acceptable levels erosion and sedimentation and other pollutants in stormwater discharges from the site. (DSEIR p. 4.6-103.)

The General Permit and SWPPP are required by Mitigation Measure 4.6.1, which would eliminate or reduce any impacts associated with erosion control and sedimentation to a level of insignificance. In addition, compliance with Mitigation Measure 4.6-1 would ensure that impacts such as surface runoff that would result in flooding, additional sources of runoff, or impeding or directing flood flows would be reduced to a less than significant level. (DSEIR p. 4.6-103.)

**Finding:** Changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the SEIR. (DSEIR p. 4.6-103.)

**Mitigation:** The following mitigation measures or agency recommendations/requirements have been incorporated into the Project as conditions of approval to reduce this impact to less than significant:

**Mitigation Measure:** Implement Mitigation Measures 4.6-1. (DSEIR p. 4.6-103.) See Findings at page 40.

**Level of Significance after Mitigation:** Less than significant. (DSEIR p. 4.6-103.)

**Impact 4.6-3d: Substantially Alter Drainage Patterns Causing Erosion or Siltation, Increase Surface Runoff that would result in Flooding, Provide Substantial Additional Sources of**

**Polluted Runoff, or Impede or Redirect Flood Flows  
Regarding Reclamation of Lake B. (Potentially  
Significant)**

The conveyance of water from Lake A to Lake C with a turnout to Lake B could result in flooding, erosion, or siltation impacts. Pipes would be installed in or near the east end of Lake B for the purpose of conveying water between Lakes A, B, and C. The pipe from Lake A to Lake B would discharge water down the east slope of Lake B. Energy dissipation and erosion protection along the east face of Lake B would be included to prevent the discharge from eroding the east face of Lake B if the discharge occurred at times when Lake B was not full. If discharge to Lake B occurred at times when the water level in Lake B was below or within roughly 10 feet above the elevation of the top of the silt (e.g., when Lake B is first being filled after mining is completed), the flow could temporarily disturb the silt and cause it to be redistributed throughout Lake B where it would likely settle. (DSEIR p. 4.6-104.)

To prevent any disruption to the silt caused by conveyance of water from Lake A to Lake B, with associated erosion and sedimentation, implementation of Mitigation Measure 4.6-4 is required. Mitigation Measure 4.6-4 requires implementation of one of two options, at the Permittee's option, to convey water around the Lake B silt storage area, including an HDPE pipe connected to the Lake B pipeline turnout or a lined channel across the top of the compacted backfill surface of the silt storage facility at the east end of Lake B. With the implementation of Mitigation Measure 4.6-3, erosion and siltation impacts due to conveyance of water from Lake A to Lake C and Lake A to Lake B would be less than significant. (DSEIR p. 4.6-104.)

The overflow outlet flow path and apron would be lined with riprap to mitigate the potential for erosion to occur. This stable pathway would ensure that construction of the Lake B spillway would have a less than significant impact on erosion, siltation, surface runoff that would result in flooding, polluted runoff, or impeded or redirected flood flows. However, the conveyance of water from Lake A to Lake B could result in a significant impact in this regard. As a result, Mitigation Measure 4.6-3 is required to reduce this impact to a less than significant level. (DSEIR p. 4.6-105.)

**Finding:** Changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the SEIR. (DSEIR pp. 4.6-104 to 4.6-106.)

**Mitigation:** The following mitigation measures or agency recommendations/requirements have been incorporated into the Project as conditions of approval to reduce this impact to less than significant:

**Mitigation Measure 4.6-4: Conveyance to Avoid Lake B Silt Storage Area**

The Permittee, or its contractor, shall implement one of the following two water conveyance options for the pipeline turnout from Lake A to Lake B:

- 1) Install a high-density polyethylene (HDPE) pipe, connected to the Lake A to Lake B pipeline turnout, that will be capable of conveying the flow from the end of the Lake A to Lake B pipeline across or around the overburden/silt backfill area in the eastern end of Lake B.
- 2) Compact the backfill surface in the eastern end of Lake B and construct a lined channel across the top of the backfill that will be capable of conveying the flow from the end of Lake A to Lake B pipeline turnout across the backfill area. This channel shall be lined with gravel or cobbles to minimize the potential for erosion or sediment transport.

(DSEIR p. 4.6-106.)

**Significance after Mitigation:** Less than Significant. (DSEIR p. 4.6-106.)

**Impact 4.6-5: Conflict with or Obstruct Implementation of a Water Quality Control Plan or Sustainable Groundwater Management Plan. (Potentially Significant)**

This impact applies to the entire site and each component. Zone 7's Alternative Plan requires implementation of the Chain of Lakes to comply with the SGMA. The Permittee's proposed reclamation plan is a component of the implementation of the Chain of Lakes. The Permittee would continue to adhere to all applicable plans, permits, and regulations governing water quality. During construction related to reclamation, the Permittee would comply with its NPDES permit (NPDES No. CAG982001), effective January 1, 2021, and Mitigation Measure 4.6-1, which includes obtaining a Stormwater General Permit with an associated SWPPP that would require BMPs for construction. In addition, the Permittee would be required to comply with Mitigation Measures 4.4-1 (erosion control plan), 4.6-2 (implement AMP), 4.6-3 (install Lake B monitoring wells), and 4.6-4 (conveyance to avoid Lake B silt storage area). (DSEIR p. 4.6-109.)

**Finding:** Changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the SEIR. (DSEIR p. 4.6-109.)

**Mitigation:** The following mitigation measure or agency recommendation/requirement has been incorporated into the Project as a condition of approval to reduce this impact to less than significant:

**Mitigation Measure:** Implement Mitigation Measures 4.6-1 (see Impact 4.6-1a, above), 4.4-1 (see Impact 4.4-4), 4.6-2, and 4.6-3 (see Impact 4.6-1d, above) and 4.6-4 (see Impact 4.6-3d). (DSEIR p. 4.6-109; FSEIR Table ES-2.) See Findings at pages 40 through 42.

**Level of Significance after Mitigation:** Less than significant. (DSEIR p. 4.6-109; FSEIR Table ES-2.)

7. *Noise*

**Impact 4.8-1: Construction Noise Impacts Relative to Local Noise Standards. (Potentially Significant)**

The following activities are proposed within the Lake A and Lake B reclamation areas:

Lake A Area: Lake A reclamation would include installation of a surface water diversion from the ADV to Lake A, conversion of a berm that is currently located in Lake A to a small island to allow water to flow across the lake, installation of a water conveyance pipeline from Lake A to future Lake C (located northwest of the site), and an overflow outlet to allow water to flow back into the ADV when Lake A water levels are high to prevent flooding in the localized area. These components are considered to be short-term construction activities rather than long-term operational activities. (DSEIR p. 4.8-18.)

Lake B Area: Lake B reclamation would include installation of a pipeline turn-out from Lake A, a water pipeline conduit to future Lake C, and an overflow outlet to allow water to flow back into the ADV when Lake B water levels are high. The final bottom elevation of Lake B is proposed at 150 feet above msl, in order to maximize the available aggregate resource. The Project includes realignment and restoration of an approximately 5,800 linear foot reach of the ADV. The proposed ADV realignment would result in an enhanced riparian corridor that flows around, rather than through (as currently anticipated in SMP-23), Lake B. These components are considered to be short-term construction activities rather than long-term operational activities. (DSEIR p. 4.8-18.)

Table 4.8-7 of the SEIR presents the maximum noise levels generated by the various types of project-related earth-moving equipment to be used during the Project. Table 4.8-8 of the SEIR shows the predicted noise levels at the nearest potentially affected residences for the various aspects of the Project. (DSEIR p. 4.8-19.) As indicated in Table 4.8-8 of the SEIR, noise generated by construction activities would be a maximum of 68 dB, thus satisfactory relative to the City of Pleasanton 86 dBA standard applicable at the property plane of the Project during daytime hours. (DSEIR p. 4.8-20.)

The realignment of the ADV, the ADV to Lake A diversion, and the

installation of conduits and pipelines fall under the category of temporary construction components of the overall Project as they are not associated with long-term, ongoing operation of the CEMEX facility. Both Alameda County and the City of Livermore exempt construction activities from the provisions of their local noise standards provided those activities occur during the hours of 7 a.m. and 8 p.m. (Livermore) and 7 am – 7 pm (Alameda County). The City of Pleasanton applies a construction noise standard of 86 dBA at any point outside of the property plane. (DSEIR p. 4.8-20.) However, if construction activities were to occur during nighttime hours after 8 p.m., such activities would not be exempt from the local noise standards and the applicable nighttime noise level standards would be exceeded at the residences to the south of Vineyard Avenue. As a result, this nighttime noise impact is considered potentially significant. This impact would be reduced to less than significant with implementation of Mitigation Measure 4.1-1. (DSEIR p. 4.8-20.)

**Finding:** Changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the SEIR. (DSEIR pp. 4.8-20.)

**Mitigation:** The following mitigation measure or agency recommendation/requirement has been incorporated into the Project as a condition of approval to reduce this impact to less than significant.

**Mitigation Measure 4.1-1**

All reclamation-related construction activities shall be limited to the hours of 7 am – 7 pm Monday through Friday, and 9 am – 6 pm on Saturday. Reclamation construction activity shall be prohibited on Sundays. (DSEIR p. 4.8-20.)

**Level of Significance after Mitigation:** Less than significant. (DSEIR p. 4.8-20.)

**Impact 4.8-2: Construction Noise Impacts Relative to Existing Ambient Conditions. (Potentially Significant)**

Construction noise impacts are also evaluated relative to changes in ambient conditions. The threshold for a finding of a significant temporary noise impact relative to construction activities is 10 dB above ambient conditions. (DSEIR p. 4.8-22.)

As indicated in Table 4.8-1 of the SEIR, ambient noise levels at the nearest residences to the north of Lake A in the City of Livermore are approximately 44 dBA L<sub>50</sub> and 63 dB L<sub>max</sub> during daytime hours. As a result, the threshold of significance for those residences for short-term construction noise would be 54 dB L<sub>50</sub> and 73 dB L<sub>max</sub>. (DSEIR p. 4.8-22.)

According to Table 4.8-8 of the SEIR, predicted construction noise levels at

the residences on the north side of Lake A would range from 42 to 65 dB  $L_{max}$  and 38 to 61 dB  $L_{50}$ . The predicted noise levels would satisfy the  $L_{max}$  criteria for all aspects of the Project construction. In addition, predicted median ( $L_{50}$ ) noise levels would be satisfactory at the northern residences during the construction activities related to the realignment of the ADV and the ADV to Lake A diversion. These impacts are considered less-than-significant relative to baseline ambient conditions at the residences on the north side of Lake A. (DSEIR p. 4.8-22.)

However, the predicted median noise level of 61 dB  $L_{50}$  at the northern residences during the conduit and pipeline installation would exceed the 54 dB  $L_{50}$  project standard of significance by 7 dB. As a result, this impact is considered potentially significant relative to baseline ambient conditions at the residences on the north side of Lake A. Mitigation Measure 4.1-1 and Mitigation Measures 4.8-1a and 4.8-1b are provided to reduce construction noise impacts relative to ambient conditions to a less than significant level. (DSEIR p. 4.8-22.)

**Finding:** Changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the SEIR.

**Mitigation:** The following mitigation measures or agency recommendations/requirements have been incorporated into the Project as conditions of approval to reduce this impact to less than significant.

**Mitigation Measure 4.1-1**

Implement Mitigation Measure 4.1-1, stated above. (DSEIR p. 4.8-22.)  
See Findings at page 46.

**Mitigation Measure 4.8-1a**

All residences within 500 feet of the conduit and pipeline installation components of the Project and the City of Livermore Community Development Department 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 notice shall be sent no less than one week prior to construction activities. (DSEIR p. 4.8-22; FSEIR Table ES-2)

**Mitigation Measure 4.8-1b**

All mobile equipment shall be fitted with mufflers consistent with manufacturers recommendations and shall be well maintained. (DSEIR p. 4.8-23.)

**Level of Significance after Mitigation:** Less than significant. (DSEIR p. 4.8-23; FSEIR Table ES-2.)

## 8. *Cumulative Impacts*

CEQA Guidelines section 15130 requires that an EIR discuss cumulative impacts of a project and determine whether the project's incremental effect is "cumulatively considerable." The definition of cumulatively considerable is provided in section 15065(a)(3):

"Cumulatively considerable" means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

According to section 15130(b) of the CEQA Guidelines:

[t]he discussion of cumulative impacts shall reflect the severity of the impacts and their likelihood of occurrence, but the discussion need not provide as great detail as is provided for the effects attributable to the project alone. The discussion should be guided by standards of practicality and reasonableness, and should focus on the cumulative impact to which the identified other projects contribute rather than the attributes of other projects which do not contribute to the cumulative impact.

For purposes these Findings, the Project would have a significant cumulative effect if:

- the cumulative effects of other past, current, and probable future projects without the project are not significant and the Project's incremental impact is substantial enough, when added to the cumulative effects, to result in a significant impact; or
- the cumulative effects of other past, current, and probable future projects without the Project are already significant and the Project contributes measurably to the effect. The standards used herein to determine measurability are that either the impact must be noticeable or must exceed an established threshold of significance.

A summary of the potential cumulative impacts and findings for each resource area is provided below.

### a) **Aesthetics.**

Potential effects to aesthetic conditions are primarily local- and community-level issues. Consideration of cumulative aesthetic effects includes analysis of whether the effects of the Project would be viewed in combination with other projects that could affect or change the visual environment. Therefore, cumulative projects listed in Table 5-2 of the SEIR that are located within a one-mile radius are identified as potential contributors to the aesthetics cumulative setting. (DSEIR, p. 5-3.)

The ongoing mining operations and existing recreation area are visible from Stanley Boulevard, north of the Project, and Isabel Avenue, which passes between Lakes A and B. The SR 84 widening project is the only project directly adjacent to the Project site. However, widening of the road has already taken place on the segment that is directly adjacent to the Project. Future planned widening would only occur between I-680 and Pidgeon Pass, south of the Project site. Furthermore, because the SR 84 widening project is the widening of an existing road, activities related to this Project would not result in changing the overall visual character of the Project area and is not considered to be a significant impact. (DSEIR, p. 5-3.)

Reclamation activities related to Lake A would begin during 2022 and would contribute temporary views of construction workers and vehicles to the area. The Project would not include nighttime activities. Visual resource impacts that could be associated with other nearby projects, such as buildout of the EPSP or the Arroyo Lago Residential Project, would be localized and would not contribute to visual impacts of the Project. (DSEIR, p. 5-3.)

**Finding:** Because construction activities would be temporary, and the results of the activities (e.g., landscaping featuring more native species and habitat, improved bike paths, a riparian channel, and lakes) would result in improved views, the Project would not cause a cumulatively considerable contribution to a significant visual effect. (DSEIR, p. 5-3.)

**Mitigation Measure:** Implement Mitigation Measure 4.1-1. See Findings at page 17.

Level of Cumulative Significance after Mitigation: Less than significant.

#### **b) Air Quality**

Air quality analysis is inherently cumulative because it relies on local and regional data. The BAAQMD's CEQA Guidelines indicate that their thresholds of significance represent both project-level and cumulative thresholds, such that if a project exceeds a BAAQMD threshold, it is deemed both a project-level impact and a cumulatively considerable significant impact. Because the amended reclamation plan activities would not exceed the BAAQMD thresholds with Mitigation Measures 4.1-1 and 4.2-1, the Project would not result in a cumulatively considerable net increase of any criteria pollutant after mitigation, except for daily NO<sub>x</sub> emissions. (DSEIR, p. 5-11.)

The Project is in the vicinity of other surface mines that operate heavy equipment for mining and reclamation purposes. The Project's

reclamation activities would add to the air quality impacts of these other mining projects in the vicinity. Air quality emissions in the area may also increase considerably with construction and buildout of other nearby projects. Project implementation would contribute to the generation of ozone precursors and particulate matter, increasing the cumulative emissions of air quality pollutants into the atmosphere. (DSEIR, p. 5-11.)

In addition to criteria pollutants, BAAQMD has thresholds of significance for local community and risk hazard impacts associated with exposure to TACs, including diesel particulates. Current cumulative conditions at the site include on-going mining operations, an approved reclamation plan (SMP-23), and associated TAC and PM<sub>2.5</sub> emissions. Mining activities and emissions associated with mining would generally cease in each area when the majority of reclamation activities begin. As a result, the cumulative TAC and PM<sub>2.5</sub> emissions in the Project area would be significantly reduced when mining ends and reclamation begins in each area. In addition, state and local law mandate the reclamation of surface mining operations, so reclamation must occur under the approved reclamation plan if the reclamation plan amendments are not approved. Therefore, reclamation emissions from the Project are not considered new. The Project would not have a cumulatively considerable contribution to TAC and PM<sub>2.5</sub> emissions, as the Project involves amendments to an existing reclamation plan, and these proposed amendments do not implicate an increase in TACs or PM<sub>2.5</sub> above baseline conditions. Thus, the cumulative impacts related to TAC and PM<sub>2.5</sub> emissions are less than significant. (DSEIR, pp. 5-11, 5-12.)

Finally, the BAAQMD CEQA Guidelines provide screening distance criteria for a variety of land uses that have the potential to generate odors, such as landfills, composting facilities, rendering plants, and asphalt batch plants. The Project reclamation activity and the cumulative projects listed in Table 5-2 of the SEIR do not involve installation or operation of any of the land use categories that might be expected to generate odors. The cumulative potential odor impacts are less than significant based on the nature of reclamation and urban construction activities, BAAQMD's odor screening criteria, and BAAQMD's record of complaints for the existing asphalt concrete plant on the Project site. (DSEIR, p. 5-12.)

Mitigation measures have been included in an attempt to lessen these impacts. For example, the Permittee would utilize cleaner emitting heavy equipment at the Project site to help reduce the project impacts, particularly for ozone precursors such as NO<sub>x</sub>. This should reduce the cumulative impacts, but would not eliminate them entirely. Even with mitigation, NO<sub>x</sub> emissions were found to be significant and

unavoidable. Furthermore, Project emissions would hinder the BAAQMD's goals for reducing significant air pollutants in the air basin in the short-term. Therefore, the cumulative impacts associated with NO<sub>x</sub> emissions and consistency with the Clean Air Plan are considered cumulatively significant and unavoidable. (DSEIR, p. 5-11.)

**Finding:** The environmentally superior Alternative 3 shall be adopted to reduce significant impacts associated with daily NO<sub>x</sub> emissions in year 2022. While Alternative 3 would reduce daily NO<sub>x</sub> emissions, the daily NO<sub>x</sub> exceedance would remain, and the impact would remain significant and unavoidable. (DSEIR pp. 6-9 to 6-10.) However, specific economic, legal, social, technological, or other considerations make infeasible additional mitigation measures or other Project alternatives which would further avoid or substantially lessen the significant environmental daily NO<sub>x</sub> effect as identified in the SEIR.

**Mitigation Measures:** Implement Mitigation Measures 4.2-1 and 4.2-2. See Findings at pages 18 and 20, respectively.

Level of Cumulative Significance after Mitigation for NO<sub>x</sub>:  
Significant and unavoidable.

**c) Biological Resources**

The potential for cumulative biological resource impacts of the Project exists as a result of the Project-specific biological resource impacts when considered in conjunction with biological resources impacts from other past, present (i.e., ongoing), and reasonably foreseeable future development and other activities. Historic and ongoing land uses such as residential and commercial development, grazing and other agricultural activities, and other land disturbing activities, including mining, have reduced the quantity and quality of wildlife habitats and movement corridors provided by undeveloped grassland and overall riparian and wetland habitats in the Project area. (DSEIR, p. 5-12.)

The Project-specific impacts discussed herein and in the SEIR have each been considered in terms of their potential to contribute to cumulative biological resources impacts. Realignment of the ADV and construction of the diversion structure at Lake A would result in species displacement, vegetation removal, grading, impacts to habitat, and impacts to wetlands. These habitat impacts could contribute to the regional cumulative impacts to wildlife habitat, including foraging and nesting habitat for the identified special status species. The displacement of species along the ADV realignment footprint and impacts to habitat is considered potentially significant both on a

Project level and cumulative basis. (DSEIR, p. 5-12.)

Mitigation measures identified for the Project provide for the replacement of wetlands and habitats pursuant to regulatory agency requirements and provide species-specific protection measures. Biological resources mitigation measures would serve to minimize the Project's impacts as well as its contribution to cumulative impacts. In addition, the reclamation plan amendments associated with the Project would result in more natural conditions with improved biological conditions compared to the existing approved reclamation plan. Furthermore, due to state and federal regulatory requirements and the County's policies regarding biological resources protection, it is also reasonable to anticipate that similar mitigation would be required of other projects to minimize their impacts to biological resources. (DSEIR, p. 5-13.)

**Finding:** As a result of biological resources impact avoidance and mitigation measures associated with the Project, reestablishment of a more natural ADV and native vegetation, and regulatory requirements and policies applied to other projects in the area, the Project would not cause a cumulatively considerable contribution to significant biological resource effects following mitigation. (DSEIR, p. 5-13.)

**Mitigation Measures:** Implement Mitigation Measures 4.3-1a through 4.3-1h, 4.3-2a, 4.3-2b, and 4.3-3. See Findings at pages 21 through 26, 29, 30, and 32.

Level of Cumulative Significance after Mitigation: Less than significant.

#### **d) Geology and Soils**

Potential effects to geologic and soil conditions are typically considered site specific. Therefore, the cumulative impact setting for geology and soils consists of the Project area and immediately adjacent properties. The scope of potential cumulative impacts is limited to the area that is physically affected by the Project. Because of the limited extent of the cumulative setting for this resource topic, none of the projects listed in Table 5-2 of the SEIR would be relevant to this analysis, as none of the listed projects are on or immediately adjacent to the Project site. (DSEIR, p. 5-14.) In addition, the Project would be required to meet applicable factors of safety to ensure slope stability, and the Project would incorporate mitigation measures 4.4-1, 4.4-2, 4.4-3, and 4.4-4. (DSEIR pp. 4.4-21 to 4.4-23.)

**Finding:** Due to the site-specific nature of potential impacts related to geology and soils, regulatory requirements, and the incorporation of mitigation measures, the Project would not result in a cumulatively

considerable contribution to a significant geology and soils effect. (DSEIR, p. 5-14.)

**Mitigation Measures:** None.

**Level of Cumulative Significance:** Less than significant.

**e) Greenhouse Gases**

Greenhouse gas analyses are inherently cumulative because it relies on regional, state-wide, and national data. The Project would result in a potentially significant impact associated with GHG emissions. Effective implementation of Mitigation Measures 4.5-1a through -1h would reduce the Project's GHG emissions and impact on global climate change to less than significant. Furthermore, GHG emissions associated with the Project would cease when reclamation activities are complete. (DSEIR, p. 5-14.)

**Finding:** Because the Project would not result in a significant impact on global climate change with the incorporation of Mitigation Measures 4.5-1a through -1h, and because the reclamation activities are temporary in nature, the Project would not result in a cumulatively considerable impact on global climate change. (DSEIR, p. 5-14.)

**Mitigation Measures:** Implement Mitigation Measures 4.5-1a to 4.5-1h. See Findings at pages 37 and 38.

Level of Cumulative Significance after Mitigation: Less than significant.

**f) Hydrology and Water Quality**

Cumulative water resources impacts are assessed both at a local level and a broader watershed/aquifer level. The local-scale cumulative setting is important for assessing some impacts, but because of the nature of water resources, most environmental impacts extend beyond a local level and have the potential to affect a more extensive area. The potentially affected area can include the portion of a drainage area that is downslope from the Project site; for example, a project may generate additional runoff that may contribute to downstream flooding when considered in combination with other projects within the same watershed. Drainage pattern alterations also have upstream effects (e.g., potential to increase flooding and erosion). (DSEIR, p. 5-15.)

Projects in the area, depending on their specific activities, must comply with the Federal Water Pollution Control Act, Federal Safe Drinking Water Act of 1974, Porter-Cologne Water Quality Control Act, San Francisco Bay Regional Water Quality Control Board requirements, California Surface Mining and Reclamation Act,

Alameda County East County Area Plan, Zone 7 SGMA Plan Alternative, the LAVQAR, and the SMO, which help to reduce the potential for impacts related to hydrology and water quality impacts. (DSEIR, p. 5-15.)

The SR 84 Expressway Widening Project may result in scour along the piers and abutments of the Isabel Avenue bridge during a 100-year flood; however, neither the Project's realignment of the stream channel farther downstream nor the spillway not being installed in Lake A and Lake B, as approved under existing conditions, would result in a considerable contribution to scour. (DSEIR, p. 5-15.)

The Project would not result in significant on-site impacts to hydrology and water quality with mitigation incorporated. The Project is an element of the Alameda County-approved Chain of Lakes, and therefore must also comply with Zone 7's Alternative Plan through the adherence to plans, permits, and regulations governing water quality. The Zone 7 Alternative Plan in turn must comply with the Sustainable Groundwater Management Act. With Mitigation Measures 4.6-1, 4.6-2, and 4.4-1, the Project would be consistent with both of these plans. (DSEIR, p. 5-16.)

**Finding:** The Project's contribution to cumulative impacts related to hydrology and water quality impacts would not be cumulatively considerable after compliance with regulatory standards and the incorporation of mitigation measures. (DSEIR, p. 5-16.)

**Mitigation Measures:** Implement Mitigation Measures 4.4-1, 4.6-1, and 4.6-2. See Findings at pages 35, 40, and 41.

Level of Cumulative Significance after Mitigation: Less than significant.

**g) Land Use and Planning**

Impacts 4.7-1 and 4.7-2 consider the specific attributes of the Project in relation to the County General Plan and the County Zoning Ordinance. The Project would not result in the physical division of an established community. The Project site is already an established operating quarry. Reclamation of this quarry would not contribute to a cumulative division of this community, but instead would help to soften the division. (DSEIR, pp. 5-16, 5-17.)

In addition, the Project would not conflict with any goals or policies of the East County Area Plan. To ensure that cumulative quarry operations throughout the County do not divide communities or result in cumulatively adverse land use conflicts, East County Area Plan Policy 155 provides that, except to the extent required by State law,

no new quarry or other open-pit mine may be approved by the County outside the Urban Growth Boundary, unless approved by the voters of Alameda County. Excavation not adjacent to an existing quarry site and on the same or an adjoining parcel shall be regarded as a new quarry. (DSEIR, p. 5-17.)

The proposed changes to the existing SMP-23 reclamation plan are located within the boundaries of the existing permitted quarry, and the long-term plant site is also located within the boundaries of the existing permitted quarry. Reclamation of the quarry operation sites is consistent with County policy regarding cumulative quarry expansions. East County Area Plan Policy 155 would similarly apply to all other quarry operations in the County, thus limiting the potential for the expansion of quarries to result in cumulatively adverse land use conflicts. In addition, the Project applies modern performance standards for reclamation, which would be an improvement to the reclamation practices considered acceptable at the time of the LAVQAR EIR. (DSEIR, p. 5-17.)

**Finding:** Land Use and Planning impacts are specific to the Project and would not contribute to cumulative land use plan conflicts or land use planning impacts. Thus, the Project would not result in a cumulatively considerable contribution to a significant land use and planning effect. (DSEIR, p. 5-17.)

**Mitigation Measures:** None.

**Level of Cumulative Significance after Mitigation:** Less than significant.

#### **h) Noise**

Impacts 4.8-1, 4.8-2, and 4.8-3 consider the potential for the Project's noise to conflict with locally adopted noise standards or to affect adjacent noise sensitive receptors adjacent to the Project site. The criteria and thresholds used for determining the significance of these impacts consider existing ambient noise levels and, in the case of construction noise, consider noise levels under future conditions. The noise impacts are considered applicable to both project-specific and cumulative conditions. (DSEIR, p. 5-17.)

The proposed reclamation activities related to water diversion, improvements in Lake A, and the realignment of the ADV are considered construction-related activities as they are not related to the long-term excavation or processing operations at the Project site. Construction-related activities are exempt from the local noise standards in the City of Livermore and the County provided the construction activities occur during certain hours and days of the week

which are considered to be less noise-sensitive. Impact 4.8-1 would result in a potentially significant impact and would be mitigated to less than significant with the implementation of Mitigation Measure 4.1-1. Impact 4.8-2 would also result in a potentially significant impact and would be mitigated to less than significant with the implementation of Mitigation Measures 4.1-1, 4.8-1a, and 4.8-1b. Due to the temporary nature of construction activities associated with reclamation, application of Mitigation Measures 4.1-1, 4.8-1a, and 4.8-1b would also reduce the Project's cumulative noise to a less than cumulatively considerable contribution to noise levels. (DSEIR, pp. 5-17, 5-18.)

The SR 84 Widening Project, which is located adjacent to proposed reclamation activity, has contributed to noise impacts in the area. However, the Isabel Avenue portion of this project, the only section adjacent to the Project, has already been completed. Because the Project's noise generating activity has yet to occur, resulting in no simultaneous noise generation with the Isabel Avenue project, cumulative impacts to noise and vibration in relation to the Isabel Avenue Widening Project would not occur. (DSEIR, p. 5-18.)

The threshold for annoyance resulting from vibration associated with project construction is 0.1 inches/second and the threshold for damage to structures is 0.3 inches/second (for older residences). The Project's vibration levels are expected to be below 0.03 inches/second at distances of 100 feet or more, resulting in a less than significant impact at the project level. Because the closest projects are either already complete (Caltrans Isabel Widening Project) or more than 4,500 feet away (Lund Ranch II) from earthmoving equipment under the Project, other projects would not result in a cumulative impact to vibration. In addition, construction activities associated with reclamation are temporary in nature and would cease when reclamation is complete. (DSEIR, p. 5-18.)

**Finding:** The Project does not result in a cumulatively considerable impact relating to noise nor construction vibration after the incorporation of mitigation measures. (DSEIR, p. 5-18.)

**Mitigation Measures:** Implement Mitigation Measures 4.1-1, 4.8-1a, and 4.8-1b. See Findings at pages 17 and 47.

**Level of Cumulative Significance after Mitigation:** Less than significant.

## 9. *Other CEQA Topics*

**Impact 7-1: Substantially Degrade the Quality of the Environment, Reduce Habitat of a Fish or Wildlife Species, Cause a**

**Fish or Wildlife Population to Drop Below Self-Sustaining Levels, Threaten to Eliminate a Plant or Animal Community, Substantially Reduce the Number or Restrict the Range of a Rare or Endangered Plant or Animal or Eliminate Important Examples of the Major Periods of California History or Prehistory Impact. (Potentially Significant)**

The Planning Commission has determined that the Project would have a less than significant impact on biological resources with mitigation incorporated, as discussed above in section VIII.D.3 of these Findings. As a result of this determination, the Project would also have a less than significant impact regarding Impact 7-1 after the incorporation of several Mitigations Measures, listed below. Furthermore, the Project's potential to eliminate important examples of major periods of California history or prehistory was determined to be less than significant in the Initial Study (See Appendix A-1 of the SEIR). (DSEIR, p. 7-2.)

**Finding:** Changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen significant environmental effects related to Impact 7-1, as identified in the SEIR.

**Mitigation:** The following mitigation measure or agency recommendation/requirement has been incorporated into the Project as a condition of approval to reduce this impact to less than significant.

**Mitigation Measures:**

Relevant biological mitigation measures required to reduce this impact to a less than significant level include the following measures from section VIII.D.3. of these Findings:

- Mitigation Measure 4.3-1a: Obtain Regulatory Entitlements and Authorizations;
- Mitigation Measure 4.3-1b: Special Status Amphibian and Reptile Species;
- Mitigation Measure 4.3-1c: Nesting Raptors;
- Mitigation Measure 4.3-1d: Nesting Birds;
- Mitigation Measure 4.3-1e: Loggerhead Shrike;
- Mitigation Measure 4.3-1f: Tricolored Blackbird;
- Mitigation Measure 4.3-1g: Burrowing Owl;
- Mitigation Measure 4.3-1h: Special Status Bats;
- Mitigation Measure 4.3-2a: Special Status Plants;
- Mitigation Measure 4.3-2b: Riparian Habitat; and
- Mitigation Measure 4.3-3: 1:1 Wetland Compensation Ratio.

(DSEIR p. 7-2.)

**Level of Significance after Mitigation:** Less than significant. (DSEIR p. 7-2.)

**Impact 7-2a: Impacts that are Individually Limited but Cumulatively Considerable: Conflict with Air Quality Plan. (Significant)**

The BAAQMD's 2017 Clean Air Plan is the applicable air quality plan for the Project and the County. Consistency with the air quality plan is determined by whether the Project would hinder implementation of control measures identified in the air quality plan or result in growth of population or employment that is not accounted for in local and regional planning. The Clean Air Plan requires consistency with ATCMs for idling trucks and on and off-road diesel using vehicles (DSEIR pp. 4.2-19, 4.2-20). Mitigation Measure 4.2-1 provides for adherence to these ATCMs.

The Clean Air Plan contains control measures that identify actions to be taken by the air district, local government agencies, and private enterprises to reduce stationary and mobile sources of criteria pollutants and ozone precursors and TAC emissions in the SFBAAB (DSEIR pp. 4.2-19, 4.2-20). The Project would result in a cumulatively considerable impact due to daily NO<sub>x</sub> emissions in the year 2022. Therefore, Project emissions would hinder the air district in its goals for reducing significant air pollutants in the air basin in the short-term. However, the daily NO<sub>x</sub> exceedances are related to construction activities required for the reclamation of Lake A and the realignment of the ADV. The emissions are only temporary in nature. Furthermore, the annual NO<sub>x</sub> emissions in the year 2022 would not exceed the annual thresholds. The remainder of the air impact model years are below the applicable thresholds for all criteria pollutants including NO<sub>x</sub>. (DSEIR p. 4.2-20.) Furthermore, reducing emissions to a less than significant level would require daily operations to be limited to shorter windows compared to proposed 8 to 12-hour days, which would extend the life of reclamation, thereby also potentially increasing emissions associated with an extended life of the reclamation activities. Therefore, the Project's estimated daily NO<sub>x</sub> emissions would constitute a significant and unavoidable impact on consistency of this portion of the Clean Air Plan in the short term.

**Finding:** The environmentally superior Alternative 3 shall be adopted to reduce significant impacts associated with daily NO<sub>x</sub> emissions in year 2022. While Alternative 3 would reduce daily NO<sub>x</sub> emissions, the daily NO<sub>x</sub> exceedance would remain, and the impact would remain significant and unavoidable. (DSEIR pp. 6-9 to 6-10.) However, specific economic, legal, social, technological, or other considerations make infeasible additional mitigation measures or other Project alternatives which would further avoid or substantially lessen the significant environmental daily NO<sub>x</sub> effect as identified in the SEIR.

**Mitigation:** The following mitigation measure or agency recommendation/requirement has been incorporated into the Project as a condition of approval to reduce this impact, but not to less than significant:

**Mitigation Measure:** Implement Mitigation Measure 4.2-1, “Off-road Equipment Plan” (see Section 4.2, “Air Quality,” of this SEIR). (DSEIR p. 7-3.)

**Level of Significance after Mitigation:** Significant and unavoidable. (DSEIR p. 7-3.)

**Impact 7-2b: Impacts that are Individually Limited but Cumulatively Considerable: Criteria Pollutants ROG, CO, SO<sub>x</sub>, PM<sub>10</sub>, and PM<sub>2.5</sub>**

The modeling results from the Air and Greenhouse Gas Emissions Study (Appendix C-1 of the SEIR) indicate that project criteria pollutant emissions are below applicable BAAQMD thresholds of significance for CEQA except for daily emissions of NO<sub>x</sub>. Therefore, the Project’s estimated ROG, CO, SO<sub>x</sub>, PM<sub>10</sub>, and PM<sub>2.5</sub> emissions would constitute a less than significant impact. Despite the less than significant impact, the County would require Mitigation Measure 4.2-2 to further reduce potential impacts from PM<sub>10</sub> and PM<sub>2.5</sub> emissions. (FSEIR pp. 3-8 to 3-9.)

**Finding:** Changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen significant environmental effects related to Impact 7-2b, as identified in the SEIR.

**Mitigation:** None required, but the following Mitigation Measure has been added at the request of the City of Livermore, as discussed above regarding air quality impact 4.2-2b:

**Mitigation Measure 4.2-2:**

Within 90 days of Project approval, the Permittee shall update its existing 2015 Dust Control Plan to address changes that would occur as a result of the proposed project. The new plan shall comply with BAAQMD best practices and be approved by the County. (FSEIR p. 3-9; Table ES-2.)

**Level of Significance after Mitigation:** Less than significant. (FSEIR p. 3-9; Table ES-2.)

**Impact 7-3: Environmental Effects which will Cause Substantial Adverse Effects on Human Beings**

**Finding:** The Project’s impacts on greenhouse gas emissions, geology and soils, hydrology and water quality, and noise would be less than significant or less than significant with mitigation incorporated. (FSEIR p. 3-9; Table

ES-2.)

**Mitigation Measures:**

Relevant mitigation measures required to reduce most of this impact to a less than significant level include those listed below:

Implement Mitigation Measures 4.1-1, 4.2-1, 4.2-2, 4.4-1, 4.4-2, 4.4-3, 4.4-4, 4.5-1a, 4.5-1b, 4.5-1c, 4.5-1d, 4.5-1e, 4.5-1f, 4.5-1g, 4.5-1h, 4.6-1, 4.6-2, 4.6-3, 4.8-1a, and 4.8-1b. (DSEIR pp. 7-4 to 7-6; FSEIR Table ES-2.)

**Level of Significance after Mitigation:** Less than significant. (DSEIR pp. 7-4 to 7-6; FSEIR Table ES-2.)

**IX. PROJECT ALTERNATIVES**

The Project would cause environmental effects that are significant, but these can be mitigated to a less than significant level for aesthetics/visual resources, air quality (except daily NOx emissions), biological resources, geology and soils, greenhouse gas emissions, hydrology and water quality, and noise, each as discussed above. The Project would result in unavoidable significant environmental effects to air quality and cumulative air quality impacts as a result of daily NOx emissions expected to occur during one year of the Project life in 2022, as discussed above. Thus, the County must consider the feasibility of any environmentally superior alternatives to the Project, as proposed. The County must evaluate whether one or more of these alternatives could substantially lessen or avoid the Project's unavoidable significant environmental effects. (*Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal. App. 3d 433, 443-45; see also Pub. Resources Code section 21002.)

In seeking to effectuate the substantive policy of CEQA to substantially lessen or avoid significant environmental effects to the extent feasible, an agency, in adopting findings, need not necessarily address the feasibility of *both* mitigation measures and environmentally superior alternatives when contemplating approval of a Project with significant impacts. Where a significant impact can be mitigated to an "acceptable" level solely by the adoption of feasible mitigation measures, the agency in drafting its findings, has no obligation to even consider the feasibility of any environmentally superior alternative that could also substantially lessen or avoid the same impact— even if the alternative would render the impact less severe than would the Project as mitigated. (*Laurel Hills Homeowners Association v. City Council* (1978) 83 Cal. App. 3d 515,521; see also *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App. 3d 692, 730-31; and *Laurel Heights Improvement Association v. Regents of the University of California* ("Laurel Heights I") (1988) 47 Cal. 3d 376, 400-03.)

The DSEIR examined alternatives to the Project to determine whether each alternative could meet the Project's objectives, while avoiding or substantially lessening the significant unavoidable impacts of the Project.

The DSEIR considered, but rejected from detailed consideration the following four

alternatives to the Project:

- **No Project—Implementation of the Approved Reclamation Plan Alternative:** Under this alternative, the County would not approve a reclamation plan amendment. The existing site use would continue as an aggregate mining operation and mine pits that would eventually be converted into water management facilities and only be allowed to carry out reclamation pursuant to the approved 1987 reclamation plan. However, changes in circumstances at the site and in applicable regulatory requirements that have necessitated the preparation of an amended reclamation plan would still exist (e.g., infeasibility of certain components of the Project). Furthermore, the reclamation objectives outlined in the approved 1987 reclamation plan can no longer be feasibly accomplished or permitted by regulatory agencies under current regulatory conditions, which have changed considerably since 1987. (DSEIR pp. 6-5, 6-6.)

In addition, physical conditions near the Project site, such as residential development in neighboring areas, the widening of Isabel Avenue/State Route 84, and sale of portions of the Property, would make carrying out the approved 1987 reclamation plan infeasible as written. Further, this alternative would eliminate the ADV realignment as a feature separate from Lake B, which would result in greater biological impacts compared to the Project and preclude the on-site restoration and enhancement of a native riparian corridor that would promote future fish passage for listed fish species. Lastly, the Permittee has noted that the two previously approved, but not yet built, concrete spillways are environmentally insensitive; therefore, carrying out their construction would result in additional environmental impacts compared to the Project. As such, the County has eliminated the No Project – Implementation of the Approved Plan alternative from further consideration as an alternative to the Project. (DSEIR p. 6-6.)

- **Avoidance of the Waters of the U.S. Alternative:** This alternative would not realign the proposed approximately 5,800-foot reach of the ADV and would not allow a diversion structure at Lake A. Thus, all of the benefits of a restored and enhanced stream with native habitats that support fish passage would not be achieved. Additionally, total materials extracted over the life of the Project would be approximately 45 percent less than the Project under this alternative because Lake B could not progress further south, consistent with the Permittee’s vested mining rights. Furthermore, this alternative would result in a shorter operational life as compared to the Project. (DSEIR p. 6-6.)

This alternative would eliminate the Project’s ability to meet the objectives of maximizing the extraction of the remaining available on-site sand and gravel resources; supplying the regional demands for PCC grade aggregate; realigning and restoring an approximately 5,800-foot reach of the ADV resulting in an enhanced riparian corridor; and reducing VMT by providing a local source of aggregate because of the ADV realignment. Furthermore, under this alternative, benefits of increased water storage from an expanded and reclaimed Lake B to a water management facility would be reduced, and enhanced habitat value would not occur. In addition, this alternative would make implementation of both the

approved SMP-23 and the Chain of Lakes project altogether infeasible because the Permittee cannot divert water from the ADV into the Chain of Lakes if work in waters of the U.S. is prohibited. As such, the County eliminated this alternative from further consideration as an alternative to the Project. (DSEIR p. 6-6.)

- **Reduced Final Reclamation Floor Elevation Alternative:** This alternative would reduce the proposed final bottom elevation of extraction in Lake B from 150 feet msl to 200 feet msl. The principal rationale for this alternative is that by raising the final reclaimed elevation of the quarry floor, potential impacts associated with the lower aquifer would be reduced, and impacts to water supply wells that are screened between 200 and 150 msl may be reduced. This alternative would result in a reduction in the total amount of material excavated over the remaining 56-year life of the Project, and would provide fewer years of product to the local area, which would also result in a reduction in mining activity. Furthermore, this alternative would result in many of the Project's objectives not being met. After peer review of the technical reports and incorporation of pertinent information into the SEIR, no potential significant impacts to water quality or supply were identified. Therefore, because this alternative would not meet most of the Permittee's objectives and no non-mitigatable significant impacts to water quality or supply associated with reclaiming to greater depths have been identified, the County eliminated this alternative from further consideration as an alternative to the Project. (DSEIR pp. 6-6, 6-7.)
- **Reduced Daily Reclamation Activity Alternative:** This alternative is intended to reduce daily NO<sub>x</sub> emissions. This alternative would create a limit on daily construction activities, the number of haul truck trips associated with reclamation-related materials delivery, and/or employ another mechanism that would reduce the reclamation progress achieved daily. This alternative would reduce the hours of operation for reclamation, and would increase the permitted reclamation period of the Project from 56 years to a longer period, and/or would increase the duration of any given phase of reclamation. Although this alternative could reduce daily noise and air quality impacts by reducing construction activities and vehicle trips at peak operational days, construction noise and air quality impacts would be extended over a longer duration (number of days). In addition, because mobilization and demobilization of construction equipment would need to take place over a longer period of time, noise and air quality impacts would be more than what would occur under the Project due to the need to start-up, mobilize, then shut-down equipment for a greater number of days. (DSEIR p. 6-7.)

In addition, GHG emissions are calculated on an annual basis, not daily. Because this alternative would result in daily construction hours being reduced and the duration of construction being extended, this alternative would result in the same amount of GHG emissions spread over a longer period of time. However, when considering construction inefficiencies (e.g., increased mobilization and demobilization over more days), GHG emissions would be greater under this alternative than under the Project. Further, because visual impacts of the Project are primarily associated with temporary construction, which would be extended under this alternative, visual impacts would be prolonged and therefore increased. (DSEIR p. 6-7.)

Lastly, this alternative would result in the delay of all objectives of the Project, especially implementation of the Chain of Lakes that would support Zone 7's water management activities, including water storage, water conveyance, and improving the reliability of local water supply. Therefore, because long-term impacts associated with aesthetics, noise, air quality, and GHG would be greater than the Project, the County has eliminated this alternative from further consideration as an alternative to the Project. (DSEIR pp. 6-7, 6-8.)

The SEIR examined in detail the following four alternatives to the Project:

- Alternative 1: No Project – Reclamation of Existing Conditions Alternative;
- Alternative 2: Prohibited Nighttime Reclamation Alternative;
- Alternative 3: Revised ADV Construction Phasing Alternative; and
- Alternative 4: Reduced Capacity of Lake A Diversion Structure Alternative.

(DSEIR p. 6-8.)

The following objectives that apply to the Project are provided in section C, above. (DSEIR pp. 6-2 to 6-3.)

**A. Alternative 1: No Project—Reclamation of Existing Conditions Alternative**

With respect to the analysis of the “No Project” Alternative, CEQA Guidelines section 15126.6(e)(2) provides:

The “no project” analysis shall discuss the existing conditions at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services.

Consistent with this direction, the DSEIR assumes under the No Project – Reclamation of Existing Conditions Alternative, reclamation of the Project site would occur under existing conditions consistent with the minimum requirements of SMARA and the SMO. Furthermore, the No Project – Reclamation of Existing Conditions Alternative assumes that the mining would not proceed until another reclamation plan amendment is adopted, and the site's water bodies and slope would be reclaimed to meet the minimum requirements of SMARA and the SMO. Lastly, the No Project – Reclamation of Existing Conditions Alternative assumes the end use would remain water management and agriculture consistent with the underlying LAVQAR requirements. (DSEIR p. 6-8.)

The discussion below considers the impacts of the No Project – Reclamation of Existing Conditions Alternative, as compared to the project:

- **Aesthetics**: The No Project – Reclamation of Existing Conditions Alternative would have increased aesthetic impacts compared to the

Project. At Lake A, the proposed landscape plan featuring California native species around the perimeter of the lake would not be implemented, and the berm across the lake would not be fully developed into an island. In addition, the existing pedestrian and bike trail along the south side of Lake A would not be extended further along Vineyard Avenue and the ADV along the south side of Lake B. Under the No Project – Reclamation of Existing Conditions Alternative, the ADV would not be realigned, reconfigured, or revegetated. Instead, the existing ADV, which has succumbed to nonnative vegetation, would remain in place without the more aesthetically pleasing native vegetation. The concrete spillways proposed under the approved reclamation plan would not be constructed as they could not be permitted under the existing regulatory environment. In addition, Lake B would not be fully developed under this alternative as would occur under the Project. Therefore, in the No Project – Reclamation of Existing Conditions Alternative scenario, Lake B would be less visible and less aesthetically pleasing as it would be under the Project. (DSEIR p. 6-17.)

- **Air Quality:** Under the No Project – Reclamation of Existing Conditions Alternative, there would be a reduction in reclamation activities to ensure the site meets minimum SMARA and SMO requirements as compared to the Project. In addition, air quality impacts associated with the realignment of the ADV would be avoided. Thus, the No Project – Reclamation of Existing Conditions Alternative would have less of an impact to air quality than the Project. (DSEIR p. 6-17.)
- **Biological Resources:** Under the No Project – Reclamation of Existing Conditions Alternative, there would be a reduction in reclamation activities to ensure that the site meets minimum SMARA and SMO requirements as compared to the Project; thus, there would be less short-term impacts to biological resources. In addition, biological resources impacts associated with the realignment of the ADV would be avoided. However, the better-quality habitat that would be established under the Project would not come to fruition. Barriers to steelhead fish passage, such as the breached quarry ponds with warmer temperatures that harbor predatory species like bullfrogs and bass, would continue to exist. In the short term, the No Project – Reclamation of Existing Conditions Alternative would have less of an impact on biological resources than the Project. However, in the long term, after the restoration of the ADV and full reclamation of Lakes A and B, the No Project – Reclamation of Existing Conditions Alternative would have more biological resource impacts than the Project. (DSEIR p. 6-17.)
- **Geology and Soils:** Under the No Project – Reclamation of Existing Conditions Alternative, there would be a reduction in reclamation activities to ensure that the site meets minimum SMARA and SMO requirements as compared to the Project. Thus, the No Project – Reclamation of Existing Conditions Alternative would have less of an impact on geology and soils than would occur under the Project.

(DSEIR p. 6-17.)

- **Greenhouse Gas:** Under the No Project – Reclamation of Existing Conditions Alternative, there would be a reduction in reclamation activities to ensure that the site meets minimum SMARA and SMO requirements as compared to the Project. GHG impacts associated with the realignment of the ADV would be avoided. However, if the Project is not fully implemented, which would allow for additional aggregate material to be supplied to the local market, then the material would have to be supplied from locations located farther from the local market (e.g., from the Vernalis area, 31 miles one-way to Livermore). Thus, it is likely that the No Project – Reclamation of Existing Conditions Alternative would increase GHG emissions compared to the Project due to the emissions associated with transporting these materials from greater distances. Further, it is generally accepted that developing new mining facilities would have more of an impact, at least on surface resources, than maximizing the extraction of resources from an existing surface mine. (DSEIR pp. 6-17, 6-18.)
- **Hydrology and Water Quality:** Under the No Project – Reclamation of Existing Conditions Alternative, there would be a reduction in reclamation activities to ensure that the site meets minimum SMARA and SMO requirements as compared to the Project. However, the relocation and revegetation of the ADV is anticipated to enhance the ability of the ADV to handle water and flood conveyance compared to the existing ADV. These benefits would not be realized under the No Project – Reclamation of Existing Conditions Alternative. Regarding Lake B, while public comments and comments from Zone 7 on the NOP indicated that there could be potentially significant impacts associated with mining deeper in Lake B, the peer reviewed analysis contained in the SEIR concluded that impacts to hydrology and water quality would be less than significant. Therefore, the No Project – Reclamation of Existing Conditions Alternative would have more of an impact on hydrology and water quality than the Project. (DSEIR p. 6-18.)
- **Land Use:** Under the No Project – Reclamation of Existing Conditions Alternative, there would be a reduction in reclamation activities to ensure that the Project site meets minimum SMARA and SMO requirements as compared to the project. Thus, land use compatibility issues such as noise, dust, and traffic related to reclamation activities would be less under the No Project – Reclamation of Existing Conditions Alternative compared to the Project. However, County General Plan policies that would be met through implementation of the Project (e.g., reducing GHG emissions and maximizing mineral resources) would not be met under this alternative. Therefore, the No Project – Reclamation of Existing Conditions Alternative would have less of an impact on land use but more of an impact on other resource topics compared to the Project. The No Project – Reclamation of Existing Conditions Alternative would also be less consistent with the LAVQAR than the Project as it would not as

completely implement the Chain of Lakes (e.g., by further reducing the size of Lake B). (DSEIR p. 6-18.)

- **Noise:** Under the No Project – Reclamation of Existing Conditions Alternative, there would be a reduction in reclamation activities to ensure that the site meets minimum SMARA and SMO requirements as compared to the Project. Thus, noise impacts associated with reclamation activities would be less under the No Project – Reclamation of Existing Conditions Alternative compared to the Project. Therefore, the No Project—Reclamation of Existing Conditions Alternative would have less of a noise impact than the Project. (DSEIR p. 6-18.)

**Relationship to Project Objectives:** The No Project—Reclamation of Existing Conditions Alternative would not meet the following Project Objectives:

- Realign and restore an approximately 5,800-foot reach of the ADV resulting in an enhanced riparian corridor that flows south of, rather than through (as currently anticipated in SMP-23), Lake B.
- Maximize the extraction of the remaining available on-site sand and gravel resources through the anticipated reclamation end date of 2056, including a change in the final bottom elevation of excavation in Lake B to 150 feet msl.
- Continue to supply the regional demands for PCC grade aggregate.
- To reduce VMTs and GHGs by retaining a local source of aggregate.
- Carry out the objectives of the LAVQAR and the Zone 7 Agreement for implementation of the Chain of Lakes on the portions of land controlled by CEMEX. (DSEIR pp. 6-8, 6-9.)

**Finding:** The Planning Commission rejects this alternative because the alternative is infeasible. The alternative is infeasible because it does not meet the Project objectives and it would result in greater impacts to aesthetics, biological resources, GHG emissions, hydrology and water quality, and land use, as discussed above.

## **B. Alternative 2: Prohibited Nighttime Reclamation Alternative**

This alternative would limit all Project-related reclamation, including the ADV realignment, construction of the Lake A diversion structure, berm construction, and grading for final reclamation to end use, to only occur between 7:00 a.m. and 7:00 p.m., except for the low-flow diversion pump, which must operate at all hours during the two-year construction period for the ADV alignment. (DSEIR p. 6-9.) Some nighttime lighting of project facilities would still be required for security and safety purposes under this alternative; however, operational and reclamation construction lighting for the Project between 7 p.m. and 7 a.m. would be avoided. Project-related traffic departing and arriving at the site between 7 p.m. and 7 a.m. would also be avoided. The current operational mining activities would not be subject to this restriction. The effects of atmospheric inversion (i.e., heat rising from the earth and interacting with cooler air above) would also be pertinent to this

alternative. In general, air pollutants disperse better during the day due to higher wind speeds, convective turbulence, and higher mixing heights of pollutants in the atmosphere. This alternative could benefit sensitive biological species because wildlife migrating through construction zones are harder to spot at night. Thus, this alternative could reduce injury or mortality to wildlife species by limiting operations to the daytime hours. This alternative would have the same impacts as the Project with mitigation incorporated (see e.g., Mitigation Measure 4.1-1) and would reclaim the site and realign the ADV similarly to the Project. (DSEIR p. 6-9.) Mitigation 4.1-1 achieves the same basic goals as this alternative, therefore this alternative is unnecessary.

This alternative would have the same impacts as the Project with mitigation incorporated. However, if mitigation measures were not appropriately implemented under the Project, this alternative would have a reduced impact on wildlife species as compared to the Project. (DSEIR p. 6-18.)

The discussion below considers the impacts of this alternative, as compared to the Project:

- **Aesthetics**: If mitigation were determined to be infeasible or not fully implemented, this alternative would have less of an impact relating to nighttime lighting than the Project. (DSEIR p. 6-19.)
- **Air Quality, Biological Resources, Geology and Soils, Greenhouse Gas, Hydrology and Water Quality**: This alternative would have the same impacts as the Project, as mitigated, associated with air quality, biological resources, geology and soils, greenhouse gas, and hydrology and water quality impacts. If mitigation were not properly implemented or monitored under the Project, this alternative would have fewer biological resource impacts than the Project. This is because nighttime lighting and noise could adversely impact biological resources, and this alternative could reduce injury or mortality to wildlife by making wildlife easier to see and avoid during the daytime. (DSEIR p. 6-19.)
- **Land Use**: If mitigation were determined to be infeasible under the Project, this alternative would have fewer land use compatibility impacts than the Project (lighting and noise). (DSEIR p. 6-19.)
- **Noise**: This alternative would have the same noise impacts as the Project, as mitigated. However, if mitigation were determined to be infeasible under the Project, this alternative would have less of an impact on noise than the Project. (DSEIR p. 6-19.)

**Relationship to Project Objectives:** This alternative would meet all of the Project Objectives.

**Finding:** The Planning Commission rejects this alternative because although this alternative generally has the same impacts as the Project, this alternative would not reduce significant and unavoidable impacts due to daily NOx emissions.

### C. **Alternative 3: Revised ADV Construction Phasing Alternative**

This alternative is aimed at reducing daily NOx emissions. This alternative would alter the reclamation schedule of the realignment and restoration of an approximately 5,800-linear-foot reach of the ADV to flow around, rather than through, Lake B. The altered schedule would extend the ADV realignment activities into 2024 or 2025, rather than 2022 or 2023 as currently anticipated under the Project. (DSEIR p. 6-19.) This would slightly delay the implementation of the ADV realignment and restoration components of the Project. However, delaying the implementation of the realignment until after reclamation activities in Lake A are complete would avoid concurrent reclamation activities of Lake A reclamation and ADV realignment and restoration activities. Therefore, daily NOx emissions, the only significant and unavoidable impact of this Project, would be substantially lessened. However, even under this alternative, the daily NOx emissions would still exceed the AQMD daily NOx threshold, so the NOx impacts would remain significant and unavoidable. (DSEIR p. 6-9.)

This alternative would alter the reclamation schedule of the realignment and restoration of an approximately 5,800-linear-foot reach of the ADV to flow around, rather than through, Lake B until 2024-2025 rather than 2022-2023 as currently anticipated under the Project. (DSEIR p. 6-19.) As this alternative's air quality and noise impacts would be less than the Project, this alternative would be the environmentally superior alternative. (DSEIR p. 6-20.)

The discussion below considers the impacts of this alternative, Revised ADV Construction Phasing Alternative, as compared to the Project:

- **Biological Resources, Greenhouse Gas, Geology and Soils, Hydrology and Water Quality, and Land Use:** This alternative would have the same impacts as the Project associated with biological resources, greenhouse gas, geology and soils, hydrology and water quality, and land use impacts. (DSEIR p. 6-19.)
- **Aesthetics:** Ground disturbance associated with the realignment of the ADV, berm construction, and grading related to reclamation would not be expected to change. Visual impacts of the Project are primarily associated with temporary construction, and therefore would be reduced compared to the Project in the short term as there would be less construction equipment performing reclamation activities at a given time under this alternative compared to the Project. (DSEIR pp. 6-9, 6-10.) However, delaying the implementation of the ADV realignment until after reclamation activities in Lake A are complete would extend the duration of visible, temporary construction activities, thereby prolonging the duration of visual impacts. Therefore, aesthetic impacts under this alternative would be greater compared to the Project. (DSEIR p. 6-19.)
- **Air Quality:** Delaying the implementation of the ADV realignment until after reclamation activities in Lake A are complete would avoid concurrent reclamation activities of Lake A reclamation and ADV realignment and

restoration activities. Therefore, daily NO<sub>x</sub> emissions, the cause of the significant and unavoidable impacts of this Project, would be reduced. Under this alternative, 125.42 lbs of daily NO<sub>x</sub> emissions would be avoided in 2022 and deferred to a future year (such as 2024). Therefore, instead of daily NO<sub>x</sub> emissions of 230.85 lbs/day for 2022, this alternative would result in 105.44 lbs/day. This represents an approximately 54 percent reduction in daily NO<sub>x</sub> emissions compared to the Project. Even under this alternative, the daily NO<sub>x</sub> exceedance beyond the BAAQMD CEQA Significance Threshold of 54 lbs/day would remain but the extent to which the threshold is exceeded would be reduced. (DSEIR pp. 6-19, 6-20.)

- **Noise:** Limiting daily reclamation activities to either Lake A reclamation (2022-2023) or the ADV realignment and restoration (2024-2025) could also reduce noise impacts by reducing noise intensity of reclamation activities and vehicle trips by avoiding concurrent reclamation in the various areas of the site. Thus, under this alternative, there would be a reduced amount of reclamation activities occurring at the same time. However, sensitive receptors' noise exposure would increase in duration, even though noise intensity would be less, compared to the Project. Therefore, this alternative would have less of a noise impact than the Project regarding noise intensity, but a greater impact regarding duration of temporary construction noise. (DSEIR p. 6-20.)

**Relationship to Project Objectives:** A two-year delay in the implementation of the ADV realignment and restoration would not significantly interfere with meeting the objectives of the Project. (DSEIR pp. 6-9, 6-10.) This alternative would meet all of the Project Objectives.

**Finding:** The SEIR identifies Alternative 3 as the environmentally superior alternative. This environmentally superior alternative shall be adopted to reduce significant impacts associated with daily NO<sub>x</sub> emissions in year 2022. While Alternative 3 would reduce daily NO<sub>x</sub> emissions, the daily NO<sub>x</sub> exceedance would remain, and the impact would remain significant and unavoidable. (DSEIR pp. 6-9 to 6-10.) However, as discussed further in section X, below, specific economic, legal, social, technological, or other considerations make infeasible additional mitigation measures or other Project alternatives which would further avoid or substantially lessen the significant environmental daily NO<sub>x</sub> effect as identified in the SEIR.

**D. Alternative 4: Reduced Capacity of Lake A Diversion Structure Alternative**

This alternative is designed to reduce potential impacts to biological resources by reducing the amount of water being diverted from the ADV into Lake A. Under this alternative, the diversion structure capacity would be reduced from 500 cfs to 200 cfs to allow diversion of only the first 200 cfs of water from the ADV into Lake A. This would allow for significantly more water to be retained in the ADV, which would be beneficial to biological resources in the restored ADV. While the Project

has a low flow channel to ensure that at least 9 cfs are retained, this alternative would allow for an additional 300 cfs of water (during higher water flows) to be retained in the ADV than envisioned in the Project. The current version of the LAVQAR, the approved reclamation plan, and contract between the Permittee and Zone 7 call for a diversion pipe of 500 cfs from Lake A to Lake C. As this alternative diversion structure would be smaller than the Project, this alternative would result in less noise and air quality impacts than the Project as a smaller diversion structure could be constructed in less time with less construction activity. In addition, while impacts to biological resources have been reduced to less than significant after implementation of mitigation measures, this alternative would have fewer impacts to biological resources by ensuring that additional water is available to biological resources within the ADV and those species that would utilize the water in the ADV for feeding or migration. In addition, this alternative would result in less impacts to waters of the U.S. than the Project because the design for the diversion structure infiltration bed would be smaller (i.e., would disturb less square footage). This alternative would not meet all of the objectives of the Project, 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.” As a result, consistency of this alternative with this objective would require an amendment to LAVQAR and negotiations between Zone 7, the Permittee, and the Community Development Agency of Alameda County. Therefore, this alternative would not meet Objective 6. (DSEIR p. 6-10.)

The discussion below considers the impacts of this alternative, as compared to the Project:

- **Aesthetics**: Under this alternative, the diversion structure would be smaller than the one envisioned in the Project. Therefore, visual impacts are expected to be less under this alternative compared to the Project. (DSEIR p. 6-20.)
- **Air Quality**: Under this alternative, the diversion structure would be smaller than the one envisioned in the Project. Due to the smaller size of the diversion structure, less equipment and less time would be needed to construct the smaller diversion structure under this alternative compared to the Project. Therefore, this alternative would have less impacts regarding daily emissions, and air quality impacts would be less than the Project. (DSEIR p. 6-20.) However, construction of the diversion structure would not begin until 2023, whereas daily NOx exceedances would only occur during 2022 reclamation activities (DSEIR pp. 4.2-20 to 4.2-22). As a result, although this alternative would have a net reduction in daily emissions, the reduction is *de minimis*, or too minor to merit consideration, and would not substantially lessen the significant and unavoidable impacts relating to NOx.
- **Biological Resources**: Under this alternative, the diversion structure would be smaller than the one envisioned in the Project. Due to the smaller size of the diversion structure, additional water would be retained in the ADV. In

turn, fewer impacts associated with waters of the U.S., wetlands and biological species in the ADV would occur. In addition, more water would be retained in-stream. Therefore, fewer impacts to biological resources would occur under this alternative compared to the Project. (DSEIR p. 6-20.)

- **Geology and Soils:** Under this alternative, less water would be diverted from the ADV than under the Project (200 cfs compared to 500 cfs). Water being diverted into Lake A at a slower rate and a lower volume may result in less erosion at the Lake A outfall. Mitigation measures have been incorporated into the Project to reduce erosion impacts to less than significant. Therefore, impacts regarding geology and soils are anticipated to be similar between this alternative and the Project. However, implementation of this alternative would reduce the need for mitigation, and potential geology and soil impacts would be less under this alternative when compared to the Project if the mitigation measures to reduce erosion were not properly implemented. (DSEIR pp. 6-20, 6-21.)
- **Greenhouse Gas:** This alternative would have the less impacts associated with GHG than the Project because less time and construction equipment (and associated GHG emissions) would be needed to construct the smaller diversion structure. (DSEIR p. 6-21.)
- **Hydrology and Water Quality:** Under this alternative, there would be less water diverted from the ADV than would occur under the Project (200 cfs compared to 500 cfs). This would allow for more water to be retained in the ADV, which would retain a more functional hydrological regime in the ADV. Thus, impacts associated with hydrology and water quality would be less under this alternative as compared to the Project. (DSEIR p. 6-21.)
- **Land Use:** This alternative would be consistent with LAVQAR in the same ways as the Project, as discussed in Table 4.7-1, “Project Consistency with Local Planning Documents,” of the DSEIR (p. 4.7-25), except for the requirement for “[t]he diversion structure from Arroyo del Valle within Lake A and into Lake C [to] be capable of diverting at least the first 500 cubic feet per second of flow from the Arroyo” (LAVQAR p. 4). Under this alternative, the diversion structure would be smaller than the one identified in the Project. Thus, this alternative may not meet all of the objectives of the Project, particularly Objective 6, which provides: “Carry out the objectives of the LAVQAR and the Zone 7 Agreement for implementation of the Chain of Lakes on the portions of land controlled by CEMEX.” The Zone 7 Agreement also requires construction of a diversion structure from Lake A to Lake C capable of diverting the first 500 cfs. As a result, consistency with this objective would require negotiations between Zone 7, the Permittee, and the Community Development Agency of Alameda County. If Zone 7 is unwilling to revise the contract and/or the Community Development Agency determines that reduced diversion is inconsistent with the LAVQAR, then this alternative would have more land use consistency impacts than the Project. (DSEIR p. 6-21.)

- **Noise:** The Reduced Capacity of Lake A Diversion Structure Alternative smaller diversion structure would take less equipment and less time to construct the facility as compared to the Project. Therefore, construction related noise impacts would be less under this alternative as compared to the Project. (DSEIR p. 6-21.)

**Relationship to Project Objectives:** This alternative would meet all of the Project Objectives, except this alternative is inconsistent with Project Objective 6, which is to carry out the objectives of the LAVQAR and Zone 7 Agreement for implementation of the Chain of Lakes. Zone 7 has indicated its opinion that this alternative is inconsistent with the LAVQAR and Zone 7 Agreement.

**Finding:** The Planning Commission finds this alternative infeasible because it does not reduce significant and unavoidable impacts (NOx emissions in 2022). Also, it would not meet the Project Objectives. Specifically, this alternative does not meet Project Objective 6 regarding implementation of the Chain of Lakes pursuant to the Zone 7 Agreement and LAVQAR. Therefore, the Planning Commission rejects this alternative.

## **X. STATEMENT OF OVERRIDING CONSIDERATIONS**

As set forth in the preceding sections, the Planning Commission's approval of the Project would result in significant adverse environmental effects with regard to Air Quality (Impacts 4.2.1 and 4.2-2a) and Cumulative Air Quality (Impacts 7-2a and 7-2b) regarding daily NOx emissions that cannot be avoided even with the adoption of all feasible mitigation measures. Despite the occurrence of these effects, the Commission chooses to approve the Project because, in the Commission's view, the economic, social, environmental, and other benefits that the Project would render the significant effects acceptable.

The County hereby determines that specific economic, legal, social, technological, and other benefits of the Project outweigh the unavoidable adverse environmental effects identified in the SEIR and stated in these Findings, including any significant adverse effects not mitigated because of the infeasibility of mitigation measures and/or alternatives and that therefore the adverse environmental effects are considered acceptable.

The following statement identifies the reasons why, in the Commission's judgment, the benefits of the Project as approved outweigh its significant and unavoidable effects. Any one of these reasons is sufficient to justify approval of the Project. Thus, even if a court were to conclude that not every reason is supported by substantial evidence, the Commission would stand by its determination that each individual reason is sufficient. The substantial evidence supporting the various benefits can be found in the subsequent discussion of Project benefits, the preceding Findings, which are incorporated by this reference into this Section X, and in the documents found in the Record of Proceedings, as defined in Section V.

The Planning Commission finds that the Project would have the following economic, social, and environmental benefits:

**A. Promotes County Policies Pertaining to Mineral Extraction**

As discussed in the DSEIR, the County General Plan Conservation Element includes the following goal: “[t]o insure extraction of minerals and reclamation of land to the fullest extent possible consistent with sound management policies.” (DSEIR Table 4.7-1.) The Project promotes this County policy by allowing for extraction of minerals and by requiring reclamation of the site including post-reclamation monitoring. (*Id.*)

**B. Promotes State of California Policies Pertaining to Mineral Extraction**

Approving the Project advances California Public Resources Code Section 2711(d), which was enacted in 2011 and states:

The Legislature further finds that the production and development of local mineral resources that help maintain a strong economy and that are necessary to build the state’s infrastructure are vital to reducing transportation emissions that result from the distribution of hundreds of millions of tons of construction aggregates that are used annually in building and maintaining the state.

Thus, both the State and County have explicitly recognized the importance of local aggregate production.

**C. Provides a Needed Source of Aggregate to the South San Francisco Bay P-C Region**

The Project would continue to provide a source of local PCC grade aggregate – a material necessary to construct and maintain:

- County roads
- Schools
- Offices
- Freeways
- Bridges
- Homes
- Hospitals
- Airports
- Shopping centers
- Sewers
- Storm water systems
- Dams, canals, and other water storage and conveyance infrastructure
- Other vital infrastructure

The extraction of minerals is essential to the continued economic well-being of the State and to the needs of society, and the reclamation of mined lands is necessary to prevent or minimize adverse effects on the environment and to protect the public

health and safety. (PRC. § 2711, subd. (a).) According to the California Department of Conservation Mapsheet 52 (2018), which provides a statewide overview of projected future aggregate needs and currently permitted reserves in various production/consumption regions across the state, the South San Francisco Bay P-C Region (in which the Project is located) only has 38 percent of permitted aggregate supplies required to meet the estimated 1.3 billion tons of aggregate demand for the next 50 years. (See Project Description for the Eliot Quarry SMP-23 Reclamation Plan Amendment, Compass, February 2019, p. 4; see also Mapsheet 52 (2018).) The continued aggregate production from the Project is necessary to address the shortage of aggregate supply in the South San Francisco Bay P-C Region. One of the stated Project objectives is to continue to supply the regional demands for PCC grade aggregate. In addition, the Project would result in reclamation that complies with updated environmental and safety standards, resulting in additional protection of the environment and public health and safety.

**D. Competition in Aggregate Sales is Good for Alameda County**

The Project would not only address the shortage of permitted aggregate resources in the South San Francisco Bay P-C Region, but it would also retain more competition to the Alameda County aggregate market. The U.S. Supreme Court has noted that competition is “the best method of allocating resources in a free market” and that “all elements of a bargain-quality, service, safety, and durability—and not just the immediate cost, are favorably affected by the free opportunity to select among alternative offers.” (*Nat'l Soc of Prof'l Engineers v. U.S.* (1978) 435 US 679, 695.) Competition supports a healthy market by yielding: lower costs and prices for goods and services; better quality; more choices and variety; more innovation; greater efficiency and productivity; and economic development and growth.

**E. Implement a Public Use Pedestrian and Bike Trail on the Southern Perimeter of Lake B on the CEMEX Property.**

One of the stated objectives of the Project is to “[i]mplement a public use pedestrian and bike trail on the southern perimeter of the CEMEX property.” (DSEIR p. 2-3.) The Lake A trail already exists but the Lake B trail does not yet exist. The DSEIR provides that “[f]ollowing reclamation, the Lake B areas north of the realigned ADV would be dedicated to Zone 7, and the pedestrian and bike trail would be granted through an easement or license to the EBRPD.” (DSEIR p. 2-14.) Public use pedestrian and bike facilities provide several benefits, including public health benefits and environmental benefits associated with reduced VMTs.

**F. Implement a More Environmentally Sensitive Reclamation Plan**

The currently approved SMP-23 is 34 years old and anticipates the elimination of the separate ADV and construction of two concrete spillways. (DSEIR p. 2-2.) Fish barriers currently exist on ADV downstream of the Project site; however, in recent years numerous fish passage projects were constructed on Alameda Creek and its tributaries to remove barriers to, and encourage anadromous fish migration into, the upper creek system. (DSEIR p. 4.3-60.) The Project would allow for fish passage

that would otherwise not occur under the currently approved SMP-23. (DSEIR p. 4.3-61.)

## **XI. PLAN CONSISTENCY FINDINGS OF FACT**

The Project is consistent with both the Alameda County General Plan, the Alameda County East County Area Plan, and the LAVQAR Specific Plan, as follows:

### **County Conservation Element Goals of the General Plan**

- 1) Minerals, Extractive Resources Goal: To ensure the extraction of minerals and reclamation of land to the fullest extent possible consistent with sound management policies. (DSEIR p. 4.7-14.)

**Finding:** The Project facilitates mining of the site as that requires a reclamation plan and provides for the ultimate reclamation of the entire Project site, including post-reclamation management. (DSEIR p. 4.7-14.)

- 2) Agriculture and Soils Resources Management Goal: **To protect agriculture and agricultural lands.**

**Finding:** The General Plan land use designation for the Project site is principally Water Management and Large Parcel Agriculture. The zoning designation is principally Agriculture, with a small portion of the site zoned as Planned Development and Unclassified. Mining activities may be permitted within any County zoning designation, including lands designated as Agricultural, subject to the provisions of the County Surface Mining and Reclamation Ordinance. As provided by this ordinance, surface mining operations are permitted only upon County approval of a surface mining permit (or existence of vested rights), reclamation plan, and financial assurances for reclamation. Thus, the existing quarry and the Project are consistent with the goal to protect agriculture and agricultural lands. (DSEIR p. 4.7-15.)

The Commission hereby finds and concludes that, as established above, the Project does not conflict with any of the Conservation Element goals stated in the County General Plan. The Project provides for the ultimate reclamation of the entire Project site and does not consist of new mining operations.

### **General Plan Policies**

- 1) **General Plan Policy E-10:** Require new construction to use building materials containing recycled content. (DSEIR p. 4.7-15.)

**Finding:** With implementation of Mitigation Measure 4.5-1f, stated above, the Project would include recycling or reusing of construction waste or demolition materials, to the extent feasible. (DSEIR p. 4.7-15.) Therefore, the Project is consistent with General Plan Policy E-10.

- 2) **General Plan Policy WT-2:** Require new landscape projects to reduce outdoor potable water use by 40 percent. (DSEIR p. 4.7-15.)

**Finding:** The proposed landscape plan at Lake B and the proposed revegetation of the ADV realignment are designed to improve water-efficiency compared to existing conditions. (DSEIR p. 4.7-15.) Therefore, the Project is consistent with General Plan Policy WT-2.

The Commission hereby finds and concludes that, as established above, the Project does not conflict with any General Plan policies. The Project would include recycling or reusing construction waste or demolition materials, to the extent feasible. The Project is also designed to improve water-efficiency as compared to existing conditions.

### **East County Area Plan**

- 1) **Allowable Uses Designation:** Subject to the provisions of Measure D, the Water Management land use designation provides for sand and gravel quarries, reclaimed quarry lakes, watershed lands, arroyos and similar and compatible uses.

**Finding:** The existing use of the Project site is a sand and gravel quarry with similar and compatible land uses. The Project provides for the ultimate reclamation of Lakes A and B for water management. Therefore, the Project is consistent with this designation. (DSEIR p. 4.7-15.)

- 2) **Accessory Uses Designation:** Sand and gravel quarries allow a range of uses including sand and gravel processing, associated manufacturing and recycling uses requiring proximity to quarries, reclamation pits, and public use areas. (DSEIR p. 4.7-15.)

**Finding:** The Project site is primarily a sand and gravel quarry for processing of raw aggregate materials and includes accessory and associated manufacturing uses that benefit from (though do not necessarily require) proximity to the quarry. As a reclamation plan for the quarry, the Project would not introduce new operational accessory uses. Therefore, the Project is consistent with this designation. (DSEIR p. 4.7-15.)

- 3) **Parcel Size and Building Intensity Designation:** Water Management Lands allows for a minimum parcel size of 100 acres and a maximum building intensity of .01 FAR. (DSEIR p. 4.7-15.)

**Finding:** The Project site is approximately 920 acres under currently active quarry operations (pursuant to SMP-23). At 920-acres, a maximum FAR of 0.01 would permit a total of approximately 400,572 square feet of building space on-site. The County Code of Ordinances (Section 17.04.010) defines the term “building” to mean “any structure erected for the support, shelter or enclosure of persons, animals or property.” The Project does not include any new structures which would qualify as buildings. Existing buildings are under the maximum square footage of building space on the Project site. Therefore,

the Project is consistent with this requirement. (DSEIR pp. 4.7-15, 4.7-16.)

- 4) **Residential Use Designation**: Not applicable.
- 5) **Development Envelope Designation**: Not applicable.
- 6) **Biological Resources Policy 122**: The County shall encourage that wetland mitigation be consolidated in areas that are relatively large and adjacent to or otherwise connected to open space. To the extent possible areas should be included in, adjacent to, or linked through open space corridors with lands designated as "Resource Management" that are managed specifically for the preservation and enhancement of biological resources. (DSEIR p. 4.7-16.)

**Finding:** The mitigation features an on-site wetland compensation ratio of 1:1 for ground disturbing activity associated with the construction of the Lake A diversion structure, the realigned ADV, or in other areas identified as containing wetlands in the Project aquatic resource delineation report. No lands on or adjacent to the Project site are designated "Resource Management." The mitigation areas are adjacent to the ADV corridor. Therefore, the Project is consistent with this policy. (DSEIR p. 4.7-16.)

- 7) **Biological Resources Policy 123**: Where site-specific impacts on biological resources resulting from a proposed land use outside the Urban Growth Boundary are identified, the County shall encourage that mitigation is complementary to the goals and objectives of the ECAP. To that end, the County shall recommend that mitigation efforts occur in areas designated as "Resource Management" or on lands adjacent to or otherwise contiguous with these lands in order to establish a continuous open space system in East County and to provide for long term protection of biological resources. (DSEIR p. 4.7-16.)

**Finding:** The Project is located outside of the Urban Growth Boundary. Numerous mitigation measures to protect biological resources are required for approval of the Project. These mitigation measures, described in Section 4.3, are complementary with the goals and objectives of the ECAP. Therefore, the Project is consistent with this policy. (DSEIR p. 4.7-16.)

- 8) **Biological Resources Policy 125**: The County shall encourage preservation of areas known to support special-status species. (DSEIR pp. 4.7-16, 4.7-17.)

**Finding:** The Project would have a less than significant impact on special status species with mitigation incorporated. The Project would also improve existing special status species habitat conditions compared to existing conditions. Therefore, the Project is consistent with this policy. (DSEIR pp. 4.7-16, 4.7-17.)

- 9) **Biological Resources Policy 126**: The County shall encourage no net loss of riparian and seasonal wetlands. (DSEIR p. 4.7-17.)

**Finding:** The Project would have a less than significant impact on riparian and seasonal wetlands. The Project would also improve existing wetlands compared to existing conditions with the realignment and revegetation of the ADV. Therefore, the Project is consistent with this policy. (DSEIR p. 4.7-17.)

- 10) **Biological Resources Policy 127:** The County shall encourage the preservation of East County's oak woodland plant communities. (DSEIR p. 4.7-17.)

**Finding:** The Project is not expected to have an adverse impact on oak woodland plant communities. Therefore, the Project is consistent with this policy. (DSEIR p. 4.7-17.)

- 11) **Biological Resources Policy 128:** The County shall ensure that, where quarries will be reclaimed as open space, reclamation plans are designed to restore biological value to sites through appropriate revegetation, contouring of lakes to simulate natural bodies of water, and protection or in-kind replacement of significant trees. (DSEIR p. 4.7-17.)

**Finding:** The Project includes reclaiming an existing quarry operation to both water management in most areas and open space and nonprime agricultural uses, and plans that restore biological value through appropriate revegetation. Therefore, the Project is consistent with this policy. (DSEIR pp. 2-14, 4.7-17.)

- 12) **Biological Resources Policy 129:** The County shall protect existing riparian woodland habitat present along the Arroyo Mocho, the ADV, Arroyo Las Positas, Arroyo de la Laguna; and Alamo, Tassajara, and Alameda Creeks. Exceptions to these requirements shall apply for those portions of the ADV to be excavated for water transfer Lakes A and B under the Specific Plan for the Livermore-Amador Valley Quarry Area Reclamation, which shall instead be subject to riparian habitat restoration as specified by Policies 128 and 164; and for any approved quarry operations in Regionally Significant Construction Aggregate Resource Sector C (Arroyo Mocho) or any other streambeds, which shall also be subject to habitat restoration under Policies 128 and 164, and according to applicable State Public Resources Code requirements, to the extent that proposed reclamation specifies riparian habitat as the end use. (DSEIR p. 4.7-17.)

**Finding:** The Project involves Lakes A and B; thus, Policies 128 and 164 apply in parts of the Project. Therefore, the Project meets the exception criteria and is consistent with this policy. (DSEIR p. 4.7-17.)

- 13) **Limitations on New Quarries Policy 155:** Except to the extent required by State law, no new quarry or other open-pit mine may be approved by the County outside the Urban Growth Boundary, unless approved by the voters of Alameda County. Excavation not adjacent to an existing quarry site and on the same or an adjoining parcel shall be regarded as a new quarry. A quarry that has received all necessary discretionary County and other approvals and permits prior to the effective date of

the ordinance — but has not yet exercised those approvals and permits — is to be considered an “existing” rather than a “new” quarry. (DSEIR p. 4.7-17.)

**Finding:** The Project site is located outside of the Urban Growth Boundary established under Measure D, but is not a new quarry. All sand and gravel excavations occurring at the Project site occur immediately adjacent to the existing quarry (i.e., immediately adjacent to the existing SMP-23 operations). The currently effective SMP-23 was issued in 1987, well before the effective provisions of Measure D, and thus the SMP-23 quarry is an “existing” quarry. Ongoing quarrying operations at the Project site are not a “new” quarry, as they occur adjacent to, and on the same and an adjoining parcel. Therefore, the Project is consistent with this policy. (DSEIR pp. 4.7-17, 4.7-18.)

- 14) **Development on State-Designated Regionally Significant Construction Aggregate Resource Areas Policy 157:** The County shall review proposals for development within or adjacent to state-designated Regionally Significant Construction Aggregate Resource Sectors. If the development is proposed on unincorporated land, the County shall consider the effects of such development on the future or continued extraction of the resource and shall approve such development only if conditions are applied to minimize the potential of the new use to preclude continued or future access to the resource. If the development is proposed within a city, the County shall encourage the city to do the same. (DSEIR p. 4.7-18.)

**Finding:** The Project site is within a state-designated Regionally Significant Construction Aggregate Resource Sector. Rather than precluding continued access to that aggregate resource, the Project would provide for reclamation of the site following completion of the extraction of that aggregate resource. Therefore, the Project is consistent with this policy. (DSEIR p. 4.7-18.)

- 15) **Minimizing Conflicts Policy 158:** The County shall require that, where conflicts between a new use and existing quarry are anticipated, notifying future residents and mitigating the conflict shall be the responsibility of the new use. (DSEIR p. 4.7-18.)

**Finding:** The Project is a reclamation plan for the eventual closure of the existing quarry, and thus would not conflict with the existing quarry operations. The Project would not introduce any new residents to the area, and would not create conflicts with existing uses. Therefore, the Project is consistent with this policy. (DSEIR p. 4.7-18.)

- 16) **Protection of Nearby Uses Policy 159:** The County shall impose conditions on approval of new Surface Mining Permits and Reclamation Plans to protect nearby uses from potential traffic, noise, dust, health and safety, visual and other impacts generated by sand and gravel quarries. Conversely, the County shall not approve land uses adjacent to any existing quarry or Regionally Significant Construction

Aggregate Resource Sector if the development of the new uses would result in exposure of residential or other sensitive uses to possible adverse impacts of the quarry, unless the new uses can effectively mitigate the significant adverse impacts and notify potential homeowners of the risk, as required by Policy 158. (DSEIR p. 4.7-18.)

**Finding:** The Project site does not invite a new use. The SEIR provides an analysis of the Project's potential traffic, noise, dust, health and safety, visual, and other impacts on nearby uses and recommends mitigation measures (where necessary) to avoid or reduce such impacts to less-than-significant levels where feasible. Therefore, the Project is consistent with this policy. (DSEIR p. 4.7-18.)

- 17) **Reclamation for Water Management Policy 160:** The County shall ensure that where quarry operations are located in areas designated as Water Management, extraction of the aggregate resource shall be allowed in the short-term. Reclamation of the land for water management and other compatible uses shall occur subject to conditions of Surface Mining Permits and Reclamation Plans and consistent with the LAVQAR. (DSEIR p. 4.7-18.)

**Finding:** The Project site is located in an area designated as Water Management, and extraction of aggregate resources is expected to continue, except in "Lake A." The proposed reclamation plan would allow for use of the completed quarry pit Lakes A and B for Zone 7 water management consistent with the LAVQAR and the revised reclamation plan. Therefore, the Project is consistent with this policy. (DSEIR p. 4.7-18.)

- 18) **Manufacturing Uses Policy 162:** The County shall allow manufacturing uses which make extensive use of harvested aggregate to locate near sand and gravel quarries. (DSEIR p. 4.7-19.)

**Finding:** Within the North Reclamation Area is CEMEX's currently operating materials processing facilities and stockpile areas. Uses include processing activities, stockpiles, administrative offices, a truck scale, and other facilities related to mining and processing. The Project does not propose addition of any on-site manufacturing uses. Therefore, the Project is consistent with this policy. (DSEIR p. 4.7-19.)

- 19) **Concurrent Mining and Agricultural Uses Policy 163:** The County shall encourage concurrent mining and agricultural uses on sites where aggregate deposits are overlain by agriculturally valuable soils to minimize the premature disturbance of such soils. To this end, the County shall consider phasing of quarry operations in the approval of Surface Mining Permits and Reclamation Plans. (DSEIR p. 4.7-19.)

**Finding:** As indicated in the initial study prepared with the notice of preparation for this SEIR, the Project site is not overlain by agriculturally

valuable soils (neither prime, statewide significant or locally significant farm soils). Based on the current mining plan and existing conditions at the site, concurrent mining and agricultural uses on the site would not be compatible. Therefore, the Project is consistent with this policy. (DSEIR p. 4.7-19.)

- 20) **Revegetation Policy 164**: The County shall ensure that where quarry operations will be reclaimed as open space, reclamation plans are designed to restore biological value to sites through appropriate revegetation, contouring of lakes to simulate natural bodies of water, and protection or in-kind replacement of significant trees. (DSEIR p. 4.7-19.)

**Finding:** The Project provides for the ultimate use of the completed quarry pit for Zone 7's water management, and it includes planting of native plants to minimize visual impacts, and re-vegetation of stream banks in a manner that would restore habitat value. Therefore, the Project is consistent with this policy. (DSEIR p. 4.7-19.)

- 21) **Water Conservation Policy 165**: The County shall require that water-conserving practices are incorporated into mining and reclamation operations. (DSEIR p. 4.7-19.)

**Finding:** One of the major objectives of this Project is to implement the LAVQAR Specific Plan and associated Zone 7 agreement by reclaiming the quarry pits (Lakes A and B) for use as basins for water storage, conveyance, and recharge facilities pursuant to and consistent with the LAVQAR Specific Plan. Implementation of the Chain of Lakes concept would allow Zone 7 to conserve water by enhancing and improving the reliability and sustainability of the groundwater supplies through groundwater recharge in the valley. Therefore, the Project is consistent with this policy. (DSEIR p. 4.7-19.)

- 22) **Land Use Buffers Program 69**: The County shall amend the Surface Mining Ordinance to require permit applicants for any Surface Mining Permit and Reclamation Plan to provide appropriate buffering of quarry operations from adjacent land uses, such as setbacks, landscaping, and use restrictions. (DSEIR p. 4.7-19.)

**Finding:** The SMO requires setbacks from adjacent uses of 25 feet or 50 feet from a right-of-way, the existing and expected future quarry operations do maintain setbacks from Vineyard Road (100 feet), from Shadow Cliffs Park (100 feet), and from the adjacent residential subdivisions (25 feet). These setbacks are consistent with the requirements of the currently effective SMP-23 issued by the County in 1987 and would be maintained as part of the reclamation plan amendment. Therefore, the Project is consistent with this program. (DSEIR p. 4.7-19.)

- 23) **Consistency with SMARA Program 70**: The County shall amend the Surface Mining Ordinance to include reclamation guidelines consistent with SMARA.

(DSEIR p. 4.7-20.)

**Finding:** The Project is a proposed update to the currently effective reclamation plan for SMP-23, and it specifically incorporates current reclamation standards consistent with SMARA reclamation standards pursuant to CCR Section 3700, et seq. The California Division of Mine Reclamation has review authority and reviewed the Project to determine consistency on May 30, 2019, with no comments. Therefore, the Project is consistent with this program. (DSEIR p. 4.7-20.)

- 24) **Recreational Opportunities Policy 101:** 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. (DSEIR p. 4.7-20.)

**Finding:** The Permittee is not a public water management agency so this policy does not technically apply here. However, the Project includes a proposal to build a trail along the southern border of Lake B, to be maintained by the East Bay Regional Park District. Additionally, the Project proposes to create a total of 137 acres of open space (including a 25-foot setback) at the Lake A site. Further, the Project proposes additional open space surrounding the approximately 5,800 linear foot reach of the to-be realigned ADV around Lake B. Therefore, the Project is consistent with this policy. (DSEIR p. 4.7-20.)

The Planning Commission hereby finds and concludes that, as established above, the Project does not conflict with the East County Area Plan.

### **County Surface Mining and Reclamation Ordinance**

- 1) **Agricultural Use (Section 6.80.060(A)):** If a mining operation is being conducted in an A District, all other uses permitted pursuant to the district regulations may be conducted on the site provided such uses do not interfere with meeting any of the requirements of this chapter, and provided any such uses are not prohibited by conditions of the surface mining permit or approved reclamation plan. (DSEIR p. 4.7-20.)

**Finding:** As this provision indicates, surface mining activities are permitted with an A: Agriculture zoning district upon approval of a surface mining permit. The Project site is located within an A: Agriculture zoning district. The proposed end use for the North Reclamation Area includes agriculture. Therefore, the Project is consistent with this ordinance. (DSEIR p. 4.7-20.)

- 2) **Accessory Uses (Section 6.80.060(C)):** Sorting, crushing, reducing, refining, mixing, packaging or other processing of minerals, or the operation of an asphalt or concrete batch plant; or any operation that uses or supplies materials produced, imported or used by mining and/or processing operations or an asphalt or concrete batch plant, may be permitted in conjunction with mining operations if conducted

within an A, M-1 or M-2 district, upon securing of a surface mining permit, when such uses are found by the planning commission to be an accessory use to the mining operations and when the planning commission finds that the effects of such processing, use, storage or transport of materials, including noise, odor, smoke, dust, bright lights, vibration, traffic, and production of waste, can be controlled so as to be compatible with adjacent uses and so as not to degrade natural resources. (DSEIR p. 4.7-21.)

**Finding:** Sorting, crushing, and other processing of aggregate is expected to continue pursuant to the previously approved surface mining permit. Changes or expansion of these activities are not proposed with this reclamation plan amendment. Therefore, the Project is consistent with this ordinance. (DSEIR p. 4.7-21.)

- 3) **Periodic Review (Section 6.80.190):** Surface mining permits and approved reclamation plans shall be reviewed by the planning commission, in accordance with the schedule adopted at the time of approval according to Section 6.80.180(C) of this chapter, to consider new or changed circumstances [sic] within the general area of the mining operations that should be accommodated by the permit or plan. The review shall include a public hearing as specified by Section 6.80.150 of this chapter.

At the conclusion of the public hearing, the planning commission may modify the permit or reclamation plan to conform to with [sic] this chapter, and such modified permit or plan shall be binding upon the operation. Any fees for periodic reviews shall be collected as specified by Section 6.80.100. (DSEIR p. 4.7-21.)

**Finding:** Compliance with this requirement would be required as part of Conditions of Approval for the Project. Therefore, the Project is consistent with this ordinance. (DSEIR p. 4.7-21.)

- 4) **Final Slope Design (Section 6.80.210(A)(1)):** Finished slopes shall conform to the requirements of Section 6.80.240E. These requirements include; a) final slopes shall be of such gradient as necessary to provide for slope stability, maintenance of required vegetation, public safety, and the control of drainage, as may be determined by engineering analysis of soils and geologic conditions and by taking into account probable future uses of the site. Final slopes shall not be steeper than two feet horizontal to one foot vertical (2:1) unless the applicant can demonstrate to the satisfaction of the planning commission that any such steeper slope will not be incompatible with the alternate future uses approved for the site; be hazardous to persons that may utilize the site under the alternate future uses approved for the site; and reduce the effectiveness of revegetation and erosion control measures where such are necessary. In no event shall the steepness of slopes exceed the critical gradient as determined by an engineering analysis of the slope stability. (DSEIR pp. 4.7-21, 4.7-22.)

**Finding:** Pursuant to the Project proposal, the final slopes of all quarry

operations are proposed to be no steeper than 2 feet horizontal to 1 foot vertical (2:1) throughout the project site, consistent with the ordinance requirements. The proposed slope designs provide for appropriate slope stability, public safety, and drainage control. Also, the Project would be required to implement an erosion control plan for the ADV realignment (see Mitigation Measure 4.4-1 and Appendix B-4 of the SEIR), berm and embankment grading (see Mitigation Measure 4.4-2), fill slopes at an inclination of 2H:1V or flatter (see Mitigation Measure 4.4-3), and cut slope requirements for Lake B (see Mitigation Measure 4.4-4) to provide for appropriate slope stability, public safety, and drainage control. Furthermore, the County would implement a Condition of Approval requiring installation of an inclinometer to a depth that extends to at least the proposed mining depth to monitor slope stability. Finally, a condition of approval shall be required 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 SMARA required Factors of Safety. Therefore, the Project is consistent with this ordinance. (DSEIR pp. 4.7-21, 4.7-22; FSEIR p. 4-6.)

- 5) **Temporary Slopes (Section 6.80.210(B)(2))**: Temporary slopes steeper than the finished slopes, in areas where finished slopes are to occur, shall be constructed and maintained in accordance with the recommendations, as approved by the planning director, or a soil engineer or a civil engineer registered in the state or an engineering geologist registered and certified in the state. Temporary slopes shall not be created or maintained in a manner that will interfere with the construction of finished slopes conforming to subsection (A)(1) of this section, and the soil engineer or engineering geologist shall make specific recommendations for the conversion of such temporary slopes to finished slopes. (DSEIR p. 4.7-22.)

**Finding:** The extraction of raw aggregate material for the vested mining operations is expected to continue using conventional mining equipment. These excavation processes do not require temporary side slopes to be excavated steeper than 2H:1V where finished slopes are to occur. The Project does not include any slope designs (permanent or temporary) that would be incompatible with the intended future use as water management, open space, or non-prime agriculture, or that would be hazardous to persons that may use the site after reclamation, or that would reduce the effectiveness of revegetation and erosion control measures. Therefore, the Project is consistent with this ordinance. (DSEIR p. 4.7-22.)

- 6) **Benches (Section 6.80.210(B))**: Benches shall be provided where necessary to control drainage on slopes or to provide for access or public safety. (DSEIR p. 4.7-22.)

**Finding:** As excavation of the quarry pits deepen, it is anticipated that temporary benches would be provided within the pits to enable large equipment to access the bottom of the pit. As discussed at Impact 4.4-1, the

proposed slopes on-site would be acceptable under static and seismic conditions (Geocon 2020). (DSEIR p. 4.7-22.) In addition, a recent investigation by CEMEX and PG&E has determined a slope instability issue on the east slope of Lake B, and a buttress is being engineered and constructed to address this issue. Finally, a condition of approval shall be required 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 SMARA required Factors of Safety. (FSEIR p. 4-6.) Therefore, the Project is consistent with this ordinance.

- 7) **Parcel Setbacks (Section 6.80.210(C)(1))**: Unless the Planning Commission approves a lesser setback pursuant to Section 6.80.210(C)(3), surface mining excavations shall not be conducted closer than twenty-five (25) feet of the common property line of any parcel, except where the adjacent property is being mined in the same manner with respect to such line; and fifty (50) feet of the right-of-way or future width line of any street. (DSEIR p. 4.7-22.)

**Finding:** The current 25-foot setback from the adjacent residential subdivision is consistent with the requirements of the currently effective SMP-23 issued by the County in 1987. The Project would not alter these setbacks. Therefore, the Project is consistent with this ordinance. (DSEIR p. 4.7-22.)

- 8) **Watercourse Setbacks (Section 6.80.210(C)(2))**: Mining excavations shall be set back from water courses, flood control channels, reservoirs and water conservation facilities a distance as may be determined by the Planning Commission on recommendation of Alameda County Flood Control and Water Conservation District (including the Zone 7 Water Agency) or Community Development Agency to be sufficient to protect existing or planned facilities. (DSEIR pp. 4.7-22, 4.7-23.)

**Finding:** One of the major changes in the Project as compared to the approved reclamation plan is that the Project proposes to realign the ADV to go around Lake B, rather than ultimately through Lake A and Lake B, as was approved in the reclamation plan for SMP-23 as issued by the County in 1987. The Project's proposal maintains a separation between ADV and the Lakes, and provides for creek restoration within the preserved Arroyo del Valle creek corridor. Therefore, the Project is consistent with this ordinance. (DSEIR pp. 4.7-22, 4.7-23.)

- 9) **Watercourse Setbacks (Section 6.80.210(C)(3))**: The Planning Commission, after receipt of a complete application and with public notice and hearing in accordance with the provisions of Article II of this Chapter, if required by the public need, may authorize setbacks less than those provided in Section 6.80.210(C)(1)(a) and (b) if the Planning Commission makes the following findings, supported by the conclusions of a geotechnical study prepared by a qualified professional licensed by the State of California: The lesser setback is required by the public need, and is not related to the demand for additional mineral resource;

- A lesser setback and any associated resultant slope are acceptable based on the specific characteristics of the location and are supported by the conclusions of the geotechnical study prepared by a qualified professional licensed by the State of California;
- A lesser setback and any associated resultant slope will not present a risk to the adjacent property or any users thereof;
- A lesser setback and any associated resultant slope will permit adequate access for the owner of the mined land to the permitted area both during mining and following reclamation to the end use;
- A lesser setback and any associated resultant slope will safely accommodate any existing or planned utilities or facilities, including, but not limited to, water diversion and conveyance structures; maintenance roads, safety berms and guardrails; drainage features; and screening landscapes, where required; and
- A lesser setback will be in the interest of, and not compromise, the public health, safety and welfare.

(DSEIR p. 4.7-23.)

**Finding:** The Project does not propose any lesser setbacks than provided under Section 6.80.210(c)(1)(a) and (c)(1)(b) as described above, and no authorization for lesser setbacks need be considered for the Project. Therefore, the Project is consistent with this ordinance. (DSEIR p. 4.7-23.)

- 10) **Use of Explosives (Section 6.80.210(F)):** No explosives shall be used except as authorized by the surface mining permit. When authorized, the specific times of use shall be approved by the director of public works. (DSEIR p. 4.7-23.)

**Finding:** No explosives are proposed to be used for any reclamation purposes for the Project. Therefore, the Project is consistent with this ordinance. (DSEIR p. 4.7-23.)

- 11) **Grading Controls (Section 6.80.210(G)(2)):** Grades in areas being mined shall be maintained so as to avoid accumulations of water that could serve as breeding areas for mosquitoes. (DSEIR p. 4.7-24.)

**Finding:** All grading and erosion control performed at the Project site is required to conform to the design standards and geotechnical requirements of the Alameda County Grading Ordinance, and erosion and sedimentation control plans are submitted to the Director of Public Works for review and approval. These standards, requirements, and monitoring provisions ensure that proper grades throughout the site are maintained during active mining operations. Post-reclamation use of the quarried pits for water management would be implemented under Zone 7's requirements and would include appropriate mosquito control. Therefore, the Project is consistent with this ordinance. (DSEIR p. 4.7-24.)

- 12) **Groundwater Flows (Section 6.80.210(G)(3))**: Excavations that may penetrate near or into usable water bearing strata shall not reduce the transmissivity or area through which water may flow (unless approved equivalent transmissivity or area has been provided for elsewhere), nor subject such groundwater basin or sub-basin to pollution or contamination. (DSEIR p. 4.7-24.)

**Finding:** One of the major objectives of the Project is to implement the LAVQAR Specific Plan and the Zone 7 agreement for reclaiming the excavated Chain of Lakes areas (Lakes A and B) as basins for water storage, conveyance, and recharge facilities for the Chain of Lakes. Implementation of the Chain of Lakes concept would allow Zone 7 to enhance groundwater recharge and improve reliability and sustainability of groundwater supplies in the Valley. Analysis was conducted to assure no transmissivity issues could occur. (See EMKO 2020a, App. F-2 of the SEIR; see also DSEIR p. 4.6-20, Table 4.6-1.) Mitigation measures would ensure hydrology and water quality impacts are less than significant. (DSEIR pp. See DSEIR pp. 4.6-76 to 4.6-109.) Therefore, the Project is consistent with this ordinance. (DSEIR p. 4.7-24.)

- 13) **Water Storage (Section 6.80.210(G)(4))**: Nothing in this chapter shall be construed to prevent the use of mined lands for the conservation or storage of water, or for the control of flood or storm waters, by a public agency duly authorized to engage in such work, provided that any such use will not conflict with nor prevent reclamation required under an approved Reclamation Plan, and provided such use is approved by the County Flood Control and Water Conservation District and/or Public Works Agency. (DSEIR p. 4.7-24.)

**Finding:** One of the major objectives of this Project is to implement the LAVQAR Specific Plan and associated Zone 7 agreement by reclaiming the quarry pits (Lakes A and B) for use as basins for water storage, conveyance, and recharge facilities pursuant to and consistent with the Chain of Lakes plan. Implementation of the Chain of Lakes concept would allow Zone 7 to enhance groundwater recharge and improve reliability and sustainability of groundwater supplies in the Valley. Therefore, the Project is consistent with this ordinance. (DSEIR p. 4.7-24.)

- 14) **Water Discharge Standards (Section 6.80.210(G)(5))**: Any waters discharged from the site to adjacent lands, streams, or bodies of water or to any groundwater body shall meet all applicable water quality standards of the Regional Water Quality Control Board and any other agency with authority over such discharges. Records of any water quality monitoring conducted in conjunction with the requirements of such agency or agencies shall be made available to the Planning Director and the Director of Public Works on request. Discharges of water to designated on-site settling ponds or de-silting basins shall not be deemed to be in violation of this chapter solely on the basis of sediment content. (DSEIR pp. 4.7-24, 4.7-25.)

**Finding:** Water discharges from the Project site are currently regulated by the San Francisco Bay RWQCB and are subject to permitting requirements of the currently applicable NPDES General Waste Discharge Requirements for Discharges of Process Wastewaters from Aggregate Mining, Sand Washing, and Sand Offloading Facilities to Surface Waters (Aggregate Mining General Permit). The current quarry operations (SMP-23) operate under a Notice of General Permit Coverage for Discharge issued by the San Francisco Bay RWQCB in October 2020, which became effective on January 1, 2021 and will expire on December 31, 2025. Therefore, the Project is consistent with this ordinance. (DSEIR pp. 4.7-24, 4.7-25.)

- 15) **Erosion Control (Section 6.80.210(H)):** During the period mining operations are being conducted, and prior to final reclamation of mined lands, the operator shall take measures to prevent erosion of adjacent lands from water discharged from the site of mining operations and the off-site discharge of sediment. Such measures may include the construction of properly designed retarding basins, settling ponds and other water treatment facilities, ditches, diking and revegetation of slopes. No discharge of sediment to offsite bodies of water shall be permitted that will result in higher concentrations of silt than existed in off-site waters prior to mining operations. Stockpiles of overburden and minerals shall be managed to minimize water and wind erosion. The removal of vegetation and overburden in advance of surface mining shall be kept to a minimum. (DSEIR pp. 4.7-25.)

**Finding:** Based on the Project's reclamation and phasing plan, erosion control facilities such as silt fences, berms, hay bales, or similar means to deter erosion would be employed. The specifics of where and when such measures would be implemented would depend upon the particular configuration of grading work being conducted at any given time. Therefore, the Project is consistent with this ordinance. (DSEIR pp. 4.7-25.)

- 16) **Land Use Compatibility (Section 6.80.210(I)):** All activities of mining and processing minerals shall be conducted in a manner that noise, dust and bright lights do not exceed levels compatible with the uses of adjacent lands as determined by the planning commission in the issuance of the surface mining permit or as a result of its periodic review of any permit. (DSEIR pp. 4.7-25.)

**Finding:** The potential noise, dust, and lighting and glare impacts associated with ongoing mining operations are not addressed in this SEIR, because they are conducted pursuant existing permits. The potential for lighting and glare and noise impacts related to the Project reclamation activities are addressed in Section 4.1, "Aesthetics," and Section 4.8, "Noise," respectively. Those impacts would be less than significant. Therefore, the Project is consistent with this ordinance. (DSEIR pp. 4.7-25.)

The Planning Commission hereby finds and concludes that, as established above, the Project does not conflict with the County Surface Mining and Reclamation Ordinance.

**Specific Plan for Livermore-Amador Valley Quarry Area Reclamation (LAVQAR Specific Plan) (Alameda County 1981) Consistency:**

The Project site is subject to the 1981 LAVQAR Specific Plan. (DSEIR p. 4.7-11.) The LAVQAR Specific Plan was adopted as a master reclamation plan that would shape mined pit areas into a “Chain of Lakes” and return the remaining mined lands to productive uses after the removal of sand and gravel preserves. (DSEIR p. 4.7-11.) The general objectives of the LAVQAR Specific Plan are:

- 1) To enable the competing resources of land, water, and sand and gravel to be utilized with a minimum of conflict and disruption;
- 2) To plan for reclamation, productive reuse, and rehabilitation of the Quarry Area;
- 3) To mitigate adverse effects of mining;
- 4) To satisfy requirements of the State Surface Mining and Reclamation Act of 1975 and the Alameda County Surface Mining Ordinance; and
- 5) To provide a coordinated plan for arrangement of mining-produced land and water masses into a coherent, flexible form, reflecting interrelatedness of geology, hydrology, land use, and other factors throughout the Quarry Area.

(DSEIR p. 4.7-11.) The following LAVQAR Specific Plan policies are relevant to the Project:

- **Policy 11:** The operators shall dedicate to Zone 7, upon terms mutually acceptable to the operators and Zone 7, all water areas and necessary supporting land areas to operate the chain of lakes in the public interest. The right of the public to manage and use water resources of the chain of lakes and area groundwater undiminished with respect to quantity and quality shall be expressly asserted and any other uses permitted in said areas shall be compatible with said right.
- **Policy 13:** Land areas may appropriately be used for mining, mining-related industry in conjunction with ongoing mining, agriculture, open space, and watershed uses. New or expanded uses in the Quarry Area shall be allowed only upon securing Zoning Approval to ensure compatibility with the LAVQAR and reclamation of the area. Reclaimed land should be capable of supporting beneficial uses. No uses shall be permitted which may unacceptably pollute the lakes.

(DSEIR pp. 4.7-12, 4.7-13.)

The key concept of the Project is the shaping of the Lake A and Lake B mining pit areas, which would eventually contain water, into a portion of the "chain of lakes" during the course of mining over the 50- to 60-year period that sand and gravel reserves are expected to last in the quarry area. (DSEIR p. 4.7-11.) The Chain of Lakes is intended to provide a surface water storage and conveyance system to replace a portion of the preexisting subsurface water storage and conveyance system feeding the groundwater basin. Connecting conduits between the lakes and structures necessary to capture and carry local runoff waters would be provided by the operators at no cost to the public through Zone 7. (DSEIR pp. 4.7-11, 4.7-12.) At the conclusion of mining, water from Arroyo del Valle

would be capable of being diverted into the Chain of Lakes, and a bypass channel for that watercourse would also be provided to maintain downstream flows necessary to Zone 7 and the Alameda County Water District. (DSEIR p. 4.7-12.)

The Project would continue to provide for the diversion of water from the ADV into the Chain of Lakes. (DSEIR p. 4.7-25.) Although the Project no longer provides for the ADV to flow through Lake A, the Project does maintain the diversion capability from the ADV at its Lake A diversion structure. (DSEIR p. 4.7-25.) Furthermore, water would still be conveyed from Lake A to future Lake C via a water conveyance pipeline. (DSEIR p. 4.7-25.) The Project adheres to the general requirement to dedicate to Zone 7, upon mutually acceptable terms in accordance with LAVQAR Policy VI-11, at no cost, all excavated Chain of Lakes basins within the LAVQAR, all exterior perimeter areas, interior perimeter areas sufficient to provide a minimum 25-foot-wide access, and appurtenant levees, conduits, and diversion structures. (DSEIR p. 4.7-25, 4.7-26.) The Project also fulfills the LAVQAR requirement for diversion of 500 cfs from Lake A into Lake C. Lastly, the Project does not propose new or expanded uses. (DSEIR p. 4.7-26.)

**Finding:** The Commission hereby finds and concludes that the Project is consistent with the LAVQAR. (DSEIR pp. 4.7-25, 4.7-26.)

**EXHIBIT C**  
**MMRP**

# MITIGATION MONITORING AND REPORTING PROGRAM

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## INTRODUCTION

Mitigation Monitoring and Reporting Programs (MMRPs) are required by the California Environmental Quality Act (CEQA) Section 21081.6 to be adopted by CEQA Lead Agencies for projects having the potential to cause significant environmental impacts. The MMRP describes changes to the project or conditions of project approval that mitigate or avoid the project's potential significant effects on the environment. This MMRP addresses the Eliot Quarry (SMP-23) Reclamation Plan Amendment proposed by RMC Pacific Materials, LLC (CEMEX). The proposed project is located within Alameda County (County); the County is the Lead Agency under CEQA and has discretionary authority over the proposed project.

## MMRP FORMAT AND IMPLEMENTATION

Mitigation measures that would reduce or eliminate potential environmental impacts of the proposed project are identified in the *Eliot Quarry (SMP-23) Reclamation Plan Amendment Subsequent Environmental Impact Report (SEIR)*. These mitigation measures will become conditions of project approval if the project is approved. The County is required to verify that all adopted mitigation measures are implemented properly and to ensure compliance. This MMRP (including the checklist) has been formulated to implement that requirement. The MMRP shall be adopted, along with CEQA Findings, by the County (Lead Agency) and must be administered by County personnel from the Planning and Public Works departments. Specific responsibilities are delineated for each measure in the attached checklist table and these responsibilities may be delegated to qualified County staff or consultants.

The checklist, which follows as Table 1, "Mitigation Monitoring and Reporting Program," is intended to be used by the Permittee, grading/construction contractors, and personnel from the above-listed County Departments, as the appointed mitigation implementation and monitoring entities. Information contained within the checklist clearly identifies each mitigation measure, defines the conditions required to verify compliance, and delineates the monitoring schedule. Following is an explanation of the three columns that constitute each MMRP checklist.

- Column 1: Mitigation Measure: An inventory of each mitigation measure is provided.
- Column 2: Monitoring Responsibility: Identifies who are responsible for determining compliance with each mitigation measure (e.g., Alameda County Planning Department, construction contractor, project Permittee, qualified biologist).
- Column 3: Implementation Schedule: As scheduling is dependent upon the progression of the overall project, specific dates are not used within the "Schedule" column. Instead, scheduling describes a logical succession of events (e.g., prior to ground-disturbing activities, etc.) and, if necessary, delineates a follow-up program.
- Column 4: Monitoring Compliance Record Name/Date: Column is left blank and is to be signed and dated when compliance with the mitigation measure has been met.

**TABLE 1  
MITIGATION MONITORING AND REPORTING PROGRAM**

Mitigation Measures	Monitoring Responsibility	Implementation Schedule	Monitoring Compliance Record Name/Date
<b>AESTHETICS/VISUAL RESOURCES</b>			
<p><b>Mitigation Measure 4.1-1:</b> Daily Limitation of Construction Hours. All reclamation-related construction activities shall be limited to the 7 a.m. – 7 p.m. Monday through Friday, and 9 a.m. – 6 p.m. on Saturday. Reclamation construction activity shall be prohibited on Sundays. <sup>1</sup></p>	Alameda County Planning Department; Permittee	Ongoing until reclamation-related construction activities are complete	
<b>AIR QUALITY</b>			
<p><b>Mitigation Measure 4.2-1:</b> Off-road Equipment Plan. The Permittee shall implement the following to reduce project NOx emissions:</p> <p>a) Develop a plan demonstrating that the off-road equipment (more than 50 horsepower) to be used in Lake A reclamation and the Lake B realignment of the Arroyo del Valle would achieve a fleet-average 20 percent NOx reduction compared to the most recent ARB fleet average for the duration of these reclamation activities. Acceptable options for reducing emissions include the use of late model engines, low-emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, and/or other options as such become available. The plan shall be submitted to the County within 90 days of project approval.</p> <p>The Alameda County Community Development Agency would be responsible for ensuring compliance.</p>	Alameda County Planning Department; Permittee	Within 90 days of project approval	
<p><b>Mitigation Measure 4.2-2:</b> Update Dust Control Plan. Within 90 days of proposed project approval, the Permittee shall update its existing 2015 Dust Control Plan to address changes that would occur as a result of the proposed project. The new plan shall comply with BAAQMD best practices and be approved by the County.</p>	Alameda County Planning Department; Permittee	Within 90 days of project approval	
<b>BIOLOGICAL RESOURCES</b>			
<p><b>Mitigation Measure 4.3-1a:</b> Obtain Regulatory Entitlements and Authorizations. The Permittee shall obtain regulatory entitlements and authorizations from the US Army Corps of Engineers (“USACE”), U.S. Fish and Wildlife Service (“USFWS”), National Marine Fisheries Service (“NMFS”), California Regional Water Quality Control Board (“RWQCB”), and California Department of Fish and Wildlife (“CDFW”).</p>	Alameda County Planning Department; Permittee; applicable regulatory agencies	Prior to reclamation-related construction activities in waters or sensitive habitats	

<sup>1</sup> Applies to reclamation activities; does not apply to vested mining and processing activities.

Mitigation Measures	Monitoring Responsibility	Implementation Schedule	Monitoring Compliance Record Name/Date
<p><b>Mitigation Measure 4.3-1b:</b> Special Status Amphibian and Reptile Species                      To avoid and minimize impacts to special status amphibian and reptile species, including western pond turtle, Alameda whipsnake (striped racer), California red-legged frog, California tiger salamander, coast horned lizard, San Joaquin whipsnake, and western spadefoot, the following shall apply:</p> <ol style="list-style-type: none"> <li>1. No more than 48 hours prior to the commencement of reclamation-related ground disturbing activity (i.e. clearing, grubbing, or grading) associated with the construction of the Lake A diversion structure, realigned Arroyo del Valle, or other areas, a qualified biologist shall conduct a pre-construction survey of suitable habitat in the project reclamation area. The survey shall include aquatic habitat and adjacent uplands surrounding aquatic habitat within the project reclamation area. Adjacent parcels under different land ownership will be surveyed only if access is granted or if the parcels are visible from authorized areas.</li> <li>2. The biologist shall supply a brief written report (including date, time of survey, survey method, name of surveyor and survey results) to the Planning Department prior to the commencement of ground disturbing activity.</li> <li>3. Construction personnel shall receive worker environmental awareness training prior to the commencement of ground disturbing activity. This training instructs workers how to recognize special status amphibian and reptiles species and their habitat.</li> <li>4. If a special status amphibian or reptile species is encountered during construction, then all construction shall cease until the animal has moved out of the construction area on its own or has been relocated by a qualified biologist in coordination with the California Department of Fish and Wildlife (CDFW). If the animal is injured or trapped, a qualified biologist shall move the animal out of the construction area and into a suitable habitat area. CDFW shall be notified within 24-hours that a special status amphibian or reptile species was encountered.</li> <li>5. Comply with the mitigation requirements and conditions of any Section 1600 Lake and Streambed Alteration Agreement (Agreement) with CDFW for project reclamation activities, as applicable to amphibian and reptile species. If there is a conflict between the terms of mitigation items 1 through 4 above and the Agreement, then the Permittee shall abide by the terms of the Agreement.</li> </ol>	<p>Alameda County Planning Department; Qualified Biologist; Permittee; CDFW</p>	<p>No more than 48 hours prior to reclamation-related ground disturbing activity; Ongoing; Within 24 hours of special status species encountered, if applicable.</p>	

Mitigation Measures	Monitoring Responsibility	Implementation Schedule	Monitoring Compliance Record Name/Date
<p><b>Mitigation Measure 4.3-1c: Nesting Raptors</b> To avoid and minimize impacts to nesting raptors, including bald eagle, golden eagle, American peregrine falcon, prairie falcon, white-tailed kite, Cooper’s hawk, ferruginous hawk, and northern harrier, the following shall apply:</p> <ol style="list-style-type: none"> <li>1. If reclamation-related ground disturbing activity (which includes clearing, grubbing, or grading) is to commence within 500 feet of suitable nesting habitat during the nesting season (e.g., March 1-Sept. 15), then a qualified biologist shall conduct a pre-construction survey for raptor nests. The survey shall cover all potential tree and ground nesting habitat on-site and off-site up to a distance of 500 feet from the construction activity. The survey shall occur within 30 days of the date that reclamation/construction would encroach within 500 feet of suitable habitat. Adjacent parcels under different land ownership will be surveyed only if access is granted or if the parcels are visible from authorized areas.</li> <li>2. The biologist shall supply a brief written report (including date, time of survey, survey method, name of surveyor and survey results) to the Planning Department prior to the commencement of ground disturbing activity. If no active nests are found during the survey, then no further mitigation would be required.</li> <li>3. If any active nests are found, then the Planning Department and the California Department of Fish and Wildlife (CDFW) shall be contacted to determine appropriate avoidance and minimization measures. The avoidance and minimization measures shall be implemented prior to the commencement of construction within 500 feet of an identified nest.</li> <li>4. Comply with the mitigation requirements and conditions of any Section 1600 Lake and Streambed Alteration Agreement (Agreement) with CDFW for project reclamation activities, as applicable to nesting raptors. If there is a conflict between the terms of mitigation items 1, 2, or 3 above and the Agreement, then the Permittee shall abide by the terms of the Agreement.</li> </ol>	<p>Alameda County Planning Department; Qualified Biologist; CDFW; Permittee</p>	<p>Prior to reclamation-related ground disturbing activity between March 1-September 15 (nesting season); Within 30 days of the date that reclamation/construction would encroach within 500 feet of suitable habitat or identified nest</p>	
<p><b>Mitigation Measure 4.3-1d: Nesting Birds</b> To avoid and minimize impacts to migratory nesting birds, the following shall apply:</p> <ol style="list-style-type: none"> <li>1. If reclamation-related ground disturbing activity (which includes clearing, grubbing, or grading) is to commence within 50 feet of nesting habitat between February 1 and August 31, then a qualified biologist shall conduct a pre-construction survey for active migratory nests within 14 days prior to the commencement of ground disturbing activity. Adjacent parcels under different land ownership will be surveyed only if access is granted or if the parcels are</li> </ol>	<p>Alameda County Planning Department; Qualified Biologist; CDFW; Permittee</p>	<p>Prior to reclamation-related ground disturbing activity between February 1-August 31 (nesting season); Within 30 days of the date that reclamation/construction</p>	

Mitigation Measures	Monitoring Responsibility	Implementation Schedule	Monitoring Compliance Record Name/Date
<p>visible from authorized areas.</p> <ol style="list-style-type: none"> <li>2. The biologist shall supply a brief written report (including date, time of survey, survey method, name of surveyor and survey results) to the Planning Department prior to the commencement of ground disturbing activity. If no active nests are found during the survey, then no further mitigation would be required.</li> <li>3. If active nests are found in the survey area, then a non-disturbance buffer of a size determined by a qualified biologist shall be established and maintained around the nest to prevent nest failure. All construction activities shall be avoided within this buffer area until a qualified biologist determines that nestlings have fledged, or until September 1, unless otherwise approved by the Planning Department and CDFW.</li> </ol>		<p>n would encroach within 500 feet of suitable habitat or identified nest</p>	
<p><b>Mitigation Measure 4.3-1e:</b> Loggerhead Shrike To avoid and minimize potential impacts to loggerhead shrike, the following shall apply:</p> <ol style="list-style-type: none"> <li>1. If reclamation-related ground disturbing activity (which includes clearing, grubbing, or grading) is to commence within 200 feet of suitable nesting habitat during the nesting season (February 15-August 31), then a qualified biologist shall conduct a pre-construction survey for loggerhead shrike nests in all suitable shrubs and trees that are within 200 feet from the construction activities. The survey shall occur within 30 days prior to the commencement of ground disturbing activities. Adjacent parcels under different land ownership will be surveyed only if access is granted or if the parcels are visible from authorized areas.</li> <li>2. The biologist shall supply a brief written report (including date, time of survey, survey method, name of surveyor and survey results) to the Planning Department prior to the commencement of ground disturbing activity. If no active nests are found during the survey, then no further mitigation would be required.</li> <li>3. If nesting individuals are found, then an exclusion zone shall be established within 200 feet of the active nest(s) until a qualified biologist determines that the young of the year are no longer reliant upon the nest.</li> <li>4. Comply with the mitigation requirements and conditions of any Section 1600 Lake and Streambed Alteration Agreement (Agreement) with the California Department of Fish and Wildlife for project reclamation activities, as applicable to the loggerhead shrike. If there is a conflict between the terms of mitigation items 1, 2, or 3 above and the Agreement, then the Permittee shall abide by the terms of the Agreement.</li> </ol>	<p>Alameda County Planning Department; Qualified Biologist; CDFW; Permittee</p>	<p>Within 30 days prior to reclamation-related ground disturbing activities between February 15-August 3 (during nesting season); until a qualified biologist determines that the young of the year are no longer reliant upon the nest.</p>	

Mitigation Measures	Monitoring Responsibility	Implementation Schedule	Monitoring Compliance Record Name/Date
<p><b>Mitigation Measure 4.3-1f: Tricolored Blackbird</b> To avoid and minimize potential impacts to tricolored blackbird, the following shall apply:</p> <ol style="list-style-type: none"> <li>1. If reclamation-related ground disturbing activity (which includes clearing, grubbing, or grading) is to commence within 300 feet of suitable nesting habitat during the nesting season (March 1-July 31), then a qualified biologist shall conduct a pre-construction survey for nesting tricolored blackbirds in suitable habitats that are within 300 feet from the project activities. The survey shall occur within 30 days prior to the commencement of ground disturbing activities. Adjacent parcels under different land ownership will be surveyed only if access is granted or if the parcels are visible from authorized areas.</li> <li>2. The biologist shall supply a brief written report (including date, time of survey, survey method, name of surveyor and survey results) to the Planning Department prior to the commencement of ground disturbing activity. If no tricolored blackbirds are found during the survey, then no further mitigation would be required.</li> <li>3. If an active tricolored blackbird colony is found within 300 feet of reclamation activity, the Permittee may avoid impacts to tricolored blackbird by establishing a 300-foot temporary setback, with fencing that prevents any project activity within 300 feet of the colony. A qualified biologist shall verify that setbacks and fencing are adequate and will determine when the colonies are no longer dependent on the nesting habitat (i.e. nestling have fledged and are no longer using habitat). The breeding season typically ends in July.</li> <li>4. Comply with the mitigation requirements and conditions of any Section 1600 Lake and Streambed Alteration Agreement (Agreement) with CDFW for project reclamation activities, as applicable to tricolored blackbird. If there is a conflict between the terms of mitigation items 1, 2, or 3 above and the Agreement, then the Permittee shall abide by the terms of the Agreement.</li> </ol>	<p>Alameda County Planning Department; Qualified Biologist; CDFW; Permittee</p>	<p>Within 30 days prior to reclamation-related ground disturbing activities between March 1 - July 31 (during nesting season); until a qualified biologist determines that the colonies are no longer reliant upon nesting habitat.</p>	
<p><b>Mitigation Measure 4.3-1g: Burrowing Owl</b> To avoid and minimize potential impacts to western burrowing owl, the following shall apply:</p> <ol style="list-style-type: none"> <li>1. If reclamation-related ground disturbing activity (which includes clearing, grubbing, or grading) is to commence within 500 feet of suitable owl burrow habitat, then a qualified biologist shall conduct a pre-construction survey for burrowing owl. The survey shall occur within 30 days prior to the date that</li> </ol>	<p>Alameda County Planning Department; Qualified Biologist; CDFW; Permittee</p>	<p>Within 30 days prior to reclamation-related ground disturbing activities within 500 feet of suitable habitat; Ongoing</p>	

Mitigation Measures	Monitoring Responsibility	Implementation Schedule	Monitoring Compliance Record Name/Date
<p>reclamation activities will encroach within 500 feet of suitable habitat. Adjacent parcels under different land ownership will be surveyed only if access is granted or if the parcels are visible from authorized areas. Surveys shall be conducted in accordance with the following:</p> <ol style="list-style-type: none"> <li>a. A survey for burrows and owls shall be conducted by walking through suitable habitat over the entire reclamation construction site and in areas within 500 feet of the project disturbance area.</li> <li>b. Pedestrian survey transects should be spaced to allow 100 percent visual coverage of the ground surface. The distance between transect center lines should be no more than 30 meters, and should be reduced to account for differences in terrain, vegetation density, and ground surface visibility. Surveyors should maintain a minimum distance of 50 meters from any owls or occupied burrows.</li> <li>c. If no occupied burrows or burrowing owls are found in the survey area, then the biologist shall supply a brief written report (including date, time of survey, survey method, name of surveyor and survey results) to the Planning Department and no further mitigation is necessary.</li> <li>d. If occupied burrows or burrowing owls are found, then a complete burrowing owl survey is required. This consists of a minimum of four site visits conducted on four separate days, which must also be consistent with the Survey Method, Weather Conditions, and Time of Day sections of Appendix D of the California Department of Fish and Wildlife (CDFW) "Staff Report on Burrowing Owl Mitigation" (March 2012). The Permittee shall then submit a survey report to the Planning Department which is consistent with the CDFW 2012 Report.</li> <li>e. If occupied burrows or burrowing owls are found during the complete burrowing owl survey, then the Permittee shall contact the Planning Department and consult with CDFW prior to construction and will be required to submit a Burrowing Owl Mitigation Plan (subject to the approval of the Planning Department and CDFW). This plan must document all proposed measures, including avoidance, minimization, exclusion, relocation, or other measures, and include a plan to monitor mitigation success. The CDFW "Staff Report on Burrowing Owl Mitigation" (March 2012) should be used in the development of the mitigation plan.</li> </ol> <p>2. Comply with the mitigation requirements and conditions of any Section 1600 Lake and Streambed Alteration Agreement (Agreement) with CDFW for project</p>			

Mitigation Measures	Monitoring Responsibility	Implementation Schedule	Monitoring Compliance Record Name/Date
<p>reclamation activities, as applicable to burrowing owl. If there is a conflict between the terms of mitigation item 1 above and the Agreement, then the Permittee shall abide by the terms of the Agreement.</p>			
<p><b>Mitigation Measure 4.3-1h: Special Status Bats</b> To avoid and minimize potential impacts to special status bats, including hoary bat, pallid bat, and Yuma myotis, the following shall apply:</p> <ol style="list-style-type: none"> <li>1. If reclamation-related ground disturbing activity (which includes clearing, grubbing, or grading) is to commence within 300 feet of suitable bat habitat during the winter hibernaculum season (e.g., November 1 through March 31), then a qualified biologist shall conduct a pre-construction survey within 300 feet of the reclamation project footprint on the CEMEX property to determine if a potential winter hibernaculum is present, and to identify and map potential hibernaculum sites.</li> <li>2. The biologist shall supply a brief written report (including date, time of survey, survey method, name of surveyor and survey results) to the Planning Department prior to the commencement of ground disturbing activity. If no winter hibernaculum sites are found during the survey, then no further mitigation would be required.</li> </ol> <p>If potential hibernaculum sites are found, then the Permittee shall avoid all areas within a 300-foot buffer around the potential hibernaculum sites until bats have vacated the hibernaculum. Winter hibernaculum habitat shall be considered fully avoided if reclamation-related activities do not impinge on a 300-foot buffer established by the qualified biologist around an existing or potential winter hibernaculum site. The qualified biologist will determine if non-maternity and nonhibernaculum day and night roosts are present on the project site. If necessary, a qualified biologist will use safe eviction methods to remove bats if direct impacts to non-maternity and non-hibernaculum day and night roosts cannot be avoided. If a winter hibernaculum site is present, then reclamation activities shall not occur until the hibernaculum is vacated, or, if necessary, safely evicted using methods acceptable to CDFW.</p>	<p>Alameda County Planning Department; Qualified Biologist; CDFW; Permittee</p>	<p>Winter Hibernaculum (November 1 – March 31)</p>	
<p><b>Mitigation Measure 4.3-2a: Special Status Plants</b> To avoid and minimize potential impacts to special status plants, including Congdon's tarplant, Mt. Diablo buckwheat, and Mt. Diablo fairy-lantern, the following shall apply:</p> <ol style="list-style-type: none"> <li>1. Prior to the commencement of reclamation-related ground disturbing activity (which includes clearing, grubbing, or grading) in areas identified as having</li> </ol>	<p>Alameda County Planning Department; Qualified Botanist or Biologist; CDFW; USFWS; Permittee</p>	<p>Within 30 days prior to reclamation-related ground disturbing activities in areas with sensitive habitat; Ongoing</p>	

Mitigation Measures	Monitoring Responsibility	Implementation Schedule	Monitoring Compliance Record Name/Date
<p>potential special status plant species in the project biological resources assessment report, a qualified botanist or biologist shall conduct a pre-construction survey for special status rare plant occurrences. The survey shall occur within 30 days prior to commencement of ground-disturbing activity.</p> <ol style="list-style-type: none"> <li>If rare plant occurrences that are listed under the ESA or CESA are found and avoidance is not feasible, then the Permittee shall notify the California Department of Fish and Wildlife (CDFW) and/or (as applicable) the U.S. Fish and Wildlife Service (USFWS) for any federally-listed species and comply with any permit or mitigation requirements stipulated by those agencies.</li> <li>Comply with the mitigation requirements and conditions of any Section 1600 Lake and Streambed Alteration Agreement (Agreement) with CDFW for project reclamation activities, as applicable to rare plant occurrences. If there is a conflict between the terms of mitigation items 1 and 2 above and the Agreement, then the Permittee shall abide by the terms of the Agreement.</li> </ol>			
<p><b>Mitigation Measure 4.3-2b: Riparian Habitat</b> Within one year of the commencement of reclamation-related ground disturbing activity (which includes clearing, grubbing, or grading) associated with the construction of the Lake A diversion structure, realigned Arroyo del Valle, or other areas identified as riparian habitat in the project biological resources assessment report, the Permittee shall mitigate for any permanent riparian impacts at a minimum 1:1 ratio, unless the regulatory permit process results in a different ratio. The implementation of mitigation for the loss of riparian habitat may be addressed separately for each phase of reclamation (e.g., Lake A diversion structure or realigned Arroyo del Valle). Exact acreage per phase shall be determined in consultation with CDFW and other regulatory requirements. Mitigation shall be accomplished by complying with the following:</p> <ol style="list-style-type: none"> <li>Enter into and comply with the mitigation requirements and conditions of a Section 1600 Lake and Streambed Alteration Agreement (Agreement) with CDFW.</li> <li>If the Agreement results in less than a 1:1 mitigation ratio for loss of riparian habitat, then the Permittee shall demonstrate that the riparian habitat which went unmitigated/uncompensated as a result of permitting has been mitigated through other means. Acceptable methods include purchase of credits from a mitigation bank or creation/preservation of on-site or off-site riparian habitats through the establishment of a permanent conservation easement, subject to the approval of the Planning Department.</li> </ol>	<p>Alameda County Planning Department; CDFW; Permittee</p>	<p>Within one year of reclamation-related ground disturbing activities near sensitive habitat; Ongoing</p>	

Mitigation Measures	Monitoring Responsibility	Implementation Schedule	Monitoring Compliance Record Name/Date
<p><b>Mitigation Measure 4.3-3: 1:1 Wetland Compensation Ratio</b> Prior to the commencement of reclamation-related ground disturbing activity (which includes clearing, grubbing, or grading) associated with the construction of the Lake A diversion structure, realigned Arroyo del Valle, or in other areas identified as containing wetlands in the project aquatic resource delineation report, the Permittee shall mitigate for direct and indirect wetland impacts at a 1:1 ratio, unless the regulatory permit process results in a different ratio. The implementation of mitigation for the loss of wetlands may be addressed separately for each phase of reclamation (e.g., Lake A diversion structure or realigned Arroyo del Valle). Exact acreage per phase shall be determined prior to initiating that phase based on the verification of the preliminary jurisdictional determination by the USACE and other applicable regulatory requirements. Mitigation shall be accomplished by complying with the following:</p> <ol style="list-style-type: none"> <li>1. Obtain and comply with the mitigation requirements and conditions of a Section 404 Permit(s) and Section 401 Water Quality Certification(s) for reclamation activities, as applicable.</li> <li>2. If regulatory permitting processes result in less than a 1:1 compensation ratio for loss of wetlands, then the Permittee shall demonstrate that the wetlands which went unmitigated/uncompensated as a result of permitting have been mitigated through other means. Acceptable methods include purchase of credits from a mitigation bank or creation/preservation of on-site or off-site wetlands through the establishment of a permanent conservation easement, subject to the approval of the Planning Department.</li> </ol>	<p>Alameda County Planning Department; CDFW; USACE; RWQCB; Permittee</p>	<p>Within one year of reclamation-related ground disturbing activities near delineated wetlands; After USACE acreage verification; Ongoing</p>	
<b>GEOLOGY AND SOILS</b>			
<p><b>Mitigation Measure 4.4-1: Erosion Control Plan.</b> The Permittee, and its contractors shall adhere to the Erosion Control Plan for the ADV realignment prepared by Brown and Caldwell in 2019, which shall be incorporated by reference into the conditions of approval for the project.</p>	<p>Alameda County Planning Department; Permittee</p>	<p>Ongoing</p>	
<p><b>Mitigation Measure 4.4-2: Berm and Embankment Grading.</b> The Permittee shall implement the following measures to control erosion related to berm and embankment grading before ground disturbing activities:</p> <ol style="list-style-type: none"> <li>a) All earthwork operations shall be observed, and all fills tested for recommended compaction and moisture content by a representative from a County-approved geotechnical specialist.</li> <li>b) Prior to commencing grading, a pre-construction conference with representatives</li> </ol>	<p>County-approved geotechnical specialist; Alameda County Planning Department; Permittee</p>	<p>Prior to reclamation-related berm or embankment construction activities; Ongoing</p>	

Mitigation Measures	Monitoring Responsibility	Implementation Schedule	Monitoring Compliance Record Name/Date
<p>from the Permittee, its grading contractor, if applicable, and County-approved geotechnical specialist shall be held at the site. Site preparation, soil handling and/or the grading plans shall be discussed at the pre-construction conference.</p> <p>c) Prior to commencing grading within embankment and slope areas, surface vegetation shall be removed by stripping to a sufficient depth (2 to 4 inches) to remove roots and organic-rich topsoil. Material generated during stripping that is not suitable for use as embankment or reclamation slope fill shall be stockpiled for future use as topsoil. Any existing trees and associated root systems shall be removed. Roots larger than 1 inch in diameter shall be completely removed. Smaller roots may be left in-place as conditions warrant and at the discretion of on-site field monitor.</p> <p>d) To increase stability and to provide a stable foundation for the berm embankments, the full length of the embankments shall be provided with embankment-width keyways. The keyways shall have a minimum embedment depth of 3 feet into firm, competent, undisturbed soil. The actual depth of the keyway shall be evaluated during construction by a County-approved geotechnical specialist. Keyway back-slopes shall be no flatter than 1 horizontal (H):1 vertical (V).</p> <p>e) Where fill is placed on sloping ground steeper than 5H:1V, the fill shall be benched into the adjacent native materials as the fill is placed. Benches shall roughly parallel slope contours and extend at least 2 feet into competent material. In addition, a keyway shall be cut into the slope at the base of the fill. Keyways shall be at least 15 feet wide and extend at least 2 feet into competent material. Bench and keyway criteria may need revision during construction based on the actual materials encountered and grading performed in the field.</p> <p>f) Pipe penetrations through the planned berms and embankments shall be avoided, if feasible. If pipe penetrations are unavoidable, the Permittee shall provide concrete cut-off collars at the penetration point to reduce potential for seepage. Reinforced concrete cut-off collars shall completely encircle the pipe and should be sized such that they are 12 to 18 inches larger than the nominal outside diameter of the pipe. Thickness shall be at least 6 inches. Water-tight filler shall be used between collars and pipes.</p> <p>g) Bottoms of keyways and areas to receive fill shall be scarified 12 inches, uniformly moisture conditioned at or above optimum moisture content and compacted to at least 90% relative compaction. Scarification and recompaction operations shall be performed in the presence of a County-approved</p>			

Mitigation Measures	Monitoring Responsibility	Implementation Schedule	Monitoring Compliance Record Name/Date
<p>geotechnical specialist to evaluate performance of the subgrade under compaction equipment loading.</p> <p>h) Engineered fill consisting of onsite or approved import materials shall be compacted in horizontal lifts not exceeding 8 inches (loose thickness) and brought to final subgrade elevations. Each lift shall be moisture-conditioned at or above optimum and compacted to at least 90% relative compaction at least 2% above optimum moisture content. Fills for the eastern Lake B fill embankments and Pond C/D separation shall be compacted to at least 95% relative compaction above optimum moisture content.</p> <p>i) Fill slopes shall be built such that soils are uniformly compacted to at least 90% relative compaction at least 2% above optimum moisture content to the finished face of the completed slope. Fill slopes for the eastern Lake B fill embankments and Pond C/D separation shall be compacted to at least 95% relative compaction above optimum moisture content.</p> <p>The Alameda County Community Development Agency shall be responsible for ensuring compliance.</p>			
<p><b>Mitigation Measure 4.4-3:</b> Embankment Fill Slope Geometry. Fill slopes for the proposed embankment between Silt Pond C and Silt Pond D, the embankment for overburden and silt storage at the east end of Lake B, and the “shark’s fin” embankment of Lake B should be constructed at an inclination of 2:1 or flatter. Mid-height bench(es) should be considered for fill slopes exceeding 50 feet in height to provide access for slope maintenance.</p>	Alameda County Planning Department; Permittee	Ongoing	
<p><b>Mitigation Measure 4.4-4:</b> Cut Slope of Lake B Adjacent to Realigned ADV. The Permittee, or its contractor, shall implement one of the following two configurations for the cut slope of Lake B below and adjacent to the realigned ADV:</p> <ol style="list-style-type: none"> <li>1. 2 ¼:1 slope</li> <li>2. 40-foot horizontal bench at elevation 260 feet msl within a 2:1 slope.</li> </ol>	Alameda County Planning Department; Permittee	Ongoing	
<b>GREENHOUSE GAS EMISSIONS</b>			
<p><b>Mitigation Measure 4.5-1a:</b> Idling Times. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all project access points. [Measure applies to idling times for all equipment].</p>	Alameda County Planning Department; Permittee	Ongoing during reclamation	

Mitigation Measures	Monitoring Responsibility	Implementation Schedule	Monitoring Compliance Record Name/Date
<b>Mitigation Measure 4.5-1b:</b> Idling Times for Diesel-powered Equipment. Minimize the idling time of diesel-powered construction equipment to two minutes. [Measure applies to idling times for diesel-powered equipment only].	Alameda County Planning Department; Permittee	Ongoing during reclamation	
<b>Mitigation Measure 4.5-1c:</b> Equipment Maintenance. All construction equipment shall be maintained and properly tuned in accordance with manufacturer’s specifications.	Alameda County Planning Department; Permittee	Ongoing during reclamation	
<b>Mitigation Measure 4.5-1d:</b> Alternative Fuel Plan. Prior to construction, develop a plan demonstrating that alternative fueled (e.g., biodiesel, electric) construction vehicles/equipment will represent at least 15 percent of the construction fleet if commercially available.	Alameda County Planning Department; Permittee	Prior to reclamation-related construction	
<b>Mitigation Measure 4.5-1e:</b> Local Building Materials. Use at least 10 percent local building materials in construction (e.g., construction aggregates, concrete pipe).	Alameda County Planning Department; Permittee	Ongoing during reclamation	
<b>Mitigation Measure 4.5-1f:</b> Recycle or Reuse Construction and Demolition Materials. Recycle or reuse at least 50 percent of construction waste or demolition materials (e.g., during decommissioning and removal of processing plant facilities).	Alameda County Planning Department; Permittee	Ongoing during reclamation	
<b>Mitigation Measure 4.5-1g:</b> On-site Material Hauling. Perform on-site material hauling with trucks equipped with on-road engines (if less emissive of GHG emissions than off-road engines), if commercially available.	Alameda County Planning Department; Permittee	Ongoing during reclamation	
<b>Mitigation Measure 4.5-1h:</b> Generator Alternative Fuel. Use alternative fuels for generators at construction sites such as propane or solar, or use electrical power, as feasible for each construction site	Alameda County Planning Department; Permittee	Ongoing during reclamation	
<b>HYDROLOGY AND WATER QUALITY</b>			
<b>Mitigation Measure 4.6-1:</b> Development of SWPPP. The Permittee, and its contractors, shall conduct activities consistent with the General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, which would require development of a stormwater pollution prevention plan (SWPPP) for the reclamation construction activities. The SWPPP and Notice of Intent to comply with the General Permit shall be prepared and filed with the RWQCB before commencement of construction activities.	Alameda County Planning Department; Permittee	Prior to reclamation-related construction activities	
<b>Mitigation Measure 4.6-2:</b> Implementation of Adaptive Management Program for Iron. The Permittee shall implement the Adaptive Management Program for Iron (see Appendix F-6 to the SEIR), which will be incorporated into conditions of approval.	Alameda County Planning Department; Permittee	Ongoing during reclamation	

Mitigation Measures	Monitoring Responsibility	Implementation Schedule	Monitoring Compliance Record Name/Date
<p><b>Mitigation Measure 4.6-3:</b> Install Lake B Groundwater Monitoring Wells. The Permittee shall install up to three groundwater monitoring wells on Lake B perimeter. Permittee shall consult with Zone 7 regarding the location and specifications of these wells. The Permittee shall provide documentation to the County that they have conducted a good faith effort of coordinating with Zone 7 regarding the amount and location of the groundwater monitoring wells.</p>	<p>Alameda County Planning Department; Permittee; Zone 7</p>	<p>Installation of wells to occur within six months of Project approval</p>	
<p><b>Mitigation Measure 4.6-4:</b> Conveyance to Avoid Lake B Silt Storage Area. The Permittee, or its contractor, shall implement one of the following two water conveyance options from the end of Lake A to Lake B:</p> <ol style="list-style-type: none"> <li>1. Install a high-density polyethylene (HDPE) pipe, connected to the Lake B pipeline turnout, that will be capable of conveying the flow from the end of the Lake A to Lake B pipeline around the silt storage area located in the eastern end of Lake B.</li> <li>2. Compact the backfill surface of the silt storage facility in the eastern end of Lake B and construct a lined channel across the top of the Lake B fill that will be capable of conveying the flow from the end of Lake A to Lake B pipeline around the silt storage area. This channel shall be lined with gravel or cobbles to minimize the potential for erosion or sediment transport.</li> </ol>	<p>Alameda County Planning Department; Permittee</p>	<p>At time of final reclamation of Lake B</p>	
<b>LAND USE AND PLANNING</b>			
<p>None required.</p>	<p>Not applicable.</p>	<p>Not applicable.</p>	<p>Not applicable.</p>
<b>NOISE</b>			
<p><b>Mitigation Measure 4.8-1a:</b> Notice of Activities. All residences within 500 feet of the conduit and pipeline installation components of the proposed project and the City of Livermore Community Development Department 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 notice shall be sent no less than one week prior to construction activities.</p>	<p>Alameda County Planning Department; Permittee</p>	<p>No less than one week prior to reclamation-related construction activities.</p>	
<p><b>Mitigation Measure 4.8-1b:</b> Mufflers. All mobile equipment shall be fitted with mufflers consistent with manufacturers recommendations &amp; shall be well maintained.</p>	<p>Alameda County Planning Department; Permittee</p>	<p>Ongoing during reclamation</p>	

**EXHIBIT D**  
**SURFACE MINING AND RECLAMATION ACT FINDINGS**

**EXHIBIT D**  
**SURFACE MINING AND RECLAMATION ORDINANCE FINDINGS**

**WHEREAS** Section 6.80.160(A) of the Alameda County Surface Mining and Reclamation Ordinance requires the Planning Commission to include a finding that approval of a surface mining permit complies with the provisions of the Surface Mining and Reclamation Act (SMARA) and state regulations; and

**WHEREAS** Section 6.80.160(B) of the Alameda County Surface Mining and Reclamation Ordinance requires the Planning Commission to make all of the following findings for approval of reclamation plans:

1. That the reclamation plan complies with SMARA Sections 2772 and 2773 as may be amended, the provisions of this chapter and other applicable provisions;
2. That the reclamation plan complies with applicable requirements of state regulations (California Code of Regulations §§ 3500-3505, and 3700-3713, as may be amended).
3. That the reclamation plan and potential use of reclaimed land pursuant to the plan are consistent with this chapter and the county's general plan and any applicable resource plan or element;
4. That the reclamation plan has been reviewed pursuant to the California Environmental Quality Act (CEQA) and the county's environmental review guidelines, and all significant adverse impacts from reclamation of the surface mining operations are mitigated to the maximum extent feasible;
5. That the land and/or resources such as water bodies to be reclaimed will be restored to a condition that is compatible with, and blends in with, the surrounding natural environment, topography, and other resources, or that suitable off-site mitigation will compensate for related disturbance to resource values;
6. That the reclamation plan will restore the mined lands to a usable condition that is readily adaptable for alternative land uses consistent with the general plan and applicable resource plan, or as specified in the reclamation plan;
7. That a written response to the State Department of Conservation (DOC) has been prepared, describing the disposition of major issues raised by that department. Where the county's position is at variance with the recommendations and objections raised by the DOC, said response shall address, in detail, why specific comments and suggestions were not accepted;
8. That the reclamation plan is consistent with protection of the public health, safety and welfare; and

**WHEREAS** Section 6.80.160(B) of the Alameda County Surface Mining and Reclamation Ordinance requires the Planning Commission to state the basis for its determinations regarding such findings.

**WHEREAS** the *Eliot Quarry (SMP-23) Reclamation Plan Amendment Subsequent Environmental Impact Report* evaluated the Eliot Quarry (SMP-23) Reclamation Plan Amendment (project) for consistency with SMARA, state regulations, the *Alameda County East County Area*

*Plan* (ECAP), and the Surface Mining and Reclamation Ordinance, pursuant to the requirements of CEQA, and found the project to be consistent with mitigation incorporated;

## **NOW THEREFORE**

**BE IT RESOLVED** that this Planning Commission finds that the County has reviewed the project for consistency and compliance the County Surface Mining Ordinance and has consulted with the DOC's Division of Mine Reclamation (DMR) regarding compliance with SMARA and finds the project, including revisions to SMP-23, complies with the provisions of SMARA and applicable state regulations;

**BE IT RESOLVED** that this Planning Commission finds that the County has reviewed the project for consistency and compliance the County Surface Mining Ordinance and has consulted with DMR regarding compliance with SMARA and finds the reclamation plan amendment complies with SMARA Sections 2772 and 2773 as amended, the provisions of the County Surface Mining and Reclamation Ordinance, and other applicable provisions;

**BE IT RESOLVED** that this Planning Commission finds that the County has reviewed the project for consistency and compliance the County Surface Mining Ordinance and has consulted with DMR regarding compliance with SMARA and finds the reclamation plan amendment complies with the provisions of SMARA and state regulations, including CCR §§ 3500-3505, and 3700-3713, as may be amended; and

**BE IT RESOLVED** that this Planning Commission finds that Section 4.7 of the Land Use Section of the *Eliot Quarry (SMP-23) Draft Supplemental Environmental Impact Report* (Draft SEIR), as revised by the *Final Environmental Impact Report* (Final SEIR) contain a consistency analyses regarding the project's consistency with applicable ordinances and plans and finds that the reclamation plan amendment and proposed use of reclaimed land is consistent with the County Surface Mining and Reclamation Ordinance and the County's general plan and any applicable resource plan or element, including the *Livermore-Amador Valley Quarry Area Reclamation Specific Plan* (LAVQAR);

**BE IT RESOLVED** that the County has reviewed the reclamation plan amendment pursuant to CEQA and the county's environmental review guidelines and has prepared the Draft SEIR, Final SEIR, and CEQA Findings of Fact and Statement of Overriding Considerations (Exhibit B to Resolution 21-XXX), and finds that all significant adverse impacts from reclamation of the surface mining operations are mitigated to the maximum extent feasible;

**BE IT RESOLVED** that after reviewing the project for compliance with the County Surface Mining and Reclamation Ordinance and ECAP and evaluating the project's impacts to land and water resources in the Draft SEIR and Final SEIR; the County finds that the land and/or resources to be reclaimed, such as water bodies, will be restored to a condition that is compatible with, and blends in with, the surrounding natural environment, topography, and other resources, or that suitable off-site mitigation will compensate for related disturbance to resource values;

**BE IT RESOLVED** that the County has reviewed the project for consistency and compliance the County Surface Mining Ordinance and has consulted with DMR regarding

compliance with SMARA and finds the reclamation plan will restore the mined lands to a usable condition that is readily adaptable for alternative land uses consistent with the general plan and applicable resource plan, including the LAVQAR, or as specified in the reclamation plan;

**BE IT RESOLVED** that, within 30 days of Project approval, the County will prepare and submit a written response to DMR's May 30, 2019 letter, which noted DMR had no specific comments on the proposed reclamation plan amendment, summarizing the County's approvals and final disposition of project;

**BE IT RESOLVED** that the County has reviewed the reclamation plan amendment regarding compliance with the County Surface Mining and Reclamation Ordinance, the County's General Plan (East County Area Plan) and evaluated the project's impacts to land and water resources in the Draft SEIR and Final SEIR and finds that the reclamation plan amendment is consistent with protection of the public health, safety, and welfare; and

**BE IT RESOLVED** that the Planning Commission relied on the *Eliot Quarry (SMP-23) Reclamation Plan Amendment Subsequent Environmental Impact Report* and its associated technical studies to form the basis for its determinations regarding the above findings.