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VIA EMAIL:

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**Re: Fifty-Year Time Extension is Covered by the CEQA Existing Facilities Exemption
and is Not a Substantial Deviation under SMARA**

Dear Riley:

This letter is prepared for Lhoist North American Mining Company ("Lhoist") regarding the Natividad Quarry, which operates under Conditional Use Permit No. 2970 (PC-4745) (the "CUP") in Monterey County ("County") with a 1982 Reclamation Plan ("RP"). Lhoist proposes to extend the Natividad CUP and RP until August 10, 2083 (an additional fifty years) ("Extension Project").

The Natividad CUP will expire on August 10, 2033. The proposed application to Monterey County related to this letter proposes to extend operations for an additional fifty years. In approving the Natividad CUP, the County Planning Commission found that the CUP "conditions should be broadly written to allow operational flexibility with respect to mining time tables and marketing conditions," and that Lhoist should initiate requests for modifications of the use permit conditions "[w]hen material . . . changes of operations . . . become necessary due to unforeseen events occurring during the life time of the . . . use permit (including . . . significant changes in market demand or significant changes in ratios of extraction)."¹ Lhoist seeks to confirm this right by submitting a CUP and RP extension application. All other aspects of existing operations will remain the same during the extension period.

This letter is in preparation to provide the County with support from Lhoist that the Extension Project falls within the California Environmental Quality Act ("CEQA") Guidelines, Section 15301 Existing Facilities categorical exemption. This letter also supplies recent examples where other California counties approved extensions of existing mines using the Existing Facilities CEQA Exemption, under Section 15301. Further, this letter provides support that the Extension

¹ August 10, 1983, County Planning Commission Resolution No. 83-279 for Use Permit No. 2970 (APNs 211-031-016 and 211-031-019), Section 3 of the Findings of Fact.

Project would not result in a substantial deviation under SMARA regulations 14 CCR 3502(d) nor County Code Section 16.04.110.

I. The Proposed Extension Request is CEQA Exempt.

A. The Proposed Time Extension is Exempt Under CEQA Per The 14 CCR 15301 Existing Facilities Exemption.

The County can rely on the Class 1 Existing Facilities categorical exemption, which covers:

[O]peration, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use.²

Several courts have upheld the use of the Class 1 Existing Facilities categorical exemption for time extensions of existing approvals.³

The Class 1 Existing Facilities categorical exemption applies here because extending the Natividad CUP does not expand an existing use. Instead, the same operations would continue for another fifty years and the same environmental impacts would occur as compared to the CEQA baseline.⁴ Accordingly, the County can rely on the Class 1 Existing Facilities exemption to comply with CEQA for the Extension Project.

B. Applicable Case Law Applying the 15301 Existing Facilities Exemption.

In *North Coast Rivers Alliance v. Westlands Water Dist.* (2014) 227 Cal.App.4th 832 (“*Rivers Alliance*”) the Court held that “once a correct environmental baseline is applied to assess the project’s impacts, it is clear that petitioners have failed to meet the requirement of showing a reasonable possibility of a significant effect on the environment.”⁵ The Court reasoned that the “baseline principle means that a proposal to continue existing operations without change would generally have no cognizable impact under CEQA.”⁶

The baseline under CEQA consists of existing conditions on the ground, which includes existing operations.⁷ Consequently, “a proposal to continue **existing operations without change would generally have no cognizable impact under CEQA.**”⁸ The California Appellate Court

² 14 CCR § 15301 (Emphasis added).

³ See, e.g., *World Business Academy v. California State Lands Commission* (2018) 24 Cal.App.5th 476, 493-97 (use of Class 1 categorical exemption for 7-year extension of lease); *North Coast Rivers Alliance, supra*, 227 Cal.App.4th at 868 (use of Class 1 categorical exemption for 2-year extension of contract).

⁴ “Where a project involves ongoing operations or a continuation of past activity, the established levels of a particular use and the physical impacts thereof are considered to be part of the existing environmental baseline.” (*North Coast Rivers Alliance v. Westlands Water Dist.* (2014) 227 Cal.App.4th 832, 872 (citations omitted).)

⁵ *Id.* at p. 871.

⁶ *Id.* at p. 872-873.

⁷ “Where a project involves ongoing operations or a continuation of past activity, the established levels of a particular use and the physical impacts thereof are considered to be part of the existing environmental baseline.” (*North Coast Rivers Alliance v. Westlands Water Dist.* (2014) 227 Cal.App.4th 832, 872 (citations omitted).)

⁸ *Id.* at p. 872-873.

explained that “thousands of permits are renewed each year **for the ongoing operation of regulated facilities**, and we discern no legislative or regulatory directive to make each such renewal an occasion to examine past CEQA compliance. . . .”⁹ Under this CEQA concept, the County is not required to conduct any further environmental review when extending the CUP for Lhoist’s existing operations. Extending the Natividad CUP will not result in any changes to the existing environment because the existing operations would not change.

Likewise, in *World Business Academy v. California State Lands Commission* (2018) 24 Cal.App.5th 476 (2018) (“*World Business*”), the Court held that the record supported the application of CEQA Exemption, Section 15301, existing facilities to the replacement lease, where the owner and operator of the nuclear power plant had leased land from the State Lands Commission for 50 years. The Court held that the Objectors were improperly relying on the “plant’s current impact on the environment rather than potential future effects due to the lease replacement.”¹⁰ The Court reasoned that the preexisting effects are part of the baseline, for which the Objectors failed to point “to any substantial evidence indicating that they will become worse due to the lease replacement.”¹¹

The *World Business* Court held “that existing facilities **do not** create substantial, adverse changes in their surrounding environments.”¹² In determining whether the Existing Facilities Exemption applies, “[t]he key consideration is whether the project involves negligible **or no expansion of an existing use.**”¹³ In addition, “The existing facilities exemption does not include a time limit.”¹⁴

C. Examples of California counties application of CEQA Exemption, Section 15301, Existing Facilities to extend the life of existing mine permits.

1. On February 10, 2022, Lake County issued a Notice of Exemption, under Section 15301, for a 20-year extension of a Use Permit (which was valid April 17, 2001 to April 17, 2021, a 100%-time extension),¹⁵ to allow continued operation of a quarry, including crushing, sorting, and a concrete batch plant.¹⁶
2. On November 10, 2021, San Joaquin County issued a Notice of Exemption, under Section 15301, which extended the life of a quarry permit for an additional 15 years (original CUP was from April 17, 2003, to December 31, 2029, an

⁹ *Bloom v. McGurk* (1994) 26 Cal.App.4th 1307, 1315.

¹⁰ *Ibid.*

¹¹ *Ibid.* (Emphasis added).

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Id.* at p. 502.

¹⁵ December 15, 2022, Lake County Staff Report:

<https://countyoflake.legistar.com/View.ashx?M=F&ID=11517070&GUID=D9C84D13-9832-47AC-9F8E-293180D6E994>

¹⁶ See Notice of Exemption, available at: https://files.ceqanet.opr.ca.gov/276158-1/attachment/EjYeeMJUqtJnlzK_oO_bf5t-n7flpVY7fbS8koCopK0p3Pu8NZ9lhoJEh6mqgx4XwBY8cvvn_ChxorM0

(posted by the State Clearinghouse on February 23, 2022); see also State Clearinghouse CEQA project portal, available at: <https://ceqanet.opr.ca.gov/2022020518>.

approximate 58%-time extension).¹⁷ The mine operator sought to extend the life of the quarry permit “Due to the current economic market conditions the applicant is requesting to extend the life of both Quarry Excavation permits.”¹⁸

3. On June 24, 2010, Placer County approved a Notice of Exemption, under Section 15301, for an extension of the operational life of a gravel pit for 10 years to complete the mining of gravel and decomposed granite deposits and to complete mine reclamation.¹⁹ The County reasoned that the project was exempt because the continued operation of the mine in accordance with the approved Reclamation Plan would not result in new or significant impacts.
4. On July 20, 2009, Sacramento County approved a Notice of Exemption, under Section 15301, which extended the Use Permit by 12 years (original Use Permit was from March 5, 1997 to March 5, 2009, a 100%-time extension).²⁰

Lhoist respectfully requests that the County grant the requested Extension Project, since (1) the above county examples approved a CEQA Exemption for time extensions (ranging from 58% to 100%), and (2) there will be no change to the existing environment.

II. The Extension Project is Not a Substantial Deviation Under SMARA or the County Code.

The Surface and Mining Reclamation Act (“SMARA”) defines a “substantial deviation” “as a change or expansion to a surface mining operation that substantially affects the completion of the previously approved reclamation plan, or that changes the end use of the approved plan to the extent that the scope of the reclamation required for the surface mining operation is substantially changed.”²¹ Monterey County Code Section 16.04.110 defines “substantial deviation” as “increases in size, depth, production, and/or end use; as determined by the Director of the Planning and Building Inspection Department.”²² In our view, neither of these have been triggered by the proposed Extension Project.

Under the SMARA regulations, the following six factors are considered in determining whether a change or expansion by an operator constitutes a “substantial deviation.”²³ Each factor is discussed below with respect to the proposed Extension Project.

¹⁷ See Notice of Exemption, available at: https://files.ceqanet.opr.ca.gov/274113-1/attachment/m-qRJJaNaYE4iLwmlIiWAPxQ-7V_6L568LI_So_ERQFSixTxZB7G3eHOX7ij8kvRZVowwls-8G2xL1PjX0; see also State Clearinghouse CEQA project portal, available at: <https://ceqanet.opr.ca.gov/2021110187>; see also October 21, 2021, San Joaquin County Planning Commission Staff Report, p. 5: <https://www.sjgov.org/commdev/cgi-bin/cdyn.exe/file/Planning/PC/Past%20Meetings/Agenda%20Packet/2021/2021-10-21.pdf>.

¹⁸ October 21, 2021; San Joaquin County Planning Commission Staff Report, p. 5:

<https://www.sjgov.org/commdev/cgi-bin/cdyn.exe/file/Planning/PC/Past%20Meetings/Agenda%20Packet/2021/2021-10-21.pdf>

¹⁹ See State Clearinghouse CEQA document portal, available at: <https://ceqanet.opr.ca.gov/2010068266>.

²⁰ See Notice of Exemption, available at: <https://ceqanet.opr.ca.gov/2009078127>

²¹ California Code of Regulations, Title 14, section 3502(d).

²² County Code Section 16.04.110

²³ See 14 CCR 3502, subd. (d).

1. No substantial increase in the disturbance of the surface area of mining.²⁴

The proposed Extension Project will not include any increase of the surface area disturbed by mining; thus, there is no substantial deviation under this factor.

2. No substantial increase in the maximum depth of mining.²⁵

The proposed Extension Project will not increase the maximum depth of mining; thus, there is no substantial deviation regarding the mining depth.

3. No substantial extension of the termination date of the mining operation as set out in the approved reclamation plan.²⁶

The RP includes the end of the reclamation as Phase 11, which is to end by 2030.²⁷ Thus, the 50-year Extension Project would extend the RP to 2080. In approving the subject RP, the Monterey County Planning Commission found that modifications were likely to occur upon “significant changes in market demand or significant changes in ratios of extraction,”²⁸ which Lhoist is now seeking to do.

Monterey County Code Section 16.04.110, regarding substantial deviation does not include the substantial extension of the termination date of the mining operation factor as one of its factors in determining whether there is a substantial deviation.²⁹

The following are examples of four different counties’ analysis of SMARA 14 CCR Section 3502(d)(2)’s time extension factor:

- a. *Alameda County found that while the time extension of mining operations constituted a substantial extension, the project as a whole did not constitute a substantial deviation:*

In 2010, an applicant who had been mining for 46 years in Alameda County sought a 20-year permit extension beyond the termination date outlined in their 1990 reclamation plan.³⁰ While the County determined that the 20-year extension, a 44% increase in time, constituted a substantial extension under Section 3502(d)(2), the County still approved the application, finding that the only substantive change was the extension of time for mining and reclamation activities; thus, the application therefore, did not constitute a substantial deviation because the extension

²⁴ 14 CCR 3502, subd. (d)(1).

²⁵ 14 CCR 3502, subd. (d)(1).

²⁶ 14 CCR 3502, subd. (d)(2).

²⁷ 1982 RP at p. 46.

²⁸ August 10, 1983, County Planning Commission Resolution No. 83-279 for Use Permit No. 2970 (APNs 211-031-016 and 211-031-019), Section 3 of the Findings of Fact.

²⁹ On January 17, 2025, via a call between Austin Turner at Mitchell Chadwick and Hya Honorato, Assistant Planner from the Planning Department, she explained that she would research the County’s stance on substantial deviation further. However, Hya did state that the County would usually rely on its Municipal Code when determining whether a proposed project constitutes a substantial deviation, and since the time extension factor is not in the County Code that it is less likely that the County would give much weight to this time factor.

³⁰ See Alameda County Planning Department Staff Report, p. 2:

[https://www.acgov.org/cda/meetings/documents/SMP-28\(SheridanQuarry\)StaffReport.pdf](https://www.acgov.org/cda/meetings/documents/SMP-28(SheridanQuarry)StaffReport.pdf)

would not interfere with the existing reclamation plan's end goal of reclaiming the site back to agricultural land use.

- b. San Luis Obispo County found that a 20-year extension for a mining operation to a previously approved permit for a 21-year mining operation was not a substantial deviation:*

On October 10, 2013, San Luis Obispo County reviewed an applicant's request to extend mining operations by 20 years (a 95%-time increase), through a modification to the approved reclamation plan.³¹ In applying 14 CCR Section 3502(d), the County found that the project did not represent a substantial deviation from the approved Reclamation Plan, and that the project was consistent with the previously adopted CEQA Mitigated Negative Declaration.³²

- c. Siskiyou County found that an eight-year extension was not a substantial deviation from the existing reclamation plan:*

On December 16, 2020, Siskiyou County approved an 8 year extension to a Reclamation Plan for the pit from December 31, 2020 (approved on February 6, 2008), to December 31, 2028 (an approximate 67%-time increase).³³ In determining whether this extension constituted a substantial deviation, the County analyzed the six factors under 14 CCR Section 3502(d), finding that the Reclamation Plan extension was not a substantial deviation from the originally approved Reclamation Plan for the following reasons:

- (1) The requested amendment is to extend the expiration date of the Reclamation Plan and would not substantially increase the disturbance of surface area or maximum depth.
- (2) While the amendment is requesting to extend the termination date of mining operations eight years, mining operations have been limited in their operations and harvested significantly less than originally anticipated for the Little Lynn Pit operations. It should be noted that SMARA does not provide quantitative standards that outline a substantial extension of the termination date and leaves this discretion to local governments. In addition, it is known that economic factors dictate quarry operations and quantities of harvested materials. Generally, Reclamation Plans are required to include an approximate end date of mining operations, and due to economic factors, Reclamations Plans are commonly amended to extend the end date of mining operations. Due to this, staff finds the requested extension of eight years for the Reclamation Plan expiration to be a non-substantial deviation.³⁴

³¹ See County of San Luis Obispo Planning Commission Staff Report, p. 3 and 17: https://slocounty.granicus.com/MetaViewer.php?view_id=50&clip_id=1619&meta_id=271551; [Mine site was originally approved in 1992, which was set to expire in 2013, which is why applicant sought to extend its' mining activity by 20 years to 2033.]

³² *Id.* at p. 3-4.

³³ Siskiyou County Planning Commission Staff Report and Resolution PC 2020-030 at p. 2 (Dec. 16, 2020).

³⁴ *Id.* at p. 4-5.

d. Shasta County found a project substantially deviated from the reclamation plan:

On October 13, 2022, the Shasta County Planning Commission determined that an 84-year extension (original Reclamation Plan was for 20 years, from 1993-2013), thus a requested 420%-time increase and an expansion of the reclamation boundary, constituted a substantial deviation.³⁵ Shasta County found that “the proposed expansion of the reclamation boundary and extension of the estimated date of reclamation constituted a substantial deviation from the approved reclamation plan pursuant to SMARA Regulations.”³⁶

These counties which found no substantial deviation under SMARA for time extensions ranging from 44% to 95% of the original Use Permit/Reclamation Plan term are instructive here, and support that Lhoist’s request for a 50-year extension is not a substantial deviation under SMARA. Likewise, as provided above in Section I.C., the counties found time extensions ranging from 58% to 100% were CEQA Exempt under the CEQA Guidelines Section 15301 Class 1 Existing Facilities Exemption.

Therefore, the Extension Project would not be a substantial extension of the termination date of the mining operation. Furthermore, “time” or the “substantial extension of the termination date” are not included in the County Code definition of “substantial deviation.”³⁷

4. No changes that would substantially affect the approved end use of the site as established in the reclamation plan.³⁸

The RP states that “By the end of the quarry operation, all of the approximately 700 acres disturbed by excavation of raw material and deposit of by-product will have been returned to a condition similar to the surrounding hills, with no evidence of the operation remaining.”³⁹ The proposed Time Extension Project will not change the end use of the RP; thus, this factor does not support a finding of substantial deviation.

5. The consistency of any proposed change to the operation with the previously adopted environmental determinations.⁴⁰

The Extension Project is consistent with the previously adopted environmental determination (MND) because there are no proposed changes to the operation. Thus, there is no substantial deviation under this factor.

6. Any other changes that the lead agency deems substantial deviations as defined in this subsection.⁴¹

The Extension Project will not substantially change the production, completion, or end use of the RP; thus, the County should not find a substantial deviation under this factor.

³⁵ Shasta County Resolution No. 2022-034, p. 1.

³⁶ *Id.*

³⁷ County Code Section 16.04.110

³⁸ 14 CCR 3502, subd. (d)(3).

³⁹ 1982 RP at p. 1.

⁴⁰ 14 CCR 3502, subd. (d)(4).

⁴¹ *Id.*, subd. (d)(4).

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For the above reasons, the proposed 50-year Extension Project would not cause a substantial deviation from the RP.

This letter is in support of the request that the County grant the Extension Project. If you have any questions or would like to discuss these issues further, please feel free to contact me.

Sincerely yours,

MITCHELL CHADWICK LLP



Patrick G. Mitchell

Cc: John Hewson (Lhoist)
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