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April 13, 2022

Mr. JD Trebec
Senior Planner
Yolo County
Department of Community Services
292 West Beamer Street
Woodland, California 95695

**SUBJECT: Cache Creek Mine (CA Mine ID #91-57-0008)
Application for Minor Modification to Mining Permit ZF #95-093**

Dear Mr. Trebec,

On behalf of CEMEX Construction Materials Pacific, LLC. ("Applicant"), we are pleased to submit this application for a minor modification to the approved Mining Permit No. ZF #95-093 to address County conditions of concern and allow an interim phasing sequence change to allow dry mining on up to 20 acres of current Phase 6 ("Project"). The County's conditions of concern were presented to CEMEX in a letter from Elisa Sabatini dated April 7, 2022 (see [Attachment 1](#)).

Specifically, the proposed Project provides for:

1. Resolution of County concern #1, regarding the temporary loss of agricultural production beyond the temporal loss of 126 acres assumed in the 1996 EIR;
2. Resolution of County concern #2, regarding a potential 4.2 acre gap in implementation of the California Endangered Species Act Memorandum of Understanding between Solano Concrete and the California Department of Fish and Game ("2081 MOU");
3. Resolution of County concern #3, regarding a potential 37.8 acre gap in implementation of the 2012 Conservation Easement Grant (Agreement No. 12-49) recorded July 30, 2012 ("2012 Easement"), which provided mitigation for the permanent loss of agricultural land and potential Swainson's hawk impacts associated with the original project; and
4. An interim phasing sequence change to allow dry mining on up to 20 acres of current Phase 6 while the County completes processing of the major Mining and Reclamation Plan Amendment Project pending under ZF #2018-0015 ("Pending Major Modification"). The 20-acre interim mining area will be a part of Phase 5 of the Mining and Reclamation Plan Amendment Project that is pending under County ZF#2018-015.

Mr. JD Trebec

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The Project is a minor modification that does not substantially alter the intent or the conditions of the approved mining plan. Except as outlined above, CEMEX proposes no change to any fundamental element of the existing operation (e.g., mining methods, maximum depth of mining, processing operations, use of settling ponds, production limits, water use, power use, truck traffic, or hours of operation).

The following items are enclosed:

1. Checks to cover initial application fees in the amount of \$1,693.88.
2. Three (3) complete hard copies of application materials.
3. Electronic copy of application materials (thumb drive).

Please feel free to contact Steve Grace (CEMEX) at 831-970-9559 or me at 916-825-4997 if you have any questions or need additional information. We look forward to working with you to process this application within the next 30 days.

Sincerely,



Yasha Saber

Managing Partner

ysaber@compassland.net

Encl.

cc: Steve Grace, CEMEX
Elisa Sabatini, Yolo County
Pat Mitchell, Mitchell Chadwick LLP

ATTACHMENT 1
COUNTY LETTER DATED 4/7/2022



Chad D. Rinde
Interim County Administrator

Office of the County Administrator
COUNTY OF YOLO

NATURAL RESOURCES DIVISION
625 Court Street, Room 202
Woodland, CA 95695
P: 530-666-8150 • F: 530-668-4029
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naturalresources@yolocounty.org

April 7, 2022

CEMEX Construction Materials Pacific, LLC
Attn: Steve Grace, West Region Director
2365 Iron Point Road, Suite 120
Folsom, CA 95630
roberts.grace@cemex.com

Sent via electronic mail

RE: Conditions of Concern; CEMEX Mining and Reclamation Project (ZF#95-093), CA Mine ID #91-57-008

Dear Mr. Grace:

We appreciate the prior discussions that have occurred with you and your consulting advisor regarding the matters identified in this letter related to the CEMEX Mining and Reclamation project. Pursuant to Section 10-4.1105 of the Yolo County Off-Channel Surface Mining Ordinance, the purpose of this letter is to: 1) document that the County has identified several conditions of concern related to mining activities being undertaken at the CEMEX site; and 2) identify appropriate remedies. Each condition of concern is identified and discussed separately below.

Item 1: Temporary Loss of Agricultural Production

The maximum area for temporary loss of crop production from the project was identified in the 1996 Solano Long-Term Off-Channel Mining Permit Application EIR ("1996 EIR") certified November 25, 1996, (Attachment A) as 126 acres (Draft volume, page 4.5-14) and in the California Endangered Species Act Memorandum of Understanding and Management Authorization (CESA No. 2081-1997-048-2) ("2081 MOU") executed September 10, 1997, (Attachment B) as 120 acres (Section 4.1, page 3). The County is aware that approximately 510 acres of the almost 600-acre mining area are currently disturbed, consisting of the plant site and mining occurring subject to prior and current approvals.

The 1996 EIR identifies that the project would result in the disturbance of a total of 585 acres of land in agricultural production (1996 EIR, Draft, page 4.5-14). Attachment F provides an overlay of acres originally in farmland and currently disturbed acres, demonstrating that 310.8 acres of originally productive farmland are currently out of production. The 1996 EIR (Draft, pages 4.5-14 through 4.5-15) identifies a maximum of 126 acres “out of production in any given year.” The amount of temporary disturbance was a material factor in the 1996 EIR’s consideration of impacts to agriculture and foraging habitat. Based on this information, the County has determined that there are currently **184.8 acres of cropland out of production beyond what was identified in the 1996 EIR** (310.8 ac. – 126 ac. = 184.8 ac.).

Item 2: Implementation of 2081 MOU

The County relied on the 2081 MOU and the 2012 Conservation Easement Grant (Agreement No. 12-49) (“2012 Easement”) recorded July 30, 2012, (Attachment C) as mitigation for impacts to Swainson’s hawk and bank swallow habitat. This is substantiated in the 1996 EIR discussion of Impacts 4.6-4 and 4.6-5 (Attachment D) and Conditions of Approval 58 and 61:

Condition of Approval 58 – A CDFG Code Section 2081 authorization, or the posting of a reclamation bond or letter of credit naming CDFG as the beneficiary, or other alternative mechanism acceptable to CDFG, shall be executed prior to commencement of mining (Mitigation Measure 4.6-4a).

The 2081 MOU identifies 372 acres of permanent habitat loss (223 ac. tree crop + 149 ac. lakes = 372 ac.) (2081 MOU Exhibit A, Section 3.1, page 3) and identifies mitigation in the form of 372 acres of habitat management lands (2081 MOU Exhibit A, Section 4.7 on page 5) comprised of: 1) Preserved Parcels totaling 182.7 acres; 2) a Restored Parcel totaling 3.1 acres; 3) Bluff Habitat presumed to be 3.2 acres; and 4) Agricultural Parcels totaling 183 acres (182.7 ac. + 3.1 ac. + 183 ac. + 3.2 ac. = 372.0 ac.). Each component of the habitat management lands is described below:

1. Preserved Parcels – The 182.7 acres of Preserved Parcels (40 ac. + 140 ac. + 2.7 ac. = 182.7 ac.) on the Hutson parcel were required to be in place by April 1, 1998 (2081 MOU Exhibit A, Section 4.7.1, page 5; 1997 Habitat Restoration Plan Addendum, Figure 3) comprised of the following:
 - 40 acres of reclaimed agriculture – This was satisfied by the 50.8-acre Area E portion of the 2012 Conservation Easement Grant (Agreement No. 12-49) (“2012 Easement”) recorded July 30, 2012. This property was part of a larger area of reclaimed farmland that was farmed from 1995 through 2016, and thereafter fallowed. This reflects a **potential excess of 10.8 acres** (50.8 ac. - 40 ac. = 10.8 ac.).
 - 140 acres of unmined agriculture – This was partially satisfied with 125 acres of native agriculture included as Areas A, B, and C of Hutson parcel (south of Phase 1) in the 2012 Easement. This reflects a **potential gap of 15 acres** (140 ac. – 125 ac. = 15 ac.).

- 2.7 acres of hedgerows – The County is not able to substantiate compliance with this requirement. There is no mention of the hedgerows in the 2012 Easement. Two locations are identified on Figure 3 of the 1997 Habitat Restoration Plan Addendum (Attachment G), which is also referenced as “Figure 3” in the 2081 MOU. CEMEX is requested to provide available information on the location and current ecological condition of these hedgerows. This item is a **potential gap of 2.7 acres** that would be remedied by providing the County with information to verify compliance and documenting requirements for ongoing maintenance by CEMEX.
2. Restored Parcel – This is described in the 2081 MOU as 3.1 acres of restored habitat north of Farnham West with fencing required on the south side. Dedication in fee title to the County was required by December 31, 1998. The County is not able to substantiate compliance with this requirement. CEMEX is requested to provide available information on the location and current biological condition of this parcel. This item is a **potential gap of 3.1 acres** that would be remedied by providing the County with information to verify compliance, including appropriate ongoing maintenance and a commitment to dedicate the parcel on a timetable acceptable to the County.
 3. Bluff Habitat – This is described in the 2081 MOU as “...vertical bluffs above the mining-related riparian habitat in the northern portion of the Snyder West parcel (between the upper terrace and the existing haul road).” 1997 Figure 3 (Attachment G) identifies the location for this area. The 2081 MOU requires fee title conveyance of this habitat with completion of Phase 6 reclamation. This is presumed to be the same area of prior active bank swallow nesting described in the 1996 EIR as occurring “above the mining-related riparian habitat in the northern portion of the Snyder East parcel” (1996 EIR, Draft, page 4.6-42). There is **no identified potential gap** in mitigation with this item. As a part of required annual reporting, CEMEX has previously provided information accepted by the County substantiating that this area has been restored, and that maintenance and monitoring are ongoing. In the second ten-year permit review (February 11, 2021) CEMEX was directed by the County to provide information regarding bank swallow occupancy at the bluffs as a component of the next compliance report.

The area north of both the Snyder West and Snyder East parcels (previously Phases 6 and 5 respectively), currently Phases 4 and 5 respectively, and proposed to be Phases 4, 5, and 6, is located within the net gains area that is to be dedicated to County by 2032.
 4. Agricultural Parcels – This is described in the 2081 MOU as 183 acres to be reclaimed to agricultural fields and “associated native grass side slopes” that are identified as “row crops” on “Exhibit 3” which we believe is the Generalized Reclamation Plan attached as the last page of the 2081 MOU.

Under current approvals, reclaimed row crop acreage totals 223 acres. Subtracting the 40 acres of reclamation on the Hutson parcel that is described above in Item 1 (first bullet) leaves a remainder of 183 acres in row crops. The County has determined this was meant to include all land approved to be reclaimed to row crops. The obligation is to place conservation easements or deed restrictions on the 183 acres after reclamation. This is consistent with Condition of Approval 10:

Condition of Approval 10 – In compliance with Section 10-5.520.2 (Permanent Easements) of the Reclamation Ordinance, upon the completion of reclamation within each phase of the project, the operator shall enroll each reclaimed parcel in Williamson Act contracts, or other equivalent long-term easements or deed restrictions satisfactory to the County, for the purpose of protection of the agricultural use of the reclaimed land in perpetuity.

There is **no identified potential gap** in this item.

Based on this information the County has determined that there is currently a **potential gap of 13.2 acres** in required mitigation for permanent impacts to habitat:

Item	Acres
Excess reclaimed agriculture	+10.8
Gap in unmined agriculture	-15.0
Gap in hedgerows	0 ¹
Gap in restored habitat	0 ¹
Total potential gap in required habitat mitigation	-4.2

¹ *These items will be resolved by providing additional information to the County and executing agreements or other mechanisms to ensure maintenance and/or dedication as described in this letter.*

Item 3: Implementation of 2012 Easement

The 2012 Conservation Easement Grant (Agreement No. 12-49) (“2012 Easement”) recorded July 30, 2012, (Attachment C) provided mitigation for permanent loss of agricultural land (Impact 4.5-2 and Condition of Approval 48) (see Attachment A). The Easement prohibited uses inconsistent with the agricultural and open space use of the property, including uses not allowed under the Williamson Act. Credit was also given for impacts to Swainson’s hawk (see discussion above).

Condition of Approval 48 – Implement the performance standards included in Sections 10-5.525 of the County Surface Mining Reclamation Ordinance to reduce the impact of the permanent loss of agricultural land. Compliance with this mitigation may be phased to track with the phasing of the mining. Compliance shall be verified by phase (Mitigation Measure 4.5-2a).

Impact 4.5-2 in the 1996 EIR identified that 252 acres of prime farmland would be permanently converted (1996 EIR, Draft, page 4.5-15). This acreage was further reduced by 90 acres to reflect improvements to reclaimed soil conditions that would exceed the quality of original native conditions. The County has determined this 90-acre credit was derived from an overlay of the area of proposed agricultural reclamation over the portions of the property classified as having severe and very severe limitations. Soils conditions were documented in the “Site-Specific Soil Assessment and Productivity Classification of the Agricultural Horizon Soils for the Solano Long-Term Off-Channel Mining Area” prepared November 1, 1995, by Ag West Resources. This report identifies (Attachment E, pages 25-26) where there were/are soils with severe limitations (Class III), very severe limitations (Class IV), and excessive Boron levels as follows:

Class III Location	Acres
Farnham West parcel	14.0
Kaupke parcel	33.0
Portions of Orrick, NW Snyder West, and Farnham East parcels	31.0
Portions of Snyder West and NW Snyder East parcels	25.0
Remaining portions of Snyder East parcel	12.0
Solano West parcel	3.0
Total Class III Soils	118.0

Class IV Location	Acres
Portions of Orrick, NW Snyder West, and Farnham East parcels	40.0
Remaining portions of Snyder West and NW Snyder East parcels	90.0
Total Class VI Soils	130.0

Credit for the 90 acres described above brings the required mitigation acreage for permanent loss of farmland down to 162 acres (1996 EIR, Draft, Page 4.5-16) (252 ac. – 90 ac. = 162 ac.). Mitigation for this was addressed with the 2012 Easement. A permanent conservation easement was placed on 175 acres of the unmined Hutson parcel to prevent future conversion to non-agricultural uses. The conservation easement was approved and accepted by the Board of Supervisors on August 25, 1998, and recorded on July 30, 2012 (Attachment C).

The easement covers the previously mined and reclaimed western half of Phase 1 (50.8 acres identified as Area E) plus another 125 acres of native (unmined) agricultural land immediately south of Phase 1 (identified as Areas A [25 acres], B [50 acres], and C [50 acres]).

The County notes that the 2012 Easement results in a potential excess of 13 acres of mitigation for permanent loss of farmland (175 ac. – 162 ac. = 13 ac.). The County is concerned, however, that the fallowing of 50.8 acres in the western portion of Phase 1 is not consistent with the spirit and intent of the easement to mitigate for loss of prime farmland, resulting in a **potential gap of**

37.8 acres of permanently protected (175 ac. in conservation easement – 162 ac. permanent protected farmland required = 13 ac. excess; 13 ac. excess – 50.8 ac. fallowed = -37.8 ac. gap).

Summary of Conditions of Concern Items 1, 2, and 3:

1. The County has determined there are 184.8 acres of temporary loss of agricultural production on the site in excess of what was identified in the 1996 EIR and 2081 MOU.
2. The County has determined there is a potential gap of 4.2 acres of mitigation for impacts to habitat.
3. The County has determined there is a potential gap of 37.8 acres of permanently protected farmland.

Total acreage of all potential conditions of concern is 226.8 acres.

Proposed Actions to Resolve Conditions of Concern:

In preliminary discussions with CEMEX, the County has identified the following actions that could rectify the identified conditions of concern:

- A. Place 110 acres in Phase 1 into productive agriculture no later than September 30, 2022, thus re-establishing productive agriculture and hawk foraging habitat.
- B. Place 50 acres of unmined productive agriculture in the southerly portion of the Hutson parcel, adjoining State Route 16 on the south and the 2012 Conservation Easement boundary on the north, in permanent agricultural easement no later than September 30, 2022. The permanent conservation of each acre of non-prime farmland would be accepted as offsetting the temporary impact to two acres, resulting in 100 acres of credit from this action. This would provide permanent protection for existing productive agriculture and hawk foraging habitat.
- C. Remove Phase 7 (15 acres) from the approved mining area no later than March 31, 2023. This would result in a net reduction of the approved mining area and preclude mining impacts from occurring west of Interstate 505.

These actions would result in immediate decreases in temporarily disturbed cropland and increases in permanent farmland and habitat benefits, totaling 225 acres (110 ac. + 100 ac. + 15 ac. = 225 ac.), thus reasonably resolving conditions of concern totaling 226.8 acres, leaving a minor differential of 1.8 acres (225 ac. – 226.8 ac. = -1.8 ac.), which may be further reduced by refined information regarding hedgerows and restored habitat.

To address these conditions of concern, CEMEX should submit a Minor Modification application to amend the CEMEX Mining and Reclamation Permit (ZF#95-093) to incorporate the proposed actions. This application would be processed in advance of the Major Modification application for which a new EIR is currently under preparation.

The Minor Modification application could also include other operational requests CEMEX has recently discussed with the County including:

- Phase 5/6 phase sequencing change.
- Authorization to commence dry mining of 20 acres in current Phase 6. The County notes that this request would increase the amount of temporarily disturbed cropland by an additional 20 acres. If this request is made as a part of the Minor Modification application, the County will work with CEMEX to identify additional proposed actions to resolve temporary impacts to croplands in excess of the maximum assumed in the 1996 EIR through further clarifications of the Major Modification application. This will ensure the ability for the County to rely on the existing 1996 EIR for CEQA clearance for consideration of the Minor Modification.

The County recommends CEMEX consider modification of the Major Modification application to include a change in the maximum area of land disturbance identified as an element of the project in the 1996 EIR to a feasible amount, and provide substantiation of the operational reasons for the revised acreage maximum.

The County will endeavor to process the Minor Modification application, assuming it addresses the items identified throughout this letter, within 30 days of receipt of complete information. This assumes preparation of a CEQA addendum to the 1996 EIR assuming there is substantial evidence to support such a determination.

Thank you for your cooperation and attention to this issue. If you have questions, please contact me at (916) 402-3985 or Elisa.Sabatini@yolocounty.org.

Sincerely,



Elisa Sabatini
Manager of Natural Resources

Copies: Yasha Saber, COMPASS Land Group
JD Trebec, Yolo County Department of Community Services
Heidi Tschudin, TSCHUDIN CONSULTING GROUP

Attachments:

Attachment A – 1996 Solano Long-Term Off-Channel Mining Permit Application EIR, certified November 25, 1996, Draft EIR pages 4.5-1 through 4.5-22.

Attachment B – California Endangered Species Act Memorandum of Understanding and Management Authorization (CESA No. 2081-1997-048-2), executed September 10, 1997.

Attachment C – 2012 Conservation Easement Grant (Agreement No. 12-49), recorded July 30, 2012. *Using other copies of the exhibit that were available in the County's records, we have determined that the annotations in red on Exhibit B of this document are as follows: "Haul Road and/or Conveyer Easement."*

Attachment D – 1996 Solano Long-Term Off-Channel Mining Permit Application EIR, certified November 25, 1996, Draft EIR pages 4.6-1 through 4.6-43 and Final EIR pages 2-6 through 2-8.

Attachment E – Site-Specific Soil Assessment and Productivity Classification of the Agricultural Horizon Soils for the Solano Long-Term Off-Channel Mining Area, prepared November 1, 1995, by Ag West Resources.

Attachment F – Overlay of Disturbed Acres on 1996 Cropland.

Attachment G – 1997 Habitat Restoration Plan Addendum, Figure 3.