

**CALIFORNIA COASTAL COMMISSION**

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# Th10

**Prepared December 10, 2021 (for the December 16, 2021 Hearing)**

**To:** Commissioners and Interested Parties  
**From:** Kate Huckelbridge, Deputy Director  
**Subject:** **Energy, Ocean Resources and Federal Consistency Division Deputy Director's Report for December 2021**

The following coastal development permit (CDP) waivers, immaterial CDP amendments, CDP extensions, emergency CDPs, and negative determinations for the Energy, Ocean Resources and Federal Consistency Division are being reported to the Commission on December 16, 2021. Pursuant to the Commission's procedures, each item has been appropriately noticed as required, and each item is also available for review at the Commission's office in San Francisco. Staff is asking for the Commission's concurrence on the items in the Energy, Ocean Resources and Federal Consistency Division Deputy Director's report, and will report any objections received and any other relevant information on these items to the Commission when it considers the report on December 16, 2021.

With respect to the December 16th hearing, interested persons may sign up to address the Commission on items contained in this report prior to the Commission's consideration of this report. The Commission can overturn staff's noticed determinations for some categories of items subject to certain criteria in each case (see individual notices for specific requirements).

**Items being reported on December 16, 2021 (see attached)**

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## **Immaterial Amendments**

- 9-14-1735-A7 / A-3-MRA-14-0050-A7 Construct and operate temporary slant test well and associated monitoring wells to develop data necessary to assess the feasibility of the project site as a potential long-term water source for a desalination facility at CEMEX, Inc. Lapis Plant. (Marina, Monterey County)

## **Administrative Items for Federal Consistency Matters, Negative Determinations**

- ND-0030-21, U.S. Fish & Wildlife Service, Reinforcement of Salt Pond Dikes, San Diego Bay National Wildlife Refuge Complex, San Diego County, Action: Concur, 12/6/2021.

# Notice of Proposed Immaterial Permit Amendment

9-14-1735-A7 /A-3-MRA-14-0050-A7

STATE OF CALIFORNIA - NATURAL RESOURCES AGENCY

GAVIN NEWSOM, GOVERNOR

## CALIFORNIA COASTAL COMMISSION

ENERGY, OCEAN RESOURCES AND FEDERAL CONSISTENCY DIVISION  
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December 3, 2021

## NOTICE OF PROPOSED IMMATERIAL PERMIT AMENDMENT

Coastal Development Permit Amendment  
No. **9-14-1735-A7 / A-3-MRA-14-0050-A7**

**To:** All Interested Parties

**From:** John Ainsworth, Executive Director

**Subject:** Permit No. **9-14-1735-A7 /A-3 MRA-14-0050-A7** granted to **California-American Water, Richard C Svindland, P.E.** for: Construct and operate temporary slant test well and associated monitoring wells to develop data necessary to assess the feasibility of the project site as a potential long-term water source for a desalination facility.

**Project Site:** CEMEX, Inc. Lapis Plant, Lapis Road, Marina, CA 93933 (APN(s): 2203011001, 2203011011)

The Executive Director of the California Coastal Commission has reviewed a proposed amendment to the above referenced permit, which would result in the following change(s):

**Background and Project Description:** In November 2014, the Commission approved CDPs for Cal-Am to construct, operate, and decommission a test slant well and associated monitoring wells and other infrastructure in the City of Marina near the shoreline of Monterey Bay.<sup>1</sup> The project purpose was to conduct a pump test program to obtain data describing the geologic, hydrogeologic, and water quality characteristics in aquifers underlying the project area to see if the site would be suitable for wells that could be used by a long-term desalination facility as part of Cal-Am's proposed Monterey Peninsula Water Supply Project ("MPWSP"). In February 2015, Cal-Am completed installation and started the pump test, which ran until June 2015 when monitoring detected that groundwater levels were approaching a permit threshold that required Cal-Am to shut down the test and obtain a permit amendment. In November 2015, the Commission approved an amendment to modify the groundwater monitoring requirements and Cal-Am restarted its pump test.<sup>2</sup> On April 15,

<sup>1</sup> The project is partially within the Commission's retained jurisdiction and partially within the jurisdiction of the City of Marina's certified Local Coastal Program. The Commission accepted an appeal of the City CDP decision and approved the portions of Cal-Am's project within both jurisdictions.

<sup>2</sup> See Commission's Final Adopted Findings for 9-14-1735-A1 and A-3-MRA-14-0050-A1, November 2015.

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2016, the Commission approved a further amendment to allow Cal-Am to modify its discharge pipe and to require additional monitoring of the pipe area. On December 13, 2017, the Commission approved an immaterial amendment to the permit providing an additional year for the test well to remain in place. Cal-Am ended its full-time pump tests on February 28, 2018. On November 9, 2018, the Commission approved an immaterial amendment to the permit allowing the test well to remain in place an additional year, until February 28, 2019. On February 14, 2020, the Commission again approved an immaterial amendment allowing another one-year extension until February 28, 2021. On February 12, 2021, the Commission approved another immaterial amendment for a one-year extension until February 28, 2022.

**Requested Amendment:** On September 30, 2021 Cal-Am submitted an application to the Commission requesting the CDPs be further amended to allow the test well to remain in place for an additional year. **Special Condition 6** of the current CDPs as amended requires that, no later than February 28, 2022, Cal-Am complete its pump test, cut off, cap, and bury the slant well head, and remove all other associated temporary facilities. Cal-Am is now requesting that deadline be extended to February 28, 2023. As part of its request, Cal-Am states that it will not operate the well other than to provide limited periodic maintenance pumping (i.e., up to a few hours each week) during this one-year extension, just as it has done since ending its full-time pump tests in February 2018.

The previous one-year extensions were meant to allow the test well facilities to remain in place while Cal-Am first completed its CEQA and NEPA review processes with the California Public Utilities Commission (“CPUC”) and the Monterey Bay National Marine Sanctuary (“MBNMS”), followed by Cal-Am’s submittal of its coastal development permit applications for the proposed MPWSP and eventual review by the Commission. The CEQA and NEPA reviews were completed in 2018, and the Commission scheduled a September 2020 hearing on Cal-Am’s CDP application (and its appeal of the City of Marina’s denial of a CDP). Cal-Am withdrew its application shortly before that hearing, but later in 2020 submitted a new application, which remains incomplete. Cal-Am is proposing this additional one-year extension to allow the well to remain in place during the Commission’s potential upcoming review of Cal-Am’s requests for CDPs that could authorize the use of the test well facilities as part of Cal-Am’s proposal to construct additional wells and infrastructure nearby that would serve a desalination facility to be located further inland.<sup>3</sup> If the additional wells and infrastructure are not approved by the Commission, Cal-Am would still be required to remove the test well and its associated infrastructure, but not until February 28, 2023. Should these permit review processes take longer than currently anticipated, Cal-Am may also request a subsequent extension of these CDPs.

Cal-Am has requested the change shown below in bold underline text to the currently-amended **Special Condition 6** of the CDP:

***Monitoring and Removal of Temporary Structures, Well Head Burial & Well Closure/Destruction. The Permittee shall monitor beach erosion at least once per week over the duration of the project to ensure the slant well and monitoring wells remain covered. If the wellheads, linings, casings, or other project components become exposed due to erosion, shifting sand or other factors, the Permittee shall***

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<sup>3</sup> On November 14, 2019, the Commission found that substantial issue existed regarding an appeal of the City’s denial of Cal-Am’s CDP application and additionally continued the hearing for the consolidated permit review being conducted by the Commission.

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*immediately take action to reduce any danger to the public or to marine life. When components of the discharge pipeline below the connection to the outfall are exposed, the Permittee shall conduct monitoring, including photographic documentation of the exposed components, at least once per day until the components are naturally reburied, after which erosion monitoring shall be done no less than once per week. When components are exposed, the Permittee shall also post notices at the nearest upcoast and downcoast vertical public access points informing the public of the exposed components. The Permittee shall provide monitoring records, photographs, and proof of the above public notices to the Executive Director upon request.*

*Prior to conducting any repairs or reinstallation of exposed equipment that require construction methods other than the hand methods described in Amendment 2 of this permit, the Permittee shall apply for and obtain a permit amendment unless the Executive Director determines no such amendment is necessary.*

*The Permittee shall complete its regular test slant well pumping operations by February 28, 2018. Thereafter, the Permittee may conduct limited periodic maintenance pumping necessary to maintain the test slant well. No later than February 28, **2023**, the Permittee shall cut off, cap, and bury the slant well head at least 40 feet below the ground surface, and shall completely remove all other temporary facilities approved by this coastal development permit. To ensure timely removal, the Permittee shall post the bond or other surety device as required by **Special Condition 17** to ensure future removal measures would be appropriately supported and timed to prevent any future resurfacing of the well casing or other project components.*

## FINDINGS

The Executive Director has determined this amendment to be IMMATERIAL within the meaning of section 13166(b) of the Commission's regulations. Pursuant to section 13166(b)(1), if no written objection to this notice of immaterial amendment is received at the Commission office listed within ten (10) working days of mailing said notice, the determination of immateriality shall be conclusive, and the amendment shall be approved (i.e., the permit will be amended as proposed). **Note:** all correspondence received responding to the previous November 5, 2021 Notice of this immaterial amendment will be considered as part of this current Notice.

Pursuant to section 13166(b)(2), if a written objection to this notice of an immaterial amendment is received within ten (10) working days of mailing notice, and the executive director determines that the objection does not raise an issue of conformity with the Coastal Act or certified local coastal program if applicable, the amendment shall not be effective until the amendment and objection are reported to the Commission at its next regularly scheduled meeting. If any three Commissioners object to the executive director's designation of immateriality, the amendment application shall be referred to the Commission to be reviewed as a material amendment at a subsequent Commission meeting. If no three Commissioners object to the executive director's designation of immateriality, that designation shall stand, and the amendment shall become effective.

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Pursuant to section 13166(b)(3), if a written objection to this notice of an immaterial amendment is received within ten (10) working days of mailing notice, and the executive director determines that the objection does raise an issue of conformity with the Coastal Act or a certified local coastal program if applicable, the amendment application shall be referred to the Commission to be reviewed as a material amendment at a subsequent Commission meeting. **Note: all correspondence received responding to the previous November 5, 2021 Notice of this immaterial amendment will be considered as part of this current Notice.**

The Executive Director has determined this proposed amendment to be "immaterial" for the following reason(s):

- **Public Access:** The proposed amendment would delay for up to one year any required decommissioning activities. The project would remain subject to the CDP's other special conditions, including the terms of **Special Condition 6** above that require monitoring and notification to avoid potential adverse effects to public access to the shoreline.
- **Biological and Marine Resources:** Although the proposed amendment would delay decommissioning activities, the project would remain subject to the CDP's other special conditions, including those that require biological monitoring and that provide for the approved biologist(s) to halt any work activities that may affect special-status species or habitat near the project location. It would also eliminate the potential that Cal-Am's decommissioning work, if started now to comply with the currently required removal by February 28, 2022, could extend into the breeding/nesting season of the federally threatened western snowy plover (*Charadrius nivosus nivosus*), which starts on March 1 of each year. This proposed amendment will not result in new development in currently undisturbed areas of the site.

If you wish to register an objection to this notice, please send the objection in writing to Tom Luster at the above address. If you have any questions, you may contact him at (415) 904-5248 or via email at [tom.luster@coastal.ca.gov](mailto:tom.luster@coastal.ca.gov).

Original on File signed by:

Tom Luster  
Coastal Program Analyst

cc: Commissioners/File

**CALIFORNIA COASTAL COMMISSION**

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December 6, 2021

Andrew Yuen  
Project Leader  
San Diego National Wildlife Refuge Complex  
U.S. Fish and Wildlife Service  
1080 Gunpowder Point Drive  
Chula Vista, California 9190

Subject: Negative Determination **ND-0030-21** (Reinforcement of Salt Pond Dikes, San Diego Bay National Wildlife Refuge Complex, San Diego County)

Dear Mr. Yuen:

We have received your letter dated November 10, 2021, in which you have determined that the above-referenced proposal to reinforce two sections of salt pond dikes in the South San Diego Bay Unit of the San Diego Bay National Wildlife Refuge Complex would have no adverse effect on coastal resources for the reasons identified in Negative Determination No. ND-0030-21. The Coastal Commission staff agrees that the proposed project will not adversely affect coastal zone resources. We therefore **concur** with your negative determination made pursuant to 15 CFR Section 930.35 of the NOAA implementing regulations.

Please contact Alexis Barrera at [alexis.barrera@coastal.ca.gov](mailto:alexis.barrera@coastal.ca.gov) if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink that reads "Cassidy Teufel".

CASSIDY TEUFEL  
Federal Consistency Coordinator  
(for)

JOHN AINSWORTH  
Executive Director