

Case File Number DET170053-A01

September 18, 2019

Location:	685 85 th Avenue – See map on reverse
Assessor's Parcel Numbers:	042-4318-008
Proposal:	Appeal of a determination from the Zoning Manager that found a rock and concrete crushing activity at the site is: 1) classified as Heavy/High Impact Manufacturing Industrial Activities in the Planning Code, and 2) not a legal nonconforming activity.
Applicant:	William Crotinger /Sean R Marciniak, Miller Starr Regalia
Appellant:	William Crotinger /Sean R Marciniak, Miller Starr Regalia
Case File Number:	DET180082-A01
Planning Permits Required:	None
General Plan:	Commercial Industrial Mix and General Industrial
Zoning:	Commercial Industrial Mix - 2 (CIX-2) Zone and Industrial and General Industrial Zone
Environmental Determination:	Categorically Exempt under California Environmental Quality Act (CEQA) Guidelines Section 15306, Information collection
Historic Status:	Non-Historic Property
City Council District:	7
Status:	The zoning determination letter was mailed on July 25, 2017 and again on February 02, 2018; Project appealed on November 3, 2018.
Staff Recommendation:	Deny the Appeal and uphold the Zoning Manager's determination.
Finality of Decision:	Final (cannot be appealed to the City Council pursuant to Section 17.132.030 of the Planning Code)
For Further Information:	Contact case Planner Moe Hackett at (510) 238-3973 or mhackett@oaklandca.gov

SUMMARY

This item is an appeal of a zoning determination that a rock and cement crushing, sorting, and processing facility was illegally expanded into a warehouse on a neighboring parcel. Staff recommends denial of the appeal because the activity is not permitted in the Commercial Industrial Mix - 2 (CIX-2) Zone and the Appellant has not demonstrated, based on substantial evidence in the record, that there was an error or abuse of discretion made by the zoning manager in the determination.

BACKGROUND

On July 16, 2013, the Bureau of Planning Issued a Zoning Clearance (ZC131567), on the basis that an existing rock and concrete crushing and processing operation at 8291, 8300, and 8304 Baldwin Street (Site 1) was a legal, nonconforming activity. This determination was based on evidence showing the business was “grandfathered” because it started when the site was within the M-40 Heavy Industrial Zone, which permits the activity. In 2008, the Zoning at the site changed from M-40 to Commercial Industrial Mix-2 (CIX-2), which does not permit the activity (see Zoning Analysis, below).

At some point between June 9, 2014 and May 11, 2015, two holes were created on the side of a warehouse on an adjacent parcel at 685 85th Avenue (Site 2) to accommodate a machine for conveying rocks and concrete from Site 1 for sorting, storage, and further crushing. Staff determined this time-period on aerial images of the site located on Google Earth. The holes in the warehouse were created without the benefit of permits, and the issue is currently being investigated by code enforcement within the Building Bureau. Site 2 was also rezoned to CIX-2 in 2008. A site visit by staff from both the Bureaus of Planning and Building on August 30, 2019 confirmed that sorting, storage, and rock and concrete crushing were being performed within the building on Site 2.

A Zoning Manager’s determination letter was requested on July 13, 2018 by William Crotinger and Sean Marciniak of Miller Starr Regalia, the attorneys for the operator of the rock and concrete crushing and processing operation (see Attachment A). This request was in response to a Notice of Violation issued by the City regarding the rock and concrete processing and crushing in the structure on Site 2.

Staff determined that the Zoning Manager considers the operation to be a Heavy/High Impact Industrial Activity under Chapter 17.10 of the Planning Code (see Attachment B for the October 29, 2018 determination letter). The determination further stated that expansion of the operation would require a Major Conditional Use Permit (a recent review of the letter determined that the activity is not permitted within the CIX-2 Zone at 685 85th Avenue; therefore, the expansion would require a Major Variance to expand. This issue is further discussed in the Zoning Analysis Section of this report). The determination letter stated that the expansion into the warehouse at Site 2 was performed without the benefit of permits and must be legalized or the activity vacated.

The applicant appealed the determination on November 13, 2018 (see Attachment C for the Appeal). The appeal is the subject of this report. Per Section 17.132.020 of the City of Oakland Planning Code, to uphold the appeal, the Planning Commission must determine that an error or abuse of discretion was made by the Zoning Manager or the Zoning Manager’s decision is not supported by evidence in the record. The arguments raised by the Appellant are summarized below in the “Basis for the Appeal” portion of this report, along with City staff’s response to each argument.

PROPERTY AND NEIGHBORHOOD DESCRIPTION

There are two sites in question: three parcels with the legal, nonconforming rock and concrete crushing operation at 8291, 8300, and 8304 Baldwin Street (Site 1) and the parcel that received the expansion at 685 85th Avenue (Site 2). Site 1 is 167,792 square-feet of open area that contains no structures, except for two small office areas. It contains large piles of concrete, truck routes, and machines for the crushing, sorting, and movement of rocks and concrete. Site 2 has an area of 204,276 square feet. This parcel is almost completely covered by a single large industrial building, which also contains machines that sort, crush, and move rocks and concrete. The industrial building also contains piles of sorted rocks and concrete. The context of the surrounding area is industrial, consisting of mostly large utilitarian buildings and open lots of varying sizes. The nearest residential areas are over 1,900 feet away.

ZONING ANALYSIS

Site 1 is entirely in the CIX-2 Industrial Zone. Site 2 is also within the CIX-2 Industrial Zone, except for the front approximately 180 feet of the property, which is in the General Industrial (IG) Zone. This zoning analysis will only consider the regulations of the CIX-2 Zone because the activity was expanded to the area of the parcel with that designation.

The CIX-2 Zone is intended to create, preserve, and enhance industrial areas that are appropriate for a wide variety of commercial and industrial establishments. It allows for a large custom, light, and general manufacturing with certain limitations relating to distance from residentially zoned areas.

Staff determined that the crushing and processing of concrete and rocks at the site is categorized within the Heavy/High Impact Manufacturing Industrial land use classification. Section 17.10.580 of the Planning Code describes this classification as the following:

Heavy/High Impact Manufacturing Industrial Activities include high impact or hazardous manufacturing processes. This classification also includes certain activities accessory to the above, as specified in Section 17.10.040. Examples of activities in this classification include, but are not limited to, the following:

- A. Any manufacturing use with large-scale facilities for outdoor oil and gas storage;
- B. Any biotechnology research, development or production activities involving materials defined by the National Institute of Health as Risk Group 4 or Restricted Agents (commonly known as "biosafety level 4");
- C. Battery manufacturing and storage;
- D. Lime and gypsum products manufacturing;
- E. Non-ferrous metals production, processing, smelting and refining;
- F. Painting, coating and adhesive manufacturing;
- G. Synthetic dye and pigment manufacturing;
- H. Urethane and other open-cell foam product manufacturing;
- I. Petroleum and coal products manufacturing and refining;
- J. Primary metal smelting;
- K. Vinegar, yeast and other pungent, odor-causing items production;
- L. Leather tanning;
- M. Cement and asphalt manufacturing (emphasis added);
- N. Explosives manufacturing;
- O. Fertilizer and other agricultural chemical manufacturing.

Staff determined this classification, which includes cement and asphalt manufacturing (underlined above), because it most closely describes the proposed activity and due to the loud noises and dust produced by cement and rock crushing, sorting, and processing. The activity on Site 2 is particularly hazardous because of the concentration of exhaust from the machines and the dust created by the rock crushing and sorting within a building. This determination is consistent with how the activity at other locations has been classified in the past. No other classification mentions the processing of cement.

This activity is not permitted in the CIX-2 Zone and, therefore, requires a Variance to operate. Section 17.148.020 states that Variances involving activities are considered Major and, thus, require a decision by the Planning Commission. Examples of activities permitted in the CIX-2 Zone include General Warehousing Storage and Distribution and Custom, Light, and General Manufacturing Industrial Activities.

Note that the determination letter incorrectly stated that the expansion required a Major Conditional Use Permit to expand into Site 2. Recent review of the issue determined that the activity is not allowed in the CIX-2 Zone and, therefore, requires a Major Variance to operate.

ENVIRONMENTAL DETERMINATION

The California Environmental Quality Act (CEQA) Guidelines statutorily and categorically exempts specific types of projects from Environmental Review. The zoning determination is Categorically Exempt under California Environmental Quality Act (CEQA) Guidelines Section 15306, Information Collection.

BASIS FOR APPEAL

The appellant filed a timely Appeal of the Zoning Manager's determination on November 13, 2018. The following describes the issues raised in the appeal and staff's response. The issues are in **bold** staff response are in *italic*.

- 1) **The zoning determination letter incorrectly frames our client's request. The City's letter indicates it was prepared "in response to [our] request for a zoning determination to expand ... the current activity to include facilities located at 685 85th Avenue (adjacent building)." We did not request that the City determine whether our client's "expansion" into the warehouse was lawful because, simply, our client never expanded into the warehouse. Silverado and the concrete recycling company operated on the premises before it, always used the entirety of the warehouse as an integral part of their recycling activities. It seems the City misunderstood the facts and the nature of our request.**

Staff Response

In the process of developing the determination, a site visit was made August 30, 2019, that confirmed the expansion of the activities on Site 1 onto Site 2. Staff would have been remiss not to note this in the determination and order termination of the violation. The scope of the determination letter is staff's decision to make, even if it is beyond that requested by the applicant.

Staff determination that the rock and concrete crushing activities expanded into the warehouse after the 2008 rezoning of the property is based on the scope of the 2013 Zoning Clearance, which did not include Site 2, and aerial imagery from Google Earth that clearly showed two openings created in the building between June 9, 2014 and May 11, 2015 to accommodate the conveyance of rocks and concrete from Site 1. Attachment D shows these images and describes how staff determined when the activity was expanded into Site 2. Note that these openings were created without the benefit of a building permit and the violation is currently under code compliance investigation with the Bureau of Building as well.

A site visit from Planning staff last winter confirmed the holes in the wall and the conveyers entering the warehouse. On a second site visit with staff from the Bureau of Building on August 30, 2019, staff witnessed rocks and concrete conveyed into the warehouse and sorted depending on size (see Attachment E for photographs of a hole in the wall, conveyor belts entering the warehouse, and the operation of machines crushing and processing rock and concrete within the warehouse). The larger rocks and concrete were further crushed within the warehouse. Staff also witnessed the hazardous indoor air quality condition produced as a result of the indoor rock crushing activities.

The appellant states that Site 2 had been used as storage for the recycling prior to the 2008 rezoning. However, since Site 2 is on a separate parcel, the activity must be classified separately from the activity on Site 1 (see 17.10.040 of the Planning Code). Therefore, prior to the expansion, the operation on Site 2 was classified as General Warehousing, Storage, and

Distribution Industrial Activities (see Section 17.10.583 of the Planning Code), which is permitted in the CIX-2 Zone and prior zoning.

However, the conveyance of the rocks across a property line and into the warehouse changed the activity on Site 2 to Heavy/High Impact Manufacturing Industrial Activity after the 2008 rezoning of the property to CIX-2. As discussed in the Zoning Analysis section, above, this activity is not permitted in the CIX-2 Zone. Like the operation on Site 1, the processing, sorting, and crushing of rocks is considered Heavy/High Impact Manufacturing Activities because of the creation of noise and dust impacts and this classification most closely describes the operation.

In sum, the Heavy/High Impact Manufacturing Industrial Activity began on Site 2 after the 2008 rezoning to CIX-2, this activity is not permitted in the CIX-2 Zone, and is, therefore neither legal nor conforming. Staff has not found any Zoning Clearance or land use entitlement allowing this activity on Site 2.

- 2) **The current warehouse uses are not materially different than what occurred under prior zoning. One of the requests in our letter was to determine that Silverado's warehouse operations were legal, non-conforming uses because this activity preceded the City's rezoning of the property in 2008, replacing an industrial (M-40) district with a mixed commercial /industrial (CIX-2) zone district. With this change, certain heavy industrial uses were no longer permitted on the property. As detailed in our request for a zoning determination letter, the warehouse has always been used in conjunction with concrete recycling that occurred in the outdoor yard at 8291-8304 Baldwin Street, both before and after the City's zoning change in 2008.**

Staff Response

See response #1. According to the appeal, warehousing occurred for the rock and concrete operation prior to the rezoning. As described above, rock sorting, processing, and crushing started after the rezoning and are considered Heavy/High Impact Manufacturing Industrial Activities, which is not permitted in the CIX Zone.

- 3) **The zoning determination letter did not acknowledge the extensive evidence provided by Silverado of the warehouse's historical use. The City's zoning determination letter does not seem to acknowledge or account for the great deal of evidence that Silverado submitted to show the warehouse was used for recycling activities prior to the City's rezoning action in 2008. The evidence includes old lease material, declarations by employees of the previous recycling operator, sign under penalty of perjury; and Alameda County records, all of which show the warehouse has been used, for more than a decade, to store recycling equipment and materials, and for the repair of heavy recycling equipment. We consulted Bay Area planners, who have indicated such evidence is routinely accepted as proof of a legal, non-conforming use, and have attached a letter by a former City of Oakland planner that confirms this practice.**

Staff Response

As mentioned in response #1, since Site 2 is on a separate parcel, the activity on that site must be classified separately from the activity on Site 1 (see 17.10.040 of the Planning Code). Therefore, before the rock crushing, sorting, processing activities began, the operation on Site 2 was classified as General Warehousing, Storage, and Distribution Industrial Activities, which was permitted in the CIX-2 Zone and prior zoning. The expansion of the Heavy/High Impact Manufacturing Industrial Activities to Site 2, however, occurred after the 2008 rezoning. This activity is not permitted in the CIX-2 Zone, and is, therefore, neither conforming nor legal.

- 4) Both The zoning determination letter did not address, all, our client’s claim that Silverado’s indoor operations are permitted by right. Staff’s position has been that past Zoning Clearances only address Silverado’s outdoor activities, which staff determined were Heavy Industrial Uses, whereas we presented substantial evidence that Silverado’s indoor uses are Light Industrial or General Industrial Uses, which are permitted by right in CIX-2 districts. This issue was not addressed in the City’s zoning determination letter.

Staff Response

Staff agrees that the General Warehousing Industrial Activities, when not in conjunction with the Heavy/High Impact Manufacturing Industrial Activities, is permitted in the CIX-2 Zone. However, the crushing, sorting and processing of rock and concrete in the indoor warehouse are classified as Heavy/High Impact Manufacturing Industrial Activities, which are not permitted in the subject zone. Rock and concrete crushing, sorting and processing are classified as Heavy/High Impact Manufacturing Industrial Activities because of its noise and dust impacts and the classification most closely describes the activity. Further, the activity on Site 2 is hazardous due to the concentration of exhaust from the machines and the dust created by the rock crushing and sorting within a building. Staff witnessed this hazardous condition when they visited the site on August 30, 2019. In 2013, the Zoning Manager determined that Heavy/High Impact Manufacturing Activities was the appropriate classification for the operation. This determination was not contested by the applicant.

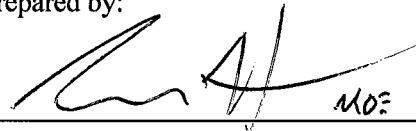
CONCLUSION

The Appellant has not demonstrated, based on substantial evidence in the record, that there was an error or abuse of discretion made by the Zoning Manager in the determination. Staff made the appropriate interpretation of Use Classification in the Planning Code, and the established history of the operation and actual, present-day site condition (based on Staff’s site visit) demonstrate illegal and nonconforming activities at Site 2.

RECOMMENDATIONS:

- For approvals: 1. Deny the Appeal, thereby upholding the Zoning Manager’s determination of unpermitted activities at 685 85th Avenue.

Prepared by:



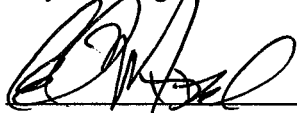
MOE HACKETT
Planner II

Reviewed by:



ROBERT MERKAMP
Zoning Manager

Approved for forwarding to the
City Planning Commission:



EDWARD MANASSE
Deputy Director
Bureau of Planning

ATTACHMENTS:

- A. July 13, 2018 Request for Determination
- B. October 29, 2018 Determination Letter
- C. November 13, 2018 Appeal of Determination Letter
- D. Google Earth aerial imagery demonstrating expansion into Site 2
- E. Photographs of conveyer belt entering the warehouse and the rock crushing machine operating within the warehouse.

LEGAL NOTICE:

ANY PARTY SEEKING TO CHALLENGE THIS DECISION IN COURT MUST DO SO WITHIN NINETY (90) DAYS OF THE ANNOUNCEMENT OF A FINAL DECISION, PURSUANT TO THE CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 1094.6, UNLESS A SHORTER PERIOD APPLIES.



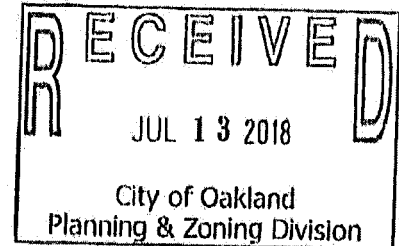
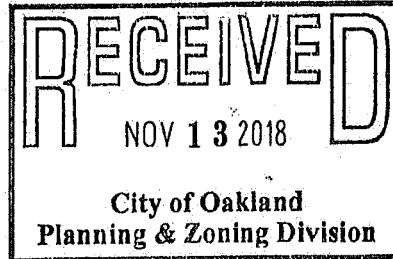
**MILLER STARR
REGALIA**

1331 N. California Blvd.
Fifth Floor
Walnut Creek, CA 94596

T 925 936 9400
F 925 933 4126
www.mslegal.com

Sean R. Marciniak
sean.marciniak@msrlegal.com

July 13, 2018



Robert Merkamp
Zoning Manager
City of Oakland
Planning and Building Department
250 Frank H. Ogawa Plaza, Ste. 2340
Oakland, CA 94612-2031
Email: RMerKamp@oaklandnet.com

Re: Request for Zoning Determination Letter in relation to 685 85th Avenue;
Code Enforcement Case No. 1704270

Dear Mr. Merkamp:

Miller Starr Regalia represents Silverado Contractors, Inc. and Argent Materials, Inc. (collectively, "Silverado") in their recycling operations at 685 85th Avenue and 8291-8304 Baldwin Street in the City of Oakland.¹ In February 2018, the City issued a Notice of Violation ("NOV") concerning these properties, alleging in part that on-site operations were inconsistent with present zoning. Miller Starr Regalia appealed the NOV, on Silverado's behalf, on March 9, 2018.

On July 3, 2018, Administrative Manager Sandra Smith sent us a letter, setting forth the City's process for adjudicating a zoning appeal. In that letter, she indicated the next step to appeal the City's alleged zoning violation would be for Silverado to request a zoning determination letter from you. This letter constitutes such a request.

I. Request that City determine Silverado's outdoor and indoor activities are legal, nonconforming uses.

We hereby request that the City determine that Silverado's recycling operations are lawful. Insofar as these recycling operations occur at 8291, 8300, and 8304 Baldwin Street and 685 85th Street (collectively, "the Properties"), these are legal, nonconforming uses. These operations were permitted by right prior to June 17, 2008, when the City changed the Properties' zoning from an industrial

¹ The assessor parcel numbers for 8291, 8300 and 8304 Baldwin Street are, respectively, 042-4318-044, 042-4318-043, 042-04317-042. The assessor parcel number for 685 85th Avenue is 042-4318-008.

(M-40) district to a CIX-2 (Commercial Industrial Mix – 2) district, and have been conducted continuously since at least 1998.

In support of these determinations, we hereby incorporate by reference the contents of our March 9, 2018 Appeal Letter and each of its 14 exhibits. In addition, we have included in this correspondence additional evidence to support our conclusions that Silverado's operations on each of the Properties are legal, nonconforming uses. These conclusions are explained and evidenced below.

II. Silverado's use of the three outdoor parcels and the warehouse are all legal, nonconforming uses.

A. *Brief summary of Silverado's uses.*

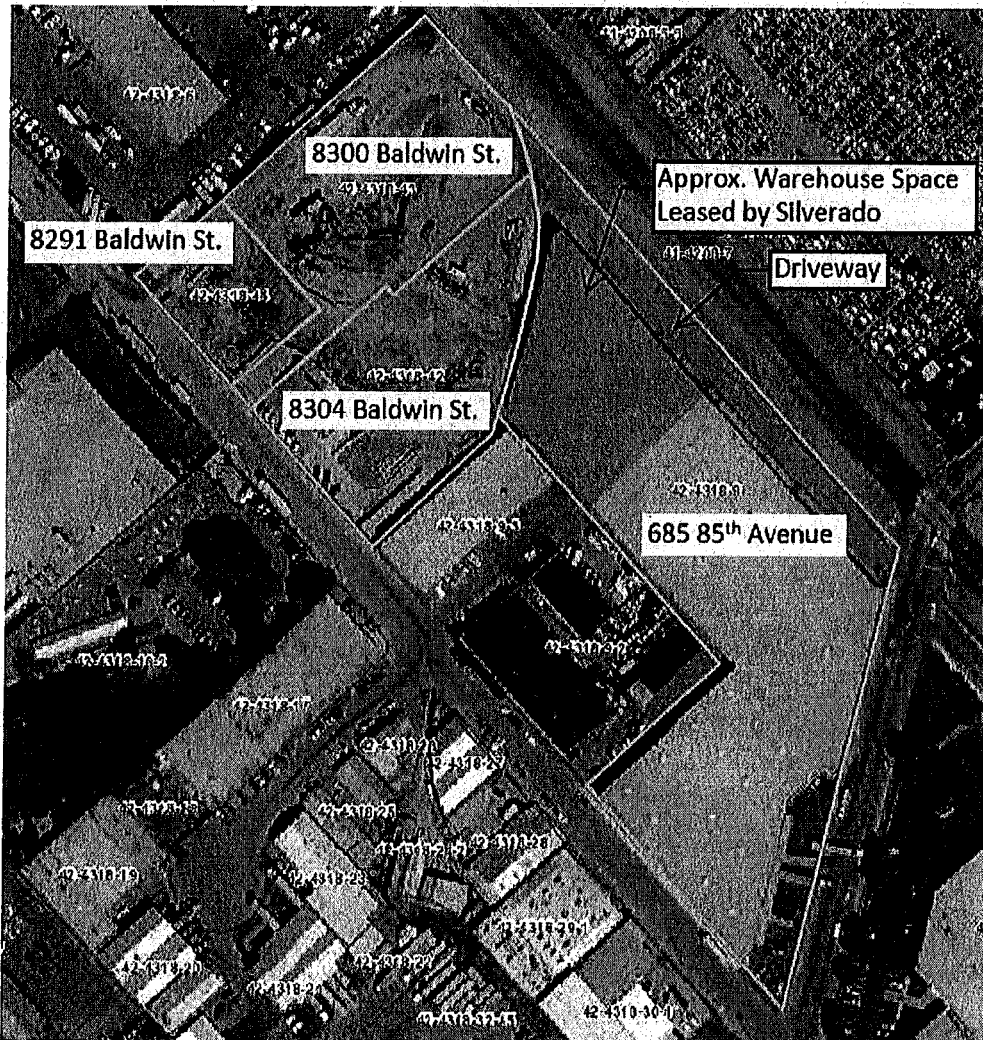
Silverado accepts the delivery of concrete and asphalt from trucks which ingress onto the Properties from 85th Avenue. In the site's yard, materials are unloaded from vehicles, stockpiled, and broken into softball-sized rocks by a mechanical crusher. Depending on market demand, these softball-sized rocks are either sold directly to Silverado's customers, or sent to Silverado's warehouse space for secondary processing and sorting. This warehouse space accommodates the secondary processing and sorting equipment, which takes up less than 16,000 square feet of the 40,000-square-foot indoor area.

After being processed and sorted into smaller aggregates, the materials are stored and made available for pickup by customers in the remaining 24,000 square feet of warehouse space, as well as in outdoor storage areas. Both the indoor and outdoor spaces are also used for the storage and repair of heavy equipment.

Ultimately, the yard and warehouse, and each of the four legal lots they occupy, are operated as an integrated whole, and together allow Silverado to recycle about 425,000 tons of aggregate annually. In past years, Silverado has taken down and recycled enormous projects such as the Bay Bridge and Candlestick Park, and diverted recycled building materials back into local construction projects. Silverado's customers consist largely of utilities, cement suppliers, and contractors (including general engineering, underground, demolition, and paving contractors), and its recycled products are used in a variety of applications, including as components of infrastructure projects (e.g., road and utility beds) and as ingredients in other products (e.g., concrete).

Silverado's recycling center is located in an industrial area of the City near Interstate 880, set amid railroad tracks, a junkyard (used to source recycled car and truck parts), and other industrial uses. The nearest residential homes are located thousands of feet away, and Silverado's immediate neighbors are the Golden Gate Truck Center, the East Bay SPCA, and various cannabis-related businesses.

For convenience, we have included an annotated map of all the Properties:



Over the past several years, Silverado's operations have become increasingly important for the Bay Area construction economy as a source of aggregate. Historically, this material was available from a number of quarry and aggregate mining activities, scattered throughout the Bay Area — some in rivers and other wetland areas. One by one, almost of all these quarry have closed, primarily for environmental reasons, but the construction need for materials has increased significantly. Silverado's operation provides a source of vitally important aggregate close to urban construction needs, without the accompanying environmental damage of quarry in rural areas.

B. ***Silverado's predecessor conducted the same type of recycling operations, on all three outdoor parcels and within the warehouse.***

Each of the outdoor and indoor spaces that Silverado uses for recycling operations was used by a predecessor that conducted similar, integrated recycling operations, and did so before the City's rezoned the area in 2008. Here are the relevant facts:

- Silverado is not the first recycling business to use the Properties to process asphalt and concrete. Since at least the late 1990s, two sister companies — Aman Environmental Construction, Inc. and the Cleveland Wrecking Company ("Aman") — had performed and supported the same recycling operations, turning asphalt and concrete into reusable products. (See Appeal Letter, Exhibit 2, ¶ 7.)
- Aman occupied, and used in an integrated manner, the entirety of 8291, 8300, and 8304 Baldwin Street and a portion of 685 85th Avenue, including the 40,000-square-foot warehouse space. There is a great deal of evidence to support this conclusion, including:
 - **A copy of Aman's lease with the owner of the Properties**, which shows Steve Aman and his companies had the right to use all of the outdoor portions of the Properties since 1998, and rights to use the warehouse space starting in November 27, 2006. (See Attachment 1, [see Recital A, which covers the outdoor space, and Paragraph 1, which gave Aman rights to use 40,000 square feet of building space at 689-691 85th Avenue²].)
 - **Eyewitness statements of people who worked for and with Aman, signed under penalty of perjury.** These documents include the statements of workers employed by Aman and a third-party trucking company, who utilized the Properties on a frequent basis. (See Attachment 2a-2c.) These individuals, which include an operations superintendent, a site foreman, and a truck driver who regularly delivered equipment to the site, report that the outdoor areas were used to crush rock, whereas the warehouse was used for storage (e.g., the storage of recyclable materials, equipment and hazardous materials) and as a shop to repair heavy equipment (e.g., through welding and other processes) — all of which were integral to Aman's recycling operations. The recollection of these individuals is consistent with the recollection of William J. Torres, the former president of an affiliate to Aman, who provided a declaration in

² The 689-691 85th Avenue is a street address used to describe the same warehouse that the 685 85th Avenue address describes. We are unaware as to how the street addresses were assigned, but can confirm it is all the same property.

support of our March 9, 2018 Appeal Letter. (Appeal Letter, Exhibit 2, Torres Decl., ¶¶ 2-7.)

- **Government documents, showing usage of the warehouse by Aman.** Various government forms and other documents show the warehouse was in use by Aman prior to the City's rezoning action in June 2008, including:
 - A June 14, 2007 hazardous materials reporting form that Aman submitted to the Alameda County Department of Environmental Health, which confirms that diesel, oil, hydraulic fluid, propane, spray paint, and waste oil were kept in the warehouse. (See Attachment 3.)
 - A June 8, 2007 Hazardous Materials Inspection Report, which shows the warehouse was used to store diesel, propylene, and used oil. (See Attachment 4 [reference to "shop bldg" in northeast corner of property].) The warehouse is referred to as a "shop" in this document, which is consistent with recollections by Aman employees that the warehouse was used, in part, as a shop to repair heavy machinery. (See Attachment 2a, ¶ 9; see also Attachment 2b, ¶ 10.)
- **Historical satellite imagery.** Satellite photos confirm that land within all corners of the yard at the Baldwin Properties has been occupied with recycling activities since at least 1998. (See Appeal Letter, Exhibit 3 [historical satellite photos of Properties compiled from Google Earth; Exhibit 4] [satellite photos of site maintained by City].) More specifically:
 - Comparing a satellite photo taken on May 31, 2007 (a year before the City's rezoning of the site) and a satellite photo taken within the past two years, one can see that the Properties have been used in substantially the same way by Aman and Silverado. (See Attachment 5.) For instance, the location of recyclable material piles and internal circulation routes occupy virtually the same footprints. (See *id.*)
 - When one overlays lot lines on satellite imagery, which is possible using Alameda County's online Parcel Viewer application,³ one can see that the onsite operations are not severable by legal lot lines. (See Attachment 6.) For instance, in numerous places, machinery and internal circulation routes straddle multiple lot lines, demonstrating

³ See http://gis.acgov.org/Html5Viewer/index.html?viewer=parcel_viewer.

Robert Merkamp
City of Oakland
Planning and Building Department
July 13, 2018
Page 6

that operations were never confined to APN 42-4318-43, the legal designation for 8300 Baldwin Street. (*See id.*)

We recognize that some City documents indicate that legal, nonconforming uses occurred at "8300 Baldwin," without mention of the three other, associated Properties. However, it appears that "8300 Baldwin" was used as shorthand for multiple properties, as was the case in the hazardous material reports sent by Aman to the County. Even the City's own documents suggest there was a conflation of the Properties. For instance, while the City's most recent zoning determination indicates that prior Zoning Clearances were issued only for 8300 Baldwin Street, and not for the remaining parcels that comprise the Properties (*see* Appeal Letter, Exhibit 6), the staff worksheet that supports these Zoning Clearances suggests they cover the business' entire operations on all parcels. (*See* Appeal Letter, Exhibit 9 [5/16/12 staff worksheet indicates legal, nonconforming determination applies to "business," not a particular property].) City inspection notes, meanwhile, confirm that the 2013 Zoning Clearance at least "covers 3 open parcels centered [on] 8300 Baldwin and rear driveway thru 685 85th Avenue behind warehouse ..." (*See* Appeal Letter, Exhibit 11 [1/5/18 Inspector Notes, as referenced in 1/19/18 email from Audree V. Jones-Taylor to City].)

Regardless of what past Zoning Clearances state, the evidence presented here is substantial, and would support any determination by the City that Silverado's activities on the site are legal nonconforming uses.

Specifically, rock crushing and other recycling activities conducted on each of the outdoor spaces were also conducted by Aman prior to the City's zoning change in June 2008. Meanwhile, Silverado uses the same exact warehouse space in support of recycling activities that Aman used prior to June 2008. The only difference is that Silverado uses 16,000 square feet of the warehouse for secondary processing and sorting activities, whereas Aman used this space for storage (e.g., the storage of recyclable materials, equipment, and hazardous materials) and the repair of heavy equipment. The remaining 24,000 square feet of warehouse space has been used by both Silverado and Aman for the storage of equipment and materials and the repair of heavy equipment.

While the nature of these recycling activities are somewhat different, the Oakland Planning Code only prohibits changes that either increase the footprint of or relocate a nonconforming use (OPC, § 17.114.080(A); *see* more extensive discussion in our March 9, 2018 Appeal Letter.)

First, Silverado's use of the 16,000-square-foot portion of the warehouse for processing and sorting of materials does not constitute an increase in size. Silverado currently uses the same exact indoor space that Aman used prior to the City's rezoning of the site in 2008, and the footprint of operations has never changed.

Second, Silverado never relocated its operations to an area that was not previously used for recycling, but instead reconfigured its existing, industrial space. In determining the meaning of words used in the City's Municipal and Planning Codes, section 1.04.020 of the Municipal Code provides that "[a]ll words and phrases shall be construed according to the common and approved usage of the language." Accordingly, Merriam-Webster's dictionary defines "relocate" to mean "establish or lay out in a *new* place." The term "reconfigure," meanwhile, means "to change the way (something) is arranged or prepared for a particular purpose." The difference, then, is that "relocating" a use contemplates moving an activity into a space that was previously unoccupied, or was occupied with a completely different land use, whereas "reconfiguring" a land use merely contemplates the rearrangement of similar activities within space that is already occupied. Silverado has *reconfigured* its operations within the same footprint Aman used, and has not *relocated* any uses to a space that Aman did not previously use in its recycling operations.

While zoning laws can be precise, it is not the practice of cities and counties to supervise a property owner's exact configuration of activities on a square-foot by square-foot basis. So long as these activities are in the same land use category, agencies generally shy away from the micromanagement of operations.⁴ For instance, in a restaurant, the City's zoning code is unconcerned about the configuration of tables and chairs and cooking space so long as the property is zoned for restaurant use. (See, e.g., OPC, § 17.73.020 [restaurants permitted in CIX-2 zones, without discussion of restaurants' internal components]; see also OPC, §§ 17.10.272, 17.10.274 [City's definitions of restaurants do not address specific locations of kitchens, seating, and other component activities, but are concerned with establishing larger categories of use].) Similarly, in a big box retail store, the City's zoning does not control in which aisles a product is stored or sold, so long as the site has commercial zoning. (See, e.g., OPC, § 17.73.020 [certain retail stores, including General Wholesale Sales, permitted in CIX-2 zones, without discussion of location of component operations]; see also, e.g., OPC, §§ 17.10.340, 17.10.345, 17.10.430 [City's definitions of retail stores do not address specific locations of sales areas, ancillary office uses, and other operational activities].) In each of the above examples, reconfiguring a site by moving seating or sales displays does not change or alter the land use.

⁴ It is more the function of the building code, and its enforcement, to ensure that specific activities are conducted in specific locations, but only to the extent necessary to make sure these activities are conducted in a safe manner. In this instant enforcement action, there is no allegation that Silverado's indoor land use activities violate the building code. The building code violation alleged by the City concerns the structural integrity of two openings to the warehouse but, as discussed in the City's July 3, 2018 letter, this violation is to be addressed once the zoning issues are resolved. Please note, a structural engineering firm, FBA Inc., has determined these "openings do not structurally compromise either the vertical load carrying ability or the lateral stability of the warehouse structures." (March 9, 2018 Appeal Letter, Exhibit 8.)

Robert Merkamp
City of Oakland
Planning and Building Department
July 13, 2018
Page 8

Here, Silverado's situation is analogous. Where, specifically, Silverado stores materials or conducts processing activities on the site, and whether it shifts operations around, does not alter the site's use. After all, the footprint of the large debris pile in the center of the site changes on a daily basis, based on how much recyclable material is imported and recycled on that specific day. Furthermore, until a few years ago, Aman and Silverado used portable crushing and processing equipment, meaning the configuration of the site changed frequently. Recycling is a dynamic operation, and necessarily must be permitted to change — and we believe the City's code reflects this.

In accordance with the above, we are requesting the City determine all of Silverado's activities are legal and nonconforming.

C. *In the alternative, Silverado's warehouse uses are permitted by right in CIX-2 Zones.*

If the City determines that Silverado's processing and sorting activities in the 16,000-square-foot portion of the warehouse at 685 85th Avenue constitute a relocation of uses, as opposed to a reconfiguration of its operations, we request that the City determine these warehouse activities are permitted by right under current zoning.

Prior to June 2008, when the City rezoned the area, Silverado's operations would have qualified as an Intermediate Recycling Processing Facility, which was defined as an "activity serving as a collection point for receiving, processing, storage, and distribution of large quantities of recyclable materials delivered from recycling collection centers or other sources." (Former OPC, § 17.10.586.) This term contemplated that recycling activities would be "processed entirely indoors." (Appeal Letter, Exhibit 12, p. 6 [December 2, 2008 Staff Report to the Community and Economic Development Agency].) On March 17, 2009, the City Council deleted this industrial subclassification through its adoption of Ordinance No. 12923, with the understanding that the City would "revert to the previous practice of considering such businesses as manufacturing (light, general or heavy/high impact, depending on the nature of the operations)." (See *id.*) The proper approach, then, is to consider the scope of Silverado's operations and, based on the specific facts, determine whether it qualifies as a light, general, or heavy industrial use.

The secondary processing and sorting of the "softball-sized" rocks in the warehouse, as well as their storage, properly qualify as either a General Manufacturing Industrial Activity or a Light Manufacturing Industrial Activity, both of which are permitted by right in CIX-2 and IG Zones. (OPC, Table 17.73.020.)

Turning to the facts, Silverado's processing and sorting operations within the warehouse consist of the processing and sorting of small, recycled stones into smaller stones, gravel, and sand. These are not "high impact" or "heavy" manufacturing activities, given that (1) these activities fit within less than 16,000

square feet of indoor space (whereas the remaining ~24,000 square feet of warehouse space is devoted to access and the storage of product, as well as the repair of equipment), and thus do not involve "large-scale facilities;" and (2) these activities do not produce noise, vibration, air pollution, a fire hazard, or noxious emissions that would violate the standards set forth in Chapter 17.120, or any other federal, state or local standards, and thus have minimal impact. (See OPC, § 17.10.580; see also March 9, 2018 Appeal Letter [detailed analysis showing Silverado's warehouse operations do not produce noise, vibration, air pollution, fire hazards, or noxious emissions that would violate the standards in Chapter 17.120, or any other federal, state, or local standards].) Therefore, the City has the discretion to determine that Silverado's operations qualify as "Light Manufacturing Industrial Activities" or as "General Manufacturing Industrial Activities" under sections 17.10.560 and 17.10.570 of the Oakland Planning Code.

Both General and Light Manufacturing Industrial Activities are permitted by right in CIX-2 and IG Zones. Accordingly, if Silverado's warehouse operations do not qualify as a legal, nonconforming use, we request the City determine they are lawful and permitted under current zoning requirements.

III. Conclusion.

Silverado constitutes an Oakland success story in its recycling and diversion of debris that would otherwise go into precious landfills. Our client's operations also allow for the sourcing of construction material without the need to permit additional quarrying sites in the region, which are generally harmful to the environment. The recycling of aggregate generates approximately 50 percent fewer greenhouse gas emissions when compared to the mining of raw materials to produce the same product. (See **Attachment 7**.) Environmental benefits also accrue from having a local source of aggregate, because less truck trips are needed to produce and deliver materials. The nearest quarries are scattered widely across the Bay Area, and generally are located between 30 to 40 miles away from the Properties. If Silverado's product were not available to local construction companies, truck deliveries from regional quarries would significantly increase vehicle miles traveled ("VMT"), and the diesel particulate matter and greenhouse gas emissions associated with these trucking routes would also increase. The estimated VMT-related greenhouse gas emission savings from operation of Silverado's site is equal to the emissions generated by about 18,000 passenger vehicles, or by about 16,000 single-family homes (which is the equivalent of 10 percent of Oakland's entire housing stock). (See *id.*) Meanwhile, Silverado's decision to move processing operations indoors confers a more localized environmental benefit, as dust from these operations is captured indoors, and does not disperse into the community. Lastly, Silverado's processing and sorting equipment is electrically powered, further reducing emissions, and our client hopes, in the long-term, to install solar panels on the warehouse roof.

Robert Merkamp
City of Oakland
Planning and Building Department
July 13, 2018
Page 10

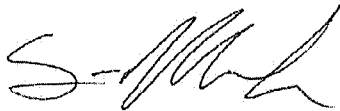
Turning to the legalities, as discussed above, we believe the City can lawfully and appropriately determine Silverado's uses, both outdoors and indoors, are legal, nonconforming activities. Substantial evidence shows that Silverado's outdoor operations on the Properties are a continuation of recycling operations that have occurred on each and every one of the outdoor Properties since at least 1998. With respect to Silverado's warehouse operations, these activities, too, are lawful. Our client's predecessor in interest, Aman, used the warehouse for the storage of equipment and materials, and for the repair of heavy equipment, since at least 2007. Since taking possession of the warehouse, Silverado also has used the space, and a majority of it, for storage, and has occupied the remaining space with processing and sorting activities. The footprint of recycling operations on the Properties, including the warehouse, has not changed in any meaningful way and, to the extent Silverado has refined its operations, this change constitutes a reconfiguration, and not an expansion or relocation, of industrial activities. The indoor activities occurring in the warehouse therefore qualify as legal, nonconforming uses.

Even if Silverado's warehouse operations did not qualify as a legal, nonconforming use, they would remain lawful. These indoor activities constitute recycling operations that should be classified as either light or general uses after an evaluation of the specific facts involved. The facts here show that Silverado's processing and sorting of materials comply with each of the City's environmental standards in Chapter 17.120, and thus could be categorized as either a General or Light Manufacturing Industrial Activity. Both of these uses are permitted by right in the governing CIX-2 and IG Zones, without the need for additional permits.

Thank you for your attention to these important matters, and please let us know if you have any questions.

Very truly yours,

Miller Star Regalia



Sean Marciniak

SRM:kli

Attachments 1 - 7

cc: Sandra Smith, Administrative Manager, City of Oakland, ssmith@oaklandnet.com
Brian Mulry, Deputy City Attorney, City of Oakland, bmulry@oaklandcityattorney.org
Luz Bultrago, Deputy City Attorney, City of Oakland, LBultrago@oaklandcityattorney.org
Wilson Wendt, Esq., Miller Starr Regalia
Bryan Wenter, Esq., Miller Starr Regalia

COPY

SECOND AMENDMENT TO
COMMERCIAL LEASE AGREEMENT

This paragraph references Aman's right to use the three outdoor parcels (8291, 8300, and 8304 Baldwin Street), even though the street address listed is 8300 Baldwin Street. (See Exhibit A.) The 8300 Baldwin Street parcel is only about 80,000 square feet, whereas the leased area is about 140,000 square feet.

This Second Amendment to Commercial Lease Agreement (the "Amendment") is entered into as of November 27, 2006 (the "Effective Date") by and between URS Corporation, a Nevada corporation dba URS Corporation Americas, as successor-in-interest to Aman Environmental Construction, Inc. ("Lessee"), and the Kenneth W. Morris 1986 Separate Property Trust under the Revocable Trust Agreement Dated April 10, 1986, as amended ("Lessor").

RECITALS

A. Lessor and Lessee entered into that certain Commercial Lease dated May 26, 1998 (executed on May 27, 1998) (the "Commercial Lease") with respect to the property commonly known as 8300 Baldwin Street, Oakland, California, which property includes approximately 140,000 square feet of land and three (3) buildings (the "Original Premises"). The Original Premises is more particularly shown on Exhibit A attached hereto and made a part hereof by this reference.

B. Pursuant to the terms of that certain Addendum Number One to Commercial Lease Agreement executed on July 9, 2002 ("First Addendum"), the parties agreed, among other things, to extend the term of the Commercial Lease until May 31, 2007.

C. Pursuant to the terms of that certain Amendment to Commercial Lease Agreement, executed on October 24, 2004 (the "Amendment" and, together with the Commercial Lease and the First Addendum, collectively, the "Lease"), Lessee agreed to expand the Original Premises by leasing an additional 20,000 square feet of space.

D. Lessor and Lessee desire to further amend the Lease as hereinafter set forth.

TERMS

NOW, THEREFORE, in consideration of the foregoing Recitals, the mutual covenants herein contained, and good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Premises. Lessee and Lessor agree that, as of the Effective Date, (a) the Original Premises is hereby expanded to include approximately 40,000 square feet of the building commonly referred to as 689 - 691 85th Avenue, Oakland, California as more particularly shown on Exhibit B attached hereto and made a part hereof by this reference (the "Expansion Premises"), and (b) Lessor shall deliver unfettered possession of the Expansion Premises to Lessee. The Expansion Premises and the Original Premises are collectively referred to as the "Premises."

This paragraph references the warehouse space Silverado uses at 685 85th Avenue; we received a copy of this lease through discovery in litigation against Silverado's landlord but, unfortunately, we were not provided with a copy of Exhibit B.

2. Lease Term. Notwithstanding anything to the contrary contained in the Lease, the term of the Lease is extended until May 31, 2012. In addition, Lessee is hereby granted the option (the "Option") to extend the term of the Lease for one (1) additional period of five (5) years. If Lessee elects to exercise the Option, Lessee shall notify Lessor in writing at least twelve (12) months prior to the expiration of the term of the Lease. The rent during the term of the Option is set forth below in Section 3. If Lessee does not exercise the Option, Lessee will pay Lessor a fee of Three Hundred Fifty Thousand Dollars (\$350,000) (the "Option Cancellation Fee") upon the expiration of the Lease term. Notwithstanding the immediately preceding sentence, Lessee shall not be obligated to pay Lessor the Option Cancellation Fee if the Lease is terminated prior to May 31, 2012 due to casualty, condemnation or a default under the Lease by Lessor.

3. Rent. Notwithstanding anything to the contrary contained in the Lease, from and after the Effective Date, the rent payable for the Premises shall be as follows:

- | | | |
|-----|--|-----------------------|
| (a) | Effective Date through ^{then to 2006} November 31, 2006 | \$30,350.00 per month |
| (b) | December 1, 2006 through May 31, 2007 | \$44,350.00 per month |
| (c) | June 1, 2007 through May 31, 2012 | \$47,600.00 per month |
- and, if the Option is exercised:
- | | | |
|-----|-----------------------------------|-----------------------|
| (d) | June 1, 2012 through May 31, 2017 | \$55,707.00 per month |
|-----|-----------------------------------|-----------------------|

4. Improvements.

(a) Lessee is responsible for constructing a demising wall consisting of 4" by 4" studs with 1/2" plywood facing in order to separate the Expansion Premises from the balance of the 103,300 square foot building within which such Expansion Premises are located. Lessee will construct such demising wall from floor to ceiling, in accordance with all applicable laws, at Lessee's sole cost and expense. The wall will be constructed prior to the date that Lessee occupies the Expansion Premises. In addition to construction of the wall as provided in this Section 4, Lessee shall have the right to make any other leasehold improvements it deems necessary or advisable, all such improvements to be the sole responsibility of the Lessee and at Lessee's sole cost and expense. Lessor is not responsible for funding the leasehold improvements. Lessee will provide plans for any leasehold improvements to Lessor for review and approval, such approval not to be unreasonably withheld, conditioned or delayed. If Lessor fails to approve or disapprove any such improvement plans within ten (10) days after Lessee's delivery thereof, then Lessor shall be deemed to have approved such plans.

(b) If Lessee decides to install a roll up door in the rear of the Expansion Premises, the roll up door will be aligned (i.e. the size of the door will be 15' by 30') to the front roll up door on 85th Avenue. Lessor will require Lessee to utilize the same door company which installed the front roll up door so that the same quality and manufacturer of the door will be

SA
RM

utilized; provided, if such installation company is unavailable or no longer in operation, Lessee shall use an installation company reasonably acceptable to Lessor and Lessee.

(c) Lessee shall install, at Lessee's sole cost and expense, black fabric screening material and a slatted gate entrance in the locations shown on Exhibit B attached hereto.

5. Other Expenses/Maintenance. Lessee shall be responsible for any increase in real property or personal property taxes due to its construction of leasehold improvements in the Expansion Premises. In the event the building containing the Expansion Premises is not a separate tax parcel, Lessor and Lessee shall reasonably allocate any tax increases caused by the construction of such leasehold improvements. Lessee shall be responsible for the cost of all utilities expenses reasonably allocable to the Expansion Premises and will be responsible for any damage it causes to the alarm and fire sprinkler system located within the Expansion Premises. Lessee will, at Lessee's expense, install a separate electrical meter and, if Lessee determines in its sole discretion that it will need to utilize water in the Expansion Premises, a separate water line, to the Expansion Premises and will be responsible for the billings from the utility companies in connection with such actions. From January 1 to December 31 of each calendar year, Lessee shall be responsible for cleaning, at least once per month, the gutters of the entire warehouse building (approximately 143,300 square feet).

3/100 section
water meter

6. Easement. Lessee is hereby granted a fifteen (15) foot wide right of way easement from the easterly fence line for vehicular and pedestrian ingress and egress over and truck staging in the east side of the building containing the Expansion Premises, such area shown on Exhibit B attached hereto (the "Easement Area"). Lessee shall have the exclusive right to use the side doors of the Expansion Premises. Lessee is also allowed to install a scale in the Easement Area near the Original Premises. Lessee shall be responsible for all costs and expenses required to install the scale and remove the scale upon termination of the Lease. Lessee shall be entitled to use the Easement Area for the purposes set forth in this Section 6 twenty-four hours per day, three hundred sixty-five days per year. The provisions of this Section 6 shall remain in full force and effect until the expiration of the Lease term (as such term may be extended) and Lessee shall have the right, at its sole option, to record in the official records of the County of Alameda First American Title Insurance Company's standard form of easement agreement to effectuate the provisions hereof (or such other form of easement agreement reasonably acceptable to Lessee). Lessor shall use its best efforts to assist Lessee in the recordation of such easement agreement. Lessee to supply and install K-Rails in the Easement Area in a location reasonably selected by Lessor.

7. Demolition.

(a) Lessee shall have the right to demolish and remove the 10,000 square foot metal building (the "Demolition Property") located on the land that comprises the Original Premises and shown on Exhibit A, at Lessee's sole cost and expense. In connection with any such demolition, Lessee will note the location where sewer, water and electrical services connect to the Demolition Property and Lessee shall cap these services in accordance with city and county regulations. Lessee shall ensure that all hazardous materials generated from the Demolition

SA
KM

Property by Lessee shall be properly removed from the Demolition Property and disposed of to the extent required by, and in accordance with, all California and Federal hazardous material laws and regulations. Notwithstanding the immediately preceding sentence, Lessee agrees to remove any lead-based paint found on the Demolition Property, even though such materials were not generated by, or placed upon, the Demolition Property by Lessee; provided, in no event shall Lessee be liable for any hazardous materials, including any lead-based paint, placed upon the Demolition Property by any party other than Lessee. Lessee is solely responsible for removal of hazardous materials from the Demolition Property placed therein by Lessee and will indemnify the Lessor, at Lessee's sole cost and expense, for any damage to Lessor caused by Lessee's failure to remove such hazardous materials in accordance with the terms of this Section 7. Lessee shall not be liable for or otherwise obligated to Lessor under any provision of the Lease with respect to (i) any claim, remediation obligation, investigation obligation, liability, cause of action, attorneys' fees, consultants' cost, expense or damage resulting from any hazardous material present in, on or about the Demolition Property or any other part of the Premises or the Expansion Premises to the extent not caused nor otherwise permitted, directly or indirectly, by Lessee; or (ii) the removal, investigation, monitoring or remediation of any hazardous material present in, on or about the Demolition Property, or any other part of the Premises or the Expansion Premises caused by any source, including third parties other than Lessee, as a result of or in connection with the acts or omissions of persons other than Lessee; provided, however, Lessee shall be fully liable for and otherwise obligated to Lessor under the provisions of this Lease for all liabilities, costs, damages, penalties, claims, judgments, expenses (including without limitation, attorneys' and experts' fees and costs) and losses to the extent (A) Lessee contributes to the presence of such hazardous materials, or (B) Lessee allows or permits persons over which Lessee has control and/or for which Lessee is legally responsible for, to cause such hazardous materials to be present in, on, under, through or about any portion of the Demolition Property or any other part of the Premises or the Expansion Premises. Except as otherwise expressly set forth in this Section 7(a), Lessor agrees to, and shall, protect, indemnify, defend (with counsel reasonably acceptable to Lessee) and hold Lessee and Lessee's directors, officers, employees, successors and assigns harmless from and against any and all claims, judgments, damages, penalties, fines, liabilities, losses, suits, administrative proceedings and costs (including, but not limited to, attorneys' and consultant fees and court costs), arising at any time during or after the term of this Lease, to the extent arising from (1) any hazardous materials present in, on or about the Demolition Property or any other part of the Premises or the Expansion Premises to the extent not caused nor otherwise permitted by Lessee and (2) the removal, investigation, monitoring or remediation of any hazardous materials present in, on or about the Demolition Property or any other part of the Premises or the Expansion Premises to the extent not caused nor otherwise permitted by Lessee.

(b) Lessor may elect, upon written notice delivered to Lessee at least twelve (12) months prior to the end of the Lease term, to require Lessee to remove, at Lessee's sole cost and expense, the concrete foundation and slab on the Demolition Property; provided, however, Lessee's obligations with respect to removal of any hazardous materials discovered in connection therewith shall be subject to terms of Section 7(a). If any hazardous materials are discovered during removal of the foundation or slab on the Demolition Property, then Lessee shall have the right to immediately cease all such removal work and all of Lessee's obligations

This is from the lead based paint removal document

*Slab ?
Cham
of Lead Slab for new Building
SA
RM*

Not to be

pursuant to this Section 7(b) shall be null and void. If Lessor fails to provide timely written notice to Lessee of such election, then Lessee's obligations pursuant to this Section 7(b) shall be null and void.

(c) Lessee agrees to regrade, in accordance with applicable law, those areas of the Premises shown on **Exhibit B** so that surface waters will not migrate from the Premises into the building adjacent to the Premises. Lessee shall be responsible for re-directing any accumulation of surface waters that migrate from the Premises into the building adjacent to the Premises.

8. Right of First Refusal. Section 24 of the Lease is hereby deleted in its entirety and the following is inserted in lieu thereof:

copy → "24. Right of First Refusal: In the event that Lessor (a) elects to sell the Premises and the legal parcel upon which the Premises is located (the "Offer Property"), or (b) receives a bona fide offer from a third party for the purchase and sale of the Offer Property, Lessor shall provide to Lessee prompt written notice thereof (the "Offer Notice"). The Offer Notice shall include either the material terms customarily found in letters of intent for the purchase and sale of property similar to the Offer Property (including, without limitation, purchase price, deposit amount, due diligence period, customary representations and warranties, prorations of costs pursuant to county custom and a closing date), or in the event Lessor receives a bona fide offer pursuant to Section 24(b) above, Lessor shall attach to such Offer Notice a true and correct copy of the third party offer received by Lessor. Lessee shall have thirty (30) days following receipt of the Offer Notice to elect to purchase the Offer Property upon the same terms and conditions contained in the Offer Notice. If Lessee timely exercises its right of first refusal herein, Lessor and Lessee shall, within thirty (30) days after Lessee's election to purchase the Offer Property, enter into an agreement of purchase and sale for the Offer Property on the then AIR Commercial Real Estate Association form of purchase agreement for non-residential property (the "Purchase Agreement"). The Purchase Agreement shall contain all of the terms and provisions contained in the Offer Notice."

No need to feel the anything

9. Railroad Spur. The provisions of Section 39 of the Lease are hereby deleted in their entirety.

10. Effect. As of the Effective Date, the provisions of this Amendment are expressly incorporated into the provisions of the Lease and the provisions of this Amendment shall be effective. Except as expressly modified by this Amendment, the Lease shall remain unchanged and in full force and effect.

11. Priority of Amendment. To the extent the provisions of the Lease are inconsistent with the provisions of this Amendment, the provisions of this Amendment shall supersede and control.

12. No Modification or Waiver. Except as otherwise set forth in this Amendment, nothing in this Amendment shall be deemed to waive or modify any of the provisions of the Lease.

13. Successors. The provisions of this Amendment shall bind and inure to the benefit of the heirs, representatives, successors and assigns of the parties hereto.

14. Counterparts. This Amendment may be executed in several counterparts, each of which will be deemed an original but all of which together will constitute one and the same document.

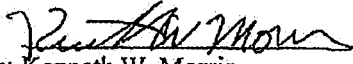
Executed in the city of Oakland, State of California, on the 27 day of November, 2006.

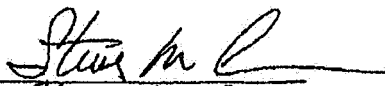
"LESSOR"

"LESSEE"

Kenneth W. Morris 1986 Separate Property
Trust under the Revocable Trust Agreement
Dated April 10, 1986

URS Corporation, a Nevada corporation dba
URS Corporation Americas

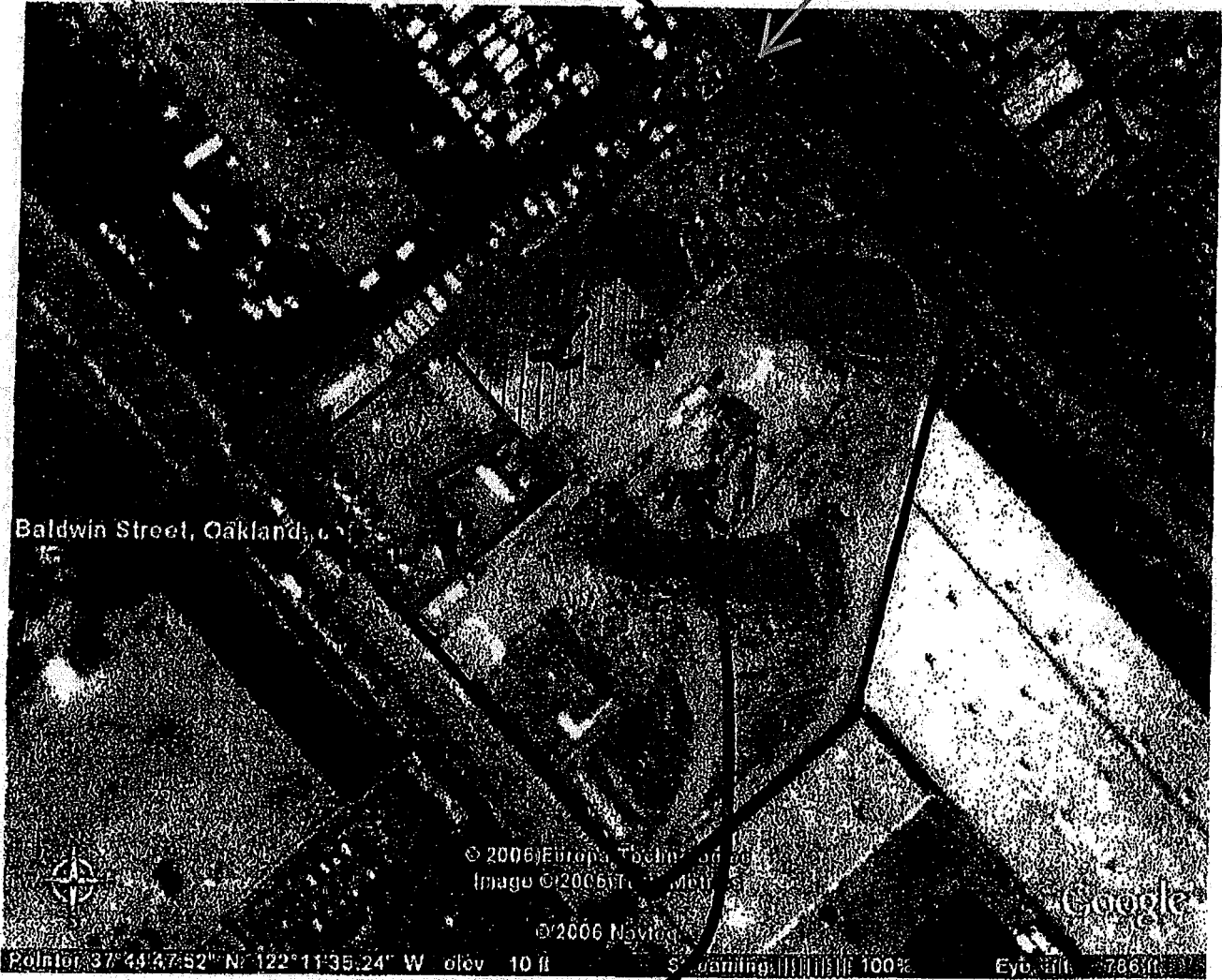
By: 
Name: Kenneth W. Morris
Its: Trustee

By: 
Name: Steve M. Aman
Its: V.P.

"EXHIBIT A"

The "Original Premises" cover the three outdoor parcels: 8291, 8300, 8304 Baldwin Street.

Shop Building to be demolished



Original Premises

SA
KWM

1 I, Michael Zamora, declare:

2 1. As to the facts in this declaration, I know them to be true of my own knowledge or
3 have obtained knowledge of them from employees with whom I work and from my review of
4 relevant business records. If called upon to testify as to the matters set forth in this declaration, I
5 could and would competently testify thereto. As to those matters stated in this declaration on
6 information and belief, I believe them to be true.

7 2. From approximately 2000 to 2016, I worked at the Cleveland Wrecking Company
8 as its General Superintendent Operation Manager.

9 3. The Cleveland Wrecking Company operated a demolition business at 8291, 8300,
10 and 8304 Baldwin Street in Oakland, California from the time I started working with the company
11 to about 2012, and operated within a 40,000-square-foot warehouse space, located at 685 85th
12 Avenue, from 2007 to about 2012.

13 4. I worked at 8291, 8300 and 8304 Baldwin Street and 685 85th Avenue in Oakland,
14 California at least every other day during the time I was employed by the Cleveland Wrecking
15 Company and the time these properties were being used by the Cleveland Wrecking Company, as
16 it was my job to oversee all of the Cleveland Wrecking Company's activities occurring on the site.

17 5. The Cleveland Wrecking Company shared use of 8291, 8300 and 8304 Baldwin
18 Street and 685 85th Avenue with its sister company, Aman Environmental Construction, Inc. As
19 such, I am familiar with the activities of Aman Environmental Construction, Inc. as well, which
20 operated a rock, asphalt, and cement crushing and recycling business at this location. The actual
21 leaseholder of the property might have been an affiliate company, or a successor-in-interest, of
22 Aman Environmental Construction, Inc., but I am not aware of, and was not privy to, the details
23 about the legal ownership of the foregoing properties.

24 6. I have reviewed parcel maps for 8291, 8300 and 8304 Baldwin Street and 685 85th
25 Avenue in Oakland, California, and am familiar with them. These addresses correspond,
26 respectively, with property described by Assessor Parcel Numbers 042-4318-044, 042-4318-043,
27 042-04317-042, and 042-4318-008.

28

ATTACHMENT 2a

1 7. From approximately 2007 to the time their operations ceased in about 2012, Aman
2 Environmental Construction, Inc. utilized approximately 40,000 square feet of the warehouse
3 located on 685 85th Avenue to conduct and facilitate the crushing and recycling operations
4 occurring at 8291, 8300, and 8304 Baldwin Street.

5 8. I distinctly remember the warehouse space being used, as early as 2007, to store
6 tools, equipment, oil, and other materials and substances related to crushing and recycling
7 operations conducted by Aman Environmental Construction, Inc.

8 9. I also remember the warehouse space being used, as early as 2007, as a shop to
9 repair equipment related to the crushing and recycling activities of Aman Environmental
10 Construction, Inc. For instance, I recall employees welding broken components of rock crushers
11 during this time.

12 10. I also remember the warehouse being used, as early as 2007, to store recyclable
13 material that had been salvaged from demolition sites, which was used to support recycling
14 operations undertaken by Aman Environmental Construction, Inc.

15 11. The other portion of the warehouse at 685 85th Avenue, which was not under the
16 control of the Cleveland Wrecking Company and Aman Environmental Construction, Inc., had
17 been used by another company to store vehicles, and I believe this other space supported a freight
18 company's operations. This portion of the warehouse, which was situated closer to 85th Avenue,
19 was separated from the operations of the Cleveland Wrecking Company and Aman Environmental
20 Construction, Inc. by a large, floor-to-ceiling wall. I have reviewed information about the current
21 configuration of the warehouse, and this wall is the same wall that presently divides the warehouse
22 into separate tenant spaces.

23 12. The 40,000-square-foot warehouse space was first occupied by the Cleveland
24 Wrecking Company and Aman Environmental Construction, Inc. a short time after Aman
25 Environmental Construction, Inc., or another of its sister companies, entered into a lease for this
26 indoor space, which I believe happened in late 2006.

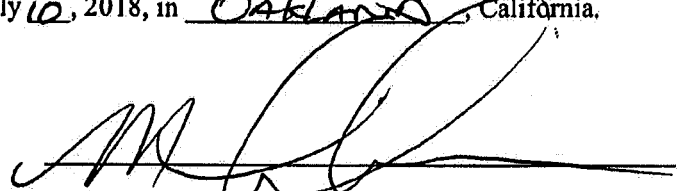
27
28

1 13. From at least 2000 to the time they ceased doing business at the site, the Cleveland
2 Wrecking Company and Aman Environmental Construction, Inc. utilized the entirety of 8291,
3 8300, 8304 Baldwin Street for demolition support activities and the crushing and recycling of
4 rock, asphalt, and cement, as well as accessory uses, which included accessory office space, a
5 weigh station, and other ancillary uses, which includes all space within the fenced perimeter of the
6 site.

7 14. From at least 2007 to the time they ceased doing business at their Oakland site, the
8 Cleveland Wrecking Company and Aman Environmental Construction, Inc. used an alley adjacent
9 to the warehouse on 685 85th Avenue for driveway purposes, which connected 8291, 8300, 8304
10 Baldwin Street to 85th Avenue.

11 15. I declare under penalty of perjury under the laws of the State of California that the
12 foregoing is true and correct of my own personal knowledge, except as to those matters stated on
13 information and belief, and, as to those matters, I am informed and believe that they are true, and
14 that this declaration was executed on July 10, 2018, in Oakland, California.

15
16
17
18
19
20
21
22
23
24
25
26
27
28



Michael Zamora

1 I, Oscar Reyes, declare:

2 1. As to the facts in this declaration, I know them to be true of my own knowledge. If
3 called upon to testify as to the matters set forth in this declaration, I could and would competently
4 testify thereto. As to those matters stated in this declaration on information and belief, I believe
5 them to be true.

6 2. From approximately 1998 to 2011, I worked for the Cleveland Wrecking Company
7 as a foreman, overseeing demolition activities at various sites throughout the San Francisco Bay
8 Area.

9 3. From approximately 1998 to at least 2011, the Cleveland Wrecking Company
10 conducted a demolition business from outdoor space located at 8291, 8300 and 8304 Baldwin
11 Street and, from 2007 to at least 2011, conducted a demolition business from indoor space located
12 at 685 85th Avenue in Oakland, California.

13 4. From approximately 1998 to at least 2011, the Cleveland Wrecking Company
14 shared space at 8291, 8300 and 8304 Baldwin Street with Aman Environmental Construction, Inc.,
15 which operated a rock, asphalt, and cement crushing and recycling business on the properties.
16 From approximately 2007 to at least 2011, the Cleveland Wrecking Company shared a large,
17 indoor warehouse space with Aman Environmental Construction, Inc. at 685 85th Street, where
18 operations related to its crushing and recycling business were also conducted. The Cleveland
19 Wrecking Company and Aman Environmental Construction, Inc. were sister companies.

20 5. I have reviewed parcel maps for 8291, 8300 and 8304 Baldwin Street and 685 85th
21 Avenue in Oakland, California, and am familiar with them. These addresses correspond,
22 respectively, with property described by Assessor Parcel Numbers 042-4318-044, 042-4318-043,
23 042-04317-042, and 042-4318-008.

24 6. From approximately 1998 to 2011, I was present at 8291, 8300 and 8304 Baldwin
25 Street a few dozen times per year. From approximately 2007 to 2011, I was present at 685 85th
26 Avenue a few dozen times per year. Two to three times per month, I would visit the properties to
27 pick up equipment for the Cleveland Wrecking Company's off-site demolition activities and,
28

ATTACHMENT 2b

1 when demolition activities were slow, I would repair equipment at 8291, 8300 and 8304 Baldwin
2 Street and 685 85th Avenue.

3 7. I am familiar with the scope of operations performed by the Cleveland Wrecking
4 Company and Aman Environmental Construction, Inc. at 8291, 8300 and 8304 Baldwin Street and
5 685 85th Avenue from approximately 1998 to 2011.

6 8. From 2007, both the Cleveland Wrecking Company and Aman Environmental
7 Construction, Inc. utilized approximately 40,000 square feet of the warehouse on 685 85th Avenue
8 to store and repair equipment, to store tools, and to store salvageable materials from demolition
9 sites which I believe were later recycled by Aman Environmental Construction, Inc.

10 9. The warehouse at 685 85th Avenue is extremely large, and the portion occupied by
11 Cleveland Wrecking Company and Aman Environmental Construction, Inc. was walled off from
12 another tenant's space from 2007 to at least 2011. I understand this wall remains in place at the
13 present time.

14 10. These warehouse activities I observed, as identified in Paragraph 8, were integrated
15 with the rock/asphalt/cement crushing, demolition, and recycling operations occurring at 8291,
16 8300, and 8304 Baldwin Street, and I distinctly remember personally repairing tools and
17 equipment, including rock crushing equipment, in the warehouse from 2007 until 2011.

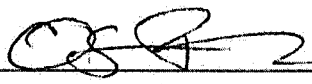
18 11. From approximately 1998 to 2011, Aman Environmental Construction, Inc. and the
19 Cleveland Wrecking Company utilized the entirety of 8291, 8300, 8304 Baldwin Street for
20 demolition activities and the crushing and recycling of rock, asphalt, and cement, as well as
21 accessory uses, which included accessory office space, a weigh station, and other ancillary uses. I
22 distinctly remember the entire outdoor area, from Baldwin Street to the northerly railroad tracks,
23 being used for crushing, screening, and stockpiling recyclable material.

24 12. From at least 2007, and perhaps earlier, the Cleveland Wrecking Company and
25 Aman Environmental Construction, Inc. used an alley adjacent to the warehouse on 685 85th
26 Avenue for driveway purposes, which connected 8291, 8300, 8304 Baldwin Street to 85th
27 Avenue, and to store equipment at various times.

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own personal knowledge, except as to those matters stated on information and belief, and, as to those matters, I am informed and believe that they are true, and that this declaration was executed on July 11, 2018, in Millbrae, California.



Oscar Reyes

1 I, Jeffrey John Rashke, declare:

2 1. As to the facts in this declaration, I know them to be true of my own knowledge. If
3 called upon to testify as to the matters set forth in this declaration, I could and would competently
4 testify thereto. As to those matters stated in this declaration on information and belief, I believe
5 them to be true.

6 2. From approximately 2001 to the present, I have worked for Mike O'Brien
7 Specialized Hauling as a truck driver.

8 3. From approximately 2001 to 2012 or 2013, I hauled equipment for the Cleveland
9 Wrecking Company, which conducted a demolition business at 8291, 8300 and 8304 Baldwin
10 Street and 685 85th Avenue in Oakland, California during various times. I believe that the
11 Cleveland Wrecking Company was a sister company to Aman Environmental Construction, Inc.,
12 which operated a rock, asphalt, and cement crushing and recycling business on the same
13 properties.

14 4. I have reviewed parcel maps for 8291, 8300 and 8304 Baldwin Street and 685 85th
15 Avenue in Oakland, California, and am familiar with them. These addresses correspond,
16 respectively, with property described by Assessor Parcel Numbers 042-4318-044, 042-4318-043,
17 042-04317-042, and 042-4318-008.

18 5. I am familiar with the scope of operations performed by the Cleveland Wrecking
19 Company and Aman Environmental Construction, Inc. at 8291, 8300 and 8304 Baldwin Street and
20 685 85th Avenue as these activities occurred from approximately 2001 to the time the companies
21 ceased doing business on these properties.

22 6. From approximately 2001 to the time the Cleveland Wrecking Company and Aman
23 Environmental Construction, Inc. ceased doing business at 8291, 8300 and 8304 Baldwin Street
24 and 685 85th Avenue, I was present on these properties once or twice a month, at which times
25 I hauled crushers, excavators, and other portable equipment between these four Oakland properties
26 and various locations in the San Francisco Bay Area where the Cleveland Wrecking Company
27 conducted demolition activities.

28

ATTACHMENT 2c

21

UNIFIED PROGRAM CONSOLIDATED FORM
FACILITY INFORMATION
BUSINESS ACTIVITIES

Page 1 of ___

I. FACILITY IDENTIFICATION

FACILITY ID # (Agency Use Only)																				1. EPA ID # (Hazardous Waste Only)	2.
																			CAL 000 28 0029		

BUSINESS NAME (Same as Facility Name) 3.


AMAN ENVIRONMENTAL CONSTRUCTION INC.

II. ACTIVITIES DECLARATION

NOTE: If you check YES to any part of this list,
please submit the Business Owner/Operator Identification page (OES Form 2730).

Does your facility...			If Yes, please complete these pages of the UPCF...
A. HAZARDOUS MATERIALS Have on site (for any purpose) hazardous materials at or above 55 gallons for liquids, 500 pounds for solids, or 200 cubic feet for compressed gases (include liquids in ASTs and USTs); or the applicable Federal threshold quantity for an extremely hazardous substance specified in 40 CFR Part 355, Appendix A or B; or handle radiological materials in quantities for which an emergency plan is required pursuant to 10 CFR Parts 30, 40 or 70?	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO	4. HAZARDOUS MATERIALS INVENTORY - CHEMICAL DESCRIPTION (OES 2731)
B. UNDERGROUND STORAGE TANKS (USTs) 1. Own or operate underground storage tanks? 2. Intend to upgrade existing or install new USTs? 3. Need to report closing a UST?	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO	5. UST FACILITY (Formerly SWRCB Form A) UST TANK (one page per tank) (Formerly Form B)
	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO	6. UST FACILITY UST TANK (one per tank) UST INSTALLATION - CERTIFICATE OF COMPLIANCE (one page per tank) (Formerly Form C) UST TANK (closure portion - one page per tank)
	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO	7.
C. ABOVE GROUND PETROLEUM STORAGE TANKS (ASTs) Own or operate ASTs above these thresholds: ---any tank capacity is greater than 660 gallons, or ---the total capacity for the facility is greater than 1,320 gallons?	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO	8. NO FORM REQUIRED TO CUPAs
D. HAZARDOUS WASTE 1. Generate hazardous waste? 2. Recycle more than 100 kg/month of excluded or exempted recyclable materials (per HSC §25143.2)? 3. Treat hazardous waste on site? 4. Treatment subject to financial assurance requirements (for Permit by Rule and Conditional Authorization)? 5. Consolidate hazardous waste generated at a remote site? 6. Need to report the closure/removal of a tank that was classified as hazardous waste and cleaned onsite?	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO	9. EPA ID NUMBER - provide at the top of this page
	<input type="checkbox"/> YES	<input type="checkbox"/> NO	10. RECYCLABLE MATERIALS REPORT (one per recycler)
	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO	11. ONSITE HAZARDOUS WASTE TREATMENT - FACILITY (Formerly DTSC Forms 1772)
	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO	12. ONSITE HAZARDOUS WASTE TREATMENT - UNIT (one page per unit) (Formerly DTSC Forms 1772 A, B, C, D, and L)
	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO	13. CERTIFICATION OF FINANCIAL ASSURANCE (Formerly DTSC Form 1232)
	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO	14. REMOTE WASTE / CONSOLIDATION SITE ANNUAL NOTIFICATION (Formerly DTSC Form 1196)
	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO	14. HAZARDOUS WASTE TANK CLOSURE CERTIFICATION (Formerly DTSC Form 1249)
E. LOCAL REQUIREMENTS (You may also be required to provide additional information by your CUPA or local agency.)			15.

The 8300 Baldwin Street address was used as "shorthand" for Aman's entire business operations, including the warehouse. See the next page.

UNIFIED PROGRAM CONSOLIDATED FORM FACILITY INFORMATION BUSINESS OWNER/OPERATOR IDENTIFICATION			
I. IDENTIFICATION			Page 2 of
FACILITY ID # <small>(Agency Use Only)</small>	BEGINNING DATE 1/1/07	ENDING DATE 12/31/07	101.
BUSINESS NAME (Same as FACILITY NAME) AMAN ENVIRONMENTAL CONSTRUCTION INC		BUSINESS PHONE (570) 553-0110	102.
BUSINESS SITE ADDRESS 8300 BALDWIN STREET			
CITY OAKLAND	104.	CA	ZIP CODE 94621
DUN & BRADSTREET		SIC CODE (4 digit #)	107.
COUNTY ALAMEDA			
BUSINESS OPERATOR NAME BILL TORRES		BUSINESS OPERATOR PHONE (510) 568-2626 ext.	110.
II. BUSINESS OWNER			
OWNER NAME KENNETH W. MORRIS		OWNER PHONE (415) 398-1512 ext.	112.
OWNER MAILING ADDRESS 8300 BALDWIN STREET			
CITY OAKLAND	114.	CA	ZIP CODE 94621
III. ENVIRONMENTAL CONTACT			
CONTACT NAME BILL TORRES		CONTACT PHONE (510) 568-2626 ext.	118.
CONTACT MAILING ADDRESS 8300 BALDWIN STREET			
CITY OAKLAND	120.	CA	ZIP CODE 94621
IV. EMERGENCY CONTACTS			
-PRIMARY-		-SECONDARY-	
NAME BILL TORRES	123.	NAME GREG DESSER	128.
TITLE REGIONAL MANAGER	124.	TITLE SALES MANAGER	129.
BUSINESS PHONE (510) ext. 568-2626	125.	BUSINESS PHONE (510) ext. 553-0110	130.
24-HOUR PHONE* (510) ext. 772-2911	126.	24-HOUR PHONE* (510) ext. 385-6004	131.
PAGER # N/A	127.	PAGER # N/A	132.
ADDITIONAL LOCALLY COLLECTED INFORMATION:			
Billing Address: 8300 BALDWIN STREET - OAKLAND CA 94621			
Property Owner: KENNETH MORRIS		Phone No.: (415) 398-1512	
Certification: Based on my inquiry of those individuals responsible for obtaining the information, I certify under penalty of law that I have personally examined and am familiar with the information submitted and believe the information is true, accurate, and complete.			
SIGNATURE OF OWNER/OPERATOR OR DESIGNATED REPRESENTATIVE 		DATE 6/14/07	NAME OF DOCUMENT PREPARER BILL TORRES
NAME OF SIGNER (print) BILL TORRES		TITLE OF SIGNER REGIONAL MANAGER	

* See Instructions on next page.

There was not a warehouse on the 8300 Baldwin Street parcel in June 2007, and this reference is to the warehouse on 685 85th Avenue.

Non-Waste Hazardous Materials Inventory Statement

For use by Unidocs Member Agencies or where approved by your Local Jurisdiction

These materials are consistent with what Aman workers observed being in the warehouse before June 2018.

Date: 6/19/07

Business Name: AMAN ENVIRONMENTAL CONSTRUCTION INC.		Type of Report on This Page: <input checked="" type="checkbox"/> Add; <input type="checkbox"/> Delete; <input type="checkbox"/> Revise		Page 1 of 1						
Chemical Location: WAREHOUSE		Facility ID #		(One page per building or area)						
EPCRA Confidential Location? <input type="checkbox"/> Yes; <input checked="" type="checkbox"/> No		Trade Secret Information? <input type="checkbox"/> Yes; <input checked="" type="checkbox"/> No								
Hazardous Components (For mixtures only)		Type and Physical State		Quantities						
Chemical Name	Wt. %	EHS	CAS No.	Max. Daily	Average Daily	Largest Cont.	Units	Storage Pressure	Storage Temp.	Hazard Categories
2	DIESEL				300	365	gallons	ambient	ambient	flam reactive pressure release acute health chronic health radioactive
1	MOTOR OIL				1500		gallons	ambient	ambient	flam reactive pressure release acute health chronic health radioactive
1	HYDRAULIC FLUID				1000	365	gallons	ambient	ambient	flam reactive pressure release acute health chronic health radioactive
1	OXYGEN					365	gallons	ambient	ambient	flam reactive pressure release acute health chronic health radioactive
4	PROPANE					365	gallons	ambient	ambient	flam reactive pressure release acute health chronic health radioactive
1	SPRAY PAINT					365	gallons	ambient	ambient	flam reactive pressure release acute health chronic health radioactive

If EPCRA, sign below:

Code Storage Type: A Aboveground Tank, B Belowground Tank, C Tank Inside Building

Code Storage Type: D Steel Drum, E Plastic/Non-metallic Drum, F Can

Code Storage Type: G Carboy, H Silo, I Fiber Drum

Code Storage Type: J Bag, K Box, L Cylinder

Code Storage Type: M Glass Bottle or Jug, N Plastic Bottle or Jug, O Tox Bin

Code Storage Type: P Tank Wagon, Q Rail Car, R Other

Hazardous Waste Inventory Statement

For use by Unidocs Member Agencies or where approved by your Local Jurisdiction

Date: 6/14/07

Business Name: (Same as Facility Name or DBA)		Facility ID # (Agency Use Only)		Type of Report on This Page: <input checked="" type="checkbox"/> Add; <input type="checkbox"/> Delete; <input type="checkbox"/> Revise		Page <u>1</u> of <u>1</u> (One page per building or area)					
Chemical Location: (Building/Storage Area)		EPCRA Confidential Location? <input type="checkbox"/> Yes; <input checked="" type="checkbox"/> No		Trade Secret Information? <input type="checkbox"/> Yes; <input checked="" type="checkbox"/> No							
Business Name: (Same as Facility Name or DBA)		Facility ID # (Agency Use Only)		Type of Report on This Page: <input checked="" type="checkbox"/> Add; <input type="checkbox"/> Delete; <input type="checkbox"/> Revise		Page <u>1</u> of <u>1</u> (One page per building or area)					
Chemical Location: (Building/Storage Area)		EPCRA Confidential Location? <input type="checkbox"/> Yes; <input checked="" type="checkbox"/> No		Trade Secret Information? <input type="checkbox"/> Yes; <input checked="" type="checkbox"/> No							
Business Name: (Same as Facility Name or DBA)		Facility ID # (Agency Use Only)		Type of Report on This Page: <input checked="" type="checkbox"/> Add; <input type="checkbox"/> Delete; <input type="checkbox"/> Revise		Page <u>1</u> of <u>1</u> (One page per building or area)					
Chemical Location: (Building/Storage Area)		EPCRA Confidential Location? <input type="checkbox"/> Yes; <input checked="" type="checkbox"/> No		Trade Secret Information? <input type="checkbox"/> Yes; <input checked="" type="checkbox"/> No							
1.	2.	3.		4.		5.	6.	7.	8.	9.	10.
Haz. Class	Map and Grid or Location Code	Waste Stream Name	Chemical Name	Hazardous Components		Type and Physical State	Quantities	Annual Waste Amount	Units	Storage Codes	Hazard Categories
		<u>WASTE OIL</u>				<input checked="" type="checkbox"/> waste	Max. Daily: <u>100</u> Average Daily: <u>365</u>		<input checked="" type="checkbox"/> gallons	<input checked="" type="checkbox"/> ambient	fire
		Management Method: <input checked="" type="checkbox"/> Shipped Off-site <input type="checkbox"/> Recycled On-site <input type="checkbox"/> Treated On-site				<input type="checkbox"/> solid	Curies: (if radioactive)	State Waste Code:	<input type="checkbox"/> pounds	<input type="checkbox"/> > amb.	reactive
						<input type="checkbox"/> liquid	Curies: (if radioactive)	State Waste Code:	<input type="checkbox"/> cu. feet	<input type="checkbox"/> < amb.	pressure release
						<input type="checkbox"/> gas	Curies: (if radioactive)	State Waste Code:	<input type="checkbox"/> tons	<input type="checkbox"/> cryogenic	acute health
						<input checked="" type="checkbox"/> waste					chronic health
		Management Method: <input type="checkbox"/> Shipped Off-site <input type="checkbox"/> Recycled On-site <input type="checkbox"/> Treated On-site				<input type="checkbox"/> solid	Curies: (if radioactive)	State Waste Code:			radioactive
						<input type="checkbox"/> liquid	Curies: (if radioactive)	State Waste Code:			fire
						<input type="checkbox"/> gas	Curies: (if radioactive)	State Waste Code:			reactive
		Management Method: <input type="checkbox"/> Shipped Off-site <input type="checkbox"/> Recycled On-site <input type="checkbox"/> Treated On-site				<input checked="" type="checkbox"/> waste					pressure release
						<input type="checkbox"/> solid	Curies: (if radioactive)	State Waste Code:			acute health
						<input type="checkbox"/> liquid	Curies: (if radioactive)	State Waste Code:			chronic health
						<input type="checkbox"/> gas	Curies: (if radioactive)	State Waste Code:			radioactive
		Management Method: <input type="checkbox"/> Shipped Off-site <input type="checkbox"/> Recycled On-site <input type="checkbox"/> Treated On-site				<input checked="" type="checkbox"/> waste					fire
						<input type="checkbox"/> solid	Curies: (if radioactive)	State Waste Code:			reactive
						<input type="checkbox"/> liquid	Curies: (if radioactive)	State Waste Code:			pressure release
						<input type="checkbox"/> gas	Curies: (if radioactive)	State Waste Code:			acute health
		Management Method: <input type="checkbox"/> Shipped Off-site <input type="checkbox"/> Recycled On-site <input type="checkbox"/> Treated On-site				<input checked="" type="checkbox"/> waste					chronic health
						<input type="checkbox"/> solid	Curies: (if radioactive)	State Waste Code:			radioactive
						<input type="checkbox"/> liquid	Curies: (if radioactive)	State Waste Code:			fire
						<input type="checkbox"/> gas	Curies: (if radioactive)	State Waste Code:			reactive

If EPCRA, sign below:

Code Storage Type: Tank, Wagon, Rail Car, Other

Code Storage Type: M, N, O

Code Storage Type: J, K, L, Cylinder

Code Storage Type: G, H, I

Code Storage Type: D, E, F, Can

Code Storage Type: A, B, C

**OAKLAND FIRE DEPARTMENT/FIRE PREVENTION BUREAU
HAZARDOUS MATERIALS UNIT**

250 FRANK OGAWA PLAZA, SUITE 3341, OAKLAND, CA 94612-2032 • (510) 238-3927

HAZARDOUS MATERIALS INSPECTION REPORT

70-2812

Site Number	Facility Name	Facility Address	Zip Code
	Cleveland Warehouse Aman Environmental	8300 Eldora	21

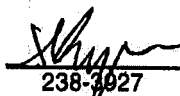
Inspection Report

PERMISSION TO INSPECT GRANTED CA 1000190320

Bill Jones, 568-2626
Fuel Storage, HWG, NOL
Site Map etc
No HMSP

Aman workers remember the warehouse at 685 85th Avenue was used as a shop to repair heaving machinery, and this description is consistent with those recollections.

- 1) SUBMIT HMSP keep copy, www.unidocs.org FORM W020
- 2) manifests Not onsite - keep 3yrs onsite
- 3) Clean out 2nd contain on Gas Agt Shop Bldg
 (NE) corner 13x55g + 165g oil & oil filters in 2nd contain
 empty 500 G Agt Deal in 2nd contain
 n/g LRB Popalyme cleaned up
- 4) 1st container - 175 Agt used oil in 2nd contain & label on door, No accum date
- 5) 3x100 new oil on 2nd contain
- 6) Get 2nd contain pallet For Spill S
 Get NFP 704 Diamond For Bldg
 comply w/ 30 days - send compliance form when done

Facility Contact/Print Name:	Inspected By:	<input type="checkbox"/> Insp. Griffin 238-7759
Facility Contact/Signature:	 238-3927	<input checked="" type="checkbox"/> Insp. Kupers 238-7054
		<input type="checkbox"/> Insp. Matthews 238-2396
		<input type="checkbox"/> Insp. Gomez 238-7253
	Date:	6/8/07

May 31, 2017 Satellite Photo, Google Earth:



Current (2017/2018) Satellite Photo, Google Earth:



Tools

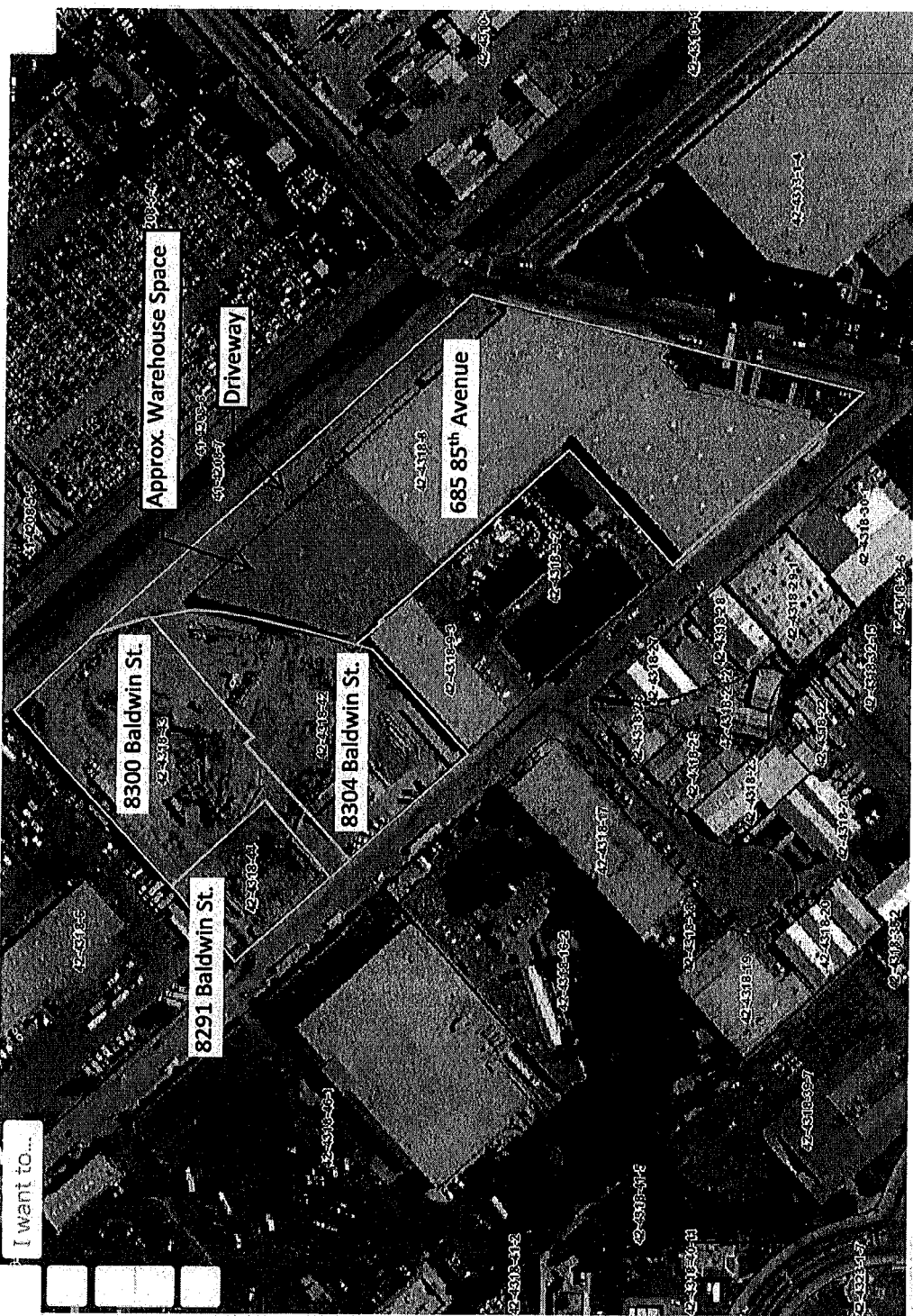
- Find Parcel
- Print
- Distance
- Area
- Edit D...
- Quick-Start Guide
- Help

Search Tools Printing Measure

Parcel Search (1)

APN: 42-4318-43
 8300 BALDWIN ST OAKLAND 94621 -
[Open in Google Maps](#)

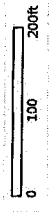
[Parcel Information](#) | [Tax Information](#)



I want to...

Displaying 1 - 1 (Total 1)

Page 1 of 1



Alameda C...



ARGENT MATERIALS

8300 Baldwin Street Oakland, CA 94621 Telephone (510) 638-7188 / Fax (510) 638-7189

June 8, 2018

Dear Interested Parties:

To better quantify the environmental benefits associated with our recycling operation, Argent Materials recently asked Environmental Science Associates (ESA), a reputable environmental consulting firm, to study and analyze our operations.

Their findings are discussed in the attached report. The following is an executive summary:

- **ESA found that Argent contributes to a significant reduction in vehicle miles traveled and associated greenhouse gas (GHG) emissions of trucks transporting concrete aggregate for disposal.** Operation of Argent's recycling facility in Oakland will save up to 53,000 metric tons of CO₂ when compared to the GHG emissions that would result from generating or recycling aggregate product at other locations in the Bay Area. As a frame of reference, 53,000 metric tons of CO₂ is the equivalent of emissions generated by about 18,710 passenger vehicles, or by about 16,054 single family homes—about 10 percent of Oakland's entire housing stock.
- **ESA found that Argent contributes to a significant reduction in GHG emissions from recycling materials as compared to *mining* for new aggregate.** Argent's focus on recycling means that, per ton of aggregate produced, it will generate significantly fewer GHG emissions when compared to its competitors that mine for aggregate. Based on a study by the U.S. Environmental Protection Agency, the recycling of aggregate products generates approximately 50% fewer greenhouse emissions than mining to generate those same aggregate products from raw materials. This percentage is represented as an averaged across aggregate containing materials including asphalt concrete, asphalt shingles, and concrete. (Think: buying recycled paper rather than cutting down trees to produce new paper.)

We are pleased by these findings and are always working to find ways to be an even better steward of natural resources and our environment. Please don't hesitate to contact us with any questions about the attached report.

Sincerely,

Bill Cröttinger
General Manager

ATTACHMENT 7

GREENHOUSE GAS EMISSIONS STUDY FOR THE TRANSPORT OF AGGREGATE MATERIALS

Comparative Analysis of Argent Materials and Existing Suppliers
in the Local Area

Prepared for
Argent Materials
8300 Baldwin Street, Oakland, CA 94621

June 2018



GREENHOUSE GAS EMISSIONS STUDY FOR THE TRANSPORT OF AGGREGATE MATERIALS

Comparative Analysis of Argent Materials and Existing Suppliers
in the Local Area

Prepared for
Argent Materials
8300 Baldwin Street, Oakland, CA

June 2018

826 Wilshire Boulevard
Suite 1100
Los Angeles, CA 90017
213.599.4300
www.esassoc.com



Irvine	Sacramento
Los Angeles	San Diego
Oakland	San Francisco
Orlando	Santa Monica
Pasadena	Seattle
Petaluma	Tampa
Portland	Woodland Hills

D180595.00

OUR COMMITMENT TO SUSTAINABILITY | ESA helps a variety of public and private sector clients plan and prepare for climate change and emerging regulations that limit GHG emissions. ESA is a registered assessor with the California Climate Action Registry, a Climate Leader, and founding reporter for the Climate Registry. ESA is also a corporate member of the U.S. Green Building Council and the Business Council on Climate Change (BCC3). Internally, ESA has adopted a Sustainability Vision and Policy Statement and a plan to reduce waste and energy within our operations. This document was produced using recycled paper.

TABLE OF CONTENTS

	<u>Page</u>
Executive Summary	ES-1
1.0 Introduction	1
1.1 Purpose	1
1.2 Regional Aggregate Demand	1
1.3 Aggregate Sources Compared in this Study	3
1.3.1 Argent Materials	3
1.3.2 Existing Aggregate Suppliers	3
2.0 Greenhouse Gases and Climate Change	5
2.1 Regulated Greenhouse Gases	5
2.2 State of California Greenhouse Gas Emissions	5
2.3 Effects of Greenhouse Gas Emissions	6
2.4 Regulations Affecting Heavy-Duty Trucks	6
3.0 Greenhouse Gas Emissions Methodology	7
3.1 On-Road Emissions Factor Model, EMFAC2017	7
3.2 Aggregate Transportation Distances	9
3.3 Other Emission Calculation Assumptions	10
4.0 Greenhouse Gas Emissions Results	11
4.1 Argent Materials and Ebi Aggregates Comparison	11
4.2 Argent Materials and CEMEX Eliot Facility and Vulcan Materials Company Pleasanton Sand & Gravel Comparison	11
4.3 Argent Materials and Cemex Clayton Quarry Comparison	12
4.4 Total Greenhouse Gas Emission Savings	13
4.5 Greenhouse Gas Cost Savings	14
4.6 Minimizing Greenhouse Gas 'Leakage'	15
5.0 References	17

Appendices

A. Greenhouse Gas Emissions Calculation Worksheets	A-1
--	-----

List of Figures

**Figure 1 Regional Map of Argent Materials Facility and Existing Aggregate Suppliers
in Alameda, Contra Costa and San Mateo County 2**

List of Tables

**Table 1 Summary of Argent Materials and Existing Aggregate Suppliers in
Alameda, Contra Costa and San Mateo Comparisons 4**

**Table 2 Argent Materials and Existing Aggregate Suppliers in Alameda, Contra
Costa and San Mateo Counties Comparison GHG Emissions 12**

EXECUTIVE SUMMARY

Greenhouse Gas Emissions

The purpose of this Greenhouse Gas Emissions Study is to provide a quantitative evaluation of the greenhouse gases (GHGs) emissions from the transport of aggregate materials from Argent Materials aggregate recycling facility located in the Oakland, California in comparison to the transport of aggregate materials to the same receiver destinations from existing aggregate suppliers in Alameda, Contra Costa and San Mateo County.

Argent Materials provides approximately 425,000 tons of recycled aggregates to its end-user receiver clients annually, the great majority of which are local. Through the year 2050, operation of Argent Material's recycling facility in Oakland will save up to 53,000 metric tons of CO₂ when compared to the GHG emissions that would result from generating or recycling aggregate product at other locations in the Bay Area. As a frame of reference, 53,000 metric tons of CO₂ is the equivalent of emissions generated by about 18,710 passenger vehicles, and by about 16,054 single family homes (about 10 percent of Oakland's 165,000 housing units¹). By using this local source of recycled materials, local developers and building companies will be able to avoid purchasing up to approximately \$4.5 million in GHG emissions offset, allowing for a reduction in the cost of homes and other projects.

Emissions of GHGs are quantitatively estimated using heavy-duty haul truck emission factors from the latest version of the California Air Resources Board (CARB) on-road vehicle emissions factor model, EMFAC2017. The input parameters in the EMFAC2017 model accounts for the specific vehicle truck type used to transport aggregate material, the range of vehicle model years used within each calendar year, forecasted emissions during future calendar years, vehicle speeds on local roadways and regional freeways for the region, and the effect of adopted CARB regulations affecting heavy-duty trucks. Existing supplier facilities and locations were determined from facilities mapped in the California Geological Survey (CGS), *Aggregate Sustainability in California*, Map Sheet 52 (CGS 2012) and detailed in the California Department of Conservation Division of Mines and Geology, *Update of Mineral Land Classification: Aggregate Materials in the South San-Francisco Bay Production- Consumption Region* (DMG 1996). These local suppliers include Ebi Aggregates, the CEMEX Clayton Quarry, the CEMEX Eliot Facility, and Vulcan Materials Company Pleasanton Sand and Gravel, which mostly rely on the mining, as opposed to the recycling, of aggregate.

Transport distances from the Argent Materials and from existing suppliers in Alameda, Contra Costa and San Mateo County to end-user receiver destinations in Alameda, Contra Costa and San

¹ Bay Area Association of Governments, *San Francisco Bay Area Housing Data 2009 Survey*, p. 2, available at https://abag.ca.gov/pdfs/2009_Housing_Data.pdf.

Francisco counties are estimated based on a population-weighted average transport distance to incorporated cities within each county. In addition, the distances to end-user receivers were weighted based on client aggregate demand data provided by Argent Materials where 90% of aggregate sold is delivered to clients within 15 miles, and the remaining 10% of material is delivered to clients further than 15 miles. This Study assumes that all aggregate supplied from Argent Materials would be delivered to end-user receiver destinations in Alameda, Contra Costa and San Francisco counties based on annual client information given by Argent Materials.

As summarized in **Table 1**, *Summary of Argent Materials and Existing Aggregate Suppliers in Alameda, Contra Costa and San Mateo Comparisons*, the transport of 425,000 tons of aggregate material annually from Argent Materials instead of Ebi Aggregates would result in a savings of approximately 33,311 metric tons (MT) of carbon dioxide (CO₂) from year 2018 to 2050 (i.e., 33-year period). This reduction would be equivalent to the following:

- 33,311 metric tons of CO₂ saved is equivalent to removing GHG emissions from nearly 11,682 average passenger vehicles traveling on roadways and freeways in Northern California over 33 years (or approximately 354 average passenger vehicles per year).
- 33,311 metric tons of CO₂ saved is equivalent to removing GHG emissions from approximately 10,024 average single-family homes in California over 33 years (or 303 average single-family homes per year).

As summarized in **Table 1**, the transport of 425,000 tons of aggregate material annually from Argent Materials instead of Vulcan Materials Company Pleasanton Sand & Gravel or CEMEX Eliot Facility would result in a savings of approximately 51,358 MT of CO₂) from year 2018 to 2050 (i.e., 33-year period). This reduction would be equivalent to the following:

- 51,358 metric tons of CO₂ saved is equivalent to removing GHG emissions from nearly 18,011 average passenger vehicles traveling on roadways and freeways in Northern California over 33 years (or approximately 545 average passenger vehicles per year).
- 51,358 metric tons of CO₂ saved is equivalent to removing GHG emissions from approximately 15,455 average single-family homes in California over 33 years (or approximately 468 average single-family homes per year).

As summarized in **Table 1**, the transport of the 425,000 tons of aggregate material annually from Argent Materials instead of CEMEX Clayton Quarry would result in savings of approximately 53,350 MT of CO₂ from year 2018 to 2050 (i.e., 33-year period). This reduction would be equivalent to the following:

- 53,350 metric tons of CO₂ saved is equivalent to removing GHG emissions from nearly 18,710 average passenger vehicles traveling on roadways and freeways in Northern California over 33 years (or approximately 566 average passenger vehicles per year).
- 53,350 metric tons of CO₂ saved is equivalent to removing GHG emissions from approximately 16,054 average single-family homes in California over 33 years (or approximately 486 average single-family homes per year).

Furthermore, while this GHG report focuses on the GHG emissions savings as a result of transport of aggregate products to end user receivers, additional GHG emissions savings are expected as the Argent Materials facility recycles aggregates by taking construction debris and

processing it into its final aggregate product as compared to the other local suppliers that either do a combination of recycling and mining (Ebi Aggregates) or mining (CEMEX Clayton Quarry, CEMEX Eliot, Vulcan Materials Company Pleasanton Sand & Gravel) to generate aggregate materials. Based on a study by the U.S. Environmental Protection Agency (USEPA), the recycling of certain aggregates products generates approximately 50% less GHG emissions than mining to generate those same aggregate products from raw materials (percentage averaged across aggregate containing materials including asphalt concrete, asphalt shingles and concrete) (USEPA 2016). Therefore, facilities such as Argent Materials, which provides recycled aggregates from construction debris, generate additional GHG savings not quantified in this report as compared to facilities that provide aggregates from virgin mined sources.

Cost Savings from Avoided GHG Emissions

As summarized in **Table 1**, for the transport of 425,000 tons of aggregate material annually from Argent Materials instead of Ebi Aggregates, cost savings from purchasing an equivalent amount of GHG emissions offsets could be as follows:

- Assuming an average cost under current conditions of \$15.10 per metric ton, 33,311 metric tons of CO₂ saved is equivalent to approximately \$502,996 saved.
- Assuming an average cost under projected future 2030 conditions of \$25 to \$85 per metric ton, 33,311 metric tons of CO₂ saved is equivalent to the range of \$832,775 to \$2,831,435 saved.

As summarized in **Table 1**, for the transport of 425,000 tons of aggregate material annually from Argent Materials instead of Vulcan Materials Company Pleasanton Sand & Gravel or CEMEX Eliot Facility, cost savings from purchasing an equivalent amount of GHG emissions offsets could be as follows:

- Assuming an average cost under current conditions of \$15.10 per metric ton, 51,358 metric tons of CO₂ saved is equivalent to approximately \$775,516 saved.
- Assuming an average cost under projected future 2030 conditions of \$25 to \$85 per metric ton, 51,358 metric tons of CO₂ saved is equivalent to the range of \$1,283,967 to \$4,365,489 saved.

As summarized in **Table 1**, for the transport of 425,000 tons of aggregate material annually from Argent Materials instead of CEMEX Clayton Quarry, cost savings from purchasing an equivalent amount of GHG emissions offsets could be as follows:

- Assuming an average cost under current conditions of \$15.10 per metric ton, 53,350 metric tons of CO₂ saved is equivalent to approximately \$805,594 saved.
- Assuming an average cost under projected future 2030 conditions of \$25 to \$85 per metric ton, 53,350 metric tons of CO₂ saved is equivalent to the range of \$1,333,765 to \$4,534,802 saved.

TABLE 1
SUMMARY OF ARGENT MATERIALS AND EXISTING AGGREGATE SUPPLIERS IN ALAMEDA, CONTRA COSTA AND SAN MATEO COMPARISONS

Aggregate Source	Weighted Average Distance to End-User Receiver Locations (miles)	Transport GHG Emissions (metric tons CO ₂)	Net Difference Compared to Argent Materials (metric tons CO ₂)		Number of Passenger Vehicle Equivalent GHG Emissions Savings		Number of Single-Family Homes Equivalent GHG Emissions Savings		Cost Savings from Purchasing Equivalent Amount of GHG Offsets	
			Over 33-year period	Average Annual	Over 33-year period	Average Annual	Over 33-year period	Average Annual	At 2018 Price (\$15.10 per metric ton in 2018)	Range at 2030 Price (\$25 to \$85 per metric ton in 2030)
Transport of 425,000 tons annually, over 33 years										
Argent Materials	9.2	25,088	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Ebi Aggregates	21.5	58,399	+33,311 (+133%)	1,009	11,682	354	10,024	303	\$502,996	\$832,775 to \$2,831,435
CEMEX Elliot Facility	28.2	76,447	+51,358 (+205%)	1,556	18,011	545	15,455	468	\$775,516	\$1,283,967 to \$4,365,489
Vulcan Materials Company Pleasanton Sand & Gravel	28.2	76,447	+51,358 (+205%)	1,556	18,011	545	15,455	468	\$775,516	\$1,283,967 to \$4,365,489
CEMEX Clayton Quarry	28.9	78,439	+53,350 (+213%)	1,616	18,710	566	16,054	486	\$805,594	\$1,333,765 to \$4,534,802
SOURCE: ESA 2018.										

Minimizing Greenhouse Gas 'Leakage'

The State of California defines GHG emissions leakage as a reduction in emissions of GHGs within the State that is offset by an increase in emissions of GHGs outside the State. Leakage occurs when emission control measures result in cost increases which:

- Can be avoided by relocating outside the state, and
- Exceed economic advantages of remaining in the state.

As demonstrated in this report, Argent Materials is a local source of aggregate for the Alameda, Contra Costa, and San Francisco County regions. By utilizing the resources at Argent Materials, regional demand for aggregate would be met while significantly decreasing GHG emissions compared to transporting aggregate from sources outside the region. Sourcing from Argent Materials would therefore be consistent with the State's policy of designing measures to minimize GHG emissions leakage by reducing the emissions of GHGs associated with the transport of aggregate to satisfy demand in Alameda, Contra Costa and San Francisco County.

1.0

Introduction

1.1 Purpose

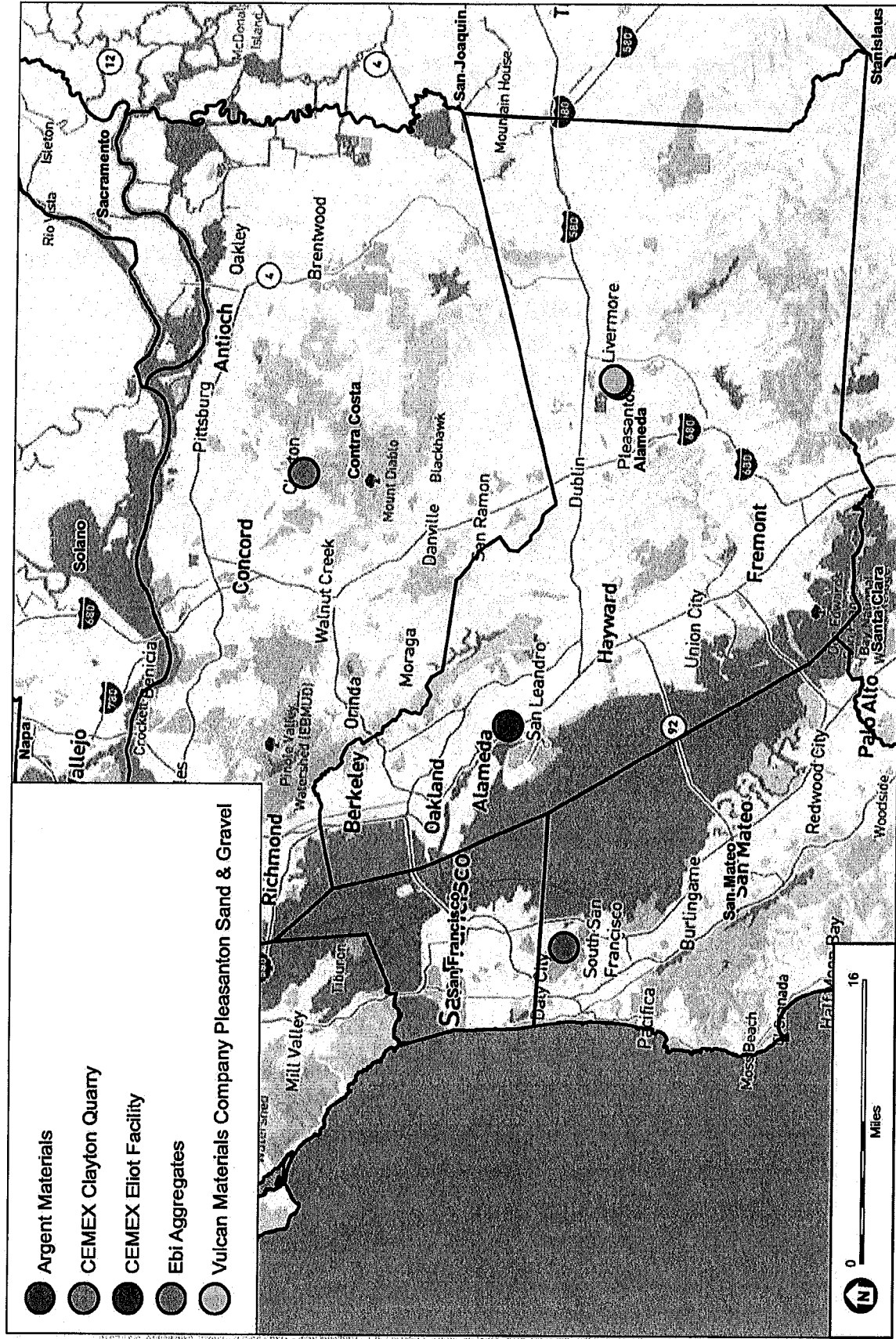
The purpose of this Greenhouse Gas Emissions Study is to provide a quantitative evaluation of the greenhouse gases (GHGs) emissions from the transport of aggregate materials from the Argent Materials aggregate recycling facility located in the Alameda county to end-user receiver destinations in Alameda, Contra Costa and San Francisco counties, in comparison to the transport of aggregate materials to the same receiver destinations from existing suppliers in Alameda, Contra Costa and San Mateo County. The locations of the two existing suppliers in Alameda county are within a third of a mile of each other. Therefore, since the location of these two supplier locations was practically identical, the distance from end-user receiver destinations to these two facilities were treated as being equal. The locations of Argent Materials and existing aggregate suppliers in Alameda, Contra Costa and San Mateo County are shown in **Figure 1, Regional Map of Argent Materials and suppliers in Alameda, Contra Costa and San Mateo County.**

The focus of this Study is the net difference in transportation-related GHG emissions from on-road haul trucks supplying aggregate materials from Argent Materials in comparison to existing suppliers in Alameda, Contra Costa and San Mateo County. Emissions of GHGs are quantitatively estimated using heavy-duty haul truck emission factors from the latest version of the California Air Resources Board (CARB) on-road vehicle emissions factor model, EMFAC2017.

1.2 Regional Aggregate Demand

Argent Materials provides approximately 425,000 tons of recycled aggregates to its end-user receiver clients annually. The basis for the comparative analysis in this Study is the transport of 425,000 tons of concrete aggregates annually, until the year 2050. The distances to end-user receivers were weighted based client aggregate demand data provided by Argent Materials where 90% of aggregate sold is delivered to clients within 15 miles, and the remaining 10% of material is delivered to clients further than 15 miles.

As detailed in the California Geological Survey (CGS) report, *Aggregate Sustainability in California*, state geologists divided California into 31 production-consumption (P-C) regions in which Portland cement concrete (PCC)-grade aggregate production is matched to the area in which most of it is consumed. As shown in Map Sheet 52 of the document, Alameda, Contra Costa and San Francisco County are located in the South San Francisco P-C region (CGS 2012).



GHG Analysis for Argent Materials and Existing Suppliers

Figure 1
Regional Map of Argent Materials Facility and Existing Aggregate Suppliers in Alameda, Contra Costa and San Mateo County

SOURCE: OpenStreetMap, 2018



As detailed in Map Sheet 52, the South San Francisco County P-C region has an aggregate supply of approximately 1,381 million tons and permitted reserves of approximately 404 million tons (CGS 2012). According to CGS staff responsible for the preparation of the *Aggregate Sustainability in California* study and the accompanying Map Sheet 52, the aggregate predictions in the study and Map Sheet 52 are based on historical aggregate use and projected into the future taking into account projected growth in housing starts, gross national product, population, and several other economic factors. The aggregate projections are not based on actual import and export data for each region, as such data is not generally tracked or widely available to the CGS.

1.3 Aggregate Sources Compared in this Study

1.3.1 Argent Materials

The Argent Materials facility is located at 8300 Baldwin Street in Oakland California generally east of Baldwin Street, east of the Nimitz Freeway (Interstate Route 880). The facility recycles approximately 1,500 tons of concrete a day, where the concrete is received categorized and processed before it is stored in the facility's 40,000 square-foot warehouse, where it is further refined into its final product. Argent Materials provides approximately 425,000 tons of recycled aggregates annually to its end-user receiver clients each year across Alameda, Contra Costa and San Francisco counties, which includes government agencies such as the California Department of Transportation (Caltrans), Bay Area Rapid Transit (BART), and the East Bay Municipal Utilities District, as well as nearly 2,000 construction firms.

1.3.2 Existing Aggregate Suppliers

1.3.2.1 Ebi Aggregates

Evans Brothers Inc. is a demolition services company that provides demolition, earth work, environmental remediation, site development and concrete crushing services for clients in both the public and private sector. Evans Brothers Inc. also owns and operates Ebi Aggregates located at 1 Quarry Road, Brisbane, California in San Mateo county. Ebi Aggregates both accepts demolition debris in order to make recycled aggregate products, as well as mines the unnamed quarry in Brisbane, southwest of the facility for aggregate materials.

For the purposes of this Study, the comparative analysis assumes the transport of 425,000 tons of aggregates annually, from 2018 to 2050 (i.e., 33-year period) from this facility to end-user receivers in Alameda, Contra Costa and San Francisco counties.

1.3.2.2 CEMEX Clayton Quarry

CEMEX is a global building materials company that produces, distributes and sells cement, ready-mix concrete, aggregates and related building products to more than 50 countries. CEMEX's United States network includes 11 cements plants, 269 ready-mix concrete plants, and 50 aggregate quarries. CEMEX's own and operates the CEMEX Clayton Quarry facility located at 515 Mitchell Canyon Road, Clayton, California in Contra Costa county. The CEMEX Clayton Quarry facility produces aggregates through mining the 124-acre Clayton Quarry that is capable of producing approximately a half-million tons of aggregate materials per year.

For the purposes of this Study, the comparative analysis assumes the transport of 425,000 tons of aggregates annually, from 2018 to 2050 (i.e, 32-year period) from this facility to end-user receivers in Alameda, Contra Costa and San Francisco counties.

1.3.2.3 CEMEX Eliot Facility

As described above, CEMEX is a global building materials company that produces, distributes and sells cement, ready-mix concrete, aggregates and related building products to more than 50 countries. CEMEX's United States network includes 11 cements plants, 269 ready-mix concrete plants, and 50 aggregate quarries. CEMEX's own and operates the CEMEX Eliot Facility located at 1544 Stanley Blvd, Pleasanton, California in Alameda county. The CEMEX Eliot Facility produces aggregates by mining the Eliot Mine located in unincorporated Alameda County, where Vulcan Materials Company Pleasanton Sand & Gravel, another existing supplier facility described below, also mines for aggregates.

For the purposes of this Study, the comparative analysis assumes the transport of 425,000 tons of aggregates annually, from 2018 to 2050 (i.e, 33-year period) from this facility to end-user receivers in Alameda, Contra Costa and San Francisco counties. As the CEMEX Eliot Facility and Vulcan Materials Company Pleasanton Sand & Gravel both mine Eliot Mine and are located in close proximity to one another (within 0.3 miles), the GHG analysis used the same distance to end-user receivers for both the CEMEX Eliot Facility and Vulcan Materials Company Pleasanton Sand & Gravel aggregate suppliers, however each facility is considered a separate and distinct existing aggregate supplier.

1.3.2.4 Vulcan Materials Company Pleasanton Sand & Gravel

Vulcan Materials Company is a construction materials company and is the nation's largest producer of construction aggregates with 337 sites that produce construction aggregates. Vulcan Materials Company owns and operates the Vulcan Materials Company Pleasanton Sand & Gravel facility located at 50 El Charro Road, Pleasanton, California in Alameda county, and produces aggregates by mining the Eliot Mine located in unincorporated Alameda County, where CEMEX Eliot Facility, another existing supplier facility described above, also mines for aggregates.

For the purposes of this Study, the comparative analysis assumes the transport of 425,000 tons of aggregates annually, from 2018 to 2050 (i.e, 33-year period) from this facility to end-user receivers in Alameda, Contra Costa and San Francisco counties. As the CEMEX Eliot Facility and Vulcan Materials Company Pleasanton Sand & Gravel both mine Eliot Mine and are located in close proximity to one another (within 0.3 miles), the GHG analysis used the same distance to end-user receivers for both the CEMEX Eliot Facility and Vulcan Materials Company Pleasanton Sand & Gravel aggregate suppliers, however each facility is considered a separate and distinct existing aggregate supplier.

2.0

Greenhouse Gases and Climate Change

This section provides a brief summary of GHGs, climate change, and regulations affecting heavy-duty trucks.

2.1 Regulated Greenhouse Gases

Compounds that are regulated as GHGs and that are relevant to transportation sources of GHGs are listed below.

- **Carbon Dioxide (CO₂):** CO₂ is the most abundant GHG in the atmosphere and is primarily generated from fossil fuel combustion from stationary and mobile sources.
- **Methane (CH₄):** CH₄ is emitted from biogenic sources (i.e., resulting from the activity of living organisms), incomplete combustion in forest fires, landfills, manure management, and leaks in natural gas pipelines.
- **Nitrous Oxide (N₂O):** N₂O produced by human-related sources including agricultural soil management, animal manure management, sewage treatment, mobile and stationary combustion of fossil fuel, adipic acid production, and nitric acid production.

The overwhelming majority of GHG emission from aggregate hauling would be in the form of CO₂ emissions. Emissions of CH₄ and N₂O would be extremely minimal and would not substantially contribute to overall GHG emissions, even when considering the higher GWP values of these pollutants. Therefore, this analysis focuses on CO₂ emissions. Other regulated GHGs include hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF₆); however, these are not generally associated with transportation sources.

2.2 State of California Greenhouse Gas Emissions

In accordance with Health and Safety Code (HSC) Division 2.5 – California Global Warming Solutions Act of 2006, CARB is tasked with compiling the official GHG emissions inventories for the State of California. Based on the 2015 GHG inventory data (i.e., the latest year for which data are available from CARB), California emitted 440.4 million metric tons (MMT) of CO₂e including emissions resulting from imported electrical power, which represents a 1.5 MMTCO₂e decrease from 2014 (CARB 2017a). The transportation sector is the largest contributor to statewide GHG emissions at 37 percent in 2015.

2.3 Effects of Greenhouse Gas Emissions

The IPCC, in its Fifth Assessment Report (AR5), Summary for Policy Makers, stated that, “it is extremely likely that more than half of the observed increase in global average surface temperature from 1951 to 2010 was caused by the anthropogenic increase in greenhouse gas concentrations and other anthropogenic forcings together” (IPCC 2013). A report from the National Academy of Sciences concluded that 97 to 98 percent of the climate researchers most actively publishing in the field support the tenets of the IPCC in that climate change is very likely caused by human (i.e., anthropogenic) activity (Anderegg 2010).

According to CARB, the potential impacts in California due to global climate change may include: loss in snow pack; sea level rise; more extreme heat days per year; worsening air quality and more high ozone days; more large forest fires; more drought years; increased erosion of California’s coastlines and sea water intrusion into the Sacramento and San Joaquin Deltas and associated levee systems; and increased pest infestation (CalEPA 2006).

2.4 Regulations Affecting Heavy-Duty Trucks

The United States Environmental Protection Agency (USEPA) has adopted a Cause or Contribute Finding in which the USEPA Administrator found that GHG emissions from motor vehicle and motor vehicle engines are contributing to air pollution, which is endangering public health and welfare. In 2006, the California State Legislature adopted Assembly Bill 32 (AB 32), codified in HSC Division 25.5 – California Global Warming Solutions Act of 2006, focusing on reducing GHG emissions in California to 1990 levels by 2020. In 2016, the California State Legislature adopted Senate Bill 32 (SB 32) and its companion bill AB 197. SB 32 and AB 197 amends HSC Division 25.5 and establishes a new climate pollution reduction target of 40 percent below 1990 levels by 2030 and includes provisions to ensure the benefits of state climate policies reach into disadvantaged communities, such as Littlerock. Shifting aggregate production from Littlerock would be a step toward compliance with this standard.

The State of California has adopted a Low Carbon Fuel Standard (LCFS) for transportation fuels that establishes a reduction in the carbon intensity of transportation fuels by 10 percent by 2020. CARB has proposed increasing the stringency of the LCFS by reducing the carbon intensity of transportation fuels by 18 percent by 2030.

GHG emissions and fuel efficiency standards for medium- and heavy-duty trucks have been jointly developed by the USEPA and the National Highway Traffic Safety Administration (NHTSA). For vocational vehicles, which consist of a variety of work vehicles including dump trucks, the Phase 1 Heavy-Duty Vehicle Greenhouse Gas Regulation started with model year 2014 and the standard requires up to a 10 percent reduction in CO₂ emissions by model year 2017 over the 2010 baseline. The Phase 2 standards start in model year 2021 and require the phase-in of a 12 to 24 percent reduction in CO₂ emission reduction from vocational vehicles by model year 2027 over the 2017 baseline (USEPA 2016). CARB has stated that California is aligning with the federal Phase 2 standards in structure, timing, and stringency, but with some minor California differences (CARB 2017b).

3.0

Greenhouse Gas Emissions Methodology

This section describes the methodology used to quantitatively estimate the GHG emissions from the transport of aggregate materials from the Argent Materials facility located in Alameda county to end-user receiver destinations in Alameda, Contra Costa and San Francisco counties in comparison to the transport of aggregate materials to the same receiver destinations from existing suppliers in Alameda, Contra Costa and San Mateo counties. Emissions modeling tools, calculation assumptions, and the methodology used to estimate transport distances are described below.

3.1 On-Road Emissions Factor Model, EMFAC2017

As part of CARB's mission to promote and protect public health, welfare, and ecological resources through the effective and efficient reduction of air pollutants, CARB has developed an Emission FACTors (EMFAC) model to calculate statewide and regional emissions inventories by multiplying emissions rates with vehicle activity data from all motor vehicles, including passenger cars to heavy-duty trucks, operating on highways, freeways, and local roads in California (CARB 2017). The EMFAC2017 (v1.0.1) model is the latest version that provides emission factors for motor vehicles operating on roads in California. According to the model documentation, EMFAC2017 includes the latest data on California's car and truck fleets and travel activity, updates to truck emission factors based on the latest test data, and the latest forecasting methods for developing vehicle age distributions and estimating vehicle miles traveled. EMFAC2017 also includes the emissions benefits from CARB's recent rulemakings, including on-road diesel fleet rules, Advanced Clean Car Standards, and the Phase I Heavy-Duty Vehicle Greenhouse Gas Regulation (refer to Section 2.4.4).

An emissions inventory can be calculated, at the most basic level, as the product of an emission rate, expressed in grams of a pollutant emitted per some unit of source activity, and a measure of that source's activity (CARB 2017). Emission rates for on-road vehicles traveling on highways and roadways are typically expressed as mass of pollutant emitted per mile driven. For the purposes of this Study, the EMFAC2017 model was used to obtain GHG emissions factors in units of grams per mile driven. The model can provide emissions factors based on a customized set of parameters including geographical region, calendar years, vehicle category, vehicle model years, and vehicle traveling speeds. Emission factors were generated based on the following set of parameters:

- **Region:** The Metropolitan Transportation Commission (MTC) jurisdictional area was selected since the area includes Alameda, Contra Costa, San Mateo and San Francisco counties; therefore, the emission factors from EMFAC2017 would be representative of

vehicles traveling within these counties. MTC also has jurisdiction over Marin, Napa, Santa Clara, Solano and Sonoma counties.

- **Calendar Year:** Emission factors were generated for calendar years 2018 through 2050 in order to evaluate GHG emissions for current and future years. As noted above, EMFAC2017 includes emissions benefits from on-road diesel fleet rules, Advanced Clean Car Standards, and the Phase I Heavy-Duty Vehicle Greenhouse Gas Regulation. Therefore, future year GHG emission rates, in terms of grams per mile driven, would be expected to generally decline in future years.
- **Vehicle Category:** EMFAC2017 can output weighted average emission factors for a combined vehicle fleet mix using model data regarding the percentage of each vehicle type and usage parameters within the specified model region or specific emission factors for individual vehicle types within the specified model region. Vehicle categories are separated into non-truck and truck types. Within each type, vehicles are further categorized as follows:
 - Non-trucks: passenger cars, light-duty trucks, medium-duty trucks, mobile homes, motorcycles, school buses, urban buses, other buses, and motor coaches.
 - Trucks: light-heavy-duty trucks, medium-heavy-duty trucks, and heavy-heavy-duty trucks.

EMFAC2017 has subcategories for each of the above categories, in particular for truck vehicle types. The subcategories for trucks are based on the different uses, such as agricultural truck or utility fleet truck, and gross vehicle weight rating (GVWR). For the transport of aggregate materials, the GHG emission factors used in this analysis were obtained for medium-heavy duty, instate truck (EMFAC vehicle code T6) heavy-heavy-duty, single unit trucks (EMFAC vehicle code T7). The T6 vehicle category applies to trucks with less than 26,000 pounds GVWR, while the T7 vehicle category applies to trucks with greater than 33,000 pounds GVWR. The average of the emission factors from these two vehicle categories was taken to represent the typical fleet of trucks that ranges from 12-ton to 25-ton capacity trucks used to transport sand and gravel aggregate materials.

- **Vehicle Model Year:** EMFAC2017 can output weighted average emission factors for aggregated vehicle model years using model data regarding the percentage of each vehicle model year operating within each calendar year or specific emission factors for individual model years. For the purpose of this Study, GHG emission factors were obtained for aggregated vehicle model years, which would represent the expected distribution of vehicle model years operating within each calendar year for the region.
- **Vehicle Speed:** Vehicle emissions can vary greatly by speed. Emission rates are typically higher at low speeds and lower at middle to higher speeds. Emission rates tend to increase as vehicles travel at high speeds in excess of 60 miles per hour due to efficiency losses (e.g., exponential increase in air resistance, operating outside of an

engine's ideal design specification). EMFAC2017 considers vehicle speed values in "speed bins" of 5 mile per hour increments and can output composite emission factors for aggregated vehicle speeds using model data regarding the percentage that each vehicle operates at different speeds or specific emission factors for individual speeds. For the purpose of this Study, GHG emission factors were obtained for the aggregated vehicle speeds, which would represent the expected distribution of vehicle speeds over local roadways and regional freeways for the region. The use of aggregated vehicle speeds is not the same as using an "average" speed value. Aggregated vehicle speeds is the composite of the EMFAC2017 speed bins whereas an average speed value would model the emissions as if vehicles were traveling only at the average speed value. As the model was run in a region-specific context based on the SCAG jurisdictional area, the emission factors generally take into account the effects of regional congestion on average speeds and the corresponding effect on exhaust emissions.

- **Fuel:** Vehicle emissions also vary by fuel type. EMFAC2017 can output weighted average emission factors for aggregated vehicle fuels using model data regarding the percentage of vehicles utilizing different fuels or specific emission factors for vehicles using a specific fuel. For the purpose of this Study, GHG emission factors were obtained for aggregated fuel types, which would represent the expected distribution of vehicle fuels for the region. For the case of heavy-heavy-duty, single unit trucks, nearly all of these vehicles would be diesel-fueled.

The above parameters result in GHG emission factors that account for the specific vehicle truck types used to transport aggregate material, the range of vehicle model years used within each calendar year, forecasted emissions during future calendar years, vehicle speeds on local roadways and regional freeways for the region, and the effect of adopted CARB regulations affecting heavy-duty trucks.

3.2 Aggregate Transportation Distances

This Study evaluates the net difference in transportation-related GHG emissions from on-road haul trucks supplying aggregate materials from the Argent Materials facility in comparison to four existing suppliers in Alameda, Contra Costa and San Mateo counties. Thus, the origination point for the analysis was set at the Argent Materials address and at the aggregate source addresses in Alameda, Contra Costa and San Mateo counties (refer to **Figure 1** and section 1.4).

There is no single end-user receiver destination for aggregate material as demand often results from development and infrastructure projects that could occur anywhere. For the purposes of this Study, a weighted average transport distance was estimated for the transport of aggregate materials to Alameda, Contra Costa and San Francisco counties. The weighted average distances are estimated as follows:

- The distances in miles to 13 incorporated cities within Alameda, Contra Costa and San Francisco counties including: Alameda, Albany, Berkeley, El Cerrito, Emeryville, Fremont, Hayward, Oakland, Piedmont, Richmond, San Francisco, San Leandro, Union

City were measured from Argent Materials and existing suppliers in Alameda, Contra Costa and San Mateo counties. The distances were mapped using the default route to each city provided in Google maps and includes travel over local roadways and regional freeways.

- The populations of each city in the analysis within Alameda, Contra Costa and San Francisco counties were obtained from the California Department of Finance (CDF 2018). It is assumed that aggregate demand is proportional to the relative population of each city. Cities with larger populations were assumed to have proportionately higher aggregate demand and proportionately higher aggregate truck trips.
- The weighted average transport distance is calculated based on the population-weighted average distance to the cities included in the analysis within Alameda, Contra Costa and San Francisco counties. In addition, the distances to end-user receivers were weighted based client aggregate demand data provided by Argent Materials where 90% of aggregate sold is delivered to clients within 15 miles, and the remaining 10% of material is delivered to clients further than 15 miles.
- Unincorporated county areas were not specifically included in the average distance calculations due to the generally non-uniform geographical extent of unincorporated areas and the difficulty in identifying population estimates for specific unincorporated areas. It is presumed that excluding unincorporated county areas would have a minimal effect on the weighted average transport distances.

3.3 Other Emission Calculation Assumptions

The following assumptions were also included in the GHG emissions calculations:

- The average truck capacity is assumed to be between 12 and 25 tons based on general mining industry standard practices and a review of mining industry documentation (CNRA 2013).
- Annual GHG emissions were estimated based on consistent aggregate demand over the analyzed time period. For example, the 425,000 tons annual demand was assumed to remain constant over the 33-year analysis period.

4.0

Greenhouse Gas Emissions Results

4.1 Argent Materials and Ebi Aggregates Comparison

This Study evaluates the net difference in transportation-related GHG emissions from on-road haul trucks supplying aggregate materials from the Argent Materials facility in comparison to four existing suppliers in Alameda, Contra Costa and San Mateo counties. The basis for the comparative analysis in this Study is the transport of 425,000 tons of concrete aggregates annually, from year 2018 until the year 2050 (approximately 33 years). Calculation details are provided in **Appendix A**.

Table 2, Argent Materials and Existing Aggregate Suppliers in Alameda, Contra Costa and San Mateo Counties Comparison GHG Emissions, shows the calculated GHG emissions from the transport of aggregate material from Argent Materials to end-user receiver destinations in Alameda, Contra Costa and San Francisco County. For comparison purposes, the calculated GHG emissions are also provided for the transport of the same tonnage of aggregate material from Ebi Aggregates located in San Mateo county. As shown in **Table 2**, the transport of aggregate material Argent Materials would result in fewer GHG emissions compared to Ebi Aggregates. This is due to the proximity of Argent Materials to end-user receiver destinations in Alameda, Contra Costa and San Francisco County. The transport of aggregate material from Ebi Aggregates results in approximately 131 percent greater GHG emissions than the transport of the same amount of material from Argent Materials.

4.2 Argent Materials and CEMEX Eliot Facility and Vulcan Materials Company Pleasanton Sand & Gravel Comparison

This Study evaluates the net difference in transportation-related GHG emissions from on-road haul trucks supplying aggregate materials from the Argent Materials facility in comparison to four existing suppliers in Alameda, Contra Costa and San Mateo counties. The basis for the comparative analysis in this Study is the transport of 425,000 tons of concrete aggregates annually, from year 2018 until the year 2050.

Table 2 shows the calculated GHG emissions from the transport of aggregate material from Argent Materials to end-user receiver destinations in Alameda, Contra Costa and San Francisco County. For comparison purposes, the calculated GHG emissions are also provided for the transport of the same tonnage of aggregate material from the CEMEX Eliot Facility and Vulcan Materials Company Pleasanton Sand & Gravel both located in Alameda county where the same distances to the end-user receivers to these two facilities were modelled. As shown in **Table 2**,

the transport of aggregate material Argent Materials would result in fewer GHG emissions compared to CEMEX Eliot Facility and Vulcan Materials Company Pleasanton Sand & Gravel. This is due to the proximity of Argent Materials to end-user receiver destinations in Alameda, Contra Costa and San Francisco County. The transport of aggregate material from CEMEX Eliot and Vulcan Materials Company Pleasanton Sand & Gravel results in approximately 205 percent greater GHG emissions than the transport of the same amount of material from Argent Materials.

TABLE 2
ARGENT MATERIALS AND EXISTING AGGREGATE SUPPLIERS IN ALAMEDA, CONTRA COSTA AND SAN MATEO COUNTIES COMPARISON GHG EMISSIONS

Aggregate Source	Weighted Average Distance to End-User Receiver Locations (miles)	Transport GHG Emissions (metric tons CO ₂)	Net Difference Compared to Argent Materials (metric tons CO ₂)		Number of Passenger Vehicle Equivalent GHG Emissions Savings		Number of Single-Family Homes Equivalent GHG Emissions Savings		Cost Savings from Purchasing Equivalent Amount of GHG Offsets	
			Over 33-year period	Average Annual	Over 33-year period	Average Annual	Over 33-year period	Average Annual	At 2018 Price (\$15.10 per metric ton in 2018)	Range at 2030 Price (\$25 to \$85 per metric ton in 2030)
Transport of 425,000 tons annually, over 33 years										
Argent Materials	9.2	25,088	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Ebi Aggregates	21.5	58,399	+33,311 (+133%)	1,009	11,882	354	10,024	303	\$502,996	\$832,775 to \$2,831,435
CEMEX Eliot Facility	28.2	76,447	+51,358 (+205%)	1,558	18,011	545	15,455	468	\$775,516	\$1,283,967 to \$4,365,489
Vulcan Materials Company Pleasanton Sand & Gravel	28.2	76,447	+51,358 (+205%)	1,558	18,011	545	15,455	468	\$775,516	\$1,283,967 to \$4,365,489
CEMEX Clayton Quarry	28.9	78,439	+53,350 (+213%)	1,618	18,710	566	16,054	486	\$805,594	\$1,333,765 to \$4,534,802

SOURCE: ESA 2018.

4.3 Argent Materials and CEMEX Clayton Quarry Comparison

This Study evaluates the net difference in transportation-related GHG emissions from on-road haul trucks supplying aggregate materials from the Argent Materials facility in comparison to four existing suppliers in Alameda, Contra Costa and San Mateo counties. The basis for the comparative analysis in this Study is the transport of 425,000 tons of concrete aggregates annually, from year 2018 until the year 2050.

Table 2 shows the calculated GHG emissions from the transport of aggregate material from Argent Materials to end-user receiver destinations in Alameda, Contra Costa and San Francisco County. For comparison purposes, the calculated GHG emissions are also provided for the transport of the same tonnage of aggregate material from CEMEX Clayton Quarry located in Contra Costa county. As shown in **Table 2**, the transport of aggregate material Argent Materials would result in fewer GHG emissions compared to CEMEX Clayton Quarry. This is due to the proximity of Argent Materials to end-user receiver destinations in Alameda, Contra Costa and San Francisco County. The transport of aggregate material from CEMEX Clayton Quarry results in approximately 213 percent greater GHG emissions than the transport of the same amount of material from Argent Materials.

4.4 Total Greenhouse Gas Emission Savings

As shown in **Table 2**, the transport of 425,000 tons of aggregate material annually from Argent Materials instead of Ebi Aggregates would result in a savings of approximately 33,311 metric tons (MT) of carbon dioxide (CO₂) from year 2018 to 2050 (i.e., 33-year period). This reduction would be equivalent to the following:

- 33,311 metric tons of CO₂ saved is equivalent to removing GHG emissions from nearly 11,682 average passenger vehicles traveling on roadways and freeways in Northern California over 33 years (or approximately 354 average passenger vehicles per year).
- 33,311 metric tons of CO₂ saved is equivalent to removing GHG emissions from approximately 10,024 average single-family homes in California over 33 years (or 303 average single-family homes per year).

As shown in **Table 2**, the transport of 425,000 tons of aggregate material annually from Argent Materials instead of Vulcan Materials Company Pleasanton Sand & Gravel or CEMEX Eliot Facility would result in a savings of approximately 51,358 MT of CO₂ from year 2018 to 2050 (i.e., 33-year period). This reduction would be equivalent to the following:

- 51,358 metric tons of CO₂ saved is equivalent to removing GHG emissions from nearly 18,011 average passenger vehicles traveling on roadways and freeways in Northern California over 33 years (or approximately 545 average passenger vehicles per year).
- 51,358 metric tons of CO₂ saved is equivalent to removing GHG emissions from approximately 15,455 average single-family homes in California over 33 years (or approximately 468 average single-family homes per year).

As shown in **Table 2**, the transport of the 425,000 tons of aggregate material annually from Argent Materials instead of CEMEX Clayton Quarry would result in savings of approximately 53,350 MT of CO₂ from year 2018 to 2050 (i.e., 33-year period). This reduction would be equivalent to the following:

- 53,350 metric tons of CO₂ saved is equivalent to removing GHG emissions from nearly 18,710 average passenger vehicles traveling on roadways and freeways in Northern California over 33 years (or approximately 566 average passenger vehicles per year).

- 53,350 metric tons of CO₂ saved is equivalent to removing GHG emissions from approximately 16,054 average single-family homes in California over 33 years (or approximately 486 average single-family homes per year).

Furthermore, while this GHG report focuses on the GHG emissions savings as a result of transport of aggregate products to end user receivers, additional GHG emissions savings are expected from the production of aggregate. As mentioned above, the Argent Materials facility recycles aggregates by taking construction debris and processing it into its final aggregate product as compared to the other local suppliers that either do a combination of recycling and mining (Ebi Aggregates) or strictly mining (CEMEX Clayton Quarry, CEMEX Eliot, Vulcan Materials Company Pleasanton Sand & Gravel) to generate aggregate materials. For instance, based on a study by the USEPA, the recycling of certain aggregates products generates approximately 50% less GHG emissions than mining to generate those same aggregate products from raw materials (percentage averaged across aggregate containing materials including asphalt concrete, asphalt shingles and concrete) (USEPA 2016). This is because aggregate recycling facilities only require the additional GHG emissions of transporting the construction debris from their suppliers in order to obtain aggregate supplies, whereas mining facilities require many pieces of heavy-duty, off-road equipment to perform intensive activities such as excavating and quarrying in order to generate raw aggregate materials that would in turn produce greater quantities of GHG emissions. Therefore, facilities such as Argent Materials, which provides recycled aggregates from construction debris, generate additional GHG savings not quantified in this report as compared to facilities that provide aggregates from virgin mined sources.

4.5 Greenhouse Gas Cost Savings

The following discussion provides an estimated cost savings from transporting aggregate material from the Argent Materials facility located in the Alameda County to end-user receiver destinations in Alameda, Contra Costa and San Francisco counties in comparison to the transport of aggregate materials to the same receiver destinations from existing suppliers in Alameda, Contra Costa and San Mateo counties.

The cost of GHG emission allowances has been priced at \$15.10 per metric ton as of March 29, 2018 according to the California Carbon Dashboard (<http://calcarbondash.org/>). In 2030, CARB predicts that the cost of GHGs per metric ton to be in the range of \$25 to \$85 under the State's Cap-and-Trade program (CARB 2017c).

As shown in **Table 2**, for the transport of 425,000 tons of aggregate material annually from Argent Materials instead of Ebi Aggregates, cost savings from purchasing an equivalent amount of GHG emissions offsets could be as follows:

- Assuming an average cost under current conditions of \$15.10 per metric ton, 33,311 metric tons of CO₂ saved is equivalent to approximately \$502,996 saved.
- Assuming an average cost under projected future 2030 conditions of \$25 to \$85 per metric ton, 33,311 metric tons of CO₂ saved is equivalent to the range of \$832,775 to \$2,831,435 saved.

As shown in **Table 2**, For the transport of 425,000 tons of aggregate material annually from Argent Materials instead of Vulcan Materials Company Pleasanton Sand & Gravel or CEMEX Eliot Facility, cost savings from purchasing an equivalent amount of GHG emissions offsets could be as follows:

- Assuming an average cost under current conditions of \$15.10 per metric ton, 51,358 metric tons of CO₂ saved is equivalent to approximately \$775,516 saved.
- Assuming an average cost under projected future 2030 conditions of \$25 to \$85 per metric ton, 51,538 metric tons of CO₂ saved is equivalent to the range of \$1,283,967 to \$4,365,489 saved.

As shown in **Table 2**, for the transport of 425,000 tons of aggregate material annually from Argent Materials instead of CEMEX Clayton Quarry, cost savings from purchasing an equivalent amount of GHG emissions offsets could be as follows:

- Assuming an average cost under current conditions of \$15.10 per metric ton, 53,350 metric tons of CO₂ saved is equivalent to approximately \$805,594 saved.
- Assuming an average cost under projected future 2030 conditions of \$25 to \$85 per metric ton, 53,350 metric tons of CO₂ saved is equivalent to the range of \$1,333,765 to \$4,534,802 saved.

4.6 Minimizing Greenhouse Gas ‘Leakage’

Implementing GHG emissions control programs often requires an assessment for potential leakage-related issues. The State of California defines GHG emissions leakage as a reduction in emissions of GHGs within the State that is offset by an increase in emissions of GHGs outside the State. Under the State’s Global Warming Solutions Act, CARB is required to design GHG emissions control measures to minimize leakage. Leakage occurs when emission control measures result in cost increases which:

- Can be avoided by relocating outside the state, and
- Exceed economic advantages of remaining in the state.

Locating aggregate mining near points of consumption results in cost savings while generating GHG emission reductions, and therefore meet neither of the above criteria. Emissions related to transport of aggregate cannot be avoided by relocating outside the state because they must be delivered to the point of consumption. For this reason, emission reductions achieved by minimizing haul distances are not subject to leakage.

In order to reduce GHG emissions and minimize leakage in the context of the aggregate mining and supply industry, policies should therefore encourage or require utilization of aggregate reserves located nearest to points of consumption. Such measures would result in a “win-win-win” for industry, government, and the environment. Conversely, regulatory actions to prohibit mining of known and/or permitted aggregate supplies located close to areas with high demand for aggregate would result in the generation of increased GHG emissions, which would then need to

be offset in other ways under the State's Global Warming Solutions Act. Such alternative emission control measures are not likely to be more cost effective than utilizing nearby aggregate reserves, nor is it likely that such measures would be revenue neutral. Rather, such offsetting measures would likely increase costs, and therefore be subject to leakage. Such measures would result in a "lose-lose" for industry and government, while generating no net environmental benefit. This would be inconsistent with the State's policy to pursue emission control measures that minimize GHG emissions leakage.

As demonstrated in this report, Argent Materials is a local source of aggregate for the Alameda, Contra Costa and San Francisco County regions. By utilizing the resources at Argent Materials, regional demand for aggregate would be met while significantly decreasing GHG emissions compared to transporting aggregate from sources outside the region. Sourcing from Argent Materials would therefore be consistent with the State's policy of designing measures to minimize GHG emissions leakage by reducing the emissions of GHGs associated with the transport of aggregate to satisfy demand in Alameda, Contra Costa and San Francisco County.

5.0

References

- Anderegg, William R. L., J.W. Prall, J. Harold, S.H., Schneider, 2010. Expert Credibility in Climate Change, Proceedings of the National Academy of Sciences of the United States of America. 2010;107:12107-12109. Available: <http://www.pnas.org/content/107/27/12107.full>. Accessed June 2018.
- California Air Resources Board (CARB), 2017. EMFAC2017 Volume I – User’s Guide, v1.0.1, December 22, 2017. Available: https://www.arb.ca.gov/msei/downloads/emfac2017_users_guide_final.pdf. Accessed June 2018.
- CARB, 2017a. California Greenhouse Gas Emission Inventory – 2017 Edition, Scoping Plan Categorization, (2017). Available: <http://www.arb.ca.gov/cc/inventory/data/data.htm>. Accessed June 2018.
- CARB, 2017b. CA Phase 2 GHG, (2017). Available: <https://www.arb.ca.gov/msprog/onroad/caphase2ghg/caphase2ghg.htm>. Accessed June 2018.
- CARB, 2017c. The 2017 Climate Change Scoping Plan Update, (2017). Available: https://www.arb.ca.gov/cc/scopingplan/2030sp_pp_final.pdf. Accessed June 2018.
- California Department of Conservation, Division of Mines and Geology (DMG), 1996. Update of Mineral Land Classification: Aggregate Materials in the South San-Francisco Bay Production- Consumption Region (1996). Available: ftp://ftp.consrv.ca.gov/pub/dmg/pubs/ofr/OFR_96-03/OFR_96-03_Text.pdf. Accessed June 2018.
- California Department of Finance (CDF), E-5 Population and Housing Estimates for Cities, Counties and the State January 1, 2018, 2018. Available: <http://www.dof.ca.gov/Forecasting/Demographics/Estimates/E-5/>. Accessed June 2018.
- California Environmental Protection Agency (CalEPA), Climate Action Team, 2006. Climate Action Team Report to Governor Schwarzenegger and the Legislature, (2006). Available: http://climatechange.ca.gov/climate_action_team/reports/2006report/2006-04-03_FINAL_CAT_REPORT.PDF. Accessed June 2018.
- California Geological Survey (CGS), 2012. Map Sheet 52, Aggregate Sustainability in California, Fifty-Year Aggregate Demand Compared to Permitted Aggregate Reserves, (2012).
- California Natural Resources Agency (CNRA), Department of Conservation, 2013. Letter from Mark Nechodom, Director, CNRA to James Kenna, State Director, Bureau of Land Management, April 23, 2013.

Intergovernmental Panel on Climate Change (IPCC), 2013. Fifth Assessment Report, Summary for Policy Makers, (2013). Available: <https://ipcc.ch/report/ar5/syr/>. Accessed June 2018.

United States Environmental Protection Agency (USEPA), 2016. Federal Register/Vol. 81, No. 206/Tuesday, Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2, October 25, 2016. Available: <https://www.gpo.gov/fdsys/pkg/FR-2016-10-25/pdf/2016-21203.pdf>. Accessed June 2018.

United State Environmental Protection Agency (USEPA), Office of Resource Conservation and Recovery. Documentation for Greenhouse Gas Emission and Energy Factors Used in Waste Reduction Model (WARM): Construction and Demolition Materials Chapters, February 2016. Available: https://www.epa.gov/sites/production/files/2016-03/documents/warm_v14_construction_demolition_materials.pdf. Accessed June 2018.

Appendix A

Greenhouse Gas Emissions Calculation Worksheets



A-1 Greenhouse Gas Calculations

City	Population	Proportion	Number of Trucks
San Leandro	67,508	0.0793	2607
Alameda	76,083	0.0714	2528
Oakland	432,827	0.381	13704
Hayward	162,000	0.1466	5385
Emeryville	11,894	0.0109	384
Berkeley	121,874	0.1103	3905
Albany	70,053	0.072	2539
San Francisco	24,850	0.022	784
San Francisco	813,953	0.0704	2434
Richmond	110,967	0.0988	313
Fremont	235,439	0.0818	664
Total	55417	1	55417

City	Population	Proportion	Number of Trucks
San Leandro	3	0.2378	2607
Alameda	3.9	0.2783	2528
Oakland	2528	22.3	13704
Hayward	380	4.1	5385
Emeryville	384	10.5	3905
Berkeley	311	1.3945	3905
Albany	611	3.0	2539
San Francisco	344	0.5511	784
San Francisco	168	0.0204	2434
Richmond	1.5	0.1163	313
Fremont	20.8	0.3901	664
Total	11,1538	9.2462	7412

City	Population	Proportion	Number of Trucks
San Leandro	28.3	2.2444	2607
Alameda	21.5	1.5344	2528
Oakland	3256	25.6	13704
Hayward	363	6.9651	5385
Emeryville	291	4.2868	3905
Berkeley	234	2.1296	3905
Albany	319	0.3491	2539
San Francisco	1719	21.005	784
San Francisco	22.7	0.0451	2434
Richmond	1.2	0.0774	313
Fremont	87.5	0.7383	664
Total	21,758	11.5231	17264

City	Population	Proportion	Number of Trucks
San Leandro	31.8	2.07	2607
Alameda	24.8	1.625	2528
Oakland	3704	23.9	13704
Hayward	380	2.376	5385
Emeryville	313	4.5308	3905
Berkeley	243	2.537	3905
Albany	257	0.444	2539
San Francisco	44.5	2.8931	784
San Francisco	31.7	0.0480	2434
San Francisco	21.1	2.3408	2434
Richmond	11.5	0.2781	313
Fremont	64	0.3607	664
Total	30,629	28.987	30,629

City	Population	Proportion	Number of Trucks
San Leandro	31.1	1.6726	2607
Alameda	27.2	1.4411	2528
Oakland	3704	19.6	13704
Hayward	380	0.1314	5385
Emeryville	313	2.5973	3905
Berkeley	243	0.3484	3905
Albany	243	3.7408	2539
San Francisco	37	0.4479	784
San Francisco	30.4	0.0781	2434
San Francisco	40.8	0.3407	2434
Fremont	64	0.4509	664
Total	20,423.6	20.1746	20,423.6

City	Population	Proportion	Number of Trucks
San Leandro	21.1	1.6726	2607
Alameda	17.2	1.9411	2528
Oakland	3704	11.443	13704
Hayward	380	2.5	5385
Emeryville	313	1.1304	3905
Berkeley	243	0.1484	3905
Albany	31.1	3.7408	2539
San Francisco	37	0.6379	784
San Francisco	34	1.562	2434
San Francisco	40.8	0.2473	2434
Richmond	11.5	0.4807	313
Fremont	64	0.4539	664
Total	30,642	26.1746	30,642

City	Population	Proportion	Number of Trucks
San Leandro	67,508	0.0793	2607
Alameda	76,083	0.0714	2528
Oakland	432,827	0.381	13704
Hayward	162,000	0.1466	5385
Emeryville	11,894	0.0109	384
Berkeley	121,874	0.1103	3905
Albany	70,053	0.072	2539
San Francisco	24,850	0.022	784
San Francisco	813,953	0.0704	2434
Richmond	110,967	0.0988	313
Fremont	235,439	0.0818	664
Total	55417	1	55417

City	Population	Proportion	Number of Trucks
San Leandro	3	0.2378	2607
Alameda	3.9	0.2783	2528
Oakland	2528	22.3	13704
Hayward	380	4.1	5385
Emeryville	384	10.5	3905
Berkeley	311	1.3945	3905
Albany	611	3.0	2539
San Francisco	344	0.5511	784
San Francisco	168	0.0204	2434
Richmond	1.5	0.1163	313
Fremont	20.8	0.3901	664
Total	11,1538	9.2462	7412

City	Population	Proportion	Number of Trucks
San Leandro	28.3	2.2444	2607
Alameda	21.5	1.5344	2528
Oakland	3256	25.6	13704
Hayward	363	6.9651	5385
Emeryville	291	4.2868	3905
Berkeley	234	2.1296	3905
Albany	319	0.3491	2539
San Francisco	1719	21.005	784
San Francisco	22.7	0.0451	2434
Richmond	1.2	0.0774	313
Fremont	87.5	0.7383	664
Total	21,758	11.5231	17264

City	Population	Proportion	Number of Trucks
San Leandro	31.8	2.07	2607
Alameda	24.8	1.625	2528
Oakland	3704	23.9	13704
Hayward	380	2.376	5385
Emeryville	313	4.5308	3905
Berkeley	243	2.537	3905
Albany	257	0.444	2539
San Francisco	44.5	2.8931	784
San Francisco	31.7	0.0480	2434
San Francisco	21.1	2.3408	2434
Richmond	11.5	0.2781	313
Fremont	64	0.3607	664
Total	30,629	28.987	30,629

City	Population	Proportion	Number of Trucks
San Leandro	31.1	1.6726	2607
Alameda	27.2	1.4411	2528
Oakland	3704	19.6	13704
Hayward	380	0.1314	5385
Emeryville	313	2.5973	3905
Berkeley	243	0.3484	3905
Albany	243	3.7408	2539
San Francisco	37	0.4479	784
San Francisco	30.4	0.0781	2434
San Francisco	40.8	0.3407	2434
Fremont	64	0.4509	664
Total	20,423.6	20.1746	20,423.6

City	Population	Proportion	Number of Trucks
San Leandro	21.1	1.6726	2607
Alameda	17.2	1.9411	2528
Oakland	3704	11.443	13704
Hayward	380	2.5	5385
Emeryville	313	1.1304	3905
Berkeley	243	0.1484	3905
Albany	31.1	3.7408	2539
San Francisco	37	0.6379	784
San Francisco	34	1.562	2434
San Francisco	40.8	0.2473	2434
Richmond	11.5	0.4807	313
Fremont	64	0.4539	664
Total	30,642	26.1746	30,642

City of San Francisco
 Department of Public Works
 1000 Market Street
 San Francisco, CA 94102

City of San Francisco
 Department of Public Works
 1000 Market Street
 San Francisco, CA 94102

City of San Francisco
 Department of Public Works
 1000 Market Street
 San Francisco, CA 94102

City of San Francisco
 Department of Public Works
 1000 Market Street
 San Francisco, CA 94102

City of San Francisco
 Department of Public Works
 1000 Market Street
 San Francisco, CA 94102

City of San Francisco
 Department of Public Works
 1000 Market Street
 San Francisco, CA 94102

Difference between Facility and Project

Year	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2040	2048	2050	
Cost Savings 2018	5502,596	5983	9917	9418	9775	9702	9625	9548	9471	9393	9313	9234	9155	9075	8997	2046	2047	2048	
	Metric: Tons GHG/year																		
	Total Metric: Tons GHG/year	1004.6	998.3	991.7	984.8	977.5	970.2	962.5	954.8	947.1	939.3	931.3	923.4	915.5	907.7	204.6	204.7	204.8	
	Average Metric: Tons GHG/year	371.7	374.4	376.8	379.0	381.7	384.3	387.0	389.7	392.3	394.9	397.5	400.1	402.7	405.3	399.4	399.4	399.4	399.4
	Total Cost (\$1 year)	302.3	300.6	298.4	296.3	294.3	291.9	289.6	287.3	285.0	282.6	280.3	277.9	275.5	273.1	270.7	273.1	273.1	273.1
Cost Savings 2019	5405,594	1509.0	1598.8	1577.2	1555.6	1533.8	1512.5	1491.5	1470.2	1449.3	1428.6	1408.1	1387.6	1367.2	1346.9	1406.2	1406.2	1406.2	
	Metric: Tons GHG/year																		
	Total Metric: Tons GHG/year	3052	298.6	291.5	284.9	278.7	272.4	266.1	260.0	253.8	247.6	241.5	235.4	229.2	223.1	227.0	227.0	227.0	
	Average Metric: Tons GHG/year	494.2	481.1	478.0	474.6	471.3	467.8	464.3	460.8	457.3	453.8	450.3	446.8	443.3	439.8	436.3	436.3	436.3	
	Total Cost (\$1 year)	1509.0	1598.8	1577.2	1555.6	1533.8	1512.5	1491.5	1470.2	1449.3	1428.6	1408.1	1387.6	1367.2	1346.9	1406.2	1406.2	1406.2	
Cost Savings 2020	54383,705	1544.9	1538.1	1520.0	1518.3	1507.2	1495.8	1484.0	1472.1	1460.3	1448.1	1435.9	1423.7	1411.5	1399.2	1387.1	1411.5	1399.2	
	Metric: Tons GHG/year																		
	Total Metric: Tons GHG/year	573.0	577.2	580.8	584.2	587.6	591.0	594.4	597.8	601.2	604.6	608.0	611.4	614.8	618.2	621.6	625.0	628.4	
	Average Metric: Tons GHG/year	466.1	453.2	450.1	446.8	443.5	440.1	436.6	433.2	429.7	426.3	422.8	419.4	415.9	412.5	409.0	405.6	402.1	
	Total Cost (\$1 year)	1544.9	1538.1	1520.0	1518.3	1507.2	1495.8	1484.0	1472.1	1460.3	1448.1	1435.9	1423.7	1411.5	1399.2	1387.1	1411.5	1399.2	
Cost Savings 2020	54385,489	573.0	577.2	580.8	584.2	587.6	591.0	594.4	597.8	601.2	604.6	608.0	611.4	614.8	618.2	621.6	625.0	628.4	
	Metric: Tons GHG/year																		
	Total Metric: Tons GHG/year	573.0	577.2	580.8	584.2	587.6	591.0	594.4	597.8	601.2	604.6	608.0	611.4	614.8	618.2	621.6	625.0	628.4	
	Average Metric: Tons GHG/year	466.1	453.2	450.1	446.8	443.5	440.1	436.6	433.2	429.7	426.3	422.8	419.4	415.9	412.5	409.0	405.6	402.1	
	Total Cost (\$1 year)	573.0	577.2	580.8	584.2	587.6	591.0	594.4	597.8	601.2	604.6	608.0	611.4	614.8	618.2	621.6	625.0	628.4	

A-2 EMFAC2017 Emission Factors

EMFAC2017 Emission Factors
 Metropolitan Transportation Commission (MTC)
 2018-2050
 aggregate model year
 aggregate speed

T6 Instate Small

Year	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036
CO2e (g/mile)	1023.612	1002.977	990.2454	977.3389	966.2945	955.138	942.7151	932.2768	921.8605	909.1278	901.2256	893.0055	884.966	876.6108	867.9475	859.3184	850.7673	842.2616	833.8121
Year	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036
CO2e(g/mile)	1554.141	1532.478	1524.301	1516.344	1512.916	1510.511	1505.368	1503.563	1501.548	1495.614	1498.13	1498.995	1499.7	1498.636	1494.857	1490.963	1486.621	1482.004	1476.653
Year	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036
CO2e(g/mile)	1298.877	1267.728	1257.273	1246.841	1239.605	1232.825	1224.041	1217.92	1211.704	1202.371	1199.678	1196	1192.333	1187.623	1181.402	1175.141	1168.694	1162.133	1155.233

T7 Single

Average

LDA

Year	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036
Metric: Tons CO2e/Vehicle	3.849	3.769	3.686	3.602	3.519	3.440	3.364	3.290	3.220	3.153	3.090	3.030	2.974	2.921	2.871	2.825	2.782	2.741	2.703

EMFAC2017 Emission Factors
 Metropolitan Transportation Commission (MTC)
 2018-2050
 aggregate model year
 aggregate speed

T6 Instate Small	Year	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050
	CO2e (g/mile)	825.4596	817.1919	808.022	800.9567	793.0022	785.1608	777.4409	769.8484	762.3789	755.0296	747.7976	740.6851	733.6982	726.832
T7 Single	Year	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050
	CO2e(g/mile)	1470.429	1463.617	1455.84	1447.281	1438.245	1428.505	1418.531	1408.41	1397.794	1386.93	1375.929	1364.787	1353.544	1342.363
Average	Year	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050
	CO2e(g/mile)	1147.944	1140.404	1132.431	1124.119	1115.623	1106.833	1097.986	1088.129	1080.087	1070.98	1061.863	1052.736	1043.621	1034.598
LDA	Year	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050
	Metric Tons CO2e/Vehicle	2.667	2.652	2.599	2.568	2.537	2.509	2.481	2.454	2.428	2.403	2.379	2.356	2.333	2.311

CITY OF OAKLAND



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA • SUITE 3315 • OAKLAND, CALIFORNIA 94612

Planning and Building Department
Bureau of Planning

(510) 238-3941
FAX (510) 238-6538
TDD (510) 238-3254

October 29, 2018

William Crotinger / Sean R. Marciniak, *for* Silverado Contractor
2855 Mandela Parkway, 2nd Floor
Oakland, CA 94608

SUBJECT: DET180082- Expansion of an existing Heavy Industrial / High Impactive Activity (concrete processing / rock crushing) to increase and expand it's facilities to include processing within a portion of an existing structure located at 685 85th Avenue (APN: 042-4318-008-00)

Project Address: 8291, 8300, and 8304 Baldwin Street (APN's: 042-4318-044-00, 043-00, and 042-00), & 685 85th Avenue (proposed) (APN: 042-4318-008-00).

Dear Mr. Crotinger

This letter is in response to your request for a zoning determination to expand a Heavy Industrial / High Impact activity. The previously existing activity was defined by Zoning Clearance (ZC131567) to allow for the continuation of a Legal Nonconforming Heavy Industrial operation (cement processing). This Clearance was based on supporting documents dated from 1998 thru 2012, and was issued on July 16, 2013. Staffs currently defines this and similar activities as Heavy Industrial / High Impact activity.

This Determination (DET180082) is to address the expansion of the current activity to include facilities located at 685 85th Avenue (an adjacent building). The activities approved by ZC131567 at 8300 Baldwin Street are considered to be legal non-conforming as it is a continuation of a prior activity at the site. The expansion of this operation into the structure at 685 85th Avenue came after the clearance was granted and therefore is not recognized as a continuation of the non-conforming activity and would require a Major Conditional Use Permit to legalize the expansion of the facility and activity.

Given the above, ether this activity needs to cease or you may apply for a Major Conditional Use Permit to attempt to legalize this.

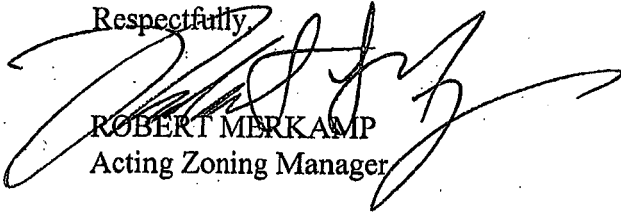
Attachment B

This determination is only regarding the Zoning Code and no representations are to be made from this determination regarding requirements from the Bureau of Building, Fire Department, or any other City agency.

If you, or any interested party, seeks to challenge this decision, an appeal **must** be filed by ~~no~~ later than ten calendar (10) days from the date of this letter, by 4:00 pm on 11/8/15. An appeal shall be on a form provided by the Planning and Zoning Division of the Community and Economic Development Agency, and submitted to the same at 250 Frank H. Ogawa Plaza, Suite 2114, to the attention of **Moe Hackett, Planner II**. The appeal shall state specifically wherein it is claimed there was error or abuse of discretion by the Zoning Manager or wherein his/her decision is not supported by substantial evidence and must include payment of \$1622.57 in accordance with the City of Oakland Master Fee Schedule. Failure to timely appeal will preclude you, or any interested party, from challenging the City's decision in court. The appeal itself must raise each and every issue that is contested, along with all the arguments and evidence in the record which supports the basis of the appeal; failure to do so may preclude you, or any interested party, from raising such issues during the appeal and/or in court. However, the appeal will be limited to issues and/or evidence presented to the Zoning Manager prior to the close of the previously noticed public comment period on the matter.

If you have any questions, please contact the case planner, **Moe Hackett, Planner II** at (510) 238-3973 or mhackett@oakland.com, however, this does not substitute for filing of an appeal as described above.

Respectfully,



ROBERT MERKAMP
Acting Zoning Manager

Cc: Brian Mulry, City Attorney's Office



**MILLER STARR
REGALIA**

1331 N. California Blvd.
Fifth Floor
Walnut Creek, CA 94596

T 925 935 9400
F 925 933 4126
www.mslegal.com

Sean R. Marciniak
Direct Dial: 925 941 3246
sean.marciniak@mslegal.com

November 13, 2018

VIA E-MAIL AND MESSENGER

Moe Hackett
Planner II
City of Oakland
Planning and Building Department
250 Frank H. Ogawa Plaza, Ste. 2340
Oakland, CA 94612-2031
Email: mhackett@oaklandnet.com

Re: Appeal of Zoning Determination Letter (DET 180082)

Dear Mr. Hackett:

Miller Starr Regalia represents Silverado Contractors, Inc. and Argent Materials, Inc. (collectively, "Silverado") in their recycling operations at 685 85th Avenue and 8291-8304 Baldwin Street in the City of Oakland.¹ On July 13, 2018, we had submitted a request for a zoning determination regarding the compliance of Silverado's operations with the City's Planning Code. We are in receipt of the City's zoning determination letter dated October 29, 2018, in which the Zoning Manager determined that Silverado's outdoor uses were legal and non-conforming, but that Silverado's indoor operations at an adjacent warehouse were not legal, non-conforming uses. We hereby appeal this determination with regard to Silverado's warehouse operations, for the reasons set forth below.

The zoning determination letter contains errors, and its determinations constitute an abuse of discretion and are unsupported by substantial evidence, for the following reasons:

- **The zoning determination letter incorrectly frames our client's request.** The City's letter indicates it was prepared "in response to [our] request for a zoning determination to *expand* ... the current activity to include facilities located at 685 85th Avenue (adjacent building)." We did not request that the City determine whether our client's "expansion" into the warehouse was lawful because, simply, our client never expanded into the warehouse.

¹ The assessor parcel numbers for 8291, 8300 and 8304 Baldwin Street are, respectively, 042-4318-044, 042-4318-043, 042-04317-042. The assessor parcel number for 685 85th Avenue is 042-4318-008.

Maurice Hackett
City of Oakland
Planning and Building Department
November 13, 2018
Page 2

Silverado, and the concrete recycling company that operated on the premises before it, always used *the entirety of the warehouse* as an integral part of their recycling activities. It seems the City's zoning determination letter misunderstood the facts and the nature of our request.

- **The current warehouse uses are not materially different than what occurred under prior zoning.** One of the requests in our letter was to determine that Silverado's warehouse operations were legal, non-conforming uses because this activity preceded the City's rezoning of the property in 2008, replacing an industrial (M-40) district with a mixed commercial/industrial (CIX-2) zoning district. With this change, certain heavy industrial uses were no longer permitted on the property. As detailed in our request for a zoning determination letter, the warehouse has always been used in conjunction with concrete recycling that occurring in the outdoor yard at 8291-8304 Baldwin Street, both before and after the City's zoning change in 2008.
- **The zoning determination letter did not acknowledge the extensive evidence provided by Silverado of the warehouse's historical use.** The City's zoning determination letter does not seem to acknowledge or account for the great deal of evidence that Silverado submitted to show the warehouse was used for recycling activities prior to the City's rezoning action in 2008. This evidence includes old lease materials; declarations by employees of the previous recycling operator, signed under penalty of perjury; declarations by an employee of a third-party trucking operation, signed under penalty of perjury; and Alameda County records, all of which show the warehouse has been used, for more than a decade, to store recycling equipment and materials, and for the repair of heavy recycling equipment. We have consulted Bay Area planners, who have indicated such evidence is routinely accepted as proof of a legal, non-conforming use, and have attached a letter by a former City of Oakland planner that confirms this practice.
- **The zoning determination letter did not address, at all, our client's claim that Silverado's indoor operations are permitted by right.** Staff's position has been that past Zoning Clearances only address Silverado's outdoor activities, which staff determined were Heavy Industrial Uses, whereas we presented substantial evidence that Silverado's indoor uses are Light Industrial or General Industrial Uses, which are permitted by right in CIX-2 districts. This issue was not addressed in the City's zoning determination letter.

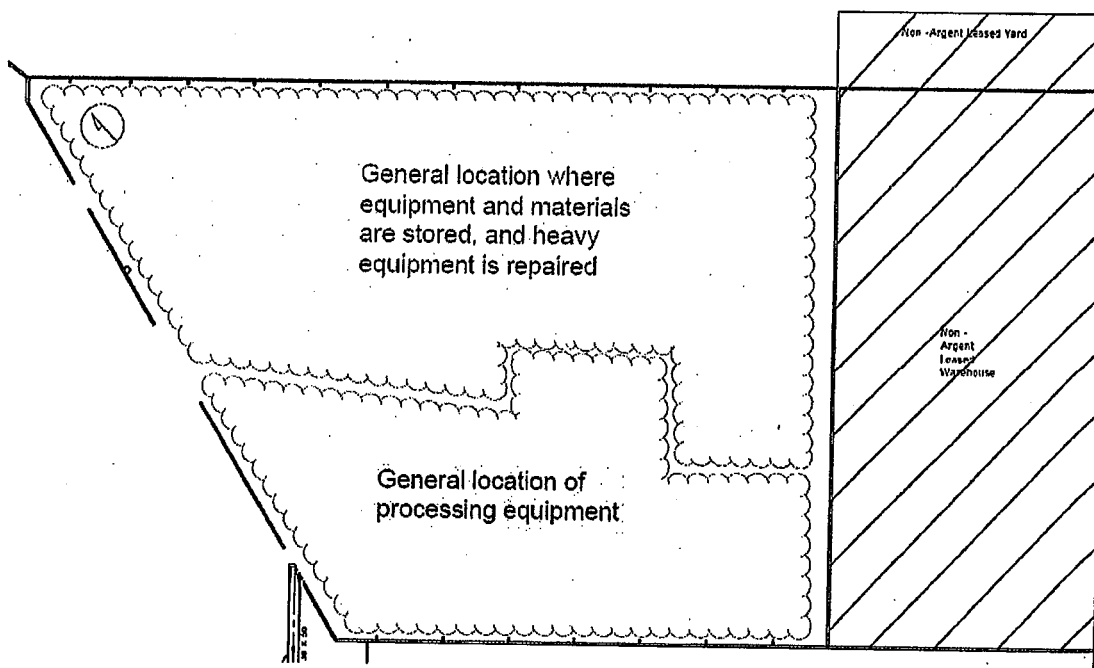
Below, we have set forth in more detail why Silverado's warehouse activities are properly categorized as legal, non-conforming uses. In support of this position, we hereby incorporate by reference the contents of our July 13, 2018 request for a Zoning Determination Letter and each of its seven attachments, as well as our

March 9, 2018 Appeal Letter and each of its 14 exhibits. Both of these are enclosed in this submittal, for your convenience.

- I. **Silverado's use of the warehouse is a legal, non-conforming use because this space always has been integral to the larger site's concrete recycling activities.**

A. ***Brief summary of Silverado's uses.***

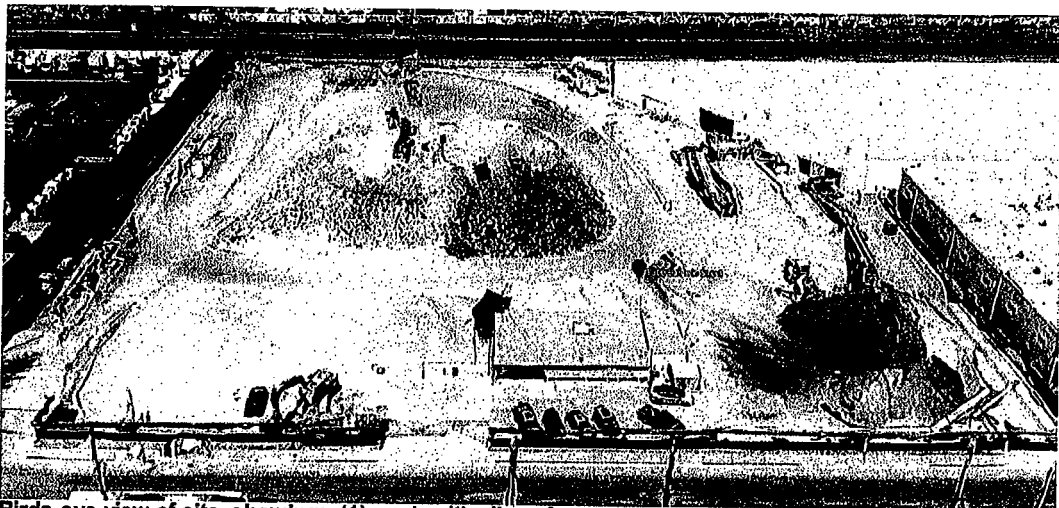
Silverado conducts a concrete and asphalt recycling operation in its yard at 8291-8304 Baldwin Street and in its warehouse at 685 85th Avenue. This warehouse space, in particular, accommodates: (1) the storage of equipment and materials, (2) the repair of heavy equipment, and (3) secondary processing and sorting equipment. In all, the warehouse encompasses 40,000 square feet, whereas approximately 24,000 square feet of this space is used to store materials and repair heavy equipment, and about 16,000 square is used to accommodate the secondary processing and sorting equipment. A site plan for the warehouse, showing the indoor spaces devoted to the foregoing uses, is included below:



Site plan view of warehouse, showing location of Silverado's different recycling activities. Boundaries are approximate, as there are no walls nor other dividers in the interior space that clearly demarcate these activity areas. Aman, meanwhile, used the entirety of the space for the storage of equipment and materials, and the repair of heavy equipment (i.e., the blue shaded area). The hatched portion on the right is warehouse space belonging to a different tenant; there is a wall separating Silverado's space from this other tenant's space.

Ultimately, the yard space and warehouse are operated as an integrated whole, and it is a dynamic operation. This means that, on a day-to-day basis, the many different steps required to recycle large amounts of concrete change in scope — both in terms of their intensity and in terms of where these steps are conducted. For instance, on a day-to-day basis, the piles of raw materials on the site change shape based on how much recyclable materials Silverado receives, requiring employees to move around their equipment, change the locations where they must repair this equipment, and otherwise adjust operations. The warehouse space is a fluid part of this operation, accommodating stored materials and equipment repair when needed, and it has been this way since at least 2007.

Below is a birds-eye view of Silverado's yard and warehouse.



Birds-eye view of site, showing: (1) yard, with piles of materials located in the center and elsewhere on the site, as well mobile crushing equipment; and (2) the warehouse, in the upper right portion of the photo, with conveyor belts that transport crushed rock leading into the structure's openings.

A recycling yard is not an office use, with static walls and other boundaries, and the nature of the industry demands flexibility. Because of Silverado's operational plasticity, the company has been able to recycle about 425,000 tons of aggregate annually. In past years, Silverado has taken down and recycled enormous projects such as the Bay Bridge and Candlestick Park, and diverted recycled building materials back into local construction projects.

Silverado's operations have become increasingly important for the Bay Area construction economy as a source of aggregate. Historically, this material was available from a number of quarry and aggregate mining activities, scattered throughout the Bay Area — some in rivers and other wetland areas. One by one, almost of all these quarry have closed, primarily for environmental reasons, but the

construction need for materials has increased significantly. Silverado's operation provides a source of vitally important aggregate close to urban construction needs, without the accompanying environmental damage of quarry in rural areas. As discussed further below, Silverado's use is a "green" one, and results in a reduction of greenhouse gas emissions that is equal to the emissions generated by about 10 percent of Oakland's entire housing stock.

B. *Silverado's predecessor conducted substantially the same type of recycling operations within the warehouse.*

Much of the information below is a reiteration of what we included in our zoning determination letter, though we have streamlined its presentation here for the sake of readability. It does not appear the City's zoning determination letter accounted for this information, which constitutes substantial evidence to support a determination that Silverado's warehouse activities are legal, non-conforming uses. These facts also highlight the errors and omissions of fact that underlie the City's conclusions in its zoning determination letter.

The relevant facts are as follows:

- Silverado is not the first recycling business to use the Properties to process asphalt and concrete. Since at least the late 1990s, two sister companies² — Aman Environmental Construction, Inc. and the Cleveland Wrecking Company ("Aman") — had performed and supported the same recycling operations, turning asphalt and concrete into reusable products. (See Appeal Letter, Exhibit 2, ¶ 7.)
- Aman occupied, and used in an integrated manner, the entirety of outdoor yard area and the 40,000-square-foot warehouse space. Evidence supporting this includes:
 - **A copy of Aman's lease with the owner of the Properties**, which shows Steve Aman and his companies had the right to use the warehouse space starting in November 27, 2006. (See Zoning Determination Letter Request, Attachment 1, [see Paragraph 1, which gave Aman rights to use 40,000 square feet of building space at 689-691 85th Avenue³].)

² It is not unusual for sister companies to be associated with recycling processes. One company usually specializes in the demolition of structures, serving as a source of materials for a recycling operation managed by an affiliated company, which receives materials from that and other sources.

³ The 689-691 85th Avenue is a street address used to describe the same warehouse that the 685 85th Avenue address describes. We are unaware as to how the street addresses were assigned, but can confirm it is all the same property.

- **Eyewitness statements of people who worked for and with Aman, signed under penalty of perjury.** These documents include the statements of workers employed by Aman and a third-party trucking company, who utilized the Properties on a frequent basis. (See Zoning Determination Letter Request, Attachment 2a-2c.) These individuals, which include an operations superintendent, a site foreman, and a truck driver who regularly delivered equipment to the site, report that the warehouse was used for storage (e.g., the storage of materials, equipment and hazardous substances) and as a shop to repair heavy equipment (e.g., through welding and other processes) — all of which were integral to Aman's recycling operations. (See also Appeal Letter, Exhibit 2, Decl. of William J. Torres, former president of an affiliate to Aman, ¶¶ 2-7.)
- **Government documents, showing usage of the warehouse for the repair of heavy industrial equipment by Aman.** Various government forms and other documents show the warehouse was in use by Aman prior to the City's rezoning action in June 2008, including:
 - A June 14, 2007 hazardous materials reporting form that Aman submitted to the Alameda County Department of Environmental Health, which confirms that diesel, oil, hydraulic fluid, propane, spray paint, and waste oil were kept in the warehouse. (See Zoning Determination Letter Request, Attachment 3.)
 - A June 8, 2007 Hazardous Materials Inspection Report, which shows the warehouse was used to store diesel, propylene, and used oil. (See Zoning Determination Letter Request, Attachment 4.) The warehouse is referred to as a "shop" in this document, which is consistent with recollections by Aman employees that the warehouse was used, in part, as a shop to repair heavy machinery. (See Zoning Determination Letter Request, Attachment 2a, ¶ 9; see also Zoning Determination Letter Request, Attachment 2b, ¶ 10.)

Based on the foregoing evidence, none of which has been disputed or contradicted by anything in the administrative record for this matter, it is clear the warehouse was used for recycling operations before the City rezoned the area in 2008. Heather Coleman, an experienced planner who has worked for the City of Oakland and other Bay Area cities, has indicated that the foregoing types of evidence are commonly accepted by cities as proof of a legal, non-conforming use. (See Attachment 1.)

C. *Silverado's predecessor conducted substantially the same type of recycling operations within the warehouse.*

Silverado uses the same exact warehouse space in support of recycling activities that Aman used prior to June 2008. The only difference is that Silverado utilizes 16,000 square feet of the warehouse — about 33 percent of it — for secondary processing⁴ and sorting activities, whereas Aman used this space for the repair of heavy equipment and the storage of materials, equipment, and hazardous substances. (See warehouse site plan on p. 3 of this letter.) The remaining 24,000 square feet of warehouse space — more than 66 percent of it — has been used by both Silverado and Aman for the exact same purposes: (1) the storage of equipment and materials and (2) the repair of heavy equipment. While Silverado's processing and sorting activities in the southern third of the warehouse are somewhat different than how Aman used the space, it is not different in a material way. The Oakland Planning Code only prohibits changes that either increase the footprint of or relocate a non-conforming use (OPC, § 17.114.080(A); see more extensive discussion in our March 9, 2018 Appeal Letter.)

First, Silverado's use of the 16,000-square-foot portion of the warehouse for processing and sorting of materials does not constitute an increase in size. *Silverado currently uses the same exact indoor space that Aman used prior to the City's rezoning of the site in 2008*, and the external footprint of recycling operations on the site has never changed.

Second, Silverado never moved its operations to an area that was not previously used for recycling, but instead reconfigured its existing, industrial space.⁵ Silverado therefore has not "relocated" any uses to a space that Aman did not previously use in its recycling operations. Again, the only difference in their operations is that

⁴ When concrete and other materials arrive at the site, they come in a variety of sizes, and often are as large as boulders. In the outdoor yard, these larger pieces are ground into "softball sized" pieces, which then are refined by machinery in the warehouse space into smaller particles. It is this refinement that we are referring to when we use the term "processed."

⁵ In determining the meaning of words used in the City's Municipal and Planning Codes, section 1.04.020 of the Municipal Code provides that "[a]ll words and phrases shall be construed according to the common and approved usage of the language." Accordingly, Merriam-Webster's dictionary defines "relocate" to mean "establish or lay out in a *new* place." The term "reconfigure," meanwhile, means "to change the way (something) is arranged or prepared for a particular purpose." The difference, then, is that "relocating" a use contemplates moving an activity into a space that was previously unoccupied, or was occupied with a completely different land use, whereas "reconfiguring" a land use merely contemplates the rearrangement of similar activities within space that is already occupied.

Maurice Hackett
City of Oakland
Planning and Building Department
November 13, 2018
Page 8

Silverado uses a minor portion of the warehouse to process and sort rock that has already undergone primary crushing. The same floor space in the warehouse was occupied before by Aman employees using loaders to move around piles of rock, and by welders and mechanics to repair heavy equipment.

While zoning laws can be precise, it is not the practice of cities and counties to supervise a property owner's exact configuration of activities on a square-foot by square-foot basis. As explained by Ms. Coleman, in her experience as a professional urban planner and a former City of Oakland employee, activities under the same establishment and management are classified together as a single land use, and moving one accessory use from one part of a site to another does not mean this accessory activity should be reclassified as a separate land use. (See **Attachment 1** [November 12, 2018 Ltr. from Heather Coleman]; see also OPC, § 17.10.040.) So long as these activities are in the same land use category or oriented toward a common purpose, agencies generally shy away from the micromanagement of operations.⁶ For instance, in a restaurant, the City's zoning code is unconcerned about the configuration of tables and chairs and cooking space so long as the property is zoned for restaurant use. (See, e.g., OPC, § 17.73.020 [restaurants permitted in CIX-2 zones, without discussion of restaurants' internal components]; see also OPC, §§ 17.10.272, 17.10.274 [City's definitions of restaurants do not address specific locations of kitchens, seating, and other component activities, but are concerned with establishing larger categories of use].) Similarly, in a big box retail store, the City's zoning does not control in which aisles a product is stored or sold, so long as the site has commercial zoning. (See, e.g., OPC, § 17.73.020 [certain retail stores, including General Wholesale Sales, permitted in CIX-2 zones, without discussion of location of component operations]; see also, e.g., OPC, §§ 17.10.340, 17.10.345, 17.10.430 [City's definitions of retail stores do not address specific locations of sales areas, ancillary office uses, and other operational activities].) In each of the above examples, reconfiguring a site by moving its kitchen or refrigerated food storage units does not change or alter the land use.

Here, Silverado's situation is analogous. Where Silverado decides to store materials or repair equipment, or where it conducts processing activities on the site,

⁶ It is more the function of the building code, and its enforcement, to ensure that specific activities are conducted in specific locations, but only to the extent necessary to make sure these activities are conducted in a safe manner. In this instant enforcement action, there is no allegation that Silverado's indoor land use activities violate the building code. The building code violation alleged by the City concerns the structural integrity of two openings to the warehouse but, as discussed in the City's July 3, 2018 letter, this violation is to be addressed once the zoning issues are resolved. Please note, a structural engineering firm, FBA Inc., has determined these "openings do not structurally compromise either the vertical load carrying ability or the lateral stability of the warehouse structures." (March 9, 2018 Appeal Letter, Exhibit 8.)

and whether it shifts operations around, does not alter the site's use. After all, the footprint of the large debris pile in the center of the site changes on a daily basis, based on how much recyclable material is imported and recycled on that specific day. Furthermore, until a few years ago, Aman and Silverado used portable crushing and processing equipment, meaning the configuration of the site changed frequently. Recycling is a dynamic operation, and necessarily must be permitted to change — and we believe the City's code reflects this. To determine that Silverado's warehouse use is legal and non-conforming would not set any precedent, but rather reflect how the City has dealt with other land uses in the past.

In accordance with the above, we are requesting that the City determine Silverado's warehouse activities are legal and non-conforming. The City's zoning determination letter, respectfully, did not account for the evidence we have presented, and its determination that Silverado "expanded" recycling operations into the warehouse after 2008 is at odds with all evidence in the administrative record, and was made in error.

D. *In the alternative, Silverado's warehouse uses are permitted by right in CIX-2 Zones.*

In the alternative, we request that the City determine Silverado's warehouse activities are permitted by right under current zoning. The City's zoning determination did not address this request.

In June 2008, when the City rezoned the area, Silverado's operations most likely would be categorized under the City's "Intermediate Recycling Processing Facility" category, which was defined as an "activity serving as a collection point for receiving, processing, storage, and distribution of large quantities of recyclable materials delivered from recycling collection centers or other sources." (Former OPC, § 17.10.586.) This term contemplated that recyclable materials, typically, would be "processed entirely indoors." (Appeal Letter, Exhibit 12, p. 6.) On March 17, 2009, the City Council deleted this industrial subclassification through its adoption of Ordinance No. 12923, with the understanding that the City would "revert to the previous practice of considering such businesses as manufacturing (light, general or heavy/high impact, depending on the nature of the operations)." (*See id.*)

For the sake of convenience, we have reproduced sections of the City's March 17, 2009 staff report below:

Maurice Hackett
City of Oakland
Planning and Building Department
November 13, 2018
Page 10

CITY OF OAKLAND
AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2008 NOV 20 PM 5:02

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: December 2, 2008

RE: Public Hearing and An Ordinance Amending The Oakland Planning Code To:
(1) Amend Chapter 17.102 "General Regulations Applicable To All Or Several Zones" To Include Performance Standards For Primary Collection Center Recycling Uses In All Zones;
(2) Amend Chapter 17.73 "CIX-1, CIX-2, IG And IO Industrial Zones" To Include Regulations Concerning Primary Collection Center Recycling Uses In CIX-1, CIX-2 And IG Zones;
(3) Amend Chapter 17.10 "Use Classifications" To Delete "Intermediate Processing Facility" As A Land Use Activity Type From O.M.C. Section 17.10.586 "Recycling And Waste-Related Industrial Activities"

B. Proposed Deletion of "Intermediate Processing Facility" as a land use activity type from O.M.C. Section 17.10.586 "Recycling and Waste-Related Industrial Activities".

As part of the ordinance adopting new industrial zones (Ord. No. 12875 C.M.S.), O.M.C. Chapter 17.10 "Use Classifications" was amended. (The subclassification "Intermediate Processing Facility" (under Recycling and Waste-Related Industrial Activities) was added in order to call out a particular sector of manufacturers using recycled materials to produce new products to facilitate access by these businesses to available loan and grant monies. Such uses are generally distinguishable from Primary Collection Centers in that there are typically no direct transactions with the public; materials are delivered in large quantities (e.g., by the truckload) and are processed entirely indoors.)

(After considerable discussion with members of the public, business owners and other affected stakeholders, it is staff's recommendation to delete this definition and revert to the previous practice of considering such businesses as manufacturing (light, general or heavy/high impact, depending on the nature of the operations).) Introduction of the definition only created a layer of complexity and confusion about what is essentially a manufacturing use.

The proper approach, and the modern one, for the City to classify recycling uses by reviewing them on a case-by-case basis and, after examining the details of a given operation, determine whether it qualifies as a light, general, or heavy industrial use.

The secondary processing and sorting of the rocks in the warehouse, as well as their storage, properly qualify as either a General Manufacturing Industrial Activity or

Maurice Hackett
City of Oakland
Planning and Building Department
November 13, 2018
Page 11

a Light Manufacturing Industrial Activity,⁷ both of which are permitted by right in CIX-2 and IG Zones. (OPC, Table 17.73.020.)⁸ In the opinion of Ms. Coleman, the use is most appropriately categorized as a General Manufacturing Industrial Activity. (See Attachment 1 [November 12, 2018 Ltr. from Heather Coleman].)

Turning to the facts, Silverado's processing and sorting operations within the warehouse consist of the processing and sorting of small, recycled stones into smaller stones, gravel, and sand. These are not "high impact" or "heavy" manufacturing activities, given that (1) these activities fit within less than 16,000 square feet of indoor space (whereas the remaining ~24,000 square feet of warehouse space is devoted to access and the storage of product, as well as the repair of equipment), and thus do not involve "large-scale facilities;" and (2) these activities do not produce noise, vibration, air pollution, a fire hazard, or noxious emissions that would violate the standards set forth in Chapter 17.120, or any other federal, state or local standards, and thus have minimal impact. (See OPC, § 17.10.580; see also March 9, 2018 Appeal Letter [detailed analysis showing Silverado's warehouse operations do not produce noise, vibration, air pollution, fire hazards, or noxious emissions that would violate the standards in Chapter 17.120, or any other federal, state, or local standards].) Therefore, the City has the discretion to determine that Silverado's operations qualify as "Light Manufacturing Industrial Activities" or as "General Manufacturing Industrial Activities" under sections 17.10.560 and 17.10.570 of the Oakland Planning Code.

Both General and Light Manufacturing Industrial Activities are permitted by right in CIX-2 and IG Zones. Accordingly, if Silverado's warehouse operations do not qualify as a legal, non-conforming use, we request the City determine they are lawful and permitted under current zoning requirements.

II. Conclusion.

Silverado constitutes an Oakland success story in its recycling and diversion of debris that would otherwise go into precious landfills. Our client's operations also

⁷ We would submit that all of Silverado's activities, both indoor and outdoor, qualify as General or Light Manufacturing Industrial Activities on the basis of facts contained in the administrative record of proceedings.

⁸ As indicated in previous sections, we believe the proper way to treat Silverado's crushing, processing, and other accessory activities is to treat them as a cohesive whole. However, if the City decides to carve Silverado's operations into a series of discrete uses, the City would have the discretion to determine the warehouse activities fall under a different land use classification than Silverado's outdoor yard activities because the warehouse is on a separate lot. (See OPC, § 17.10.050.) Whereas the outdoor activities occur on APNs 042-4318-042, -043, and -044 (i.e., 8291-8304 Baldwin Street), the warehouse activities occur on APN 042-4318-008 (i.e., 685 85th Avenue).

Maurice Hackett
City of Oakland
Planning and Building Department
November 13, 2018
Page 12

allow for the sourcing of construction materials without the need to permit additional quarrying sites in the region, which are generally harmful to the environment. The recycling of aggregate generates approximately 50 percent fewer greenhouse gas emissions when compared to the mining of raw materials to produce the same product. (See Zoning Determination Letter Request, Attachment 7.) Environmental benefits also accrue from having a local source of aggregate, because less truck trips are needed to produce and deliver materials. The nearest quarries are scattered widely across the Bay Area, and generally are located between 30 to 40 miles away from the Properties. If Silverado's product were not available to local construction companies, truck deliveries from regional quarries would significantly increase vehicle miles traveled ("VMT"), and the diesel particulate matter and greenhouse gas emissions associated with these trucking routes would also increase. The estimated VMT-related greenhouse gas emission savings from operation of Silverado's site is equal to the emissions generated by about 18,000 passenger vehicles, or by about 16,000 single-family homes (which is the equivalent of 10 percent of Oakland's entire housing stock). (See *id.*) Meanwhile, Silverado's decision to move processing operations indoors confers a more localized environmental benefit, as dust from these operations is captured indoors, and does not disperse into the community. Lastly, Silverado's processing and sorting equipment is electrically powered and its diesel equipment runs on 100 percent renewable diesel fuel, further reducing emissions. In the long-term, our client hopes to install solar panels on the warehouse roof, thereby minimizing its carbon footprint.

Turning to the legalities, as discussed above, we believe the City can lawfully and appropriately determine Silverado's uses, both outdoors and indoors, are legal, non-conforming activities. Substantial evidence shows that Silverado's outdoor operations on the properties are a continuation of recycling operations that have occurred on each and every one of the outdoor properties since at least 1998. With respect to Silverado's warehouse operations, these activities, too, are lawful. Our client's predecessor in interest, Aman, used the warehouse for the storage of equipment and materials, and for the repair of heavy equipment, since at least 2007. Since taking possession of the warehouse, Silverado also has used the space, and a majority of it, for storage and equipment repair, and has occupied the remaining space with processing and sorting activities. The footprint within which recycling operations occur on the properties, including the warehouse, has not changed in any meaningful way and, to the extent Silverado has refined its operations, this change constitutes a reconfiguration, and not an expansion or relocation, of industrial activities. The indoor activities occurring in the warehouse therefore qualify as legal, non-conforming uses.

Even if Silverado's warehouse operations did not qualify as a legal, non-conforming use, they would remain lawful. These indoor activities constitute recycling operations that should be classified as either light or general uses after an evaluation of the specific facts involved. The facts here show that Silverado's processing and sorting of materials comply with each of the City's environmental standards in Chapter 17.120, and thus could be categorized as either a General or

Maurice Hackett
City of Oakland
Planning and Building Department
November 13, 2018
Page 13

Light Manufacturing Industrial Activity. Both of these uses are permitted by right in the governing CIX-2 zones, without the need for additional permits.

Thank you for your attention to these important matters, and please let us know if you have any questions.

Very truly yours,

Miller Starr Regalia



Sean Marciniak

SRM:kli

November 12, 2018 Letter from Heather Coleman
July 13, 2018 Zoning Determination Request Letter and Attachments 1-7
March 9, 2018 Appeal Letter and Attachments 1 - 14

cc: Robert Merkamp, Acting Zoning Manager, City of Oakland, rmerkamp@oaklandnet.com
Brian Mulry, Deputy City Attorney, City of Oakland, bmulry@oaklandcityattorney.org
Wilson Wendt, Esq., Miller Starr Regalia
Bryan Wenter, Esq., Miller Starr Regalia

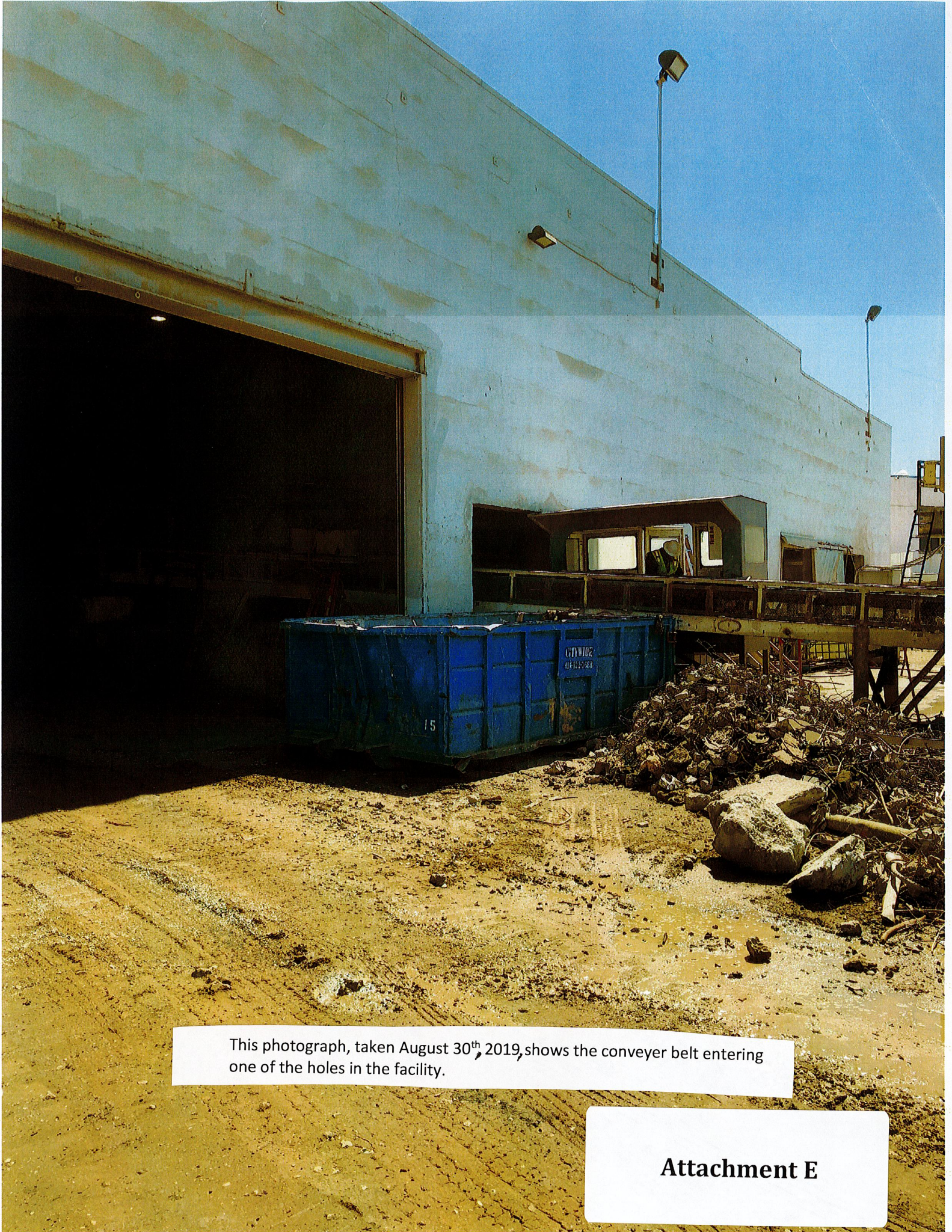
This photo dated 2-22-14 shows the site in operation without material moving through the building wall.



ATTACHMENT D

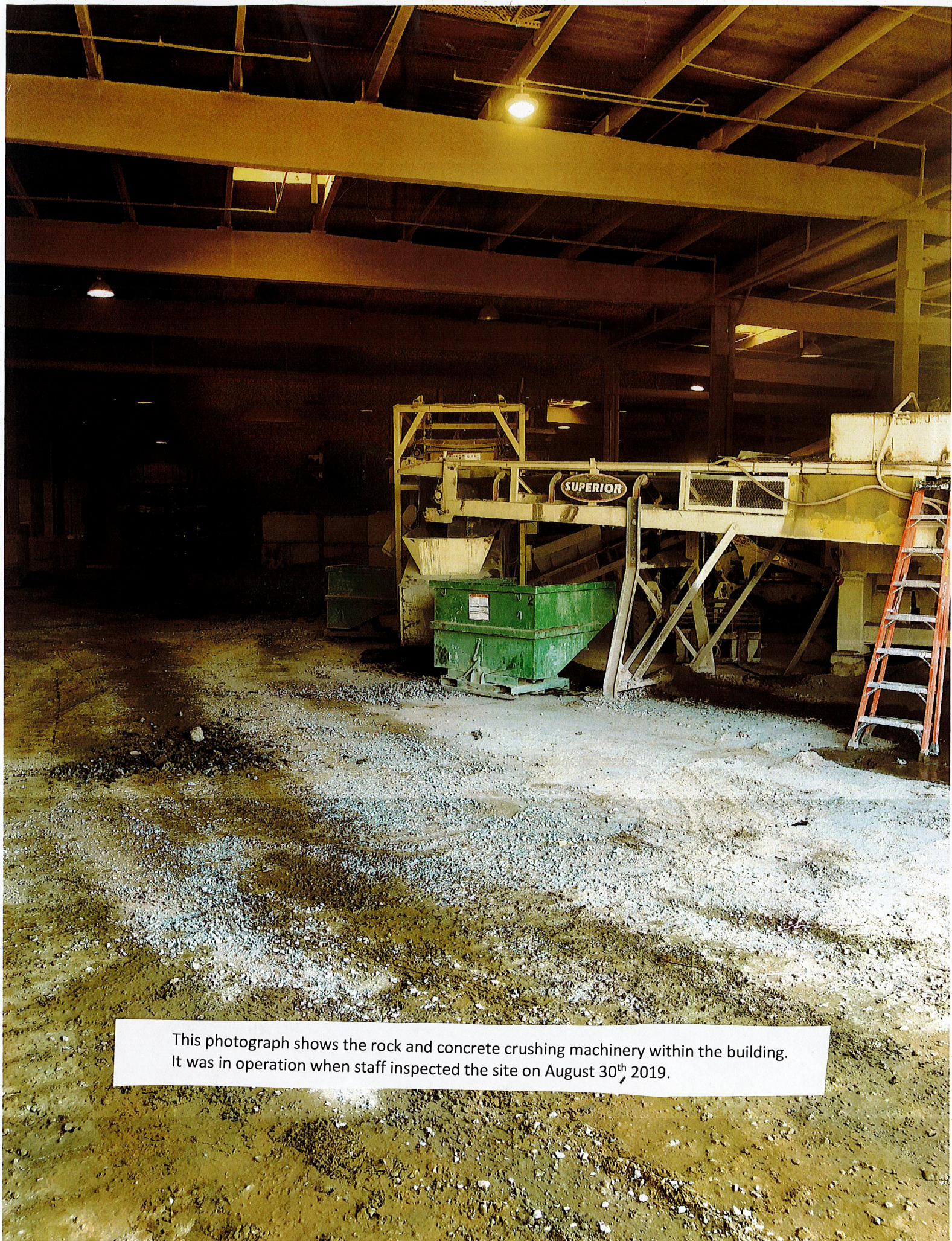
This photograph, dated 10-26-18, shows the current configuration of the site, with conveyor belts moving material (rock and concrete) through the building wall.





This photograph, taken August 30th, 2019, shows the conveyer belt entering one of the holes in the facility.

Attachment E



This photograph shows the rock and concrete crushing machinery within the building. It was in operation when staff inspected the site on August 30th, 2019.