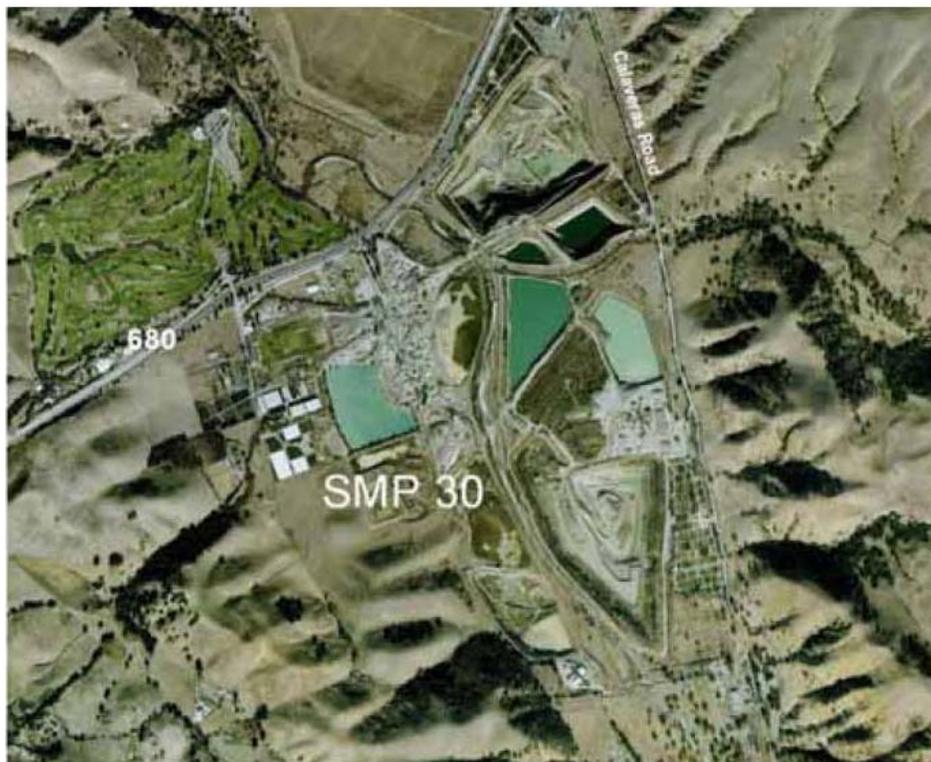


Conservation Plan For Sunol Quarry SMP-30 Site



A Conservation Plan by Oliver de Silva, Inc. to Enhance
the Biological Resources of the Sunol Quarry SMP-30
Project Area in Alameda County, California

December 15, 2008

EXECUTIVE SUMMARY

This Conservation Plan was prepared by Oliver de Silva, Inc., the Alameda Creek Alliance, and the Center for Biological Diversity, to protect and enhance the biological resources in the vicinity of the Sunol Quarry Site in the Sunol Valley. The conservation measures in this plan will significantly reduce the potential impacts of Sunol Quarry mining operations on native wildlife species and their habitats, will provide further mitigation for unavoidable biological impacts, and will benefit special-status species and their habitats in the vicinity of the project.

As detailed herein, Oliver de Silva (“ODS”) will fund, implement and monitor the avoidance, mitigation, and restoration measures detailed in this Conservation Plan to best protect and conserve special-status species and their habitats prior to and during the development of quarry operations at the Sunol Quarry, under Surface Mining Permit 30 (“SMP-30”), Revised SMP-30 and Further Revised SMP-30.

In 2006 ODS submitted a proposal for a mining lease in the Sunol Valley, SMP-30. ODS contemplates additional, future mining operations at the SMP-30 site, subject to the Approval of a revised surface mining permit for the site (“Revised SMP-30”) and a further revised surface mining permit for the site (“Further Revised SMP-30”). Activities under SMP-30 and Revised SMP-30 are separate and distinct projects, with independent utility, from mining activities at Apperson Ridge pursuant to SMP-17 and Revised SMP-17. Contemporaneously with finalization of this Conservation Plan, the Parties have reached an agreement on an Apperson Ridge Conservation Plan.

The Parties understand that this SMP-30 Conservation Plan will recognize and accommodate a sequence of environmental reviews and approvals that will allow for the development (with appropriate avoidance and mitigation measures) of Revised SMP-30 and the subsequent environmental review and approval that would allow for development (with appropriate avoidance and mitigation measures) of Further Revised SMP-30. After approval of the current SMP-30 Lease by the San Francisco Public Utilities Commission (“SFPUC”), ODS will seek approval from the lead agency, Alameda County, of Revised SMP-30, subject to the agreed upon avoidance and mitigation measures for Revised SMP-30. If and when Revised SMP-30 is approved and the Lease is extended for a period of thirty (30) years from the date of Approval, ODS plans to seek approval of Further Revised SMP-30 from the lead agency, Alameda County. If there is Approval of Further Revised SMP-30 and Revised SMP-17, and the SMP-30 Lease is extended until 2064, ODS agrees to continue to implement Revised SMP-30 and to implement the Further Revised SMP-30 avoidance and mitigation measures in accordance with this Conservation Plan.

SMP-30 is an existing mining operation under lease from the SFPUC located in the Sunol Valley immediately west of Calaveras Road and approximately one mile south of Highway 680. The SMP-30 site is a 325 acre site comprising a portion of Parcel 65 of Alameda County property on the right bank of Alameda Creek upstream of the San Antonio Creek confluence. Sand and gravel extraction has occurred on this site for approximately half a century. In 2007, the SFPUC put out a request for proposals for future mining expansion through a revision of SMP-30 and entered into an exclusive negotiating agreement with Oliver de Silva. The SMP-17 mining

project (Apperson Quarry) is not a part of this Conservation Plan, but the SMP-17 mining project may at some point in the future be related to the SMP-30 site due to the proposal to reduce infrastructure and processing facilities at the SMP-17 Site for material mined at SMP-17, so long as ODS is able to conduct such activities on the SMP-30 Site, including the operation of an asphalt concrete plant, a ready-mix concrete plant and storage facilities and processing plants at the SMP-30 Site, and operation of a conveyor belt across private and SFPUC lands to deliver material mined and sized from SMP-17 to the SMP-30 Site. A renewed Lease for the SMP-30 quarry for Revised SMP-30 and Further Revised SMP-30 provides opportunities to avoid and significantly reduce many of the potential impacts of the SMP-17 Project by siting facilities within the SMP-30 Site, an area already impacted by past quarrying and with little habitat value for sensitive wildlife.

ODS will undertake the Conservation Measures in this Conservation Plan to enhance habitat for special status species in the vicinity of the SMP-30 Site, including:

- Funding for projects to help restore steelhead trout to Alameda Creek, including up to \$2 million for fish passage projects at the BART weir and inflatable rubber dams in lower Alameda Creek and up to \$1 million for retrofitting the PG&E pipeline crossing in the Sunol Valley;
- Funding for re-vegetation of stream banks and restoration of more natural stream function to enhance habitat quality along Alameda and San Antonio Creeks adjacent to the SMP-30 quarry; and
- Financial support for a SFPUC Sunol Valley Restoration Plan to stabilize and restore the Sunol Valley reach of Alameda Creek.

Oliver de Silva, the Alameda Creek Alliance and the Center for Biological Diversity have jointly developed this Conservation Plan with the understanding that implementation of the avoidance, mitigation and conservation measures in the Plan represent a significant reduction of the potential biological impacts of the mining operations at the SMP-30 Site on native species and habitats, offer full and appropriate mitigation for unavoidable impacts, and provide additional conservation benefits that will help to restore Alameda Creek and improve habitat for native species in the vicinity of the projects. The parties agree to jointly take the position with all government agencies and other stakeholders that the implementation of the Conservation Measures in this Conservation Plan fully addresses all potential species, vegetation, habitat and biological impacts of the SMP-30, Revised SMP-30 and Further Revised SMP-30 Projects. The Parties further understand and agree that the Conservation Measures described in this Conservation Plan cannot be guaranteed to achieve the desired outcomes in all ways and to the full extent desired by the Parties due to the fluid, complex, and often unanticipated actions of ecosystems, and to the influence of other natural or human-caused activities on or near the vicinity of the SMP-30 Project Area.

TABLE OF CONTENTS

EXECUTIVE SUMMARY 2

I. INTRODUCTION AND BACKGROUND 5

A. Acronyms and Definitions 5

B. Description of Permitted Project 7

C. Parties Activities in General 8

D. Regulatory Framework 10

**II. POTENTIAL BIOLOGICAL IMPACTS AND MEASURES TO AVOID,
MINIMIZE AND MITIGATE IMPACTS 13**

A. Approval of SMP-30 Milestone 13

 SURVEY-1 13

 SURVEY-2 13

 TAKE-1 13

 AC-1 13

 AC-2 14

B. Approval of Revised SMP-30 Milestone 14

 AC-3 14

 AC-4 14

 AC-5 14

 AC-6 15

B. Further Revised SMP-30 Milestone 15

 SURVEY-3 15

 AC-7 15

 AC-8 15

APPENDIX A – Take Avoidance Measures 16

 AMPH-1 16

 AMPH-2 17

 BIRD-1 17

I INTRODUCTION AND BACKGROUND

A. Acronyms and Definitions

Acronyms

ACA = Alameda Creek Alliance
ACFCD = Alameda County Flood Control District
ACWD = Alameda County Water District
CBD = Center for Biological Diversity
CDFG = California Department of Fish and Game
CEQA = California Environmental Quality Act
CRLF = California red-legged frog
CTS = California tiger salamander
EBRPD = East Bay Regional Park District
FYLF = Foothill yellow-legged frog
ODS = Oliver de Silva, Inc.
S.F. Board = San Francisco Board of Supervisors
SFPUC = San Francisco Public Utilities Commission
SMP = Surface Mining Permit
USFWS = U.S. Fish and Wildlife Service

Definitions

“Approval” of a Surface Mining Permit (“SMP”) is defined as completion of all of the following: 1) the issuance of an SMP by the County of Alameda (or other lead agency); 2) approval and execution of any related lease extension by the SFPUC and the San Francisco Board of Supervisors (“S.F. Board”); 3) receipt of any other federal, state or local permits, agreements, contracts, certifications (e.g. CEQA document), entitlements or other approvals reasonably necessary for the development, construction and operation of the SMP, and 4) (a) the expiration of all administrative and judicial periods for appeal or challenge of the SMP, or of any federal, state, or local permits, agreements, contracts, certifications, entitlements, or other approvals reasonably necessary for the development, construction, and operation of the SMP (“SMP Approvals”), with no appeals or challenges pending, or if any appeals or challenges are pending as to those SMP Approvals, the resolution of such appeals or challenges in a manner satisfactory to ODS, in its sole discretion, exercised in good faith, or (b) the commencement of mining operations by ODS on the particular SMP site, whichever comes first..

“Conservation Measures” is defined as all of the conservation strategies, including avoidance, minimization and mitigation measures, specifically described in the Conservation Plan.

“Conservation Project(s)” is defined as that combination of environmental protection and enhancement and land management measures, and related funding agreements and plans, set forth in detail in this Conservation Plan, intended to protect and enhance the quality and functioning of the regional biological habitat, including wetlands and related lands, of species of interest located within the areas of the Project(s).

“Further Revised Surface Mining Permit 30” (“Further Revised SMP-30”) is defined as the project to be conducted from approximately 2030 until 2064 at the SMP-30 Site and adjoining real property that includes stockpile areas, an aggregate processing plant, an asphalt plant and a ready-mix concrete plant for delivery, stockpiling and processing of sized aggregate from Apperson Ridge into finished quarry products.

“Lease” means a quarry lease between the City of San Francisco and ODS which will include continuation of SMP-30 operations until 2021, an extension for a period of thirty (30) years for the operation of Revised SMP-30 (if required approvals are obtained) and an extension to 2064 for the operation of Further Revised SMP-30 (if required approvals are obtained).

“Parties” refers to all the parties who formulated this Conservation Plan, which are Oliver de Silva, Inc., a California corporation (“ODS”), the Alameda Creek Alliance, a California non-profit corporation (“ACA”), and the Center for Biological Diversity, a New Mexico non-profit corporation (“CBD”).

“Project(s)” is defined as the activities comprised within SMP-30, Revised SMP-30, Further Revised SMP-30, SMP-17 or Revised SMP-17, whichever project is being specifically referenced, or refers to all or some combination of these projects if they are being referred to collectively.

“Revised Surface Mining Permit 17” (“Revised SMP-17”) is defined as the project comprised of a conveyor system to deliver aggregates mined from SMP-17 and sized for delivery on a conveyor system to the SMP-30 Site for stockpiling and processing into asphalt concrete, ready-mix concrete and other construction products.

“Revised Surface Mining Permit 30” (“Revised SMP-30”) is defined as the project comprised of Revised SMP-30 as set forth in the SFPUC’s Request For Proposals (Alternate F), issued December 13, 2005, with operations at the site expanded to a depth of at least 225 feet, and with an asphalt concrete plant and ready-mix concrete plant as ancillary uses.

“SMP-17 Project Area” is defined as the mining and operational footprint at the SMP-17 Site, associated infrastructure (including mining equipment, equipment storage, conveyors and storage piles), the route of the conveyor system, and the access road, along with immediately adjacent areas where there may be impacts from the SMP-17 or Revised SMP-17 mining activities.

“SMP-30 Project Area” is defined as the SMP-30 Site and associated infrastructure, along with immediately adjacent areas where there may be impacts from SMP-30, Revised SMP-30 and Further Revised SMP-30.

“SMP-17 Site” means the 680-acre parcel defined as the Property in that Mineral Lease Agreement dated August 30, 1983 between William W. Apperson as Lessor and ODS as Lessee (the “Mineral Lease Agreement”), along with all easements and other interests granted Lessee in the Mineral Lease Agreement and all amendments thereto.

“SMP-30 Site” means that 315-acre parcel (6527 Calaveras Road, Sunol, California; APN 96-375-009) for which quarrying is authorized pursuant to Surface Mining Permit 30 (“SMP-30”); and, if Approval of Revised SMP-30 is achieved, the additional expansion area of 58 acres; and if Approval of Further Revised SMP-30 is achieved, the additional areas of adjacent real property needed for access, conveyor systems and stockpile areas.

“Surface Mining Permit 17” (“SMP-17”) is defined as the Apperson Quarry hard rock mining project approved by Alameda County in 1984.

“Surface Mining Permit 30” (“SMP-30”) is defined as the existing mining operation under lease from the SFPUC in the Sunol Valley.

B. Description of Permitted SMP-30 Project

SMP-30 Quarry

An existing quarry permit in the Sunol Valley, Surface Mining Permit 30 (“SMP-30”), was approved by Alameda County and is under lease by the SFPUC. A copy of the Conditions of Approval for SMP-30 and the resolution approving SMP-30 are attached hereto. Mining operations have occurred on the premises of the SMP-30 project since the 1960s and are currently authorized under SMP-30 issued by Alameda County. The current operator at SMP-30 operates under a month-to-month lease. SMP-30 authorizes mining until June 1, 2021 or upon completion of reclamation, whichever occurs first. SMP-30 currently allows mining to a depth of 140 feet.

The SFPUC proposes to expand mining operations at the SMP-30 Site to a depth of at least 225 feet, in accordance with the planning concepts set forth in Alternative F of the Sunol Valley Resources Management Element of the Alameda Watershed Management Plan adopted by the SFPUC in September of 2000. The SFPUC is in the process of selecting a new operator that will be required to apply for a new or amended mining permit for the site from Alameda County (the “Revised SMP-30 Mining Permit”) and process all approvals and complete all environmental review for the Revised SMP-30 mining permit. The SFPUC is in exclusive negotiations with ODS for the SMP-30 Lease, and has been apprised by ODS, and approves, of the proposed uses of the SMP-30 Site to receive, stockpile and process material from the SMP-17 mining site, beginning after 2030. The Revised SMP-30 permit will include the right to mine to a minimum depth of 225 feet, and will include obligations for the lessee, among other things, to restore the right bank of Alameda Creek and the left bank of San Antonio Creek, contribute funding to planning efforts for the restoration of Alameda Creek in the Sunol Valley, install a bentonite slurry cut-off wall to prevent groundwater inflow into the quarry pit, and to perform reclamation to allow use of the completed quarry pit for water storage.

SFPUC Lease Conditions for SMP-30

In December 2005, the SFPUC put out a request for proposals for the lease and operation of the Sunol Valley aggregate quarry (SMP-30) and an exclusive right to negotiate for future mining expansion. The required terms and conditions included several environmental enhancements and

measures to minimize water losses from Alameda Creek and to help the restoration of steelhead trout, including:

- Coordination with PG&E to modify a gas pipeline crossing of Alameda Creek in the Sunol Valley that is a barrier to upstream fish passage;
- Contribution of funds to a SFPUC study of restoring the Sunol Valley mining reach of Alameda Creek;
- Minimizing percolation losses of water from Alameda Creek to benefit habitat for steelhead trout, through installation of a bentonite cutoff wall to eliminate inflow through the shallow alluvium into mining pits;
- Restoring stream habitat and biological function through restoration of the right bank of Alameda Creek and the left bank of San Antonio Creek adjacent to the SMP-30 quarry;
- Accommodation of any future public access trails through the area that may be desired by the East Bay Regional Park District; and
- Any other environmental enhancements offered by the lease bidder to make its proposal competitive.

This Conservation Plan provides new species conservation and habitat enhancement measures, including enhancement of Alameda Creek, to benefit and help restore fish and aquatic wildlife, specific conservation measures for rare species, funding to conservation groups for monitoring and implementation of this Conservation Plan, funding for regional restoration projects, and support for conservation efforts for special-status species and their habitats in the Alameda Creek watershed.

C. Parties Activities in General

During the term of this Conservation Plan, as or before milestones are achieved, the Parties will do the following:

1. Approval of SMP-30 Milestone:

- ODS will fund the additional Conservation Measures AC-1 and AC-2 for the benefit of Alameda Creek specified in section II.A. below, which are to be funded by ODS during the term of the current SMP-30 Lease.
- At an appropriate time, ODS will hire a consultant(s), reasonably approved by all Parties, to survey and assess the SMP-30 Site, including the approximately 58-acre expansion area to be included in Revised SMP-30, and immediately adjacent areas for presence of special status species and potential habitat, and to assess potential impacts to those resources. These surveys shall be shared with the Conservation Groups at the time that ODS submits the surveys to the public agencies. Selection of the consultant(s) will be subject to the reasonable approval of the SFPUC and the County of Alameda. Studies will begin after approval of the current SMP-30 Lease by the S.F. Board.
- The Consultant will complete protocol level surveys as necessary for all special status species at and immediately adjacent to SMP-30 and Revised SMP-30, unless all Parties agree particular species are assumed to be present or all parties agree that particular species are

unlikely to occur. These surveys shall be shared with the Conservation Groups at the time that ODS submits the surveys to the public agencies.

- Prior to achievement of the Approval of SMP-30 Milestone, ACA and CBD will support SFPUC, S.F. Board, and Alameda County approval of the SMP-30 Lease and associated SMP-30 projects, which will include continuation of current SMP-30 operations until 2021, an extension for the operation of Revised SMP-30 (if required approvals are obtained) and an extension for the operation of Further Revised SMP-30 (if required approvals are obtained).
- At all times, ACA and CBD will work to secure the support of other conservation groups for SFPUC, S.F. Board and Alameda County approval of the SMP-30 Lease and associated SMP-30 and will publicly promote approval of the Lease by the SFPUC, S.F. Board and Alameda County.
- ACA and CBD will publicly support County of Alameda, SFPUC and S.F. Board approval of Revised SMP-30 and Revised SMP-30 Lease extension, as well as all other permits, approvals, authorizations and other entitlements for these projects.
- ACA and CBD will work to secure the support of other conservation groups and will publicly support approval by the SFPUC, the S.F. Board and Alameda County of the Revised SMP-30 Lease. ACA and CBD will publicly promote approval by the SFPUC and the Board of the Revised SMP-30 Lease.
- The Parties agree and will jointly take the public position that environmental review of Revised SMP-30, including CEQA review, will be done only as part of the entitlement process for Revised SMP-30.

2. Approval of Revised SMP-30 Milestone:

- ODS will fund and implement all mitigations required by the SFPUC or Alameda County as conditions of approval for Revised SMP-30.
- ODS will defer mining at SMP-17 until no earlier than 2030 and not before cessation of mining at SMP-30. Construction of improvements and facilities for SMP-17 will be done during two (2) years prior to commencement of mining at SMP-17, but not before 2028.
- ODS will fund and implement the additional Conservation Measures AC-3, AC-4, AC-5, and AC-6 required by this Conservation Plan for the benefit of Alameda Creek which are specified in section II.B. below and which are to be funded by ODS during the term of the Revised SMP-30 Lease.
- ODS will submit its Application(s) for Further Revised SMP-30 to the County of Alameda within one (1) year of the date of Revised SMP-30 Lease extension.
- The Conservation Groups will support approval by the County of Alameda, SFPUC and S.F. Board of Further Revised SMP-30, as well as a Further Revised SMP-30 Lease extension to

2064 to allow processing of rock and operation of asphalt and ready-mix plants at the SMP-30 Site, as well as all other permits, approvals, authorizations and other entitlements for these projects.

- The Conservation Groups will work to secure the support of other conservation groups for, and will publicly support the approval by the SFPUC and the S.F. Board, of the Further Revised SMP-30 and Further Revised SMP-30 Lease extension to 2064, as well as all other permits, approvals, authorizations and other entitlements for these projects. The Conservation Groups will publicly promote approval by the SFPUC, the S.F. Board and Alameda County of the Further Revised SMP-30 and Further Revised SMP-30 Lease extension to 2064, as well as all other permits, approvals, authorizations and other entitlements for these projects.
- The Parties agree and will jointly take the public position that environmental review, including CEQA review, of Further Revised SMP-30 will be done only as part of the entitlement process for Further Revised SMP-30. The Conservation Groups will work to support, and further will not oppose, efforts to gain approval of this entitlement process, and the environmental review attendant to that process.

3. Approval of Further Revised SMP-30 Milestone:

- ODS will fund and implement all mitigations required by the SFPUC or Alameda County as conditions of approval for Further Revised SMP-30.
- ODS will defer construction of stockpile areas, aggregate processing plant, asphalt plant and ready-mix concrete plant at SMP-17, so long as those activities are allowed to be conducted by ODS at the Further Revised SMP-30 site.
- ODS will fund and implement the additional Conservation Measures AC-7 and AC-8 required by this Conservation Plan for the benefit of Alameda Creek, which are specified in section II.C. below, and are to be funded by ODS during the term of Further Revised SMP-30 Lease.

D. Regulatory Framework

This Conservation Plan will allow for the mining of the SMP-30 and Revised SMP-30 sites and provides mitigation and other Conservation Measures relating to mining activities under SMP-30, Revised SMP-30 and Further Revised SMP-30. This plan contains appropriate mitigation and other Conservation Measures to protect biological resources, additional Conservation Measures to benefit special-status species in the vicinity of mining operations, and contributions to the restoration of Alameda Creek. The Conservation Measures in this Plan will be added to the terms and conditions for the SFPUC Lease and to conditions of approval for Revised SMP-30 and Further Revised SMP-30, as practicable and as approved by lead agencies and appropriate state, federal, and local agencies. Notwithstanding anything to the contrary in this Conservation Plan, ODS shall not be required to provide copies of any surveys, reports or other data to the Conservation Groups until the surveys, reports or other data are submitted by ODS to the public agencies.

ODS will initiate the following sequence of environmental reviews under CEQA and permit approvals that will allow for the development, with appropriate avoidance and mitigation measures, of the SMP-30, Revised SMP-30 and Further Revised SMP-30 mining projects.

ODS will first assume the existing Lease for SMP-30, subject to approval by the SFPUC, the S.F. Board, and Alameda County. After approval by all public agencies of the existing SMP-30 mining lease, ODS will seek approval from the lead agency, Alameda County, for a Revised SMP-30 project, containing the avoidance and mitigation measures for Revised SMP-30 detailed in this Conservation Plan and Lease terms and conditions required by the SFPUC. At that time ODS will hire a consultant, approved by all Parties, to survey and assess the Revised SMP-30 site and immediately adjacent areas for the presence of special status species and potential habitat, and to assess potential impacts to those resources. Selection of the consultant will be subject to the reasonable approval of the SFPUC and County of Alameda. The consultant will complete protocol level surveys for all special status species at and immediately adjacent to the Revised SMP-30 Site, except as otherwise set forth herein. Special status species surveys will begin after the approval of the current SMP-30 Lease by all the public agencies.

Alameda County is expected to conduct the environmental review under CEQA for the Revised SMP-30 project. If and when the Revised SMP-30 project is approved by Alameda County, ODS will then seek approval from the SFPUC of a Lease extension for Revised SMP-30 for a period of thirty (30) years from the date of approval by the SFPUC.

If and when Revised SMP-30 and the Revised SMP-30 Lease extension are approved, ODS will seek approval for the Further Revised SMP-30 project from the lead agency, Alameda County. The application(s) for the Further Revised SMP-30 project will be submitted to the County of Alameda within one (1) year of the date of the Revised SMP-30 lease extension. Alameda County is expected to conduct the environmental review under CEQA for the Further Revised SMP-30 project. ODS will request any needed modifications to Alameda County's conditions of approval to incorporate the changes in the project and the avoidance, mitigation and conservation measures for Further Revised SMP-30 contained in this Conservation Plan. Approval of the Further Revised SMP-30 Lease extension to 2064 will allow stockpiling and processing of material from SMP-17 and operation of asphalt and ready-mix plants at the Revised SMP-30 site, significantly reducing the area impacted by the operations at Apperson Ridge.

The Conservation Groups will support the permit approvals and lease agreements needed for the SMP-30, Revised SMP-30 and Further Revised SMP-30 Projects, as well as all other permits, approvals, authorizations and other entitlements for these projects, but shall not be prohibited from participating in and commenting on the environmental review processes for Revised SMP-30 and Further Revised SMP-30. The Conservation Groups shall not be prohibited from participating in any action or administrative process related to violations by ODS of any terms of the SMP-30 or SMP-17 Surface Mining Permits, state, federal or local laws, and/or this Conservation Plan. However, the Conservation Groups shall not pursue or assist in any manner, directly or indirectly, any civil action in opposition to these projects.

If Approvals are obtained for Revised SMP-30, Revised SMP-17 and Further Revised SMP-30, excavated and sized aggregate material will be transported from the SMP-17 Site via conveyor belt to the SMP-30 Site for further processing. ODS will develop a traffic management plan that minimizes vehicle trips on the access road, including a regular employee carpool from Calaveras Road to the SMP-17 Site. Vehicle access to the site will be generally along the alignment of the existing access roads which are located in a private access easement which traverses approximately 2.8 miles of SFPUC watershed lands from Calaveras Road to the Apperson Ranch boundary and then 1.9 miles of the ranch to the quarry site. The Conservation Groups acknowledge and will publicly support the conclusion that these efforts by ODS are calculated to reduce environmental impacts to the SMP-30 Project Area and to enhance the functioning of species habitat in the Alameda County watershed.

II POTENTIAL BIOLOGICAL IMPACTS AND MEASURES TO AVOID, MINIMIZE AND MITIGATE IMPACTS

During the term of this Conservation Plan, as milestones are achieved, ODS agrees to the following:

A. Approval of SMP-30 Milestone.

SURVEY-1: After approval of the current SMP-30 Lease by the SFPUC, the S.F. Board, and Alameda County and as a part of the CEQA process for Revised SMP-30, ODS will hire a consultant, approved by all Parties, to survey and assess the Revised SMP-30 project area and immediately adjacent areas for presence of special status species and potential habitat, and to assess potential impacts to those resources. The selection by ODS of the consultant will also be subject to the reasonable approval of the SFPUC and County of Alameda. The consultant will complete protocol level surveys for all special status species at and immediately adjacent to the Revised SMP-30 site, unless all Parties agree presence is assumed or all parties agree that species are unlikely to occur. These surveys shall be shared with the Conservation Groups at the time that ODS submits the surveys to the public agencies. Surveys required as part of mitigation measure TAKE-1 below, listed in Appendix A, must still be conducted.

SURVEY-2: ODS will provide a copy to the ACA and CBD of all reports, surveys and monitoring data at that time that ODS submits to state, federal and County regulatory agencies and the SFPUC regarding Revised SMP-30.

TAKE-1: The USFWS and CDFG typically require a number of survey and avoidance measures to reduce the likelihood of take of special-status species before issuance of permits, authorizations or a biological opinion. ODS will implement the following mitigation measures to avoid take of special-status species. ODS will fund, comply with and implement all of the pre-project avoidance measures for sensitive species detailed in Appendix A, so long as they do not conflict with other legal requirements. These measures may include exclusion of special-status species from mining and equipment areas before mining activities, potential relocation of special-status species, pre-activity surveys, and observation of vehicle speed limits on internal roads within the project area.

AC-1: After Approval of the current SMP-30 Lease by the SFPUC and S.F. Board, ODS will contribute up to \$2 million in funding toward the lower Alameda Creek fish passage projects at the Alameda County Flood Control District (“ACFCD”) BART weir and the Alameda County Water District (“ACWD”) upper rubber dam (“ACWD Projects”) for which ACWD will be the lead agency. ODS will provide funding in an amount sufficient to meet the funding shortfall for completing construction of the ACWD Projects, but not to exceed \$2 million, in a manner to be further negotiated between the Parties and approved by the appropriate government agencies. Funding will be provided to the ACWD after all permits, easements and other necessary approvals are obtained by the ACWD, the contract for the work has been awarded by ACWD, and all other available funding has been disbursed by ACFCD and ACWD. If required, ODS will provide a Letter of Credit or other payment security to ACWD.

AC-2: After Approval of the current SMP-30 Lease by the SFPUC and S.F. Board, ODS and/or the SFPUC will provide \$1 million in funding and/or equipment and services (as approved by the lead agencies on the project) to further a fish passage project at the PG&E gas pipeline crossing of Alameda Creek in the Sunol Valley, in a manner to be further negotiated between the Parties and approved by the appropriate government agencies. Funding will be provided after all permits, easements and other necessary approvals are obtained and all other available funding has been disbursed.

If PG&E agrees to a fish passage project at the pipeline crossing that removes all infrastructure from the Alameda Creek streambed (i.e. a project that buries the gas pipeline crossing under the streambed), ODS will provide PG&E with the full amount of \$1 million toward the fish passage project. If PG&E approves a fish passage project that maintains infrastructure in the creek or any barrier which requires a fish ladder for steelhead migration, ODS will provide PG&E with \$500,000 toward the fish passage project, and the remaining \$500,000 will go to the SFPUC for implementing enhancement measure AC-6 below, the Sunol Valley Restoration Plan. In any event, any portion of the \$1 million that is not used for the PG&E Project shall be used for measure AC-6 below. Of the \$1 million of funding, not more than \$750,000 will be required to be funded by ODS prior to Approval of Revised SMP-30; \$250,000 will be provided by ODS after Approval of Revised SMP-30. If required, ODS will provide a Letter of Credit or other payment security.

B. Approval of Revised SMP-30 Milestone.

AC-3: ODS will fund and implement the Revised SMP-30 Lease terms regarding Alameda Creek restoration and remediation, as may be required and approved by SFPUC. These terms are expected to include: installation of a bentonite cut-off wall approximately 7,800 feet long at an estimated depth of 35 to 45 feet to prevent water inflow from Alameda Creek into the SMP-30 quarry pit; a second 2,300 foot long slurry cutoff wall along the left bank of San Antonio Creek if required; restoring the right bank of Alameda Creek and the left bank of San Antonio Creek adjacent to the SMP-30 lease with native vegetation; restoring a more natural stream function that is compatible with and enhances habitat quality in these stream reaches; contributing \$200,000 in funding to a SFPUC restoration planning for the reach of Alameda Creek in the Sunol Valley; and accommodating possible future public access trails through the area that may be desired by the East Bay Regional Park District.

AC-4: After Approval of Revised SMP-30, ODS will additionally re-vegetate the left bank of Alameda Creek and the right bank of San Antonio Creek, adjacent to the SMP-30 lease, with native vegetation. Re-vegetation will be completed, according to success criteria to be agreed upon by the Parties, within two (2) years of the approval of the Revised SMP-30 Lease. Watering, monitoring and replacement of vegetation will be conducted until 2030, if needed to maintain vegetation in good condition.

AC-5: Not later than one (1) year after the date of Approval of the Revised SMP-30 and the Revised SMP-30 lease extension, ODS (per the SFPUC lease conditions) will fund a study of the geomorphology of Alameda Creek to determine the need for stabilization and reconfiguration of the creek within the entire gravel quarry reach of Alameda Creek in the Sunol Valley. At that

time, ODS will hire a consultant (reasonably approved by all Parties and the SFPUC) to develop a streambed restoration and re-vegetation plan for this reach (“Sunol Valley Restoration Plan”).

AC-6: After Approval of Revised SMP-30 and the Revised SMP-30 lease extension, ODS will support a Sunol Valley Restoration Plan to be commenced by the SFPUC, with financial support from ODS and other quarry lease holders in the Sunol Valley. The Restoration Plan will include streambed repair, grade stabilization, riparian re-vegetation, migratory fish passage, and fish habitat enhancement of the Alameda Creek stream reach in the Sunol Valley – including both banks of Alameda Creek from the Sunol Valley Water Treatment Plant downstream to the Sunol Water Temple. The Plan will also consider SFPUC long-term plans for reclaiming quarry pits in the Sunol Valley and possible future public access trails through the area that may be desired by the East Bay Regional Park District. The SFPUC will be the lead agency for the restoration plan and the SFPUC, ODS, EBRPD and other quarry lease holders in the Sunol Valley will negotiate cost-sharing for funding of the Sunol Valley Restoration Plan. Any remaining funding from measure AC-2 above not used for the PG&E fish passage project will be used for funding of the Sunol Valley Restoration Plan.

C. Further Revised SMP-30 Milestone.

SURVEY-3: ODS will provide a copy to the ACA and CBD of all reports, surveys and monitoring data at the time that ODS submits to state, federal and County regulatory agencies and the SFPUC regarding Further Revised SMP-30.

AC-7: ODS will fund and implement the Further Revised SMP-30 Lease terms regarding Alameda Creek restoration and remediation, as may be required by the SFPUC.

AC-8: After Approval of Further Revised SMP-30 and the Further Revised SMP-30 lease extension, ODS will continue to support a Sunol Valley Restoration Plan to be commenced by the SFPUC, with financial support from ODS and other quarry lease holders in the Sunol Valley.

APPENDIX A

TAKE AVOIDANCE MEASURES

As specified in avoidance measure TAKE-1, in an effort to avoid direct take of special-status species with the potential to occur in the vicinity of the SMP-30 site, ODS will comply with the following pre-project avoidance measures. Notwithstanding anything to the contrary in this Conservation Plan, ODS will have no obligation to share any surveys with the Conservation Groups until ODS provides the surveys to any public agency or to the general public.

Amphibians

In an effort to avoid direct impacts to special-status amphibians, particularly the California red-legged frog (FT/CSC), foothill yellow-legged frog (--/CSC), and California tiger salamander (FT/CSC), the following avoidance measures shall be adhered to:

AMPH-1: Prior to any construction or mining activities under Revised SMP-30, ODS will hire a qualified biologist to conduct pre-construction surveys within and adjacent to the SMP-30 site to ensure that no red-legged frogs, yellow-legged frogs or tiger salamanders are present within the mining site, equipment areas, or along roads used to access the site. These surveys shall be shared with the Conservation Groups at the time that ODS submits the surveys to the public agencies.

- Surveys shall be completed for all life cycle stages of CRLF and FYLF (e.g., egg masses, tadpole, juveniles, and adults) that may occur within or adjacent to the project area.
- Surveys will be completed for all life cycle stages of CTS, appropriately timed with respect to salamander activity and proposed construction activities.
- The name and credentials of a biologist qualified to act as a construction monitor shall be submitted to the USFWS for approval at least 15 days prior to commencement of work.
- The USFWS-approved biologist shall conduct pre-construction surveys within aquatic habitat in the project area, at least two weeks prior to the onset of construction activities.
- If adult CRLF, FYLF, or CTS tadpoles or eggs are found within the construction disturbance zone, the USFWS-approved biologist shall contact the USFWS to determine if moving any of these life stages is appropriate. If the USFWS approves moving the animals, the approved biologist shall be allowed sufficient time to move them from the construction sites before work activities begin. If no CRLF, FYLF or CTS are detected during these surveys, construction-related activities may proceed without further requirements for the protection of individuals.
- The USFWS-approved biologist will remove and destroy from within the project area any individuals of non-native species, such as bullfrogs, crayfish, and centrarchid fishes, to the maximum extent possible.
- Exclusionary fencing, such as silt fences, shall be installed around all construction areas that are within 150 feet of or adjacent to documented CRLF, FYLF, or CTS habitat. Once fencing is in place, it shall be maintained by ODS until completion of construction within or adjacent to the enclosure.

AMPH-2: ODS will implement a worker education program regarding special-status amphibians in the vicinity of the SMP-30 project site, and will implement a vehicle speed limit on all internal roads within and adjacent to the SMP-30 project site during winter, to reduce the likelihood of road kill of migrating amphibians.

Nesting Raptors and Passerine Birds

In order to avoid disturbance of the nests of raptors or special-status passerine bird species, which are protected under CA Fish and Game Code 3503, the following measures shall be adhered to:

BIRD-1: No more than two weeks prior to any construction or mining activities under Revised SMP-30, a qualified wildlife biologist will conduct preconstruction surveys of all potential bird nesting habitat within the Revised SMP-30 project area. These surveys shall be shared with the Conservation Groups. If construction activities (i.e., ground clearing and grading, including removal of trees or shrubs) are scheduled to occur during the non-breeding season (September 1 through January 31), no measures are required. If construction activities are scheduled to occur during the breeding season (February 1 through August 31), the project proponent will implement the following measures to avoid potential adverse effects on any special-status birds which may occur:

- If active nests are found during preconstruction surveys, the project proponent will create a no-disturbance buffer (acceptable in size to the CDFG) around nests of special-status birds during the breeding season, or until it is determined that all young have fledged. Typical buffers are 250 feet for passerine nesting birds and 300 feet for raptors. The size of these buffer zones and types of construction activities restricted in these areas may be further modified in coordination with the CDFG and will be based on existing noise and human disturbance levels at the project site. Nests initiated during construction are presumed to be unaffected, and no buffer would be necessary.
- If preconstruction surveys indicate that nests are inactive or potential habitat is unoccupied during the construction period, no further mitigation is required. Trees and shrubs within the construction footprint that have been determined to be unoccupied by special-status birds or that are located outside the no-disturbance buffer for active nests may be removed.

Status Codes:

Federal Categories (U.S. Fish and Wildlife Service)
FT = Listed as Threatened by the Federal Government

State Categories (California Department of Fish and Game)
CSC = California Species of Special Concern