

STAFF REPORT

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**CONSIDER APPROVAL OF A SETTLEMENT AGREEMENT BETWEEN
THE CALIFORNIA STATE LANDS COMMISSION AND CEMEX CONCERNING
SAND MINING AT THE LAPIS SAND PLANT IN MARINA, MONTEREY COUNTY**

PARTIES:

California State Lands Commission

RMC Pacific Materials, LLC d/b/a CEMEX

PROPOSED SETTLEMENT AGREEMENT:

Key terms of the proposed settlement include:

- 1) Global resolution of all violations alleged by the California Coastal Commission (CCC), the Commission, and the City of Marina.
- 2) Settlement of disputed law and facts without admission of violation, fault, or liability by any party.
- 3) Extraction activities to cease and dredge to be removed by December 31, 2020.
- 4) Maximum volume of sand extracted during the period after approval of the settlement by the Commission through December 31, 2020 limited to 720,000 tons, not to exceed 240,000 tons in any calendar year.
- 5) Processing of inventory (not to include extraction of sand from existing dunes) and sales to cease 36 months after December 31, 2020 (December 31, 2023).
- 6) Restoration and mitigation obligations to be as set forth in the existing RMC Lonestar Lapis Plant Reclamation Plan approved by the State Mining and Geology Board on June 15, 1992, pursuant to the Surface Mining and Reclamation Act, with the following caveats: (1) CEMEX

STAFF REPORT NO. 81 (CONT'D)

may seek modifications to the plan as necessary to allow it to leave certain facilities in place and/or seek any other authorizations required for same, and, if all necessary approvals are secured, may leave such facilities in place; (2) CEMEX shall coordinate with the prospective purchaser (see item 7) on the restoration activities required under the Reclamation Plan to ensure a smooth transition of ownership.

- 7) CEMEX to enter into agreement for the sale of the entire site of approximately 400 acres, with a non-profit or governmental entity or consortium that commits to hold and manage the property primarily for conservation purposes, with the only other allowable uses being for low-impact, passive recreation purposes or activities, public access, public education, removal activities, activities to restore native habitat, and activities consistent with existing easements. The sale price is not to exceed 80 percent of the as-is fair market value of the 400 acres in an arm's-length sale as estimated by a Member of the Appraisal Institute-designated appraiser jointly selected by CEMEX and the buyer, after consultation with the Commission. The appraisal will not consider the potential value of unmined sand, will not assume or take into account a deed restriction, change in zoning, or similar future restriction on the property, and will consider the potential highest and best use of the property. The CCC and Commission will assist in identifying acceptable purchasers to facilitate the sale.
- 8) CEMEX to waive any claims or liabilities against the Commission related to the Lapis Sand Plant as of the date of the Settlement Agreement and withdraw all Public Records Act requests made to the Commission.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6106, 6216, 6301

Background:

On August 18, 1964, the Commission authorized issuance of a 5-year lease (Lease No. PRC 3183.1) to Pacific Cement and Aggregates, Inc., for a dragline sand mining operation in Marina, California (the Lapis Sand Plant). The dragline method involved scooping sand from below the tide line with a drag scraper and dumping it into a pit. The lease limited production to 80,000 cubic yards annually (approximately 104,000 tons) — the amount that the Commission estimated could be extracted without contributing to damage to the shoreline. The lease also provided that it

STAFF REPORT NO. 81 (CONT'D)

could be revoked by the Commission in the event that mining adversely affected the shoreline.

By the summer of 1967, the lessee had changed its method of sand removal from a surf zone dragline to a pond constructed on the beach from which sand was dredged by a floating barge. The lessee was reporting no production on the lease, presumably because of the change in the mining method, and only paid minimum royalty.

Following the expiration of the lease on August 18, 1969, the Commission authorized a lease extension on August 25, 1969 that was never executed, apparently in part due to difficulty obtaining required permits from other government agencies.

Subsequent operators continued utilization of the dredge pond, including the current operator, CEMEX, Inc. (U.S. subsidiary of CEMEX S.A.B. de C.V.). In recent decades, CEMEX appears to have increased its production above the 80,000 cubic yard/104,000 ton maximum level that the Commission determined in 1964 could be extracted without contributing to damage to the shoreline. While some of this production could be attributable to upland mining of sand dunes on site, Commission staff believes that the majority of CEMEX's extraction is from the dredge pond with the sand originating from offshore.

During 2015-2017, CCC staff and members of the public submitted videos, numerous photos and other evidence to Commission staff indicating a periodic ocean connection to the dredge pond and potential mechanical breaching of the pond. Commission staff performed surveys of the area. Staff also reviewed relevant scientific literature, much of which indicated that the majority of the sand extracted from the dredge pond originates from offshore, and that the Lapis Sand Plant is the primary contributor to beach erosion in the littoral cell in which it is located.

On March 15, 2016, the Marina City Council issued a resolution authorizing the City Manager to coordinate with the CCC in enforcement proceedings related to possible violations of the Coastal Act and the City's Local Coastal Program.

On March 17, 2016, the CCC's Executive Director issued a Notification of Intent to issue a cease and desist order and impose a restoration order and administrative civil penalties on CEMEX based on asserted unpermitted development and intensification of use on the property.

STAFF REPORT NO. 81 (CONT'D)

On March 13, 2017, the Mayor of the City of Monterey sent a letter to CEMEX, expressing support for the CCC's enforcement efforts, asserting that high coastal erosion rates in the Monterey Bay are exacerbated by the Lapis Sand Plant, and urging CEMEX to cease sand mining.

The Commission's Executive Officer sent a letter to CEMEX on May 16, 2017, detailing concerns over the Lapis Sand Plant, maintaining that the plant adversely impacts Public Trust resources, converts State minerals in violation of the California Civil Code, expropriates public property in violation of the State Constitution, and constitutes a public and private nuisance.

On June 6, 2017, the Marina City Council issued a resolution finding that the CEMEX mine violated the City's Municipal Code and met the elements required to constitute a public nuisance under California Civil Code sections 3479 and 3480, pursuant to section 731 of the California Code of Civil Procedure.

CEMEX has disputed and continues to dispute the Commission's allegations and asserts that it conducts the Lapis sand plant operations lawfully. CEMEX similarly disputes the allegations made by the CCC and the City of Marina.

Settlement Negotiations and Proposed Settlement

The CCC entered into negotiations with CEMEX in 2016, and in May 2017, the Commission's Executive Officer and the Lieutenant Governor's Office joined the negotiations. The City of Marina also participated. Agreement was reached in late June, expressed in a proposed Commission Settlement Agreement (attached as Exhibit A) and a CCC Consent Settlement Agreement and Cease and Desist Order (CCC Consent Agreement, attached as Exhibit B). The proposed Commission Settlement Agreement incorporates the CCC Consent Agreement by reference. CEMEX executed the CCC Consent Agreement on June 23, 2017 and the subject Commission Settlement Agreement on June 26, 2017. The CCC unanimously approved the CCC Consent Agreement at its July 13, 2017 meeting, [agenda item 22](#). The City of Marina approved a settlement agreement that also incorporates the CCC Consent Agreement by reference on June 26, 2017.

Public Trust and State's Best Interests Analysis:

The recommended action is to authorize the Executive Officer or her designee to execute the Settlement Agreement, substantially in the form

STAFF REPORT NO. 81 (CONT'D)

attached as Exhibit A, between the California State Lands Commission and RMC Pacific Materials, LLC d/b/a CEMEX.

CSLC staff believes a settlement along the terms described above is consistent with the common law Public Trust Doctrine and in the best interest of the State for the following reasons:

- 1) There is a date certain for the retirement of the Lapis sand mining operation, particularly for the excavation of sand. This will ensure that further environmental degradation and sand depletion from the littoral cell due to sand mining will not occur at this location after December 31, 2020, thus protecting Public Trust resources in the long term. Any litigation on this matter would take at least 3 years, if not much longer to resolve the competing claims of the parties.
- 2) The agreement limits the amount of sand that can be excavated over the next 3 years, providing additional protection and regulation for the marine environment.
- 3) There is an established process for ensuring the 400 acres of private waterfront land and dune habitat is placed into conservation at a less than market price.
- 4) The 36-month wind down period post December 31, 2020 allows appropriate time for the CEMEX employees and contractors to plan for their future after the retirement of the facility.
- 5) This settlement will avoid the expense, protraction, and uncertainty of litigating claims against CEMEX.

As detailed above, approval of the Commission Settlement Agreement would ensure that CEMEX stops sand mining that is leading to erosion in Monterey Bay. The CCC Consent Agreement, which the Commission Settlement Agreement incorporates by reference and requires full compliance with, necessitates completion of reclamation of the property, protection of sensitive species on site, and recordation of a deed restriction on use of the property to protect public access and habitat at the site in perpetuity. This would protect Public Trust uses and values on and adjacent to the site.

For all the reasons above, staff believes that Commission approval of the Settlement Agreement is consistent with the common law Public Trust Doctrine and with the Public Trust needs and values at this location at this time, and is in the best interests of the State.

STAFF REPORT NO. **81** (CONT'D)

OTHER PERTINENT INFORMATION:

1. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation and responsible economic use of the lands and resources under the Commission's jurisdiction; Strategy 1.2 to provide that the current and future management of ungranted sovereign lands and resources and granted lands, including through strategic partnerships with trustee ports and harbor districts, is consistent with evolving Public Trust principles and values, particularly amid challenges relating to climate change, sea-level rise, public access, and complex land use planning and marine freight transportation system; and Strategy 1.3 to protect, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways.

2. The authorization to execute the Commission Settlement Agreement is not a project as defined by CEQA because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

EXHIBITS:

- A. Settlement Agreement between the California State Lands Commission and CEMEX
- B. California Coastal Commission Consent Settlement Agreement and Cease and Desist Order CCC-17-CD-02

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the authorization of the Executive Officer to execute the Commission Settlement Agreement is consistent with the Public Trust needs and values at this location and at this time, is consistent with the common law Public Trust Doctrine, and is in the best interests of the State.

AUTHORIZATION:

1. Authorize the Executive Officer or her designee to execute the Settlement Agreement, substantially in the form attached as Exhibit A, between the California State Lands Commission and RMC Pacific Materials, LLC d/b/a CEMEX.

STAFF REPORT NO. **81** (CONT'D)

2. Authorize and direct the staff of the Commission and/or the California Attorney General to take all necessary or appropriate action on behalf of the Commission, including the execution, acknowledgment, acceptance, and recordation of all documents as may be necessary or convenient to carry out the Settlement Agreement; and to appear on behalf of the Commission in any legal proceedings relating to the Settlement Agreement.

EXHIBIT A

SETTLEMENT AGREEMENT

BETWEEN THE STATE LANDS COMMISSION AND CEMEX

THIS SETTLEMENT AGREEMENT (this "Agreement") is made and entered as of the last date of execution (the "Effective Date").

Parties & Recitals

- A. The parties to this Agreement are the California State Lands Commission ("Lands Commission"), a California state public agency and RMC Pacific Materials, LLC d/b/a CEMEX ("CEMEX"). All parties to this Agreement will be referred to collectively as the "Parties."
- B. The Lands Commission's Contentions.
 1. Conversion of State Minerals. The Lands Commission contends that a predecessor to CEMEX at the Lapis plant in Marina (the "Property"), Pacific Cement and Aggregates, Inc., paid royalties to the Lands Commission under a 5-year lease issued August 18, 1964 (Lease No. PRC 3183.1) for rights related to land adjacent to the Property. The Lands Commission further contends that following the commencement of operations; the plant changed its method of sand removal from a dragline to the current dredge pond located on the Property ("CEMEX Lapis Operation"). A lease was not obtained by prior operators or CEMEX for the dredge pond, nor was a royalty paid for sand removed through the dredge pond. The Lands Commission further contends that sand mined at the CEMEX Lapis Operation comes from offshore and that the dredge pond takes advantage of area wave patterns and beach topography to function as a vacuum, siphoning sand from below the ordinary high water mark, and trapping it in the dredge pond. The Lands Commission contends that through this process, the dredge pond performs the same function as the prior dragline operation, removing a mineral resource from sovereign land subject to the Public Trust Doctrine, which CEMEX then processes for private commercial gain. The Lands Commission further contends that the commercial exploitation of this Public Trust resource without compensation to the State constitutes 1) an expropriation of public property that is prohibited by the California Constitution (Cal. Const., art. XVI, § 6) and 2) conversion of state minerals, subject to civil liability and treble damages (Cal. Pub. Resources Code, § 6224.2.)

2. Nuisance. The Lands Commission additionally contends that the intensity of sand extraction by the CEMEX Lapis Operation impacts Public Trust resources downcoast that the Lands Commission is charged with protecting, causing environmental damage, public and private property damage, and loss of economic benefit through beach erosion. Longstanding California Supreme Court mining case law holds that, when the customary and previously legitimate activities of a business develop into a condition that threatens public and private rights, such a customary activity is no longer reasonable and may be found to be a nuisance. (*People v. Gold Run Ditch and Mining Company* (1884) 66 Cal. 138, 150-151. See also *Pacific Gas & Electric Co. v. Scott* (1938) 10 Cal.2d 581, 585.) The California Supreme Court has also concluded that the State's ongoing Public Trust oversight power "precludes anyone from acquiring a vested right to harm the public trust." (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 436, 452.)

C. CEMEX's Contentions.

1. Conversion of State Minerals. CEMEX denies the contentions of the Lands Commission. CEMEX contends that CEMEX or its predecessors have been extracting sand and conducting related processing activities on this private property continuously since 1906, when sand extraction from the privately-owned dunes and privately-owned beach areas commenced. CEMEX further contends that CEMEX and its predecessors have at all times secured all required governmental authorizations to operate the CEMEX Lapis Operation. CEMEX further contends that the dredge pond itself has been in place for more than half a century. It is separated from offshore wave action by a berm, and is used to collect sand that is naturally occurring on the private portions of the beach outside of the jurisdiction of the Lands Commission. CEMEX contends that no activity was undertaken by its predecessor under Lease No. PRC 3183.1 that required the payment of royalties for sand extracted.
2. Nuisance. CEMEX denies the contentions of the Lands Commission. CEMEX contends that the intensity of sand extraction by the CEMEX Lapis Operation is generally consistent with historic rates of extraction, and is well within the limits of sand that can be removed annually from the region without creating shoreline changes, erosion or other harm along the coast of Monterey Bay or elsewhere. Shoreline change is affected by multiple factors (both natural and manmade) and there is no credible, scientific evidence that the CEMEX Lapis Operation is the source of any narrowing of the

beaches in Southern Monterey Bay. Given the cumulative effect of other independent factors, the CEMEX Lapis Operation does not alter the overall trajectory of the littoral system in Monterey Bay, and thus does not cause environmental damage, public and private property damage, and/or loss of economic benefit through beach erosion.

- D. The Parties desire to avoid the expense, protraction and uncertainty of litigating any claims relating to these contentions pursuant to the terms of this Agreement.

Agreement

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, and the recitals and facts stated above which are hereby incorporated by this reference, the Parties agree as follows:

1. **Settlement Conditions.** This Agreement is contingent upon satisfaction of all of the following conditions:
 - a) CEMEX's full compliance with the California Coastal Commission Consent Settlement Agreement and Cease and Desist Order No. CCC-17-CD-02, executed by CEMEX on June 23, 2017 ("Coastal Agreement"), including but not limited to Section 6, which agreement is attached hereto and herein incorporated by reference in its entirety.
 - b) Extraction Operations (as defined in the Coastal Agreement) at the CEMEX Lapis Operation must cease as provided in the Coastal Agreement.
 - c) The Lands Commission acknowledges, through the execution of this agreement, and performs its responsibilities as it relates to the Coastal Agreement, including but not limited to Section 6.
2. **Releases.**
 - a) Releases by the Lands Commission.
 - i) The Lands Commission hereby waives any and all claims it may have against CEMEX (including claims for civil penalties, fines, or damages), related to the CEMEX Lapis Operation's activities as of the date of this Agreement, including those asserted in the Lands Commission's May 16, 2017 letter addressed to CEMEX executives Eric Wittmann and Mike Egan ("May Letter"), and claims with respect to activities undertaken and permitted pursuant to the Coastal Agreement (so long as CEMEX performs such activities in accordance with the terms and conditions of the Coastal Agreement) for:

- (1) Conversion of State Minerals pursuant to Public Resources Code section 6224.2
 - (2) Expropriation of public property pursuant to the California Constitution (Art. XVI, § 6)
 - (3) Statutory and common law claims for public and private nuisance.
- ii) The Lands Commission hereby withdraws its demand that CEMEX apply for a lease for the CEMEX Lapis Operation for activities occurring prior to the date of this Agreement, and hereby waives any and all claims related to CEMEX's failure to obtain a lease for the CEMEX Lapis Operation prior to the date of this Agreement.
- b) Releases by CEMEX.
- i) CEMEX hereby withdraws any and all existing requests, pursuant to the California Public Records Act or otherwise, that the Lands Commission provide records (broadly defined) to, or otherwise make them available to, CEMEX. CEMEX shall also cause any similar existing requests made by any representative or affiliate to be similarly withdrawn. CEMEX also waives any and all claims it may have against the Lands Commission based on any such requests under the California Public Records Act.
 - ii) CEMEX hereby withdraws any and all claims related to the May Letter.
 - iii) CEMEX waives any and all claims it may have against the Lands Commission relating to the CEMEX Lapis Operation as of the date of this Agreement. Except for rights and obligations created by this Agreement, CEMEX releases the Lands Commission (including its commissioners, staff, and attorneys) from and on account of any and all claims, actions, causes of action, claims for relief, liabilities, costs, expenses, fees, penalties, sanctions, injuries, statutory damages, exemplary damages, punitive damages and damages of whatever name or nature, known or unknown, asserted or unasserted in connection with the contentions recited above regarding the CEMEX Lapis Operation as of the date of this Agreement (the "Released Matters"). These releases will not preclude the use of any evidence of past conduct in connection with any proceedings concerning alleged violations other than the Released Matters, or to preclude any objections to such evidence that would ordinarily be available.
 - iv) In the event the Coastal Commission initiates administrative enforcement action and/or litigation against CEMEX alleging breach of the Coastal Agreement, CEMEX covenants not to sue the Lands Commission in such administrative enforcement action and/or litigation related to the Coastal Agreement, unless the Lands Commission joins in, or otherwise formally

participates in, the action of the Coastal Commission. In the event the Coastal Commission initiates administrative enforcement action and/or litigation and requests general or incidental information from the Lands Commission, the provision of such general or incidental information by the Lands Commission will not constitute formal participation for purposes of this subparagraph.

3. Settlement of Claims:

- a) The Lands Commission and CEMEX agree that this Settlement Agreement settles the Lands Commission's claims asserted in the May Letter, occurring prior to the date of this Agreement, including but not limited to claims for civil penalties, fines, or damages related to:
 - i) Conversion of State Minerals pursuant to Public Resources Code section 6224.2
 - ii) Expropriation of public property pursuant to the California Constitution (Art. XVI, § 6)
 - iii) Statutory and common law claims for public and private nuisance.

4. Representations and Warranties of Each of the Parties. Each of the Parties represents and warrants to the other Parties as of the Effective Date that:

- a) its execution and delivery of this Agreement and performance of its obligations under this Agreement (i) are within its corporate or governmental power, (ii) have been duly authorized by all necessary corporate or governmental action, (iii) do not contravene any law or any contractual provision binding on it, and (iv) do not require any consent or approval of any person or governmental authority other than by the Lands Commission;
- b) upon the Parties' execution of this Agreement, this Agreement constitutes a legal, valid, and binding obligation and is enforceable in accordance with its terms; and
- c) it has not heretofore assigned or transferred, or purported or intended to assign or transfer, to any person or entity, any claim against any other Party hereto, or any portion thereof or interest therein.

5. No Admission. This Agreement and the provisions hereof, including the payment of monetary and other consideration, constitute the settlement of claims that are denied and contested. Nothing contained in this Agreement or the payment of any sum provided for herein will be construed as an admission by any Party of any liability of any kind to any other Party. Accordingly, this Agreement is not and will not constitute an admission of any kind by CEMEX or the Lands Commission for any alleged or actual non-compliance with any legal requirement. No admission of

liability will be inferred in any administrative or judicial proceeding in connection with the Released Matters. Evidence of this settlement will not be admissible in any administrative or judicial proceeding to prove, or attempt to prove, the culpability or liability for the Released Matters.

6. Boundary: Notwithstanding any other provision in this Agreement (including section 2(b)), this Agreement is not intended to, nor shall it be interpreted as, an agreement to establish or fix the legal boundary, the ordinary high water mark, between the State sovereign tide and submerged lands and lands lying landward of the ordinary high water mark.
7. No Waiver. No failure or delay by any Party in exercising any right, power or privilege hereunder will operate as a waiver or relinquishment thereof nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power, or privilege.
8. Specific Performance. This Agreement is enforceable through specific performance.
9. Successors and Assigns. This Agreement is and will be binding upon, and will inure to the benefit of, the Parties hereto and their respective successors, assigns, heirs, devisees, beneficiaries, and affiliates including any future owners or interest holders in the Property and any of their respective officers, directors, commissioners, and staff.
10. Complete Agreement. This Agreement is the only agreement of the Parties relating to the subject matter of this Agreement. No statements, promises, or representations have been made by any Party to another, or are relied upon, and no consideration has been or is offered, promised, expected, or held out, other than that provided in this Agreement. No conditions precedent to the effectiveness of this Agreement exist, other than as may be expressly provided herein. All prior discussions and negotiations have been and are merged and integrated into, and are superseded by, this Agreement. This Agreement may not be altered, amended, modified, or otherwise changed in any respect whatsoever except by a writing duly executed by all Parties hereto.
11. Headings. Headings contained in this Agreement are solely for the convenience of the Parties and will not be deemed to or be used to define, construe, or limit any of the provisions hereof.
12. Further Assurances. Without limiting any of the foregoing provisions of this Agreement, following the Effective Date, the Parties will cooperate with each other and execute, acknowledge, and deliver to each other such further and additional documents as may reasonably be required to effect and evidence the terms of this Agreement.

13. Construction. In this Agreement, whenever the context so requires, the masculine, feminine, or neuter gender, and the singular or plural number or tense, will include the others.
14. Independent Counsel. Each of the Parties acknowledges that, in executing this Agreement, such Party has relied solely upon such Party's own judgment, belief, and knowledge, and the advice and recommendation of such Party's own independently selected counsel, concerning the nature, extent, and duration of their rights and claims, and that neither has been influenced to any extent whatsoever in executing the same by any representations or statements made by any other Party or by a representative of another Party. Each Party acknowledges, represents, and declares that such Party has carefully read this Agreement, knows the contents and executes the same voluntarily and without duress or pressure. Each of the Parties and their respective counsel have reviewed this Agreement, and the rule of construction to the effect that any ambiguities in an agreement are to be resolved against the drafting Party will not be employed in the interpretation of this Agreement.
15. Governing Law. This Agreement is to be governed by California law.
16. Notices. Any communications or notices required by this Agreement must be in writing, and may be given either personally, by regular U.S. Mail, or by Federal Express, UPS, or other similar couriers providing overnight delivery. Such notices or communications shall be given to the Parties at the addresses set forth below, unless a Party provides advance written notice that the information below has changed:

a) For the Lands Commission:

California State Lands Commission
100 Howe Avenue, Suite 100 South
Sacramento, California 95825-8202
Attention: Executive Officer
Telephone: 916-574-1800

With a Courtesy Copy to:

California State Lands Commission
100 Howe Avenue, Suite 100 South
Sacramento, California 95825-8202
Attention: Chief Counsel

b) For CEMEX:

For RMC Pacific Materials d/b/a CEMEX
10100 Katy Freeway, Suite 300
Houston TX 77043
Attn: General Counsel

with a copy to:

CEMEX
3990 E. Concourse St., Suite 200
Ontario, CA 91764
Attention: President, West Region
Telephone: (909) 974-5500

with a copy to:

CEMEX
1501 Belvedere Road
West Palm Beach, Florida 33406-1501
Attention: Legal Department
Telephone: (561) 833-5555

17. Execution of Agreement. Any person executing this Agreement on behalf of any Party does hereby personally represent and warrant to the other Parties that he/she/it has the authority to execute this Agreement on behalf of, and to fully bind, that Party.
18. Counterparts. This Agreement may be executed in one or more counterparts. When all Parties have signed, all executed counterparts taken together will constitute one and the same Agreement. The Commission will be responsible for receiving and retaining the executed signature pages of each party and for providing a copy of the dated and executed Agreement to each of the Parties. The Parties agree that the delivery of facsimile and/or electronic signatures will be acceptable and will for all purposes be deemed to have the same force and effect as original signatures.
19. Effective Date. This Agreement becomes effective on the last date of execution ("Effective Date").

It is so AGREED.

Jennifer Lucchesi
Executive Officer
California State Lands Commission

DATED: _____

MD F G

[Name] Mike P Egan
[Title] General Counsel

RMC Pacific Materials, LLC d/b/a CEMEX

DATED: June 26, 2017

APPROVED AS TO FORM:

Counsel for the Commission

DATED: _____

N. Jerao Carlson
Counsel for CEMEX

DATED: 6/26/17

EXHIBIT B

CEMEX Consent Cease and Desist Order
CCC-17-CD-02

CONSENT SETTLEMENT AGREEMENT AND CEASE AND DESIST ORDER CCC-17-CD-02

BACKGROUND

The California Coastal Commission (“the Commission”) issued a "Notification of Intent to Commence Cease and Desist Order and Restoration Order Proceedings and Administrative Civil Penalties Proceedings," dated March 17, 2016, to RMC Pacific Materials, LLC d/b/a CEMEX (the “NOI”), alleging certain violations of the Coastal Act by the Lapis sand plant operations located on Lapis Road in the City of Marina, Monterey County, California.

CEMEX has disputed and continues to dispute the Commission's allegations set forth in the NOI and asserts that it conducts the Lapis sand plant operations lawfully.

This Consent Settlement Agreement and Cease and Desist Order number CCC-17-CD-02 (this “Agreement”) represents a resolution by the parties hereto of a disputed matter to avoid the cost and uncertainty of proceedings related to the NOI and/or litigation. CEMEX does not acknowledge any violation, liability, or fault with respect to the allegations of the NOI or otherwise, and this Agreement shall not be deemed or construed to suggest, imply, or establish otherwise.

1.0 CEASE AND DESIST ORDER CCC-17-CD-02

Pursuant to its authority under California Public Resource Code (“PRC”) Section 30810, the California Coastal Commission (“the Commission”) hereby orders and authorizes RMC Pacific Materials, LLC d/b/a CEMEX, owner and operator of the Lapis Sand Plant, (“CEMEX”) and all its successors in interest, assigns, employees, agents, contractors, any persons acting in concert with any of the foregoing with respect to the Site (defined in Section 3.7 below), and any future owners of the Property (defined in Section 3.1 below) other than the transferee pursuant to Section 6.1, below, (collectively referred to hereinafter as “Respondent”), to undertake the activities allowed or required by this Agreement. By its execution of this Agreement, CEMEX (without admitting that it has violated the Coastal Act or otherwise acted unlawfully and without admitting any allegation made with respect to its Lapis operation), agrees to do the following (all subject to and in accordance with the terms and conditions of this Agreement) on the Site:

- 1.1 Cease and desist (pursuant to and consistent with Section 4.1, below) from (i) Extraction Operations, as defined in Section 3.6, below, including any extraction resulting in the creation of ponds and (ii) placement of any floating dredge and

development associated with the placement and installation of a dredge, such as placement and installation of anchors and mooring cables, pipes, a pump station(s), and any other facilities used to operate a dredge.

- 1.2 Remove (pursuant to and consistent with Section 5.0, below and the Removal Plan approved pursuant thereto) the physical structures and materials required to be removed by the Reclamation Plan, as that phrase is defined in Section 3.5, below, and those identified for removal in the removal schedule attached hereto as Exhibit 3 (“Removal Schedule”) that remain on the Site, including any dredges and associated anchors and mooring cables, pipes, and a pump station(s), with the exception of items that any Buyer (as defined in Section 6.1) agrees to allow to remain pursuant to Section 5.3.C, other than the items listed in Section 1.1, above.
- 1.3 Cease and desist from conducting any development (as defined in PRC section 30106) on the Site, including any industrial or commercial operations, including, as applicable, washing, grading, sorting, storage, loading and shipping of sand; other forms of grading (excluding grading to conduct the removal and restoration activities authorized and required by Section 5.0 of this Agreement during the Phase-Out and Final Removal Periods and by the Reclamation Plan); and intensification of use of the Site, unless authorized pursuant to the Coastal Act (PRC Sections 30000 to 30900), or a previously approved Coastal Development Permit (“CDP”), or pursuant to and consistent with Sections 3.3 or 3.4, below, as applicable.
- 1.4 Secure any and all other approvals or permits for the work required herein that are required from Federal, State and local agencies having authority over that work, and comply with all the terms and conditions of such permits or other approvals.¹
- 1.5 This Agreement is not intended to and does not amend or modify the rights and obligations of the California State Mining and Geology Board and Respondent under the Reclamation Plan.

2.0 NATURE OF ORDER AND OF CONSENT

- 2.1 Through the execution of this Agreement, Respondent agrees to comply with the terms and conditions of this Agreement. This Agreement orders and authorizes the removal and reclamation activities, among other things, outlined herein. Nothing in

¹ This requirement to comply with the requirements of other permits or other approvals does not obviate the need to comply with the requirements herein. If Respondent cannot obtain the authorization necessary to perform the work required herein, Respondent must seek an amendment to this Consent Agreement to resolve the conflict. If Respondent obtains other authorizations, not necessary to authorize work required by this Agreement, and those other authorizations would (1) allow Respondent to conduct work that is inconsistent with the requirements of this Agreement or (2) require Respondent to take actions inconsistent with the requirements of this Agreement, such authorizations shall not be construed as creating such a “conflict” that could allow an amendment to this Agreement. However, to the extent any such authorization allowed or required work inconsistent with this Agreement but not inconsistent with the Coastal Act, the Executive Director may consider an amendment, in his sole discretion.

this Agreement guarantees or conveys any right to development on the Site, other than the work and activities expressly authorized by this Agreement. Any development subject to the Coastal Act and or the City of Marina Local Coastal Development Plan permitting requirements that does not have a CDP and/or is not enumerated in Sections 3.3 (Phase-Out Period), 3.4 (Final Removal Period), or 5.0 (Removal), requires a CDP.

- 2.2 Respondent agrees to include as a condition in any contracts for work related to this Agreement that any and all employees, agents, contractors, and any persons acting in concert with any of the foregoing, adhere to and comply with the terms and conditions set forth herein.
- 2.3 Subject to 5.3D, Respondent, all of its successors, assigns, employees, agents, contractors, and anyone acting in concert with any of the foregoing, are jointly and severally subject to all requirements of this Agreement. Respondent agrees to undertake the work required herein and agrees to cause its employees, agents, and any contractors performing or directing any of the work required herein, and any persons acting in concert with any of these entities in performing or directing such work, to comply with the terms and conditions of this Agreement. Respondent shall provide written notice to all successors, assigns, and potential purchasers of the Property of any remaining restrictions created by or obligations under this Agreement.
- 2.4 Any development that (a) does not already have a CDP, (b) is not exempt from Coastal Act permitting requirements (for reasons other than vested rights, and/or the City of Marina Local Coastal Program permitting requirements); and (c) is not specifically authorized by this Agreement and is not pursuant to and consistent with Sections 3.3, 3.4 and 3.5, requires a CDP.

3.0 DEFINITIONS

- 3.1 “Property”
The property that is subject to this Agreement is as follows: Lapis Sand Plant, Lapis Road, City of Marina, Monterey County Assessor’s Parcel Numbers (“APNs”) 203-011-019-000, 203-011-001-000, 203-011-016, and 203-011-020.
- 3.2 “Alleged Unpermitted Development”
All alleged unpermitted “development” as that term is defined in the Coastal Act (PRC Section 30106) that the Commission asserts occurred on the Site after February 1, 1973, without the authorization required under the Coastal Act or its predecessor,² including, but not limited to: Dredging and extraction of sand, resulting in the creation of ponds; placement of floating dredges and development

² The predecessor to the Coastal Act was the California Coastal Zone Conservation Act of 1972, passed as Proposition 20. It was codified in Division 18 of the PRC, sections 27000 through 27650.

associated with the dredges, such as placement and installation of anchors and mooring cables, pipes, a pump station(s), and other facilities; grading; and changes in the intensity of use of the Site.

3.3 “Phase-Out Period”

The period of time during which Respondent shall phase out permanently the Extraction Operations and remove all physical items listed on the Removal Schedule for removal by end of the Phase-Out Period and consistent with Section 5.0, below. This period shall commence on the latest to occur of (a) the Effective Date of this Agreement, (b) the date the State Lands Commission acts to approve the settlement attached hereto as Exhibit 1, or (c) the date the City of Marina acts to approve the settlement attached hereto as Exhibit 2, and shall end on December 31, 2020.

3.4 “Final Removal Period”

The period of time to complete the inland processing and sale of sand on the Property, including removal of sand from onsite stockpiles, washing, grading, sorting, drying, stockpiling, blending, bagging, storage, weighing, loading and shipping of such sand, rotation or relocation of on-site inventory, and routine repair and maintenance of equipment and structures (hereinafter “Non-Extraction Operations”); remove the items identified on the Removal Schedule for removal from the Property during such period; complete other customary activities necessary to wind down a business, including personnel opportunities and transitions; and to initiate reclamation activities consistent with the Reclamation Plan, including restorative grading, revegetation with Flandarian Dune seed and Mesic Scrub seed mixes as described in the Reclamation Plan, and monitoring, not to exceed 36 months from December 31, 2020.

3.5 “Reclamation Plan”

The Reclamation Plan for the Lapis Sand Plant approved by the State Mining and Geology Board on June 15, 1992 pursuant to Resolution #92-12.

3.6 “Extraction Operations”

The term “Extraction Operations” refers to the collection of sand from the environment, including from ponds and dunes, but is not intended to and does not include removal of sand from onsite stockpiles, the rotation or relocation of stockpiles, or processing of materials from stockpiles.

3.7 “Site”

The term “Site” refers to the Property (as defined above) and the State tidelands seaward of the Property.

4.0 EXTRACTION OPERATIONS, MONITORING, REPORTING, AND TERMINATION

- 4.1 Respondent shall terminate all Extraction Operations by the end of the Phase-Out Period as provided for in Section 3.3. Further, Respondent may not extract more than 720,000 tons of sand in total from the Site between the commencement of the Phase-Out Period and the end of the Phase-Out Period; may not extract more than 240,000 tons of sand from the Site in any calendar year nor import more than 5 percent of that amount of material per year for mixing and blending to create a final product; as has been customary in their practice; and, for the period in calendar year 2017 after the commencement of the Phase Out Period, may not extract more than the product of (x) the number of days remaining in the year after the commencement of the Phase Out Period divided by 365 times (y) 240,000.
- 4.2 Monitoring Reports.
- A. Within forty-five days after the end of each calendar quarter commencing with the quarter ending on December 31, 2017 through the last quarter of the Phase-Out Period, Respondent shall submit to the Executive Director a written report substantially in the form attached as Exhibit 4 (“Monitoring Report”) prepared by a third party acceptable to the Executive Director (which approval shall not be unreasonably withheld, conditioned or delayed), setting forth: 1) calculations of total quantities (in tons) of any and all (A) sand extracted from the Site by Extraction Operations and (B) materials imported onto the Site, both within that particular reporting period as measured in the manner described in such form, and 2) the hours of operation of the dredge and fuel consumption to run the dredge. A copy of all Monitoring Reports shall also be provided by Respondent to the City of Marina and the State Lands Commission, at the addresses identified in Section 7.0, below.
- B. The Monitoring Reports shall include photographs taken during periodic site inspections, which show, at a minimum, the dredge pond (showing north, south, east and west directions) and any stockpiles of sand.
- 4.3 The Commission acknowledges Respondent voluntarily implements measures to protect sensitive resources on the Site, such as the Western Snowy Plover. Respondent intends to continue such measures. Nothing herein prohibits Respondent from undertaking other similar such measures during the term of this Agreement, subject to the Coastal Act as applicable.

5.0 REMOVAL PLAN

- 5.1 No later than ninety (90) days prior to the end of the Phase-Out Period, Respondent shall submit a detailed written plan to the Executive Director (“Removal Plan”), for review and approval, to summarize all measures to be taken in connection with the

removal of the physical structures and materials discussed in Section 1.2 for removal from the Site.

- A. The Removal Plan shall include a narrative describing all temporary run-off and erosion control measures to be used during removal activities. The Removal Plan shall provide that during removal, all stock piles and construction materials shall be located as far away as possible from drain inlets and any waterways. No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wind or runoff erosion and dispersion.
 - B. The Removal Plan shall describe the equipment to be used. With respect to the mechanized equipment to be used, the Removal Plan shall provide for:
 - 1. Limitations on the hours of operations for all such equipment and a contingency plan that addresses at a minimum: 1) impacts from equipment use, including disturbance of areas where revegetation and/or mitigation will occur, and the responses thereto; 2) potential spills of fuel or other hazardous releases that may result from the use of mechanized equipment and the responses thereto; and 3) any potential water quality impacts.
 - 2. Designated and confined areas for maintaining and washing mechanized equipment and processes specifically designed to control runoff. Thinners or solvents shall not be discharged anywhere on the Site, including into sanitary or storm sewer systems. The discharge of hazardous materials into any receiving waters is prohibited.
 - C. The Removal Plan shall indicate that removal will occur pursuant the timeline listed in the Removal Schedule attached as Exhibit 3.
- 5.2 Within forty-five (45) days of completion of removal activities, Respondent shall submit photographic evidence of the completed removal to the Executive Director. After review of the evidence, if the Executive Director determines that the removal did not, in whole or in part, comply with the Removal Schedule and the Removal Plan, this Agreement, or the Coastal Act, the Executive Director will specify measures necessary to ensure that the removal complies with the Removal Schedule, the Removal Plan, this Agreement, and the Coastal Act. Respondent shall implement any specified measures, within the timeframe specified by the Executive Director.
- 5.3 Final Removal Element.
- A. Respondent agrees to commence implementation of the Reclamation Plan by the end date of the Final Removal Period and complete all removal and restoration activities required by the Reclamation Plan and any amendments thereto.

- B. Respondent shall retain all responsibility for funding and completing all reclamation requirements pursuant to the Surface Mining and Reclamation Act and all responsibility for receiving final signoff of the Reclamation Plan, unless assumed in writing by a Buyer in a document provided to the Commission and as otherwise set forth herein.
- C. Any structures (not including materials identified in Section 1.1) that Buyer (as defined in Section 6.1 below) wants to retain on the Property for uses consistent with the conservation and public recreational reuse of the Property shall be addressed via a retention proposal under this Agreement, submitted to the Executive Director for review and approval, and amending the Reclamation Plan, as needed. Such retention and reuse may require approvals in compliance with applicable laws, and, if approved, may also provide for an exception to any removal requirements under this Agreement.
- D. If the transfer of property contemplated by Section 6.0 occurs prior to the completion of the removal or reclamation set forth in the Reclamation Plan or Removal Plan, then any purchase-sale agreement between Respondent and Buyer (as defined in Section 6.1 below) shall set forth the party responsible for completing such obligations and provide that the Buyer agrees to comply with and fulfill all the outstanding terms and conditions of this Agreement.
- E. Except for the approval of the Removal Plan granted under this Agreement for the removal of the items required to be removed from the Site as described in the Removal Schedule, the Removal Plan, and the Reclamation Plan, nothing in this document is a guarantee of Coastal Act authorization for any development on the Site, and therefore the development may require a CDP from the City of Marina or the Commission.

6.0 PROPERTY DISPOSITION

6.1 Conveyance

- A. Subject to Section 23.2, Respondent shall transfer fee title to all of the Property to a non-profit or governmental entity or consortium approved by the Commission, in consultation with the City of Marina, (“Buyer”), such approval not to be unreasonably withheld, that commits to hold and manage the property primarily for conservation purposes, with the only other allowable uses being for low-impact, passive recreation purposes or activities, public access, public education, removal activities, activities to restore native habitat, and activities consistent with existing easements identified by Cemex prior to the Effective Date. Any uses that qualify as development as defined in the Coastal Act, and that require Coastal Act authorization consistent with Section 2.4, above, will require a coastal development permit.

B. The sale price for any initial transfer of the Property to Buyer shall not exceed 80 percent of the as-is fair market value of the Property transferred, without reference to any restrictions for conservation purposes, in an arms-length sale as estimated by an MAI-designated appraiser jointly selected by Respondent and the Buyer, after consultation with the State Lands Commission. The appraisal shall be prepared in accordance with appraisal instructions approved by the State Lands Commission and will be based on the potential highest and best use of the Property, will not consider the potential value of unmined sand, and will not assume or take into account any deed restriction, change in zoning or any other potential similar restriction on the Property that is not already in place as of June 15, 2017. The Commission and the State Lands Commission will assist in identifying acceptable purchasers for purposes of facilitating the sale.

C. To protect the Property in perpetuity, the purchase-sale agreement will include (1) a requirement that if Buyer ever chooses to transfer acquired property, Buyer must comply with the same requirements regarding the approval of any subsequent purchaser, (2) commitments with respect to allowable use(s) of the Property as listed above, and (3) an obligation that any future transfer must include such requirement and commitments for any subsequent transferee as well; provided, however, that Respondent's obligations in connection with conveyance of the Property shall be deemed fully satisfied upon the conveyance of the Property in accordance with this Section 6.1.

6.2 Pre-Conveyance

A. Subject to Section 23.2 below, during the period from June 15, 2017 until the close of escrow or other finalization of any conveyance described in Section 6.1, Respondent shall not sell, grant, or otherwise convey any interest in the Property or any portion thereof or enter into any agreement committing itself or any future owner to do so, other than as permitted by this Agreement in accordance with Section 6.1, above.

B. Subject to Section 23.2, Respondent shall not convey any new rights of ownership or use of the Property from June 15, 2017 until the entire Property is transferred pursuant to this Agreement, unless required to by law, or with the express written consent of the Executive Director.

C. Nothing in this Agreement limits the ability of the City of Marina to adopt Local Coastal Program or Zoning Ordinance amendments.

D. As part of the conveyance described in Section 6.1, Respondent shall prepare and deposit into escrow for recordation at closing, a Conservation and Public Access Deed Restriction, in a form and content approved by the Executive Director addressing the following ("Deed Restriction"):

1. The purpose of the Deed Restriction shall be to preserve the open space and habitat values of the Property and allow for public access and low-impact passive recreation on the Property. The Deed Restriction shall reflect that no development, as defined in PRC Section 30106, shall occur on the Property, provided that improvements to provide low-impact passive recreation, public access, public education, removal activities, activities to restore native habitat, and activities consistent with existing easements or other rights of record identified by Cemex prior to the Effective Date, including those noted in Section 23.2, will not be prohibited.

2. Prior to recordation of the Deed Restriction by the Buyer, Respondent shall provide Commission staff with information customarily requested by the Commission to help in the review and approval of the form of Deed Restriction, including a formal metes and bounds legal description and a corresponding graphic depiction of the Property prepared and stamped by a licensed surveyor, as well as a current Preliminary Report issued by a licensed title insurance company within the prior 60 days.

3. The Deed Restriction must be recorded against the Property by the Buyer as part of the closing of any escrow.

4. Respondent will cooperate with the Commission and use best efforts to seek to ensure that the Deed Restriction is recorded free of all prior liens and encumbrances that the Executive Director determines would affect the interest being conveyed, provided that Cemex does not have to expend in excess of \$25,000 in order to subordinate liens and encumbrances. Following recordation of this deed restriction, Respondent must provide evidence, including a Certified copy of the recorded deed restriction obtained from the Monterey County Recorder's Office for the review and confirmation of Commission staff that the agreed form of Deed Restriction was recorded, as well as an updated Preliminary Report dated after the date of recordation, reflecting the Deed Restriction running in the chain of title for the Property and recorded free of prior liens and encumbrances that Commission staff determined need to be subordinated and believes to have been subordinated.

E. Beginning on the Effective Date, Respondent shall treat the Property as if the habitat protections of the Deed Restriction required by Section 6.2.D had been recorded, and Respondents shall comply with such restrictions thereof except that nothing in this provision will prevent the activities discussed in Sections 3.3, 3.4, or 3.5 for the periods listed therein.

7.0 SUBMITTAL OF DOCUMENTS

All documents submitted to the Commission pursuant to this Agreement shall be sent to:

California Coastal Commission
Attn: Justin Buhr
725 Front St, Suite 300
Santa Cruz, CA 95060

With a Copy to:
California Coastal Commission
Attn: John Del Arroz
45 Fremont St, Suite 2000
San Francisco, CA 94105

And Copies to:

California State Lands Commission
Attn: Executive Officer
100 Howe Avenue, Suite 100 South
Sacramento, California 95825-8202

City of Marina
Attn: Community Development Director
211 Hillcrest Avenue
Marina, CA 93933

All documents submitted to Respondent pursuant to this Agreement shall be sent to:

RMC Pacific Materials d/b/a CEMEX
10100 Katy Freeway, Suite 300
Houston TX 77043
Attn: General Counsel
Telephone: (800) 264-5342

With Copies to:

CEMEX
3990 E. Concourse St., Suite 200
Ontario, CA 91764
Attention: President, West Region
Telephone: (909) 974-5500

CEMEX
1501 Belvedere Road
West Palm Beach, Florida 33406-1501
Attn: Legal Department
Telephone: (561) 833-5555

8.0 SITE ACCESS

Respondent shall provide Commission staff and staff of any agency having jurisdiction over the work being performed under this Agreement with access to the areas of the Property described below, for the purposes of verifying compliance with this Agreement. Such access shall be granted upon the giving of 24-hour advance notice and subject to all Mine Safety and Health Administration rules and regulations (including any necessary escort), and applicable site safety rules. The Commission and other relevant agency staff,

along with any necessary escort, may enter and move freely about the following areas: (1) the portions of the Property on which any alleged violations are located, (2) any areas where work is to be performed pursuant to this Agreement or pursuant to any plans adopted pursuant to this Agreement, (3) adjacent areas of the Property and any other area in order to view the areas where work is being performed pursuant to the requirements of this Agreement, (4) any other area where evidence of compliance with this Agreement may lie for purposes including, but not limited to, inspecting records, logs and contracts relating to documenting and reviewing the progress of Respondent in carrying out the terms of this Agreement. Nothing in this Agreement is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law.

9.0 EFFECTIVE DATE AND TERMS OF THIS AGREEMENT

The “Effective Date” of this Agreement is the date the Commission votes to issue this Agreement; provided, however, the obligations under this Agreement (broadly construed to include prohibitions and other provisions, including releases) shall not become binding on the parties until the latest to occur of (a) the Effective Date of this Agreement, (b) the date the State Lands Commission acts to approve the settlement attached hereto as Exhibit 1, or (c) the date the City of Marina acts to approve the settlement attached hereto as Exhibit 2. Notwithstanding the broad construction of the term “obligations” in the prior sentence, the withdrawals listed in Section 14.1 and 14.3 are effective as indicated therein. This Agreement shall remain in effect permanently unless and until rescinded by the Commission. However, if the conditions precedent in (b) and (c) are not met, a rescission is not required, and the Agreement shall not be in effect, unless agreed to by the parties. This Agreement includes and incorporates by reference Exhibits 1 (State Lands Commission Agreement) and 2 (City of Marina Agreement).

10.0 FINDINGS

This Agreement is issued on the basis of the findings adopted by the Commission, as set forth in the document entitled “Staff Report: Recommendations and Findings for Consent Settlement Agreement and Cease and Desist Order.” Notwithstanding the above, this Agreement is not intended to be, and shall not be deemed to be, an admission by Respondent on any matters, including the findings adopted by the Commission, but Respondent has agreed not to contest the issuance or enforcement of this Agreement. The Commission has authorized the removal and restoration activities required in this Agreement as being consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act.

11.0 COMMISSION JURISDICTION

The Commission has jurisdiction over resolution of the alleged Coastal Act violations on the Site pursuant to PRC Section 30810. In light of the desire to settle these disputed

matters, Respondent agrees not to contest the Commission's jurisdiction to issue or enforce this Agreement.

12.0 REVISIONS OF DELIVERABLES

The Executive Director may require revisions to deliverables required under this Agreement, and Respondent shall revise any such deliverables consistent with the Executive Director's specifications in accordance of this Agreement, and resubmit them for further review and approval by the Executive Director within any deadlines established by such modification request.

13.0 DEADLINES

Prior to the expiration of any given deadline established by this Agreement, Respondent may request from the Executive Director an extension of the unexpired deadline. Such a request shall be made in writing at least 10 days in advance of the deadline, and directed to the Executive Director, care of Justin Buhr at the Commission's Santa Cruz office address identified in Section 7.0, above. The Executive Director or his designee shall grant an extension of deadlines upon a showing of good cause, if the Executive Director or his designee determines that Respondent has demonstrated that Respondent has diligently worked to comply with its obligations under this Agreement but cannot meet deadlines due to unforeseen circumstances beyond its control.

The Executive Director will not extend the end date of the Phase-Out Period unless Respondent (1) was actually prevented from extracting sand during that period, (2) at times of year when they have historically extracted sand, and (3) due to a court order or unprecedented operational impacts from natural phenomenon. Any such extension will not allow Respondent to extract any more sand than the maximum tonnages listed in Section 4.1, above.

A violation of deadlines established pursuant to this Agreement, without an extension, will result in stipulated penalties, as provided for in Section 15.2, below.

14.0 RELEASES

In light of the intent of the parties to resolve these matters in settlement and solely for the purpose of adoption and issuance of this Agreement, Respondent has agreed to withdraw the "Statement of Defense" form it submitted pursuant to Section 13181 of Title 14 of the California Code of Regulations ("14 CCR") and its Claim of Vested Rights, as set forth below, and not to contest the legal and alleged factual bases for, the terms of, or the issuance of this Agreement, including the allegations of Coastal Act violations contained in the Notice of Intent to Commence Cease and Desist and Restoration Order Proceedings dated March 17, 2016. Respondent has also agreed to withdraw any Public Record Act requests made to the California Coastal Commission, State Lands Commission and/or the City of Marina, as set forth below. Specifically, Respondent has

agreed not to contest the issuance or enforcement of this Agreement at a public hearing or any other proceeding.

14.1 Vested Rights Claim

CEMEX hereby withdraws its pending claim of vested rights, which it submitted on May 12, 2017, without prejudice, such withdrawal to become with prejudice upon the latter of the Effective Date of this Agreement, the date the State Lands Commission acts to approve the settlement attached hereto as Exhibit 1, or the City of Marina acts to approve the settlement attached hereto as Exhibit 2. However, if the Commission alleges a breach of this Agreement and pursues judicial remedies for the underlying Coastal Act violations as described herein, Cemex's right to file this claim will be revived.

14.2 Claims

Respondent waives any and all claims it may have against the Coastal Commission, arising on or before the Effective Date of this Agreement.

14.3 Statement of Defense

Respondent hereby withdraws its Statement of Defense, which it submitted on May 15, 2017, without prejudice, such withdrawal to become with prejudice at the same time the withdrawal of Respondent's Claim of Vested rights becomes with prejudice, pursuant to Section 14.1, above. However, if the Commission alleges a breach of this Agreement and pursues judicial remedies for the underlying Coastal Act violations as described herein, Cemex's right to file this statement will be revived.

14.4 Record Requests

Respondent agrees to withdraw any and all existing requests, pursuant to the California Public Records Act or otherwise, that the Commission, State Lands Commission or the City of Marina provide records (broadly defined) to, or otherwise make them available to, Respondent, upon the effective date of such agency's respective settlement agreement with Respondent. Respondent shall also cause any similar requests made by any representative or affiliate of Respondent to be similarly withdrawn. Respondent will also waive any and all claims it may have against the Commission based on the California Public Records Act upon the last effective date of the foregoing agreements. Respondent hereby extends the deadlines for responding to the above-referenced document requests until the respective effective dates.

15.0 RESOLUTION VIA CONSENT SETTLEMENT AGREEMENTS

In light of the desire to settle this matter via this Agreement and avoid litigation, pursuant to the agreement of the parties as set forth in this Agreement, Respondent hereby agrees not to seek a stay pursuant to PRC Section 30803(b) or to challenge the issuance and

enforceability of this Agreement in a court of law or equity, nor to sue the Coastal Commission, the State Lands Commission, or the City of Marina for matters covered hereunder associated with the Site. If Respondent's commitment not to sue the State Lands Commission or the City of Marina creates a conflict with a provision in Respondent's separate agreements with either of those entities, those other agreements govern.

16.0 SETTLEMENT/COMPLIANCE OBLIGATION

16.1 In light of the intent of the parties to resolve these matters in settlement, Respondent has agreed to, among other things: 1) phase out and terminate the Extraction Operation on the Site in accordance with Section 3.3 above; 2) as part of any sale of the Property, to record a deed restriction over the Property to protect it in perpetuity; and 3) sell the Property to a Buyer reasonably acceptable to the Commission pursuant to the terms in Section 6.1, above.

16.2 Strict compliance with this Agreement by all parties subject hereto is required. Failure to comply with any term or condition of this Agreement, including any deadline contained in this Agreement, unless the Executive Director or his designee grants an extension under Section 13.0, will constitute a violation of this Agreement and shall result in Respondent being liable for stipulated penalties in the amount of \$10,000 per day per violation. Respondent shall pay stipulated penalties regardless of whether Respondent subsequently complies. If Respondent violates this Agreement, nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of the Commission to seek any other remedies available, including the imposition of civil penalties and other remedies pursuant to PRC Sections 30820, 30821, 30821.6, and 30822, as a result of the lack of compliance with this Agreement arising on or after the Effective Date and for the underlying Coastal Act violations as described herein.

17.0 SETTLEMENT OF CLAIMS

The Commission and Respondent agree that this Agreement settles all of the Commission's claims for relief from Respondent for the alleged violations of the Coastal Act occurring prior to the Effective Date of this Agreement, (including claims for civil penalties, fines, or damages under the Coastal Act, including under PRC Sections 30805, 30820, 30821, and 30822), provided that the terms and conditions required herein are fully implemented and the obligations of this Agreement are fully satisfied, and with the exception that, if Respondent fails to comply with any term or condition of this Agreement, the Commission may seek monetary or other claims for both alleged violations of the Coastal Act arising on or after the date of this Agreement and for the violation of this Agreement.

18.0 RECORDATION OF THIS AGREEMENT

18.1 Within 30 days after (a) execution of this Agreement by the Commission, (b) execution of the settlement attached hereto as Exhibit 1 by the State Lands Commission, and (c) execution by the City of Marina of the settlement attached hereto as Exhibit 2; Respondent shall record this Agreement against the Property in the County Recorder's Office for the County of Monterey, with a cover page acceptable to the Commission (to facilitate recordation) that does not alter the substance or significance of the recording. To ensure the recordation will occur smoothly, Respondent shall properly notarize this Agreement at the time the document is signed by Respondent, RMC Pacific Materials, LLC d/b/a/CEMEX. The Executive Director will also properly notarize the Agreement at the time the document is signed by the Executive Director. This Agreement may be executed in counterparts.

18.2 The cover page for the recorded document shall indicate that, once recorded, the original recorded document shall be mailed to the Commission, attention of Justin Buhr, at the address listed in Section 7 of this Agreement. Respondent shall also provide a certified copy evidencing the recordation of this Agreement within one week of the recordation.

18.3 Upon request by Respondent, once Commission staff has determined that Respondent has fully complied with this Agreement, Commission staff will mail a clearance letter to Respondent. After receiving such clearance letter from Commission staff, if Respondent wishes to have the recordation of the Agreement rescinded, Respondent shall prepare a rescission document analogous to the procedure described in PRC section 30812(f), for the review and written approval by the Executive Director, and may only record such document upon receiving such approval.

19.0 LIMITATION OF AUTHORITY

Except as expressly provided herein, nothing in this Agreement shall limit or restrict the exercise of the Commission's enforcement authority pursuant to Chapter 9 of the Coastal Act, including the authority to require and enforce compliance with this Agreement and the authority to take enforcement action for Coastal Act violations beyond those that are specified in Section 3.2 of this Agreement. Failure to enforce any provision of this Agreement shall not serve as a waiver of the ability to enforce those provisions or any others at a later time.

Except as to Respondent's agreement not to contest the issuance or enforcement of this Agreement at a public hearing or any other proceeding and as indicated in Section 14.2, Respondent is not waiving any legal rights, positions, or defenses, or conceding any factual matters, by entering into this Agreement; and Respondent retains the right to assert all of its legal rights, positions, and defenses, and present all facts and evidence in support thereof, in any proceeding (other than the proceeding contemplated hereby to issue this Agreement, any proceedings for its enforcement, or a proceeding against the Commission asserting claims waived in Section 14.2) for any purpose by or before the

Commission, any other governmental agency, any administrative tribunal, any third-party, or a court of law. The Commission shall not assert in any such other proceeding that Respondent has waived any of its rights, positions, or defenses, or conceded any facts, by virtue of its entering into this Agreement, other than those expressly waived by this Agreement, including in Sections and 11.0 and 14.2.

20.0 SEVERABILITY

Should any provision of this Agreement be found invalid, void or unenforceable, such illegality or unenforceability shall not invalidate the whole, but this Agreement shall be construed as if the provision(s) containing the illegal or unenforceable part were not a part hereof.

21.0 GOVERNMENT LIABILITIES

Neither the State of California, the Commission, nor its employees shall be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent in carrying out activities pursuant to this Agreement, nor shall the State of California, the Commission or its employees be held as a party to any contract entered into by Respondent in carrying out activities pursuant to this Agreement.

22.0 GOVERNMENT JURISDICTION

This Agreement shall be interpreted, construed, governed, and enforced under and pursuant to the laws of the State of California.

23.0 CONTRACTUAL OBLIGATION

23.1 This Agreement constitutes both an administrative order issued to Respondent personally and a contractual obligation between Respondent and the Commission, and therefore shall remain in effect until all terms and conditions are fulfilled regardless of whether or not Respondent owns any portion of the Property, except as otherwise set forth in Section 5.3.D, above.

23.2 Notwithstanding anything in this Agreement to the contrary, this Agreement is not intended to and shall not be construed or deemed to supersede or interfere with any existing rights or obligations of California-American Water Company, a California corporation ("Cal Am") related to the Property, including, but not limited, to the recorded easement and related option in favor of Cal Am and does not require the removal of such easement and related option. Respondent expressly reserves and does not waive or relinquish any rights it may have against Cal Am for funding and/or completion of reclamation requirements related to the Property pursuant to any agreement with Cal Am or the Surface Mining and Reclamation Act.

24.0 SUCCESSORS AND ASSIGNS

