

File No. 090832

Committee Item No. 4

Board Item No. 18

COMMITTEE/BOARD OF SUPERVISORS AGENDA PACKET CONTENTS LIST

Committee BUDGET AND FINANCE

Date 11/18/09

Board of Supervisors Meeting

Date 11/24/09

Cmte Board

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Completed by: Gail Johnson

Date 11/13/09

Completed by: AG

Date 11/19/09

* An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

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1 [Approval of Surface Mining Permit 30 Sunol Valley Quarry Lease]

2
3 **Resolution authorizing the General Manager of the Public Utilities Commission to enter**
4 **into a quarry lease for a 308.5 acre parcel located in unincorporated Alameda County in**
5 **the Sunol Valley with Oliver de Silva, Inc., as tenant, through June 1, 2021, pursuant to**
6 **San Francisco Charter Section 9.118, with rights to extend the term for two years to**
7 **complete reclamation and with potential expansion and extension rights subject to**
8 **further environmental review and regulatory approvals.**

9
10 WHEREAS, The City and County of San Francisco (the "City") owns watershed
11 property in the Sunol Valley in unincorporated Alameda County that is held under the
12 jurisdiction of the San Francisco Public Utilities Commission ("SFPUC"), portions of which are
13 leased to private operators for sand and gravel quarrying operations; and

14 WHEREAS, The Sunol Valley watershed lands include a 308.5 acre parcel (the "Sunol
15 Valley Site") which has been mined since the 1960s and currently is being mined pursuant to
16 an existing month-to-month tenancy under Surface Mining Permit number 30 ("Surface Mining
17 Permit 30") issued by Alameda County after completion of environmental review and in
18 accordance with the provisions of the State Surface Mining and Reclamation Act (Public
19 Resources Code section 2710) and the Alameda County Surface Mining Ordinance (Alameda
20 County General Code Chapter 6.80); and

21 WHEREAS, Pursuant to its current terms, Surface Mining Permit 30 is in effect until
22 June 1, 2021, or upon completion of reclamation, whichever occurs first; and

23 WHEREAS, In 1992, the SFPUC commenced a planning process for a watershed
24 management plan for watershed lands held under its jurisdiction in Alameda County, which
25

1 included the development of a Sunol Valley Resources Management Plan and selection by
2 the SFPUC of a preferred alternative for the Sunol Valley Resources Management Plan; and

3 WHEREAS, On September 26, 2000, the SFPUC, after certification of a Final Program
4 Environmental Impact Report, adopted the final Alameda Watershed Management Plan (the
5 "Watershed Management Plan") under Resolution No. 00-0229;

6 WHEREAS, The preferred alternative for the Sunol Valley Resources Management
7 Element of the Watershed Management Plan called for expanded mining at the Sunol Valley
8 Site in furtherance of reclaiming the site upon completion of mining and developing it as a
9 water storage asset; and

10 WHEREAS, In December 2005 the SFPUC issued a Request For Proposals (the
11 "RFP") for the lease and operation of the Sunol Valley Site and an exclusive right to negotiate
12 for future mining expansion as set forth under the preferred alternative of the Sunol Valley
13 Resources Management Element of the Watershed Management Plan; and

14 WHEREAS, On March 22, 2007, a RFP Review Panel comprised of staff from the
15 SFPUC, San Francisco Department of Real Estate, and the Port of San Francisco selected
16 Oliver de Silva, Inc. ("Tenant") as the highest ranked respondent to the RFP; and

17 WHEREAS, On May 8, 2007, the SFPUC adopted its Resolution No. 07-0082,
18 authorizing the General Manager of the SFPUC (the "General Manager") to enter into
19 negotiations with Tenant for a lease of the Sunol Valley Site; and

20 WHEREAS, The SFPUC and Tenant have negotiated the terms of the proposed lease
21 (the "Lease"); and

22 WHEREAS, On June 9, 2009, the SFPUC, by its Resolution No. 09-0095 (the "SFPUC
23 Resolution"), approved the Lease and authorized the General Manager to submit the Lease
24 for consideration by the Board of Supervisors under Charter Section 9.118; and

25 WHEREAS, The Lease provides that upon its effective date Tenant shall promptly

1 apply to Alameda County for, and diligently pursue, the transfer of the existing Surface Mining
2 Permit 30 from the existing operator to Tenant, with no change proposed in the existing permit
3 or the activities authorized thereunder in connection with the transfer; and

4 WHEREAS, Upon the transfer of Surface Mining Permit 30, Tenant shall have the right
5 to harvest sand and gravel from the Sunol Valley Site to the 140-foot depth permitted under
6 such permit, subject to the terms and conditions of such permit, through the permit's current
7 expiration date of June 1, 2021, or the date the Sunol Valley Site is finally reclaimed,
8 whichever comes first; and

9 WHEREAS, As set forth in a letter from the SFPUC Bureau of Environmental
10 Management, dated June 1, 2009 (the "BEM Letter"), no change is proposed to Surface
11 Mining Permit 30 as reviewed and approved by Alameda County and, therefore, unless and
12 until any expansion of the mining operation as contemplated under the Lease is approved by
13 Alameda County and the City, there would be no change to the activities being undertaken at
14 the property which would require environmental review prior to approval of the Lease; and

15 WHEREAS, The Lease provides that within six months Tenant shall submit an
16 application to Alameda County for an amendment to Surface Mining Permit 30 to allow for
17 expansion of mining at the Sunol Valley Site as identified in the RFP, which includes the
18 incorporation of an adjacent 58 acre site owned by the City, consistent with the preferred
19 alternative set forth in the Sunol Valley Resources Management Element of the Watershed
20 Management Plan; and

21 WHEREAS, The proposed revision of Surface Mining Permit 30 shall be subject to all
22 required regulatory and environmental review, and the City retains discretion to participate in
23 the process as a responsible agency and to approve any proposed extensions or revisions to
24 Surface Mining Permit 30 (the "City's Retained Discretion"), all as more fully described in the
25

1 Lease and the staff report prepared in connection with this transaction (the "Staff Report");
2 and

3 WHEREAS, If such initial proposed revision of Surface Mining Permit 30 is approved
4 consistent with the provisions of the Lease, then the Lease term would be extended through
5 the expiration of the newly revised Surface Mining Permit 30, which is anticipated to include a
6 term of thirty years from the date such revision is approved; and

7 WHEREAS, Tenant also holds a lease on certain ridgeline property in the vicinity of the
8 Sunol Valley Site (the "Apperson Ridge Site") that is not owned by SFPUC but is the subject
9 of Surface Mining Permit number 17 issued by Alameda County ("Surface Mining Permit 17");
10 and

11 WHEREAS, Surface Mining Permit 17 currently authorizes the construction and
12 operation of sand and gravel processing facilities, including primary and secondary crushing
13 plants, an asphalt plant, a concrete batch plant and associated industrial facilities at the
14 Apperson Ridge Site as well as an access road between Calaveras Road and the Apperson
15 Ridge Site to be used by trucks bringing materials to and from the Apperson Ridge Site; and

16 WHEREAS, Tenant has not yet commenced operations at the Apperson Ridge Site;
17 and

18 WHEREAS, Tenant's response to the RFP included a proposal to pursue authorization
19 for and construct a conveyor system to allow materials from the Apperson Ridge Site to be
20 transported to the Sunol Valley Site for further stockpiling, processing and sale; and

21 WHEREAS, Such proposal is likely to have significant environmental benefits as
22 compared to the existing terms of the Surface Mining Permit 17, including the relocation of
23 much of the currently authorized industrial activity from the SFPUC's San Antonio Reservoir
24 watershed to the Sunol Valley Site, which is likely to reduce the negative effects that such
25 activities would have on water quality in the SFPUC water system; and

1 WHEREAS, The Lease has been negotiated to incorporate possible future
2 implementation of the conveyor proposal following completion of required environmental
3 review and approval and procurement of all required permits, provided that City and Tenant
4 enter into a Lease amendment and other agreements governing the terms and conditions of
5 the installation and operation of the conveyor system and the stockpiling and processing of
6 material on the Sunol Valley Site or adjacent City lands (collectively, the "Conveyor and
7 Processing Agreements"); and

8 WHEREAS, Under the Lease, within one year of the effective date of the initial revision
9 to Surface Mining Permit 30 to expand mining at the Sunol Valley Site, Tenant shall apply for
10 revisions to Surface Mining Permit 17 and Surface Mining Permit 30 that would, if approved
11 by Alameda County and the City, authorize the operation of the two sites using the conveyor
12 system as described above; and

13 WHEREAS, Such revisions to Surface Mining Permit 17 and Surface Mining Permit 30,
14 respectively, shall be subject to all required regulatory and environmental review and the
15 City's Retained Discretion, all as more fully described in the Lease and the Staff Report; and

16 WHEREAS, If such revisions of Surface Mining Permit 17 and Surface Mining Permit
17 30 are approved and City and Tenant enter into the Conveyor and Processing Agreements,
18 the Lease for the portion of the Sunol Valley Site required to stockpile, process and sell
19 materials from the Apperson Ridge Site would be extended through the expiration of the
20 newly revised Surface Mining Permit 17, which is not expected to be extended from its current
21 expiration date of December 31, 2064; and

22 WHEREAS, The Lease also includes provisions detailing how the Sunol Valley Site will
23 continue to be operated if any of the proposed permit revisions are not approved; and

24 WHEREAS, The Lease sets the mining royalties to be paid to the SFPUC for Sunol
25 Valley Site materials at 15% of the revenues realized from the sale of such materials, and the

1 processing royalty to be paid to the SFPUC for Apperson Ridge Site materials processed at
2 the Sunol Valley Site at 10.5% of the revenues realized from the sale of such materials; and

3 WHEREAS, The Lease sets base rents that are to be paid by Tenant irrespective of the
4 royalty amounts generated from operations, which base rents are subject to increase and
5 reduction based on royalty performance over time, all as more fully set forth in the Lease and
6 the Staff Report; and

7 WHEREAS, Tenant has pursued negotiations with interested environmental groups
8 regarding the most appropriate manner for Tenant to pursue expanded mining at the Sunol
9 Valley Site and to establish mining operations at the Apperson Ridge Site; and

10 WHEREAS, Such negotiations resulted in Tenant's agreement with the Alameda Creek
11 Alliance and the Center for Biological Diversity regarding two conservation plans, one with
12 respect to the Sunol Valley Site and the other with respect to the Apperson Ridge Site
13 (together, the "Conservation Plans"); and

14 WHEREAS, While the City is not a party to the Conservation Plans, SFPUC staff has
15 worked with Tenant and the other signatories to understand the relationship between the
16 activities called for under the Conservation Plans and other environmental measures planned
17 by the SFPUC in connection with the Lease and other SFPUC water system projects in the
18 vicinity; and

19 WHEREAS, As provided in the Lease, there will be further opportunity to discuss
20 environmental impacts, mitigation measures, stakeholder compensation and conservation
21 programming through the environmental and regulatory review processes with respect to the
22 expanded mining activities described above and these decisions would require SFPUC and
23 Board of Supervisors approval; and

1 WHEREAS, SFPUC staff and Tenant have engaged Sunol Valley stakeholders in
2 ongoing discussions regarding the appropriate manner in which to proceed with the activities
3 contemplated under the Lease; and

4 WHEREAS, Based on the information provided by SFPUC staff, Tenant and other
5 stakeholder groups regarding the proposed conservation of environmental resources in the
6 area and based on the discretion retained by the SFPUC to review and consent to the
7 activities under the Lease, the SFPUC determined that the transaction contemplated by the
8 Lease is an appropriate and responsible approach to quarrying activities; and

9 WHEREAS, Copies of the SFPUC Resolution and the related agenda item, the
10 proposed Lease and its exhibits, the Staff Report, the BEM Letter and the Conservation Plans
11 are on file with the Clerk of the Board of Supervisors in File No. ⁰⁹⁰⁸³² // ; and

12 WHEREAS, Charter Section 9.118(c) requires the Board of Supervisors approval of
13 leases having a term of ten or more years or anticipated revenues of one million dollars or
14 more; now, therefore, be it

15 RESOLVED, That the Board of Supervisors hereby approves the Lease, including all
16 exhibits, and authorizes the General Manager to execute the Lease in such final form as is
17 approved by the General Manager in consultation with the City Attorney; and be it

18 FURTHER RESOLVED, That the Board of Supervisors authorizes the General
19 Manager to enter into any additions, amendments or other modifications to the Lease
20 (including, without limitation, preparation and attachment of, or changes to, any or all of the
21 exhibits) that the General Manager, in consultation with the City Attorney, determines are in
22 the best interests of the City, do not materially decrease the benefits of the Lease to the City,
23 do not materially increase the obligations or liabilities of the City, do not authorize the
24 performance of any activities without pursuing all required regulatory and environmental
25 review and approvals, and are necessary or advisable to complete the transactions which the

1 Lease contemplates and effectuate the purpose and intent of this resolution, such
2 determination to be conclusively evidenced by the execution and delivery by the General
3 Manager of the Lease and any such additions, amendments, or other modifications to that
4 document; and be it

5 FURTHER RESOLVED, That the Board of Supervisors authorizes and urges the
6 General Manager and any other appropriate officers, agents or employees of the City to take
7 any and all steps (including, but not limited to, the execution and delivery of any and all
8 certificates, agreements, notices, consents and other instruments or documents), as they or
9 any of them deems necessary or appropriate, in consultation with the City Attorney, in order to
10 consummate the transaction under the Lease in accordance with this resolution, or to
11 otherwise effectuate the purpose and intent of this resolution, such determination to be
12 conclusively evidenced by the execution and delivery by any such person or persons of any
13 such documents; and be it

14 FURTHER RESOLVED, That the Board of Supervisors approves, confirms and ratifies
15 all prior actions taken by the officials, employees and agents of the City with respect to the
16 Lease.

CITY AND COUNTY



OF SAN FRANCISCO

BOARD OF SUPERVISORS

BUDGET ANALYST

1390 Market Street, Suite 1025, San Francisco, CA 94102 (415) 554-7642
FAX (415) 252-0461

November 12, 2009

TO: Budget and Finance Committee

FROM: Budget Analyst

SUBJECT: November 18, 2009 Budget and Finance Committee Meeting

Item 4 – File 09-0832

Department: Public Utilities Commission (PUC)

Item: Resolution authorizing the General Manager of the San Francisco Public Utilities Commission (PUC) to enter into a new quarry lease for a 308.5 acre parcel located in the unincorporated area of Alameda County in the Sunol Valley with Oliver de Silva, Inc., as lessee, for an initial term of approximately 11.5 years or through June 1, 2021, pursuant to San Francisco Charter Section 9.118, with (a) rights to extend the term for up to two years to complete reclamation and (b) potential expansion and extension rights subject to further environmental review and regulatory approval by the Alameda County Community Development Agency and the San Francisco Board of Supervisors.

Locations and Acreage:

Attachment I is a map of the following premises:

California Surface Mining Permit 30 (SMP 30), Sunol Valley Site (subject of this requested new lease)
308.5 acres of PUC-owned land in Alameda County, currently leased to and mined by the Santa Clara Sand and Gravel Company.¹

¹ As described in the Phase 2 Section of the Description below, the acreage of the SMP 30 site could increase by 58 acres, to a total of 366.5 acres.

California Surface Mining Permit 17 (SMP 17), Apperson Ridge Site²

Approximately 680 acres of privately owned³ unmined ranch land within the San Antonio Reservoir watershed in Alameda County, adjacent to the above-noted PUC-owned SMP 30 site.

Lessor: City and County of San Francisco acting by and through the PUC.

Lessee: Oliver de Silva, Inc. (ODS), a private company that mines, processes, and sells quarry products.

Term of Proposed Lease: An initial term of approximately 11.5 years, commencing upon the execution of the subject lease and delivery of the leased premises to Oliver de Silva, Inc. through June 1, 2021, subject to potential extensions of up to 45.5 years through December 31, 2066, for a total potential period of 57 years, as described below.⁴

Background: The PUC currently has six leases covering a total of 752 acres of land in the Sunol area of Alameda County for mining operations⁵, including: (a) Mission Valley Rock Company (MVR Co.), which currently has four leases for a total of 427.4 acres, and (b) Santa Clara Sand and Gravel Company (SCS&G) which currently has two leases for a total of 324.6 acres, of which 308.5 acres are the subject of the proposed quarry lease.⁶

² The subject lease does not include lands on the SMP 17 site; however, materials mined on the SMP 17 site could be processed and sold on the subject SMP 30 site, as detailed in the Phase 3 Section of the Description below.

³ The SMP 17 site is owned by William H. Apperson and leased to Oliver de Silva, Inc.

⁴ According to Mr. Martin, Alameda County has the authority to revise the permit to include terms that differ from those terms contained within the proposed lease. However, Mr. Martin advises that any such changes would be subject to review and approval by the PUC and the Board of Supervisors.

⁵ According to Mr. Martin, these companies mine, process, and market sand, gravel, and related products which are used primarily for construction purposes.

⁶ Mr. Gary Dowd, Director of Real Estate Services with the PUC, advises that of the two Santa Clara Sand & Gravel Company (SCS&G) leased areas, only the 3430A site is currently being mined, and the 3605 site is used for stockpiling and storage of mined materials. Mr. Dowd additionally advises that 8.8 acres of unmineable land will be removed from the current 317.3 acre 3730A site, resulting in the subject proposed 308.5 acre site. According to Mr. Dowd, should the SMP 30 permit (which includes both the 3730A site and the 3605 site) be transferred to ODS, the PUC would pursue efforts which would (a) continue the use of the 3605 site in conjunction with the SMP 30 site or (b) use the

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November 18, 2009 Budget and Finance Subcommittee Meeting

The table below, based on information provided by Mr. Dowd, lists payments for the PUC's existing leases for the Sunol area:

Revenue for Existing PUC Quarry Leases in the Sunol Area, FY 2008-2009				
Lessee	Area - Lease	State Mining Permit	Acreege	Payment to PUC
SCS&G	3430A	SMP 30	317.3	\$387,176
SCS&G	3605	SMP 30	7.3	\$7,831
SCS&G Subtotal			324.6	\$395,007
MVR Co.	3931	SMP 32	242.0	\$1,555,245
MVR Co.	3292	SMP 24	48.3	0*
MVR Co.	3555A	SMP 24	135.0	0*
MVR Co.	3821	SMP 24	2.1	6,804
MVR Co. Subtotal			427.4	\$1,562,049
Sunol Total			752.0	\$1,957,056

*Rent for the 3292 and the 3555A areas are included in the rent for the 3931 area.

On December 31, 1980, the PUC leased the 317.3 acres included in the subject 3430A SMP 30 site to Santa Clara Sand and Gravel Company for mining operations for a period of 20 years, from January 1, 1981 through December 31, 2000.⁷ Since December 31, 2000, or for approximately nine years, this lease between the City and Santa Clara Sand & Gravel Company has continued on a month-to-month basis.⁸

land to address concerns such as spoils disposal from other quarry sites. Depending on the structure of the ultimate use arrangement of the site, the related agreements may require future Board of Supervisors approval.

⁷ Mr. Dowd advises that the current lease between the PUC and Santa Clara Sand & Gravel Company was not subject to a competitive bid process because the PUC had leased SMP 30 to Santa Clara Sand & Gravel Company since April of 1960, and in 1980 the PUC entered into direct negotiations with Santa Clara Sand & Gravel Company rather than competitively bidding the new lease. According to Mr. Dowd, the PUC does not have a record of why current lease between the PUC and Santa Clara Sand & Gravel Company was not subject to a competitive bid process in 1980.

⁸ Mr. Martin advises that Cemex, Inc. purchased the Santa Clara Sand and Gravel Company in March of 2005, but the lease remains in Santa Clara Sand and Gravel Company's name. According to Mr. Dowd, the current lease between the PUC and Santa Clara Sand & Gravel Company has continued on a month-to-month basis for approximately nine years. According to Mr. Dowd, in December of 2002 the Board of Supervisors rejected a proposed amendment to the existing lease between the PUC and SCS&G, which would have extended the term of the lease through June of 2005.

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**Request for Proposal
Process:**

In December of 2005, the PUC issued a Request for Proposals (RFP) for (a) the lease and operation of the SMP 30 quarry and (b) the exclusive right to negotiate for future mining expansion at the SMP 30 site, through June 1, 2021 with an option for the Lessee to extend the term for up to 32 additional years, for a total potential lease term of 43.5 years. In response, the PUC received three proposals, which were evaluated and scored by the PUC's selection committee⁹ on March 22, 2007,¹⁰ as summarized in the table below:

RFP Scoring, Quarry Lease			
Bidder	Bid Review Points	Interview Points	Total Points
Oliver de Silva, Inc. (ODS)	416	447	863
Santa Clara Sand & Gravel Co. (SCS&G)	415	432	847
TSV Properties	328	n/a*	328

* According to Mr. Martin, TSV did not have an interview due to their low Bid Review rating.

As shown in the table above, Oliver de Silva, Inc. received the highest number of total points, such that on September 19, 2007, the PUC entered into exclusive negotiations with Oliver de Silva, Inc. for the subject lease and extension rights. Approximately 21 months after the PUC entered into negotiations with Oliver de Silva, Inc., the PUC submitted this proposed lease to the Board of Supervisors on June 30, 2009.

According to Mr. Martin, negotiations took approximately 21 months to complete due to the complex nature of the lease and quarry development proposed by Oliver de Silva, Inc., including coordination of such negotiations with related PUC interests in the Sunol Valley area, such as the PUC Water System Improvement Projects (WSIP), and negotiation by Oliver de Silva, Inc. of the conservation plans described in Attachment VI. As noted above, the existing lease between the PUC and Santa

⁹ The PUC's Selection Committee included three members of the PUC, one member of the Port, and one member of the Real Estate Department.

¹⁰ According to Mr. Martin, over a year elapsed between the PUC's issuance of the RFP and the PUC's selection committee's scoring of the proposals because the PUC additionally conducted the following activities upon receipt of the proposals: (a) economic analysis of the submitted proposals, (b) interviews with the proposers, and (c) closed session briefings with the PUC regarding the review and analysis of the proposals.

Clara Sand & Gravel Company has continued on a month-to-month basis for approximately nine years.

Description:

The proposed resolution would approve a quarry operations lease between the PUC and Oliver de Silva, Inc., which has three phases, as described below. Under the proposed lease, quarry operations would include gravel mining, processing, stockpiling and sales. Mr. Martin advises that all permit revisions, described below, are subject to review and approval by Alameda County,¹¹ the PUC, and the Board of Supervisors.

Phase 1: Permit Transfer & Tenant Change

Begins: Upon execution of the lease and delivery of the premises to Oliver de Silva, Inc.

Mr. Martin advises that immediately pursuant to approval of this proposed resolution, Oliver de Silva, Inc. would apply to Alameda County for authorization to transfer the existing mining permit from Santa Clara Sand & Gravel Company to Oliver de Silva, Inc.¹²

After the existing permit is transferred from Santa Clara Sand & Gravel Company to Oliver de Silva, Inc., the PUC would terminate the existing month-to-month lease with SCS&G. After the existing lease between the PUC and SCS&G is terminated, SCS&G will either (a) vacate the SMP 30 site, or (b) execute a sublease with Oliver de Silva, Inc. as described in Comment No. 1 below. The proposed lease between the PUC and Oliver de Silva, Inc. would be effective through June 1, 2021, subject to extensions due to permit revisions (see Phase 2 and Phase 3 below) or through the reclamation period (see Reclamation Period below).

¹¹ Alameda County's Community Development Agency is the County agency which performs environmental and regulatory reviews.

¹² Mr. Martin advises that the transfer of such permit is anticipated to be completed within three weeks of Oliver de Silva, Inc.'s application for such transfer, provided such transfer proceeds as indicated during discussions between the PUC, ODS, and Alameda County.

Phase 2: First Permit Revision

Begins: Immediately pursuant to approval by the Alameda County Community Development Agency, the PUC, and the San Francisco Board of Supervisors of the Phase 2 permit revisions described below.

Ends: Upon the expiration of the permit, as approved by the Alameda County Community Development Agency, likely the date 30 years from its effective date.

Under Phase 2 of the proposed quarry lease, Oliver de Silva, Inc. could apply to Alameda County to revise the existing permit to (a) extend the expiration date of the existing permit by 30 years from the date of permit revision,¹³ (b) increase the depth of the existing quarry by 85 feet, from 140 feet to 225 feet, (c) increase the acreage of the existing quarry by 58 acres from 308.5 acres to 366.5 acres, and (d) install and operate a new asphalt plant and a new ready-mix concrete plant on the SMP 30 site. Such permit revisions would be subject to separate future approval by the Board of Supervisors.

Mr. Martin advises that the proposed asphalt and ready-mix concrete plant would mix quarry materials mined from SMP 30 with other materials which would be transported to the SMP 30 site by Oliver de Silva, Inc. Mining, processing, stockpiling, and sales of gravel would continue under Phase 2. Additionally, if the revised permit is approved, processing and sales of asphalt and cement would commence under Phase 2.

Should the permit revision be approved by the Alameda County Community Development Agency, the PUC, and the San Francisco Board of Supervisors, the subject lease between the PUC and Oliver de Silva, Inc. would automatically be extended¹⁴ to match the new term of the

¹³ Although there is no set date for the date of permit revision, if the revision is approved by all parties, such revision would be effective no later than June 1, 2021.

¹⁴ Mr. Martin advises that although the lease would be automatically extended pursuant to issuance of the mining permit revision, the PUC and the Board of Supervisors retain discretion to (a) review the required environmental documents prepared in connection with the permit revision application, (b) comment as to the adequacy of those documents, (c) propose additional mitigation measures, or

revised permit, which, as noted above, is expected to be 30 years from the date of issuance of the revised permit.¹⁵

If the permit is revised and the lease is automatically extended as described above, Oliver de Silva, Inc. would:

(a) be required to perform specified improvements to the quarry, which are listed in Attachment II, provided by Mr. Martin and included in the proposed lease agreement. Such required improvements, which are estimated to cost \$6,310,000 according to ODS, are to be performed at the sole expense of ODS. These improvements include the construction of a slurry cutoff wall to reduce water flow from Alameda Creek into the mining pit¹⁶; and

(b) not be permitted to begin mining the SMP 17 site until the later of January 1, 2030, or the date upon which ODS completes mining of the SMP 30 site.

Phase 3: Second Permit Revision

Begins: Immediately after the date on which the Phase 3 permit revisions receive environmental and regulatory review and approval from the Alameda County Community Development Agency, the PUC, and the San Francisco Board of Supervisors.

Ends: December 31, 2064.

This second permit revision would authorize Oliver de Silva, Inc. to pursue permits and environmental clearance from the Alameda County Community Development Agency to (a) continue mining, stockpiling, processing, and selling gravel, asphalt, and cement from the SMP 30

(d) determine not to consent to the proposed permit revision if there are significant environmental impacts that cannot be mitigated to a less than significant level. Because each permit revision is a prerequisite of the corresponding lease extension, and because no permit revision can be made without appropriate environmental clearance, Mr. Martin advises that the lease will not be extended without the option for additional environmental review by the Board of Supervisors.

¹⁵ According to Mr. Martin, the Alameda County Community Development Agency will have the discretion to accept, reject, or modify the permit application upon environmental review. Such potential modifications could include a change to the terms sought in the application, which is why the expiration date of this Phase is uncertain.

¹⁶ Mr. Martin advises that the installation of this slurry cutoff wall is anticipated to minimize losses of Alameda Creek water, including discharges of stored PUC water into Alameda Creek for environmental or regulatory purposes.

site through the 30 year period specified in the first permit revision (see Phase 2 above), (b) construct a conveyor system to transport quarry materials from the SMP 17 site to the SMP 30 site,¹⁷ and (c) begin processing and selling gravel extracted from the SMP 17 site at the SMP 30 site. This second permit revision, which would be subject to separate future approval by the Board of Supervisors, would extend the permit through December 31, 2064 for the stockpiling, processing and sale of materials extracted from the SMP 17 site.

As in Phase 2, should these Phase 3 permit revisions receive environmental and regulatory clearance from the Alameda County Community Development Agency, the PUC, and the Board of Supervisors, the subject lease between the PUC and Oliver de Silva, Inc. would automatically be extended through December 31, 2064, the current expiration date of the SMP 17 permit.

Reclamation Period

Begins: Immediately pursuant to the expiration of any of the above described phases.

Ends: No more than two years after reclamation activities commence, or no later than December 31, 2066.

As of the expiration of the lease under any of the three Phases, Oliver de Silva, Inc. would be granted up to two additional years during which Oliver de Silva, Inc. would be obligated to (a) complete all aspects of the reclamation plan and (b) remove all property and leave the remainder of the site in good condition. Reclamation and restoration activities would include construction of engineered levees to create a storage lake so that the PUC may use the subject quarry site for water storage. Mr. Martin advises that during the reclamation period, further extraction of mining products would be prohibited but sales of stockpiled materials would be authorized and subject to the applicable royalty rate.

¹⁷ Mr. Martin advises that the length of the proposed conveyor system is anticipated to be approximately five miles.

Rental Payments: Pursuant to the terms of the proposed lease, each year's required rental payment to be made by Oliver de Silva, Inc. to the PUC would be the greater of either the base rent or the royalty rent.

Base Rent

Base rent, paid by Oliver de Silva, Inc. to the PUC, would be \$500,000 per year for the first three years of the proposed lease. The base rent would then escalate annually for the next eight years, or through June 1, 2021 as shown in Attachment III, provided by Mr. Martin and included in the proposed lease. Should the lease be extended beyond June 1, 2021 (See Phase 2 of Description Section), the base rent paid by Oliver de Silva, Inc. to the PUC would be the greater of either (a) 103 percent of the prior year's base rent or (b) further base rent adjustments detailed in Attachment III.

For the not-to-exceed two year period when quarry mining activities would cease and Oliver de Silva, Inc. would perform reclamation and restoration operations, the base rent paid by Oliver de Silva, Inc. to the PUC would decline to \$250,000 per year.

Royalty Rates

Royalty rates, paid by Oliver de Silva, Inc. to the PUC would consist of (a) 15 percent of the gross sales revenue for quarry products derived from the SMP 30 site, and (b) 10.5 percent of gross sales revenues for quarry products derived from the SMP 17 site. Attachment IV, provided by Mr. Martin, lists the projected royalty revenue expected to be generated by the above-listed royalty rates.

Fiscal Impact:

As noted in the Rental Payments Section above, pursuant to the terms of the proposed lease, each year's payment to be made by Oliver de Silva, Inc. to the PUC would be the greater of either the base rent or the royalty rent. According to Mr. Martin, annual royalty rental payments are projected to exceed annual base rent payments to the PUC throughout the duration of the subject lease. Based on the above royalty rates, royalty revenues to be paid by Oliver de Silva, Inc. to the PUC from January 1, 2010 through the expiration of Phase 1 on June 1, 2021, or over

approximately 11.5 years, is estimated to total \$44,207,326, or an average of \$3,844,115 per year.

If all phases and lease extensions are approved as described above, rental payments (based on royalty revenues) to the PUC from January 1, 2010 through December 31, 2064, or over approximately 55 years is estimated to total \$347,146,712, or an average of approximately \$6,311,758 per year. According to Mr. Martin, such revenues would be deposited into the PUC's Water Enterprise Revenue Fund, which is used to defray capital and operating expenses of the PUC's Water Enterprise, subject to appropriation approval by the Board of Supervisors.

As noted above, for the not-to-exceed two year reclamation and restoration period, the base rent paid by Oliver de Silva, Inc. to the PUC would decrease to \$250,000 per year, although ODS may continue selling stockpiled materials during this time provided Oliver de Silva, Inc. makes the required royalty payments to the PUC.

Attachment V, provided by Mr. Martin, describes the existing rental payments paid to the PUC under the existing lease between the PUC and Santa Clara Sand & Gravel Company, as compared to the projected rental payments to be paid to the PUC under the proposed lease between the PUC and Oliver de Silva, Inc.

As discussed on page 2 of Attachment V, the rental payments under the proposed lease in FY 2010-2011 would exceed the rental payments collected in FY 2008-2009 by a minimum of \$104,993 (\$500,000 base rent less \$395,007 FY 2008-2009 payments). As shown in Attachment IV, the PUC estimates that royalty payments will be \$3,309,075 in Year 1 of the proposed lease, which would result in an increase of \$2,914,068 in revenue to the PUC for Year 1 (\$3,309,075 projected royalty payments less \$395,007 paid in FY 2008-2009 under the existing lease).

Memo to Budget and Finance Subcommittee
November 18, 2009 Budget and Finance Subcommittee Meeting

Environmental

Impact:

Attachment VI, provided by Mr. Martin, is a memorandum discussing the existing and potential environmental impacts of this proposed lease.

Comments:

1. As noted above, should the Board of Supervisors approve this proposed resolution authorizing the PUC to enter into a quarry lease with Oliver de Silva, Inc., the lease, including the permit transfer and proposed future permit revisions, would then be subject to further environmental review and regulatory approval by the Alameda County Community Development Agency. Additionally as noted above, Alameda County has the authority to revise the permit to include terms that differ from those terms contained within the proposed lease. However, according to Mr. Martin, should Alameda County revise any terms, such revisions would be subject to review and approval by the PUC and the Board of Supervisors.

2. During Phase 1, Oliver de Silva, Inc. may allow Santa Clara Sand & Gravel Company to remain on the quarry site as a subtenant, and continue operations, in order to facilitate the transition from the Santa Clara Sand & Gravel Company to Oliver de Silva, Inc.. Mr. Martin reports that Oliver de Silva, Inc. has advised that its intention is to pursue such a sublease with Santa Clara Sand & Gravel Company, but that any such sublease would not be finalized until the proposed lease is approved. According to Mr. Martin, should such a sublease be negotiated and executed between the Santa Clara Sand & Gravel Company and Oliver de Silva, Inc., the sublease would not be subject to Board of Supervisors approval. However, all of the terms and conditions of the proposed lease between Oliver de Silva, Inc. and the PUC would apply to all sublease operations at the site, including the rental payments by Santa Clara Sand & Gravel Company on behalf of Oliver de Silva, Inc. to the PUC.

3. As noted above in the Phase 2 Section of the Description, if the SMP 30 permit revision is approved and the lease between the PUC and Oliver de Silva, Inc is automatically extended for up to an additional 30 years,

Oliver de Silva, Inc would be required to perform improvements to the quarry site. Pursuant to the terms of Section 12.2 of the proposed lease, the PUC may direct Oliver de Silva, Inc to complete one of the improvements, construction of the slurry cutoff wall, prior to authorization and execution of the Phase 2 permit revisions, which as noted above would include (a) extending the expiration date of the existing permit, (b) increasing the depth and acreage of the existing quarry, and (c) installing and operating an asphalt plant and ready-mix concrete plant. Should the PUC elect to direct Oliver de Silva, Inc to complete the slurry cutoff wall prior to execution of the Phase 2 permit revisions, the cost of such early construction would be credited against Oliver de Silva, Inc's rent in the next succeeding rental payment(s) and then reimbursed on a monthly basis to the PUC by the Oliver de Silva, Inc. over the course of two years.

4. As noted in the Request for Proposal Process Section above, the RFP for the lease, operations, and right to negotiate expansion at the SMP 30 site was through June 1, 2021 for an initial period of 11.5 years, with an option for the Lessee to extend the term for up to 32 additional years, or a total potential lease term of 43.5 years through approximately June 1, 2053.

As discussed in Phase 3 of the Description Section above, Section 3.5 (a) iii of this subject lease includes an extension through December 31, 2066 with respect to processing materials from the SMP 17 site at the SMP 30 site. Therefore, this subject lease contains options for a total potential lease term through December 31, 2066, or a period of up to 57 years, rather than the total potential term of 43.5 years specified in the RFP. According to Mr. Martin, this third extension is responsive to the RFP requests for additional environmental enhancements.

5. As described in Attachment V, and as discussed in the Fiscal Impact Section above, Oliver de Silva, Inc. would pay a minimum base rent of \$500,000 to the PUC in Year 1 of the proposed lease or at least \$104,993 more than the PUC currently receives. However, as discussed above, the PUC anticipates receiving royalty payments rather than

such base rent payments, which would result in revenues to the PUC of \$3,309,075 in Year 1 of the proposed lease, or an increase of \$2,914,068 in revenue to the PUC for Year 1 over the \$395,007 in FY 2008-2009 payments to the PUC under the existing lease.

Recommendation: Approve the proposed resolution.



EXHIBIT B

Minimum Required Improvements

1. Slurry cutoff wall: Installation of a slurry cutoff wall to reduce the inflow of water from Alameda Creek into the active mining pit on the Premises. The general location of the cutoff wall is shown on Attachment D to the RFP. The cutoff wall along Alameda Creek will be approximately 7,800 feet long at an estimated depth of 35 to 45 feet and should meet a permeability standard not exceeding 10-7 cm/sec. Depending on the results of studies to be conducted as part of the Application for Revised SMP 30, a second 2,300 foot long slurry cutoff wall along the left bank of San Antonio Creek may also be required at an estimated depth of 40 feet (see Attachment D to the RFP). Slurry wall materials and construction shall meet applicable standards established by the American Petroleum Institute for mixing and field-testing of bentonite slurries, and ASTM standards for laboratory testing of slurry properties and hydraulic conductivity. Plans and specifications for the slurry cutoff wall shall be subject to the review and approval of SFPUC and shall contain the following elements:

- i. Coordination of construction
- ii. Equipment layout and storage areas
- iii. Specifications for excavators and mixing equipment
- iv. Procedures for slurry mixing, trenching and backfilling
- v. Materials specifications including sources and certificates of manufacturer's compliances
- vi. Control of drainage and spills/ environmental protection plan
- vii. Clean up of site

The specific design details set forth above (including but not limited to the length of the required cutoff wall) may be subject to change as reasonably approved by SFPUC, provided that in all events the SFPUC's goal of minimizing seepage losses from Alameda Creek shall be attained.

- 2. Installation of Movable Sand and Aggregate Processing Facilities:** Provide a processing plan for mining the entire site according to the Alternative F Plan requirements in a cost effective manner that maximizes royalty revenue to the SFPUC.
- 3. Creek Bank Restoration:** After consultation with state and federal resource agencies, restoration of the right bank of Alameda Creek and the left bank of San Antonio Creek (looking downstream) with native vegetation and other measures in accordance with the provisions of the Alternative F Plan and maintain any plantings during the term of the Lease. In addition to regulatory agency approval, the final creek bank restoration plan will be subject to City approval and coordination with the Creek Restoration Study.

4. **Relocation of Existing 36 Inch Water Line During Extension Term:** Removal of the existing 36 inch water line currently located on the Expansion Premises and the installation of a new, smaller pipeline at a location outside of the quarry boundary parallel to Calaveras Road.
5. **Use of Native Plants to Screen Quarry Operation:** Planting and maintenance of native plants and trees to minimize the visual impacts of the quarry operation from Calaveras Road, consistent with existing requirements in the Alameda County Surface Mining Ordinance.
6. **Nursery Relocation:** Relocate nursery and install new perimeter fence.
7. **Power Line Relocation:** Relocate the portion of the power line to the filter plant located on the Expansion Premises, if required after review by SFPUC engineering and operations staff.



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Attachment III
Page 1 of 2

MEMORANDUM

October 29, 2009

To: Kate Jordan, Office of the Budget Analyst
From: Michael Martin, Development Project Manager
Re: Proposed SMP 30 Lease - Base Rent Structure

Per your request, what follows is a summary of the provisions of the above-captioned lease agreement (the "Lease") setting the base rent payment obligations of Oliver de Silva, Inc., the proposed tenant under the Lease ("Tenant").

Initial Base Rent Schedule

The Lease imposes an escalating base rent structure. The base rent amounts are payable each year, but royalty rent payments under the lease are credited against base rent such that Tenant will pay the greater of base rent or royalty rent, but not both. This structure provides an incentive for consistent operation by Tenant.

The initial base rents payable by Tenant under the Lease are shown in the table below. The base rents increase slowly during the first five years of the lease in acknowledgement of the significant initial capital and permitting expenses to be incurred by Tenant. The Lease provides for steeper increases in years six through 11, subject to adjustment upward as described below.

<u>Lease Year</u>	<u>Base Rent Amount</u>
1	\$500,000
2	\$500,000
3	\$500,000
4	\$515,000
5	\$530,450
6	\$1,000,000
7	\$1,175,509
8	\$1,259,274
9	\$1,344,052
10	\$1,479,874
11	\$1,616,770

Further Base Rent Adjustments

In addition, beginning in the seventh lease year and every three years thereafter there shall be a special adjustment in the base rent, under which base rent shall be increased by either 3% or to the average total royalty amounts paid by Tenant over the preceding three Lease years, whichever amount is greater. Therefore these special adjustments may only increase base rent, but only up to \$3,000,000 (\$3,250,000 if the total rent amount paid in first ten Lease years does not equal \$10,142,336). Once applicable level is reached then further annual increases shall be limited to 3% annually.

While the special adjustments described above may only increase the base rent, the Lease includes a provision for a temporary reduction in base rent in acknowledgement of the cyclical nature of the quarry business. Starting with the sixth lease year, if the mining and processing royalties described above do not exceed the base rent payable in two consecutive lease years, base rent shall be reduced to \$1,000,000. If such a reduction is triggered the scheduled base rent payments will be restored once the royalties again exceed the base rents that would have been payable (i.e. without giving effect to the reduction) for two consecutive Lease years.

Attachment IV

Lease Revenue Projections
SFPUC Sunol Quarry; EPS #17155

No.	Year	Variable Price and Production Rate		
		SMP 30	SMP 17	Total
1	2010	\$3,309,075	\$0	\$3,309,075
2	2011	\$3,398,485	\$0	\$3,398,485
3	2012	\$3,391,414	\$0	\$3,391,414
4	2013	\$3,518,549	\$0	\$3,518,549
5	2014	\$3,594,695	\$0	\$3,594,695
6	2015	\$3,953,047	\$0	\$3,953,047
7	2016	\$3,614,326	\$0	\$3,614,326
8	2017	\$3,465,143	\$0	\$3,465,143
9	2018	\$3,182,757	\$0	\$3,182,757
10	2019	\$3,931,390	\$0	\$3,931,390
11	2020	\$4,443,025	\$0	\$4,443,025
12	2021	\$4,405,419	\$0	\$4,405,419
13	2022	\$4,398,256	\$0	\$4,398,256
14	2023	\$4,806,371	\$0	\$4,806,371
15	2024	\$5,274,379	\$0	\$5,274,379
16	2025	\$4,856,714	\$0	\$4,856,714
17	2026	\$4,762,227	\$0	\$4,762,227
18	2027	\$4,367,108	\$0	\$4,367,108
19	2028	\$5,137,692	\$0	\$5,137,692
20	2029	\$5,250,370	\$0	\$5,250,370
21	2030	\$5,293,312	\$0	\$5,293,312
22	2031	\$6,244,560	\$0	\$6,244,560
23	2032	\$6,676,154	\$0	\$6,676,154
24	2033	\$7,373,342	\$0	\$7,373,342
25	2034	\$6,770,254	\$0	\$6,770,254
26	2035	\$6,568,770	\$0	\$6,568,770
27	2036	\$4,673,902	\$0	\$4,673,902
28	2037	\$0	\$5,145,288	\$5,145,288
29	2038	\$0	\$5,421,409	\$5,421,409
30	2039	\$0	\$5,495,536	\$5,495,536
31	2040	\$0	\$5,702,864	\$5,702,864
32	2041	\$0	\$5,824,519	\$5,824,519
33	2042	\$0	\$6,507,184	\$6,507,184
34	2043	\$0	\$6,047,342	\$6,047,342
35	2044	\$0	\$5,927,689	\$5,927,689
36	2045	\$0	\$6,098,382	\$6,098,382
37	2046	\$0	\$6,713,434	\$6,713,434
38	2047	\$0	\$7,073,709	\$7,073,709
39	2048	\$0	\$7,170,428	\$7,170,428
40	2049	\$0	\$7,440,944	\$7,440,944
41	2050	\$0	\$7,599,677	\$7,599,677
42	2051	\$0	\$8,490,399	\$8,490,399
43	2052	\$0	\$7,890,410	\$7,890,410
44	2053	\$0	\$7,734,289	\$7,734,289
45	2054	\$0	\$7,957,006	\$7,957,006
46	2055	\$0	\$8,759,509	\$8,759,509
47	2056	\$0	\$9,229,585	\$9,229,585
48	2057	\$0	\$9,355,782	\$9,355,782
49	2058	\$0	\$9,708,744	\$9,708,744
50	2059	\$0	\$9,915,854	\$9,915,854
51	2060	\$0	\$11,078,045	\$11,078,045
52	2061	\$0	\$10,295,196	\$10,295,196
53	2062	\$0	\$10,091,493	\$10,091,493
54	2063	\$0	\$10,382,088	\$10,382,088
55	2064	\$0	\$11,429,172	\$11,429,172
Total (Nominal Dollars)		\$126,660,734	\$220,485,977	\$347,146,712


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MEMORANDUM

November 12, 2009

To: Kate Jordan, Office of the Budget Analyst
 From: Michael Martin, Development Project Manager
 Re: Proposed SMP 30 Lease – Revenue Projections

I write in response to your request for a memorandum discussing the revenue projections for the proposed lease (the “Lease”) of the Surface Mining Permit 30 (“SMP 30”) site to Oliver de Silva, Inc. (“ODS”)

1. EPS Memorandum

Economic & Planning Systems, Inc. (“EPS”) was retained by the SFPUC to assist in analyzing the economics of the responses to the SMP 30 Request for Proposals, as well as to provide related support during the lease negotiation process. SFPUC staff worked with EPS to prepare revenue projections to assist in the consideration of the lease by the SFPUC and the Board of Supervisors. A memorandum from EPS showing the results of that analysis was provided as an attachment to the SFPUC staff memorandum submitted along with the lease approval resolution to the Board of Supervisors file.

Annual quarry lease revenues depend on larger macroeconomic trends as well as factors like the volume of road construction and homebuilding undertaken in the Bay Area in a given year. On the micro level revenues also depend on the ability of the operator to strike favorable deals with high-volume purchasers of quarry products. Therefore in analyzing the lease’s long-term revenue potential SFPUC and EPS staff worked to reflect the recessionary short term economic trends while at the same time accounting for the generally expansionary historical performance of quarry operations in the California market over the long term.

To do so EPS reduced the initial year lease revenue projections it derived for its analysis for purposes of scoring ODS’s proposal by the percentage decrease in quarry revenues realized by the SFPUC over the time between the submission of ODS’s proposal in fiscal year 2005-2006 and the preparation of the EPS memorandum in fiscal year 2008-2009. EPS then escalated that revenue amount over the 55 years the lease could potentially run according to a trend line

derived from the historical cyclical performance of quarry product prices and volumes in California.

2. Near term revenue expectations

The SFPUC's existing lease of SMP 30 to Santa Clara Sand & Gravel, Inc. ("SCS&G") includes a 10.5% royalty percentage and a \$100,000 per year base rent. Under these terms the SMP 30 lease generated \$395,007 in revenues to the SFPUC in 2008-2009. The EPS memorandum projects an initial Lease royalty revenue amount of \$3,309,075 for calendar year 2010, an increase of \$2,914,068 as compared to the most recent completed fiscal year of the SCS&G lease. While on its face this projection appears aggressive in view of continued softness in key sectors of quarry demand like home construction, SFPUC staff notes several factors that provide some measure of confidence that the proposed Lease, if approved, would generate significantly more revenues than have been generated in recent years. These factors include the following:

- Favorable lease terms. The proposed lease includes a first year base rent amount of \$500,000, an increase of \$104,993 over the revenues realized under the SMP 30 lease during the 2008-2009 fiscal year, which means there will be a guaranteed 20% increase over the 2008-2009 SCS&G revenues from the moment the lease is signed. The Lease royalty amount is 15%, as opposed to the 10.5% under the SCS&G lease. Therefore, even if sales revenues remain at the identical, abnormally low 2008-2009 level there will be a 43% increase in royalty revenues under the proposed Lease as compared to the current SCS&G tenancy.
- Improving economic trends. While the national and state unemployment rates have continued to rise of late, other economic indicators show signs of a recovery from the recent steep downturn. In addition, federal stimulus dollars continue to make their way to contractors, spurring another sector of quarry product demand. Lastly, last year's state budget difficulties resulted in many state contractors being paid with warrants instead of cash, which limited both the contractors' resources to procure quarry products as well as their willingness to continue performing on their state contracts. While the state budget is by no means remedied, the state's redemption of the warrants and its resumption of cash payments together are likely to restore some measure of quarry product demand in the public contractor sector.
- Tenant motivation. The limited base rents and uncertain duration of the existing month-to-month SCS&G tenancy provided a disincentive to SCS&G's seeking longer term contracts or growing its quarry business. In contrast, the multiyear term of the proposed Lease will provide ODS with security it needs to justify investing in its business and seeking more lucrative long-term supply agreements. At the same time the escalating base rent structure and the significant up-front capital investments required under the lease provide additional incentive for ODS to maximize its operating revenues from the day the new Lease commences.

3. Long term revenue expectations

SFPUC staff also notes further factors that it believes will result in revenue performance meeting the EPS projections over the life of the lease. These include the following:

- Expansion into new markets. As set forth in the Lease, ODS's applications for revisions to SMP 30 may include an asphalt plant and/or a ready mix concrete plant at ODS's option. ODS has indicated its firm intent to pursue such plants. The Lease calls for the payment of royalty revenues of all quarry products used as components of the finished asphalt or ready mix product, and so these sales will create a revenue stream in addition to the products currently mined, processed and sold at the SMP 30 site.
- Decreased competition. As noted in the SFPUC staff memorandum submitted to the Board of Supervisors file along with the lease, the SMP 30 and SMP 17 quarries represent two large supplies of quarry materials among a dwindling number of Bay Area quarries. As competing sources are exhausted, demand at the SMP 30 site will increase. The favorable location of the SMP 30 site may also allow ODS to increase prices as compared to more distant sources which would impose further transport costs on purchasers.
- Environmental mitigation costs. Under the conservation plans ODS has entered with respect to the quarry operations proposed under the Lease, ODS is obligated to make significant expenditures in favor of several environmental mitigation efforts. To satisfy these obligations ODS will have every incentive to maximize its quarry revenues, which in turn will increase the royalty revenues to the City.

4. Conclusion

Therefore for the reasons outlined above SFPUC staff believes that the EPS memorandum provides a credible and useful projection of the revenues reasonably expected to be generated by the Lease over its full potential 55 year term. SFPUC staff further observes that the proposed Lease is in all instances a more lucrative arrangement than the current SCS&G relationship, both in terms of guaranteed base rent revenue as well as the significantly more favorable royalty percentage.



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- Favorable lease terms. The proposed lease includes a first year base rent amount of \$500,000, an increase of \$104,993 over the revenues realized under the SMP 30 lease during the 2008-2009 fiscal year, which means there will be a guaranteed 20% increase over the 2008-2009 SCS&G revenues from the moment the lease is signed. The Lease royalty amount is 15%, as opposed to the 10.5% under the SCS&G lease. Therefore, even if sales revenues remain at the identical, abnormally low 2008-2009 level there will be a 43% increase in royalty revenues under the proposed Lease as compared to the current SCS&G tenancy.
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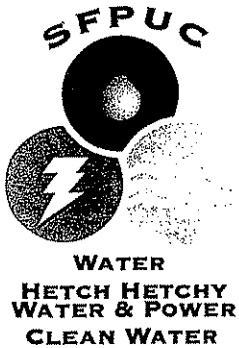
3. Long term revenue expectations

SFPUC staff also notes further factors that it believes will result in revenue performance meeting the EPS projections over the life of the lease. These include the following:

- Expansion into new markets. As set forth in the Lease, ODS's applications for revisions to SMP 30 may include an asphalt plant and/or a ready mix concrete plant at ODS's option. ODS has indicated its firm intent to pursue such plants. The Lease calls for the payment of royalty revenues of all quarry products used as components of the finished asphalt or ready mix product, and so these sales will create a revenue stream in addition to the products currently mined, processed and sold at the SMP 30 site.
- Decreased competition. As noted in the SFPUC staff memorandum submitted to the Board of Supervisors file along with the lease, the SMP 30 and SMP 17 quarries represent two large supplies of quarry materials among a dwindling number of Bay Area quarries. As competing sources are exhausted, demand at the SMP 30 site will increase. The favorable location of the SMP 30 site may also allow ODS to increase prices as compared to more distant sources which would impose further transport costs on purchasers.
- Environmental mitigation costs. Under the conservation plans ODS has entered with respect to the quarry operations proposed under the Lease, ODS is obligated to make significant expenditures in favor of several environmental mitigation efforts. To satisfy these obligations ODS will have every incentive to maximize its quarry revenues, which in turn will increase the royalty revenues to the City.

4. Conclusion

Therefore for the reasons outlined above SFPUC staff believes that the EPS memorandum provides a credible and useful projection of the revenues reasonably expected to be generated by the Lease over its full potential 55 year term. SFPUC staff further observes that the proposed Lease is in all instances a more lucrative arrangement than the current SCS&G relationship, both in terms of guaranteed base rent revenue as well as the significantly more favorable royalty percentage.



SAN FRANCISCO PUBLIC UTILITIES COMMISSION



1155 MARKET STREET, 11TH FLOOR • SAN FRANCISCO, CA • 94103
TEL. (415) 934-5701 • FAX (415) 554-3424

MEMORANDUM

November 10, 2009

To: Kate Jordan, Office of the Budget Analyst

From: Michael Martin, Development Project Manager

Re: Proposed SMP 30 Lease – Environmental review and mitigation

The following is a summary of the environmental issues bearing on the proposed lease (the “Lease”) of the Surface Mining Permit 30 (“SMP 30”) site in the Sunol Valley to Oliver de Silva, Inc. (“ODS”)

1. California Environmental Quality Act – review of impacts

In connection with the issuance of SMP 30 in 1992 the Alameda County Planning Commission found in its Resolution No. 92-32 that “although the [proposed mining activities to be performed under the permit] could have a significant effect on the environment, there will not be a significant effect in this case because the project sponsor has agreed to mitigation measures, which mitigation measures have been incorporated into the [permit] which reduce those impacts to a less than significant level.”

The initial phase of the proposed lease contemplates the continuation of mining under the terms and conditions of the SMP 30 permit, and as such the finding of the Alameda County Planning Commission set forth above will apply to those activities.

The permit revisions under subsequent extension terms of the Lease (referred to as “Phase 2” and “Phase 3” in the draft report) have not yet been reviewed for environmental impacts. The proposed lease contemplates that ODS will pursue such review as required in conjunction with its application for the permit revisions to Alameda County. As noted above, the proposed lease includes provisions retaining discretion to the PUC and the Board of Supervisors to review the related environmental impact reports prior to any such permit revision becoming effective, and to take actions that in effect would authorize, deny or modify the Phase 2 and Phase 3 permit revisions.

2. Environmental Enhancements and Impact Mitigation Under Lease

As described above, the SFPUC and the Board of Supervisors will have an opportunity to review the environmental documentation relating to the Phase 2 and Phase 3 permit revisions and to take appropriate action to address any identified impacts prior to there being any change in operations from those which have occurred on the site since SMP 30 was issued in 1992. Notwithstanding the discretion so reserved to the City, the proposed Lease obligates ODS to pursue certain direct environmental enhancements at the site in connection with the Phase 2 permit revision. These improvements include the restoration of key creek banks, screening plantings, and the construction of a slurry cutoff wall around the mining pit to support the continued flow of water in Alameda Creek.

In addition, the proposed Lease also delays and limits the industrial activities in the San Antonio Reservoir watershed. If the Phase 3 permit revisions are approved and processing of SMP 17 materials is permitted at SMP 30, ODS agrees under the Lease that it will not open the SMP 17 quarry until the later of 2030 or the date that SMP 30 is exhausted of material. The Phase 3 permit application will also include a conveyor system transport approach instead of the previously authorized truck haul road, which will greatly reduce the impact from the transport of materials. By potentially postponing the commencement of operations at SMP 17 to at least 2030 and limiting the truck traffic through the San Antonio watershed lands through the use of a conveyor system, the proposed lease represents an opportunity to greatly reduce the environmental impact from ODS's rights to access and operate SMP 17.

3. Environmental Enhancements Under Conservation Plans

As a companion measure to the proposed Lease, ODS has also entered into two conservation plans with the Alameda Creek Alliance and the Center for Biological Diversity relating to the environmental impacts of the quarry activities proposed under the lease. The plans call for streambed restoration, habitat protections and other enhancements benefiting Alameda Creek in particular and the Sunol Valley/Apperson Ridge area in general. The plans have been submitted as part of the Board file and we note them as being a portion of the work that would move forward upon the approval of this lease by the Board of Supervisors.



AGENDA ITEM
Public Utilities Commission
City and County of San Francisco



DEPARTMENT External Affairs AGENDA NO. _____
 MEETING DATE June 9, 2009

SUMMARY OF PROPOSED COMMISSION ACTION

Discussion and possible action to approve the terms of and authorize the General Manager of the San Francisco Public Utilities Commission (SFPUC) to submit to the Board of Supervisors for consideration under Charter Section 9.118, a Quarry Lease between the SFPUC and Oliver de Silva, Inc., for the mining of the 308.5 acre Sunol Valley Aggregate Quarry site located on a portion of Parcel 65 of Alameda County lands in Sunol Valley, for an initial term through June 1, 2021, subject to extension as described therein.

DESCRIPTION OF PROPOSED ACTION

City and Oliver de Silva, Inc. (ODS) entered into an Exclusive Negotiating Agreement, dated September 19, 2007, as amended by that certain First Amendment to Exclusive Negotiating Agreement, dated August 1, 2008 (as so amended, the "ENA"), to govern negotiations for a mining lease (the "Lease") of the SFPUC's 308.5 acre property located in Alameda County, California, known as the Sunol Valley Aggregate Quarry (the "Site"). The negotiations have proceeded to a proposed agreement between SFPUC staff and ODS as to the substantive terms of the Lease. The proposed lease would authorize ODS to mine the Site under the current permit upon its transfer from the existing Site operator, with no change in activity contemplated for the Site under such transfer. The lease further contemplates that ODS would pursue future modifications to the Site mining permit, subject to appropriate permitting approvals and environmental review, and further subject to the City's retained discretion as described in the lease.

CONTEXT OF THIS ACTION:

As described in the attached Staff Report, the Site is included among lands in the Sunol area that were purchased from the Spring Valley Water Company in 1930. The Site and much of the SFPUC and privately owned property nearby have been operated as aggregate quarries since the 1960s. The SFPUC also owns and operates a number of other water system assets in the Sunol Valley area, including the San Antonio and Calaveras Reservoirs, the Hetch Hetchy Aqueduct, and the Sunol Valley Water Treatment Plant. The Site is mined as authorized under

APPROVAL:

PERFORMING ORGANISATION	<u>Garrett M. Dowd</u>	FINANCE	<u>Todd L. Rydstrom</u>
COMMISSION SECRETARY	<u>Michael Housh</u>	GENERAL MANAGER	<u>Ed Harrington</u>

Department: External Affairs**Action:** Quarry Lease with Oliver de Silva, Inc.

California Surface Mining Permit 30 ("SMP 30") issued by Alameda County under the State Surface Mining and Reclamation Act.

ODS holds a mining lease on privately owned property in the vicinity of the Site, within the San Antonio Reservoir watershed, known as Apperson Ridge (the "Apperson Ridge Site"). In 1969 the City entered into an exchange deed and right of way agreement with the owner of the Apperson Ridge Site whereby the City would provide an easement through its lands to replace the access road inundated by the completion of the San Antonio Reservoir in 1965. Tenant obtained a lease to the Apperson Ridge Site and in 1984 Alameda County issued Surface Mining Permit 17 ("SMP 17") to Tenant for the mining of a portion of such land. SMP 17 as currently authorized includes the installation of an asphalt manufacturing plant and sand and gravel processing facilities, along with improved road access for large numbers of trucks that would be required to deliver those products from the Apperson Ridge Site to end users.

The proposed lease calls for ODS to secure a transfer of SMP 30 by Alameda County from the existing quarry operator in order to continue mining the premises under existing SMP 30 through its currently effective 2021 expiration date, and upon such transfer to pursue with Alameda County environmental review and permitting for two potential permit modifications and extension terms.

The first permit modification contemplates and, if approved, would authorize the expansion of the Site to provide a wider and deeper mining area, consistent with the Sunol Valley Resource Management Element of the Alameda Watershed Management Plan adopted by the SFPUC in 2000, extend the mining permit term through the date which is 30 years from the date of the permit revision, and, at ODS's option, allow installation and operation of an asphalt plant and ready mix concrete plant. Upon completion of mining the Site shall be reclaimed as a water storage asset as generally described in the preferred alternative of the Sunol Valley Resources Management Element of the Alameda watershed Management Plan. Certain portions of the Site may be used for processing and stockpile activities during the second extension term described below; such portions will be reclaimed upon the completion of the processing and stockpile activities.

The second permit modification contemplates and, if approved, would authorize the processing and sale through 2064 of quarry products delivered to the Site via a conveyor system to be constructed between the Apperson Ridge Site and the Site.

Base rents under the lease begin at \$500,000 and escalate as described in the Staff Report. Royalty rates are set at 15% for the Site and 10.5% for the Apperson Site. Both the base rent and the royalty rent under the lease represent significant increases from the rents paid by the other SFPUC quarry tenants in the area.

Assuming that permitting and environmental clearance is achieved and the three phases of the proposed lease are implemented as planned the business relationship represented by the lease is projected to provide \$100.4 million in revenues to the

SFPUC water enterprise through the end of the final extension term in 2064 on a net present value basis. While this projection incorporates an extrapolation of quarry product economic conditions based on recent experience, the revenue performance of the lease is subject to actual mining market conditions during the term.

ODS has also agreed to two conservation plans with the Alameda Creek Alliance ("ACA") and the Center for Biological Diversity ("CBD"), one with respect to the Site and the other with respect to the Apperson Ridge Site (together, the "Conservation Plans"). The Conservation Plans resulted from discussions between ODS and affected environmental stakeholder groups as to the most appropriate manner for ODS to pursue expanded mining at the Site and to establish mining operations at the Apperson Ridge Site. Under the Conservation Plans ODS commits to certain expenditures for creek restoration, fish passage and wildlife preservation projects in the area. In return, ACA and CBD agree to support the expansion of mining at the Site and the establishment of mining at the Apperson Ridge Site contemplated under the terms of the lease, including in the pursuit of any required regulatory or environmental review of such activities.

Staff has structured the lease in order to provide the benefits described above in such a way as to minimize the negative impacts on the environment and the SFPUC facilities in the area. In particular, the combination of (i) the postponement of mining at the Apperson Ridge Site, (ii) the substitution of the conveyor system for the currently permitted haul road through SFPUC watershed lands to the Apperson Ridge Site, (iii) the environmental mitigations to be identified under the aforementioned CEQA processes and (iv) those environmental enhancements set forth in the Conservation Plans would together provide a significant improvement over the impacts that could be expected to result from Tenant's exercise of its existing right to mine Apperson Ridge. The lease team has also worked with Water System Improvement Program ("WSIP") project teams to ensure that the development of the quarry will be coordinated in such a way as to further the objectives of the WSIP as a whole. For the foregoing reasons, and as further described in the Staff Report, staff recommends approval of this item.

PROS/CONS

PROS

- Increases Base Rent and Royalty Rent Payable from the Site
- Postpones and Limits Impacts to Watershed Lands from ODS' Exercise of Apperson Ridge Site Mining Right, Including Potential Removal of Haul Road and Certain Aggregate Processing Facilities from San Antonio Reservoir watershed
- Offers Potential Environmental Enhancements as Compared to ODS' Existing Right to Mine Apperson Ridge Site
- Increases Water Storage upon Reclamation of Site

CONS

- none

ATTACHMENTS

Lease

Staff Report (previously provided; on file with the Commission)

Conservation Plan for Sunol Quarry SMP-30 Site (previously provided; on file with the Commission)

Apperson Ridge Conservation Plan SMP-17 Site (previously provided; on file with the Commission)

Contact Person: Garrett M. Dowd

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 09-0095

WHEREAS, The San Francisco Public Utilities Commission (SFPUC) currently leases approximately 308.5 acres of its Alameda watershed lands in Sunol Valley for sand and gravel mining under the auspices of Surface Mining Permit (SMP) 30; and

WHEREAS, On November 19, 1992, the Alameda County Planning Commission approved the issuance of SMP 30 with certain terms and conditions; and

WHEREAS, On December 13, 2005, the SFPUC issued a request for proposals (the "RFP") for the exclusive right to negotiate for the operation and potential future expansion of the SMP 30 aggregate quarry; and

WHEREAS, On March 22, 2007, a RFP Review Panel comprised of staff from the SFPUC, San Francisco Department of Real Estate, and the Port of San Francisco interviewed the two top ~~proposers and completed their ranking of said proposals; and~~

WHEREAS, On May 8, 2007, this Commission adopted Resolution No. 07-0082, authorizing the General Manager of the SFPUC (the "General Manager") to direct staff to enter into negotiations with Oliver de Silva, Inc. ("Tenant"), as the highest ranked respondent to the RFP, to achieve an Exclusive Negotiation Agreement for the lease of the Site (the "Lease"), with the understanding that the final terms and conditions of any Exclusive Negotiation Agreement, lease or related documents negotiated during the exclusive negotiation period will be subject to approval of the Commission, in its sole discretion; and

WHEREAS, The SFPUC and Tenant were able to reach agreement on all terms and conditions for the exclusive negotiation process; and

WHEREAS, The SFPUC and Tenant entered into an Exclusive Negotiating Agreement, dated September 19, 2007 (the "ENA"), which sets forth the terms and conditions upon which the SFPUC and Tenant entered into negotiations for the lease of the Site; and

WHEREAS, The SFPUC and Tenant agreed to a First Amendment to Exclusive Negotiating Agreement (the "Amended ENA") which amended the ENA to add two six (6) month extensions to its term, potentially extending the term of the agreement to September 17, 2009; and

WHEREAS, Tenant has exercised both of the options to extend provided under the Amended ENA; and

WHEREAS, The SFPUC and Tenant have negotiated the Lease in the form on file with the Commission; and

WHEREAS, The Lease provides that upon its effective date Tenant shall promptly apply to Alameda County for, and diligently pursue, the transfer of the existing SMP 30 mining permit from the existing operator to Tenant; and

WHEREAS, Upon the transfer of SMP 30, Tenant shall have the right to mine the Site subject to the terms and conditions of such permit, through its current expiration date of June 1, 2021, or the date the Site is finally reclaimed, whichever comes first; and

WHEREAS, The Lease contemplates the possibility of further permit revisions and extension terms, with such revisions and extensions subject to any and all required environmental and regulatory review; and

WHEREAS, As provided in the Lease, there will be further opportunity to discuss environmental impacts, mitigation measures, stakeholder compensation and conservation programming with respect to any expanded mining activities and these decisions will need Commission and Board of Supervisors approval; and

WHEREAS, Commission staff and Tenant have engaged Sunol Valley stakeholders in discussions, which are ongoing, on the appropriate manner in which to proceed with the activities contemplated under the Lease; and

WHEREAS, This Commission recognizes that quarrying activities are generally accompanied by environmental and human impacts, but based on the information provided by Commission staff, Tenant and other stakeholder groups regarding the proposed conservation of environmental resources in the area and based on the discretion retained by the Commission to review activities under the Lease, the Commission believes that the transaction contemplated by the Lease is an appropriate and responsible approach to such activities; now, therefore, be it

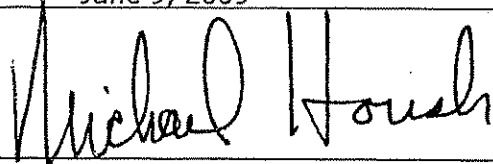
RESOLVED, That this Commission hereby approves the attached Lease and authorizes the General Manager of the San Francisco Public Utilities Commission to forward the completed Lease to the City Board of Supervisors for its consideration as required by City Charter Section 9.118; and, be it further

RESOLVED, That this Commission authorizes the General Manager to enter into any additions, amendments or other modifications to the Lease that the General Manager, in consultation with the Commercial Land Manager and the City Attorney, determines are in the best interests of the SFPUC and the City, do not materially decrease the benefits to the SFPUC or the City, do not materially increase the obligations or liabilities of the SFPUC or the City, and do not authorize the performance of any activities without pursuing all required regulatory and environmental review and approvals, such determination to be conclusively evidenced by the execution and delivery of any such additions, amendments, or other modifications; and, be it further

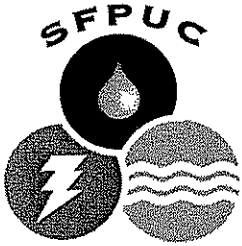
RESOLVED, That this Commission directs staff to work with Sunol Valley stakeholders to address and respond to community concerns about the effects of proposed expanded mining operations on the area, and further authorizes the General Manager to enter into any additions, amendments or other modifications to the Lease that the General Manager, in consultation with the Commercial Land Manager and the City Attorney, determines are in the best interests of the SFPUC and the City with respect to such stakeholder issues and are necessary and appropriate to achieve the objectives of this Resolution and the Lease; and, be it further

RESOLVED, That upon approval by the Board of Supervisors this Commission hereby authorizes and directs the General Manager to execute the Lease on behalf of the SFPUC.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of June 9, 2009



Secretary, Public Utilities Commission



SAN FRANCISCO PUBLIC UTILITIES COMMISSION



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**WATER
HETCH HETCHY
WATER & POWER
CLEAN WATER**

MEMORANDUM

June 19, 2009

To: Honorable Members, Board of Supervisors

Through: Ed Harrington, General Manager
Laura Spanjian, Assistant General Manager, External Affairs

From: Garrett M. Dowd, Director, Real Estate Services
Michael Martin, Development Project Manager

Re: Proposed Lease of Sunol Valley Aggregate Quarry (SMP 30) Site with
Oliver de Silva, Inc.

1. Executive Summary

The San Francisco Public Utilities Commission (the "SFPUC") proposes to lease to Oliver de Silva, Inc. ("Tenant") certain premises the SFPUC owns in the Sunol area, which are currently being operated by Cemex, Inc. ("Cemex") as an aggregate quarry under a month-to-month tenancy pursuant to California Surface Mining Permit 30 ("SMP 30") issued by Alameda County under the State Surface Mining and Reclamation Act.

The proposed lease calls for Tenant to secure from Alameda County a transfer of SMP 30 from the existing operator to Tenant in order to continue mining the premises under existing SMP 30 through its currently effective 2021 expiration date and then to pursue environmental review and permitting for two potential mining permit modifications and extension terms. If approved, the first permit revision would expand the SMP 30 permit to authorize a wider and deeper mining area, consistent with the Sunol Valley Resource Management Element of the Alameda Watershed Management Plan adopted by the SFPUC in 2000, and a term extension of 30 years from the date of the permit revision. If approved, the second permit revision would authorize the processing and sale through 2064 of quarry products delivered to the SMP 30 site via a conveyor system to be constructed between SMP 30 and another mining lease and Surface Mining Permit that Tenant holds on property within the San Antonio Reservoir watershed on what is known as Apperson Ridge, a privately owned ranch adjacent to SFPUC holdings in the Sunol area.

Assuming that permitting and environmental clearance is achieved and the three phases of the proposed lease are implemented as planned, and taking into account the cyclical nature of quarry product prices and sales volumes, the business relationship represented by the lease is projected to provide \$102 million in revenues to the SFPUC water enterprise through the end of the final extension term in 2064 on a net present value basis.

The lease negotiation team has structured the lease in order to provide the benefits described above in such a way as to minimize the negative impacts on the environment and the SFPUC facilities in the area. In particular, the combination of (i) the postponement of mining at the Apperson Ridge Site, (ii) the substitution of the conveyor system for the currently permitted haul road through SFPUC watershed lands to the Apperson Ridge Site, (iii) the environmental mitigations to be identified under the aforementioned CEQA processes and (iv) those environmental enhancements set forth in Tenant's agreement with environmental stakeholder groups would together provide a significant improvement over the impacts that could be expected to result from Tenant's exercise of its existing right to mine Apperson Ridge. The lease team has also worked with Water System Improvement Program ("WSIP") project teams to ensure that the development of the quarry will be coordinated in such a way as to further the objectives of the WSIP as a whole.

2. Background

a. The Premises

The Premises proposed to be leased to Tenant include the current 308.5-acre quarry premises (the "Initial Premises") and additional area of approximately 58 acres that is contemplated for expansion of mining in connection with the initial revision of SMP 30 (the "Expansion Premises" and, together with the Initial Premises, the "Sunol Valley Site"). The Initial Premises and Expansion Premises are depicted in Exhibit A.

The Sunol Valley Site is included among lands in the area that were purchased from the Spring Valley Water Company in 1930. The Sunol Valley Site and much of the SFPUC and privately owned property nearby have been operated as aggregate quarries since the 1960s. The SFPUC also owns and operates a number of other water system assets in the Sunol Valley area, including the San Antonio and Calaveras Reservoirs, the Hetch Hetchy Aqueduct, and the Sunol Valley Water Treatment Plant.

b. Alameda Watershed Management Plan

In 1992 the SFPUC commenced a planning process with respect to its watershed lands in Alameda County and on the San Francisco Peninsula. For the Sunol Valley area, this process included the development of the Sunol Valley Resources Management Element in the late 1990s, which was an effort to further clarify future policies and actions within the Sunol Valley area, particularly with respect to mining activities. Upon its completion the Sunol Valley Resources Management Element was incorporated into the broader watershed planning process that culminated in 2000 with the adoption of the Alameda Watershed Management Plan.

The Sunol Valley Resources Management Element analyzed several different scenarios for balancing the water storage, recreation and revenue generation opportunities in the Sunol Valley area in an environmentally sensitive manner. In 1996 SFPUC adopted a preferred alternative to guide the SFPUC's pursuit of water storage opportunities in the vicinity. This preferred alternative called for the maximization of water storage in areas south of Interstate 680, including the expansion of mining at the Sunol Valley Site to provide 34,000 acre-feet of water storage. This alternative was incorporated in the preferred alternative adopted as part of the Alameda Watershed Management Plan and analyzed in the Program Environmental Impact Report accompanying the Plan.

c. Apperson Ridge

Tenant holds a mining lease on privately owned property in the vicinity of the Sunol Valley Site, known as Apperson Ridge (the "Apperson Ridge Site"). In 1969 the City entered into an exchange deed and right of way agreement with the owner of the Apperson Ridge Site whereby the City would provide an easement through its lands to replace the access road inundated by the completion of the San Antonio Reservoir in 1965. Tenant obtained a lease to the Apperson Ridge Site and in 1984 Alameda County issued Surface Mining Permit 17 ("SMP 17") to Tenant for the mining of a portion of such land. SMP 17 as currently authorized includes the installation of an asphalt manufacturing plant and sand and gravel processing facilities, along with improved road access for large numbers of trucks that would be required to deliver those products from the Apperson Ridge Site to end users.

The San Francisco Board of Supervisors (the "Board") adopted a resolution opposing the issuance of SMP 17 unless legally binding guarantees were provided to mitigate potential adverse impacts to water quality and nearby watershed lands owned by the SFPUC. Subsequent to the issuance of SMP 17 the City entered into an amendment of the 1969 exchange deed and right of way agreement and other agreements and memoranda that more clearly established the road easement location as well as the obligations of the parties in addressing the water quality concerns previously voiced by the Board. Specifically, under a 1986 memorandum of agreement (the "MOA") between the SFWD and the Tenant, as Apperson Ridge Site lessee, Tenant has an obligation to reimburse the SFWD for costs of water quality monitoring attributable to the quarrying activities along with all reasonable costs directly resulting from lessee's quarry operations (e.g. increased water treatment costs, cleanup of City property adjacent to roadway, etc.).

d. Mining Market Conditions in the East Bay Region

The continuing tide of development and construction in the San Francisco Bay area has served to increase demand for quarry products while at the same time reducing land available for the development of new mining resources. Further, the passage of Measure D by Alameda County voters in November 2000 prohibited the development of new quarries in the county without prior voter approval. These factors combine to place a premium on existing quarry resources and new resources that can be developed or expanded in an economically efficient manner. As depicted in Exhibit B, a 2006 market analysis by the California Department of Conservation shows a sharp reduction in permitted aggregate resources in the Bay Area over the years 2001-2006. A

rough extrapolation of demand based on population growth indicates that the current permitted supply of aggregate materials in the Bay Area can be expected to meet less than 30% of the 50-year demand for such materials from 2006 through 2056. Thus any expansion of such permitted resources can expect to face limited local competition in serving the Bay Area economy in future years.

Local sources of supply have two primary advantages over other sources of raw materials. The primary alternative to local sources of quarry products would be to transport them to the area, either from inland areas with greater access to mining products or by barge from Canada and elsewhere. Mining is a high volume, low profit business, and imported materials are less competitive due to increased transport costs. Similarly, local sources of quarry products avoid some measure of the fossil fuel combustion inherent in transporting products from more distant locations, thus reducing their overall carbon footprint in comparison with such other sources.

While the pace of real estate development and road construction may have slowed due to the ongoing economic downturn, it is reasonable to expect that demand for construction materials will increase as the regional and national economies recover. If approved by Alameda County after appropriate environmental review, the expansion of SMP 30 and the participation in royalties from the Apperson Ridge Site contemplated under the proposed Lease would provide the SFPUC with a financial stake in an important local source of supply for these products that is strategically situated between markets in the South Bay and the Livermore-Amador Valley.

e. Solicitation of Proposals and Negotiation for a Mining Lease of the Premises

In December 2005 the SFPUC issued a request for proposals for the lease and operation of a quarry at the Sunol Valley Site and an exclusive right to negotiate for future mining expansion (the "RFP"). The RFP sought proposals to mine the site and to seek revisions to SMP 30 in order to expand mining to the Expansion Premises and to a depth that would provide the water storage volume described in the Sunol Valley Resource Management Element of the Alameda Watershed Management Plan. The RFP also encouraged proposers to provide responses that included innovative approaches to maximize water storage and environmental enhancements that can protect and improve drinking water quality and the aquatic environment on the SFPUC watershed lands.

The SFPUC received three responses to the RFP. While Tenant's proposal did not represent the most lucrative proposal with respect to the mining of SMP 30 alone, it did include additional benefits beyond the others. These benefits included participation in royalty revenues from the Apperson Ridge Site in addition to the proposed quarrying under SMP 30, as well as the potential for environmental enhancements to SFPUC watershed lands, all as more fully described in Section 3 below.

The SFPUC's selection committee evaluated the proposals and ranked Tenant's proposal highest among the three. On May 8, 2007 the SFPUC adopted a resolution authorizing the General Manager to enter into negotiations with Tenant as the highest ranked respondent. The SFPUC subsequently entered into an Exclusive Negotiating Agreement with Tenant commencing on

September 19, 2007, followed by a First Amendment to Exclusive Negotiating Agreement dated August 1, 2008.

The negotiations pursued under the amended agreement resulted in the preparation of the lease document submitted to the SFPUC for its consideration. At its June 9, 2009 meeting the SFPUC approved the lease and authorized its submission to the Board of Supervisors for approval under Charter Section 9.118 by a vote of 4-0.

3. Lease Description

a. Lease phasing and environmental review

Tenant's proposal contemplates three distinct phases for the proposed lease:

- mining of the Initial Premises pursuant to a transfer of the existing SMP 30 mining authorization from the exiting quarry operator;
- revision of SMP 30 to add the Expansion Premises to the mining area and to allow for deeper mining, which together would increase water storage and mining at the Sunol Valley Site as generally contemplated in the Sunol Valley Resource Management Element; and
- revision of SMP 30 and SMP 17 to allow the processing of Apperson Ridge Site materials at the Sunol Valley Site and the construction of a conveyor system from the Apperson Ridge Site through SFPUC watershed lands to the Sunol Valley Site to transport such materials for processing.

Each of the aforementioned phases of the proposed lease potentially requires further environmental and regulatory clearance before Tenant can proceed. It is anticipated that Alameda County would be the lead agency for such environmental review and the City would be a responsible agency. The proposed lease reserves certain discretion to the City and the SFPUC in connection with these anticipated environmental review processes. This discretion includes the right to:

- consult with Alameda County throughout the environmental review process;
- comment on the adequacy of any draft CEQA Document;
- comment on the adequacy of response to written comments and public hearing testimony;
- propose additional or different mitigation measures;
- challenge Alameda County's decision regarding the adequacy of its environmental review and approval of the project;

- require further environmental review, if necessary to comply with the provisions of CEQA;
- determine not to consent to the proposed project if the project will cause significant environmental impacts that cannot be mitigated to a less than significant level, including but not limited to where the SFPUC has determined not to perform or permit the performance of certain proposed mitigation measures as provided in the lease; and
- determine to consent to the proposed project, despite significant and unavoidable environmental impacts, upon making certain findings based on substantial evidence in the record.

Further, the SFPUC shall have (i) the right under certain circumstances to require modifications to the terms of this Lease in order to adopt mitigation measures recommended in the final CEQA Document for a proposed project that are proposed to reduce or avoid significant environmental impacts, (ii) the right to determine not to undertake mitigation measures identified as the responsibility of the SFPUC or the City, and (iii) the right to determine not to permit the implementation of mitigation measures by others and to determine not to consent to any conditions to Alameda County approval, if the implementation of such measures or imposition of such conditions could adversely affect the SFPUC's water system operations.

b. Phase 1: Transfer of existing SMP 30 mining permit

The first lease phase is the mining of the Existing Premises under the terms and expiration date of the existing SMP 30 mining permit. Such permit would have to be transferred from the current lessee to Tenant. The existing lessee is currently on a month-to-month tenancy and Alameda County has indicated that once the proposed lease is executed between the SFPUC and Tenant the transfer of the permit to Tenant would not require a protracted regulatory or environmental review process. In any event, the expectation is that Tenant's mining under the current SMP 30 would proceed as soon as possible once the lease is approved and the permit transfer process (including required environmental review, if any) is successfully completed. Tenant has indicated that it may allow the existing quarry operator to remain in operation on the premises as a subtenant, subject to SFPUC review rights under the lease, which the parties expect would smooth the transition process.

c. Phase 2: Revision of SMP 30, addition of Expansion Premises to mining area, authorization of a deeper mining depth, extension of permit term for an additional 30 years

The second phase is the procurement of regulatory approvals and environmental clearance for a deeper mining pit at the Sunol Valley Site that also incorporates the Expansion Premises, which revisions would together provide the opportunity for greater water storage as described in the Alameda Watershed Management Plan. Tenant may also include an asphalt and/or a ready mix concrete plant as part of the application, at its option. Tenant will submit an application for a revision to SMP 30 along these lines to Alameda County within six months of the commencement of the lease. Such a revision would likely require environmental clearance, for

which Alameda County would serve as lead agency and the City would serve as responsible agency.

If the permit revision is granted then the lease term will be extended through the expiration date of the revised permit, which is anticipated to be 30 years from permit issuance. Upon the receipt of the revised permit Tenant will be responsible for completion of certain "Minimum Required Improvements" at its expense. These improvements are listed in Exhibit B to the proposed Lease and include a slurry cutoff wall to limit the drainage of Alameda Creek into the neighboring mining pits as well as creek bank restorations in the quarry area. The SFPUC has the right to direct Tenant to complete the slurry cutoff wall early (i.e. prior to the procurement of the revision to SMP 30) in order minimize water infiltration into the quarry pit from Alameda Creek at the earliest possible date, subject to the procurement of all required permits and environmental clearance. The cost of such early construction would be credited against Tenant's rent or, under certain circumstances and at SFPUC's election, reimbursed on a monthly basis in cash by SFPUC. Such rent credits and SFPUC reimbursements would be repaid by Tenant to the SFPUC over a period of two years beginning on the date of receipt of revised SMP 30, which reflects the timing of the costs that would have been incurred by Tenant had it constructed the slurry cutoff wall under the terms required under the RFP. Installation of the cutoff wall is an essential element in restoring native populations of steelhead trout to the Alameda Creek watershed because it will minimize losses of stored SFPUC water that may be required as part of the restoration effort.

The successful revision of SMP 30 as described above would also trigger a covenant by Tenant that it will not commence mining of the Apperson Ridge Site until the later of the date that Tenant completes mining of SMP 30 or January 1, 2030, so long as the proposed lease remains in force and Alameda County has not taken action to reject the proposed processing of Apperson Ridge Site materials at the Sunol Valley Site. Upon completion of mining under revised SMP 30 Tenant will have the obligation to reclaim the Premises and perform finish grading and certain other activities to allow for the establishment of water storage on the Sunol Valley Site, subject to reservations of space for the establishment of conveyor and processing activities if such activities are approved as described in subsection d below.

- d. Phase 3: Revision of SMP 17, further revision of SMP 30, and establishment of lease modifications and other agreements to allow for extended processing plant term activities at the Sunol Valley Site through 2064

The third phase of the lease is the procurement of regulatory approvals and environmental clearance for the Apperson Ridge portions of Tenants' proposal. In summary, this phase includes the construction of a conveyor system through the SFPUC-owned watershed lands from the Apperson Ridge Site to the Sunol Valley Site and the establishment of facilities on the Sunol Valley Site to process and sell the materials transported by the conveyor, along with the entry of related agreements and amendments to govern the relationship between the parties.

This third phase of the lease requires revisions of both SMP 17 and SMP 30. Under the lease Tenant agrees to pursue these revisions within one year after the approval of the "Phase 2" revisions to SMP 30. The SMP 30 revision in conjunction with this final phase will be structured

to incorporate mining and reclamation plans for the Sunol Valley Site that will accommodate the proposed extended processing term while still providing the water storage benefits sought by the SFPUC at the earliest practicable date. If the required revisions are adopted the lease will be extended through December 31, 2064 to allow for the successful completion of processing and reclamation activities at the Sunol Valley Site.

4. Lease Objectives

a. Establishing a New Lease Relationship for the Sunol Valley Site

The immediate objective of the lease is to establish a longer term lease relationship for the Sunol Valley Site under the existing parameters of SMP 30. The proposed lease includes increased base rents and royalty amounts as compared to the month-to-month tenancy currently held by Cemex at the Sunol Valley Site. The extension of the term to the current SMP 30 expiration date will also foster more strategic management of the quarry assets as compared to the current relationship which is subject to termination with limited notice.

b. Maximizing Mining and Processing Royalties

If fully implemented after environmental review and permitting, the three phases of the proposed Lease are projected to provide \$102 million on a net present value basis for the benefit of the SFPUC's Water Enterprise, which holds jurisdiction over the quarry property. (See Exhibit C for a memorandum from SFPUC consultant Economic & Planning Systems Inc., describing the lease revenue analysis and projection.) The Water Enterprise is undertaking an expensive but necessary effort to seismically retrofit the City's water system. Over time these revenues can be of assistance in alleviating some of the upward pressure on retail water rates resulting from the cost of financing the WSIP.

The 15% royalty rate for products derived from the Sunol Valley Site set forth in the proposed lease is competitive under current market conditions and exceeds the rate realized from the SFPUC's other active quarries in the area. The additional 10.5% processing royalty rate for materials mined at Tenant's Apperson Ridge Site provides an additional benefit above and beyond the mining value of the SFPUC-owned Sunol Valley Site. The proposed lease provides that the SFPUC will receive such Apperson Ridge Site processing royalties even if the conveyor system is rejected by Alameda County or is otherwise not implemented, so long as Tenant has the right to process Apperson Ridge Site materials at the Sunol Valley Site.

The lease also imposes an escalating base rent structure, which provides an incentive for consistent operation by Tenant. The base rents payable by Tenant under the lease start at \$500,000; by way of comparison, Cemex, the existing quarry tenant, pays no base rent. During the first five years of the lease the base rents increase slowly in acknowledgement of the significant initial capital and permitting expenses to be incurred by Tenant, with steeper increases in years six through 11. In addition, beginning in the seventh lease year and every three years thereafter there shall be a special adjustment in the base rent, under which base rent shall be increased by either 3% or to the average total royalty amounts paid by Tenant over the preceding three lease years, whichever amount is greater. Therefore these special adjustments

may only increase base rent, but only up to \$3,000,000 (\$3,250,000 if the total rent amount paid in first ten lease years does not equal \$10,142,336). Once applicable level is reached then further annual increases shall be limited to 3% annually.

While the special adjustments described above may only increase the base rent, the lease includes a provision for a temporary reduction in base rent in acknowledgement of the cyclical nature of the quarry business. Starting with the sixth lease year, if the mining and processing royalties described above do not exceed the base rent payable in two consecutive lease years, base rent shall be reduced to \$1,000,000. If such a reduction is triggered the scheduled base rent payments will be restored once the royalties again exceed the base rents that would have been payable (i.e. without giving effect to the reduction) for two consecutive lease years.

c. Minimizing Environmental Impacts

The quarry operations proposed for the Sunol Valley Site and the Apperson Ridge Site under the terms described in the proposed lease will undoubtedly have environmental impacts. With that in mind staff has negotiated the lease to retain significant participation rights for the SFPUC and the City in the environmental review process. Thus there will be opportunities for further SFPUC and Board review of environmental impacts of the various aspects of the proposed projects and potential methods of mitigating those impacts as the repermitting process moves forward.

At the present time, however, staff notes that there are certain environmental enhancements and benefits that can be expected in connection with the approval and execution of the proposed lease. The most direct enhancements come from Tenant's obligation under the lease to pursue the Minimum Required Improvements as described above in Section 3.c. These improvements include the restoration of key creek banks, screening plantings, and the aforementioned measures to support the continued flow of water in Alameda Creek (a key objective for the SFPUC in connection with the retrofit and operation of water system assets in the area).

Another key benefit is the limit that the proposed transaction places on industrial activities in the San Antonio Reservoir watershed. As described in Section 2.c above, Tenant has the legal right to build a haul road through SFPUC watershed lands to access the Apperson Ridge Site. It is true that the MOA with the Tenant summarized in that section provides for reimbursement of the SFPUC's costs in monitoring and addressing water quality impacts resulting from the construction and use of such a road and the operation of primary and secondary processing plants on the Apperson Ridge site. That said, it is obviously preferable to defer or avoid as many of the water quality and environmental impacts of the development of the Apperson Ridge quarry as possible rather than relying on this monitoring/remediation/reimbursement contractual structure to safeguard the quality of the SFPUC watershed lands. As noted above, the lease provides that once Revised SMP 30 is obtained Tenant shall not open the Apperson Ridge Site until the later of January 1, 2030, or the date the Sunol Valley Site is completely exhausted. The proposed substitution of a conveyor system for the haul road and the limitation of processing facilities at the Apperson Ridge Site to those required to crush the materials down to the size required for transport on the conveyor will serve to drastically reduce the volume of truck trips and eliminate most of the other industrial activities within the SFPUC's watershed lands. In turn this reduction

of industrial activities will limit the adverse watershed impacts of Tenant's mining rights under SMP 17.

As a companion measure to the proposed lease Tenant has also entered into two conservation plans with the Alameda Creek Alliance and the Center for Biological Diversity relating to the environmental impacts of the quarry activities proposed under the lease. The plans call for improvements benefiting Alameda Creek in particular and the Sunol Valley area in general. While the City is not a party to those plans, we note them as being a key portion of the work that would move forward upon an approval of this lease by the Commission and the Board of Supervisors.

Finally, while there may be direct environmental effects of proceeding with a quarry project, a decision to reject this or any other local quarry development opportunity carries potential indirect impacts that should not be overlooked. As described in Section 2.d above, the local sources of quarry products are progressively reaching exhaustion. Since it is unlikely that the demand for these products would decline at the same rate as the local sources of supply are used up, the failure to fully develop a local source of supply will have a logical expansionary effect on the carbon footprint of the consumption of quarry materials. If, for example, the next nearest supply location is located in Tracy (a likely outcome if the Sunol-area resources are not available), a proportional increase in truck fossil fuel emissions would be required in order to serve Bay Area consumption centers from a source more than 30 miles to the east of the existing Sunol quarries. In an acute shortage we could also see quarry materials shipped by sea from Canada or Mexico. As these barges are powered by fossil fuels such an outcome would add yet another layer of environmental impacts to the use of these same quarry products. The avoided environmental impact should be accounted for in any analysis of the expansion of mining under the lease, just as the reduction in truck trips that would be ensured by the implementation of the proposed conveyor system should be factored into an assessment of the SMP 17 aspect of this proposal.

d. Coordinating with Nearby Water System Assets and Construction Projects

The fourth key objective guiding the negotiation of the proposed lease is the need for coordination with SFPUC capital projects in the area. As noted above, the Sunol Valley Site is located at a key juncture of the water system, and as such is adjacent to or in the vicinity of a number of WSIP projects, including the Alameda Siphon #4 project, the New Irvington Tunnel project and the San Antonio Backup Pipeline project. Accordingly, SFPUC staff has made every effort to coordinate the proposed mining of the Sunol Valley Site with the needs and objectives of the WSIP activities in the area.

In particular, the lease is structured to give priority to the staging and construction spoils disposal needs of the WSIP projects before providing Tenant access to the full area of the Expansion Premises for mining purposes. While a good deal of the affected WSIP construction work will take place during the period required to obtain the environmental clearance and permit revisions for the incorporation of the Expansion Premises into the quarry, staff agreed that it would be prudent to make this priority clear in the Lease.

Similarly, the Sunol Valley Site will also be used to receive operational and emergency discharges from the water system if such discharge is necessary for management of the system. The proposed lease includes provisions detailing the cooperation between the SFPUC and Tenant in constructing the discharge structures, providing warnings of discharges wherever possible, and protocols for utilizing and/or disposing of the water discharged to the Sunol Valley Site mining pit.

e. Implementing the Water Storage Objective Set Forth in the Alameda Watershed Management Plan




In its preparation and adoption of the Sunol Valley Resources Management Element of the Alameda Watershed Management Plan the SFPUC weighed the competing land uses in the Sunol Valley area and selected a preferred alternative that called for the development of water storage assets at this strategically important juncture of the City's water system and other area water infrastructure.





The plan selected for the watershed lands south of Interstate 680 sought the development of 34,000 acre-feet of water storage on the Sunol Valley Site, including the Expansion Premises. The Tenant's mining and reclamation activities under the proposed lease are the vehicle to achieving this water storage objective. The actual amount of water storage to be developed is subject to practical limitations at the site, for example by conditions imposed as part of the environmental review or permitting processes or else by unforeseen geological factors that will not allow the full proposed magnitude of water storage. However, based on technical analysis to date and expected permit conditions staff believes that this water storage goal is achievable under the terms of the proposed lease.

Exhibit A

Map of Initial Premises and Expansion Premises

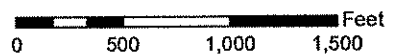


-  SFPUC Fee Owned Parcels
-  Existing SFPUC Pipelines
-  SFPUC Buildings

-  Proposed New Irvington Tunnel
-  Proposed SFPUC Pipeline
-  Initial Premises
-  Expansion Premises

San Francisco Public Utilities Commission
Right of Way

Exhibit A-3



May 21, 2009

The City does not guarantee that the information is accurate or complete. The City provides this information on an "as is" basis and is not responsible for any damages arising from the use of data. Users should verify the information before making project commitments.

Aerial Photo Date: 2006

Exhibit B

Permitted Aggregate Resources Compared with Demand, 2006-2056

District (1)	<i>Millions of Tons</i>			50-year Demand 2056 (2)	% of Demand Met by Permitted Supply
	Permitted Aggregate Resources				
	2001	2006	# Change		
North San Francisco Bay Area	178	49	-129	647	8%
South San Francisco Bay Area	564	458	-106	1244	37%
Total	742	507	-235	1,891	27%

(1) Defined in the Map Sheet 52 (Updated 2006) study entitled "Aggregate Availability in California", a 2006 report prepared by the California Department of Conservation - California Geological Survey. North Bay Area includes Marin, Sonoma, and Napa Counties.

(2) Projecting demand for aggregate resources over a 50-year horizon is speculative by nature. Here, current aggregate usage has been estimated on a per-person basis and projected for the future based on California Department of Finance projections of population growth.

Sources: United States Geological Survey (2005 Minerals Yearbook - California); California Department of Conservation - California Geological Survey (Aggregate Availability in California); Economic & Planning Systems.

Exhibit C

Lease Revenue Analysis Memorandum

MEMORANDUM

To: Michael Martin and Gary Dowd, San Francisco Public Utilities Commission

From: Walter Kieser and Rebecca Benassini

Subject: Background for Staff Report to the Commission, Sunol Quarry; EPS #17155

Date: June 22, 2009

The Economics of Land Use



Economic & Planning Systems (EPS) was retained by the San Francisco Public Utilities Commission (SFPUC) to evaluate lease terms under consideration for the Sunol Valley Mine. This memorandum summarizes EPS's findings regarding potential lease revenues associated with the mine lease.

About the Analysis

The lease revenue projection is based on a financial analysis EPS originally conducted during lease negotiations with Oliver De Silvia. The analysis tests revenue to the SFPUC under various scenarios of production volume and pricing of materials from the mine. In addition, the revenue projection reflects the potential variability of quarry product market conditions. Other variables may affect these revenues including the timing within which revised mining permits are attained and production and sales prices which fall outside of the scenarios tested.

Key Lease Terms

The lease terms include a number of mechanisms through which the SFPUC will receive revenue. These include base rent and royalty payments for material *mined* under Surface Mining Permit (SMP) 30 for the Sunol Valley site and base rent and royalty payments for material mined at the Apperson Ridge site *processed* at the Sunol Valley site. Key lease terms which will impact revenues to the SFPUC include the following:

*Economic & Planning Systems, Inc.
2501 Ninth Street, Suite 200
Berkeley, CA 94710-2515
510 841 9190 tel
510 841 9208 fax*

*Berkeley
Sacramento
Denver*

www.epsys.com

- Base rent increases from \$500,000 for the first year of the lease to \$1.6 million in Year 11, with 3 percent increases thereafter (subject to further adjustment after Year 7 as described below).
- If 15 percent of sales of product derived from the Sunol Valley site exceeds the base rent, then the 15 percent royalty rent will be paid.
- Beginning in Year 7 and every subsequent third year, base rent may be increased to the average of the prior three years' annual lease payments.
- Beginning in Year 7, base rent may be temporarily decreased if royalty rent is less than base rent in two consecutive years.
- If 10.5 percent of sales of product derived from the Apperson Ridge site and processed at the Sunol Valley site exceeds the base rent, then the 10.5 percent royalty rent will be paid.

Revenue Projection Summary

In order to project lease revenues over the 55-year lease term, historical changes in material pricing and rates of production have been used as a model for future conditions. Production variations are based on the annual changes in the production of construction sand and gravel in California from 1999 to 2007; Sale price variations are based on the year-over-year change in the construction cost index for the United States from 1954 to 2008.

This variable production and pricing scenario results in a revenue projection of \$102 million in net present value dollars (discounted at 4.5 percent over a 55 year period). **Figure 1** below summarizes the results in net present value terms. Two revenue streams are shown: base rent and royalty payments from material *mined* at the Sunol Valley site and base rent and royalty payments for material mined at the Apperson Ridge site and *processed* at the Sunol Valley site.

Figure 1. Lease Payments, Net Present Value
(4.5% discount rate over 55 years, in millions)

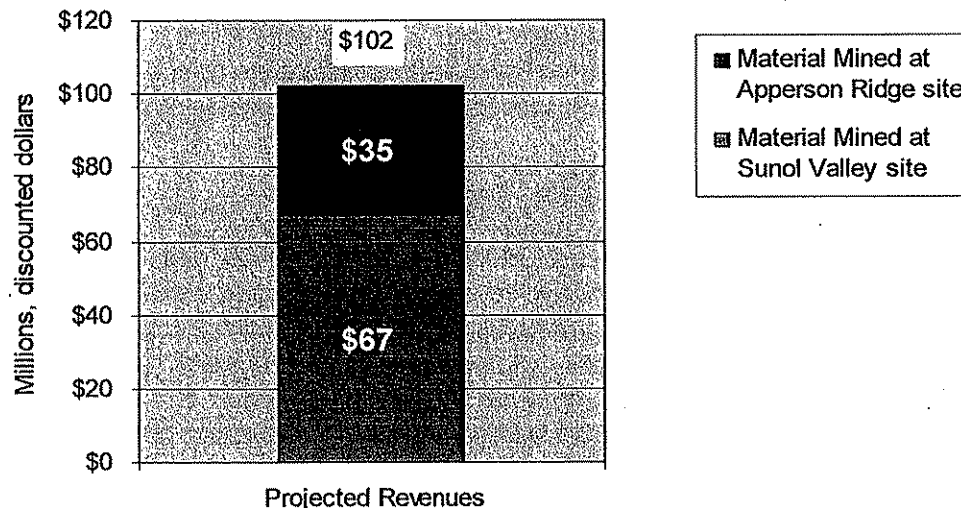


Figure 2 illustrates the projected annual payments to the SFPUC in nominal (inflated) dollars. As shown, variable production rates and pricing fluctuate over the 55-year lease period, resulting in fluctuating lease revenues to the SFPUC.

Figure 2. Annual Estimated Rent Revenue to the SFPUC (Nominal dollars)

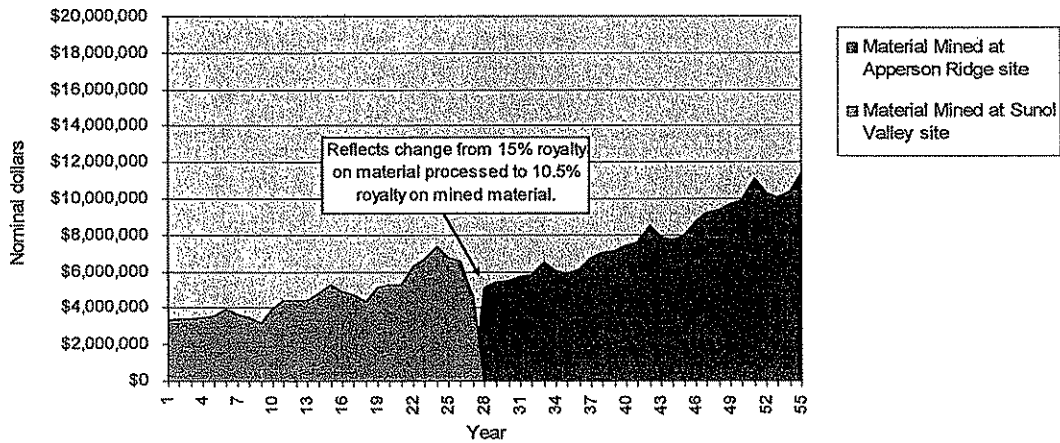


Figure 3 provides the projected annual lease revenue for selected years over the lease term, in nominal (inflated) dollar terms. As shown, revenues are expected to range from \$3.6 million in year 7 to \$11.4 million by year 55. **Table 1** provides detailed projections.

Figure 3. Annual Estimate Lease Revenue for Selected Years (nominal dollars)

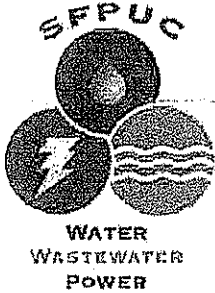
Year	Projected Revenue
7	\$3,614,000
10	\$3,931,000
20	\$5,250,000
30	\$5,496,000
40	\$7,441,000
50	\$9,916,000
55	\$11,429,000

Table 1
Lease Revenue Projections
SFPUC Sunol Quarry; EPS #17155

No.	Year	Variable Price and Production Rate [1] (Nominal dollars)		Total
		Sunol Valley Material	Apperson Material	
1	2010	\$3,309,000	\$0	\$3,309,000
2	2011	\$3,398,000	\$0	\$3,398,000
3	2012	\$3,391,000	\$0	\$3,391,000
4	2013	\$3,519,000	\$0	\$3,519,000
5	2014	\$3,595,000	\$0	\$3,595,000
6	2015	\$3,953,000	\$0	\$3,953,000
7	2016	\$3,614,000	\$0	\$3,614,000
8	2017	\$3,465,000	\$0	\$3,465,000
9	2018	\$3,183,000	\$0	\$3,183,000
10	2019	\$3,931,000	\$0	\$3,931,000
11	2020	\$4,443,000	\$0	\$4,443,000
12	2021	\$4,405,000	\$0	\$4,405,000
13	2022	\$4,398,000	\$0	\$4,398,000
14	2023	\$4,806,000	\$0	\$4,806,000
15	2024	\$5,274,000	\$0	\$5,274,000
16	2025	\$4,857,000	\$0	\$4,857,000
17	2026	\$4,762,000	\$0	\$4,762,000
18	2027	\$4,367,000	\$0	\$4,367,000
19	2028	\$5,138,000	\$0	\$5,138,000
20	2029	\$5,250,000	\$0	\$5,250,000
21	2030	\$5,293,000	\$0	\$5,293,000
22	2031	\$6,245,000	\$0	\$6,245,000
23	2032	\$6,676,000	\$0	\$6,676,000
24	2033	\$7,373,000	\$0	\$7,373,000
25	2034	\$6,770,000	\$0	\$6,770,000
26	2035	\$6,569,000	\$0	\$6,569,000
27	2036	\$4,674,000	\$0	\$4,674,000
28	2037	\$0	\$5,145,000	\$5,145,000
29	2038	\$0	\$5,421,000	\$5,421,000
30	2039	\$0	\$5,496,000	\$5,496,000
31	2040	\$0	\$5,703,000	\$5,703,000
32	2041	\$0	\$5,825,000	\$5,825,000
33	2042	\$0	\$6,507,000	\$6,507,000
34	2043	\$0	\$6,047,000	\$6,047,000
35	2044	\$0	\$5,928,000	\$5,928,000
36	2045	\$0	\$6,098,000	\$6,098,000
37	2046	\$0	\$6,713,000	\$6,713,000
38	2047	\$0	\$7,074,000	\$7,074,000
39	2048	\$0	\$7,170,000	\$7,170,000
40	2049	\$0	\$7,441,000	\$7,441,000
41	2050	\$0	\$7,600,000	\$7,600,000
42	2051	\$0	\$8,490,000	\$8,490,000
43	2052	\$0	\$7,890,000	\$7,890,000
44	2053	\$0	\$7,734,000	\$7,734,000
45	2054	\$0	\$7,957,000	\$7,957,000
46	2055	\$0	\$8,760,000	\$8,760,000
47	2056	\$0	\$9,230,000	\$9,230,000
48	2057	\$0	\$9,356,000	\$9,356,000
49	2058	\$0	\$9,709,000	\$9,709,000
50	2059	\$0	\$9,916,000	\$9,916,000
51	2060	\$0	\$11,078,000	\$11,078,000
52	2061	\$0	\$10,295,000	\$10,295,000
53	2062	\$0	\$10,091,000	\$10,091,000
54	2063	\$0	\$10,382,000	\$10,382,000
55	2064	\$0	\$11,429,000	\$11,429,000

Nominal dollars total:	\$126,658,000	\$220,485,000	\$347,143,000
NPV at discount rate of 4.5%:	\$67,290,000	\$34,810,000	\$102,100,000

[1] Projected revenue is based on a review of historic market conditions, estimated rates of production and pricing of quarry material. Other variables may affect these revenues including the timing within which revised mining permits are attained and production and sales prices which fall outside of the scenarios tested.



SAN FRANCISCO PUBLIC UTILITIES COMMISSION

BUREAU OF ENVIRONMENTAL MANAGEMENT
1145 Market St., Suite 500, San Francisco, CA 94103 • Tel. (415) 934-5700 • Fax (415) 934-5750 • TTY (415) 554.3488



June 1, 2009

Gary Dowd
San Francisco Public Utilities Commission
Real Estate Services
1145 Market Street, 7th Floor
San Francisco, CA 94103

GAVIN NEWSOM
MAYOR

ANN MOLLER CAEN
PRESIDENT

F.X. CROWLEY
VICE PRESIDENT

FRANCESCA VIETOR
COMMISSIONER

JULIET ELLIS
COMMISSIONER

ED HARRINGTON
GENERAL MANAGER

Re: CEQA Determination for Surface Mining Permit 30 Quarry Lease

Dear Gary:

The Bureau of Environmental Management has reviewed your request for project environmental review for the Surface Mining Permit 30 Quarry Lease. The lease between SFPUC, Real Estate Services, and Oliver de Silva, Inc. (ODS) would allow ODS to continue an existing sand and gravel mining operation as authorized under Surface Mining Permit 30. (SMP 30) approved by the Alameda County Community Development Agency in resolution number 92-32 in accordance with the State Surface Mining and Reclamation Act (Public Resources Code §§2710 et seq.).

Based on the information provided by SFPUC Real Estate Services, the new lease does not entail a new use or activity on the premises. Therefore, the lease does not require environmental review under CEQA pursuant to the guidance provided by the ERO of the San Francisco Planning Department.

The Environmental Review Officer of the San Francisco Planning Department has also indicated that a new contract to continue doing the same activities is not a project under CEQA.

The proposed lease provides an option for two possible future revisions to SMP 30 by ODS, but no commitment to such revisions is contemplated at this time. SFPUC and ODS explicitly retain the right to disapprove or change the terms of the revisions; thus no approval is sought at this time. The first of the potential modifications would revise the permit to allow deeper mining and the expansion of the mining area to include a 58 acre nursery area owned by the City and located between the existing quarry pit and Calaveras Road, in accordance with the Sunol Valley Resource Management Element of the Alameda Watershed Plan. The second potential change would allow the processing at the SMP 30 site of sized aggregates and other products delivered from a nearby mining area (Apperson Ridge) controlled by ODS. The Apperson Ridge quarry was previously authorized by Alameda County under SMP 17, issued in 1984. Both of the potential revisions to SMP 30, and changes to SMP 17, would be subject to subsequent environmental review by the Alameda County Community Development Agency as lead agency and to the San Francisco Planning Department's retained discretion as responsible agency as set forth under the proposed lease, and as such are not being approved at this time. Accordingly, there is no authorization to change or modify the activities currently being conducted under SMP 30. If such revisions are approved in the future, there would be amendments to the lease and related agreements that would accommodate and govern the future permitted quarry activities, and the SFPUC retains discretion to disapprove or modify the amendments. If the proposed modifications to SMP 30 are not approved, ODS would continue to mine the site in accordance with SMP 30 until expiration of the current permit in 2021.

Gary Dowd, Sr PUC Real Estate Services
Re: CEQA Determination – SMP 30 Quarry Lease

Page.2

Please retain this memorandum in your files and contact me with questions.

Please also ensure that all future lease requests are reviewed by the Bureau of Environmental Management. Thank you.

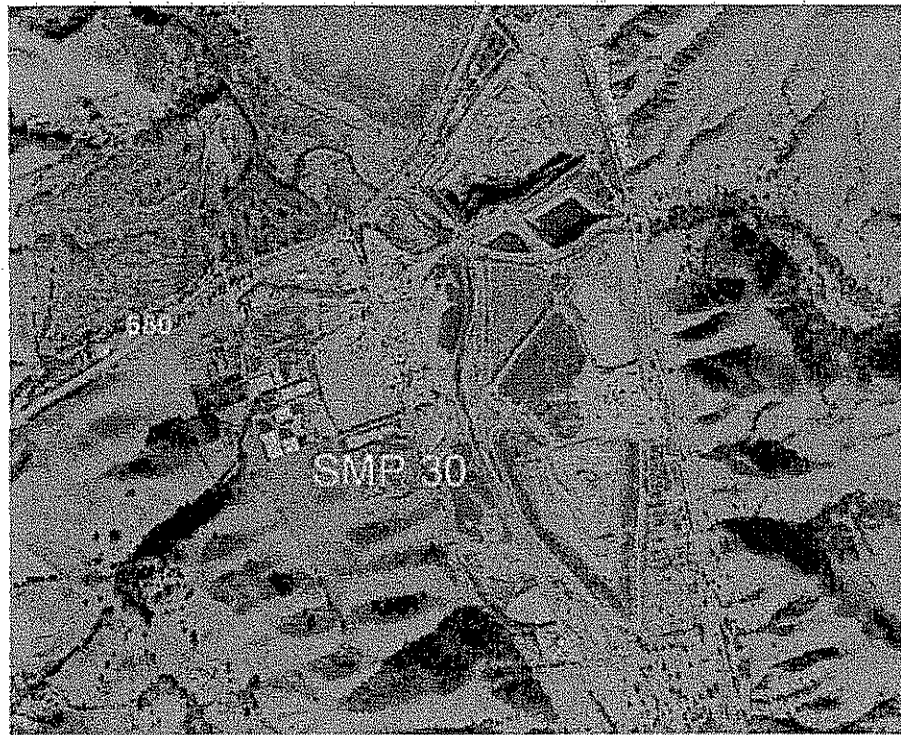
Sincerely,



Irina P. Torrey, AICP
Manager, Bureau of Environmental Management

cc: Mike Martin, SFPUC External Affairs

Conservation Plan For Sunol Quarry SMP-30 Site



A Conservation Plan by Oliver de Silva, Inc. to Enhance
the Biological Resources of the Sunol Quarry SMP-30
Project Area in Alameda County, California.

December 15, 2008

EXECUTIVE SUMMARY

This Conservation Plan was prepared by Oliver de Silva, Inc., the Alameda Creek Alliance, and the Center for Biological Diversity, to protect and enhance the biological resources in the vicinity of the Sunol Quarry Site in the Sunol Valley. The conservation measures in this plan will significantly reduce the potential impacts of Sunol Quarry mining operations on native wildlife species and their habitats, will provide further mitigation for unavoidable biological impacts, and will benefit special-status species and their habitats in the vicinity of the project.

As detailed herein, Oliver de Silva ("ODS") will fund, implement and monitor the avoidance, mitigation, and restoration measures detailed in this Conservation Plan to best protect and conserve special-status species and their habitats prior to and during the development of quarry operations at the Sunol Quarry, under Surface Mining Permit 30 ("SMP-30"), Revised SMP-30 and Further Revised SMP-30.

In 2006 ODS submitted a proposal for a mining lease in the Sunol Valley, SMP-30. ODS contemplates additional, future mining operations at the SMP-30 site, subject to the Approval of a revised surface mining permit for the site ("Revised SMP-30") and a further revised surface mining permit for the site ("Further Revised SMP-30"). Activities under SMP-30 and Revised SMP-30 are separate and distinct projects, with independent utility, from mining activities at Apperson Ridge pursuant to SMP-17 and Revised SMP-17. Contemporaneously with finalization of this Conservation Plan, the Parties have reached an agreement on an Apperson Ridge Conservation Plan.

The Parties understand that this SMP-30 Conservation Plan will recognize and accommodate a sequence of environmental reviews and approvals that will allow for the development (with appropriate avoidance and mitigation measures) of Revised SMP-30 and the subsequent environmental review and approval that would allow for development (with appropriate avoidance and mitigation measures) of Further Revised SMP-30. After approval of the current SMP-30 Lease by the San Francisco Public Utilities Commission ("SFPUC"), ODS will seek approval from the lead agency, Alameda County, of Revised SMP-30, subject to the agreed upon avoidance and mitigation measures for Revised SMP-30. If and when Revised SMP-30 is approved and the Lease is extended for a period of thirty (30) years from the date of Approval, ODS plans to seek approval of Further Revised SMP-30 from the lead agency, Alameda County. If there is Approval of Further Revised SMP-30 and Revised SMP-17, and the SMP-30 Lease is extended until 2064, ODS agrees to continue to implement Revised SMP-30 and to implement the Further Revised SMP-30 avoidance and mitigation measures in accordance with this Conservation Plan.

SMP-30 is an existing mining operation under lease from the SFPUC located in the Sunol Valley immediately west of Calaveras Road and approximately one mile south of Highway 680. The SMP-30 site is a 325 acre site comprising a portion of Parcel 65 of Alameda County property on the right bank of Alameda Creek upstream of the San Antonio Creek confluence. Sand and gravel extraction has occurred on this site for approximately half a century. In 2007, the SFPUC put out a request for proposals for future mining expansion through a revision of SMP-30 and entered into an exclusive negotiating agreement with Oliver de Silva. The SMP-17 mining

project (Apperson Quarry) is not a part of this Conservation Plan, but the SMP-17 mining project may at some point in the future be related to the SMP-30 site due to the proposal to reduce infrastructure and processing facilities at the SMP-17 Site for material mined at SMP-17, so long as ODS is able to conduct such activities on the SMP-30 Site, including the operation of an asphalt concrete plant, a ready-mix concrete plant and storage facilities and processing plants at the SMP-30 Site, and operation of a conveyor belt across private and SFPUC lands to deliver material mined and sized from SMP-17 to the SMP-30 Site. A renewed Lease for the SMP-30 quarry for Revised SMP-30 and Further Revised SMP-30 provides opportunities to avoid and significantly reduce many of the potential impacts of the SMP-17 Project by siting facilities within the SMP-30 Site, an area already impacted by past quarrying and with little habitat value for sensitive wildlife.

ODS will undertake the Conservation Measures in this Conservation Plan to enhance habitat for special status species in the vicinity of the SMP-30 Site, including:

- Funding for projects to help restore steelhead trout to Alameda Creek, including up to \$2 million for fish passage projects at the BART weir and inflatable rubber dams in lower Alameda Creek and up to \$1 million for retrofitting the PG&E pipeline crossing in the Sunol Valley;
- Funding for re-vegetation of stream banks and restoration of more natural stream function to enhance habitat quality along Alameda and San Antonio Creeks adjacent to the SMP-30 quarry; and
- Financial support for a SFPUC Sunol Valley Restoration Plan to stabilize and restore the Sunol Valley reach of Alameda Creek.

Oliver de Silva, the Alameda Creek Alliance and the Center for Biological Diversity have jointly developed this Conservation Plan with the understanding that implementation of the avoidance, mitigation and conservation measures in the Plan represent a significant reduction of the potential biological impacts of the mining operations at the SMP-30 Site on native species and habitats, offer full and appropriate mitigation for unavoidable impacts, and provide additional conservation benefits that will help to restore Alameda Creek and improve habitat for native species in the vicinity of the projects. The parties agree to jointly take the position with all government agencies and other stakeholders that the implementation of the Conservation Measures in this Conservation Plan fully addresses all potential species, vegetation, habitat and biological impacts of the SMP-30, Revised SMP-30 and Further Revised SMP-30 Projects. The Parties further understand and agree that the Conservation Measures described in this Conservation Plan cannot be guaranteed to achieve the desired outcomes in all ways and to the full extent desired by the Parties due to the fluid, complex, and often unanticipated actions of ecosystems, and to the influence of other natural or human-caused activities on or near the vicinity of the SMP-30 Project Area.

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I INTRODUCTION AND BACKGROUND

A. Acronyms and Definitions

Acronyms

ACA = Alameda Creek Alliance
ACFCD = Alameda County Flood Control District
ACWD = Alameda County Water District
CBD = Center for Biological Diversity
CDFG = California Department of Fish and Game
CEQA = California Environmental Quality Act
CRLF = California red-legged frog
CTS = California tiger salamander
EBRPD = East Bay Regional Park District
FYLF = Foothill yellow-legged frog
ODS = Oliver de Silva, Inc.
S.F. Board = San Francisco Board of Supervisors
SFPUC = San Francisco Public Utilities Commission
SMP = Surface Mining Permit
USFWS = U.S. Fish and Wildlife Service

Definitions

“Approval” of a Surface Mining Permit (“SMP”) is defined as completion of all of the following: 1) the issuance of an SMP by the County of Alameda (or other lead agency); 2) approval and execution of any related lease extension by the SFPUC and the San Francisco Board of Supervisors (“S.F. Board”); 3) receipt of any other federal, state or local permits, agreements, contracts, certifications (e.g. CEQA document), entitlements or other approvals reasonably necessary for the development, construction and operation of the SMP, and 4) (a) the expiration of all administrative and judicial periods for appeal or challenge of the SMP, or of any federal, state, or local permits, agreements, contracts, certifications, entitlements, or other approvals reasonably necessary for the development, construction, and operation of the SMP (“SMP Approvals”), with no appeals or challenges pending, or if any appeals or challenges are pending as to those SMP Approvals, the resolution of such appeals or challenges in a manner satisfactory to ODS, in its sole discretion, exercised in good faith, or (b) the commencement of mining operations by ODS on the particular SMP site, whichever comes first..

“Conservation Measures” is defined as all of the conservation strategies, including avoidance, minimization and mitigation measures, specifically described in the Conservation Plan.

“Conservation Project(s)” is defined as that combination of environmental protection and enhancement and land management measures, and related funding agreements and plans, set forth in detail in this Conservation Plan, intended to protect and enhance the quality and functioning of the regional biological habitat, including wetlands and related lands, of species of interest located within the areas of the Project(s).

“Further Revised Surface Mining Permit 30” (“Further Revised SMP-30”) is defined as the project to be conducted from approximately 2030 until 2064 at the SMP-30 Site and adjoining real property that includes stockpile areas, an aggregate processing plant, an asphalt plant and a ready-mix concrete plant for delivery, stockpiling and processing of sized aggregate from Apperson Ridge into finished quarry products.

“Lease” means a quarry lease between the City of San Francisco and ODS which will include continuation of SMP-30 operations until 2021, an extension for a period of thirty (30) years for the operation of Revised SMP-30 (if required approvals are obtained) and an extension to 2064 for the operation of Further Revised SMP-30 (if required approvals are obtained).

“Parties” refers to all the parties who formulated this Conservation Plan, which are Oliver de Silva, Inc., a California corporation (“ODS”), the Alameda Creek Alliance, a California non-profit corporation (“ACA”), and the Center for Biological Diversity, a New Mexico non-profit corporation (“CBD”).

“Project(s)” is defined as the activities comprised within SMP-30, Revised SMP-30, Further Revised SMP-30, SMP-17 or Revised SMP-17, whichever project is being specifically referenced, or refers to all or some combination of these projects if they are being referred to collectively.

“Revised Surface Mining Permit 17” (“Revised SMP-17”) is defined as the project comprised of a conveyor system to deliver aggregates mined from SMP-17 and sized for delivery on a conveyor system to the SMP-30 Site for stockpiling and processing into asphalt concrete, ready-mix concrete and other construction products.

“Revised Surface Mining Permit 30” (“Revised SMP-30”) is defined as the project comprised of Revised SMP-30 as set forth in the SFPUC’s Request For Proposals (Alternate F), issued December 13, 2005, with operations at the site expanded to a depth of at least 225 feet, and with an asphalt concrete plant and ready-mix concrete plant as ancillary uses.

“SMP-17 Project Area” is defined as the mining and operational footprint at the SMP-17 Site, associated infrastructure (including mining equipment, equipment storage, conveyors and storage piles), the route of the conveyor system, and the access road, along with immediately adjacent areas where there may be impacts from the SMP-17 or Revised SMP-17 mining activities.

“SMP-30 Project Area” is defined as the SMP-30 Site and associated infrastructure, along with immediately adjacent areas where there may be impacts from SMP-30, Revised SMP-30 and Further Revised SMP-30.

“SMP-17 Site” means the 680-acre parcel defined as the Property in that Mineral Lease Agreement dated August 30, 1983 between William W. Apperson as Lessor and ODS as Lessee (the “Mineral Lease Agreement”), along with all easements and other interests granted Lessee in the Mineral Lease Agreement and all amendments thereto.

“SMP-30 Site” means that 315-acre parcel (6527 Calaveras Road, Sunol, California; APN 96-375-009) for which quarrying is authorized pursuant to Surface Mining Permit 30 (“SMP-30”); and, if Approval of Revised SMP-30 is achieved, the additional expansion area of 58 acres; and if Approval of Further Revised SMP-30 is achieved, the additional areas of adjacent real property needed for access, conveyor systems and stockpile areas.

“Surface Mining Permit 17” (“SMP-17”) is defined as the Apperson Quarry hard rock mining project approved by Alameda County in 1984.

“Surface Mining Permit 30” (“SMP-30”) is defined as the existing mining operation under lease from the SFPUC in the Sunol Valley.

B. Description of Permitted SMP-30 Project

SMP-30 Quarry

An existing quarry permit in the Sunol Valley, Surface Mining Permit 30 (“SMP-30”), was approved by Alameda County and is under lease by the SFPUC. A copy of the Conditions of Approval for SMP-30 and the resolution approving SMP-30 are attached hereto. Mining operations have occurred on the premises of the SMP-30 project since the 1960s and are currently authorized under SMP-30 issued by Alameda County. The current operator at SMP-30 operates under a month-to-month lease. SMP-30 authorizes mining until June 1, 2021 or upon completion of reclamation, whichever occurs first. SMP-30 currently allows mining to a depth of 140 feet.

The SFPUC proposes to expand mining operations at the SMP-30 Site to a depth of at least 225 feet, in accordance with the planning concepts set forth in Alternative F of the Sunol Valley Resources Management Element of the Alameda Watershed Management Plan adopted by the SFPUC in September of 2000. The SFPUC is in the process of selecting a new operator that will be required to apply for a new or amended mining permit for the site from Alameda County (the “Revised SMP-30 Mining Permit”) and process all approvals and complete all environmental review for the Revised SMP-30 mining permit. The SFPUC is in exclusive negotiations with ODS for the SMP-30 Lease, and has been apprised by ODS, and approves, of the proposed uses of the SMP-30 Site to receive, stockpile and process material from the SMP-17 mining site, beginning after 2030. The Revised SMP-30 permit will include the right to mine to a minimum depth of 225 feet, and will include obligations for the lessee, among other things, to restore the right bank of Alameda Creek and the left bank of San Antonio Creek, contribute funding to planning efforts for the restoration of Alameda Creek in the Sunol Valley, install a bentonite slurry cut-off wall to prevent groundwater inflow into the quarry pit, and to perform reclamation to allow use of the completed quarry pit for water storage.

SFPUC Lease Conditions for SMP-30

In December 2005, the SFPUC put out a request for proposals for the lease and operation of the Sunol Valley aggregate quarry (SMP-30) and an exclusive right to negotiate for future mining expansion. The required terms and conditions included several environmental enhancements and

measures to minimize water losses from Alameda Creek and to help the restoration of steelhead trout, including:

- Coordination with PG&E to modify a gas pipeline crossing of Alameda Creek in the Sunol Valley that is a barrier to upstream fish passage;
- Contribution of funds to a SFPUC study of restoring the Sunol Valley mining reach of Alameda Creek;
- Minimizing percolation losses of water from Alameda Creek to benefit habitat for steelhead trout, through installation of a bentonite cutoff wall to eliminate inflow through the shallow alluvium into mining pits;
- Restoring stream habitat and biological function through restoration of the right bank of Alameda Creek and the left bank of San Antonio Creek adjacent to the SMP-30 quarry;
- Accommodation of any future public access trails through the area that may be desired by the East Bay Regional Park District; and
- Any other environmental enhancements offered by the lease bidder to make its proposal competitive.

This Conservation Plan provides new species conservation and habitat enhancement measures, including enhancement of Alameda Creek, to benefit and help restore fish and aquatic wildlife, specific conservation measures for rare species, funding to conservation groups for monitoring and implementation of this Conservation Plan, funding for regional restoration projects, and support for conservation efforts for special-status species and their habitats in the Alameda Creek watershed.

C. Parties Activities in General

During the term of this Conservation Plan, as or before milestones are achieved, the Parties will do the following:

1. Approval of SMP-30 Milestone:

- ODS will fund the additional Conservation Measures AC-1 and AC-2 for the benefit of Alameda Creek specified in section II.A. below, which are to be funded by ODS during the term of the current SMP-30 Lease.
- At an appropriate time, ODS will hire a consultant(s), reasonably approved by all Parties, to survey and assess the SMP-30 Site, including the approximately 58-acre expansion area to be included in Revised SMP-30, and immediately adjacent areas for presence of special status species and potential habitat, and to assess potential impacts to those resources. These surveys shall be shared with the Conservation Groups at the time that ODS submits the surveys to the public agencies. Selection of the consultant(s) will be subject to the reasonable approval of the SFPUC and the County of Alameda. Studies will begin after approval of the current SMP-30 Lease by the S.F. Board.
- The Consultant will complete protocol level surveys as necessary for all special status species at and immediately adjacent to SMP-30 and Revised SMP-30, unless all Parties agree particular species are assumed to be present or all parties agree that particular species are

unlikely to occur. These surveys shall be shared with the Conservation Groups at the time that ODS submits the surveys to the public agencies.

- Prior to achievement of the Approval of SMP-30 Milestone, ACA and CBD will support SFPUC, S.F. Board, and Alameda County approval of the SMP-30 Lease and associated SMP-30 projects, which will include continuation of current SMP-30 operations until 2021, an extension for the operation of Revised SMP-30 (if required approvals are obtained) and an extension for the operation of Further Revised SMP-30 (if required approvals are obtained).
- At all times, ACA and CBD will work to secure the support of other conservation groups for SFPUC, S.F. Board and Alameda County approval of the SMP-30 Lease and associated SMP-30 and will publicly promote approval of the Lease by the SFPUC, S.F. Board and Alameda County.
- ACA and CBD will publicly support County of Alameda, SFPUC and S.F. Board approval of Revised SMP-30 and Revised SMP-30 Lease extension, as well as all other permits, approvals, authorizations and other entitlements for these projects.
- ACA and CBD will work to secure the support of other conservation groups and will publicly support approval by the SFPUC, the S.F. Board and Alameda County of the Revised SMP-30 Lease. ACA and CBD will publicly promote approval by the SFPUC and the Board of the Revised SMP-30 Lease.
- The Parties agree and will jointly take the public position that environmental review of Revised SMP-30, including CEQA review, will be done only as part of the entitlement process for Revised SMP-30.

2. Approval of Revised SMP-30 Milestone:

- ODS will fund and implement all mitigations required by the SFPUC or Alameda County as conditions of approval for Revised SMP-30.
- ODS will defer mining at SMP-17 until no earlier than 2030 and not before cessation of mining at SMP-30. Construction of improvements and facilities for SMP-17 will be done during two (2) years prior to commencement of mining at SMP-17, but not before 2028.
- ODS will fund and implement the additional Conservation Measures AC-3, AC-4, AC-5, and AC-6 required by this Conservation Plan for the benefit of Alameda Creek which are specified in section II.B. below and which are to be funded by ODS during the term of the Revised SMP-30 Lease.
- ODS will submit its Application(s) for Further Revised SMP-30 to the County of Alameda within one (1) year of the date of Revised SMP-30 Lease extension.
- The Conservation Groups will support approval by the County of Alameda, SFPUC and S.F. Board of Further Revised SMP-30, as well as a Further Revised SMP-30 Lease extension to

2064 to allow processing of rock and operation of asphalt and ready-mix plants at the SMP-30 Site, as well as all other permits, approvals, authorizations and other entitlements for these projects.

- The Conservation Groups will work to secure the support of other conservation groups for, and will publicly support the approval by the SFPUC and the S.F. Board, of the Further Revised SMP-30 and Further Revised SMP-30 Lease extension to 2064, as well as all other permits, approvals, authorizations and other entitlements for these projects. The Conservation Groups will publicly promote approval by the SFPUC, the S.F. Board and Alameda County of the Further Revised SMP-30 and Further Revised SMP-30 Lease extension to 2064, as well as all other permits, approvals, authorizations and other entitlements for these projects.
- The Parties agree and will jointly take the public position that environmental review, including CEQA review, of Further Revised SMP-30 will be done only as part of the entitlement process for Further Revised SMP-30. The Conservation Groups will work to support, and further will not oppose, efforts to gain approval of this entitlement process, and the environmental review attendant to that process.

3. Approval of Further Revised SMP-30 Milestone:

- ODS will fund and implement all mitigations required by the SFPUC or Alameda County as conditions of approval for Further Revised SMP-30.
- ODS will defer construction of stockpile areas, aggregate processing plant, asphalt plant and ready-mix concrete plant at SMP-17, so long as those activities are allowed to be conducted by ODS at the Further Revised SMP-30 site.
- ODS will fund and implement the additional Conservation Measures AC-7 and AC-8 required by this Conservation Plan for the benefit of Alameda Creek, which are specified in section II.C. below, and are to be funded by ODS during the term of Further Revised SMP-30 Lease.

D. Regulatory Framework

This Conservation Plan will allow for the mining of the SMP-30 and Revised SMP-30 sites and provides mitigation and other Conservation Measures relating to mining activities under SMP-30, Revised SMP-30 and Further Revised SMP-30. This plan contains appropriate mitigation and other Conservation Measures to protect biological resources, additional Conservation Measures to benefit special-status species in the vicinity of mining operations, and contributions to the restoration of Alameda Creek. The Conservation Measures in this Plan will be added to the terms and conditions for the SFPUC Lease and to conditions of approval for Revised SMP-30 and Further Revised SMP-30, as practicable and as approved by lead agencies and appropriate state, federal, and local agencies. Notwithstanding anything to the contrary in this Conservation Plan, ODS shall not be required to provide copies of any surveys, reports or other data to the Conservation Groups until the surveys, reports or other data are submitted by ODS to the public agencies.

ODS will initiate the following sequence of environmental reviews under CEQA and permit approvals that will allow for the development, with appropriate avoidance and mitigation measures, of the SMP-30, Revised SMP-30 and Further Revised SMP-30 mining projects.

ODS will first assume the existing Lease for SMP-30, subject to approval by the SFPUC, the S.F. Board, and Alameda County. After approval by all public agencies of the existing SMP-30 mining lease, ODS will seek approval from the lead agency, Alameda County, for a Revised SMP-30 project, containing the avoidance and mitigation measures for Revised SMP-30 detailed in this Conservation Plan and Lease terms and conditions required by the SFPUC. At that time ODS will hire a consultant, approved by all Parties, to survey and assess the Revised SMP-30 site and immediately adjacent areas for the presence of special status species and potential habitat, and to assess potential impacts to those resources. Selection of the consultant will be subject to the reasonable approval of the SFPUC and County of Alameda. The consultant will complete protocol level surveys for all special status species at and immediately adjacent to the Revised SMP-30 Site, except as otherwise set forth herein. Special status species surveys will begin after the approval of the current SMP-30 Lease by all the public agencies.

Alameda County is expected to conduct the environmental review under CEQA for the Revised SMP-30 project. If and when the Revised SMP-30 project is approved by Alameda County, ODS will then seek approval from the SFPUC of a Lease extension for Revised SMP-30 for a period of thirty (30) years from the date of approval by the SFPUC.

If and when Revised SMP-30 and the Revised SMP-30 Lease extension are approved, ODS will seek approval for the Further Revised SMP-30 project from the lead agency, Alameda County. The application(s) for the Further Revised SMP-30 project will be submitted to the County of Alameda within one (1) year of the date of the Revised SMP-30 lease extension. Alameda County is expected to conduct the environmental review under CEQA for the Further Revised SMP-30 project. ODS will request any needed modifications to Alameda County's conditions of approval to incorporate the changes in the project and the avoidance, mitigation and conservation measures for Further Revised SMP-30 contained in this Conservation Plan. Approval of the Further Revised SMP-30 Lease extension to 2064 will allow stockpiling and processing of material from SMP-17 and operation of asphalt and ready-mix plants at the Revised SMP-30 site, significantly reducing the area impacted by the operations at Apperson Ridge.

The Conservation Groups will support the permit approvals and lease agreements needed for the SMP-30, Revised SMP-30 and Further Revised SMP-30 Projects, as well as all other permits, approvals, authorizations and other entitlements for these projects, but shall not be prohibited from participating in and commenting on the environmental review processes for Revised SMP-30 and Further Revised SMP-30. The Conservation Groups shall not be prohibited from participating in any action or administrative process related to violations by ODS of any terms of the SMP-30 or SMP-17 Surface Mining Permits, state, federal or local laws, and/or this Conservation Plan. However, the Conservation Groups shall not pursue or assist in any manner, directly or indirectly, any civil action in opposition to these projects.

If Approvals are obtained for Revised SMP-30, Revised SMP-17 and Further Revised SMP-30, excavated and sized aggregate material will be transported from the SMP-17 Site via conveyor belt to the SMP-30 Site for further processing. ODS will develop a traffic management plan that minimizes vehicle trips on the access road, including a regular employee carpool from Calaveras Road to the SMP-17 Site. Vehicle access to the site will be generally along the alignment of the existing access roads which are located in a private access easement which traverses approximately 2.8 miles of SFPUC watershed lands from Calaveras Road to the Apperson Ranch boundary and then 1.9 miles of the ranch to the quarry site. The Conservation Groups acknowledge and will publicly support the conclusion that these efforts by ODS are calculated to reduce environmental impacts to the SMP-30 Project Area and to enhance the functioning of species habitat in the Alameda County watershed.

II POTENTIAL BIOLOGICAL IMPACTS AND MEASURES TO AVOID, MINIMIZE AND MITIGATE IMPACTS

During the term of this Conservation Plan, as milestones are achieved, ODS agrees to the following:

A. Approval of SMP-30 Milestone.

SURVEY-1: After approval of the current SMP-30 Lease by the SFPUC, the S.F. Board, and Alameda County and as a part of the CEQA process for Revised SMP-30, ODS will hire a consultant, approved by all Parties, to survey and assess the Revised SMP-30 project area and immediately adjacent areas for presence of special status species and potential habitat, and to assess potential impacts to those resources. The selection by ODS of the consultant will also be subject to the reasonable approval of the SFPUC and County of Alameda. The consultant will complete protocol level surveys for all special status species at and immediately adjacent to the Revised SMP-30 site, unless all Parties agree presence is assumed or all parties agree that species are unlikely to occur. These surveys shall be shared with the Conservation Groups at the time that ODS submits the surveys to the public agencies. Surveys required as part of mitigation measure TAKE-1 below, listed in Appendix A, must still be conducted.

SURVEY-2: ODS will provide a copy to the ACA and CBD of all reports, surveys and monitoring data at that time that ODS submits to state, federal and County regulatory agencies and the SFPUC regarding Revised SMP-30.

TAKE-1: The USFWS and CDFG typically require a number of survey and avoidance measures to reduce the likelihood of take of special-status species before issuance of permits, authorizations or a biological opinion. ODS will implement the following mitigation measures to avoid take of special-status species. ODS will fund, comply with and implement all of the pre-project avoidance measures for sensitive species detailed in Appendix A, so long as they do not conflict with other legal requirements. These measures may include exclusion of special-status species from mining and equipment areas before mining activities, potential relocation of special-status species, pre-activity surveys, and observation of vehicle speed limits on internal roads within the project area.

AC-1: After Approval of the current SMP-30 Lease by the SFPUC and S.F. Board, ODS will contribute up to \$2 million in funding toward the lower Alameda Creek fish passage projects at the Alameda County Flood Control District ("ACFCD") BART weir and the Alameda County Water District ("ACWD") upper rubber dam ("ACWD Projects") for which ACWD will be the lead agency. ODS will provide funding in an amount sufficient to meet the funding shortfall for completing construction of the ACWD Projects, but not to exceed \$2 million, in a manner to be further negotiated between the Parties and approved by the appropriate government agencies. Funding will be provided to the ACWD after all permits, easements and other necessary approvals are obtained by the ACWD, the contract for the work has been awarded by ACWD, and all other available funding has been disbursed by ACFCD and ACWD. If required, ODS will provide a Letter of Credit or other payment security to ACWD.

AC-2: After Approval of the current SMP-30 Lease by the SFPUC and S.F. Board, ODS and/or the SFPUC will provide \$1 million in funding and/or equipment and services (as approved by the lead agencies on the project) to further a fish passage project at the PG&E gas pipeline crossing of Alameda Creek in the Sunol Valley, in a manner to be further negotiated between the Parties and approved by the appropriate government agencies. Funding will be provided after all permits, easements and other necessary approvals are obtained and all other available funding has been disbursed.

If PG&E agrees to a fish passage project at the pipeline crossing that removes all infrastructure from the Alameda Creek streambed (i.e. a project that buries the gas pipeline crossing under the streambed), ODS will provide PG&E with the full amount of \$1 million toward the fish passage project. If PG&E approves a fish passage project that maintains infrastructure in the creek or any barrier which requires a fish ladder for steelhead migration, ODS will provide PG&E with \$500,000 toward the fish passage project, and the remaining \$500,000 will go to the SFPUC for implementing enhancement measure AC-6 below, the Sunol Valley Restoration Plan. In any event, any portion of the \$1 million that is not used for the PG&E Project shall be used for measure AC-6 below. Of the \$1 million of funding, not more than \$750,000 will be required to be funded by ODS prior to Approval of Revised SMP-30; \$250,000 will be provided by ODS after Approval of Revised SMP-30. If required, ODS will provide a Letter of Credit or other payment security.

B. Approval of Revised SMP-30 Milestone.

AC-3: ODS will fund and implement the Revised SMP-30 Lease terms regarding Alameda Creek restoration and remediation, as may be required and approved by SFPUC. These terms are expected to include: installation of a bentonite cut-off wall approximately 7,800 feet long at an estimated depth of 35 to 45 feet to prevent water inflow from Alameda Creek into the SMP-30 quarry pit; a second 2,300 foot long slurry cutoff wall along the left bank of San Antonio Creek if required; restoring the right bank of Alameda Creek and the left bank of San Antonio Creek adjacent to the SMP-30 lease with native vegetation; restoring a more natural stream function that is compatible with and enhances habitat quality in these stream reaches; contributing \$200,000 in funding to a SFPUC restoration planning for the reach of Alameda Creek in the Sunol Valley; and accommodating possible future public access trails through the area that may be desired by the East Bay Regional Park District.

AC-4: After Approval of Revised SMP-30, ODS will additionally re-vegetate the left bank of Alameda Creek and the right bank of San Antonio Creek, adjacent to the SMP-30 lease, with native vegetation. Re-vegetation will be completed, according to success criteria to be agreed upon by the Parties, within two (2) years of the approval of the Revised SMP-30 Lease. Watering, monitoring and replacement of vegetation will be conducted until 2030, if needed to maintain vegetation in good condition.

AC-5: Not later than one (1) year after the date of Approval of the Revised SMP-30 and the Revised SMP-30 lease extension, ODS (per the SFPUC lease conditions) will fund a study of the geomorphology of Alameda Creek to determine the need for stabilization and reconfiguration of the creek within the entire gravel quarry reach of Alameda Creek in the Sunol Valley. At that

time, ODS will hire a consultant (reasonably approved by all Parties and the SFPUC) to develop a streambed restoration and re-vegetation plan for this reach (“Sunol Valley Restoration Plan”).

AC-6: After Approval of Revised SMP-30 and the Revised SMP-30 lease extension, ODS will support a Sunol Valley Restoration Plan to be commenced by the SFPUC, with financial support from ODS and other quarry lease holders in the Sunol Valley. The Restoration Plan will include streambed repair, grade stabilization, riparian re-vegetation, migratory fish passage, and fish habitat enhancement of the Alameda Creek stream reach in the Sunol Valley – including both banks of Alameda Creek from the Sunol Valley Water Treatment Plant downstream to the Sunol Water Temple. The Plan will also consider SFPUC long-term plans for reclaiming quarry pits in the Sunol Valley and possible future public access trails through the area that may be desired by the East Bay Regional Park District. The SFPUC will be the lead agency for the restoration plan and the SFPUC, ODS, EBRPD and other quarry lease holders in the Sunol Valley will negotiate cost-sharing for funding of the Sunol Valley Restoration Plan. Any remaining funding from measure AC-2 above not used for the PG&E fish passage project will be used for funding of the Sunol Valley Restoration Plan.

C. Further Revised SMP-30 Milestone.

SURVEY-3: ODS will provide a copy to the ACA and CBD of all reports, surveys and monitoring data at the time that ODS submits to state, federal and County regulatory agencies and the SFPUC regarding Further Revised SMP-30.

AC-7: ODS will fund and implement the Further Revised SMP-30 Lease terms regarding Alameda Creek restoration and remediation, as may be required by the SFPUC.

AC-8: After Approval of Further Revised SMP-30 and the Further Revised SMP-30 lease extension, ODS will continue to support a Sunol Valley Restoration Plan to be commenced by the SFPUC, with financial support from ODS and other quarry lease holders in the Sunol Valley.

APPENDIX A

TAKE AVOIDANCE MEASURES

As specified in avoidance measure TAKE-1, in an effort to avoid direct take of special-status species with the potential to occur in the vicinity of the SMP-30 site, ODS will comply with the following pre-project avoidance measures: Notwithstanding anything to the contrary in this Conservation Plan, ODS will have no obligation to share any surveys with the Conservation Groups until ODS provides the surveys to any public agency or to the general public.

Amphibians

In an effort to avoid direct impacts to special-status amphibians, particularly the California red-legged frog (FT/CSC), foothill yellow-legged frog (--/CSC), and California tiger salamander (FT/CSC), the following avoidance measures shall be adhered to:

AMPH-1: Prior to any construction or mining activities under Revised SMP-30, ODS will hire a qualified biologist to conduct pre-construction surveys within and adjacent to the SMP-30 site to ensure that no red-legged frogs, yellow-legged frogs or tiger salamanders are present within the mining site, equipment areas, or along roads used to access the site. These surveys shall be shared with the Conservation Groups at the time that ODS submits the surveys to the public agencies.

- Surveys shall be completed for all life cycle stages of CRLF and FYLF (e.g., egg masses, tadpole, juveniles, and adults) that may occur within or adjacent to the project area.
- Surveys will be completed for all life cycle stages of CTS, appropriately timed with respect to salamander activity and proposed construction activities.
- The name and credentials of a biologist qualified to act as a construction monitor shall be submitted to the USFWS for approval at least 15 days prior to commencement of work.
- The USFWS-approved biologist shall conduct pre-construction surveys within aquatic habitat in the project area, at least two weeks prior to the onset of construction activities.
- If adult CRLF, FYLF, or CTS tadpoles or eggs are found within the construction disturbance zone, the USFWS-approved biologist shall contact the USFWS to determine if moving any of these life stages is appropriate. If the USFWS approves moving the animals, the approved biologist shall be allowed sufficient time to move them from the construction sites before work activities begin. If no CRLF, FYLF or CTS are detected during these surveys, construction-related activities may proceed without further requirements for the protection of individuals.
- The USFWS-approved biologist will remove and destroy from within the project area any individuals of non-native species, such as bullfrogs, crayfish, and centrarchid fishes, to the maximum extent possible.
- Exclusionary fencing, such as silt fences, shall be installed around all construction areas that are within 150 feet of or adjacent to documented CRLF, FYLF, or CTS habitat. Once fencing is in place, it shall be maintained by ODS until completion of construction within or adjacent to the enclosure.

AMPH-2: ODS will implement a worker education program regarding special-status amphibians in the vicinity of the SMP-30 project site, and will implement a vehicle speed limit on all internal roads within and adjacent to the SMP-30 project site during winter, to reduce the likelihood of road kill of migrating amphibians.

Nesting Raptors and Passerine Birds

In order to avoid disturbance of the nests of raptors or special-status passerine bird species, which are protected under CA Fish and Game Code 3503, the following measures shall be adhered to:

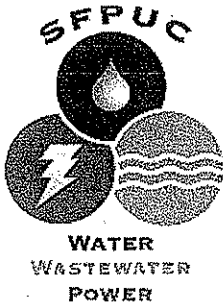
BIRD-1: No more than two weeks prior to any construction or mining activities under Revised SMP-30, a qualified wildlife biologist will conduct preconstruction surveys of all potential bird nesting habitat within the Revised SMP-30 project area. These surveys shall be shared with the Conservation Groups. If construction activities (i.e., ground clearing and grading, including removal of trees or shrubs) are scheduled to occur during the non-breeding season (September 1 through January 31), no measures are required. If construction activities are scheduled to occur during the breeding season (February 1 through August 31), the project proponent will implement the following measures to avoid potential adverse effects on any special-status birds which may occur:

- If active nests are found during preconstruction surveys, the project proponent will create a no-disturbance buffer (acceptable in size to the CDFG) around nests of special-status birds during the breeding season, or until it is determined that all young have fledged. Typical buffers are 250 feet for passerine nesting birds and 300 feet for raptors. The size of these buffer zones and types of construction activities restricted in these areas may be further modified in coordination with the CDFG and will be based on existing noise and human disturbance levels at the project site. Nests initiated during construction are presumed to be unaffected, and no buffer would be necessary.
- If preconstruction surveys indicate that nests are inactive or potential habitat is unoccupied during the construction period, no further mitigation is required. Trees and shrubs within the construction footprint that have been determined to be unoccupied by special-status birds or that are located outside the no-disturbance buffer for active nests may be removed.

Status Codes:

Federal Categories (U.S. Fish and Wildlife Service)
FT = Listed as Threatened by the Federal Government

State Categories (California Department of Fish and Game)
CSC = California Species of Special Concern



SAN FRANCISCO PUBLIC UTILITIES COMMISSION

1155 Market St., 11th Floor, San Francisco, CA 94103 • Tel. (415) 554-3155 • Fax (415) 554-3161 • TTY (415) 554.3488



file 090832

TO: Angela Calvillo, Clerk of the Board of Supervisors

FROM: Nathan Purkiss, 554-3404

DATE: 6/22/09

SUBJECT: Resolution approving SFPUC Sunol Valley Quarry Lease with Oliver de Silva, Inc.

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2009 JUN 22 AM 11:57
NP

GAVIN NEWSOM
MAYOR

ANN MOLLER CAEN
PRESIDENT

F.X. CROWLEY
VICE PRESIDENT

FRANCESCA VIOTOR
COMMISSIONER

JULIET ELLIS
COMMISSIONER

ED HARRINGTON
GENERAL MANAGER

Please find the original and 4 copies of the resolution attached to this cover letter, along with the supporting documents for introduction on June 23, 2009.

The supporting documents include the proposed lease, the San Francisco Public Utilities Commission (SFPUC) agenda item and resolution by which the SFPUC authorized the submission of the lease to the Board of Supervisors for its consideration, a staff report describing the proposed lease transaction, the SFPUC CEQA Determination Letter, and two related environmental conservation plans.

The resolution approves a quarry lease through 2021 between the City acting through the SFPUC, as landlord, and Oliver de Silva, Inc. as tenant. The lease is for longer than 10 years with anticipated revenue of more than one million dollars. The leased premises are located in unincorporated Alameda County lands in the Sunol Valley. As further described in the attached staff report, upon approval and execution the lease would allow the tenant to apply to Alameda County for a transfer of the existing mining permit for the site and to perform the permitted sand and gravel quarrying operations until the expiration of that permit.

The lease also contemplates potential future revisions to the mining permit and lease: one to allow for expanded mining at the premises and an adjacent SFPUC site for an extended term and another to allow for the construction and operation of a conveyor system transporting materials from a separate mining site that tenant controls in the area to the SFPUC site for processing and stockpiling for a further extended term. As noted in the resolution and the staff report, such permit revisions would be subject to environmental and regulatory review and approval. Such permit revisions would also be considered again at the Board of Supervisors and the Commission in the exercise of the discretion retained to such bodies in the lease. If approved, such permit revisions would be accompanied by extensions to the lease term, to allow tenant to perform the activities authorized under the revised permit. Please refer to the staff report for further information regarding these potential future actions.

Departmental representative to receive a copy of the adopted resolution:

Name: Nathan Purkiss Phone: 554-3404

Interoffice Mail Address: 1155 Market Street, 11th Floor



SAN FRANCISCO PUBLIC UTILITIES COMMISSION

GAVIN NEWSOM, MAYOR

QUARRY LEASE

between

CITY AND COUNTY OF SAN FRANCISCO,
as Landlord

and

OLIVER DE SILVA, INC., a California corporation,
as Tenant

For the lease of
The Sunol Valley Aggregate Quarry Site

Located at 6527 Calaveras Road, Sunol, California.
Consisting of approximately 308.5 acres of primary premises and
approximately 58 acres of proposed expansion premises

Dated as of _____, 2009

PUBLIC UTILITIES COMMISSION

- Ann Moller Caen - President
- F. X. Crowley - Vice President
- Francesca Vietor - Commissioner
- Juliet Ellis - Commissioner

Ed Harrington
General Manager of Public Utilities Commission



Apperson Ridge Conservation Plan SMP-17 SITE



A Conservation Plan by Oliver de Silva, Inc. to Protect
and Enhance the Biological Resources of Apperson
Ridge in Alameda County, California

December 18, 2008



B + F comm + clerk
C page

#090832

November 11, 2009

San Francisco Board of Supervisors
Budget & Finance Committee
Supervisor John Avalos
Supervisor Ross Mirkarimi
Supervisor Carmen Chu
City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

RECEIVED
SAN FRANCISCO BOARD OF SUPERVISORS
BUDGET & FINANCE COMMITTEE
2009 NOV 13 AM 11:06
BY RC

Support for Approval of Sunol SMP-30 Quarry Lease

The Center for Biological Diversity and the Alameda Creek Alliance strongly support the approval of the San Francisco Public Utilities Commission's proposed quarry lease to Oliver de Silva, Inc. to mine gravel under Surface Mining Permit (SMP) 30 in the Sunol Valley. This lease represents a new paradigm for San Francisco's gravel mining operations in the Sunol Valley.

In December 2008 our conservation groups signed a cooperative conservation agreement with Oliver de Silva, Inc. regarding the SMP-30 quarry project and the nearby Apperson Quarry on private land. The historic conservation agreement will provide substantial mitigations for wildlife, protect and enhance endangered species habitat, provide millions of dollars for fish-passage projects and restoration of Alameda Creek, secure habitat enhancements for tule elk, address greenhouse gas emissions, and dramatically change the impacts of the Apperson Quarry project, as well as delaying mining at the Apperson site until 2030.

The SMP-30 quarry lease before you and our conservation agreement are the result of several years of collective efforts by the SFPUC, Oliver de Silva, and our organizations to add environmental enhancements to the existing SMP-30 lease and to reduce impacts and improve conservation measures on the Apperson Quarry, which is adjacent to SFPUC watershed lands.

The joining of the two quarry projects and the selection of Oliver de Silva as the lease holder will provide major environmental enhancements that would not otherwise be possible. The changes to the Apperson Quarry project, as well as the avoidance, mitigation, and habitat enhancement measures contained in our conservation agreement are contingent upon approval of the SMP-30 lease and lease extensions.

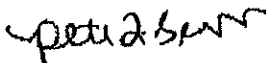
Oliver de Silva has made commitments to environmental protections and restoration efforts through these two projects far above and beyond any other San Francisco leaseholder. In working with Oliver de Silva, we have found the company to be proactive, trustworthy and solution-oriented. We believe Oliver de Silva will be a responsible lease holder, a conscientious

neighbor to the Sunol community, and provide a benefit to the environmental conditions of the watershed.

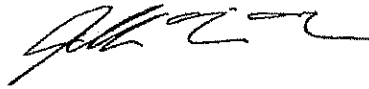
We encourage the approval of the SMP-30 lease by the Budget and Finance Committee and the full Board of Supervisors.

A copy of the press release announcing our conservation agreement is attached. Please contact us if you have any questions about the lease or our conservation agreement.

Sincerely,



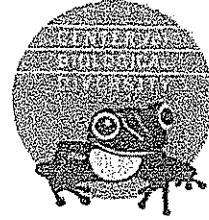
Peter Galvin
Conservation Director
Center for Biological Diversity
351 California Street, Suite 600
San Francisco, CA 94104
(707) 986-2600
E-mail: pgalvin@biologicaldiversity.org



Jeff Miller
Director
Alameda Creek Alliance
P.O. Box 2626
Niles, CA 94536
(510) 499-9185
E-mail: alamedacreek@hotmail.com



Oliver de Silva, INC



For Immediate Release, May 21, 2009

**Historic Conservation Agreement Signed for Apperson and Sunol Quarries
With Center for Biological Diversity and Alameda Creek Alliance**

***Apperson Quarry Project Will Be Delayed Until 2030; Substantial
Mitigations for Wildlife***

Contact: Jeff Miller, Alameda Creek Alliance, (510) 499-9185
Peter Galvin, Center for Biological Diversity, (707) 986-2600
Jim Summers, Oliver de Silva, Inc., (925) 828-7999

SUNOL, Calif. – Two conservation groups and a mining company today announced a historic cooperative conservation agreement for two quarry projects in the Sunol area — the Apperson Ridge Quarry and the Sunol Valley Quarry. The Center for Biological Diversity and the Alameda Creek Alliance signed an agreement in December 2008 with Oliver de Silva, Inc. that will dramatically change the Apperson Quarry project, protect and enhance endangered species habitat, provide millions of dollars for fish-passage projects and restoration of Alameda Creek, secure habitat enhancements for tule elk, and address greenhouse gas emissions.

"We are proud to announce conservation plans for the Apperson Ridge and Sunol Valley quarries that allow us to support both projects, and we applaud Oliver de Silva's commitments to environmental protections and restoration efforts through these projects," said Jeff Miller, director of the Alameda Creek Alliance. "This unprecedented agreement will significantly reduce the biological impacts of the Apperson Quarry, contribute to restoration of Alameda Creek, and provide extensive mitigation and conservation measures to protect and restore habitat for endangered and locally rare species such as steelhead trout, tule elk, and red-legged frog."

"The Apperson agreement is a model for cooperative conservation planning between environmental groups and private companies," said Peter Galvin, conservation director at the Center for Biological Diversity. "These historic conservation plans will result in permanent protection of more than 600 acres of endangered species habitat and secure funding for reintroduction and enhancement of tule elk. This agreement is a good deal for wildlife and a boon for conservation and restoration projects in the area for the next half century."

"This provides a rare, once-in-a-lifetime opportunity to marry two projects and provide major environmental enhancements that would not be possible if we were not working together with the conservation groups," said Ed DeSilva, chairman of Oliver de Silva, Inc.

Under the agreement, Oliver de Silva will fund and implement an Apperson Ridge Conservation Plan that will reduce potential impacts of the approved Apperson Quarry operation on native wildlife species and their habitats, provide mitigation for any environmental impacts, and permanently protect and enhance habitat for special-status species. Oliver de Silva will also fund a Sunol Quarry Conservation Plan that will assist in fish passage projects for steelhead trout and significantly advance the restoration of Alameda Creek.

The Apperson Quarry (Surface Mining Permit 17 or "SMP-17") is a hard-rock quarry approved by Alameda County in 1984, with a footprint of approximately 116 acres, located within a 680-acre leasehold on a private ranch east of the Sunol Valley. The Sunol Valley Quarry ("SMP-30") is an existing gravel operation approved in the 1960s, on 325 acres of public land in the Sunol Valley, under lease from the San Francisco Public Utilities Commission.

The conservation agreement proposes changes to both quarry operations that, if approved by regulators, will dramatically reduce impacts to biological resources at Apperson Ridge. Quarrying at Apperson Ridge would be deferred until 2030 or cessation of operations at the Sunol Quarry site, whichever is later. Already approved processing plants to produce asphalt and concrete would be moved from Apperson Ridge to the Sunol Quarry site, which does not have habitat for special-status species. Material from Apperson Ridge would be transported for processing using a conveyor system, rather than an approved haul road, reducing road grading, truck traffic, and noise disturbance associated with the access road.

One of the major mitigation measures in the agreement is replacement of habitat loss at Apperson Ridge within the footprint of quarrying and due to project infrastructure, through purchase and/or permanent protection of similar habitats on private land, at a replacement ratio of 3 to 1, and with a minimum parcel or parcels consisting of 600 acres protected. The plan provides robust mitigation for any loss of breeding habitat for several focal species at a 4 to 1 replacement ratio. Oliver de Silva will also initiate an incidental-take permit process under the Endangered Species Act, using a federal Habitat Conservation Plan with the U.S. Fish and Wildlife Service.

The agreement contains a comprehensive tule elk mitigation and monitoring plan, including \$250,000 in initial funding and up to \$250,000 annually when activity begins at Apperson Ridge, to enhance and protect elk habitat and establish a tule elk reserve in northern California.

Oliver de Silva will contribute several million dollars for fish passage projects to help restore steelhead trout to Alameda Creek, including funding fish ladders at the BART

weir and inflatable rubber dams in the lower Alameda Creek flood-control channel, and a fish passage project at a PG&E gas pipeline crossing of Alameda Creek in the Sunol Valley. The company will also revegetate stream banks and restore more natural stream function to enhance habitat quality in the stream reaches adjacent to the Sunol Quarry, and contribute financial support for an SFPUC Sunol Valley Restoration Plan to stabilize and restore the entire Sunol Valley reach of Alameda Creek.

Oliver de Silva has additionally committed to measures to reduce the greenhouse gas emissions of the Apperson Quarry project and to purchase approved offsets for 100 percent of the greenhouse gas emissions. It will also provide significant ongoing funding to the signatory conservation groups for efforts to protect wildlife and wild areas in the greater San Francisco Bay Area.

The agreement contains measures designed to avoid biological impacts, such as focused species surveys to determine presence of special-status species and the extent of suitable habitat, potential stockpiling of quarried rock at the SMP-30 site to allow for seasonal constraints on SMP-17 operations to minimize potential noise disturbance to wildlife, and "take" avoidance measures to exclude special status species from quarry areas before construction.

The changes to the Apperson Quarry project, as well as the avoidance, mitigation, and habitat enhancement measures contained in the conservation plans are contingent upon and triggered by agency approvals of the lease and lease extensions for the Sunol Quarry project (SMP-30) and agency approvals for the revised Apperson Quarry project (SMP-17).

More information about the Apperson Quarry agreement can be found on the Center for Biological Diversity Web site at:

www.biologicaldiversity.org/campaigns/apperson_quarry_conservation_agreement/index.html

