

RESOLUTION 2022-075

A resolution denying Boulder County Community Planning & Permitting Docket SU-22-0003: CEMEX Dowe Flats Mining and Reclamation Extension

Recitals

A. CEMEX, Inc. (“Cemex”), and the Boulder County Parks & Open Space Department (collectively the “Applicants”) requested Special Review approval under Article 4-601 of the Boulder County Land Use Code (the “Code”), and Site-Specific Development Plan approval to amend an existing Special Use approval, SU-93-14, for an existing limestone/shale open mining and quarrying operation located at the Dowe Flats quarry. Requested amendments included extending approved mining activities for an additional fifteen years, reducing the permit area from 1,911 acres to 709 acres, concluding cement plant operations at the facility located south of Highway 66 within the same fifteen-year time frame, and conducting concurrent reclamation of wildlife habitat.

B. The subject property is located at 13301 55th Street, Parcel #120316000050, approximately 0.5 mile north of the intersection of North 53rd Street and State Highway 66, in Sections 9, 10, 15, and 16, Township 3 North, Range 70 W, in an Agricultural zoning district of unincorporated Boulder County (the “Property”).

C. The original Special Use/Site-Specific Development Plan (“SU/SSDP”) approval for mining at Dowe Flats, SU-93-14, allowed for the open mining activities to occur for a period of 25 years once mining activities commenced along with a number of conditions on, and commitments from, the applicants to mitigate and offset the impacts of the mining activities. The 25-year period for the original Special Use approval expired in September of 2022. The Applicants applied for SU/SSDP review to amend SU-93-14 to permit the Open Mining use to continue at the Dowe Flats quarry for an additional fifteen years.

D. The Dowe Flats quarry open mining use area includes a total of fifteen parcels (Parcels 120316000050, 120316000046, 120316001001, 120316001002, 120316001003, 120316001004, 120316001005, 120316001006, 120316001007, 120316001008, 120316001009, 120316001010, 120316001011, 120316001012, and 120316001013). The open mining pits are located on the northern-most parcel, 120316000050, while the other parcels are primarily used for the on-site processing of materials and transporting the materials via the conveyor system. The total area encompassed by the proposed extension request is 709 acres.

E. The Property has the following designations as determined by the Boulder County Comprehensive Plan: Adjacent to county Open Space on the west, north, and east;

Environmental Conservation Area; High Biodiversity Area (ranked "B1," of outstanding significance; limited on the Property); Natural Area (limited on the Property); View Protection Corridor; Nearby Agricultural Ditches; Nearby Critical Wildlife and Preble's Meadow Jumping Mouse habitats.

F. The originally approved SU/SSDP boundary encompassed an area of 1,911 acres. Approximately 101 acres have been removed from the boundary over the years due to property sales. The current SU/SSDP area is approximately 1,810 acres. The Applicants have proposed, as part of the requested extension, to further reduce the boundary to an area of 709 acres. The areas west, north, and east of the proposed new boundary were included in the original approval as buffer areas, much of which is no longer necessary for the current mining activities or the proposed extension of those activities. In addition, much of that land has been transferred to the county.

G. The Boulder County Planning Commission (the "Planning Commission") considered the application at online public hearings held on August 17, 2022 and September 1, 2022. At the September 1, 2022 Planning Commission online public hearing, the Planning Commission unanimously recommended denial of the above-described request.

H. The above-described request was processed and reviewed as Boulder County Community Planning & Permitting Docket SU-22-0003 (the "Docket"), as further described in the memorandum and written recommendation to the Board by Boulder County Community Planning & Permitting Department planning staff dated September 14, 2022, together with its attachments (the "Staff Recommendation"). The Staff Recommendation found that the Docket could meet the criteria for approval, and therefore, recommended that the Board conditionally approve the Docket.

I. At an online public hearing on the Docket held on September 14, 2022 (the "September 14 Public Hearing"), as further reflected in the official record of the September 14 Public Hearing, the Board considered the Staff Recommendation as well as the documents and testimony presented by Community Planning & Permitting Department staff. The Board also heard testimony from Michael Clauson and Trpimir Renic on behalf of the Applicants. Forty-four members of the public spoke at the September 14 Public Hearing. The majority of the public comments were opposed to the Applicants' request. The public raised concerns regarding, among other things, air quality and CO₂ emissions, traffic, dust, and visual impacts.

J. After hearing public comment, the Board moved to table the Docket to September 29, 2022. At the continued online public meeting on the Docket held on September 29, 2022 (the "September 29 Public Meeting"), as further reflected in the official record of the September 29 Public Meeting, the Board considered the Staff Recommendation as well as the documents and testimony presented by Community Planning & Permitting Department staff. The Board also

heard testimony from Trpimir Renic on behalf of the Applicants. No public comment was taken at the September 29 Public Meeting.

K. At the September 29 Public Meeting, the Applicants revised the application to reduce the requested extension to twelve years, which included a commitment to end operations at the Lyons cement plant at the end of that twelve-year time period. The Applicants also offered a commitment of record to offset five percent of Cemex's annual greenhouse gas ("GHG") emissions through a combination of GHG emission offsets and renewable energy credits from the present until the implementation of the Greenhouse Gas Emissions and Energy Management for Manufacturers in Colorado ("GEMM") audit program that Cemex is undertaking with the Colorado Department of Public Health and Environment.

L. Based on the evidence presented at the September 14 Public Hearing and the September 29 Public Meeting, the Board finds that the Docket does not meet the criteria for Special Use approval under Article 4-601 of the Code.

M. For the reasons stated on the record and as summarized below, the Board finds that twelve additional years of mining involves significant land use impacts when compared with the scenario of reclamation beginning now, which is what happens if the application is denied. These impacts are not sufficiently mitigated by the proposal.

N. The proposal is not compatible with the surrounding area as required by Article 4-601.A.2. While the footprint will not become larger during the twelve-year extension, the pit will be quarried at deeper levels. This will involve increased site disturbance, continued visual impacts to neighbors and nearby open space, dust, and traffic. Importantly, reclamation of the site will be delayed for an additional twelve years.

O. The proposal is not in accordance with the Comprehensive Plan as required by Article 4-601.A.3. Open pit mining has negative public health impacts, especially for those who live and recreate near the pit. The Comprehensive Plan requires consideration of these negative health impacts. The Comprehensive Plan also highlights the need to preserve, conserve and restore the land. The sooner this land is reclaimed, the sooner it will be restored to a more natural state.

P. The requested extension will result in over-intensive use of the land or excessive depletion of natural resources, which is prohibited by Article 4-601.A.4. In considering this criterion, the Board compared the requested extension with mining operations ceasing immediately, and found that twelve more years would be an over-intensive use of the land, which borders open space and is located in a scenic and rural area.

Q. Twelve more years of open pit mining will result in additional dust and traffic, which implicates Article 4-601.A.8, addressing air, odor, water or noise pollution. These impacts are

not sufficiently mitigated. Similarly, Article 4-601.A.10 addresses detriment to the health, safety, and or welfare of the public. This criterion is not met considering the open pit mining will result in twelve more years of dust, traffic and air quality impacts.

R. Finally, Article 4-601.A.11 addresses the need to find an appropriate balance between current and future economic, environmental, and societal needs by minimizing the consumption and inefficient use of energy, materials, minerals, water, land, and other finite resources. The Board finds that this balance is not achieved by the proposal. Under the current approval, mining was supposed to cease in September 2022. That is what the original approval contemplated and what neighboring communities expected. Over the last twenty-five years, the community surrounding the quarry has grown and changed, and open space properties have been developed for recreation. What may have been compatible at the site twenty-five years ago has changed. The Board does not find it to be an appropriate balance to use this land for open pit mining for an additional twelve years when reclamation can begin on the site immediately.

S. While CEMEX has made voluntary commitments offering additional open space and agreeing to shut down the cement plan in twelve years, these commitments do not sufficiently mitigate the land use impacts of twelve more years of mining. Whether or not the plant will actually continue operating is unclear, and therefore this commitment is not enough to offset the land use impacts of continued mining at the Dowe Flats Quarry. And open space, while important, will not negate the health and environmental impacts of twelve more years of open mining.

T. Therefore, the Docket is not approved.

Therefore, the Board resolves:

Docket SU-22-0003 is denied on the basis and terms set forth in this Resolution.

[Signature Page to Follow]

A motion to deny the Docket was made by Commissioner Claire Levy, seconded by Commissioner Marta Loachamin, and passed by a 2-1 vote. Commissioners Levy and Loachamin voted in favor, and Commissioner Matt Jones voted in opposition.

ADOPTED as a final decision of the Board on this _____ day of November 2022.

**BOARD OF COUNTY COMMISSIONERS
OF BOULDER COUNTY:**

Marta Loachamin, Chair

Claire Levy, Vice Chair

Matt Jones, Commissioner

ATTEST:

Clerk to the Board