



Parks & Open Space

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PARKS & OPEN SPACE ADVISORY COMMITTEE MEETING

Time/Date of Meeting: 6:30 p.m., Thursday, June 23, 2022

Location: Virtual Meeting

TO:	Parks & Open Space Advisory Committee
FROM:	Janis Whisman, Real Estate Division Manager
AGENDA ITEM:	CEMEX Request to Extend Mining at Dowe Flats
DATE OF MEMO:	June 13, 2022
ACTION REQUESTED:	Information Only

For much longer than Parks & Open Space's history of stewarding open space, the land in this community has been important to the diverse Indigenous communities that continue to thrive here. We are partnering with Indigenous people to make meaningful changes to how we do our work that include Indigenous people, incorporate their perspectives, and honor their land stewardship legacy.

Summary

CEMEX has applied to the Boulder County Community Planning & Permitting (CP&P) department to extend its Dowe Flats mining permit for 15 years through December 31, 2037. The subject property lies east of Lyons and north of Highway 66 and has an address of 13301 55th Street in unincorporated Boulder County. Boulder County has an option to acquire 766 acres at Dowe Flats and has paid CEMEX \$1.65 million on option payments. Under the current option, the county would need to pay as much as \$7.15 million for those 766 acres. If CEMEX's application is approved, Boulder County would receive 974 acres at Dowe Flats—the 766 acres at no additional cost and another 208 acres for zero cost. CEMEX would also grant the county an option to acquire 830 acres for open space south of Highway 66 where the county currently has no legal interest. CEMEX's proposal would add 1,038 acres to the 766 acres currently under option, giving the county an option for 1,804 acres of open space.

Background Information

In 2002, CEMEX granted Boulder County the option to acquire 766 acres at Dowe Flats in mid-2025. The timing of this option is based on the concept that CEMEX would be done mining by September 30, 2022 and would reclaim the Dowe Flats property by December 31, 2024. Boulder County has made option payments totaling \$1.65 million for this option and is scheduled to pay as much as \$7.15 million at closing, with the exact cost dependent upon when the first phase of a two-part closing would occur.

On May 2, 2022, CEMEX applied to CP&P for a special use permit to extend mining at Dowe Flats for an additional 15 years, through December 31, 2037. In its application, CEMEX committed to the concessions described in the 'Deal Terms' section below that would result in more open space if CEMEX's application is approved by the Board of County Commissioners. These concessions would set a firm end date for cement plant operations and would preserve 1,804 acres of open space at a significantly reduced cost. Because the county has an existing option to purchase the Dowe Flats property, Parks & Open Space's consent was required for CEMEX's application to be processed. Parks & Open Space determined that CEMEX's application merits consideration. No county decisions

about CEMEX's application have been made. CP&P is managing the land use process to consider the application. The public is invited to provide input as outlined further below.

Deal Terms

CEMEX would grant the county a new open space option with the following terms if the Board of County Commissioners approves CEMEX's request to extend mining. CEMEX would:

1. Close its plant on the south side of Highway 66 on December 31, 2037, which is the same date that mining would end at Dowe Flats. Without this concession, CEMEX could have operated its cement plant indefinitely, even after the mine closes. (The plant south of Highway 66 was operating prior to any county land use regulations applying to the property, so Boulder County cannot control CEMEX's operations.)
2. Grant the county an option to acquire 830 acres around its plant south of Highway 66 for \$17,000/acre in 2022 dollars, with a 2% annual escalator until closing. (In 2022 dollars, the price for these 830 acres is approximately \$14.1 million.) This cost would be paid with open space sales and use taxes. The 830 acres encompass the Rural Preservation and Municipal Facilities areas denoted in the current intergovernmental agreement between Boulder County and the Town of Lyons relating to the CEMEX property. Those areas are depicted on a map attached to this memo.
 - a. The county would need to obtain permission from the Town of Lyons before acquiring the Municipal Facilities area. The existing intergovernmental agreement between Boulder County and the Town of Lyons is scheduled for renewal soon and city-county conversations on this topic are just beginning.
 - b. The county would acquire all mineral rights and all appurtenant water rights, and there are no active wells on CEMEX's property. The county would acquire all development rights with the property, and the number of rights would be based on the acreage results of a survey to be done later.
3. Convey all of CEMEX's land north of Highway 66 (974 acres) to the county at no additional cost. The county has paid \$1.65 million for its existing option over 766 acres and appurtenant water rights at Dowe Flats. The county is scheduled to pay as much as another \$7.15 million, with the exact cost dependent upon when the first phase of a two-part closing would occur, but if CEMEX's application is approved, the county would get these 766 acres and water rights for no additional cost. CEMEX would also convey another 208 acres in the Dowe Flats area to the county for zero cost.
4. Reclaim all 1,804 acres under the new option by December 31, 2040, when the county could then exercise its option. The county would acquire all 1,804 acres in early 2041. Reclamation would include removing the "tube" over Highway 66 and all of the structures and other improvements at Dowe Flats. Through the current county land use process and via the county's existing and proposed options with CEMEX, Parks & Open Space will be able to influence how reclamation is done. To protect the county from environmental liability, the county would also be able to acquire less acreage if some of

the acreage is not reclaimed to the county’s satisfaction. (The new option would not address reclamation of the land CEMEX would retain at its plant site for several reasons: the county would not get an interest in the plant site; the significant infrastructure there will be more challenging to reclaim and may not be feasible within three years; the land is within the Town of Lyons’ planning area; and CEMEX doesn’t yet know if any of the infrastructure would be usable for whatever future other, non-mining uses that may be approved by the Town of Lyons to occur on the site.)

5. Pay \$400,000/year, or \$6 million total, to lease county property around Dowe Flats for another 15 years. Then CEMEX’s payment to lease that land would revert to the current \$1,000/year for the three years in which reclamation would occur.
6. Grant the county a trail easement along the St. Vrain Creek corridor. This new easement would make one of the last connections needed to build a trail from Lyons to Longmont.
7. Grant the county an access easement over CEMEX’s retained land, including its bridge, so the county can access existing county property that has had no physical access since the 51st Street bridge was washed out in the 2013 Flood.

Option Comparison:

County’s Current Option	County’s Potential Option
1. 766 Dowe Flats acres for \$7.15M more	1. 766 Dowe Flats acres for \$1.65M paid
2. –	2. 208 new Dowe Flats acres for \$0
3. –	3. 830 acres for \$14.1M (@ \$17K/acre + 2%/yr)
4. \$3,000 lease/rental income	4. \$6,003,000 lease/rental income
5. –	5. Trail easement
6. –	6. Access Easement
7. –	7. Plant closure
8. Acquisition in 2025	8. Acquisition in 2041
<u>Results (in 2022 dollars):</u>	<u>Results (in 2022 dollars):</u>
<ul style="list-style-type: none"> • No plant closure • County pays \$7.15M in 2025 for 766 acres 	<ul style="list-style-type: none"> • Plant closes in 2037 • County pays \$8M in 2041 for 1,804 acres (1,038 new acres)

* Under either option, the county would acquire all mineral rights and appurtenant water rights.

Boulder County Comprehensive Plan Designations

The Boulder County Comprehensive Plan (Comp Plan) provides information about the area’s agricultural, cultural, environmental, and other open space resources (including passive recreation, community buffers, and scenic viewsheds). Maps in the Comp Plan indicate the following designations of these resources near the property.

The Dowe Flats property north of Highway 66 is within the Rabbit Mountain Environmental Conservation Area and the Rabbit Mountain B1 High Biodiversity Area. The Dowe Flats property has been significantly impacted by mining and its open space resources would primarily arise after reclamation. Parks & Open Space has recommended it be reclaimed to grasslands. The

Dowe Flats property has a current View Protection score of 2.62 on a scale of 1 to 5 (with 5 being the highest).

The plant property south of Highway 66 has Preble's meadow jumping mouse habitat (Zone 1-Mouse Management Area and Zone 2-Possible Linkage), Wetlands, and several designations along the St. Vrain Corridor, including Riparian Areas, Riparian Habitat Connectors, Critical Wildlife Habitat, and the potential for a trail connection from Longmont to Lyons. The plant property has View Protection Corridor scores of 2.91 along Highway 66, 1.74 along Hygiene Road, and 1.62 along Highway 66.

Potential Uses

Like all properties acquired for open space, the property would be managed for open space uses. Determination of specific future open space uses (including public access via trails or other passive recreation versus closures that protect a property's open space resources) is an involved planning process that would be done after acquisition. Parks & Open Space staff need ample time after acquisition to evaluate the property. In this case, evaluations of potential future uses cannot be made until the option exercise window at the end of 2040 is nearer.

Public Process

CP&P is managing the public process to consider CEMEX's application to extend mining at Dowe Flats through December 31, 2037. The public is invited to comment on the application. The application materials and the opportunity to comment can be found on this webpage: <https://landuse.boco.solutions/boco.lu.docketlistings/app/detail.html?docket=SU-22-0003>

Parks & Open Space staff will also convey to CP&P comments received from POSAC members and the public at the June 23 POSAC meeting.

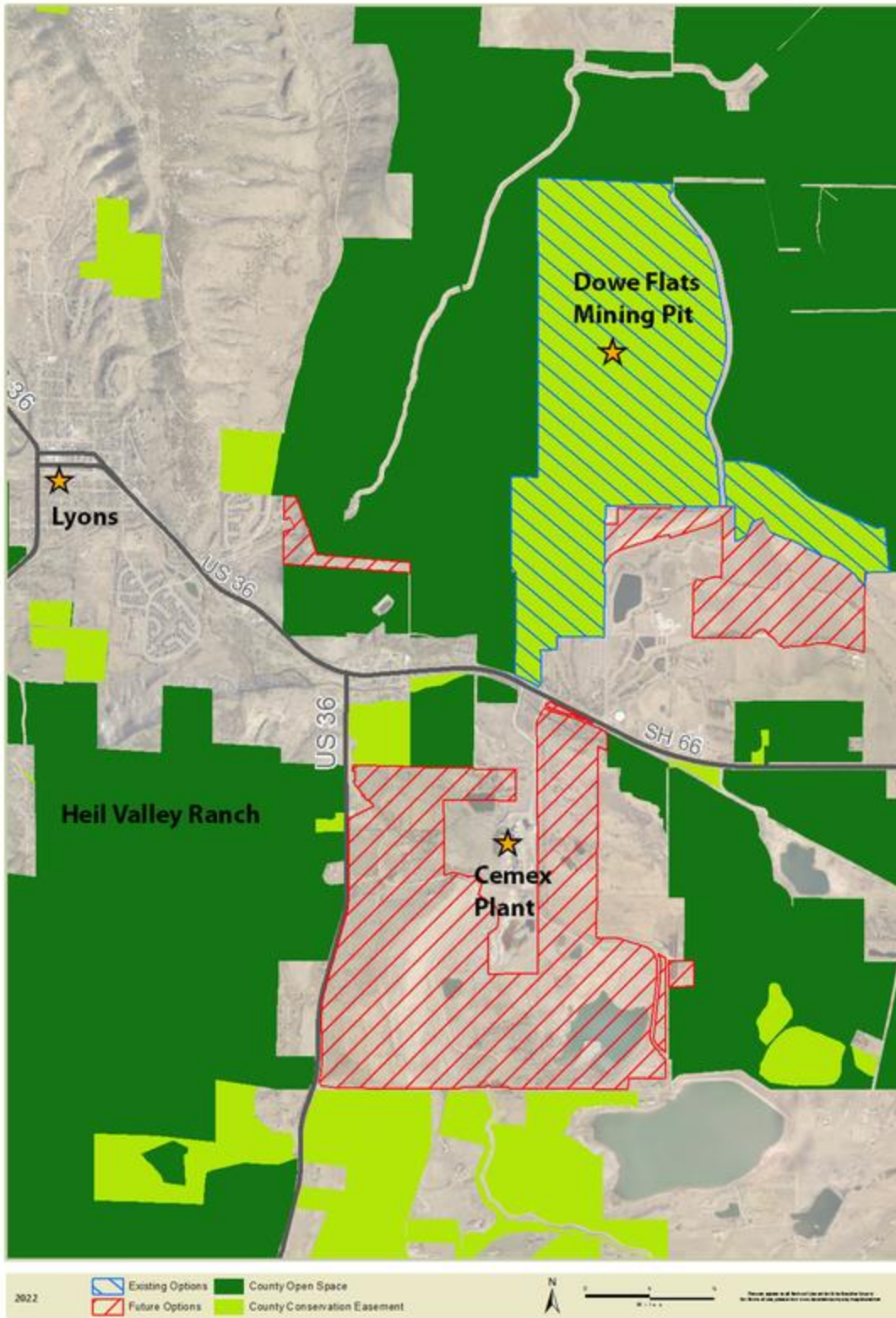
Staff Recommendation

No staff recommendation is being given for this information-only item. While Parks & Open Space determined that CEMEX's proposal merits consideration, the department has not taken a position for or against it.

POSAC Action Requested

No formal POSAC action is requested since this is an information-only item; however, as always with informational agenda items, POSAC members are invited to share their comments.

(Property maps are provided on the next two pages.)



The map below is Exhibit A to the Lyons CEMEX Area Comprehensive Development Plan Intergovernmental Agreement recorded with the Boulder County Clerk & Recorder on May 23, 2012, at Reception #03224693.

