

CALIFORNIA COASTAL COMMISSION

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SAN FRANCISCO, CA 94105
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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)

Emergency Permits

- G-9-21-0050, Oil spill cleanup activities including removal of diesel fuel contaminated beach sand from Totuava Beach (Mission Hospital Laguna Beach, Orange County).

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.

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**EMERGENCY PERMIT**

Issue Date: November 16, 2021
Emergency Permit No. **G-9-21-0050**

APPLICANT:

Mission Hospital Laguna Beach
31872 South Coast Highway
Laguna Beach, CA 92651
Attn: Michael Mathis

VIA EMAIL: Michael.Mathis@stjoe.org; Lanetta.Faulkner@stjoe.org

LOCATION OF EMERGENCY

Totuava Beach, Laguna Beach, CA 92651

EMERGENCY WORK

On September 29th, 2021 approximately 290 gallons of red dye diesel fuel was released from a backup generator at Mission Hospital in Laguna Beach. The diesel entered the nearby storm drain, migrated under Pacific Coast Highway, and ultimately discharged onto the sand at the base of the bluff at Totuava Beach. The spilled chemicals of concern include total petroleum hydrocarbons (TPH) (as diesel – DRO), volatile organic compounds (VOCs), and semi-volatile organic compounds (SVOCs). Based on the initial site assessment, concentrations of DRO, and to a lesser extent, VOCs, and SVOCs were detected in the samples at depths up to 6 feet below surface. Red dye diesel fuel (free product) was not observed on the water ponded near the storm drain outlet or in any subsurface water encountered.

The initial phase of the cleanup included pressure washing the street surfaces and flushing the storm drain system, while beach crews started hand digging and removing the upper 6 to 12 inches of sand from the impacted area. This removal work generated approximately four (4) cubic yards of contaminated sand which was placed into 1-cubic yard super-sacs, which were then placed into a secured area above the reach of the tide.

On October 5, 2021, a landing craft was used to bring heavy equipment (excavator) and other support materials onto the beach to further all necessary remediation and investigatory measures. The excavator began removing the sand and buried rock immediately adjacent to storm drain outfall. Excavation work continued until organic vapor readings were below 10 ppm. Eleven (11) confirmation soil samples from various depths up to six feet below grade were taken. Water was encountered at a depth of approximately six (6) feet below grade in two test pits and a water sample was collected from each test pit. Approximately 10 cubic yards of contaminated sand were excavated and placed into super sacks.

Due to the urgent nature of starting the next phase of cleanup, Commission staff provided verbal authorization for the excavation work to begin on Wednesday, October 6th. Additional cleanup/excavation activities were conducted on Friday, October 8th and continued on Monday, October 11th. Approximately 30 cubic yards of contaminated material was collected and placed into super sacks on those two days.

This is the second diesel spill within the past eighteen months at this location. On May 7, 2020, Mission Hospital spilled roughly 2,100 gallons of red dye diesel that migrated through the storm drain system onto the same area of Totuava beach. To address that cleanup, the Commission issued emergency permit (G-9-20-0032) for the removal of diesel fuel from the subsurface water and excavation and removal of roughly 385 cubic yards of contaminated beach sand. The removed sand was replaced with clean beach quality sand at a 1:1 replacement ratio. The follow-up regular Coastal Development Permit (9-20-0058) for that work is still pending.


This emergency coastal development permit (ECDP) authorizes emergency development, further described in the *Draft Removal Action Workplan*, prepared by Group Delta on October 15, 2021 (Attachment 1), including the excavation and removal of contaminated beach sand from Totuava Beach. The contaminated sand will be excavated and loaded directly into super sacks for transport to an offsite disposal facility. The onsite contractor will keep a record of the specific amounts of contaminated sand removed. Soil and water samples will be taken at regular intervals during the project to ensure that the contamination is removed. The removed sand will be replaced with clean sand of similar composition and characteristics (e.g., quantity, grain size, color, etc.) as the native beach sand.

This letter constitutes approval of the emergency work Mission Hospital Laguna Beach has requested be done at the location listed above. The proposed emergency development was necessary to abate the threat from a significant diesel spill and to minimize the release of hazardous materials from entering the ocean. Therefore, the Executive Director of the California Coastal Commission hereby finds that:

- (a) An emergency existed that required action more quickly than permitted by the procedures for administrative or ordinary CDPs, and that the development can and will be completed within 30 days unless otherwise specified by the terms of this ECDP; and
- (b) Public comment on the proposed emergency development has been reviewed if time allows.

The emergency development is hereby approved, subject to the conditions listed on the attached pages.

Sincerely,
John Ainsworth
Acting Executive Director

DocuSigned by:

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By: Kate Huckelbridge, Deputy Director

Enclosure: Acceptance Form

CONDITIONS OF APPROVAL:

1. The enclosed ECDP acceptance form must be signed by the Permittee (i.e., Mission Hospital Laguna Beach) and returned to the California Coastal Commission's Headquarters Office in San Francisco within 10 days of the date of this ECDP (i.e., by November 26th, 2021). This ECDP is not valid unless and until the acceptance form has been received in the Headquarters Office.
2. Only that emergency development specifically described in this ECDP is authorized. Any additional and/or different emergency and/or other development requires separate authorization from the Executive Director and/or the Coastal Commission.
3. The emergency development authorized by this ECDP must be completed within 30 days of the date of this permit (i.e., by December 16, 2021) unless extended for good cause by the Executive Director.
4. The Permittee recognizes that the emergency work is considered temporary and subject to removal unless and until a regular CDP permanently authorizing the work is approved. A regular CDP would be subject to all of the provisions of the Coastal Act and may be conditioned accordingly. Within 60 days of the date of this permit (i.e., January 15, 2022), the Permittee shall submit a complete application for a regular CDP to have the emergency development be considered authorized. (The CDP application may be found at: <http://www.coastal.ca.gov/cdp/cdp-forms.html>). The deadline in this condition may be extended for good cause by the Executive Director.
5. In exercising this ECDP, the Permittee agrees to hold the California Coastal Commission harmless from any liabilities for damage to public or private properties or personal injury that may result from the project.
6. This ECDP does not obviate the need to obtain necessary authorizations and/or permits from other agencies (e.g., US Coast Guard, CA Dept. of Fish and Wildlife, Regional Water Quality Control Board, etc.). The Permittee shall submit to the Executive Director copies of all such authorizations and/or permits upon their issuance.
7. All emergency development shall be limited in scale and scope to that specifically identified in the following materials prepared during the emergency response: 1) *Draft Removal Action Workplan, Diesel Impacted Area at Totuava Beach, by Group Delta, October 15, 2021*. All emergency development is limited to the least amount necessary to abate the emergency.
8. All emergency construction activities shall limit impacts to coastal resources (including public recreational access and the Pacific Ocean) to the maximum extent feasible. All best management practices described in the document entitled *Draft Removal Action Workplan, Diesel Impacted Area at Totuava Beach, by Group Delta, October 15, 2021* shall be implemented, including but not limited to:
 - a. All work shall take place during daylight hours. Lighting of the beach is prohibited.
 - b. Construction work and equipment operations shall not be conducted in the surf zone, unless wave run-up and tidal waters have receded from the authorized work area.
 - c. To prevent diesel or contaminated material from entering coastal waters, absorbent materials will be placed around the work and staging area.

- d. All construction areas shall be demarked by temporary fencing designed to allow public access and protect public safety to the maximum extent feasible.
 - e. The construction site shall maintain good construction site housekeeping controls and procedures (e.g., clean up all leaks, drips, and other spills immediately; dispose of all wastes properly; remove all debris from the beach; etc.).
 - f. The Permittee shall notify the Coastal Commission staff immediately upon completion of construction and required restoration activities. If Commission staff identifies additional reasonable measures necessary to restore the beach, such measures shall be implemented immediately.
9. The Permittee shall have a qualified Environmental Monitor(s), onsite during all emergency response/development activities to minimize impacts to sensitive beach and shoreline areas. The Environmental Monitor(s) shall ensure that emergency cleanup personnel are adhering to sensitive habitat protection measures, as well as address any biological issues that may arise on a daily basis. The Environmental Monitor(s) shall inspect beach and shoreline areas throughout the emergency cleanup to ensure compliance with all sensitive habitat avoidance measures and shall submit to the Executive Director a report with the results of these inspections/observations as part of the Final Report (see Special Condition 12) and submitted as part of the follow-up regular CDP.
 10. Once the contamination has been removed from the beach, sand will be replaced with clean beach quality sand of similar composition and characteristics (e.g., quantity, grain size, color, etc.) as the native beach sand. The replacement sand will equal the amount of sand removed (1:1 cubic yards) and shall be approved by the Executive Director prior to placement.
 11. For the first week following completion of the emergency activities, the Permittee shall perform daily inspections of the site to ensure that: a) no additional diesel is observed leaking onto the beach from the storm drain; b) no additional diesel is observed in the sand or emerging from the site; and c) that the replacement sand is reasonably stable and conforms to the original beach elevations and contours at the site. If the results of the daily inspections conform to a), b), and c), the inspections may be reduced to once weekly for three additional weeks. If at any time the results of the daily inspections do not conform to a), b), and c), the Permittee shall contact the Coastal Commission staff to discuss any necessary actions to be taken and additional permitting requirements, if any. The results of the inspections shall be included in the Final Report that will be submitted to the Executive Director as part of the regular CDP application (see Condition 12).
 12. Within 30 days of completion of the development authorized by this ECDP, the Permittee shall submit a Final Report identifying all development completed under this emergency authorization. The Final Report shall compare the emergency condition to the post-work condition, and shall include a narrative description, along with photographic evidence, of all emergency development and restoration activities undertaken pursuant to this ECDP authorization. The Final Report shall include a quantification of both the amount of diesel fuel and the amount of diesel contaminated sand removed from the site. The Final Report shall include the observations of the Environmental Monitor (see Condition 9) and the results of the daily/weekly inspections (see Condition 11). The Final Report shall also describe how the conditions that initially lead to the spill have been or will immediately be addressed to ensure that: (1) protective measures are in place to prevent another spill, and (2) if a spill

does occur, it will be properly contained and cleaned up in a manner that avoids impacts to coastal resources. The Final Report shall also include a specific timeline for implementation of these measures with completion occurring no more than 90 days after the report submittal date. The deadlines in this condition may be extended for good cause by the Executive Director.

13. This ECDP shall not constitute a waiver of any public rights which may exist on the property. The Permittee shall not use this ECDP as evidence of a waiver of any public rights which may exist on the property.
14. Failure to comply with the conditions of this approval may result in enforcement action under the provisions of Chapter 9 of the Coastal Act.
15. The issuance of this ECDP does not constitute admission as to the legality of any development undertaken on the subject site without a CDP and shall be without prejudice to the California Coastal Commission's ability to pursue any remedy under Chapter 9 of the Coastal Act.

As noted in Conditions 4 and 5 above, the emergency development carried out under this ECDP is at the Permittee's risk and is considered to be temporary work done in an emergency situation to abate an emergency. For the development to be authorized under the Coastal Act and/or if the Permittee wishes to expand the scope of work, a regular CDP must be obtained. A regular CDP is subject to all of the provisions of the California Coastal Act and may be conditioned or denied accordingly.

If you have any questions about the provisions of this ECDP, please contact Jonathan Bishop at (415) 693-8375 or email Jonathan.Bishop@coastal.ca.gov.

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.¹ 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.² On April 15,

¹ 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.

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

Notice of Proposed Immaterial Permit Amendment

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

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.³ 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

³ 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.

Notice of Proposed Immaterial Permit Amendment

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

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.

Notice of Proposed Immaterial Permit Amendment

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

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.

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 if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cassidy Teufel'.

CASSIDY TEUFEL
Federal Consistency Coordinator
(for)

JOHN AINSWORTH
Executive Director