



## Inter Office Memo

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DATE: June 8, 2023

TO: Board of Supervisors

FROM: Planning Commission

SUBJECT: RESOLUTION NO. 12996 – UNCLASSIFIED CONDITIONAL USE PERMIT APPLICATION NO. 3755-A and 3755-B

APPLICANT: Pete LoCastro, Area Operations Manager, CEMEX

OWNER: CEMEX Construction Material Pacific , LLC

REQUEST: 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 four years (extend expiration date from July 28, 2023 to July 28, 2027).

LOCATION: 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).

### PLANNING COMMISSION ACTION:

At its hearing of June 8, 2023, the Commission considered the Staff Report and testimony (summarized in Exhibit A).

A motion was made by Commissioner Abrahamian and seconded by Commissioner Arabian to determine that in accordance with Section 15162 of CEQA that the project is not subject to preparation of a supplemental EIR and the previously prepared EIR may be used for consideration of this proposal, and move to determine that the required Findings as recommended in the staff report can be made, and approve Unclassified Conditional Use Permit No. 3755 subject to the recommended Conditions of Approval listed in Exhibit B with the exception that the date operating period be increased to four additional years of operation, ending on July 28, 2027, and that the Applicant enter into an agreement to indemnify the County from the cost of potential litigation over approval of the project.

This motion passed on the following vote:

VOTING:        Yes:            Commissioners Abrahamian, Arabian, Ewell, Hill, and Zante  
                  No:            Commissioners Chatha and Woolf  
                  Absent:        Commissioner Carver  
                  Abstain:       None

STEVEN E. WHITE, DIRECTOR  
Department of Public Works and Planning  
Secretary-Fresno County Planning Commission

By:   
\_\_\_\_\_  
William Kettler, Manager  
Development Services and Capital Projects Division

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NOTES:        The approval of this project will expire two years from the date of approval unless substantial development has occurred. When circumstances beyond the control of the applicant do not permit compliance with this time limit, the Commission may grant an extension not to exceed one additional year. Application for such extension must be filed with the Department of Public Works and Planning before the expiration of the Conditional Use Permit.

Attachments

EXHIBIT A

Unclassified Conditional Use Permit Application No. 3755-A and 3755-B

Staff: The Fresno County Planning Commission considered the Staff Report dated June 8, 2023 and heard a summary presentation by staff.

Presenters: The applicant and the applicant's representatives concurred with the Staff Report and the recommended conditions. They described the project and indicated that regional demand for sand and gravel necessitates this application.

- We agree with the staff report except for two issues, extension of time should be four years rather than staff's recommended one year, and we see a different approach to compliance with CEQA based on an exemption, and case law.
- The CEQA Section 15301 for Existing Facilities would also be applicable for this application.
- We are only requesting a four-year extension of time, nothing else will change.
- There two reasons for the Application, we need time to allow the environmental work to be completed for the parallel modification application, and we have existing resource of aggregate in the ground that they need to finish mining.
- Cemex provides employment for 92 employees in the County.
- We have been working on the associated modification application for a year prior to its submission to the County 3.5 years ago.
- The material is used local to build all varieties of projects, and if the quarry is not there, material would have to be trucked from the Kings River, Madera County, or Coalinga which increases traffic and air impacts.
- The site is in a Mineral Resource Zone.
- The CEQA Section 15301 for Existing Facilities would also be applicable.
- If we are only approved for a one-year extension, we would have to file a subsequent application for an additional extension as it is highly probable that the Environmental Impact Report (EIR) will take longer.
- An EIR is a complex document, and it can take significantly longer than a year to complete, depending on the number of comments on the Draft EIR it could require an additional year to complete; further, if there is litigation it could add additional years to resolve the issues. The shortest time frame is more likely to be 15 months, four years is more realistic, would prefer seven years.
- The extension would create no environmental impacts.
- Cemex is agreeable with additional Conditional of Approval for indemnification for defense of potential Litigation.

- The amount of aggregate left to be mined without any modification operations on the site would take more than four years to mine.

Others:

Eight of the other individuals presenting information were in support of the application and there were eight in opposition to the application.

- Those in support asserted the benefits CEMEX brings to the workers and the community at large.
- Several individuals in opposition to the application stated the existing operation has caused dust, water issues, and traffic concerns of which impacted their wellbeing.
- A representative of the San Joaquin River Parkway and Conservation Trust Inc. stated the certified and supplemental EIRs only applies to the processing of the Beck resources (now reclaimed) and therefore, the Staff Reports CEQA exemption (Section 15162) is baseless.
- The previous EIR does not meet current standards as there have been significant changes to the site and surrounding area such as stockpiling of raw materials along the south edge of the site and residential growth across the project sites.
- The increased residential, pedestrian, and bicyclist volumes along the Friant Road corridor have increased due to Woodward Park and the trail facilities in the area and present a safety concern.

Correspondence:

In addition to those attached to the published Staff Report, four letters of opposition were presented to the Planning Commission along with two letters that were neutral but raised issues to be considered by the commission, along with a letter from the Applicant in response to comment letters attached to the published Staff Report was provided to the Commission at the beginning of the meeting. One additional letter of support was presented during the hearing.

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EXHIBIT B

**Unclassified Conditional Use Permit Application No. 3755-A & 3755-B**

Conditions of Approval	
1.	The operation shall be in substantial accordance with the Site Plans, Elevations and Operational Statement as presented to and approved by the Board of Supervisors.
2.	All conditions of Conditional Use Permit Nos. 367, 2032, 2209, 2235, 2241, 3063, and 3093 shall remain in full force and effect.
3.	The permits shall expire on July 28, 2027.
4.	The Applicant/ Appellant shall enter into an agreement indemnifying the County for al/ legal costs associated with its approval of UCUP No. 3755 and provide security in an amount determined by the County for any such legal costs incurred. The agreement and payment of security shall be due unless the litigation period has expired, in which case the requirements for the indemnification agreement and security shall be considered null and void.
Notes	
<b>The following Notes reference mandatory requirements of Fresno County or other Agencies and are provided as information to the project Applicant.</b>	
1.	Grading import/stockpiling of material (e.g., sand and gravel) are prohibited within the flood zone as to not cause an impact to the determined area of flooding.

EXHIBIT B

EXHIBIT "C"

ATTACHMENT  
TO  
AGENDA ITEM

FISCAL IMPACT STATEMENT

Unclassified Conditional Use Permit Application No. 3755-A and 3755-B

Listed below are the fees collected for the land use applications involved in this Agenda Item:

Unclassified Conditional Use Permit Amendment Application:	\$ 4,561.50 <sup>1</sup>
Environmental Review:	259.00 <sup>2</sup>
Pre- Application Credit	(247.00) <sup>3</sup>
Health Department Review:	<u>654.00<sup>4</sup></u>
<b>Total Fees Collected</b>	<b>\$ <u>5,261.50</u></b>

<sup>1</sup> Includes project routing, coordination with reviewing agencies, preparation and incorporation of analysis into Staff Report.
<sup>2</sup> Review proposal to provide appropriate California Environmental Quality Act (CEQA) evaluation.
<sup>3</sup> Pre-Application Credit granted if application filed within 6-month timeframe
<sup>4</sup> Review of proposal by the Department of Public Health, Environmental Health Division to provide comments.