

ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY

NEIGHBORHOOD PRESERVATION
AND
SUSTAINABILITY DEPARTMENT

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March 13, 2012

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

RE: SMP-31/36 – Request for Additional Funds, Potential Contamination at Busch Pit, Proposed Financial Assurance Cost Estimate

Mr. Dunn:

The Alameda County Community Development Agency (“CDA”) sends this letter to address matters relating to Surface Mining Permit and Reclamation Plan Nos. 31 and 36 (“SMP-31/36”).

Request for Additional Funds

The County provided a written request for these deposit funds on January 5, 2012. On January 23, 2012, at a meeting at the County offices, Legacy Partners stated the necessary funds would be deposited by the end of the week (i.e., January 27, 2012). No funds were received by that date. However, on March 12, 2012, the requested deposit funds did arrive at the County. This letter acknowledges receipt of the requested funds.

Modifications to Pending SMP Amendment Application

On February 8, 2012, Legacy Partners submitted a letter modifying its pending request to amend the terms and conditions of approval for SMP-31/36. The CDA acknowledges receipt of that letter and will consider Legacy Partner’s requests during its evaluation of the application and when preparing a recommendation to the Alameda County Planning Commission.

Potential Contamination at the Busch Pit

On January 5, 2012, the CDA provided written notice to cease and desist all earthmoving activities at SMP-31/36. That notice remains in full force and

effect.

The cease and desist notice was sent to address Legacy Partner's actions to undertake grading activities in purported fulfillment of the approved reclamation plan but in a location and manner which may have frustrated or been at odds with the separate regulatory responsibilities of the Alameda County Department of Environmental Health (ACEH).

Legacy Partners, Inc. did not disclose to the CDA that the ACEH has two (2) open site assessment cases¹ addressing identified issues of potential soil and/or groundwater contamination at SMP-31/36. ACEH records show Legacy Partners knew of the open cases and hired consultants to complete samplings and reports to address them. Subsequently, the CDA observed and Legacy Partners acknowledged that a substantial volume of fill was placed in the Busch Pit on top of sample locations associated with an open ACEH case.

On January 18, 2012, the ACEH transmitted a letter to Legacy Partners and which contains a list of requested information of both past and proposed future filling activities. In response, on February 6, 2012, Legacy Partners transmitted a response to ACEH. That response was subsequently reviewed by ACEH and deemed deficient in a March 1, 2012 letter.

This letter confirms that the prior notice of cease and desist all earthmoving activities at SMP-31/36 remains in full force and effect until such time as CDA receives concurrence from ACEH that such activities will not conflict with their regulatory responsibilities.

Financial Assurance Cost Estimate

On February 6, 2012, Legacy Partners, Inc. submitted a proposed, revised Financial Assurance Cost Estimate ("FACE") for its reclamation obligations under SMP-31/36. This letter provides notice that the CDA disapproves the proposed FACE.

For the reasons enumerated below, the submitted FACE does not substantially meet the statutory requirements of Surface Mining and Reclamation Act ("SMARA") §2772, 2773, and 2773.1. Specifically, the following revisions to the FACE are required:

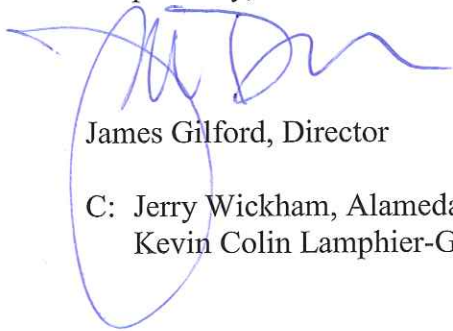
- Costs for a Compactor (Self Propelled Sheepsfoot Roller), such as a CAT 815B, and labor to perform necessary compaction of the fill materials as required by Condition of Approval 35 should be included in the cost estimate.

¹ Spills, Leaks, Investigations, and Cleanups (SLIC) Cases R00002952 and R00002941, and Geotracker Global IDs SL0600101555 and SLT19719376.

- The location of stockpiled topsoil to be used in site reclamation should be identified in the FACE. If insufficient topsoil is present at the site, the cost to import additional topsoil to be used during site reclamation should be estimated.
- Costs to spread topsoil as required by Condition of Approval 35 should be included in the cost estimate.
- Costs for removal and disposal of the stockpiled soils in excess of that needed to backfill the Busch Pit should be included in the cost estimate. The excess stockpiled soil is estimated to be approximately 396,000 cubic yards of material.
- Costs for monitoring of the site revegetation, erosion control, and any Stormwater Pollution Prevention Plan required Best Management Practices should be included in the cost estimate.

As required by SMARA §2770(d), a revised FACE should be submitted to CDA within sixty (60) days (i.e., by Monday, May 14, 2012). Additionally, please note the FACE review process will occur independently of the SMP Amendment application presently being evaluated by CDA in accordance with SMARA and the Alameda County Surface Mining Ordinance (“SMO”).

Respectfully,



James Gilford, Director

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