



US Army Corps
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San Francisco District

SAN FRANCISCO DISTRICT

Regulatory Division
450 Golden Gate Ave., 4th Floor
San Francisco, CA 94102-3406

PUBLIC NOTICE

PROJECT: CEMEX Eliot Facility Arroyo del Valle Realignment Project (SMP-23)

PUBLIC NOTICE NUMBER: 2015-00216S

PUBLIC NOTICE DATE: June 21, 2019

COMMENTS DUE DATE: July 21, 2019

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1. **INTRODUCTION:** RMC Pacific Materials, LLC (CEMEX) (POC: Alejandro Ortiz (916) 941-2800), 2365 Iron Point Road, Suite 120, Folsom, California 95630, through its agent, Compass Land Group (POC: Yasha Saber (916) 825-4997), 3140 Peacekeeper Way, Suite 102, McClellan, California 95652, has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to realign and restore a $\pm 5,864$ linear foot reach of the Arroyo del Valle (ADV) as a component of CEMEX's mine reclamation plan and expansion of CEMEX's Lake B mining area. The project is located in the City of Pleasanton, Alameda County, California. This Department of the Army permit application is being processed pursuant to the provisions of Section 404 of the Clean Water Act of 1972, as amended (33 U.S.C. § 1344 *et seq.*).

2. PROPOSED PROJECT:

Project Site Location: The project is located at the CEMEX Eliot Quarry, 1544 Stanley Boulevard, in the city of Pleasanton, Alameda County, California (37.6571, -121.8197).

Project Site Description: The project is located on the 920-acre CEMEX Eliot Quarry, which is a sand and gravel mining facility. The facility has been mined for sand and gravel since 1906. The project would take place on a 109-acre portion of the property in the vicinity of the existing ADV alignment and adjacent to the Lake B mining area. The project area contains the existing ADV alignment, artificial quarry impoundments, and developed quarry areas. See Figures 1 and 2.

Project Description: CEMEX proposes to expand the area of Lake B for mining by extending south into the area currently occupied by the ADV within a 109-acre portion

of the Eliot Facility. That would occur after CEMEX completes a realignment of a $\pm 5,864$ linear foot reach of the ADV as a component of the project (see the attached figures). The Project would create and restore a $\pm 6,206$ linear foot riparian corridor south of the Lake B mining area. The realigned and restored channel would feature native aquatic vegetation and a complex mosaic of restored wetland habitats expected to improve the ecological functions and values of the stream and its surroundings.

Basic Project Purpose: The basic project purpose comprises the fundamental, essential, or irreducible purpose of the project, and is used by USACE to determine whether the project is water dependent. The basic project purpose is to expand sand and gravel mining in order to provide aggregate resources.

Overall Project Purpose: The overall project purpose serves as the basis for the Section 404(b)(1) alternatives analysis and is determined by further defining the basic project purpose in a manner that more specifically describes the applicant's goals for the project while allowing a reasonable range of alternatives to be analyzed. The overall project purpose is for CEMEX to expand its sand and gravel (aggregate) resource extraction to meet regional demands for high quality aggregate-based construction materials.

Project Impacts: 29.11 acres of jurisdictional waters would be temporarily impacted within the area of the realigned Arroyo. This acreage would include 20.22 acres [$\pm 2,126$ linear feet] of perennial stream, 8.83 acres of breached quarry ponds, and 0.06 acre [± 91 linear feet] of intermittent stream. See Figure 9, Impacted Aquatic Features. The 8.83 acres of breached quarry ponds are man-made artificial impoundments (mine excavations in historically upland areas) that may be jurisdictional waters

because of the surface breach that created a hydrologic connection between the ponds and the ADV.

28.67 acres of jurisdictional waters would be permanently impacted within the area of the realigned ADV as that section of the channel would be relocated south of its current configuration to allow for the southerly progression of the Lake B mining excavation. This acreage includes 20.60 acres [$\pm 3,738$ linear feet] of perennial stream and 8.07 acres of breached quarry ponds. See Figure 9. The 8.07 acres of breached quarry ponds may be jurisdictional waters because of the surface breach that creates a hydrologic connection between the ponds and the ADV.

Proposed Mitigation: The Project has been designed for the smallest footprint that would allow the basic objectives to be achieved. No other avoidance is practicable to carry out the proposed realignment and restoration of the ADV and to facilitate the southerly progression of Lake B mining. The Project would realign and restore the ADV to a more natural state and is expected to improve the ecological functions and values of the stream and its surroundings. The Project design includes an extensive erosion control design for the protection of waters of the U.S., which would be a substantial improvement over the existing, highly-disturbed nature of the channel and surroundings. To compensate for the temporary and permanent impacts, the Project would restore 30.51 acres of aquatic resources in the realigned ADV and create 28.10 acres of cohesive, native upland habitat adjacent to the realigned ADV. The Project would replace $\pm 5,864$ linear feet of highly disturbed and degraded ADV stream with $\pm 6,206$ linear feet of restored ADV stream. The Project would also provide for the development of 43.26 acres of Lake B, a water management facility to be operated by Zone 7 as part of the Chain of Lakes. See Figure 10, Restored Habitat.

Project Alternatives: USACE has not endorsed the submitted alternatives analysis at this time. USACE will conduct an independent review of the project alternatives prior to reaching a final permit decision.

3. STATE AND LOCAL APPROVALS:

Water Quality Certification: State water quality certification or a waiver thereof is a prerequisite for the issuance of a Department of the Army Permit to conduct any activity which may result in a fill or pollutant discharge into waters of the United States, pursuant to Section 401 of

the Clean Water Act of 1972, as amended (33 U.S.C. § 1341 *et seq.*). The applicant has recently submitted an application to the California Regional Water Quality Control Board (RWQCB) to obtain water quality certification for the project. No Department of the Army Permit will be issued until the applicant obtains the required certification or a waiver of certification. A waiver can be explicit, or it may be presumed if the RWQCB fails or refuses to act on a complete application for water quality certification within 60 days of receipt, unless the District Engineer determines a shorter or longer period is a reasonable time for the RWQCB to act.

Water quality issues should be directed to the Executive Officer, California Regional Water Quality Control Board, San Francisco Bay Region, 1515 Clay Street, Suite 1400, Oakland, California 94612, by the close of the comment period.

Coastal Zone Management: Section 307(c) of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. § 1456(c) *et seq.*), requires a non-Federal applicant seeking a federal license or permit to conduct any activity occurring in or affecting the coastal zone to obtain a Consistency Certification that indicates the activity conforms with the state's coastal zone management program. Generally, no federal license or permit will be granted until the appropriate state agency has issued a Consistency Certification or has waived its right to do so. The project does not occur in the coastal zone, and a *preliminary* review by USACE indicates the project is not likely to affect coastal zone resources. This presumption of effect, however, remains subject to a final determination by the San Francisco Bay Conservation and Development Commission.

Coastal zone management issues should be directed to the Executive Director, San Francisco Bay Conservation and Development Commission, 50 California Street, Suite 2600, San Francisco, California 94111 by the close of the comment period.

Other Local Approvals: The applicant has applied for the following additional governmental authorizations for the project: A Reclamation Plan (SMP-23) to be issued by the County of Alameda, and a Lake and Streambed Alteration Agreement to be issued by the California Department of Fish and Wildlife.

4. COMPLIANCE WITH VARIOUS FEDERAL LAWS:

National Environmental Policy Act (NEPA): Upon review of the Department of the Army permit application and other supporting documentation, USACE has made a *preliminary* determination that the project neither qualifies for a Categorical Exclusion nor requires the preparation of an Environmental Impact Statement for the purposes of NEPA. At the conclusion of the public comment period, USACE will assess the environmental impacts of the project in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321-4347), the Council on Environmental Quality's regulations at 40 C.F.R. § 1500-1508, and USACE regulations at 33 C.F.R. § 325. The final NEPA analysis will normally address the direct, indirect, and cumulative impacts that result from regulated activities within the jurisdiction of USACE and other non-regulated activities USACE determines to be within its purview of Federal control and responsibility to justify an expanded scope of analysis for NEPA purposes. The final NEPA analysis will be incorporated in the decision documentation that provides the rationale for issuing or denying a Department of the Army Permit for the project. The final NEPA analysis and supporting documentation will be on file with the San Francisco District, Regulatory Division.

Endangered Species Act (ESA): Section 7(a)(2) of the ESA of 1973, as amended (16 U.S.C. § 1531 *et seq.*), requires Federal agencies to consult with either the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS) to ensure actions authorized, funded, or undertaken by the agency are not likely to jeopardize the continued existence of any Federally-listed species or result in the adverse modification of designated critical habitat. As the Federal lead agency for this project, USACE has conducted a review of the California Natural Diversity Data Base, digital maps prepared by USFWS and NMFS depicting critical habitat, and other information provided by the applicant to determine the presence or absence of such species and critical habitat in the project area. Based on this review, USACE has made a preliminary determination that the following Federally-listed species may be present at the project location or in its vicinity and may be affected by project implementation. Alameda whipsnake (*Masticophis lateralis*), California tiger salamander (*Ambystoma californiense*), and California red-legged frog (*Rana draytonii*). To address project related impacts to these species, USACE will initiate consultation with USFWS, pursuant to Section 7(a) of the Act. Any required consultation must be concluded prior to the issuance of a Department of the Army Permit for the

project. Any required consultation must be concluded prior to the issuance of a Department of the Army Permit for the project.

Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA): Section 305(b)(2) of the MSFCMA of 1966, as amended (16 U.S.C. § 1801 *et seq.*), requires Federal agencies to consult with the NMFS on all proposed actions authorized, funded, or undertaken by the agency that may adversely affect essential fish habitat (EFH). EFH is defined as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. EFH is designated only for those species managed under a Federal Fisheries Management Plan (FMP), such as the *Pacific Groundfish FMP*, the *Coastal Pelagics FMP*, or the *Pacific Coast Salmon FMP*. As the Federal lead agency for this project, USACE has conducted a review of digital maps prepared by NMFS depicting EFH to determine the presence or absence of EFH in the project area. Based on this review, USACE has made a *preliminary* determination that EFH is not present at the project location or in its vicinity and that consultation will not be required. USACE will render a final determination on the need for consultation at the close of the comment period, taking into account any comments provided by NMFS.

Marine Protection, Research, and Sanctuaries Act (MPRSA): Section 302 of the MPRSA of 1972, as amended (16 U.S.C. § 1432 *et seq.*), authorizes the Secretary of Commerce, in part, to designate areas of ocean waters, such as the Cordell Bank, Gulf of the Farallones, and Monterey Bay, as National Marine Sanctuaries for the purpose of preserving or restoring such areas for their conservation, recreational, ecological, or aesthetic values. After such designation, activities in sanctuary waters authorized under other authorities are valid only if the Secretary of Commerce certifies that the activities are consistent with Title III of the Act. No Department of the Army Permit will be issued until the applicant obtains any required certification or permit. The project does not occur in sanctuary waters, and a *preliminary* review by USACE indicates the project is not likely to affect sanctuary resources. This presumption of effect, however, remains subject to a final determination by the Secretary of Commerce or his designee.

National Historic Preservation Act (NHPA): Section 106 of the NHPA of 1966, as amended (16 U.S.C. § 470 *et seq.*), requires Federal agencies to consult with the appropriate State Historic Preservation Officer to take into

account the effects of their undertakings on historic properties listed in or eligible for listing in the *National Register of Historic Places*. Section 106 of the Act further requires Federal agencies to consult with the appropriate Tribal Historic Preservation Officer or any Indian tribe to take into account the effects of their undertakings on historic properties, including traditional cultural properties, trust resources, and sacred sites, to which Indian tribes attach historic, religious, and cultural significance. As the Federal lead agency for this undertaking, USACE has conducted a review of the latest published version of the *National Register of Historic Places*, survey information on file with various city and county municipalities, and other information provided by the applicant to determine the presence or absence of historic and archaeological resources within the permit area. Based on this review, USACE has made a *preliminary* determination that historic or archaeological resources are not likely to be present in the permit area and that the project either has no potential to cause effects to these resources or has no effect to these resources. USACE will render a final determination on the need for consultation at the close of the comment period, taking into account any comments provided by the State Historic Preservation Officer, the Tribal Historic Preservation Officer, the Advisory Council on Historic Preservation, and Native American Nations or other tribal governments. To address project related impacts to historic or archaeological resources, USACE will initiate consultation with the State Historic Preservation Officer or the Tribal Historic Preservation Officer, pursuant to Section 106 of the Act. Any required consultation must be concluded prior to the issuance of a Department of the Army Permit for the project. If unrecorded archaeological resources are discovered during project implementation, those operations affecting such resources will be temporarily suspended until USACE concludes Section 106 consultation with the State Historic Preservation Officer or the Tribal Historic Preservation Officer to take into account any project related impacts to those resources.

5. COMPLIANCE WITH THE SECTION 404(b)(1) GUIDELINES: Projects resulting in discharges of dredged or fill material into waters of the United States must comply with the Guidelines promulgated by the Administrator of the Environmental Protection Agency under Section 404(b) of the Clean Water Act (33 U.S.C. § 1344(b)). An evaluation pursuant to the Guidelines indicates the project is not dependent on location in or proximity to waters of the United States to achieve the basic project purpose. This conclusion raises the (rebuttable) presumption of the availability of a less environmentally damaging practicable

alternative to the project that does not require the discharge of dredged or fill material into special aquatic sites. The applicant has been informed to submit an analysis of project alternatives to be reviewed for compliance with the Guidelines.

6. PUBLIC INTEREST EVALUTION: The decision on whether to issue a Department of the Army Permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the project and its intended use on the public interest. Evaluation of the probable impacts requires a careful weighing of the public interest factors relevant in each particular case. The benefits that may accrue from the project must be balanced against any reasonably foreseeable detriments of project implementation. The decision on permit issuance will, therefore, reflect the national concern for both protection and utilization of important resources. Public interest factors which may be relevant to the decision process include conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people.

7. CONSIDERATION OF COMMENTS: USACE is soliciting comments from the public; Federal, State, and local agencies and officials; Native American Nations or other tribal governments; and other interested parties in order to consider and evaluate the impacts of the project. All comments received by USACE will be considered in the decision on whether to issue, modify, condition, or deny a Department of the Army Permit for the project. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, and other environmental or public interest factors addressed in a final environmental assessment or environmental impact statement. Comments are also used to determine the need for a public hearing and to determine the overall public interest in the project.

8. SUBMITTING COMMENTS: During the specified comment period, interested parties may submit written comments to Danielle Mullen, San Francisco District, Regulatory Division, 450 Golden Gate Avenue, 4th Floor, Suite 1111, San Francisco, California 94102-3404; comment letters should cite the project name, applicant name, and public notice number to facilitate review by the

Regulatory Permit Manager. Comments may include a request for a public hearing on the project prior to a determination on the Department of the Army permit application; such requests shall state, with particularity, the reasons for holding a public hearing. All substantive comments will be forwarded to the applicant for resolution or rebuttal. Additional project information or details on any subsequent project modifications of a minor nature may be obtained from the applicant and/or agent or by contacting the Regulatory Permit Manager by telephone or e-mail (cited in the public notice letterhead). An electronic version of this public notice may be viewed under the *Public Notices* tab on the USACE website: <http://www.spn.usace.army.mil/Missions/Regulatory>.