

ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY

NEIGHBORHOOD PRESERVATION  
AND  
SUSTAINABILITY DEPARTMENT

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May 2, 2012

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**RE: SMP-31/36 - Proposed Financial Assurance Cost Estimate**

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Mr. Dunn:

The Alameda County Community Development Agency (“CDA”) sends this letter to respond to the following topics concerning Surface Mining Permit and Reclamation Plan Nos. 31 and 36 (“SMP-31/36”): (1) on-going discussions about potential contamination at the Busch Pit; and (2) the proposed, revised Financial Assurance Cost Estimate (“FACE”) received on April 20, 2012.

[www.acgov.org/cda](http://www.acgov.org/cda)

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. 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).

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. However, the ACEH informed CDA that the requested additional information was submitted on March 12, 2012.

On May 1, 2012, the ACEH issued a letter authorizing the continued placement of fill in the Busch Pit, provided certain conditions are met. After review of that letter, the CDA concurs with its contents and hereby provides notice to Legacy Partners that placement of fill in the Busch Pit may now proceed in furtherance of SMP-31/36, the Surface Mining and Reclamation

Act (“SMARA”), and Alameda County Surface Mining Ordinance (“SMO”). The prior cease and desist notice is rescinded in its entirety.

#### Financial Assurance Cost Estimate

On February 6, 2012, Legacy Partners, Inc. submitted a proposed Financial Assurance Cost Estimate (“FACE”) for its reclamation obligations under SMP-31/36. In a March 13, 2012 letter, the CDA disapproved the proposed FACE and provided an explanation of the reasons for that decision. Then, on April 20, 2012, the CDA received a proposed, revised FACE.

Though most of the FACE revisions adequately respond to CDA’s prior comments, the CDA once again points out that costs for removal of the excess on-site stockpile should be included. A March 28, 2012 letter from Legacy Partner’s consultant EnviroMINE addresses the stockpile and states:

Removal of the stockpiled material from the site in excess of what is required for backfilling the Busch Pit from the site is not required to achieve reclamation of the site. Removing the stockpiled material from the site would be considered a mining activity and according to the SMGB guidelines for FACES, the operator is not required to include costs for completing mining of the site.

Condition No. 35 of SMP-31/36 requires, in part, that, “All stockpiles and equipment shall be removed from the site upon completion of reclamation, unless plans for their continued use by another operator are approved by the Planning Director.” By this condition alone, removal of the stockpile is a necessary reclamation task.

Additionally, retention of the excess 396,000 cubic yards of material would not result in elevation contours consistent with the approved reclamation plan. As the CDA has conveyed verbally to Legacy Partners at meetings of January 23, 2012 and April 16, 2012, if retention of the stockpile is desired, an amendment to the approved reclamation plan is required. Until such an amendment is approved, the FACE must include costs for removal of the excess stockpile materials.

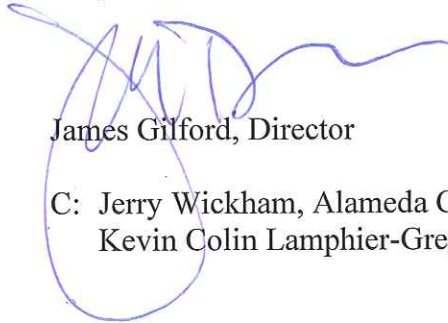
Apart from the requirements of Condition No. 35, removal of the stockpile does not constitute a mining activity within the meaning of SMARA, the SMARA Regulations, or any guidelines promulgated by the State Mining & Geology Board. The subject stockpile is overburden (SMARA §2732) or mining waste (SMARA §2730) and not a mineral resource yet to be mined. Consequently, placement of the stockpile materials into the Busch Pit or removal from the (former) mine site would be considered a grading activity in furtherance of the approved reclamation plan.

Additionally, regardless of its physical properties, SMARA does not authorize carte blanche the retention of stockpiles at final reclamation. In fact, the SMGB Financial Assurance Guidelines reflect this by requiring that, "The value of mined material stockpiles located on the mine plant site cannot be used to off-set the cost of reclaiming the mine plant site or any other part of the mined lands subject to the reclamation plan."

For the reasons cited above, the FACE must be revised to include costs for removal of the excess stockpile materials. Without those costs, the proposed FACE does not substantially meet the statutory requirements of SMARA §2772, 2773, and 2773.1. If Legacy Partners desires to contest this decision, it has ten (10) days to do so, in accordance with SMARA §2770(e).

In closing, as noted in prior CDA letters, the FACE review process will occur independently of the SMP Amendment application presently being evaluated by CDA in accordance with SMARA and SMO.

Respectfully,



James Gilford, Director

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