



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY

NEIGHBORHOOD PRESERVATION  
AND  
SUSTAINABILITY DEPARTMENT

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Steve Dunn, Senior Managing Director  
Legacy Partners  
4000 East Third Ave., Ste. 600  
Foster City, CA 94404

**RE: SMP-31/36 – Notice to Cease and Desist Further Filling Activities  
at the Busch Pit, On-Site Stockpile Evaluation, and Request for  
Additional Funds**

Mr. Dunn:

Though the Alameda County Community Development Agency (CDA) continues to evaluate Legacy Partners proposal to amend Surface Mining Permit and Reclamation Plan Nos. 31 and 36 (“SMP-31/36”), this letter is sent to address new information uncovered through the process of that evaluation as well as to notify Legacy Partners that additional deposit funds are due to the CDA.

Potential Contamination at the Busch Pit

At an August 19, 2011 meeting between Legacy Partners and CDA, the CDA requested documentation that previously deposited fill in the Busch Pit did not contain hazardous materials. In response, a September 30, 2011 submittal from Legacy Partners included two documents: (1) Busch Pond-Surface Water and Shallow Soil Characterization Results, Former Hanson Radium Plant Site, Pleasanton, California – dated February 11, 2009 and by ENV America; and (2) Proposal for Performing Soil and Surface Water Characterization of Busch Pond, Former Hanson Radium Plant Site, Pleasanton, California – dated January 14, 2009 and by ENV America. Those two documents reveal new information to CDA, namely that Legacy Partners has been aware of the presence of hazardous materials at the Busch Pit since at least October 7, 2008.<sup>1</sup>

Additional recent investigation by the CDA has revealed the ACEH has two (2) open site assessment cases<sup>2</sup> to address identified issues of soil and/or

<sup>1</sup> Letter dated October 7, 2008 from Alameda County Environmental Health Department (ACEH) to Lee Cover, Hanson Aggregates (copy sent to Steve Dunn, Legacy Partners).

<sup>2</sup> Spills, Leaks, Investigations, and Cleanups (SLIC) Cases R00002952 and R00002941, and Geotracker Global IDs SL0600101555 and SLT19719376.

groundwater contamination at SMP-31/36 and, in particular, at the location of the Busch Pit. ACEH records show Legacy Partners knew of the open cases and hired consultants to complete samplings and reports to address the cases. None of this information was disclosed to CDA in the initial application to amend SMP-31/36 (filed on December 30, 2010) or any subsequent submittals to CDA.

On December 16, 2011, CDA consultants observed and visually documented the placement of a substantial quantity of fill into the Busch Pit. Trucks were observed in both in the morning and afternoon depositing fill with a scraper spreading deposits around. An employee of Legacy Partners, Tom Jordy, was present during the afternoon site visit by CDA consultants. Mr. Jordy verified that Legacy Partners was importing fill from a construction site elsewhere in the County. Mr. Jordy also claimed to have no knowledge of pending open cases with ACEH.

CDA subsequently consulted with the ACEH and confirmed that observed fill activities were not authorized by ACEH and that ACEH did have concerns with placement of fill of unknown origin at the site. Therefore, in accordance with Alameda County Surface Mining Ordinance §6.80.260, Legacy Partners is hereby notified to cease and desist all further earthmoving activities of any kind at SMP-31/36 until such time as both CDA and ACEH provide written approval for such activities.

If any additional earthmoving activities are found to occur after issuance of this letter, CDA will initiate enforcement actions under California Surface Mining and Reclamation Act (SMARA) §2774.1 and Alameda County Surface Mining Ordinance §6.80.260 to abate any such activities. Additional enforcement actions may be taken by ACEH.

#### Evaluation of Existing Stockpile Quantity

On September 30, 2011, Legacy Partners submitted unclear information purporting to document the quantity of fill necessary to fill the Busch Pit as well as quantify the volume of a stockpile on-site which could be used to fill the Busch Pit. In a letter dated, October 6, 2011, the County requested clarification of the submitted information and notified Legacy Partners that it would seek a third-party review of such material.

The County subsequently retained Terraphase, Inc. to verify information submitted by Legacy Partners. The conclusion of that peer review is that a sufficient stockpile of soil is present on-site to fill the Busch Pit. However, please note the timeframe and conditions under which the Busch Pit must be filled to achieve final reclamation are still under evaluation by staff and will be presented for decision to the Planning Commission at a future date.

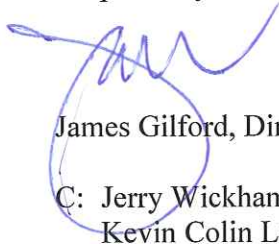
Request for Additional Funds

On December 30, 2010, Legacy Partners submitted an application deposit of \$1,000 and, on August 1, 2011, that deposit was increased by another \$17,300. Those deposits have since been exhausted and additional funds are required to continue processing the application to amend SMP-31/36. The continued incomplete and unclear nature of submittals has and continues to require additional staff and consultant time not originally contemplated.

Aside from fees necessary to process the application to amend SMP-31/36, CDA has also incurred additional costs through recent and on-going enforcement efforts. In at least two separate instances to date, CDA has requested Legacy Partners comply with SMARA and/or SMO provisions not related to the application to amend SMP-31/36. In each instance, Legacy Partners chose not to timely respond or request an extended timeframe for compliance. As a result, the County has been forced to initiate enforcement proceedings and incur additional costs doing so.

The total amount of additional deposit funds due the County equals \$55,669 and, of which, addresses both costs incurred to date and reasonably foreseeable future costs. A spreadsheet itemizing these funds is enclosed.

Respectfully,



James Gilford, Director

C: Jerry Wickham, Alameda County Environmental Health Department  
Kevin Colin Lamphier-Gregory

Enclosure: Itemized list of Costs

SMP-31/36 (Legacy Partners) - Amendment Application

Deposits

12/30/10	\$	1,000
08/01/11	\$	17,300

To-Date and Estimated Future Costs

To-Date: SMP Amendment

Consultant Costs	Authorized Maximum	Billed To Date
Lamphier-Gregory	\$ 30,500	14,280
Legacy Partners Share (50%)		7,140

To-Date: SMP Enforcement

	Authorized Maximum	Billed To Date
Lamphier-Gregory	\$ 23,130	\$ 2,600
Legacy Partners Share (100%)	\$	\$ 2,600

To-Date: Peer Review

	Authorized Maximum	Billed To Date
Terraphase	\$ 3,600	\$ -
Questa	\$ 3,100	\$ -
County Staff Costs (20% of Consultant Fees)	\$ 1,340	\$ -
Legacy Partners Share (100%)	\$	\$ -

To-Date: County Staff Costs

Bruce Jensen	76.70 Hours @ \$134/Hr	\$	10,278
James Gilford	60 Hours @ \$165/Hr	\$	9,900
	Subtotal	\$	20,178
	Legacy Partners Share (50%)	\$	10,089

Estimated Future Costs

Financial Assurance Cost Estimate / Mechanism Updates	\$	4,150
K-Rail Enforcement	\$	5,200
Address Undisclosed Site Contamination Issues	\$	5,200
	Subtotal	\$ 14,550
County Staff Costs (20% of Consultant Fees)	\$	2,910
	Subtotal	\$ 17,460

Summary

Legacy Partners Costs To-Date			
	Consultant	\$	9,740
	Staff	\$	10,089
	Subtotal	\$	19,829
Legacy Partners Costs To-Be Billed			
	SMP Amendment (50% of Remaining)	\$	8,110
	Consultant Peer Review	\$	8,040
	SMP Enforcement (100% of Remaining)	\$	20,530
	Estimated Future Costs	\$	17,460
	Subtotal	\$	54,140
	Deposit Remaining	\$	(55,669)
Amount Due		\$	55,669