

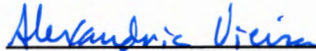
Proof of Service by Mail

(Code of Civil Procedure § 1013a)

I, Alexandria Vieira, declare as follows:

1. I am over 18 years of age and not a party to the matter connected with this proof of service.
2. I am employed by the County of Fresno in the office of the Clerk of the Board of Supervisors, at 2281 Tulare Street, Room 301, in Fresno, California 93721.
3. On June 30, 2023, I served the attached Notice of Hearing before the Board of Supervisors of the County of Fresno for the Unclassified Conditional Use Permit No. 3692 filed by SCI Fresno Memorial Garden.
4. I served the documents by enclosing them in an envelope and placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
5. The envelopes were addressed and mailed to each of the owners at their addresses, as shown on the current Fresno County Assessment Roll and on the property list compiled from said rolls, as set forth on the attached.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on this 30th day of June 2023 in Fresno, California.



Deputy, Clerk of the Board

The original proof of service, including the list of persons and their addresses to whom notice was mailed, is maintained by Public Works staff.



RECEIVED
JUN 22 2023
CLERK. BOARD OF SUPERVISORS

For Office Use Only
Date received: 6-22-23
Copied to: W. Kettler, C. Motta, D. Randall,
Date copy sent: 6/22/23
Hearing set for: 7-18-23

NOTICE OF APPEAL OF PLANNING COMMISSION DECISION

Date: 6/21/2023

Appeal Fee: \$508 – Due when filing appeal

APPELLANT FILL IN BELOW THIS LINE, THIS SIDE ONLY – PLEASE PRINT OR TYPE

Project Site Address

13475	N. Friant Road	Fresno	93626	300-070-56S,57S,58S,59S & 60S
Number	Street	City	Zip	Assessor's Parcel Number
14765	N. Friant Road	Fresno	93626	300-049-19 & 20, 300-081-01S, 300-250-12 & portion of 300-310-01

Appellant's Information

Name: City of Fresno
Mailing Address: 2600 Fresno Street
Fresno, CA 93721
Telephone: 559-621-8003

Applicant's Information check if same as Appellant)

Name: CEMEX Construction Materials Pacific, LLC
Mailing Address: 13475 N. Friant Road
Fresno, CA 93636
Telephone 559-287-7912

Subject of Appeal

I wish to appeal the Planning Commission's decision to Approve Deny

Variance Application No.* _____
Conditional Use Permit No. 3755-A & 3755-B
Director Review and Approval Application No. _____
Tentative Tract Application No. _____
Amendment Application No. _____
Amendment to Text Application No. _____
Other: _____

Date of Planning Commission Action 6/8/2023

Reason(s) for Appeal (Attach additional sheets if necessary)

Unclassified CUP No. 3755A&B proposes to amend the Unclassified Conditional Use Permit No. 3093 and related CUP Nos. 367, 2032, 2209, 2241, 2235 & 3063 to extend the operational time limit for the existing aggregate (sand & gravel) operation, processing plants, and related currently permitted uses for an additional four years from July 28, 2023 to July 28, 2027. The City of Fresno issued a comment letter on 3/1/2023 3/15/2023 wherein we indicated that the existing EIR is no longer adequate for the proposed project because substantial changes have occurred with respect to the circumstances under which the project is undertaken (copies attached). These changes will require major revisions of the previous EIR.


Appellant's Signature

* Fresno County Zoning Ordinance § 877(c) requires that any appellant, other than the applicant, County Department Director, or Board of Supervisors member, must be a property owner within a certain distance from the Variance Application property. The Department of Public Works and Planning will verify that the ordinance requirements are met. If the requirements are not met, the appeal fee will be returned and no date for appeal hearing before the Board of Supervisors will be set.

Please return completed form to Clerk of the Board, 2281 Tulare Street, Room 301, Fresno, CA 93721.



County of Fresno

BOARD OF SUPERVISORS

Chairman
Sal Quintero
District Three

Vice Chairman
Nathan Magsig
District Five

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District One

Steve Brandau
District Two

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District Four

Bernice E. Seidel
Clerk

Notice of Land Use Appeal

Notice of hearing before the Board of Supervisors of the County of Fresno on **UNCLASSIFIED CONDITIONAL USE PERMIT NO. 3755 A & B** filed by **PETE LOCASTRO, AREA OPERATIONS MANAGER, CEMEX**

Note: On June 8, 2023, the Fresno County Planning Commission approved this application, and on June 22, 2023, an appeal was filed by Appellant (City of Fresno) to the Fresno County Board of Supervisors for consideration.

Notice is hereby given that the Board of Supervisors of the County of Fresno has set this hearing for **Tuesday, the 18th day of July, 2023**, at the hour of **9:30 A.M. (or as soon thereafter as possible)**, in the **Board of Supervisors Chambers, Room 301, Hall of Records, 2281 Tulare St., Fresno, California**, as the time and place for holding a public hearing on the following matter:

Appeal of the Planning Commission's approval amending Unclassified Conditional Use Permit No. 3093 and related CUP Nos. 367, 2032, 2209, 2241, 2235, and 3063, to extend the operational time limit for the existing aggregate (sand and gravel) operation, processing plants, and related currently permitted uses for an additional four years (extend expiration date from July 28, 2023 to July 28, 2027). This application proposes to only extend existing operations. No changes are being proposed to area or operation of the mine and/or reclamation plan. All prior conditions of approval and mitigation measures for CUP 3093 (and related permits) shall continue to apply.

The Project includes the Plant Site and the Quarry Site as described below:

- 1. Plant Site (UCUP No. 3755-A): CEMEX's current Plant Site is located on approximately 122 acres on the west side of N. Friant Road 0.65-miles north of Willow Avenue and approximately 1.5-miles north of the nearest boundary of the City of Fresno (APNs: 300-070-56S, 57S, 58S, 59S, & 60S) (13475 N. Friant Road) (Sup. Dist. 2).**
- 2. Quarry Site (UCUP No. 3755-B): CEMEX's current Quarry Site is located on approximately 354 acres on the west side of N. Friant Road at its intersection with Merrill Avenue and approximately 2.0-miles north of CEMEX's current Plant Site (APNs: 300-040-19 & 20, 300-081-01S, 300-250-12 & portion of 300-310-01) (14765 N. Friant Road) (Sup. Dist. 2).**

Please see attached map

For information, contact **Elliot Racusin**, Department of Public Works and Planning, 2220 Tulare Street, (Corner of Tulare & "M" Streets, Suite A), Fresno, CA 93721, telephone **(559) 600-4245**.

The full text of this Land Use Appeal will be available on the Fresno County website <https://fresnocounty.legistar.com/Calendar.aspx> under the July 18, 2023 meeting at the Meeting Details link by Wednesday, July 12, 2023.

PROGRAM ACCESSIBILITY AND ACCOMMODATIONS: The Americans with Disabilities Act (ADA) Title II covers the programs, services, activities, and facilities owned or operated by state and local governments like the County of Fresno ("County"). Further, the County promotes equality of opportunity and full participation by all persons, including persons with disabilities. Towards this end, the County works to ensure that it provides meaningful access to people with disabilities to every program, service, benefit, and activity, when viewed in its entirety. Similarly, the County also works to ensure that its operated or owned facilities that are open to the public provide meaningful access to people with disabilities.

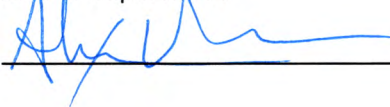
To help ensure this meaningful access, the County will reasonably modify policies/ procedures and provide auxiliary aids/services to persons with disabilities. If, as an attendee or participant at the meeting, you need additional accommodations such as an American Sign Language (ASL) interpreter, an assistive listening device, large print material, electronic materials, Braille materials, or taped materials, please contact the Current Planning staff as soon as possible during office hours at **(559) 600-4230** or at jpotthast@fresnocountyca.gov. Reasonable requests made at least 48 hours in advance of the meeting will help to ensure accessibility to this meeting. Later requests will be accommodated to the extent reasonably feasible.

NOTES:

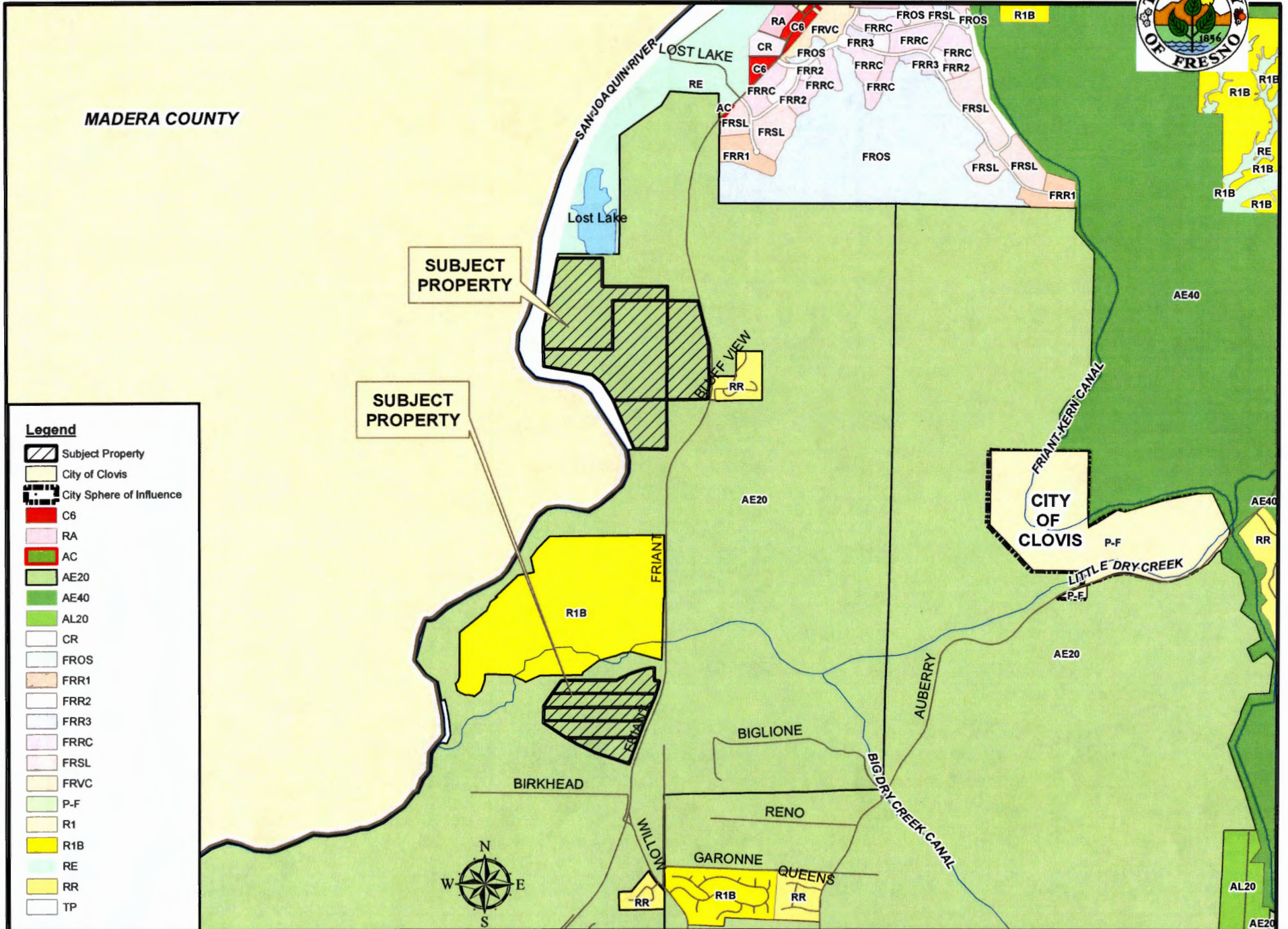
- Anyone may testify, please share this notice with your neighbors or anyone you feel may be interested.
- The Board of Supervisors will also accept written testimony such as letters, petitions, and statements. In order to provide adequate review time for the Board of Supervisors, please submit these documents to the Clerk to Board prior to the hearing date.
- If at some later date you challenge the final action on this matter in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice or in written correspondence delivered to the Board of Supervisors at, or prior to, the public hearing.

DATED: June 30, 2023

BERNICE E. SEIDEL
Board of Supervisors

By  _____, Deputy

EXISTING ZONING MAP



Legend

- Subject Property
- City of Clovis
- City Sphere of Influence
- C6
- RA
- AC
- AE20
- AE40
- AL20
- CR
- FROS
- FRR1
- FRR2
- FRR3
- FRRC
- FRSL
- FRVC
- P-F
- R1
- R1B
- RE
- RR
- TP



THE BUSINESS JOURNAL

FRESNO | KINGS | MADERA | TULARE

P.O. Box 126
Fresno, CA 93707
Telephone (559) 490-3400

(Space Below for use of County Clerk only)

IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA

Notice of Public Hearing

UNCLASSIFIED CONDITIONAL USE PERMIT NO. 3755 A & B

DATE AND TIME OF PUBLIC HEARING:
JULY 18, 2023 AT 9:30 AM

DECLARATION OF PUBLICATION (2015.5 C.C.P.)

MISC. NOTICE

STATE OF CALIFORNIA

COUNTY OF FRESNO

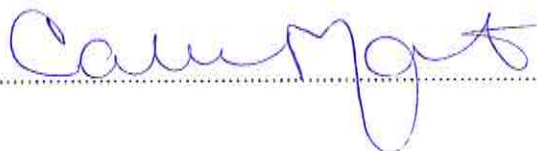
I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above entitled matter. I am the principal clerk of **THE BUSINESS JOURNAL** published in the city of Fresno, County of Fresno, State of California, Monday, Wednesday, Friday, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Fresno, State of California, under the date of March 4, 1911, in Action No.14315; that the notice of which the annexed is a printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to wit:

JULY 7, 2023

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Fresno, California,

JULY 7, 2023

ON



Notice of Public Hearing
Notice of hearing before the Board of Supervisors of the County of Fresno on UNCLASSIFIED CONDITIONAL USE PERMIT NO. 3755 A & B filed by PETE LOCASTRO, AREA OPERATIONS MANAGER, CEMEX. On June 8, 2023, the Fresno County Planning Commission approved this application, and on June 22, 2023, an appeal was filed by the Appellant (City of Fresno) to the Fresno County Board of Supervisors for consideration. Notice is hereby given that the Board of Supervisors of the County of Fresno has set this hearing for Tuesday, July 18, 2023, at the hour of 9:30 am (or as soon thereafter as possible), at the Board of Supervisors Chambers, Room 301, Hall of Records, 2281 Tulare St., Fresno, California as the time and place for holding a public hearing on the following matters:

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The Project includes the Plant Site and the Quarry Site as described below:

1. Plant Site (UCUP No. 3755-A): CEMEX's current Plant Site is located on approximately 122 acres on the west side of N. Friant Road 0.65-miles north of Willow Avenue and approximately 1.5-miles north of the nearest boundary of the City of Fresno (APNs: 300-070-56S, 57S, 58S, 59S, & 60S) (13475 N. Friant Road) (Sup. Dist. 2).

2. Quarry Site (UCUP No. 3755-B): CEMEX's current Quarry Site is located on approximately 354 acres on the west side of N. Friant Road at its intersection with Merrill Avenue and approximately 2.0-miles north of CEMEX's current Plant Site (APNs: 300-040-19 & 20, 300-081-01S, 300-250-12 & portion of 300-310-01) (14765 N. Friant Road) (Sup. Dist. 2). For information, contact Elliot Racusin, Department of Public Works and Planning, 2220 Tulare Street, (Corner of Tulare & "M" Streets, Suite A), Fresno, CA 93721, telephone (559) 600-4245.

The full text of this Land Use Appeal will be available on the Fresno County website <https://fresnocounty.legistar.com/Calendar.aspx> under the July 18, 2023 meeting at the Meeting Details link by Wednesday, July 12, 2023.

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To help ensure this meaningful access, the County will reasonably modify policies/ procedures and provide auxiliary aids/services to persons with disabilities. If, as an attendee or participant at the meeting, you need additional accommodations such as an American Sign Language (ASL) interpreter, an assistive listening device, large print material, electronic materials, Braille materials, or taped

materials, please contact the Current Planning staff as soon as possible during office hours at (559) 600-4230 or at jpothast@fresnocountyca.gov. Reasonable requests made at least 48 hours in advance of the meeting will help to ensure accessibility to this meeting. Later requests will be accommodated to the extent reasonably feasible.

Sal Quintero, Chairman
Board of Supervisors

ATTEST:
BERNICE E. SEIDEL
Clerk, Board of Supervisors
07/07/2023

ITEM #13
07/18/2023

From: De Young Assistant <dyassistant@deyoungproperties.com>
Sent: Friday, July 14, 2023 11:21 AM
To: District 1 <district1@fresnocountyca.gov>
Cc: Samantha Balderrama <SBalderrama@deyoungproperties.com>
Subject: CEMEX Operating Permit

CAUTION!!! - EXTERNAL EMAIL - THINK BEFORE YOU CLICK

Dear Respected Public Officials,

I hope this letter finds you well. My name is Ryan De Young, President of De Young Properties, a family-owned homebuilding company that has proudly served the Fresno community for three generations. As a lifelong resident of Fresno, I write to you regarding the recent debate surrounding the continuation of CEMEX's operations in our city. As you are aware, the imminent decision by the City of Fresno officials to either extend or end the operating permit for CEMEX is a matter of significant concern for local homebuilders like myself. We recognize the importance of adhering to environmental regulations and ensuring operations within our city do not contribute to deteriorating air quality or other adverse environmental impacts. However, we must also consider the broader implications of ceasing CEMEX's operations without a comprehensive, effective, and locally suitable alternative. Our company, like many others in Fresno's construction industry, depends heavily on the sand and gravel supplied by CEMEX. As stated by Clifton Wahlberg, president of E-Z Haul Ready Mix and Rockery, keeping a construction project viable means having local sources of rock and sand. If CEMEX's operations are halted, it would not only skyrocket our construction costs but could potentially pause or completely halt ongoing and planned projects. This would have dire repercussions for our business, employees, and the local economy. Furthermore, sourcing these materials from distant locations will invariably increase truck traffic and, consequently, greenhouse gas emissions. This runs counter to our shared goal of improving Fresno's air quality. As James Hammond, business manager for Laborers' International Union of North America, rightly pointed out, extending the conditional use permit for CEMEX could actually reduce traffic on our roads and mitigate air pollution. I urge you to consider the economic, environmental, and logistical challenges associated with abruptly disrupting CEMEX's operations. Any potential decision should be balanced, considering not only the critical environmental factors but also the sustainability of Fresno's construction industry and our city's broader economic health. I also ask that the city and CEMEX work together to expedite the completion and review of the Environmental Impact Report (EIR), allowing for a more informed decision-making process. As we navigate these complexities, we must strike a balance between environmental sustainability and economic viability. We look forward to supporting any initiatives that ensure this balance, promote local business viability, and guarantee a healthy environment for Fresno's residents.

Thank you for your attention to this matter.

Sincerely,

J. Ryan De Young
President
De Young Properties

ITEM #13
07/18/2023

From: Austin Turner <aturner@mitchellchadwick.com>
Sent: Friday, July 14, 2023 4:23 PM
To: Clerk/BOS
Cc: Patrick Mitchell
Subject: CEMEX - Rockfield Unusual Circumstances Exception Letter to County
Attachments: CEMEX - Rockfield Unusual Circumstances Exception Letter to County (00063580xD62CE).PDF

CAUTION!!! - EXTERNAL EMAIL - THINK BEFORE YOU CLICK

From: Austin Turner
Sent: Friday, July 14, 2023 2:44 PM
To: drandall@fresnocountyca.gov
Cc: brome@fresnocountyca.gov; WKettler@fresnocountyca.gov; CMotta@fresnocountyca.gov; Patrick Mitchell <pmitchell@mitchellchadwick.com>
Subject: CEMEX - Rockfield Unusual Circumstances Exception Letter to County

Good afternoon Clerk at the Board of Supervisors,

Please find a letter by Pat Mitchell on behalf CEMEX regarding the CUP four-year extension not falling within the "unusual circumstances" exception to the "Existing Facilities" exemption under CEQA.

Very Respectfully,

Austin D. Turner, Attorney



3001 Lava Ridge Court, Suite 120
Roseville, CA 95661
Office: 916.462.8801
Fax: 916.788.0290
aturner@mitchellchadwick.com
www.mitchellchadwick.com

CONFIDENTIALITY NOTICE: This communication and any accompanying document(s) are confidential and privileged. They are intended for the sole use of the addressee. If you receive this transmission in error, you are advised that any disclosure, copying, distribution, or the taking of any action in reliance upon the communication is strictly prohibited. Moreover, any such inadvertent disclosure shall not compromise or waive the attorney-client privilege as to this communication or otherwise. If you have received this communication in error, please contact us by telephone at (916) 462-8888.



**MITCHELL
CHADWICK**

Patrick G. Mitchell
pmitchell@mitchellchadwick.com
916-462-8887
916-788-0290 Fax

July 14, 2023

VIA U.S. MAIL AND EMAIL: DRANDALL@FRESNOCOUNTYCA.GOV

David Randall
Senior Planner
Fresno County Planning Department
2220 Tulare Street, Sixth Floor
Fresno, California 93721

**Re: Four-Year Extension Does Not Fall Within the Unusual Circumstances Exception
to the Existing Facilities Exemption**

Dear Mr. Randall:

This letter is to provide the County with support from CEMEX that the four-year Conditional Use Permit extension will not significantly affect the environment due to unusual circumstances pursuant to CEQA Guidelines, Section 15300.2(c). This letter also supplies recent examples where other counties approved extensions of existing mines using the Existing Facilities CEQA Exemption, under Section 15301.

I. Case Law Regarding Unusual Circumstances:

**A. *North Coast Rivers Alliance v. Westlands Water Dist.* (2014) 227 Cal.App.4th 832
("Rivers Alliance")**

In *Rivers Alliance*, the Court concluded that an interim renewal contract was not within the "unusual circumstances" exception to the CEQA categorical exemption for the continued operation of existing facilities pursuant to Section 15301.

The Petitioners argued that (1) the Respondent's diversion of water from the Delta "could potentially have an adverse effect on certain threatened fish population and fragile habitat in the Delta." and (2) that the diverted "water's use for irrigation purposes could potentially add to the salt and selenium content in the soil and groundwater in the Westlands Water District area due to lack of drainage."¹ The Petitioners claimed that the above constituted "potential[ly] significant

¹ *Rivers Alliance, supra*. 227 Cal.App.4th at pp. 870-871.

{00063572:1 }

effects on the environment;”² thus, “to the extent there is a reasonable possibility the activity will lead to significant environmental effects, the unusual circumstances requirement is met and the exception set forth in Guidelines section 15300.2, subdivision (c), is established.”³

The Court disagreed and held that “once a correct environmental baseline is applied to assess the project's impacts, it is clear that petitioners have failed to meet the requirement of showing a reasonable possibility of a *significant effect* on the environment.”⁴ The Court reasoned that the “baseline principle means that a proposal to continue existing operations without change would generally have no cognizable impact under CEQA.”⁵

B. *World Business Academy v. California State Lands Commission* (2018) 24 Cal.App.5th 476, as modified on denial of reh'g (July 10, 2018) (“*World Business*”)

In *World Business*, the Court held as follows:

- (1) The record supported the application of CEQA Exemption, Section 15301, existing facilities to the replacement lease.
 - Here, the owner and operator of the nuclear power plant had leased land from the State Lands Commission for 50 years. The Court held that “the lease replacement maintains rather than expands the plant's current operational capacity.”⁶ The Court reasoned that “[t]he relevant factual finding here is the Commission's implied finding that there were no unusual circumstances. The Commission was not obligated to make specific findings as to each proffered unusual circumstance it rejected, or its bases for doing so.”⁷
- (2) The Objectors failed to demonstrate that the size of the plant warranted the application of the “unusual circumstances” exception to the existing facilities exemption.

² *Id.* at p. 871.

³ *Id.* at pp. 870-871.

⁴ *Id.* at p. 871.

⁵ *Id.* at pp. 872-873.

⁶ *World Business, supra*, 24 Cal.App.5th at p. 497.

⁷ *Ibid.*

- (3) The Objectors' alleged effect of the plant on marine life did not warrant the application of the "unusual circumstances" exception to the existing facilities exemption.
- Here, the Objectors alleged that the plant's locality near the ocean would significantly impact marine life during the lease replacement because it created a coastline dead zone stretching 93 square miles.⁸ The Court held that the Objectors were improperly relying on the "plant's current impact on the environment rather than potential future effects due to the lease replacement."⁹ The Court reasoned that the preexisting effects are part of the baseline, for which the Objectors failed to point "to any substantial evidence indicating that they will become worse due to the lease replacement."¹⁰
- (4) The Objectors' alleged effect that the plant had on endangered species and other marine life did not warrant the application of the "unusual circumstances" exception to the existing facilities exemption.
- Again, the Court held that the Objectors' argument addressed current conditions, which were baseline conditions; thus, the Objectors' argument failed.¹¹

II. Courts May Look at the General Plan/Zoning of a Project in Determining Unusual Circumstances:

In determining whether a circumstance is unusual, "Courts may also look to conditions in the immediate vicinity of a proposed project," which "includes whether the project is consistent with the surrounding zoning."¹² In *Citizens*, an environmental organization filed a petition for writ of mandate against a district agricultural association ("District"), arguing that the District's granting of a CEQA exemption was in violation of CEQA because of the "unusual circumstances" exception.

The Court was dealing with the Class 23 exemption, the Court noted that in order for a party to show an unusual circumstance exception under Section 15300.2 for projects in an exempt class,

⁸ *Id.* at p. 504.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Id.* at pp. 504-505.

¹² *Citizens for Environmental Responsibility v. State ex rel. 14th Dist. Ag. Assn.* (2015) 242 Cal.App.4th 555, 586 ("Citizens").

they must show that the project has some feature that distinguishes it from others in the exempt class, such as its size or location.¹³ The Court held that “the rodeo presented no unusual circumstances” because it was “consistent with the surrounding zoning.”¹⁴

A. General Plan Designation:

The Fresno County General Plan designates the land use for the project sites as Agriculture. The recovery of mineral resources has been ongoing at the project sites for over 100 years, and the continued recovery of mineral resources from lands designated for Agriculture is allowed under the Fresno County General Plan Policy LU-A.4.

Thus, the unusual circumstances exception does not apply to the Plant Site and Quarry Site because the operations are allowed under the applicable General Plan designation.

B. Zoning Classifications:

The Quarry Site and Plant Site are zoned "AE-20" Exclusive Agriculture, a 20-acre minimum parcel size. Surface mining operations and related facilities and activities are permitted in the AE-20 district subject to a CUP under Section 858 of the Fresno County Zoning Ordinance.

Thus, the unusual circumstances exception does not apply to the Plant Site and Quarry Site because the operations are allowed under the applicable zoning.

III. Examples of California Counties Application of CEQA Exemption, Section 15301, Existing Facilities to Extend the Life of Existing Mine Permits

- A. On February 10, 2022, Lake County issued a Notice of Exemption, under Section 15301, for an extension of a Use Permit to allow continued operation of a volcanic cinder quarry, including crushing, sorting, a concrete batch plant, and the importation of asphalt concrete, aggregate, and fill for on-site processing and recycling.¹⁵

¹³ *Id.* at pp. 576-586.

¹⁴ *Id.* at p. 587; see also *Tustin Ranch v. City of Tustin* (2021) 70 Cal.App.5th 951, 963 (holding that the unusual circumstances exception does not apply if the project is consistent with the County’s general plan, the applicable specific plan, the applicable zoning designation, and development and design standards).

¹⁵ See Notice of Exemption, available at: https://files.ceqanet.opr.ca.gov/276158-1/attachment/EjYeeMJUqtJnlzK_oO_bf5t-n7flpVY7fbS8koCopK0p3Pu8NZ9lhoJEh6mqgx4XwBY8cvvn_ChxorM0 (posted by the State Clearinghouse on February 23, 2022); see also State Clearinghouse CEQA project portal, available at: <https://ceqanet.opr.ca.gov/2022020518>.

- B. On November 10, 2021, San Joaquin County issued a Notice of Exemption, under Section 15301, which extended the life of a quarry permit for an additional 15 years.¹⁶ The reason for the exemption was that the project was exempt from under CEQA Guidelines, Section 15301, as an existing facility.
- C. On June 24, 2010, Placer County submitted an approved Notice of Exemption, under Section 15301, to the State Clearinghouse for an extension of the operational life of a gravel pit for 10 years to complete the mining of gravel and decomposed granite deposits and to complete mine reclamation.¹⁷ The County reasoned that the project was exempt because the continued operation of the mine in accordance with the approved Reclamation Plan would not result in new or significant impacts.

Sincerely yours,

MITCHELL CHADWICK LLP



Patrick G. Mitchell

Cc: Bryan Rome, Esq.
Will Kettler
Chris Motta

¹⁶ See Notice of Exemption, available at: https://files.ceqanet.opr.ca.gov/274113-1/attachment/m-qRJjaNaYE41LwmlIWAPxQ-7V_6L568LI_So_ERQFSixTxZB7G3eHOX7ij8kvRZVowwls-8G2xL1PjX0; see also State Clearinghouse CEQA project portal, available at: <https://ceqanet.opr.ca.gov/2021110187>.

¹⁷ See State Clearinghouse CEQA document portal, available at: <https://ceqanet.opr.ca.gov/2010068266>.

7/18/23
Item #13

From: District 5
Sent: Tuesday, July 18, 2023 8:40 AM
To: Cesar, Hana; Vieira, Alexandria
Subject: FW: Cemex Application

Item 13 comments

-----Original Message-----

From: John McDaniel <mandomac@comcast.net>
Sent: Monday, July 17, 2023 5:21 PM
To: District 5 <district5@fresnocountyca.gov>
Subject: Cemex Application

CAUTION!!! - EXTERNAL EMAIL - THINK BEFORE YOU CLICK

Dear Supervisor Magsig

My wife, Andrea, and I are contacting your office to express our strong opposition to the continued degradation of the San Joaquin River that is embedded in the Cemex application to be heard by the Board of Supervisors on the 18th. The River has already paid enough of a price. Continued exploitation of this important habitat is not warranted.

Thank you for your consideration.

John McDaniel
440 E Terrace Ave
Fresno CA 93704
(559) 779-7186
mandomac@comcast.net

ITEM #13
07/18/2023

From: David Grubbs <davidgr@mail.fresnostate.edu>
Sent: Monday, July 17, 2023 3:41 PM
To: Clerk/BOS
Subject: Cemex Appeal Hearing

CAUTION!!! - EXTERNAL EMAIL - THINK BEFORE YOU CLICK

I hope to attend the hearing tomorrow but want to be on the record if I can't. Thank you.

+++++++

Jul 17, 2023

I oppose the proposed extension of the Conditional Use permit by Cemex and support the City of Fresno in their appeal.

Conditions have changed. A plan written in 1986, for a different mining site incidentally, could not possibly represent conditions here today.

The 1,100 homes at Woodward Lakes were a vague concept in the 1980s. And development has accelerated. The 2020 Decennial Census tracts 55.03 and 55.15 now boast 8,300 residents in 3,200 households. The construction and expansion of Table Mountain Casino, "Millerton New Town" and adjacent tracts in the Willow/Shepard gap are now part of the picture. We need a broader view. One that includes quality of life for the community as a whole.

While the proposed extension may not result in "new" environmental impacts, continued use as a mining site would further limit recreational opportunities, delay long stalled habitat restoration and subvert conservation goals.

Recovery of the floodplain for public use is overdue in a region that ranks near the bottom of the ladder in surveys of open space and public amenities. Indefinite use extensions and destructive project expansions will only prolong our perch on the lower rungs.

David Grubbs

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Item #13
7-18-2023

CEMEX Rockfield Mine

Extension Project

Unclassified CUP Application No. 3755A and 3755B &
Preliminary Environmental Review No. 8341

Fresno County Board of Supervisors
July 18, 2023



Extension Project Overview

Scope:

1. Four-year extension
 - a) Prior CUP would have expired July 28, 2023
 - b) P.C. extension expires July 28, 2027
2. No changes to operations or traffic
3. CEMEX will continue to comply with existing CUPs
4. Separate from the Modification Project, which will be reviewed via an EIR by the County, which EIR preparation is underway
5. Resource remains in the already permitted area

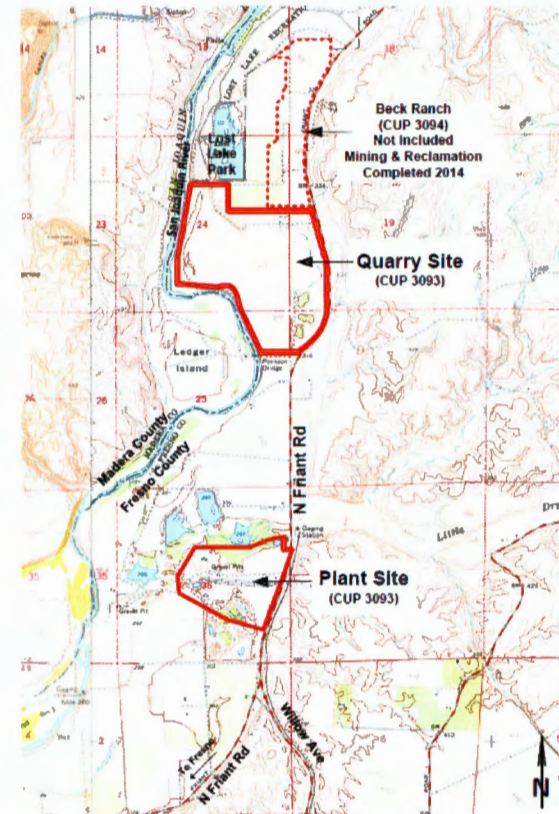
Extension Project Overview

Objectives:

1. Continue to provide jobs for 92 employees (and support for their families)
2. Mine existing permitted resource
3. Continue to provide a source of local aggregate
4. Provide sufficient time so the County can complete environmental review of the proposed Modification Project
 - a. Modification application submitted Dec. 2019 to extend mine life, increase mine depth, and other operational changes
 - b. Draft EIR not yet completed

Rockfield Mine – 110 Years of Operations

- Opened in 1913, with mining first occurring at the Quarry Site
- Mining and processing operations have been located at the Plant Site since 1924
- Together, mining and processing have occurred at the Quarry Site and Plant Site continuously for the past 110 years (1913-2023)





A Source of Jobs and Economic Development

ROCKFIELD AGGREGATE FACILITY

ANNUAL ECONOMIC IMPACT AT CURRENT PRODUCTION LEVEL



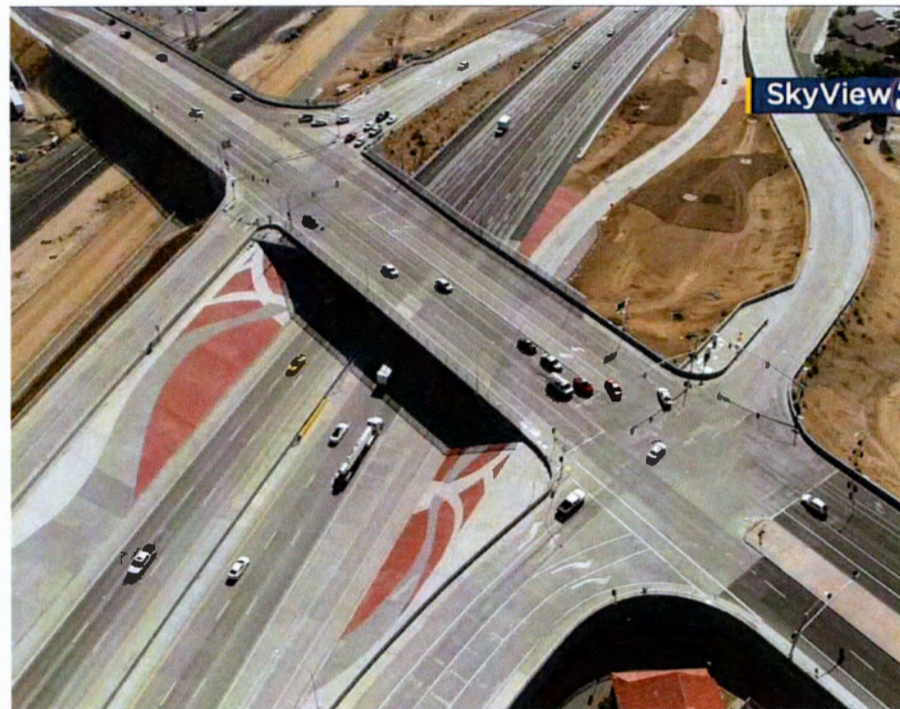


**A Valued Source
of Construction
Aggregate**



Highways 41, 99, 168, and 180

- Local California highways built from Rockfield Quarry serve thousands of drivers daily
- Freeways 41, 99, 168, and 180 constructed using material from Rockfield Quarry



Clovis Community Medical Center



- Constructed using material from Rockfield Quarry

Clovis Community College

- Serves over 14,000 students in Central Valley
- Constructed using material from Rockfield Quarry



Chukchansi Ball Park



- Located in Fresno, California
- Home of Minor League Baseball's Fresno Grizzlies
- Seats 10,650 people
- Constructed using material from Rockfield Quarry

Save Mart Center

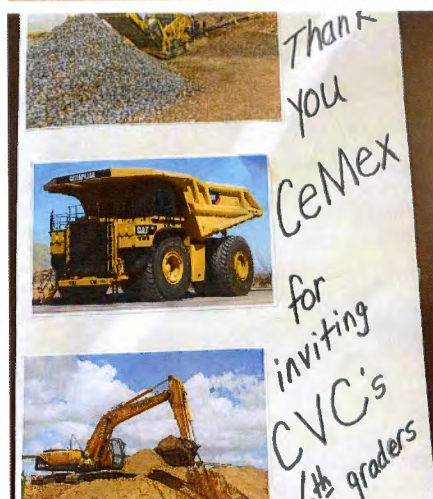
- Located at Fresno State University
- Seats 18,000 people
- Constructed using material from Rockfield Quarry



Fresno Amazon Distribution Center



- Located in Fresno, California
- Serves as a hub for Amazon to ship products to customers
- Can employ up to 1,500 employees
- Constructed using material from Rockfield Quarry



Rockfield Mine : A Community Partner for 100 Years



Supporting 92 employees and their families

A CUP Extension For an Existing Operation is Typical

- Many CA counties extend operations while processing a pending modification application without requiring an extension application
- Here a CUP extension is proper to continue a long-existing mine, even without considering the timing needs of the pending modification application
 - Mine is in a County and State designated MRZ zone
 - An already permitted resource still remains

CEQA Process for the Extension Project

CEQA review – key concepts:

- “Where a project involves ongoing operations or a continuation of past activity, the established levels of a particular use and the physical impacts thereof are considered to be part of the existing environmental baseline.”
- “[A] proposal to continue existing operations without change would generally have no cognizable impact under CEQA.”
 - *North Coast Rivers Alliance v. Westlands Water Dist.* (2014) 227 Cal.App.4th 832, 872.
- Extension related to an existing facility is categorically exempt from CEQA review.
 - *North Coast* at 868 (Fifth District Court of Appeal covering Fresno County; use of existing facilities categorical exemption for 2-year extension of water delivery contract); *World Business Academy v. California State Lands Commission* (2018) 24 Cal.App.5th 476, 493-97 (existing facilities categorical exemption for 7-year extension of lease to build and operate water intake and discharge structures for a nuclear power plant).

CEQA Process for the Extension Project

- The City appeal is legally incorrect
- Extension is CEQA exempt
 - No EIR required
 - No truck review required
 - Existing traffic is baseline and not increasing
- “Once a correct environmental baseline is applied to assess the project’s impacts, it is clear that the petitioners have failed to meet the requirement of showing a reasonable possibility of a *significant effect* on the environment...[the] baseline principle means that a proposal to continue existing operations without change would generally have no cognizable impact under CEQA.”
 - *North Coast Rivers* (2014) 227 Cal.App.4th at 872

Examples of California Counties Applying Section 15301 for Extension of Mine Use Permits

1. Feb. 2022 - Lake County issued Notice of Exemption for an extension of a Use Permit to allow continued operation of a volcanic cinder quarry
2. Nov. 2021 - San Joaquin County issued Notice of Exemption to extend life of a quarry permit by 15 years
3. June 2010 - Placer County issued Notice of Exemption for extension of a gravel pit for 10 years

4 Years Needed to Finalize Modification EIR Process

Remaining steps for processing the Modification Project will take 3 to 7 more years

1. Admin Draft EIR: The County's administrative Draft EIR is only approximately 65% completed after 3.5 years. It will likely take **6 to 12 months** for the County to complete the administrative Draft EIR
2. Comment Period: The County will circulate the Draft EIR for a minimum state law required **45-day** public comment period
3. Prepare Final EIR: The County will prepare responses to comments and prepare a Final EIR. There will likely be a high volume of comments, so it will take **6 to 18 months** to prepare the Final EIR
4. Prepare Staff Report and Findings: The County will need to prepare a staff report and findings for the project, which will likely take **1 to 3 months** to prepare
5. Hearings: Over a **3 to 6 month period**, the County would hold at least one Planning Commission Hearing and at least one Board of Supervisors Hearing

4 Years Needed to Finalize Modification EIR Process

Timeline for Review of Other Mining Projects
(Date the Draft EIR was released to Project approval)

Austin Quarry (Madera County): **4 years** (2012 to 2016)

Riverbend Sand & Gravel (Fresno County): **1 year** (2014 to 2015)

Carmelita Mine & Reclamation Project (Fresno County): **4 years** (2011 to 2015)

Kings River Sand and Gravel Project (Fresno County): **4 years** (2004 to 2008)

Conclusion

- Extension Project does not create any new environmental impacts because existing operations are part of the already existing CEQA baseline
- CEQA exemption applies to the Extension Project
- Approving an extension protects a long existing site, 92 jobs, and a local source of aggregate for Fresno County projects
- Unfair to deny the four year extension when CEMEX does not control the timeline for the Modification Project review and has currently permitted reserves remaining