



Board Agenda Item 47

DATE: August 22, 2023

TO: Board of Supervisors

SUBMITTED BY: Steven E. White, Director
Department of Public Works and Planning

Daniel C. Cederborg, County Counsel

SUBJECT: Indemnification and Defense; and Financial Security for UCUP No. 3755-A and 3755-B

RECOMMENDED ACTION(S):

1. **Adopt the resolution on file with Clerk of the Board affirming the actions of the Board of Supervisors on July 18, 2023, approving CUP 3755-A & CUP 3755-B Subject to conditions of approval as stipulated in Exhibit A of the Resolution.**
2. **Approve and authorize Chairman to:**
 - A. **Execute Indemnification and Defense Agreement with CEMEX Construction Materials Pacific, LLC (“Applicant”), as required by condition of approval of Unclassified Conditional Use Permit (“CUP”) Application Nos. 3755-A and 3755-B relating to amend Unclassified Conditional Use Permit (“UCUP”) No. 3093 and related UCUP 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, located along N. Friant Road, north of the City of Fresno, for an additional three years (extend expiration date from July 28, 2023 to July 28, 2026).**
 - B. **Execute Escrow Agreement with Applicant and U.S. Bank, NA (“Escrow Agent”) securing \$200,000.00 paid into escrow by Applicant to Escrow Agent as financial security for the Indemnification and Defense Agreement.**
3. **Authorize the Director of Public Works and Planning to do any and all things and take any and all actions and execute and provide any and all notices, certificates, and other documents which he may deem necessary or advisable in order to administer the Indemnification and Defense Agreement and the Escrow Agreement on behalf of the County.**

On July 18, 2023, your Board approved CUP Application Nos. 3755-A and 3755-B made by Pete LoCastro, Area Operations Manager on behalf of the Applicant. This approval amended UCUP No. 3093 and related UCUP 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 by three years. Your Board’s approval was conditioned upon the Applicant agreeing to indemnify and defend the County in any litigation arising from the approval and submitting a financial security to secure the agreement. The recommended actions fulfill requirements imposed by your Board on this project. This item pertains to a location in Districts 2 and 5.

ALTERNATIVE ACTION(S):

There are no viable alternative actions under the present circumstances. The recommended actions are necessary to satisfy a condition of approval imposed by the Board of Supervisors and are necessary in order for the applicant to exercise the approved conditional use permit.

FISCAL IMPACT:

There is no increase in Net County Cost associated with the recommended actions. The recommended Indemnification and Defense Agreement ("I & D Agreement") requires the Applicant to pay for costs to defend and indemnify the County against any legal challenge filed against the County related to the Project. The recommended Escrow Agreement provides that Escrow Agent would be compensated by the Applicant for providing the escrow services.

DISCUSSION:

Unclassified Conditional Use Permit Application (UCUP) No. 3755 allows to amend Unclassified Conditional Use Permit No. 3093 and related UCUP 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 three years (extend expiration date from July 28, 2023 to July 28, 2026).

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

Plant Site (UCUP 3577-A): 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, and 60S) (13109 N. Friant Road) (Sup. Dist. 2).

Quarry Site (UCUP 3577-B): 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, 300-040-20, 300-080-01S, 300-250-12 and portion of 300-310-01) (13757 N. Friant Road) (Sup. Dist. 5).

At its June 8, 2023 regular meeting, your Board determined that further environmental review was not required by the California Environmental Quality Act and approved UCUP Nos. 3755-A and 3755-B, subject to the Conditions of Approval and Project Notes listed in the Planning Commission Staff Report, as modified by your Board.

In approving the UCUP No. 3755-A and 3755-B, the Board imposed a condition of approval requiring that the Applicant defend and indemnify the County against any legal challenge filed against the County related to the Project. The I & D Agreement recommended for approval by this item will satisfy this indemnification and defense condition of approval.

To secure the Applicant's obligations under the recommended I & D Agreement, staff proposes that the Applicant be required to enter into the recommended Escrow Agreement with the County and the Escrow Agent, by which the Applicant will deposit a minimum of \$200,000 in a separate savings account with Escrow Agent as cash security. The terms of the Escrow Agreement require such deposit upon the parties' execution of that agreement. The County will have the sole right to withdraw funds from the saving account upon a determination by the Director of Public Works and Planning that the Applicant has defaulted under the I&D Agreement.

Finally, following the Applicant's satisfaction of his obligations under the I & D Agreement, and the passage of either 30 days from the applicable appeal period 200 days from final disposition of any legal actions

challenging the County's approval of UCUP No. 3755-A and 3755-B, the recommended I & D Agreement provides that the Applicant may submit a request to the Director to terminate the Escrow Agreement; that would allow any remaining cash security to be delivered by Escrow Agent to the Applicant. Provided that these requirements are satisfied, the Director would be authorized to issue notice terminating the Escrow Agreement and releasing the County's interest in any remaining cash security, within 30 County business days of receiving the Applicant's request.

REFERENCE MATERIAL:

BAI #13, July 18, 2023

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Resolution
On file with Clerk - Indemnification and Defense Agreement
On file with Clerk - Escrow Agreement

CAO ANALYST:

Salvador Espino