



August 4, 2022

Victoria Simonsen
Town Administrator
Town of Lyons
432 5th Avenue
P.O. Box 49
Lyons, CO 80540
vsimonsen@townoflyons.com

RE: Responses to Referral Comments for SU-22-0003 CEMEX Dowe Flats Mining & Reclamation Extension

Dear Administrator Simonsen:

We have reviewed the referral comments submitted by the Town of Lyons about CEMEX's request to update the Dowe Flats Special Use Permit to extend the life of the quarry. While the letter was directed to Boulder County Community Planning & Permitting, we take this opportunity to respond to various statements made in the letter and to provide additional context.

We understand the Town recommends the County Planning Commission recommend denial of the referenced permit application. As a general matter, the permitting of Dowe Flats quarry is separate and distinct from the operational entitlements of the cement plant, and CEMEX would like the County to consider CEMEX's permit application on that basis. CEMEX has been open about its interest in seeking an amendment to extend operations at Dowe Flats, including a presentation during a 2019 meeting of the Town's Board of Trustees. As you will recall from that presentation, the current proposal reflects an extension of time that is significantly less than the 25 years then contemplated based on the approximate mineable resources remaining in the quarry.

Below is a listing of the Town of Lyons' specific comments made in its 07/22/22 letter followed by CEMEX's responses. *The responses are provided in italics.*

The Town of Lyons recommends against granting the 15-year Special Use Permit extension to the applicant for the following reasons:

- The Town does not believe that CEMEX can continue plant operations indefinitely if the SUP is extended. The current mining permit, M-1977-208, mandates that should mining operations cease north of SH 66 at the Dowe Flats quarry, the cement plant south of SH 66 in turn must be demolished and the land reclaimed to "irrigated pasture" (please refer to Appendix Item 8 for the 2004 map filed with the State of Colorado, as well as the 2002 letter from the Colorado Division of Minerals & Geology).

Continued cement plant operations are not contingent upon continued mining at Dowe Flats, as the permit at issue does not pertain to the cement plant operation.

The mining permit cited in the Town's comment – M-1977-208 – pertains to mining operations on property surrounding the cement plant south of SH 66 and known as the Lyons Mine (or Lyons Quarry), where mining operations have ceased, and reclamation is ongoing. The Dowe Flats quarry operates north of SH 66 under mining permit M1993-041. It is the Dowe Flats quarry that is the subject of the pending application.

The letter from the State of Colorado Division of Minerals and Geology included by the Town in its support of expedited reclamation of the cement plant does not pertain to cessation of mining and subsequent reclamation at Dowe Flats. It pertains to cessation of mining operations at the Lyons Quarry. Moreover, after acknowledging the County's confirmation that the cement plant operates as a nonconforming use, the letter provides that the cement plant becomes subject to

reclamation under the permit for Lyons Quarry (not Dowe Flats) only after the cement plant is no longer in operation. ("It appears that once the facility is no longer in operation, the nonconforming use will terminate and be subject to reclamation under DMG permit M-1977-208.")

Notwithstanding its entitlement to continued cement plant operations, CEMEX has offered the concession of an accelerated termination of cement plant operations if the SUP for Dowe Flats is extended as proposed in the application. We believe that proposing cessation of cement plant operations at a date certain to coincide with the cessation of mining at Dowe Flats at the end of the requested 15-year period, despite no permitting or other obligation to do so, helps resolve any misperceptions around this issue and provides certainty to all stakeholders. This certainty should facilitate future regional and local planning.

- Permitting and oversight is unclear.
 - If mining at Dowe Flats ceases, will the Colorado Department of Mining and Reclamation permit pertaining to both the north and south sides of the property expire?

As noted above, there is no single state "permit pertaining to both the north and south sides of the property." Mining permit M-1977-208 is for Lyons Quarry (south of SH 66), while Dowe Flats (north of SH 66) operates under mining permit M1993-041. Thus, regardless of the County's determination on the pending application to extend the period for the Dowe Flats quarry operation under M1993-041, the Lyons Quarry permit (M-1977-208) would not be implicated.

If the quarry operation at Dowe Flats ceases, the reclamation requirements for Dowe Flats associated with permit M1993-041 will apply.

- What is the status of the Title V Clean Air Act expired permit? EPA Region 8 has thus far been unable to determine an answer.

CEMEX submitted its air permit renewal application to Colorado Department of Public Health and Environment (CDPHE) on March 1, 2021. A Permit Shield was granted March 12, 2021 and remains in effect.

- If CEMEX will, as they say, truck in materials to process at the plant, do they require CDOT approval? What are the estimated vehicular and safety impacts? Where will the materials come from? Will this jeopardize DRCOG TIP funding?

The cement plant has received materials via truck over its years of operation and would continue to do so from various sources. Provided operations continue within existing cement plant entitlements, no additional permits would be necessary if the Dowe Flats quarry permit is not extended. CEMEX is unaware of potential impacts, if any, on DRCOG TIP funding.

- The Greenhouse Gas Emissions and Energy Management for Manufacturers in Colorado (GEMM) rule requires CEMEX specifically to undergo an emissions audit in 2022. The GEMM rule requires facilities that show through an audit process they are using GHG Best Available Control Technologies and Energy Best Management Practices to achieve an additional 5% reduction in their GHG emissions. Has CEMEX undertaken this audit process?

The GEMM rule audit requirements do not pertain to the Dowe Flats quarry operation which is the subject of the permit application.

CEMEX has engaged a consulting firm to perform a GEMM audit of the cement plant. The first such audit will be completed by year end in compliance with the rule, and future audits will be on a 5-year recurring schedule.

- The application does not support the 2020 Boulder County Comprehensive Plan's listed primary philosophies of
 - Growth should be channeled to municipalities
 - Agricultural land should be protected
 - Preservation of our environmental and natural resources should be a high priority in making land use decisions

CEMEX's land use application addresses how its extension request complies with the Comprehensive Plan's primary philosophies.

- For Boulder County to reach its 2030 climate goals, both mining and plant operations should either cease or be held to current standards. The Lyons CEMEX facility violates Federal clean air regulations and emitted more than 357,000 tons of CO₂ in 2020 alone. Fugitive silica dust storms are common and well-documented. There is an urgent need to redouble our efforts to combat climate change.

CEMEX respects the establishment of Boulder County's 2030 climate goals. Indeed, CEMEX has established its own ambitious goals to achieve a 40% reduction in CO₂ emissions globally by 2030 and to reach carbon neutrality across its full value chain by 2050. CEMEX recognizes these goals cannot be achieved alone, as they will require engagement across all aspects of CEMEX's operations and depend on advances in technology and innovation. Likewise, efforts to achieve the County's climate goals are not expected to be borne by any individual, company or industry. Nor should they be.

CEMEX endeavors to comply fully with applicable laws and regulations and disputes any suggestion that the Dowe Flats quarry and the cement plant are not held to standards applicable to them, as well as the unfounded assertion that the cement plant is in violation of Federal Clean air regulations. To support such a proposition by reference to a 2013 settlement of alleged violations denied by CEMEX arising from modifications to the plant during 1997-2000 is disingenuous at best. We suggest it would be more productive to focus on the present, rather than citing historical matters.

- There are environmental justice concerns given the location of the facility in relation to the County and Town's limited stock of affordable housing.

We interpret this comment to refer to the Dowe Flats quarry as it is the subject of the permit application. Other than two smaller parcels in the southeastern portion of the quarry, Dowe Flats is currently subject to options in favor of Boulder County and would not be available for affordable housing without Boulder County's participation. The current application does not change that dynamic.

- The Special Use Permit is set to expire in September of 2022. Both the Town and the surrounding community took CEMEX at their word on the matter; if granted, there is no prohibition against CEMEX applying for an additional SUP prior to 2037.

Any further extension of the mining permit would be at the discretion of the County, which would be subject to the same or similar process as the present application.

- There is also no prohibition against CEMEX selling the plant to another General Industrial operator, such as an asphalt producer.

The County has oversight of land use, not continuity of ownership of the underlying operation. As the cement plant currently operates as a pre-existing non-conforming use, any sale for another General Industrial land use that constitutes a material enlargement in the scope of pre-existing uses would require future County land use authorization. Otherwise, while we have come to understand that there may be speculation by some within the community about a sale of the

cement plant property to an asphalt operator in particular, we are not aware of any basis for that.

- In addition, there are several other considerations currently at play:
 - The Town of Lyons is in the process of revising its 2010 Comprehensive Plan, which provisionally envisions scenarios within both the Eastern Corridor and its Primary Planning Area.
 - The approved Colorado Department of Transportation SH 66 Planning & Environmental Linkages Study Report (please refer to Appendix Item 9)
 - The soon to be revised 2012 IGA between the Town and County (please refer to Appendix Item 10 for both the general IGA and the CEMEX-specific IGA)

We acknowledge these entities have various ongoing work in which CEMEX does not participate. To the extent the Town made CEMEX aware of its interest in possibly installing a renewable energy project within the area designated in the 2012 CEMEX-specific IGA as the "CEMEX Municipal Facilities Area," we ensured the County was also informed of the Town's interest in this regard.

- Our opportunities to shepherd the direction of land use in our Primary Planning area is being hampered. The current proposal does not provide a sufficient framework for the Town of Lyons to affect annexation or zoning of our PPA at the plant site. Remediation, reclamation, and rezoning the main plant site will directly and positively impact Lyons, the surrounding community, and Boulder County as a whole.

As with the IGA between the County and Lyons, CEMEX has not played a role in the manner in which those entities engage in regional planning concerning how this land will be utilized after operations at the cement plant conclude. Moreover, CEMEX received assurances that the County and Town have remained engaged in those regards.

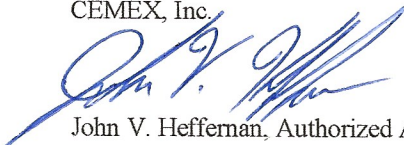
- The opportunities for transforming this high-polluting mine and plant include creating a state-of-the-art eco village that can be a centerpiece for the County, have a net zero impact on the environment, and offer a solar generation facility to power the entire Town of Lyons; we are our own electric utility as it stands.

While we disagree with this characterization of our operations, CEMEX is not averse to discussing various alternative options for potential future use of the Lyons' Planning Area (as currently configured or as may be changed pursuant to a new IGA between the County and Lyons) after the cement plant has concluded its operations. We do not believe the requested extension of the existing operation at Dowe Flats would be inherently inconsistent with all potential future uses, nor do we believe the proposed timeline for the cement plant closure would be. In fact, even the referenced conceptual projects would almost certainly require significant time for development and ultimately would benefit from locally sourced building materials to lessen their impact on the environment.

Thank you for your consideration. If you have any questions or need any additional information, please let me know.

Sincerely,

CEMEX, Inc.



John V. Heffernan, Authorized Agent