

From: Bart Lorang Personally Identifiable Information

Sent: Wednesday, August 31, 2022 8:34 PM MDT

To: LU Land Use Planner <planner@bouldercounty.org>; Boulder County Board of Commissioners <commissioners@bouldercounty.org>; Loachamin, Marta <mloachamin@bouldercounty.org>; Levy, Claire <clevy@bouldercounty.org>

CC: Michael Booth <booth@coloradosun.com>; Matthew Bennett <mbennett@prairiemountainmedia.com>; Rossana Longo-Better <rossana@kgnu.org>; Strife, Susie <sstrife@bouldercounty.org>; Pearlman, Ben <bpearlman@bouldercounty.org>; Whisman, Janis <jwhisman@bouldercounty.org>; Dolores Vasquez <dvasquez@townoflyons.com>; ICountyAttorney <CountyAttorney@bouldercounty.org>; congressmanjoeneguse@mail.house.gov <congressmanjoeneguse@mail.house.gov>; L'Orange, Pete <plorange@bouldercounty.org>; Case, Dale <dcase@bouldercounty.org>; Glowacki, Therese <tglowacki@bouldercounty.org>; Shannon Young <shannon@kgnu.org>; Victoria Simonsen <vsimonsen@townoflyons.com>; Hollie Rogin <hrogin@townoflyons.com>; Sarah Lorang Personally Identifiable Information; Ed Kean Personally Identifiable Information

Subject: [EXTERNAL] SU-22-0003 - How Many Years of Plant/Mine Ops in exchange for Fair Market Value?

Boulder County Planning Commission & Boulder County Commissioners:

My name is Bart Lorang. I live in Lyons, and I've spent the past 30+ years as an entrepreneur, investor & venture capitalist working in high-stakes negotiations and M&A all across the globe. I am one of the founding members of [GoodNeighborsLyons.com](https://www.goodneighborslyons.com), which has spent thousands of hours unpacking every single element of this deal proposal and helping inform the public about an extraordinarily complex situation.

I say all of this to simply let you know that I am extremely informed about SU-22-0003 and the nuances involved, as well as advanced deal-negotiation tactics borne from a lifetime of training.

In this message I hope to provide some value and a bit of advice with respect to the negotiation at hand. I sincerely hope it is heard, received and acted upon.

As I conveyed to both Janis Whisman and Ben Pearlman in phone conversations many months ago (in late 2021 and early 2022), my goal is (and remains) to **accelerate the closure of the plant**. Unfortunately, the deal as proposed, is optimized for Boulder County Parks & Open Space's mission of what I would call "additional open space at best prices" and is not optimized for the accelerated closure of the plant (which is what the community, the Town of Lyons and your constituents clearly want).

In the proposed deal, Dowe Flats is being offered for \$0 instead of the pre-existing option agreement, another 208 Acres is being offered for \$0, there are \$6M of additional lease payments as sweetener, and 830 acres of land south of HWY 66 is being offered for \$17,000/acre - far below likely FMV.

This equates to a **minimum ~\$16.7M of value** provided to Boulder County in exchange for the certainty of 15 years of definitive mining and 15 years of definitive plant operations. This dollar figure doesn't include the appurtenant water rights (which I've estimated possibly > 10,000 acre-feet), nor a value greater than \$17,000/acre for the 830 acres south of Hwy 66, which could push the total value of this deal much, much higher.

Why would an applicant provide > \$16.7MM of value for something they claim to be able to do "indefinitely"? *Side-tangent: the word indefinitely is a negotiator's word. Indefinitely simply means that - it could mean Oct 1, 2022, for all we know. But the limbic brain jumps to "forever" and then the person who hears "indefinitely" acts out of fear and emotion, and believes "15 years is better than indefinite" which sets up a false-choice fallacy - "15 years, or indefinite." When I saw that - I instantly recognized this classic negotiation tactic.*

But to answer this question about why the applicant would offer such an enormous ransom bounty for another 15 years, I have built [extensive NPV \(Net Present Value\) financial models](#) that demonstrate the Applicant's BATNA (Best Alternative To a Negotiated Agreement). No matter how many models/scenarios we run with varying assumptions, it is clear - the **Applicant's BATNA is NOT to Operate Indefinitely** and is tantamount to a "free bluff." It's a "free bluff" because they aren't risking anything with their gambit, as they'll be right back where they started if the application is rejected! It's clear from the models that "Operating Indefinitely" is not as profitable for their shareholders as simply shutting down and selling the assets to Boulder County. But one thing is clear and consistent from the models - the **#1 NPV option for the Applicant is 15 years more of mining**, as that gives them a fresh lease on life and turns a non-marketable, nearly dead asset into a marketable one, along with ~\$50M of NPV for Shareholders.

I [have provided these Financial Models publicly](#), and they've been sent to Staff (though it's unclear if anyone at BoCo Staff has actually taken a hard and thorough look). If someone in the BoCo Finance/Analytics department would like to discuss with me, I'd be more than happy to oblige.

Many people in the community have asked me two questions that I don't know the answer to:

1. How many years of continued mining & plant operations would the Applicant agree to if Boulder County Parks & Open space would simply agree to pay FMV for all assets? 1 Year? 3 Years? 5 Years?
2. Has Boulder County actually attempted to negotiate fewer years in exchange for less dollar value for Boulder

County Parks & Open Space by paying FMV?

I will, in turn, ask you these same questions, and I challenge you to ask question #1 of the applicant in and ask tough question #2 of your colleagues and of BoCo Staff.

Candidly, the current inclusion of this type of excessive value received for BCPOS isn't a great look for Boulder County. As residents, we pay Open Space Taxes in order for BCPOS to acquire Open Space at near-market prices, not to trade away years of industrial operation, public health and safety and harmful CO2 emissions to get lots of land for virtually free.

Both the Planning Commission and the County Commissioners (while including, rather than excluding, the Town of Lyons, as it's far better to add additional stakeholders that the Applicant needs to 'satisfy' in a negotiation) have an opportunity to further negotiate this deal with the applicant and extract far fewer years, some plant health upgrades that BCPHE has recommended, elements of the Town of Lyons proposal, all in exchange for more net dollars flowing from Boulder County to the Applicant for the real estate it is acquiring. **I strongly recommend you attempt it, as there's absolutely no harm in pushing for a better deal.** If well trained in negotiation, the Applicant might feign distaste and try to walk away, but trust me, they'll return to the table, particularly if they know the threat of a possible Rejection of the Proposal is looming. Time is on your side, and the September 30th deadline is theirs, not yours. They've known about the expiration date for 25 years. September 30th isn't Boulder County's problem and they are creating false urgency on the County's part (another classic negotiating tactic that seems to be working for them).

When you negotiate a better deal and shrink the number of years of extension from 15 down to a handful, you will be heroes to the community, and the overwhelming majority of community groups, including Good Neighbors Lyons, the Town of Lyons, and everyone in the County, will line up behind you to celebrate a great victory!

Each of you will also have the personal satisfaction of having **saved millions of tons of CO2 emissions**. Efficient market dynamics will push cement production to other places - like newer, greener plants or plants like Florence, which are installing CO2 sequestration technology. And, rumors to the contrary, Colorado is actually a *net exporter* of cement, so we are actually making more than we need as a State.

This single action: pushing for far fewer years of cement plant operation - is literally the #1 thing we can do for Boulder County GHG Goals. While the event with the Commissioners and Nancy Pelosi today was a good press release, I encourage you to follow it up with courageous action and show everyone that Boulder County truly means business when it comes to the climate crisis.

Thanks for your time and thanks for reading.

I am available for anyone at Boulder County to call me at (303) 440-1234 if you'd like to discuss further or need any assistance whatsoever. I'm simply here to help accelerate the plant's closure.

Bart Lorang
12800 N Foothills Hwy, Lyons, CO 80540
GoodNeighborsLyons.com

To: Hollie Rogin[hrogin@townoflyons.com]; Jocelyn Farrell[JFarrell@townoflyons.com]
From: Sarah Lorang[lorang.sarah@gmail.com]
Sent: Mon 1/23/2023 2:11:14 PM (UTC-07:00)
Subject: Formal Letter of Support from the Town of Lyons
[Letter to Boulder County Commissioners FINAL.pdf](#)

Hello Hollie and Jocelyn,

I'll preface this with, I know Hollie is off grid at the moment, so I'll just note that there isn't a huge rush with this. First, I wanted to say thank you for all of your support with our CEMEX efforts. We officially launched our next phase, and I am hoping to gain the formal support of the Town to request that the County Commissioners require Director Case to issue a letter of termination to CEMEX. 'Formal Support' would be via a jointly signed letter from the Town of Lyons (or each individual Board member) and the governing bodies of several other Boulder County municipalities. I've attached a copy of the letter for your review.

In regard to the logistics of how to 'sign' this letter, I am opting to keep it really simple and just list the names/title/municipality or organization of those in support in lieu of collecting electronic signatures. An email (to me) confirming support from each willing member of the Town's Board of Trustees should be sufficient.

Just for your own information, I have already filed this as a formal complaint with Boulder County Land Use, and I also shared this letter and our overall approach with one of the Commissioners to collect feedback. She was supportive and reiterated that the show of force we are attempting to collect will help the Commissioners make this a priority for the County. I didn't get the impression there are any concerns with what we are actually requesting.

Related, we are hosting some webinars to explain our strategy in more detail, and also to share many of the other things we've been doing behind the scenes if you or any Board Members would like to attend. [Click here to register](#) for one of our webinars on Thursday, January 26th (11am, 2pm, 7pm). If you're inclined to sign and share our petition (it's the same as the letter attached) [here is the link](#) for that!

Thank you again and please let me know if you have any questions, or if there is anything else I can do.

Sincerely,
Sarah Lorang
[Good Neighbors of Lyons](#)

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Sarah Lorang
Cell: 303-476-0089
Email: lorang.sarah@gmail.com

To: Hollie Rogin[hrogin@townoflyons.com]
From: Sarah Lorang[lorang.sarah@gmail.com]
Sent: Fri 2/17/2023 5:44:08 PM (UTC-07:00)
Subject: Re: FW: CC4CA Roundup - Feb 16, 2023

[1. Letter to Boulder County Commissioners, 2.14.23.pdf](#)
[2. Petition Cover Page ZON-23-0003, 2.13.23 \(1\).pdf](#)
[8. CEMEX Statements on Trucking Impact, ZON-23-0003, 2.5.23.pdf](#)
[9. \[DRAFT\] Letter from Dale Case to CEMEX.pdf](#)
[3. CEMEX Petition 2.13.23.pdf](#)
[4. Social Media Comments ZON-23-0003, 2.13.23.pdf](#)
[10. Binder Appendix for ZON-23-0003, 2.14.23.pdf](#)
[5. Additional Documentation for ZON-23-0003, County Code Compliance 2.3.23.pdf](#)
[7. Past Non-Conforming Uses ZON-23-0003 2.13.23.pdf](#)
[6. Cement Kiln Dust \(CKD\) at CEMEX 2.10.23.pdf](#)

Sorry for the delayed reply - I would love to hear how your lunch with Guyleen went!

Also, I just wanted to let you know that I formally submitted the letter, petition, and lots of detail to the Commissioners on 2/14. I presented everything in an easy-to-digest binder (the contents are all attached, except for the scanned copies of your letter) to each of them, as well as Ben Pearlman, Dale Case, Martin Laws (Head of Code Compliance), and Dyan Harden (Code Compliance Specialist managing the investigation. I also have an extra binder for you if you would like it for reference as well.

I spoke/mailed with all three Commissioners, but not a lot was said. I'd love to know if you hear anything through the grapevine.

Thanks again for all of your help and support. Please share my gratitude with the Board of Trustees as well. We're still doing a lot behind the scenes, but for this, we mostly just need to wait for Dyan's determination, which she said should take about a month. Fingers crossed!

Sincerely,
Sarah

On Wed, Feb 15, 2023 at 4:07 PM Hollie Rogin <hrogin@townoflyons.com> wrote:

Thanks Sarah.

I have a lunch with Guyleen on Friday. Should be interesting.

From: Sarah Lorang <lorang.sarah@gmail.com>
Sent: Wednesday, February 15, 2023 3:44 PM
To: Kim Mitchell <KMitchell@townoflyons.com>
Cc: Hollie Rogin <hrogin@townoflyons.com>; Victoria Simonsen <vsimonsen@townoflyons.com>
Subject: Re: FW: CC4CA Roundup - Feb 16, 2023

Thank you - I will dig into this more soon. If you have time (and interest), the AQCC will be discussing Cemex's audit in their monthly meeting tomorrow. That topic should start around 10am - I don't really know what the audit entails (I've asked them but not gotten much info in return), but it is separate from the Title V operating permit renewal which has a similar review process I believe. Either way, it should be interesting to hear the discussion.

On Wed, Feb 15, 2023 at 3:37 PM Kim Mitchell <KMitchell@townoflyons.com> wrote:

Please see number 5 highlighted below.

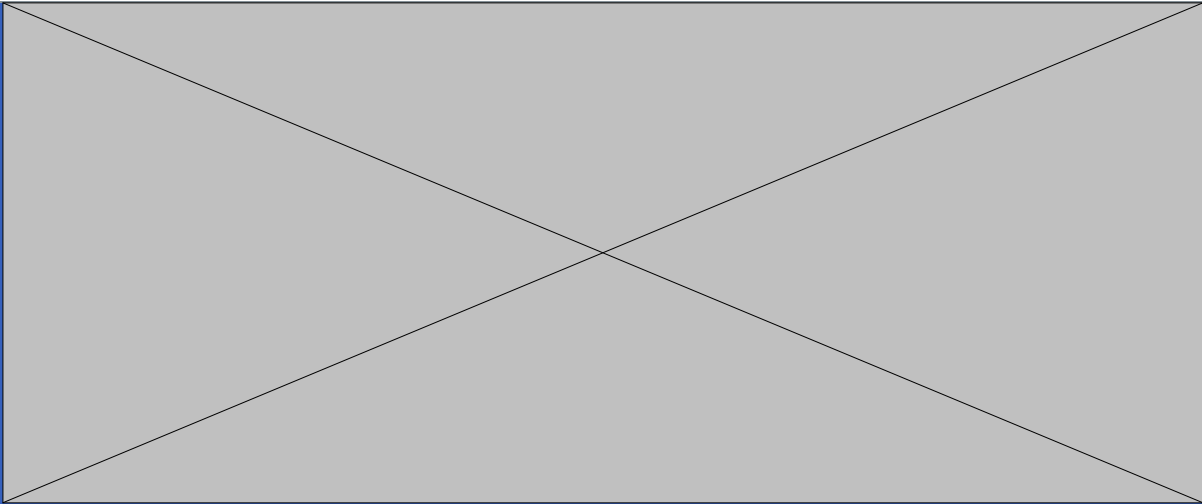
I believe Boulder County Sustainability Dept also may have more info/news.

FYI, we are members of CC4CA

Kim

From: Colorado Communities for Climate Action <jsmith+cc4ca.org@ccsend.com>
Sent: Wednesday, February 15, 2023 2:14 PM
To: Kim Mitchell <KMitchell@townoflyons.com>
Subject: CC4CA Roundup - Feb 16, 2023

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Colorado Communities for Climate Action

Member Updates

February 15, 2023

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Making sure the CC4CA Roundup is as useful to our members as possible is an ongoing effort on staff's part. As the years have passed, the Roundup has grown persistently longer to the point that many email clients won't show the entire issue unless you click on a "read the full email" link at the bottom. This month, we are experimenting with separating the Roundup into several smaller updates:

- ▽ **The Roundup** will focus on advocacy and organizational updates.
- ▽ **Upcoming Opportunities (tentative name)** will focus on upcoming opportunities to testify, submit comments, participate in webinars, and otherwise engage in specific advocacy or learning opportunities.
- ▽ **Funding Opportunities (tentative name)** will focus on local government opportunities for funding through state and federal programs.

We welcome any and all feedback on this new approach to the Roundup (jsmith@cc4ca.org). Thanks everyone, and happy reading!

1. CC4CA Advocacy News - Air Quality

2023 Ozone SIP Rulemaking Preliminaries Underway

Member engagement opportunity: APCD virtual public comment session, Feb 21, 6:00-8:00 pm. Register [here](#).

In December, the Air Quality Control Commission (AQCC) voted to approve the 2022 Ozone State Implementation Plan (SIP) knowing that it was out of compliance with the federal National Ambient Air Quality standards - one set in 2008 limiting ozone emissions to 75 ppb (parts per billion) and the other set in 2015 to strengthen the limit to 70 ppb. The state must submit plans to meet both standards, which apply to the dangerous ozone pollution across the 9-county area designated by the EPA as the North Front Range Nonattainment Area.

Commission members pointedly noted the glaring deficiencies in the plans jointly brought forward by the Regional Air Quality Council (RAQC) and the Air Pollution Control Division (APCD), but nonetheless approved the submission of the 2015 plan and parts of the 2008 plan feeling hamstrung by federal procedural requirements. But it also adopted provisions expressing its explicit intent that during 2023 the RAQC and APCD will fix the faulty inventory that underpins the plans and set in motion consideration of [a wide set of control measures](#), which includes measures that our local government coalition advocated for throughout the process.

During January, both the RAQC and the APCD set in motion stakeholder processes to work towards an October 2023 hearing slated by the Commission to consider those fixes. We intend to fully participate in both stakeholder processes and will continue

our strong push for healthier air, particularly in disproportionately impacted communities, and for the GHG reduction co-benefits that accrue from the control measures to fight ozone, itself a heat-trapping gas. For more information see [CDPHE's Severe Ozone Planning webpage](#) and the [RAQC's Control Strategy Committee webpage](#).

Media coverage:

- ▽ [Colorado won't reduce its hazardous ozone levels voluntarily](#), Colorado Sun, Dec 23.
- ▽ [Corrected ozone data estimate fracking and drilling produce more emissions than every Front Range vehicle](#), CPR News, Jan 5.

AQCC Rulemaking on Air Toxics Permitting in Disproportionately Impacted Communities

Member engagement opportunity: AQCC monthly meetings (Feb through May)

- ▽ *The next public comment opportunity is Feb 16 at 9 am)*
- ▽ Or [share your input](#) on the written comment form

At its Jan meeting, the AQCC agreed to go forward with rulemaking on APCD's proposal, which responds to Colorado's Environmental Justice Act ([HB21-1266](#)) directives. The rule would require additional permitting, modeling, and/or monitoring requirements for new and modified sources of pollution that affect communities of color, low-income residents, and communities already being harmed by pollution. The rulemaking hearing will be during the AQCC May 16-19 meeting.

Sources may include manufacturing, oil and gas, and construction, all of which affect disproportionately impacted communities. Pollutants to be addressed include certain volatile organic compounds, nitrogen oxides, particulate matter smaller than 2.5 microns, and the hazardous air pollutants benzene, toluene, ethylbenzene, and xylene.

CC4CA is part of a Local Government Coalition that is a party to the rulemaking. The coalition's primary concerns about the draft rule are that the monitoring and modeling requirements are not clearly defined and existing sources are inadequately addressed. See a [joint letter](#) submitted by local government advocates, including CC4CA, and [CDPHE webpages](#) for additional information.

2. CC4CA Advocacy News – Oil and Gas

COGCC Launches Cumulative Impacts Rulemaking Planning

Member engagement opportunity: Submit written comments by Feb 24.

- ▽ See [COGCC form](#) to solicit issues that should be addressed in the cumulative impacts stakeholder process and to sign up to participate in potential future working groups.

In Dec 2022, the Colorado Oil and Gas Commission agreed to launch a new stakeholder and public input process as a prelude to new cumulative impacts rulemaking. That process is now underway.

This new process was in response to growing pressure by CC4CA and others, including a CC4CA [letter](#) detailing the case for proceeding with the rulemaking, noting that COGCC's implementation of cumulative impacts rules adopted as part of its Mission Change rulemaking in 2021 falls short. So far, COGCC has done very little except continuing to build a database assessing those impacts (although even this minimal effort lacks clear parameters on exactly what impacts should be assessed). And it has failed to enact provisions to actually reduce those impacts. CC4CA is particularly focused on the Mission Change rules that require *all* cumulative impacts of oil and gas development be addressed – not just air quality, but also impacts to public health, water, soil, biological resources, and disproportionately impacted communities. CC4CA and representatives of fossil fuel-impacted members are currently preparing comments on what the rules should cover and intend to participate in working groups COGCC is planning to convene.

For more information, see [COGCC's Cumulative Impacts Stakeholder Outreach webpage](#).

Related media coverage: [Troubled oil and gas company KP Kauffman threatened with loss of right to do business in Colorado](#), Colorado Sun, Feb 2.

AQCC Oil and Gas GHG Intensity Controls Rulemaking

Member engagement opportunities: Support robust measurement requirements to determine GHG reduction compliance.

- ▽ Public comment session Feb 15, 10-11:30 am. [Register here](#).
- ▽ AQCC monthly meetings, Feb - Jul 2023. Next - Feb 16, 9 am public comment session.

This rulemaking follows up on the AQCC's adopted 2021 new rules to reduce GHG pollution from oil and gas production facilities through a performance-based

GHG intensity program. The rules require operators to reduce their share of GHGs emitted to the atmosphere as compared to how much total oil and gas they produce on a declining basis from 2025-30. The APCD is now following up with a critically important “intensity measurement and verification” rulemaking proposal, scheduled for AQCC consideration at its April meeting, followed by a July hearing.

The intensity approach depends heavily on operators accurately self-reporting their emissions despite the substantial incentive to under-report. CC4CA and our allies are pushing for APCD to prescribe use of accurate technologies using both ground-based measurements at production sites and aerial detection using aircraft and satellites, as well as verification of measurements by a third party and APCD.

APCD is currently conducting public and community engagement sessions regarding its draft rules, available [here](#). The draft rules give operators two options to measure their annual emissions: Direct measurements that they collect on their own, or use of default emissions rates created by APCD for specific types of equipment and operations.

For more information, see the Environmental Defense Fund’s [analysis](#) of the draft rules and APCD’s [Greenhouse Gas Intensity Verification Rule Development webpage](#).

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3. CC4CA Advocacy News – Clean Transportation

AQCC Rulemaking - Advanced Clean Trucks

Member engagement opportunities: Comments needed in support of strong rules. AQCC monthly meetings (Feb through Apr).

At an April hearing, the AQCC will consider APCD’s [draft Advanced Clean Trucks rules](#), which incorporate all of the major provisions of the rules adopted by California under the same Clean Air Act waiver that was used to enable Colorado to adopt Low Emissions and Zero Emissions Vehicle rules in 2019. Truck manufacturers would be required to comply with two requirements: 1) to increase sales of zero-emission medium and heavy duty (M/HD) trucks, starting in 2027 and ramping up through 2034; and 2) under the Heavy-Duty Omnibus NOx rule, clean up emissions in new diesel heavy-duty trucks. CC4CA generally supports the draft rules and is a party to the rulemaking as part of the Local Government Coalition that also includes the Denver and Jefferson County Health Departments.

The trucking industry is mounting strong opposition even though these fleets currently make an outsized contribution to greenhouse gas and ozone-forming pollutants, as well as an outsized impact on disproportionately impacted communities located near major roadways. A major issue is the degree of reporting required of fleet owners. While M/HD vehicles make up less than 10% of all vehicles, they produce over one-fifth (22%) of on-road GHG emissions, 30% of on-road NOx emissions, and 40% of on-road fine particulates emissions. Transitioning to zero- and low-emission truck fleets could result by 2050 in \$5.8B worth of cumulative savings from reduction of direct costs in vehicle maintenance and fuel purchases, as well as up to \$20.4 billion in overall net societal benefits. For further information, see [CC4CA's Fact Sheet](#) and for details.

Media coverage:

▽ [Tesla will build heavy trucks at a new factory in Nevada](#), New York Times, Jan 24.

AQCC Rulemaking - Advanced Clean Cars II

At its Dec meeting, the AQCC confirmed it will start rulemaking on Clean Cars II, which extends to 2026-32 the Zero Emission Vehicle rule adopted in 2019 requiring EV manufacturers to continue to ramp up vehicle sales. These rules again piggyback on the California standards. The AQCC's decision to proceed responds to recommendations in the Colorado Energy Office's (CEO) [initial draft concepts for the Colorado EV Plan 2023](#). That plan proposes to expand on the 2020 EV Plan priorities, particularly focused on investments and incentives for EV purchases and charging infrastructure, and incorporates tens of millions of dollars of federal investments. For more information see the CEO [2023 EV Plan Update website](#) and the [CEO presentation](#) in the Community Access Enterprise Dec meeting minutes.

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4. CC4CA Advocacy News – Buildings Transformation

AQCC Rulemaking - Building Performance Standards

Member engagement opportunities: Support strong rules with flexible compliance options.

▽ AQCC monthly meetings, Jan - Apr 2023. Next - Jan 19, 9 am public comment session.

▽ Share your ideas and concerns by filling out [this comment form](#).

At its Jan meeting, the AQCC agreed to go forward with the APCD's proposal on Building Performance Standards, scheduling a May hearing. The draft rule responds to [SB21-1286](#), which requires the operators of commercial, multifamily, and public buildings 50,000 square feet or larger to cut their GHG emissions seven percent by 2026 and 20 percent by 2030. CEO convened a task force to recommend building performance standards designed to achieve the required emissions reductions. In Oct, the panel of building operators, architects, utility employers, local governments, and environmental advocates approved [final suggestions](#), upon which APCD is structuring its proposed rules.

Those recommendations would give building operators, including local governments, a menu of options to achieve compliance for each individual building they manage, starting in 2023:

- ▽ Requiring a cut in building energy intensity, a measurement based on energy usage per square foot.
- ▽ Requiring the building to meet 80 percent of its space and water heating demand with all-electric appliances.
- ▽ If a building operator decides both pathways are unfeasible, it can pursue other options such as a combination of those two approaches, buying renewable energy credits, participating in utility demand-management programs, or applying for an adjusted timeline if it faces financing, labor constraints, or supply-chain issues.

CC4CA has filed to be a party to the rulemaking and is working closely with building performance staff from Boulder, Boulder County, and Fort Collins to advocate for improvements in the draft rules.

For further information, see the [CDPHE website](#) and a [Basic Fact Sheet on the Building Performance Standards Rulemaking](#).

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5. CC4CA Advocacy News – Industrial Emissions

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AQCC Rules - GEMM 1 (GHG Emissions and Energy Management for Manufacturing) Audit Reports

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In 2021, the AQCC adopted a rule in response to legislative direction to achieve a 5%

reduction in emissions from four facilities singled out as “Energy Intensive and Trade Exposed” - cement manufacturers GCC Rio Grande (Pueblo), GCC Rio Grande (Florence), and Cemex Construction Materials South (Lyons); and the EVRAZ Steel Mill (Pueblo). Achievement of the rule’s performance standards relies on using GHG Best Available Control Technologies and Energy Best Management Practices. The rule requires third-party audits of the facilities on their controls and practices, with the intent of identifying onsite emissions control and process improvements to meet the performance standards, as well as to prioritize co-benefits that reduce impacts on nearby disproportionately impacted communities. If a facility’s audit shows it is not using the best controls to save energy and reduce GHG emissions, it will need to reduce the same amount of emissions that those best controls would achieve, plus reduce an additional 5% in total GHG emissions.

The AQCC at its Feb 16 meeting will review the first round of those audit reports for their adequacy. CC4CA and other members of the Local Government Coalition, as well as conservation community allies that were party to that rulemaking are all finding that the audit reports fall far short of expectation and are urging they be rejected. Aside from a few minor improvements, they instead cite cost-effectiveness analyses and technical feasibility as a way to absolve responsibility for on-site improvements that would benefit DICs. They fail to fully assess alternatives such as fuel-switching and electrification, fail to take into account updated costs of carbon pollution that EPA is poised to adopt, and ignore the substantial financial incentives available through the federal Inflation Reduction Act. [See CC4CA’s comments](#). For more information see [CPHE’s GEMM webpage](#).

AQCC Rules - GEMM 2 (GHG Emissions and Energy Management for Manufacturing) Rulemaking

CC4CA is participating in extensive stakeholder meetings that APCD is conducting to inform the next round of GEMM rulemaking. APCD is scheduled to present a proposal in May that would prescribe controls on additional large manufacturer sources of GHGs. HB21-1266 requires Colorado's industrial sector as a whole to reduce their emissions 20% by 2030. The industrial sector in Colorado includes traditional heavy and light manufacturing along with energy use by other non-manufacturing industries like oil and gas, construction, and agricultural operations.

In order to determine the required GHG emission reductions from each facility it applies to, APCD will look at the type of facility, its pollution levels now and in the past, and how close facilities are located to communities of color, low-income residents, and communities already being harmed by pollution. We have already identified significant problems with APCD’s approach and will remain heavily engaged throughout the rulemaking process.

6. News about the 2023 Legislative Session

We are about five weeks into the legislative session, and it is clearly shaping up to be as interesting, as challenging, and as potentially helpful on climate policy as the last several have been. Although no bills of interest to CC4CA have made it all the way through the process yet, four of the bills CC4CA is opposing have been killed. A few of the biggest issues at this point include:

- ▽ legislation establishing a building code floor for Wildland Urban Interface areas in the state
- ▽ multiple “local zoning preemption” bills aimed at making housing more affordable and reducing GHG emissions
- ▽

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Sarah Lorang
Cell: 303-476-0089
Email: lorang.sarah@gmail.com

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Sarah Lorang
Cell: 303-476-0089
Email: lorang.sarah@gmail.com

February __, 2023

CEMEX Inc.
Attn John Heffernan
5134 Ute Highway
Longmont, CO 80503

CEMEX Inc
ATTN TAX DEPT
1501 Belvedere, Rd
West Palm Beach FL 33406-1501

RE: Investigation of ZON-23-0003

Dear Property Owner:

In accordance with the Boulder County Land Use Code, Article 4-1003.H, I am providing written notification of my determination that the right for continued nonconforming use of your property located at 5134 Ute Highway, Longmont, CO 80503, has or may have been terminated based on the provisions of Article 4-1003.C.1, which provides cause for termination of a nonconforming use:

The right to continue a nonconforming use terminates immediately when the nonconforming use is enlarged, expanded, extended, or altered in any of the following ways, and the property owner does not successfully pursue any of the options specified in Section 4-1003.H. within 30 calendar days after the Director provides written notification of an alleged illegal enlargement or alteration to the owner.

- a. Addition of a new structure containing or accessory to the nonconforming use;*
- b. Enlargement or alteration of a structure containing or accessory to the nonconforming use, including but not necessarily limited to an increase in floor area, an increase in height, or any other alteration or improvement in excess of normal or routine maintenance of the structure;*
- c. Enlargement or alteration in the land area occupied by the nonconforming use, unless the basic nature of the use, at the time it became nonconforming, clearly indicated or contemplated such an increase or alteration; or*
- d. Any other enlargement or alteration of the nonconforming use which has the effect or threatened effect of creating a hazard or nuisance on or off the property, of adversely affecting the character of the neighborhood, or of intensifying the use of the land or its need for services.*

During the course of our investigation, we have found that the nonconforming use has undergone numerous enlargements and/or alterations that have the effect or threatened effect of creating a hazard or nuisance on or off the property, of adversely affecting the character of the neighborhood, or of intensifying the use of the land or its need for services:

- Since October 2022, there has been a substantial increase in heavy trucking (upwards of more than ten to twenty additional 35 ton trucks per hour) along HWY 66, HWY 36 and 28th Street in Boulder, resulting in citizen complaints. The increase in trucking has caused increased air pollution, noise, dust, debris on the roads, diesel fumes, “jake braking” and constitutes hazards to motorists, cyclists and pedestrians. This increase has also intensified the need for services, due to the substantial increase in road wear and tear and required maintenance, as each heavy truck does exponentially more damage to roads than normal vehicles due to the fourth power rule.

- Since September 2022, there have been new and enlarged stockpiles of materials on your property visible from HWY 36, Hygiene Rd and neighboring properties which are a nuisance offsite and adversely impact the character of the neighborhood. These new and altered stockpiles constitute an enlargement in the land area occupied by the nonconforming use, and, given their size and scope, likely constitute accessory structures to the nonconforming use.
- Possibly related to your stockpiles, there have been complaints about new grading activities onsite in excess of 50 cubic yards and 500 cubic yards, which is not allowed absent Limited Impact Special Use Review or Special Use Review permits or a County-issued mining permit.
- Since October 2022, there has been an alteration in the source of materials you have used for cement production to include materials sourced near Rocky Flights, long known for elevated amounts of plutonium in the ground and the surrounding area. The changes to the raw materials could change the nature of the Cement Kiln Dust (CKD) your operation produces, the well-chronicled toxic byproduct of cement production which is currently disposed of onsite in Pit-C but is frequently released into the air via unexpected fugitive dust events. Any alterations to cement production impact the chemical composition of the CKD, which could pose a significant threat to public health and safety.

You have 30 calendar days after the date of this notification to provide evidence satisfactory to me that the determination is in error, to apply for approval of a special use or other applicable approval under the Land Use Code, or to file an appeal of my determination to the Board of County Commissioners. Otherwise, the nonconforming use shall be terminated immediately.

Please note that if you file an appeal, you will have the burden to show that the right to continue the nonconforming use was not terminated according to the applicable provisions of this Article, when judged in light of the history and nature of the use and the circumstances of the alleged termination.

If you have any questions or would like to discuss this matter further, please do not hesitate to contact me at dcase@bouldercounty.org or 720-564-2604.

Sincerely,

Dale Case
Director
Boulder County Community Planning & Permitting
Office of Land Use Planning

To: Kathy (SFC) Carroll[kpc12connect@gmail.com]; David DeCoster (SFC)[dcdecoaster@gmail.com]; Fred (SFC) Annexstein[fannexstein@gmail.com]; Jeff Christy (SFC)[jeffwchristy@gmail.com]; Dawn (SFC) Weller[weller.dawn@gmail.com]; Kara Bauman[baumankara@gmail.com]; Ted Elson[telson@townoflyons.com]; Dave Hatchimonji (SFC)[dhatchimonji@gmail.com]; Kim Mitchell[KMitchell@townoflyons.com]; Hollie Rogin[hrogin@townoflyons.com]
From: Edward Kean[Ed@Bluegrass.com]
Sent: Wed 4/10/2024 5:30:22 PM (UTC-06:00)
Subject: BREAKING NEWS: Notice of Termination Issued to CEMEX Lyons

Good Afternoon!

Actually, it's been a GREAT afternoon, as I have one very noteworthy update to share:

CEMEX Lyons has been issued a Notice of Termination from Boulder County

[Link to Press Release](#)

Headline: The County has determined that the increased traffic at the plant created a hazard, which improperly expanded the use of the cement plant. Subsequently, a Notice of Termination was issued, which ceases the plant's right to operate. CEMEX, however, has 30 days to provide evidence that the director's determination was incorrect, reduce the enlargement of the cement plant use, or appeal the determination to the Boulder County Board of County Commissioners. CEMEX will be able to operate its cement plant under current operating conditions until a final determination is made. Given the recent rezoning of CEMEX's parcel to agricultural zoning, Director Dale Case indicated that, under County Regulations, CEMEX would NOT be able to apply for a Special Use permit in order to potentially continue operations.

This decision is a result of the complaint and investigation initiated by Good Neighbors of Lyons in January 2023, and supported by a petition signed by so many of you, as well as a [letter signed by the mayors and many other elected officials](#) in nearly every Boulder County municipality. While this is not exactly the end, this is the decision that we have been waiting on the edge of our seats for, and are relieved, to put it lightly.

I will share CEMEX's response and expected next steps as soon as we know more.

One final parting thought - never have these words from Margaret Mead rung more true (to me), "Never doubt that a small group of thoughtful, committed citizens can change the world; indeed, it's the only thing that ever has." Thank you to each and every one of you who have been on this journey with us.

Sincerely,

Sarah Lorang
Good Neighbors of Lyons

12800 Foothills Hwy

Lyons, CO 80540

United States

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To: Ed Kean[ed@bluegrass.com]
From: Ed Kean[edkean@yahoo.com]
Sent: Tue 11/7/2023 3:49:59 AM (UTC-07:00)
Subject: **Action Requested** CEMEX Updates

Please take a moment to review and share this email widely.

Good Morning!

We had some unexpected (but welcome!) developments in the past couple of weeks and would really appreciate some strong support from our community and beyond. That said, below are the big updates regarding Cemex for now!

Action Item

- Provide public comment on CEMEX's Title V Permit Renewal by November 11th

1. [CEMEX's Title V Operating Permit Renewal](#)

Title V Operating Permits are issued under federal guidelines to regulate major emission sources and are a key mechanism to regulate industrial emissions. CEMEX's Title V Permit expired in March 2022, but for context, Suncor's Title V permit (a top polluter in Denver) was expired for 13-years before CDPHE began the public process for renewal. We've filed many complaints and provided many public testimonies to expedite the process, and I suppose we were effective because it's up for renewal NOW!

This is our opportunity to influence the content of CEMEX's permit and what they must comply with - [to learn more about how to provide written public comment, as well as our early thoughts on what needs improvement, please **CLICK HERE](#).**

Public comment ends on November 11, 2023.

Note: We are still reviewing this permit from all angles and will continue to add to our list of concerns and requests accordingly. We are also seeking expert testimonies in Air Quality Monitoring, Environmental Science, Climate Science, Public Health, and Environmental Law - if

you or someone you know might be able to help, please let me know!

2. **CDOT Traffic Engineering Study:** When our complaint was filed in December 2022, CDOT indicated that any permanent increase of truck traffic of 20% or more would require a new access permit. CDOT finally received the [required traffic engineering study from CEMEX in September 2023](#). The traffic engineering study definitively confirmed that [truck traffic has increased more than 100% since 2022](#). This information has been shared with Boulder County for their case regarding the termination of CEMEX's nonconforming status, but also as part of CEMEX's recent permit update with the Colorado Department of Transportation (CDOT), a new Highway 66 Access Control Plan has been implemented to enhance road safety. This plan restricts CEMEX trucks from making left turns out of the plant onto Highway 66. This vital measure aims to mitigate traffic hazards and improve overall vehicular safety along this key thoroughfare.

3. **Boulder County Nonconforming Case:** We are still waiting....but we're so close! The County issued one last request for information from CEMEX, and CEMEX's deadline to respond to that is November 3rd. We expect a determination to be made by the County soon thereafter. While separate from this issue, we are also still waiting to hear about any zoning changes to the properties included in the County's moratorium (CEMEX being one of them).

4. Last, a quick **Thank You to Mayor Aaron Brockett** (City of Boulder): As you may recall, I spent several weeks at the beginning of the year attempting to earn support for our [Letter to the Boulder County Commissioners](#) from all of the Boulder County municipalities. While our Town of Lyons Board of Trustees have been an amazing support from day one, many others struggled to see why our concerns about CEMEX extended beyond the Lyons community. [Mayor Brockett](#) was quick to take a meeting with me to learn more (and it was a completely cold reach out on my part), and went above and beyond to help our efforts. **I have no doubt that his early support of us was the social proof that gained the support of so many other local Mayors and legislators, and played a significant role in getting the attention we needed from the Board of Boulder County Commissioners.** Mayor Brockett truly walks the walk when it comes to fighting climate change and improving our air quality; he champions causes that reach far beyond the City of Boulder, and has even taken further steps by testifying for those causes at the state legislature and at the Air Quality Control Commission. He's also been very actively supporting, and helping grow support for, a [ballot measure to phase out fracking in Colorado](#) by 2030.

I share all of this because I so desperately wish there were more Mayor Brocketts in this world, and for those of you voting in the City of Boulder elections this Fall, I just wanted to make sure you knew how valuable he has been to Good Neighbors of Lyons and our work in holding CEMEX accountable.

As always, thank you so much for your help and support - please do not hesitate to reach out if you have any questions on how to provide written comments on the Title V, or even just need some help with writer's block. I am here to help!

Sincerely,

Sarah Lorang
Good Neighbors of Lyons
www.goodneighborslyons.com

Good Neighbors of Lyons

12800 Foothills Hwy

Lyons, CO 80540

United States

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From: Sarah Lorang[lorang.sarah@gmail.com]
Sent: Sun 9/11/2022 8:19:41 AM (UTC-06:00)
Subject: **Only 72 Hours to Act** - Help Us Stop CEMEX!

Hello!

The Boulder Board of County Commissioners (BOCC) Hearing on CEMEX’s application for 15 years of mining is on **Wednesday, September 14th at 2PM**, and we could use your help in a big way!

We have good intel that the BOCC intends to Approve this application and could override the Planning Commission’s recommendation to Deny, so it’s critical we change their minds.

Here’s how you can help:

- **[Sign up to Speak](#)** for up to 3 minutes at the **September 14th** (at 2PM over Zoom) BOCC hearing. Encourage friends and family to join! Our goal is 300+ attendees. If you plan to attend but aren’t comfortable speaking, please consider donating your 3 minutes to another person who has a lot to say. [Click HERE to donate your time](#).
- **[Sign and Share this Petition](#)**. Please sign, and share freely and widely with anyone you know in Boulder County, and ask them to do the same.
- **Email the Commissioners and the Planner!** If you want some help with content, keep on reading or check out our [blog](#) and [FAQ](#).
 - TO: commissioners@bouldercounty.org and planner@bouldercounty.org
 - Subject Line: SU-22-0003

Thank you so much for your time, support, and attention to this incredibly important issue. If you would like any help crafting an email, a speech, or just have questions or concerns, please do not hesitate to reach out to me. I am here to help in any way I can!

Sincerely,
Sarah Lorang
Good Neighbors of Lyons
www.goodneighborslyons.com

Helpful Links:

- [Talking Points and Tips](#)
- [Sign the Petition](#)
 - [Draft language to encourage friends and family to sign as well](#)
- [Register for the Board of County Commissioners Meeting on Sept. 14th at 2pm \(Zoom\)](#)
 - Plan to attend, but not speak? [Donate your time here!](#)
- [Good Neighbors of Lyons Blog](#) and [Good Neighbors of Lyons FAQ](#)

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Sarah Lorang
Cell: 303-476-0089
Email: lorang.sarah@gmail.com

From: Sarah Lorang[lorang.sarah@gmail.com]
Sent: Thur 9/15/2022 10:26:09 AM (UTC-06:00)
Subject: *CEMEX Update* - BOCC Hearing Continuance Date is Sept. 29th

Good Morning!

What a night! Thank you to everyone who dialed in to support our cause - I think about 68 of us were still hanging on at the end of the nearly 8-hour long meeting!

In case you missed it, the Commissioners ultimately tabled their discussion and vote until **September 29th at 3:30pm** (with a hard stop at 5pm), but based on their thoughtful questions, they appear to have read our written comments, and truly heard what we had to say. Public comment is officially closed on this application (so no more written or verbal testimonies will be accepted), but I'm optimistic.

Coincidentally, Bart and I will be celebrating our 10th wedding anniversary on September 29th so we'd love for you to celebrate with us over Zoom at 3:30pm. :) Hopefully we will ALL have something to celebrate by the meeting's end.

Last, I'd just like to give a quick shout out to a couple of our MVPs last night - James Silvestro (Land Use Attorney) and Rosi Dennett (Land Use Planning Consultant). These are just two of the professionals your donations to SOSVV are paying for, and their testimonies are worth their weight in gold. If you haven't already, **we could really use some help on the fundraising front** - [click here to donate](#) (it's tax deductible!). If you would like to listen to James and Rosi's testimonies, [click here](#). James speaks at about 3:02, and Rosi is right after him at 3:13.

Thank you again for all of your help and support throughout this whirlwind of a process. As always, we will keep you updated with what's happening, but it should be a pretty quiet couple of weeks (thank goodness!).

Have a great day,

Sarah Lorang

Good Neighbors of Lyons

www.goodneighborslyons.com

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Sarah Lorang

Cell: 303-476-0089

Email: lorang.sarah@gmail.com

August 31, 2022

To the Boulder County Planning Commission:

My name is Sarah Lorang, and I live at 12800 Foothills Highway. I am writing in regard to SU-22-0003, specifically the Supplemental Memo to Staff Recommendation provided by Planning Staff on August 26th.

I would like to voice my serious concerns about Planning Staff's interpretation of the Special Review Criteria and the Boulder Comprehensive Plan, and also their application of these policies as it relates to SU-22-0003. I think it is important to note that I have personally spent HUNDREDS of hours combing through every document related to Dowe Flats, Lyons Quarry, this application, Planning Staff's Draft Recommendation, Planning Staff's Supplemental Memo, and the laundry list of environmental violations against CEMEX Lyons (which would be entertaining reading akin to *The Office* if it wasn't so disturbing). I've also had the pleasure of becoming intimately familiar with the cement industry and its latest technology, fully understanding the extreme environmental impact of 357,000 tons of annual CO2 emissions, policies and procedures within our State Mining Division, Boulder County Land Use Codes, and the Boulder County Comprehensive Plan. I add all of that because I am just a regular citizen. A citizen with young children who consume a lot of my time. I don't work in the environmental conservation industry. I have no background in government. I'm not even necessarily against mining or cement in general, and I have never really taken an interest in local government and politics before this. I am far more informed about this than I ever wanted to be, but with every page I read, the more upset I became. So I kept reading.

If there is a headline to what you are about to read from me, it is this: This application very objectively does not meet roughly 11 of the 13 Special Use Review Criteria. Planning Staff's interpretation in the Draft Recommendation and Supplemental Memo read as though someone told them to make the case for approval, and stretch the truth or misapply policies however needed. Staff uses rationale that results in errors of law, repeatedly contradicts themselves with logic used, fails to show any due diligence or effort to disprove 'assumptions', and blatantly disregards the spirit of many of the policies they use in an attempt to support various criteria. It is clear to me that Boulder County staff is optimizing this transaction to gain certainty on acquiring purchase options for the CEMEX land south of Highway 66 to complete Ron Stewart's Open Space legacy at the extreme expense of Boulder County's climate goals and public health. I find this absolutely unconscionable.

Before I address Mr. L'Orange's Supplemental Memo, please see my attached assessment of the Special Review Criteria for this application, as well as my interpretation of this application's compliance with the Boulder County Comprehensive Plan (Special Review Criteria item #3). As I mentioned above, I strongly believe that 11 of the 13 criteria cannot be met. Additionally, I have identified at least 29 policies in the Boulder County Comprehensive Plan that I find this application to be in direct conflict with. I've actually found more since compiling my list, but I'm just tired of typing at this point.

1) The legal nonconformity of the operations at the Lyons Quarry Site

Response to Planning Staff Supplemental Memo #1:

Staff references Article 4-1003.B to support the argument that the non-conforming status of the plant means it can be used indefinitely. However, other **relevant sections of 4-1000 should be taken into account, including, but not limited to, Article 4-1001.A which states 1. "Nonconforming uses and structures should be brought to conforming status as speedily as justice will permit", and 2. "this Article shall be strictly construed against the continuation or expansion of nonconformity in Boulder County," in addition to Article 4-1003.C, which prohibits additional accessory structures, public nuisances, and hazards or threatened hazards on or off the property.**

Given that the plant at Lyons Quarry has been in a legal non-conforming status since 1994 ("Mining, Mineral Processing, Cement Plant, Cement Processing, Kin Dust Collector, Kiln Dust Bin") , it is improbable to believe that CEMEX has not added accessories or altered their non-conforming use or structures (as described in Article 4-1003.C) in the past 28 years. It is Boulder County's obligation to bring nonconforming uses and structures to conforming status as speedily as justice will permit. There are 16 approved technical revisions to the M1977208 permit, many of which discuss new accessory structures (pipes, wells, pumps, acid storage tanks, injection systems) as well as disposal of potentially hazardous CKD in Pit-C, which caused real hazards to Waterfowl (covered by TR-8 & TR-9) as well as the need for groundwater monitoring and compliance wells to be built to ensure the CKD wasn't causing harmful groundwater effects. Other examples of accessories or alterations include the conveyor running from Dowe Flats and encroaching into the Plant site itself, an obvious accessory to the plant's nonconforming use, the addition of truck wash, and the change of their exterior lights which caused noteworthy light pollution and public outrage. All of these have occurred after 1994. Has Boulder County conducted a thorough review of all of these alterations and accessory structures to bring this structure to conforming status and require a Special Use Review? **Boulder County Land Use has erred in not requiring a Special Use Permit for the Lyons Quarry and the Cement Plant, as there is ample evidence for triggering of the conditions in 4-1003.C.**

Here is a matrix outlining potential nonconforming events and which section of the Land Use Code could be the trigger:

https://docs.google.com/spreadsheets/d/1bU3EHfnSN4hzyYh2_VKxCO3Y3Ci6mgz5GAjyMp64NM/edit#gid=859611852

Response to Planning Staff Supplemental Memo #2

Planning Staff stated “[we have] reviewed the application under the assumption that the Lyons Quarry and cement plant would continue to operate until such a time as the operator decides to voluntarily cease operations” and based their recommendation on that assumption.

Staff’s reasoning cannot be applied to approve this application because they have very clearly not performed adequate due diligence to corroborate this assumption (and have acknowledged this).

- 1) it is highly unlikely that the plant is truly in a legal non-conforming status, as it seems that Boulder County has possibly ignored Articles 4-1001.A and 4-1003.C on several occasions over the past 28 years,**
- 2) Planning Staff failed to make reasonable effort to fact check this statement with DRMS, and**
- 3) Planning Staff does not appear to have attempted to validate the financial feasibility of 'indefinite operations'.**

With a mere two emails to DRMS, and some financial modeling with publicly available information, we concluded with a high degree of confidence that CEMEX will voluntarily cease operations in the near-future or be without revised permits that allow them to continue processing of cement. As a reminder, in order for CEMEX to operate the Lyons cement plant without Dowe Flats, the following things must happen:

- 1) DRMS provides an updated M1977208 permit to change the source location;
- 2) CDOT provides the appropriate access permits;
- 3) CDPHE processes and approves the Title V operating permit renewal; and
- 4) The financial profile of operating indefinitely is superior to the financial profile of shutting everything down and selling assets (which is highly unlikely).

Given this information, the criteria in Special Review items #3, #8, and #10 can not be met.

Link to DRMS Emails:

<https://static1.squarespace.com/static/6299fc89866f6c66caa2011d/t/62fd3f1557a1c55b64acb927/1660763926022/Amy+Email+1+-+Question+on+M1977-208+Inspection+Report+%281%29.pdf>

Link to Financial Models:

https://docs.google.com/spreadsheets/d/1S-aQWmqPjTSzMad9n-3ybdKi0cEpRdn_ODVmjJOeSb0/edit#gid=0

Response to Planning Staff Supplemental Memo #3

In response to Mr. L’Orange’s statement that “County staff have confirmed with staff from the Colorado State Division of Natural Resources that the State permit for the Lyons Quarry and cement plant (M1977-208) would not need to be terminated if the Dowe Flats Quarry permit (M1993-041) ended.”, **I would like to point out what should be obvious: Of course M1977-208 would not need to be terminated if mining ceased**

at Dowe Flats. This was a poor way of asking the question and a poor way of interpreting the response from Jared at DRMS. Mr. L'Orange's email to DRMS was hastily written during the Planning Commission Hearing on August 17th. There are still many years of reclamation to be performed under M1977-208 (thus the permit would not need to be terminated, as mining permits live many years beyond active mining activities) and CEMEX could apply for a Technical Revision or an Amendment to attempt to continue M1977-208 (whose sole mining activity presently is the processing of material at Dowe Flats).

In an email from Amy Eschberger at DRMS, she clarifies that "Any changes to the approved plan, such as changing the primary source location for the plant, would need to be reviewed by our office through the appropriate revision submittal." In other words, CEMEX needs a change to their permit to truck in material to process at the cement plant. This is a change/revision/amendment they don't have, nor have they even applied for. Amy's email can be found here:

<https://static1.squarespace.com/static/6299fc89866f6c66caa2011d/t/62fd3f1557a1c55b64acb927/1660763926022/Amy+Email+1+-+Question+on+M1977-208+Inspection+Report+%281%29.pdf>

While I think the above speaks for itself, I would also like to point out what is very evident to the community, and what I hope is now crystal clear to the Planning Commission: that is, **the threat of "indefinite operations" that has been used as the primary reason to approve this application by both the co-applicant, Boulder County Parks and Open Space, as well as the Boulder County Planning Staff was NEVER fact-checked by County staff, and it is incorrect to think their assumption is true.**

Given this information, the criteria in Special Review items #3, #4, #8, #10, #11, and #13 can not be met.

2) The cumulative public health effects of 15 more years of operations

Response to Planning Staff Supplemental Memo #4

While I do not agree with Staff saying the public's concerns with the negative impacts of an additional 15 years of plant operations should not be discussed as part of this application, **I am willing to look at this through a narrow lens of removing the plant from consideration. Under that lens, using Staff's logic, any theoretical future benefits from plant closure or anything ancillary to the subject parcel in question should also be stricken from the basis for recommendation.** In other words, the Dowe Flats extension should stand on its own merits and the Planning Commission should take a narrow view of this application absent considerations on other parcels - real estate, financial, or otherwise. **When striking these arguments, several of the Special Use Review Criteria arguments no longer have proper support to be logically coherent. Staff's recommendations based on assessing Special Review Criteria #3, #4, #8, #9, #10, #11, and #13 are all supported by theoretical future**

benefits on parcels that Staff has indicated are not part of this application, and thus, all of these assessments should be discarded.

If Staff would like to include those theoretical future benefits not related to Dowe Flats, they must also include any negative impact associated with an additional 15 years of mining operations, including but not limited to the 5,400,000 tons of CO₂ the plant will emit with an additional 15 years of operation. Conservatively, the ultimate environmental cost of these emissions (per a legal precedent valuing the impact at \$50 p/ton of CO₂ emitted) is over \$250M. Anything short of including all of the impact or none of the impact of the plant, is an error of law. Staff's previous selective omissions are known as the legal doctrine of "cherry picking". Staff cannot use the plant to support its recommendation, which they do repeatedly, then in the same breath deny its negative impacts and say it's not part of this application.

Planning Staff's logic and reasoning to exclude the CEMEX plant's enormous environmental impact is not legally sound.

The criteria for Special Review items #3, #4, #8, #9, #10, #11, and #13 can NOT be met. This application should be rejected.

Response to Planning Staff Supplemental Memo #5

This application has been categorized as an extension to the Special Use Permit. So when talking about the environmental impact, Planning Staff casually stated "An extension of mining activities at the Dowe Flats quarry would mean that these emissions could continue for an additional 15 years", a sentiment that does not properly acknowledge the significant emissions and **environmental impact that mining on this "significant agricultural land", as deemed by the County in the Comprehensive Plan in Policy-AG 1.03, Map 15.**

Regardless, this application is not an extension, but rather a **NEW special use** and should be treated as such. The Dowe Flats Special Use Permit has an explicit expiration date: 25 years, or September 30, 2022. When Marigold sold the Dowe Flats land to Boulder County, they placed a covenant on the land as documented in a "Covenant Running with the Land" Agreement on July 15, 2002. Section 1.1 of that agreement prohibits use of the property for the excavation or extraction or removal of minerals or other materials ("mining") after December 21, 2021. The spirit of that covenant was to ensure that the expiration of the Special Use permit for mining at Dowe Flats was upheld; **this agreement was signed by Paul Danish, a Boulder County Commissioner at the time. The clear intent of Boulder County was to cease all mining activity at Dowe Flats as of December 21, 2021.**

When CEMEX indicated to Boulder County that they would like an extension on their Dowe Flats permit back in 2019, Dale Case made it clear that any extension is out of the County's hands because of the covenant prohibiting mining held by Marigold.

Unsurprisingly, CEMEX then went back and found a way to persuade Marigold to have the mining portion of that covenant removed, which was done in February 2020.

If CEMEX would like an additional 15 years at Dowe Flats, they must apply for a NEW Special Use permit.

This is not an extension, and thus does not meet the criteria in Special Review items #2, #3 (BCCP Policy ER 1.01, AG 1.03 and more), and #4.

Response to Planning Staff Supplemental Memo #6

When discussing the impact of 15 additional years of mining at Dowe Flats, Staff intimated that there is no additional impact because the boundaries are not being extended. Is that really true though? People have assumed this means that CEMEX just plans to dig deeper pits, not dig new ones. In CEMEX's application, they state, "If CEMEX, Inc. continues to mine the mineral resources that are all within the currently permitted disturbance boundary, no additional land will be disturbed." No additional land [in the boundary] will be disturbed. On a site visit of Dowe Flats with Good Neighbors of Lyons in March 2022, **CEMEX's Michael Clausen spoke about future mining at Dowe Flats and pointed to an untouched section of land to show where they would like to continue mining.** It is reasonable to assume there will be NEW and significant impact with 15 years of additional mining.

Without a current environmental impact study, which should have been completed when this application was filed (but has not been done), how can staff say the criteria surrounding environmental impact is met?

Subsequently, Special Review Criteria items 2, 4, 12, and 13 can not be met.

Response to Planning Staff Supplemental Memo #7

I would like to remind the Commission that without 'indefinite operations' of the plant as a viable threat (and it is not - **County Staff did not adequately fact check the claim of indefinite operations by CEMEX** during negotiations, when issuing draft recommendations, or even in the hasty email sent by Mr. L'Orange on August 17th), that the plant **MUST** be considered when discussing environmental impact. Planning Staff even contradicts themselves on this point multiple times in their Supplemental Memo.

By now, I am confident you understand the plant's enormous emissions and that the ultimate cost to our community for an additional 15 years of operations is valued at \$250M (as supported by recent case law). But I also think understanding **how CEMEX behaves as a corporate citizen of our community is important.** A character assessment, if you will, as Mr. L'Orange failed to include such details about CEMEX's impact on public health when asked by Commissioner Fitch. When reviewing a summary of The Colorado Department of Public Health and Environment's (CDPHE) enforcement history with CEMEX, they have been the subject of 12 formal enforcement actions by the

Air Pollution Control Division (APCD) since 2000, 5 of these in the last 5 years (see details below). In addition, there is an additional formal enforcement action by APCD which is still pending.

Case No. 2021-077

Continuous Emissions Monitoring Systems (CEMS) downtime; Opacity violation (kiln & clinker cooler); Monitoring, Recordkeeping & Reporting issues. CEMEX was given a \$40,250 penalty.

Case No. 2020-036

Failed to conduct timely VOC testing; Failed to operate power sweeper on two days; Failed to complete required QA/QC actions for THC CEMS; Dust plume observed (from points associated with kiln/clinker cooler), violating requirement to operate in a manner with good air pollution control practices; Monitoring & Reporting issues. CEMEX was given a \$42,000 penalty.

Case No. 2019-197

September & October 2019 stack testing; Failed to conduct timely dioxin/furan testing on the kiln. CEMEX was given a \$5,250 penalty.

Case No. 2019-158

Significant dust emissions from the clinker transport elevator and drag chains from a process, violating requirement to operate the process' baghouses in accordance with good air engineering practices. CEMEX was given a \$7,000 penalty.

Case 2019-021

Opacity from the kiln; Failure to operate and maintain a baghouse in accordance with manufacturer's specifications and/or good engineering practices; Failure to operate the plant water truck on two dates in Jan 2018; Failure to operate the power sweeper for 2 hours on one date in March 2017; Failure to ensure carbon & lime injection system was operating when temperatures reached trigger point on one date in July 2017; Monitoring, Recordkeeping & Reporting issues. CEMEX was given a \$35,000 penalty.

A note from APCD Staff: "Historically, there have been regular complaints about Cemex from nearby residents. Most of these complaints are related to fugitive dust from the plant and/or associated quarry. Some years APCD/Boulder County receive more complaints than others. For example, 2022: 4 complaints (to date); 2021: 16 complaints; 2020: 4 complaints; and 2019: 16 complaints."

CEMEX's Plant Manager, Erik Estrada, has said to members of the community that it makes more financial sense for CEMEX to pay the fines for their environmental violations than to fix the issues. Michael Clausen of CEMEX has also said, in various contexts, that the plant "would never do anything that would risk its permits". I believe he is referencing the plant's legal nonconforming status, and any improvements or accessories added would trigger a County review of the plant's nonconforming status, thus risking its permits altogether. All that is to say, **CEMEX very literally does the bare**

minimum required as it pertains to protecting public health. And the bare minimum is generally just paying the fine, not protecting public health at all. That attitude is not limited to the plant, but also to the quarry. Is the County really okay with another 15 years of this corporate citizen who does not care about the people in its community at all?

While some of those comments are hearsay (not all of them), CEMEX's actions most certainly support the sentiments. **I also want to remind the Planning Commission that the Boulder County Public Health Department's requests for conditions to be added to protect public health were disregarded in their entirety in the Planning Staff's draft recommendation with their legally false reasoning that plant upgrades should be omitted from conditions to the application, despite including the plant themselves multiple times in their Supplemental Memo for reasoning to support the application.**

The public health impact of this application prohibits the criteria in Special Review Items #3 (BCCP Policy PH 1.01) #8, and #10 from being met.

3) Details and data on CO2 emissions

Response to Planning Staff Supplemental Memo #8

In his supplemental memo, Mr. L'Orange states "While the Lyons Quarry and cement plant are not being reviewed as part this application, the public health impacts of the Lyons Quarry and cement plant are relevant in considering whether the applicant's commitment of record to close the plant is sufficient mitigation for the impacts of extending mining operations at Dowe Flats." Staff repeatedly cites CEMEX's commitment to 'cease cement plant operations' as justification to meet various Special Review criteria, but Staff also repeatedly asserts that the plant is not part of this application and its impact should not be considered. Any future benefit related to the plant or properties other than Dowe Flats, should also be removed from consideration.

Specifically referring to Mr. L'Orange's assessment on the negligible impact of an additional 15 years of mining at Dowe Flats, **without a current environmental impact study, which should have been completed when this application was filed (but has not been done), how can staff say the criteria surrounding environmental impact is met?**

Based on the above, the criteria in Special Review items 2, 3, 4, 8, 10, 11, 12, and 13 can not be met.

4) The relationship between Dowe Flats and the Lyons Quarry site

Response to Planning Staff Supplemental Memo #9

In his Supplemental Memo, Mr. L'Orange asserts, "As a legally nonconforming use, the Lyons Quarry can continue to operate independently of the Dowe Flats quarry." While that is true in the eyes of Boulder County, **it is an error of law to not take into account that the Lyons Quarry can NOT continue to operate independently of the Dowe Flats quarry with their current state permit, M-1977-208.** In order for CEMEX to operate the Lyons cement plant without Dowe Flats, the following things must happen: 1) DRMS provides an updated M1977208 permit to change the source location; 2) CDOT provides the appropriate access permits; 3) CDPHE ultimately processes and approves the Title V operating permit renewal; 4) The financial profile of operating indefinitely is superior to the financial profile of shutting everything down and selling assets.

Given this information, the criteria in Special Review items #3, #8, and #10 can not be met.

Link to DRMS Emails:

<https://static1.squarespace.com/static/6299fc89866f6c66caa2011d/t/62fd3f1557a1c55b64acb927/1660763926022/Amy+Email+1+-+Question+on+M1977-208+Inspection+Report+%281%29.pdf>

Link to Financial Models:

https://docs.google.com/spreadsheets/d/1S-aQWmqPjTSzMad9n-3ybdKi0cEpRdn_0DVmJJOeSb0/edit#gid=0

5) Commissioner McMillan's unaddressed questions about the length of the requested permit (15 years)

Response to Planning Staff Supplemental Memo #10

In the August 17th Planning Commission hearing, Commissioner McMillan raised questions about how CEMEX and Boulder County Parks and Open Space settled on 15 years for the extension. These questions were left unanswered in the Planning Staff's Supplemental Memo.

During that same hearing, CEMEX's Mark Davies stated that 15 years was just what they agreed to, and that CEMEX initially wanted more time. Just another point that increases the likelihood we will be having this same discussion about extending mining in 15 years time if this application were to be approved. The number of years CEMEX is asking for is noteworthy, as CEMEX chose to only operate the Dowe Flats mine 4 days per week which, extended over 25 years, leaves more than 10 years of potential mining unused.

It is also worth noting that it feels like more than a coincidence that the 'gift' to Boulder County Parks and Open Space of approximately \$15M of land parallels 15 years of mining to show a pretty clear relationship between the two. **How many years of mining would be acceptable to Boulder County if it was \$0 of additional gifts and land parcels?**

Thank you for your time and attention to this, which is no small feat given the length of this letter. I really do appreciate the role you (The Planning Commission), as citizen volunteers, are playing in our local government's process. We need checks and balances like the Planning Commission to ensure ALL stakeholders are being heard. Your personal commitment to that is noticed and appreciated. Thank you again.

With gratitude,

A handwritten signature in black ink, appearing to read 'S. Lorang'.

Sarah Lorang
Good Neighbors of Lyons
www.goodneighborslyons.com

From: Sarah Lorang[lorang.sarah@gmail.com]
Sent: Tue 9/13/2022 2:31:26 PM (UTC-06:00)
Subject: 24 HOURS TO GO! Important Tips for Tomorrow's CEMEX Hearing

Only 24 hours to go!

If you haven't already, please [register to speak](#) at the Boulder Board of County Commissioners (BOCC) Hearing on **Wednesday, September 14th at 2PM**. This will likely go well into the late evening, so testimonies will likely be in the evening hours. I'm happy to help monitor and notify people when they're close to getting called up. Just let me know somewhere in [this spreadsheet](#). We have good intel that the BOCC intends to Approve this application and could override the Planning Commission's recommendation to Deny, so it's critical we change their minds.

Thank you for all your help sharing [our petition](#) - we have already collected 870 signatures and counting! Feel free to mention this in your testimony tomorrow!

Speaking of testimonies, we have put together a list of [soundbites and talking points](#) we would LOVE the Commissioners to hear repeatedly throughout the night. If you are willing and able, please insert one or more of these points into your speech. I've organized them by topic.

Last, if you're able, [please donate to Save Our St. Vrain Valley \(SOSVV\)](#), a 501c3 organization. All funds raised will go directly to paying for legal counsel. We would like SOSVV's attorney, James Silvestro, to testify on our collective behalf both in writing and at the hearing tomorrow, arguing many of our legal positions on why this application must be rejected. If every person on this email list donated just \$25, it would be enough to cover his fees.

As always, thank you so much for your time, support, and attention to this incredibly important issue. Please do not hesitate to reach out to me if I can help you in any way, and I hope to see you tomorrow!

Sincerely,
Sarah Lorang
Good Neighbors of Lyons
www.goodneighborslyons.com

Helpful Links:

- [Talking Points and Tips](#)
- [Sign the Petition](#)
 - [Draft language to encourage friends and family to sign as well](#)
- [Register for the Board of County Commissioners Meeting on Sept. 14th at 2pm \(Zoom\)](#)
 - Plan to attend, but not speak? [Donate your time here!](#)
- [Good Neighbors of Lyons Blog](#) and [Good Neighbors of Lyons FAQ](#)

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Sarah Lorang
Cell: 303-476-0089
Email: lorang.sarah@gmail.com

TOWN OF LYONS BOARD OF TRUSTEES MEETING
HYBRID MEETING
LYONS TOWN HALL, 432 5TH AVENUE, LYONS, COLORADO

ZOOM LINK:

DRAFT AGENDA
MONDAY, December 4, 2023

5:30 PM – 6:00 PM

WORKSHOP

6:00 PM – 6:50 PM

Joint Workshop with UEB:

Water Year Update/Time of Use 101/Tierra Resources Update/Solar Project Update

7:00 pm BOARD OF TRUSTEES REGULAR MEETING

I. Roll Call and Pledge of Allegiance

II. Land Acknowledgement

III. Approve Agenda

IV. A Reflective Moment of Silence

V. Audience Business

VI. Staff Reports

1. Boulder County Sheriff's Office Report
2. Administrator's Report – Introduction of New Code Compliance Officer Doug Mattingley
3. Legal Update

VII. Ordinances and Public Hearings

1. Public Hearing – Resolution 2023-XX – a Resolution of the Town of Lyons, Colorado Setting the Mill Levy for 2024

VIII. Consent Agenda

1. Resolution 2023-XX – a Resolution of the Town of Lyons, Colorado Approving the 2024 Fee Schedule

IX. Items Removed from Consent Agenda

X. Boards & Commissions

XI. General Business

1. CEMEX – Board support for public testimony/class action suit
2. Sidewalk Assessment Update

XII. Trustee Reports

XIII. Summary of Action Items:

XIV. Adjournment

“The Town of Lyons will not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs, or activities. Persons needing accommodations or special assistance should contact the Town at hr@townoflyons.com as soon as possible, but no later than 72 hours before the scheduled event.”

To: jeffwchristy@gmail.com[jeffwchristy@gmail.com]
From: Nicholas Angelo [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7E8721EB17F447F4A7DE132A8BE27B23-NICHOLAS AN]
Sent: Fri 2/25/2022 12:04:00 PM (UTC-07:00)
Subject: CEMEX CO2 Levels

Jeff,

This is the email that I had thought I had forwarded to you earlier. I have also sent each of our Commissioner's an email asking about requiring carbon reduction technology that should be a requirement of any continued use of the plant. I was under the impression that perhaps the County did not want CEMEX to install carbon reduction technology because it would extend the life of the plant. Apparently, that is not true but I wonder why a mining permit extension would be granted without requiring the foremost carbon reduction technology as required at the plant in California.

Thanks,

Nick

From: Bart Lorang <lorangb@gmail.com>
Sent: Friday, October 8, 2021 11:45 AM
To: Nicholas Angelo <NAngelo@townoflyons.com>

Subject: CO2 Emissions from CEMEX Lyons

Nick,

As we discussed, after seeing the draft climate action resolution for Lyons, I did extensive digging into the facts about the CO2 emissions produced by CEMEX, relative to all other sources in Boulder County.

Here's what I was able to find via public sources produced by Boulder County:

- Boulder County [committed to reduce emissions](#) from **15 mtCO2e** to **7 mtCO2e** per capita by the year 2030
- Lyons (pop 2,148) averages **9.8 mtCO2e per capita** (total of 21,008 mtCO2e)
- Cement Manufacture (CEMEX Lyons) represents **5% of all emissions** in Boulder County (total of 243,652 mtCO2e, the equivalent of 15,000 Boulder County residents)
- CEMEX Lyons alone produces **12-times the emissions than the entire Town of Lyons**

I've attached the [Boulder County modeling report released in October 2018](#) for your convenience.

Obviously, the emissions production of CEMEX Lyons is an enormous problem that needs to be addressed without delay. Most, if not all, of the other CO2 initiatives we could undertake as Boulder County residents seem to be insignificant in comparison! Especially disheartening is that if cement production ramps up even a small amount (perhaps 10-15%), the resulting CO2 emissions dwarf any gains undertaken by private citizen action!

But, the good news is, that given the size of the problem, the impact of solving it is enormous as well. As an illustrative example, decommissioning CEMEX Lyons (and replacing it with something more practical, like a 100MW agri-voltaics style solar garden) would:

- Reduce Boulder County emissions by ~1 **mtCO2e** per capita (total of 500,000 **mtCO2e**)
- Provide renewable energy for 5,000 to 10,000 homes (more than enough for Lyons and other areas of Boulder County)
- Sequester substantial quantities of **mtCO2e** by way of vegetation, plants and trees

I'm actually working on some very rough financial feasibility models based on what I think it would take to a) purchase

the CEMEX Lyons plant and b) construct a solar garden in its place. Early models are promising, but, given that the CEMEX property is in Lyons Primary Planning Area but is technically in unincorporated Boulder County, something of this magnitude would have to be done in partnership with both Lyons and Boulder County as it would undoubtedly require a high degree of public/private partnership.

Hope the data is helpful, do let me know if you have any questions!

As for the concept I outlined as one potential solution to this pressing problem, I would love to get any and all early feedback on this from yourself, or anyone in Boulder County you think might find this concept interesting - I'd be more than happy to have informal discussions to receive feedback! I can assure you I'm serious about pursuing it if it's indeed feasible.

Feel free to call me anytime to talk live 303.717.0414.

Regards,

Bart

To: Victoria Simonsen[vsimonsen@townoflyons.com]
From: David Hamrick[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=01D8A4C5C9434CF99774E8739D534453-DAVID HAMRI]
Sent: Tue 7/12/2022 11:31:10 AM (UTC-06:00)
Subject: CEMEX financials?

Hi Victoria,

We have a PCDC special meeting today to discuss our response to the CEMEX referral. You have mentioned receiving the financial analysis done by the Lorang's. Could you send that to me (as well as any other info you may think useful)?

Thanks,

David

To: Ed Kean[ed@bluegrass.com]
From: Ed Kean[edkean@yahoo.com]
Sent: Wed 8/31/2022 9:19:48 AM (UTC-06:00)
Subject: CEMEX Hearing #2 (Tomorrow Wed Sept 1) - Urgent Action Requested!
[SU-22-0003 BCCP Compliance 8.29.22.pdf](#)
[SU-22-0003 Special Review Criteria Compliance 8.29.22.pdf](#)

Please forward to your helpful friends far and wide.

Here are some reminders and resources regarding the September 1st (at 1:30pm on Zoom) Planning Commission Hearing to vote on CEMEX's application for an additional 15 years of mining at Dowe Flats.

1 - Please email in your feedback on Staff's Supplemental Memo to the Planning Commission prior to September 1st. **We may not get the opportunity to speak at the hearing so this is very important.** *Please note that we are only supposed to comment on new information gleaned from Planning Staff's Supplemental Memo.* [Here is a link to a Google Spreadsheet with rebuttals](#) to the Staff Memo (1st tab). Please feel free to use them however you are most comfortable (copy and paste is fine).

We also took the liberty of drafting arguments for every special review criteria that the Planning Commission is ultimately voting on - I've attached them for your convenience and use. They can also be found on Tabs 2 and 3 of the spreadsheet shared above.

Email: Boulder County: planner@bouldercounty.org

CC: Boulder County Commissioners: commissioners@bouldercounty.org

Subject Line: SU-22-003

2 - Please register to participate at the September 1st hearing [here](#). The Planning Commission will decide if this meeting will be open to public comment at the beginning of the call, so we don't know if we will be able to speak, but we would like as many people there and ready to testify as possible. *Please note that we are only supposed to comment on new information gleaned from Planning Staff's Supplemental Memo above.* [Here is a link to a Google Spreadsheet with rebuttals](#) to the Staff Memo (1st tab). If you plan to speak at Thursday's hearing, please sign up for a talking point to cover.

3 - If you're able, [please donate to Save Our St. Vrain Valley \(SOSVV\)](#), a 501c3 organization. All funds raised will go directly to paying for legal counsel. We would like SOSVV's attorney, James Silvestro, to testify on our collective behalf both in writing and at the hearing on September 1st, arguing many of our positions held in the rebuttals and response to the Special Review Criteria document attached. **If every person on this email list (approximately 200 people) donated just \$18, it would be enough to cover his fees.**

As always, please do not hesitate to reach out to me if you have any questions! Thank you for your time and support, and I hope to hear from you on Thursday at the hearing!

Sincerely,
Sarah Lorang
Good Neighbors of Lyons
www.goodneighborslyons.com

Links:
[Good Neighbors of Lyons Draft Talking Points for Planning Commission Hearing 9.1.22](#)
[Registration Link for September 1st \(at 1:30pm\) Planning Commission Hearing](#)
[Planning Staff's Supplemental Memo](#)
[Donation Link for SOSVV](#)

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Sarah Lorang
Cell: 303-476-0089
Email: lorang.sarah@gmail.com

DRAFT LETTER

Dear Commissioners Levy, Loachamin, and Stolzmann,

We are writing to formally request that you take action and uphold the Boulder County Land Use Code regarding the termination of Nonconforming Use (article 4-1003) as it relates to the CEMEX Lyons property, located at 5134 Ute Highway.

After the closure of its Dowe Flats mine, in October 2022, CEMEX Lyons began trucking in all of their raw materials from remote locations. County residents have observed and complained publicly on Facebook and other forums about 10-20 'new' 35-ton trucks driving to CEMEX Lyons via Highways 36 and 66 every hour. This includes significant traffic through the City of Boulder from a shale operation south of Boulder County.

This is a significant alteration and enlargement from the baseline use, as the truck traffic has roughly doubled. These changes are so substantial that they have caused CDOT to require a new access permit.

CEMEX's recent operational changes have resulted in:

- Significantly more intensive use of their land and/or its services,
- Hazards and public nuisance on/off the property,
- Increased threats to public health and safety, and
- An adverse impact on the character of the neighborhood.

CEMEX has also created new shale stockpiles, and the size and land area occupied by the stockpiles of other materials has increased dramatically. These new and increased stockpiles are now highly visible from US-36, Hygiene Road, and by numerous neighbors. This is an enlargement and alteration of use, affects the character of the neighborhood, and is a visual nuisance off the property.

These new, intensive uses clearly trigger the non-conforming use termination clause (Article 4-1003.C.1.d) for CEMEX's Lyons-based plant on a number of fronts, which now compels the Boulder County Director of Land Use to send a notice of termination (Article 4-1003.H.1) determining that the property owner's right to continue a non-conforming use has, or may have, been terminated because of violations of Section 4-1003 (alterations of use) of the Land Use Code. Upon receiving the letter, the property owner has 30 days to provide evidence to the Director of Land Use to the contrary, appeal to the Boulder County Commissioners, or apply for a Special Use Permit.

Termination of the non-conforming use and denial of a Special Use Permit would ultimately result in the closure and demolition of the plant as the cessation of operations would trigger CEMEX's DRMS (Colorado Department of Reclamation, Mining, and Safety) Reclamation Plan.

What we are asking of you, our Boulder County Commissioners: Require that Boulder County Land Use Director, Dale Case, act on Article 4-1003.H.1 (notice of termination) by sending a letter to CEMEX Lyons indicating that nonconforming use *has or may have* terminated in accordance with Section 4-1003 of the Boulder County Land Use Code (alteration of use). For your convenience, we have included a draft letter that Director Case may use for reference. As a reminder, per Land Use Article 4-1001.A, the County has a duty to eliminate nonconformity "*as speedily as justice will permit*".

It is also worth noting that Article 4-1003.H.2 states, "...any failure by the Director to provide a notification of a determination of termination as provided for in this Section shall in no way entitle the property owner to continue or resume a nonconforming use terminated by operation of this Section 4-1003(H)." This means that any past failures to enforce the above codes do not give the property owner the right to continue those alterations of use. [Click here for a matrix](#) of 15 past alterations that may have met the criteria in Article 4-1003 (alteration of use) and could have triggered Section 4-1003.H.1 (notice of termination).

We are simply asking that you enforce policies that were thoughtfully put into our Land Use Code to protect the community at large. Taking this step may very likely be one of the most impactful things you will have the opportunity to do in your lifetime to fight climate change. CEMEX Lyons is the #1 CO₂ emitter in Boulder County (representing > 7% of all emissions), with annual greenhouse gas emissions equal to the annual emissions of ~30,000 people, and they have every intention of hanging around 'indefinitely' if we let them.

Thank you for your time and attention to this incredibly urgent and important matter.

Sincerely,

References

- [Boulder County Land Use Code, Article 4-1000 Nonconforming Structures and Uses](#)
- [Matrix of Nonconforming Use Violations](#)

To: Hollie Rogin[hrogin@townoflyons.com]; Hollie Rogin[hrogin@gmail.com]
From: Edward Kean[Ed@Bluegrass.com]
Sent: Sat 12/9/2023 12:05:10 PM (UTC-07:00)
Subject: Cemex Lyons Hearing 1-5-2024

Hollie -

Urgent - Do you know of any individuals or groups who might consider assisting re: Cemex Lyons heinous pollution and operating permit violations which will hopefully lead to shut-down of this 1969 wheezing hunk of junk?

This is the grandmothered-in cement manufacturing plant which spews massive NOx, CO2, Mercury, and Cement Kiln Dust (CKDs) all over Northern Colorado, the EPA's Severe Rated Colorado Front Range Ozone NonAttainment Area (Greeley to Castle Rock), and including CO2 in our greenhoused world. It is likely the most humongous single piece of Colorado fossil-fuel-climate-action-low-hanging-fruit that one could dream (nightmare?) of and all we need to do is to continue to ask the State of Colorado and Boulder County to enforce their most basic current and pre-existing regulations. Nothing fancy, nothing anti-business, nothing political.

Coloradoans have a time sensitive, critical, and amazing opportunity January 5th to advise State Regulators at a virtual hearing.

If a bunch of citizens show up at this meeting, (while simultaneously doing chores around their homes and offices) sign up to speak, or just be on-line hanging out, to be a voice and/or presence, it will be much more difficult for Colorado officials to continue not doing their basic enforcement of the regulation of Cemex's factory.

While it's sad that citizens need to prod officials to do their jobs, here we are.

GoodNeighborsLyons is working on a process to assist participants in focusing their comments to the technically oriented items the State is interested in and actionable and this functionality will be available to all to make participants time and effort confidence inspiring, fruitful, and satisfying.

May I help you and your community engage?

Thank you for your consideration,

Edward Kean
Small Planet Blue
Cell 303-589-2727
Ed@Bluegrass.com

On Thursday, November 23, 2023 at 07:34:45 AM MST, Kevin Cross <jkevin87@comcast.net> wrote:

Hi Julia –

Thanks for your reply, and Happy Thanksgiving!

We typically have three meetings per year. The first is a virtual mid-week evening meeting held at roughly the middle of the legislative session, sometime in March. That one lasts about 1-1/2 hours. The second is an

in-person and virtual hybrid held after the legislative session ends, typically in June or early July. And the third is an in-person and virtual hybrid held in the fall, either in October or November. The latter two meetings are held on either a Saturday or a Sunday, and last three hours (four if you include lunch).

Member reps are expected to try to attend all meetings, but we understand if folks can't make it. Proxy voting is allowed. In addition to voting during meetings, we also conduct e-mail votes from time to time. Those take place about once per week during the legislative session, when we take positions on bills related to climate and clean energy. You can learn more about our decision-making processes at the top of [this webpage](#).

Apart from attending meetings and participating in votes, there are no other member representative responsibilities or privileges. Meetings and participation in committees are open to both member reps and individual allies. There are no dues, although I do send out a couple of fundraising messages per year to cover our budget, which is roughly \$2,000 this year.

That's about it. Let me know if you have any other questions.

Best,

Kevin

From: Julia Moravcsik <juliamoravcsik@yahoo.com>
Sent: Wednesday, November 22, 2023 10:24 AM
To: 'Ron Bennett' <ron@350colorado.org>; Kevin Cross <jkevin87@comcast.net>
Cc: 'Edward Kean' <ed@bluegrass.com>
Subject: Re: Go Electric Colorado - CCLC membership request

Hi Kevin,

I looked at your Mission and Vision statements and I support them and am confident that Go Electric Colorado as a whole also supports them. I would like GECCO to join and for me to become a voting member.

Could you give a more detailed description of what being a voting member would entail? How often do you meet? What communal projects are you involved in that would require our input?

Thanks, Julia

On Tuesday, November 21, 2023 at 04:53:07 AM MST, Kevin Cross <jkevin87@comcast.net> wrote:

Hi Ron, Julia, and Edward –

Thank you for all your legwork on this, Ron. Julia and Edward, please confirm that you support our mission and vision statements (link below), want GECCO to join the CCLC, and that you both wish to become voting member representatives of the CCLC. More info is on our website, please check that out and let me know if you have any questions about what membership entails.

Best,

Kevin Cross

Convener

Colorado Coalition for a Livable Climate

P.O. Box 672

Fort Collins, CO 80522

Ph. 970-484-3141 <https://colivableclimate.org>

The CCLC is a project of the Northern Colorado Alliance for a Livable Future (NCALF), which is incorporated under section 501(c)3 of the IRS code.

We adhere to all requirements applying to 501(c)3 organizations, including those related to political and commercial activity.

From: Ron Bennett <ron@350colorado.org>

Sent: Monday, November 20, 2023 9:41 AM

To: 'Kevin Cross' <jkevin87@comcast.net>

Cc: 'Julia (GECCO) Moravcsik' <juliamoravcsik@yahoo.com>; 'Edward Kean' <Ed@Bluegrass.com>

Subject: Go Electric Colorado - CCLC membership request

Kevin,

Thank you for your reply. Please allow me to introduce you to Julia Moravcsik and Edward Kean. They are interested in CCLC membership, representing Go Electric Colorado. I've CC'd them here and have included their bio's below for your reference.

-Ron

Ron Bennett, AIA

Decarbonization Advocate

350Colorado.org

he/him

mobile: 978.258.2550

Julia Moravcsik is involved in home electrification, EV education and policy, and sustainability in general. As well as being a co-founder of Go Electric Colorado, she is the president of the Denver Electric Vehicle Council, the events coordinator for the Denver Tesla Club, a volunteer brand ambassador for Aptera (a solar EV company), and works with Drive Electric Colorado, Coltura, Citizens Climate Lobby, and 350 Colorado to educate and legislate for EVs and climate change.

Edward Kean has been working most recently in disaster relief in Colorado, Florida, Texas, and Nepal, Colorado eBike Sales and Tech, Real Estate Brokerage, Electrical, HVAC, Electric Vehicles and Sound Engineering (Planet Bluegrass). Edward is currently a Home Advisor and HVAC Workforce Education Committee member in GoElectricColorado.org, serves as Chairperson of the Town of Lyons Colorado's Sustainable Future Commission, Lyons Board Member of Colorado Communities for Climate Action State Lobby Group and is a supporting member of GoodNeighborsLyons working to shut Colorado's fourth largest producer of CO2, NO2, and Mercury emissions - Cemex Lyons Cement Factory. Edward is married to Claudia Kean for 40 years and together have two sons. Edward works on all the above on behalf of his first grandchild due in December 2023 and rides his solar powered electric mountain bike all over Colorado, Utah, Wyoming, Arizona and New Mexico to maintain focus and health.

From: Kevin Cross <jkevin87@comcast.net>
Sent: Saturday, November 18, 2023 6:03 AM
To: 'Ron Bennett' <ron@350colorado.org>
Subject: RE: Steps to nominate a new organization for CCLC membership

Hi Ron –

Thanks for promoting us to GECCO!

Have they expressed interest to you in joining the CCLC? It's easy to do – as long as they support our mission and vision statements (available [here](#)) and can provide at least one representative to be on our “members” listserv, they're in. Prospective members need to be either 501c3s, 501c4s, or unincorporated volunteer organizations (not sure of their organizational structure, but I don't think this is an issue since they appear to be an all-volunteer organization). Assuming you've been talking with them about us, please put me in touch with your contact(s) there.

The CCLC has an active “Labor Outreach” committee, and we can talk about GECCO reps participating in that.

Again, thanks.

Kevin

From: Ron Bennett <ron@350colorado.org>
Sent: Friday, November 17, 2023 12:01 PM
To: jkevin87@comcast.net
Subject: Steps to nominate a new organization for CCLC membership

Hi Kevin,

Go Electric Colorado (GECO) has grown from a few volunteers helping their neighbors electrify their homes to a non-profit organization focused on electrification of existing homes and the workforce training needed to make that transition... <https://goelectriccolorado.org/>

GECO volunteers have handled many referrals from Boulder's Energy Smart Yes program... <https://energysmartyes.com/>

They had a successful fundraiser/launch party at the end of October hosted by former RMI exec's that included a keynote speech by CEO Director Toor...

<https://www.tickettailor.com/events/goelectriccolorado/999152>

I know that CCLC has a workforce development committee and a couple folks from GECO would most likely want to participate.

Please help me understand the process of nominating GECO and one or two of its representatives for CCLC membership. Thank you.

-Ron

Ron Bennett, AIA

Decarbonization Advocate

350Colorado.org

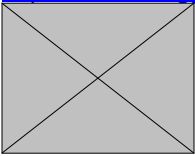
he/him

mobile: 978.258.2550

--

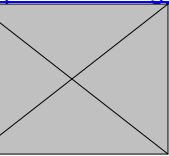
Leslie Glustrom
[720-341-3154-cell](tel:720-341-3154)

Clean Energy Action, Boulder, Colorado
Accelerating the Transition to the Post Fossil Fuel World
<http://cleanenergyaction.org/>



I acknowledge that I live, work and play on the ancestral homelands and unceded territory of Indigenous Peoples who have traversed, lived in and stewarded lands in the Boulder Valley for over 10,000 years. Those Indigenous Nations include dozens of tribes including the: Di De'i (Apache), Hinono'eiteen (Arapaho), Tsistsistas (Cheyenne), Nʉmʉnʉnʉ (Comanche), Kiowa, Čariks i Čariks (Pawnee), Sosonih (Shoshone), Oc'eti S'akowin (Sioux) and Núuchiu (Ute).

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To: Hollie Rogin[hrogin@townoflyons.com]
Cc: Bart Lorang[lorangb@gmail.com]
From: Sarah Lorang[lorang.sarah@gmail.com]
Sent: Tue 9/6/2022 8:27:47 PM (UTC-06:00)
Subject: CEMEX Media Availability

Hi Hollie,

As you may or may not know, we have a crisis PR person on board to help us. She wanted me to reach out to you to gauge your willingness and availability to:

1. give quotes about your concerns regarding the CEMEX application
2. be interviewed for print media
3. be interviewed for broadcast media

One thing that came up in particular is what you've already spoken about, with how some of our most vulnerable residents would probably be the most adversely impacted by an additional 15 years of mining and associated plant operations. I added to that with the data point that since an Environmental Impact Survey was never completed, we don't really know what the impact will be. There are some residences in the area (Hygiene Rd) with water tables as shallow as 12 feet (ours is 30 feet, which is also very shallow). How do we know that an additional 30ish feet of digging at Dowe Flats won't impact the water table that local residents rely on for their well water (e.g. Shady Acres)?

Rosi Dennett (our Land Use Consultant) confirmed that an Environmental Impact Study should have been done as part of the application, so the lack of one should render the application incomplete.

That's just one angle, you can obviously drill down on whatever you find to be the biggest concerns for the Town. Anyway, if the above sounds okay, please let me know what days/times are off-limits from now until Sept. 14th.

Thank you!

Sarah Lorang

--

Sarah Lorang
Cell: 303-476-0089
Email: lorang.sarah@gmail.com

To: Victoria Simonsen[vsimonsen@townoflyons.com]; Bart Lorang[lorangb@gmail.com]; Sarah Lorang[lorang.sarah@gmail.com]
From: Hollie Rogin[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=955FA234C14B454295963FA95788C39D-HOLLIE ROGI]
Sent: Tue 7/26/2022 9:23:54 AM (UTC-06:00)
Subject: Cemex/Governor's office

Good morning,
Andrés is Governor Polis' Deputy Director of Community Engagement. As we were talking about Gov. Polis attending our Summit groundbreaking, he asked what other issues the Town of Lyons is facing at the moment. I gave him the two-minute backgrounder about Cemex and he called yesterday to ask for a bit more information regarding the number of people employed there, then texted me this morning to ask for background materials. So, the Governor is aware of this issue. Knowing his entrepreneurial bent, how excited he is about renewable energy and opportunities to make CO shine particularly in an election year, I am hopeful.

Hollie

From: Hollie Rogin <hrogin@townoflyons.com>
Sent: Tuesday, July 26, 2022 9:17 AM
To: Andres.Carrera@state.co.us <Andres.Carrera@state.co.us>
Subject: Cemex documentation

Good morning Andrés,

Attached please find our referral response to Boulder County Planning, with supporting documentation.

I would be happy to connect you with Bart and Sarah Lorang of Good Neighbors of Lyons. Bart is a highly successful serial entrepreneur who first envisioned transforming the Cemex property into a world-class eco-village that includes renewable energy generation that can power our entire town. That information begins on page 96 of the attached packet and is immediately followed by input from our community.

[Here](#) is a recent Colorado Sun article about the issue.

I'm happy to answer any questions at all! Thank you so much for bringing this forward.

All the best,
Hollie

Hollie Rogin (she, her, hers)
Mayor, Town of Lyons
970-617-3168 c

My working time may not be your working time. Please don't feel obligated to respond outside of your working hours.

To: Victoria Simonsen[vsimonsen@townoflyons.com]; Dolores Vasquez[DVasquez@townoflyons.com]
From: Hollie Rogin[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=955FA234C14B454295963FA95788C39D-HOLLIE ROGI]
Sent: Sun 2/5/2023 10:04:30 AM (UTC-07:00)
Subject: Fw: CEMEX Documentation for Board Packet
[Additional Documentation for ZON-23-0003, County Code Compliance 2.3.23.pdf](#)

Hello,
Is there enough time to amend the packet and include the attached document either instead of or in addition to the supporting information that is there now?
Thanks much,
Hollie

From: Sarah Lorang <lorang.sarah@gmail.com>
Sent: Sunday, February 5, 2023 9:32 AM
To: Hollie Rogin <hrogin@townoflyons.com>; Jocelyn Farrell <JFarrell@townoflyons.com>
Subject: CEMEX Documentation for Board Packet

Good Morning!

First, I wanted to say thank you for making time in your upcoming Board meeting to review potential support of our letter to the County Commissioners. I recently created a cleaner, easier to read document that has all the supporting data you should need in lieu of the deck I originally provided. If it's not too late, the attached would probably be better to provide in the packet for review.

Also, there have been some developments with the County since we first started these efforts, most notably that a case for investigation has been opened (ZON-23-0003). Cases are investigated based on the address of the operator, so our three separate requests for investigation are all being addressed under that same Case #. The case manager is Dyan Harden, who is supervised by Martin Laws. I spoke with them both this week and provided the attached documentation.

That said, we will still present the letter and petition to the Commissioners to ensure the County puts the desired priority and resources behind this investigation, as the case manager implied that she is managing many priorities, so this isn't the only thing she is working on. In a conversation with one of the Commissioners, she also indicated that public feedback would help them, the Commissioners, make this the priority we all want it to be. We intend to present the letter you are contemplating endorsing, associated petition, and a lot of supporting detail to the Commissioners along with a personal note from us (Good Neighbors) that explains this slightly revised intent. Also, just for your own information, I have received formal endorsement for the letter from the Mayors of Lafayette, Superior, Boulder, and Broomfield - I am anticipating support from others shortly. I'll be presenting to the Board of Trustees for both Nederland and Jamestown early this week.

Thank you again for your help with this. I really appreciate it!

Sincerely,
Sarah Lorang

--

Sarah Lorang
Cell: 303-476-0089
Email: lorang.sarah@gmail.com

Boulder County Code Compliance Case # ZON-23-0003

Summary of Case Issues

[Good Neighbors of Lyons](#) filed three separate complaints regarding the operations at CEMEX Lyons:

1. **Termination of Non-Conforming Status:** Documentation of multiple events that should trigger the non-conforming use termination clause (Article 4-1003.C.1.d) for CEMEX's Lyons-based plant, and a request that Director Case send a notice of termination (Article 4-1003.H.1) determining that the property owner's right to continue a non-conforming use has, or may have, been terminated because of violations of Section 4-1003 (alterations of use) of the Land Use Code.
2. **Grading Permits:** Documentation of new grading activity at CEMEX Lyons. Grading involving more than 50 cubic yards of dirt requires a Grading Permit; it also requires review through the Site Plan Review Waiver process. Movement of more than 500 cubic yards requires Limited Impact Special Review. Mining and quarrying activities are typically exceptions, but the code says that a Special Use Review and Limited Impact Review will still be required. It does not appear that either have been completed for these recent operational changes. It is worth noting that each of these exemptions discusses having a Special Use Permit or "permitted mining activities", and given CEMEX's non-conforming status within the Land Use code, they have neither.
3. **Trucking Activity:** Documentation of increased trucking (approximately doubling baseline usage) and subsequent road impact, with a request to investigate County enforcement mitigation opportunities. Note: each 35-ton truck does the damage to roads of 160,000 1.5 ton passenger vehicles (ref: [4th power rule](#).), which means that CEMEX is adding the impact of ~12.8 million passenger vehicles to our roads every day.

General CEMEX Background

CEMEX is a Mexican multinational materials company who manufactures and distributes cement, ready-mix concrete, and aggregate in 50 countries. CEMEX is a Global 2000 (#1178) company with \$13 billion in annual revenues, and \$27 billion in assets.

The CEMEX Lyons plant produces cement, which is the main basic ingredient of ready-mix concrete. Cement is produced largely from combining limestone, shale, and silica from mines and quarries. To combine these ingredients, CEMEX Lyons burns coal (approximately 7 tons per day) to heat their kiln to >2300 degrees Fahrenheit.

The CEMEX Lyons plant was constructed in 1969 by Martin Marietta, and adjacent quarries were mined for decades until they were exhausted. The adjacent Dowe Flats Mine began their mining operation on September 30, 1997 with a 25-year Special Use Permit granted by Boulder County that expired on September 30, 2022.

CEMEX Lyons is the #1 polluter in Boulder County, emitting 357,000 tons of CO2 annually, and makes up about 7% of the entire County's greenhouse gas emissions.

Case Issue #1: Termination of Non-Conforming Status

Based on multiple operational changes made by CEMEX since October 2022, we are requesting that Boulder County Land Use act on Article 4-1003.H.1 (notice of termination) by sending a letter to CEMEX Lyons indicating that nonconforming use has or may have terminated in accordance with Section 4-1003 of the Boulder County Land Use Code (alteration of use).

Referencing the Land Use Code section below:

Land Use Code, Section 4-1003.C.1.d:

“The right to continue a nonconforming use **terminates immediately** when [there] is **any** other enlargement or alteration of the nonconforming use which has the effect or threatened effect of creating a hazard or nuisance on or off the property, of adversely affecting the character of the neighborhood, or of intensifying the use of the land or its need for services.”

*Note: This is a very broad clause that can be triggered by **any changes** to the nonconforming use that threaten public health and safety, create a nuisance, or intensify use of the land or services.*

For quick reference, this is how Boulder County Land Use describes a ‘nuisance’:

- Excessive noise: A use that generates excessive noise, such as a loud construction site, can be considered a nuisance if it disrupts the peaceful enjoyment of nearby properties.
- Odors: A use that generates offensive odors, such as a livestock operation or a waste treatment facility, can be considered a nuisance if it causes discomfort or inconvenience to nearby residents.
- Visual impacts: A use that has a negative visual impact on the surrounding area, such as a billboard or a poorly maintained property, can be considered a nuisance if it affects the aesthetics of the community.
- Health hazards: A use that poses a health hazard, such as an abandoned building with lead paint or a hazardous waste storage facility, can be considered a nuisance if it poses a risk to the health and safety of the community.
- Traffic congestion: A use that generates excessive traffic can be considered a nuisance if it causes congestion and delays on the roads.

Description and Documentation of Enlargements or Alterations:

1. **Trucking in Materials:** In October 2022, CEMEX began trucking in 100% of their raw materials from multiple, distant locations. A great deal of their shale is being brought in from the Arcosa Lightweight mine on Highway 93 near Rocky Flats and Golden. Every HOUR, 10+ 35-ton trucks (~80+ per day) are bringing in materials by driving right through the City of Boulder on 28th Street/Highway 36.
 - When thinking about the impact of this new trucking, it’s important to not forget the impact on the roads themselves. Each 35-ton truck does the damage to roads of 160,000 1.5 ton passenger vehicles (Ref: [4th power rule.](#)), which means that CEMEX is adding the impact of ~12.8 million passenger vehicles to our roads every day.
 - Many local residents feel that the increased trucking makes the roads unsafe, creates a concerning amount of dust/debris, and dramatically increases road noise. [Click here](#) for hundreds of public comments regarding the nuisance and impact of CEMEX’s enlargements and alterations.
 - [Please click here](#) for a brief deck documenting the ‘new’ truck traffic, as well as some additional public comments about the impact of these ‘new’ trucks.

- We would anticipate that CEMEX will attempt to claim rights to the non-conforming use because at one time (prior to the opening of Dowe Flats in 1997), they were trucking just as much as they are now, therefore, they have a right to continue. This argument should be rejected on the grounds of 'ceasing of a specific intensity of use for more than 6 months, then resumption, does indeed constitute a ceasing or alteration/enlargement of that non-conforming use'.
- CDOT's Region 4 Permit Manager, Tim Bilobran, is requiring that CEMEX apply for a new access permit given that their new trucking operation is a permanent change with increased traffic of 20% or more. CEMEX must hire a 3rd party for a traffic engineering survey as part of that application, which should be complete by the end of February 2023. The survey will be public when the access permit application is approved.
- The new material being trucked in (shale) may be of note, because when referencing CEMEX's CDPHE Title V Operating Permit (Operating Permit 95OPBO082, which is expired), Section 4: Summary of Emission Units, Permit Section Section II.14: General Fugitive Emissions Requirements, P018.019, shale is specifically NOT mentioned, and that is what the 'new' trucking operation is hauling in after the recent closure of CEMEX's adjacent mine.
- Quick review against Land Use Code criteria:

Effect or threatened effect of creation a hazard or nuisance on or off the property?	YES; Traffic, Noise, Pollution, Safety Hazard for Cyclists and other Drivers
Adversely affecting the character of the neighborhood?	YES; Neighbors are complaining about the "exponential" increase in traffic, Jake Braking, and Diesel Fumes
Intensifying the use of the land or its need for services	YES; Increase in Trucks = Increase in Services; CDOT Requires a new Permit for >20% Increase in Traffic. Each 35-ton truck does the damage to roads of <u>160,000</u> 1.5 ton vehicles - see: air power rule

- 2. Stockpiles/Grading Activity:** In September 2022 CEMEX began increasing the size of its raw materials stockpiles, and in October 2022 they started creating many new shale stockpiles as they began trucking that material in from distant locations (it was previously being brought over Highway 66 via a conveyor). The size of these stockpiles are significant, because they are typically several stories tall and highly visible from Highway 36, many nearby roads, and neighboring residences. They easily exceed 50 cubic feet in size, and each individual pile is much more than likely larger than 500 cubic feet.
 - The new material being stockpiled (shale) may be of note, because when referencing CEMEX's CDPHE Title V Operating Permit (Operating Permit 95OPBO082, which is expired), Section 4: Summary of Emission Units, Permit Section Section II.14: General Fugitive Emissions Requirements, P018.019, shale is specifically NOT mentioned, and that is what the stockpiles consist of after the recent closure of CEMEX's adjacent mine.
 - More public comments specifically regarding stockpiles and grading activity can be provided on request.

- Quick review against Land Use Code criteria:

Alteration in the land area occupied by the nonconforming use?	YES; New Stockpiles are Occupying an Increased Area of the Land
Effect or threatened effect of creation a hazard or nuisance on or off the property?	YES; Visual Aesthetics of Large Stockpiles visible from Neighbors, Foothills Hwy, Hygiene Road
Adversely affecting the character of the neighborhood?	YES; Neighbors are complaining about the "new mining" and "large piles"
Intensifying the use of the land or its need for services	YES; New Stockpiles are Occupying an Increased Area of the Land and is a More Intense Use

- Photo documentation of stockpiles:



3. **Change of Source Materials / Cement Kiln Dust Exposure Threat:** Cement Kiln Dust (CKD) is a toxic, fine and powdery material that is disposed of onsite at CEMEX Lyons and often is released into the community via frequent fugitive dust events. These dust events are a result of poor operating practices. The chemical composition of CKD is highly variable dependent on the source of materials. So when CEMEX changed the input materials after the closure of Dowe Flats, the composition of the CKD changed. This change and the unknown impacts on the toxicity of CEMEX's CKD creates a potential threat to public health and safety. It is also worth noting that the 'new' materials are largely being mined within about one mile of Rocky Flats. We've been unable to confirm if the shale from that mine is being tested for elevated levels of plutonium, but it's a concern as there have been more recent reports of elevated levels of plutonium still existing near the site ([reference article](#)).
 - Bill Hayes and Gabi Hoefler in Boulder County Public Health have received lots of documentation over many years about frequent fugitive dust events. In recent conversations, Bill indicated that their local air quality monitors have not detected anything of note from CEMEX when compared with dust event reports. Bill also indicated that they expect to get more monitors in the area this summer.
 - More public comments specifically regarding CEMEX's change in source materials and subsequent concerns related to that can be provided on request.

- Quick review against Land Use Code criteria:

Effect or threatened effect of creation a hazard or nuisance on or off the property?	YES: threat and hazard due to composition of CKD changing; continued CKD fugitive dust events
Intensifying the use of the land or its need for services	YES: More CKD Disposal directly onsite

- Photo documentation of Cement Kiln Dust (CKD) fugitive dust events:

Fugitive Dust Event - October, 2022



View from
Hwy 66
driving
Westbound

Fugitive Dust Event - November 23rd, 2022



Potential Past Opportunities to Terminate CEMEX's Non-Conforming Status:

Per Land Use Article 4-1001.A, the County has a duty to eliminate nonconformity “as speedily as justice will permit”. With that in mind, should the County determine that any of the above three triggers are not sufficient to issue a notice of termination, we would like to highlight that Article 4-1003.H.2 states, “...any failure by the Director to provide a notification of a determination of termination as provided for in this Section shall in no way entitle the property owner to continue or resume a nonconforming use terminated by operation of this Section 4-1003(H).” We believe that this means any past failures to enforce the above codes do not give the property owner the right to continue those alterations of use.

- [Please click here](#) for a matrix of 15 past alterations that may have met the criteria in Article 4-1003 (alteration of use) and could have triggered Section 4-1003.H.1 (notice of termination).

Case Issue #2: Grading Permits

After the closure of its Dowe Flats mine, in October 2022, CEMEX Lyons began trucking in all of their raw materials from remote locations and stockpiling the materials on what they refer to as “the patio” on their property. These ‘new’ stockpiles are predominantly shale and exceed 50 cubic yards in size, and also much more than likely exceed 500 cubic yards in size.

Per Boulder County Code Compliance, “Grading involving more than 50 cubic yards of dirt requires a Grading Permit. It also requires review through the Site Plan Review Waiver process. Movement of more than 500 cubic yards requires Limited Impact Special Review.” Mining and quarrying activities are typically exceptions, but the code says that a Special Use Review and Limited Impact Review will still be required. It does not appear that either have been completed for these recent operational changes.

Further, each of these exemptions discusses having a Special Use Permit or “permitted mining activities”, and given CEMEX’s non-conforming status within the Land Use code, they have neither.

We are requesting an investigation into CEMEX’s compliance with Boulder County’s grading permit requirements.

- More photos of the stockpiles with documentation of dates taken can be provided on request.
- Photo documentation of grading activity:



Case Issue #3: Trucking Activity

Documentation of increased trucking (approximately doubling baseline usage) and subsequent road impact, with a request to investigate County enforcement mitigation opportunities. Note: each 35-ton truck does the damage to roads of 160,000 1.5 ton passenger vehicles (ref: [4th power rule.](#)), which means that CEMEX is adding the impact of ~12.8 million passenger vehicles to our roads every day.

- CDOT's Region 4 Permit Manager, Tim Bilobran, is requiring that CEMEX apply for a new access permit given that their new trucking operation is a permanent change with increased traffic of 20% or more. CEMEX must hire a 3rd party for a traffic engineering survey as part of that application, which should be complete by the end of February 2023. The survey will be public when the access permit application is approved.
- Tim at CDOT also indicated that approval of the new access permit will also likely have impacts on which direction trucks may go when leaving the CEMEX facility. Specifically, trucks will no longer be permitted to turn left (west) on Highway 66 when exiting CEMEX's plant.
- Many local residents feel that the increased trucking makes the roads unsafe, creates a concerning amount of dust/debris, and dramatically increases road noise. [Click here](#) for hundreds of public comments regarding the nuisance and impact of CEMEX's enlargements and alterations.
- [Please click here](#) for a brief deck documenting the 'new' truck traffic, as well as some additional public comments about the impact of these 'new' trucks.

Additional Active Investigations Related to CEMEX Lyons:

CDOT (Colorado Department of Transportation)

CDOT indicated that any permanent increase of truck traffic of 20% or more would require a new access permit. The permit application includes a traffic engineering survey completed by a third party, which will provide detailed data on the truck traffic and routes (information CEMEX has historically refused to provide). Approval of the new access permit will also likely have impacts on which direction trucks may go when leaving the CEMEX facility.

- **What is Happening Now:** CDOT is actively working with CEMEX to begin the application/traffic survey process as of January 11, 2023. CEMEX has about 45 days to complete the survey.

DRMS (Colorado Department of Reclamation, Mining, and Safety): Lyons Quarry Permit M1977208

DRMS has indicated that the mining activities at the Lyons Quarry are related to the processing of material mined from the Dowe Flats Mine, and that the closure of the Dowe Flats Mine would have implications for the Lyons Quarry permit. Any changes to the previously approved plan, such as changing the primary source location of raw materials, would require review through an Amendment or Technical Revision submission.

- **What is Happening Now:** CEMEX has not applied for either; a formal complaint with request for investigation and follow up was filed on 1.10.23. CEMEX received notice, but requested actions on behalf of DRMS are still pending as they investigate internally.
- **Note:** An amendment to the permit would involve public hearings, and a vote by the Mining Board made up of citizen volunteers. A technical revision would not inherently allow for a public process, but if disputed within 20 days of a revision filing, there would be a public process for that dispute.

The current Reclamation Plan for Cemex Lyons includes a surety bond of approximately \$8.9MM, which is based on estimates from nearly 20 years ago. DRMS has previously indicated that this bond amount is likely inadequate in present day dollars and needs to be reassessed (bonds must always reflect the current cost to remediate).

- **What is Happening Now:** A formal complaint with request that the bond be made current was made on 1.12.23. CEMEX received notice with a response deadline of March 13, 2023. CEMEX must provide DRMS a “reclamation cost estimate” with “sufficient detail for the Division to calculate the cost of reclamation of the site that would be incurred by the state”.

The Reclamation Plan was changed in 2001/2002 to include the burial of about 80,000 cubic yards of concrete rubble and will be 10 acres in area. This is 6 city blocks by 4 stories deep worth of concrete rubble buried in the ground, but the water table is only 10 feet deep. This is a significant modification to the Reclamation Plan and was approved via a Technical Revision in the 2001/2002 timeframe without an Amendment and the corresponding public notice process that is required for a significant change like this.

- **What is Happening Now:** A formal complaint with request to investigate and follow up on the changes to the reclamation plan that should have been an amendment with a public process was filed on 1.12.23. CEMEX received notice, but DRMS is still investigating internally.

CDPHE (Colorado Department of Public Health and Environment): Operating Permit 95OPBO082

CEMEX's Title V Operating Permit is expired (an application to renew was filed in Feb 2021).

- **What is Happening Now:** A request for the public renewal process of CEMEX's expired Title V Operating permit to commence immediately was requested on 1.12.23, and a second request was made on 1.18.23. A formal acknowledgement was received 1.25.23.

When referencing Section 4 (Summary of Emission Units), Permit Section II.14 (General Fugitive Emissions Requirements), P018.019, shale is specifically NOT mentioned, and that is what the 'new' trucking is bringing in with the recent closure of CEMEX's adjacent mine. These very significant changes to CEMEX's operation appear to not be permitted under their current permit (which is expired), but they have requested some modifications to possibly allow for some of this new, intensive use in their permit application filed in 2021.

- **What is Happening Now:** An investigation as to whether or not conducting the above changes is allowed under their expired permit was requested on 1.12.23, and a second request was made on 1.18.23. A formal acknowledgement was received 1.25.23.

Additional Resources:

- Boulder County Planning Commission Meeting, August 17, 2022 - [Video Link](#)
 - CEMEX Dowe Flats Mining Extension Application Docket Item (SU-22-0003) begins at 3:30.
 - Public testimony begins at 4:27.
- Boulder County Planning Commission Meeting, September 1, 2022 - [Video Link](#)
 - Continuation of CEMEX Dowe Flats Mining Extension Application Docket Item (SU-22-0003). No public testimony was permitted in this meeting.
- Board of Boulder County Commissioners Meeting, September 14, 2022 - [Video Link](#)
 - Public testimony related to CEMEX Dowe Flats Mining Extension Application Docket Item (SU-22-0003) begins at 2:28.
- Board of Boulder County Commissioners Decision, September 29, 2022 - *Unable to Locate Video*
 - No public testimony was permitted in this meeting.
 - [Colorado Sun Article](#) on decision
 - [Daily Camera Article](#) on decision

To: Board of Trustees[TOL_BOT@townoflyons.com]; David Kimmett[dkimmett@townoflyons.com]; Kim Mitchell[KMitchell@townoflyons.com]
From: Victoria Simonsen[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CF9B3B24630E4CC1848783EE8ACFEF95-VICTORIA SI]
Sent: Fri 7/28/2023 11:35:31 AM (UTC-06:00)
Subject: FW: CEMEX Investigation Update

FYI - DO NOT REPLY ALL

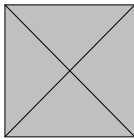


Victoria Simonsen
Town Administrator
303-823-6622, ext. 19
vsimonsen@townoflyons.com

Please note that my email may be subject to the Colorado Open Records Act.

From: Sarah Lorang <sarah@goodneighborslyons.com>
Sent: Wednesday, July 26, 2023 5:41 PM
To: Victoria Simonsen <vsimonsen@townoflyons.com>
Subject: CEMEX Investigation Update

Hello! I hope your summer is going well! I apologize for the long stretch between updates; things have been moving very slowly with the many on-going investigations, but I assure you that we are still



Hello!

I hope your summer is going well! I apologize for the long stretch between updates; things have been moving very slowly with the many on-going investigations, but I assure you that we are still very much on top of all that is happening with CEMEX Lyons and doing everything in our power to hold them accountable. We are still waiting for a determination from Boulder County on what is arguably the most critical pending investigation (termination of the plant's non-conforming status), but I do have a little good news and a couple of updates:

- ▽ We filed a complaint in January with the Colorado Division of Reclamation, Mining, and Safety (DRMS) regarding CEMEX's outdated (20+ years) reclamation bond. CEMEX provided a new estimate that largely used various quotes dating back to 2005 and 2013 and merely added inflation. There were also many noteworthy omissions, like the very likely presence of asbestos onsite, cement kiln dust burial, and other hazards that would materially impact such a quote. We issued a detailed rebuttal, to which DRMS requested more information from CEMEX. CEMEX continues to ask for time extensions to complete DRMS's requests, but DRMS recently required that CEMEX at least fund the bond increase they proposed (that we deem insufficient) while the Division determines the **real** cost to reclaim the land. **This amounts to a ~\$2 million increase to the bond CEMEX must fund.** We expect this number to increase substantially, but this is still likely a painful blow to CEMEX as all of our industry experts indicate that the plant, as it's operating today, is probably barely breaking even...if at all.
- ▽ We also received a notice from the Colorado Department of Public Health and Environment (CDPHE) and the Air Pollution Control Division regarding

CEMEX's violation of air quality regulations from incidents that occurred between April 2020 and May 2021, and the subsequent settlements for those violations. [The signed settlement can be found here](#). **The settlement requires CEMEX to pay a financial penalty of \$357,175 and take expedient actions to reduce air pollution from its facility in Lyons.** This penalty is a direct result of our community filing complaints about fugitive dust events. As you have probably noticed, local government and enforcement agencies do not move at the speed of the private sector given the incident dates that were just resolved. We have been in regular communication with CDPHE and there are additional on-going air quality violation investigations happening as a result of public complaints filed regarding dust events, and we fully expect additional noteworthy financial penalties for the violations being investigated. We (Good Neighbors of Lyons) have filed 22 separate complaints about 22 separate fugitive dust events that occurred from January 2022 to June 2023. We encourage you to continue to report anything you might see as well; instructions on how to file complaints can be found [here](#). Regarding the fine itself, the number might feel small, but this is substantial to a plant that is struggling to stay alive right now, so we are very pleased with the result.

▽ Last, regarding the termination of CEMEX Lyon's non-conforming status, Boulder County is still investigating, but expects to make a determination by the end of the summer. I apologize that this keeps getting dragged out. In their defense, we did give them an inordinate amount of data and detail to support termination, so validating all of that takes time. We would also assume that they've retained outside counsel to manage this case, which would also add to the timeline. Related to that, I wanted to share something we found back in March and had added to the County's investigation, but had concerns about sharing publicly at the time. The headline is this though: **there is absolutely no question that CEMEX's non-conforming status must be terminated even if only based on this single inclusion of our complaint.** Keep in mind, we included about 21 additional incidents that could warrant termination.

- *In reviewing a 2008 petition on file with the EPA, we found confirmation that CEMEX's predecessor, Southdown, documented its plans for what they referred to as the "Lyons Capacity Increase" project (ref. page 7). These plans were documented in an Authorization for Expenditure (AFE 98097), which stated that the project will increase the plant's capacity by 125,000 tons at a cost of \$10 million. Why is this relevant?*
- *This alteration and enlargement happened in 1998/1999 after the Land Use Code was adopted (1994).*
- *There is no question that it is both an alteration and enlargement as it is explicitly described as such in Southdown's own documentation, as well as the EPA's. The EPA's Notice of Violation (NOV) dated March 2007 also confirms that the Lyons Plant Expansion was a "major modification" as per their internal definitions of such. This all played out in Federal Court and CEMEX did not dispute any of the above facts.*
- *The above also documents the plant's capacity when it received its legal non-conforming status in 1994. This is important as CEMEX often claims, 'we trucked in materials before Dowe Flats opened, so we can do it again'. The maximum amount of material being trucked in when they received their non-conforming status in 1994 is a fraction of what it is today. This frequent argument by CEMEX should also be rejected on the grounds that 'ceasing of a specific intensity of use for more than 6 months, then resumption, does indeed constitute a ceasing or alteration/enlargement of that non-conforming use'.*
- *As a result of the Lyons Capacity Increase project, net annual emissions of NOx from the plant increased by 563 tons per year over the 1995/1996 baseline levels. For some context, prior to the production turndown in 2008, CEMEX emitted over 1,700 tons (per year) of NOx from the Lyons facility. A clear enlargement and potential threat to public health.*
- *Boulder County may not have been made aware of these significant*

changes that were components of the expansion project, as we have not yet been able to locate permits approving these changes. The EPA's 2007 NOV alleged that Southdown made major modifications to the Lyons facility resulting in increased emissions of NOx without first obtaining a pre-construction permit and installing required pollution control equipment, so we believe it's reasonable to assume they also failed to obtain the necessary permits with Boulder County.

As always, thank you so much for your help and support. I hope to be in touch with more good news soon!

Sincerely,

Sarah Lorang
Good Neighbors of Lyons

www.goodneighborslyons.com

Good Neighbors of Lyons
12800 North Foothills Hwy
Lyons, CO 80540
United States

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To: Alexander Painter[apainter@townoflyons.com]; David Kimmett[dkimmett@townoflyons.com]
From: Victoria Simonsen[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CF9B3B24630E4CC1848783EE8ACFEF95-VICTORIA SI]
Sent: Fri 7/15/2022 1:57:14 PM (UTC-06:00)
Subject: FW: CEMEX options and questions

For your consumption.



Victoria Simonsen
Town Administrator
303-823-6622, ext. 19
vsimonsen@townoflyons.com

Please note that my email may be subject to the Colorado Open Records Act.

From: Roger Flynn <Roger@wmaplaw.org>
Sent: Friday, July 15, 2022 11:06 AM
To: Marissa Davis <mdavis@townoflyons.com>; Hollie Rogin <hrogin@townoflyons.com>; Victoria Simonsen <vsimonsen@townoflyons.com>
Cc: Ted Elson <telson@townoflyons.com>; Jocelyn Farrell <JFarrell@townoflyons.com>; Paula Williams <pwilliams@townoflyons.com>; Tanya Daty <tdaty@townoflyons.com>; Gregg Oetting <goetting@townoflyons.com>; Glen Delman <gdelman@townoflyons.com>
Subject: CEMEX options and questions

Dear Mayor Rogin, members of the Lyons Board of Trustees, Administrator Simonsen, and Deputy Clerk Davis,

Thank you for the opportunity to comment on the issues surrounding CEMEX's proposal to continue mining at Dowe Flats in exchange for some future commitments on open space, among other issues.

I am the Director and Managing Attorney with the Western Mining Action Project, a non-profit public interest law firm, based here in Lyons since 2005, which specializes in mining issues in the West. I am also an Adjunct Professor at the University of Colorado School of Law, teaching Mining and Mineral Development Law since 2002.
I served on the Lyons PCDC for 8 years (2011-2019).

A major concern I have is the lack of information coming from CEMEX, and to some extent Boulder County, regarding the current permitted operations at the site (both north and south of Rt. 66), and CEMEX's proposed operations in the future.

For example, CEMEX is claiming that if its mining at Dowe Flats ends this year (as it originally committed to Boulder County), it will continue its cement plant operations indefinitely. But this would require a drastic change in the source of the materials/minerals for plant operations. Right now, the materials come from Dowe Flats, via the overhead conveyor. If mining at Dowe Flats ends, CEMEX must obtain a constant source of minerals from other mines across the Front Range. This will obviously result in major truck traffic, pollution, safety and other concerns that currently do not exist.

It is imperative for the Town, and Boulder County, to have this information before any decisions can be made. The Town, and County, should ask of CEMEX, who, where, what, how much, and how they will get their materials to continue running the cement plant if Dowe Flats mining stops at the end of this year.

I would be very concerned if CEMEX says it does not have this information, as it should have thought

this through, especially with the impending deadline for closure of Dowe Flats. I can't imagine that CEMEX does not have those contingency plans in place, especially with the impending deadline.

How can the County make an informed decision on CEMEX's proposed "deal" if it does not know how many trucks, routes, sources, etc., for all this new material, and the resulting impacts from these major changes?

Also, and due to the lack of information so far provided to the public by CEMEX, other questions remain about whether CEMEX's current state mining permit allows them to operate the plant as what is known as a "batch plant," "custom mill," or "dedicated plant" – which means that the source material for the plant comes from other locations, as compared to an on-site source, such as the old quarry on the south side or the connected (via the conveyor) source in Dowe Flats, which has been the case for decades.

This is also a question regarding the County permit for plant operations. Does the current County permit allow CEMEX to take source material from an unknown number of mines in the region, or does the County permit limit the source of plant materials to just Dowe Flats? If that is the case, then CEMEX would have to go through the County permitting process, with hopefully robust public comment opportunities, and no guarantees that CEMEX would be allowed to undertake such a major change in operations.

Again, without this critical information, it is very hard for the public to properly ascertain the pros and cons of the "deal," especially regarding whether CEMEX can operate the plant indefinitely using totally new material sources, when the company may not be permitted to do so.

I would hope that the Town would request this information from the County, and CEMEX, so that we can all be better informed.

Please note: if the Town already has this information, it would greatly assist public review if these documents could be posted online for review as the process continues.

There are other critical issues and questions that CEMEX has not been forthcoming on, such as what industrial operations could occur at the plant site in 15+ years (that will not be transferred/sold to the County), etc. I would hope that the Town and County receives details from CEMEX on these issues, instead of what appear to be vague generalities.

Overall, without this information regarding what is currently allowed, and what may not be allowed without major modifications to the various permits, I would urge the Town to recommend that the County does not agree to the deal as proposed by CEMEX.

Thank you for the opportunity to provide these comments, and again, I appreciate the Town's leadership in reaching out to the public for our input.

Please do not hesitate to contact me if you have any questions.

Roger Flynn
1010 Steamboat Valley Rd.
Lyons

To: David Kimmett[dkimmett@townoflyons.com]; Kim Mitchell[KMitchell@townoflyons.com]
From: Victoria Simonsen[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CF9B3B24630E4CC1848783EE8ACFEF95-VICTORIA SI]
Sent: Mon 1/23/2023 9:24:07 AM (UTC-07:00)
Subject: FW: Help with CEMEX Petition

Just FYI at this point. You may sign petitions as an individual if you choose, but not as a TOL employee. I would guess that this will rear its head again when the petition is signed and submitted to Boulder County. V.



Victoria Simonsen
Town Administrator
303-823-6622, ext. 19
vsimonsen@townoflyons.com

Please note that my email may be subject to the Colorado Open Records Act.

From: Sarah Lorang <lorang.sarah@gmail.com>
Sent: Sunday, January 22, 2023 3:26 PM
Subject: Help with CEMEX Petition

Hello!

As you may or may not know, Bart and I have sort of become accidental community activists over the past year and have been working very hard to shut down Boulder County's #1 polluter: the CEMEX Lyons cement plant. We had [success in closing their adjacent mine](#) this past Fall, and are now working to finish the job by closing the plant.

I would really appreciate your support by signing [this petition](#), and sharing it with other Boulder County residents.

CEMEX is now trucking in 100% of their raw material, which has resulted in 10-20 'new' 35-ton trucks arriving into CEMEX **every hour** traveling on 28th Street, US-36, HWY 66 with numerous complaints from residents about the resulting noise, dust, and diesel fumes because of this heavy increase in traffic.

This change is a **clear trigger** to terminate the plant's non-conforming ("Grandfathered") status based on Article 4-1003.C, which states:

"The right to continue a nonconforming use terminates immediately ... [when there is] any enlargement or alteration of the nonconforming use which has the effect or threatened effect of creating a hazard or nuisance on or off the property, of adversely affecting the character of the neighborhood, or of intensifying the use of the land or its need for services"

It is time for the Boulder County Land Use Director to send a notice of termination (Article 4-1003.H.1) determining that the property owner's right to continue a non-conforming use has, or may have, been terminated because of violations of Article 4-1003 (alterations of use) of the Land Use Code. Upon receiving the letter, the property owner will have 30 days to provide evidence to the Director of Land Use to the contrary, appeal to the Boulder County Commissioners, or apply for a Special Use Permit. Termination of the non-conforming use and denial of a Special Use Permit would ultimately result in the closure and demolition of the plant as the cessation of operations would trigger CEMEX's DRMS (Colorado Department of Reclamation, Mining, and Safety) Reclamation Plan.

If you're interested in learning more, we will be hosting 3 webinars on Thursday, January 26th at 11am, 2pm, and 7pm to explain this specific strategy in more detail, but also highlight many of the other things we are doing behind the scenes at the County and State levels. [Click here to register to attend!](#)

Thank you so much for your time and support! Please do not hesitate to reach out with any questions.

Sincerely,
Sarah Lorang

Good Neighbors of Lyons
www.goodneighborslyons.com

--

Sarah Lorang
Cell: 303-476-0089
Email: lorang.sarah@gmail.com

To: Ashley Stolzmann[ashleys@louisvilleco.gov]
From: Hollie Rogin[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=955FA234C14B454295963FA95788C39D-HOLLIE ROGI]
Sent: Mon 8/29/2022 9:33:54 AM (UTC-06:00)
Subject: Fw: Non-Conforming Use Matrix {DRAFT}
[Matrix of Non-Conforming Uses at CEMEX.pdf](#)

From: Bart Lorang <lorangb@gmail.com>
Sent: Sunday, August 28, 2022 11:47 AM
To: Hollie Rogin <hrogin@townoflyons.com>; Victoria Simonsen <vsimonsen@townoflyons.com>
Subject: Fwd: Non-Conforming Use Matrix {DRAFT}

FYI - see below and attached, hopefully a simpler way of looking at the non-conforming use issue.

----- Forwarded message -----
From: **Bart Lorang** <lorangb@gmail.com>
Date: Sun, Aug 28, 2022 at 11:13
Subject: Non-Conforming Use Matrix {DRAFT}
To: Edward Kean <Ed@bluegrass.com>, to: Kathy Leonard <kathyleonard60@gmail.com>, Richard Cargill <rcargill@aol.com>, cc: Amanda Dumenigo <amanda@horsense.net>, Hunter Lovins <hunterlovins@gmail.com>, John Steiner and Margo King <steinerking33@gmail.com>, Kathleen Sands <solasands@gmail.com>, Sarah Lorang <lorang.sarah@gmail.com>, Steve Bross <steveb108@gmail.com>, Bart Lorang <lorangb@gmail.com>, Paul Tamburello <paul@thinkgenerator.com>, Rene Doubleday <rene@thinkgenerator.com>

All:

In an effort to simplify the complex topic of legal, non-conforming use terminations and potential events that could have triggered termination, I drafted the attached matrix in PDF format (attached and screenshot inline)

The raw, Google Sheets version is [available here](#) if folks want to edit/comment or provide feedback.

When taking a big step back and looking at the volume of events since 1994 that could/should have triggered a termination of nonconforming use, it seems improbable that all have been genuine exceptions granted under the Land Use Code. And it only requires one event to be a cause for termination of nonconforming use.

Given the density of content (100s of documents and 1000s of pages) to skim and quickly analyze, I'm certain I've probably missed additional potential triggering events buried within the 16 DRMS Technical Revisions and the Building Permits issued at the CEMEX property since the Land Use Code was adopted 1994. If anyone has the time, energy and detail orientation (or knows someone who does) to look through the decades of public documents from DRMS and BoCo and surface additional potential triggering events, the help would be more than welcome!

Conforming Use of Cement Plant e.g. "Lyons Quarry"	"Mining, Mineral Processing, Cement Plant, Cement Processing, Kin Dust Collector, Kin Dust Bin"	Year	1987	1987	1987	1988	2017	1988	2008	2008	2015	2008
			Conveyor (Lower Plant to Cement Plant) (See 87)	New Storage and Access Road to Existing Cement Plant (See 87)	New First Primary Cement Conveyor to 1st Primary Material Feed Structure	Cement Silo Dike (CSD) (Grounded to 1st C)	Installation of New Storage Lights	Existing Silos (See 87) and Dust Dike (See 87) (Grounded to 1st C)	1st & 2nd Dike of CSD (See 87) (Grounded to 1st C)	1st & 2nd Dike of CSD (See 87) (Grounded to 1st C)	1st & 2nd Dike of CSD (See 87) (Grounded to 1st C)	1st & 2nd Dike of CSD (See 87) (Grounded to 1st C)
Grounds for Termination of a Nonconforming Use:												
4-1003.C.1	Right to continue a nonconforming use terminates immediately when the nonconforming use is enlarged, expanded, extended or altered in any of the following ways:	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
4-1003.C.1.a	Addition of a New Structure Containing or Auxiliary to the nonconforming use	Yes - the conveyor structure sits at the way into the Plant site	Yes - adding a new bridge to a new conveyor structure at the third end of the cement processing	Yes - new conveyor structure at the third end of the cement processing	No	No	Yes - a new feed chute was added to prevent the Swede, North Fork CSD Chapter 16 the structure in the addition.	Yes - new feed chute 7 years existing at Lyons Quarry	Yes - pump to the Plant and Acid Tanks with the Auxiliary Structure	Yes	Yes - a number of new structures, including a new 30' diameter and aboveground	
4-1003.C.1.b	Enlargement or alteration of a structure containing or auxiliary to the nonconforming use, alteration or improvement in excess of normal or routine maintenance of the structure	No	No	No	No	No	No	No	No	Yes	No	
4-1003.C.1.c	Enlargement or alteration in the land area occupied by the nonconforming use, unless the latter nature of the use, at the time it became nonconforming, clearly indicated or contemplated such an increase or alteration	No	Maybe - a road across the site as an extension of the land	No	Yes - alteration of land for disposal of CSD, not extension of existing, and a 20-year plan for 7 acres of disposal	No	No	No	No	No	No	
4-1003.C.1.d	Any other enlargement or alteration of the nonconforming use which has the effect or threatened effect of creation a hazard to nuisance on or off the property of adjacent owners or the character of the neighborhood, or of intensifying the use of the land or its need for services	Yes - the conveyor was enlarged as a structure affecting the visual aesthetics of the neighborhood	Yes - a bridge over road increases road for services	Yes - a structure can be seen from afar	Yes - CSD is a potentially hazardous material and new stream impacts if not handled properly. During CSD in the same area intensifying the use of the land.	Yes - neighbors have been complaining about the new rights created from noise away	No	Yes - it is acknowledged as a hazard to waterfowl.	Yes - Acid Tanks years like a threatened effect of a hazard.	Yes - Acid Tanks years like a threatened effect of a hazard.	Yes	
4-1003.C.1.e	Removal or replacement of any structural member in a use for which the County is prohibited from enforcing this Code specific to use on the basis of safety, health, or welfare	No	No	No	No	No	No	No	No	No	No	
Exceptions for Termination of a Nonconforming Use:												
4-1003.C.2	An impermissible enlargement or alteration shall not include the following:	Maybe	Maybe	No	Maybe	Maybe	Maybe	Maybe	Maybe	Maybe	Maybe	Maybe
4-1003.C.2.a	A change of ownership of the property	No	No	No	No	No	No	No	No	No	No	No
4-1003.C.2.b	An alteration or expansion which the Building Official determines is necessary to rectify a hazardous health or safety situation or to comply with a public health or safety requirements of another governmental entity having valid jurisdiction of the structure	Maybe the Co. claims this?	Maybe the Co. claims this?	No	Maybe CEMEX claims it was a CSD improvement?	No	Maybe CEMEX claims this was a Safety Requirement imposed by someone else.	Maybe CEMEX claims this was a Safety Requirement imposed by someone else.	Maybe CEMEX claims this was a Safety Requirement imposed by someone else.	Maybe CEMEX claims this was a Safety Requirement imposed by someone else.	Maybe CEMEX will claim this is all part of the EPA settlement	
4-1003.C.2.c	An extension of the nonconforming use within the structure containing the use, provided that such extension is not accompanied by an alteration of the structure falling within category (b), above	No	No	No	No	No	No	No	No	No	No	
4-1003.C.2.d	The addition of a solar energy system to a structure containing a nonconforming use, provided it meets the specifications in Articles 4-514 or 4-516 or	No	No	No	No	No	No	No	No	No	No	
4-1003.C.2.e	Any replacement or upgrading of outdated or worn equipment or supplies, provided that such activity does not fall within category 4-1003.C.1.d., above	No	No	No	No	Maybe CEMEX claims this?	No	No	No	No	No	

To: Victoria Simonsen[vsimonsen@townoflyons.com]
From: Hollie Rogin[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=955FA234C14B454295963FA95788C39D-HOLLIE ROGI]
Sent: Sat 7/9/2022 11:56:19 AM (UTC-06:00)
Subject: Fw: Quick question on article

Given that Ben first told us we weren't involved because the decision wouldn't affect our property and then revealed it was because Cemex didn't want us involved, do we believe him about reclamation of the kiln footprint?

From: Bart Lorang <lorangb@gmail.com>
Sent: Friday, July 8, 2022 9:16 PM
To: Hollie Rogin <hrogin@townoflyons.com>; Paul Tamburello <paul@thinkgenerator.com>; Rene Doubleday <rene@thinkgenerator.com>; Sarah Lorang <lorang.sarah@gmail.com>; Victoria Simonsen <vsimonsen@townoflyons.com>
Subject: Fwd: Quick question on article

Hi All -

See below response from Michael Booth of Colorado Sun.

Basically, sounds like Pearlman told him - on the record - that the cement kiln *will* be reclaimed as part of any final deal that's struck, and Michael indicated it sounds like negotiations are ongoing....

----- Forwarded message -----

From: **Bart Lorang** <lorangb@gmail.com>
Date: Fri, Jul 8, 2022 at 9:06 PM
Subject: Re: Quick question on article
To: Michael Booth <booth@coloradosun.com>
CC: Sarah Lorang <lorang.sarah@gmail.com>

Michael - thanks so much!

And I agree with your potential next question of Pearlman - as it certainly makes a *big* difference in community and referral agency reactions as well as the financial implications of the deal, given that reclamation and cleanup is a non-trivial expense.

This is pure speculation on my part (and perhaps wishful thinking), but maybe the coverage, community response and education about this matter has provided Boulder County with additional leverage during ongoing negotiations to help secure plant reclamation/demolition guarantees.

In any event, we will work hard to keep GoodNeighborsLyons.com up to date to the best of our ability. We've added a Questions & Concerns section where we're doing our best to provide answers to ongoing questions we have as a community.

Your reporting is helping uncover answers and is making a big difference, so THANK YOU!

On Fri, Jul 8, 2022 at 4:34 PM Michael Booth <booth@coloradosun.com> wrote:

Bart -- I went back over the transcript of my conversation with Pearlman, and all I can tell you is that this statement accurately reflects what he said, and that the negotiations appear to be ongoing. What I would have liked to ask him and will next time, is, how can you ask all the referral agencies and neighbors to be commenting on something where the details have yet to be worked out, and where the details make a big difference in peoples' reactions?

On Fri, Jul 8, 2022 at 2:23 PM Bart Lorang <lorangb@gmail.com> wrote:

Hi Michael,

Nice article this morning! We haven't met yet, but you've connected with my wife Sarah (CC'd)

I wanted to make sure that the statement about reclamation of the cement kiln is indeed accurate from Ben Pearlman, as there's nuance given there is the property surrounding the plant (zoned Ag) vs. the plant itself (zoned General Industrial).

In [CEMEX's letter proposal](#), there is nothing about reclamation of the cement plant/kiln and we haven't been able to find any written evidence that's *actually* in the deal.

My question is: was the essence of the conversation with Ben assurances that the County's final negotiated deal **would** include a clause for demolition and reclamation of the cement plant and kiln itself and that CEMEX has agreed to that?

In other words, when all is said and done, that land will still be zoned General Industrial, but it will essentially be vacant of major structures?

The county will have assurances that Cemex will close and reclaim the cement kiln property after the proposed 2037 shutdown of the kiln/mine combo, despite worries from Lyons neighbors that another operator could use the blast furnace, Pearlman said. The primary kiln property would retain industrial zoning, Pearlman said, noting that everyone considering the proposal over the next few months should keep that in mind when debating the value of surrounding open space"

To: Becker, KC[becker.kc@epa.gov]
From: Hollie Rogin[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=955FA234C14B454295963FA95788C39D-HOLLIE ROGI]
Sent: Wed 8/31/2022 10:29:31 AM (UTC-06:00)
Subject: Fw: SU-22-0003 - Letter and Supporting Documents
[SU-22-0003 - Letter from Sarah Lorang 8.31.22.pdf](#)
[SU-22-0003 BCCP Compliance 8.31.22.pdf](#)
[SU-22-0003 Special Review Criteria Compliance 8.31.22.pdf](#)

Hi KC,
I thought you might find the attached of interest.

All the best,
Hollie

From: Sarah Lorang <lorang.sarah@gmail.com>
Sent: Wednesday, August 31, 2022 10:09 AM
To: planner@bouldercounty.org <planner@bouldercounty.org>
Cc: commissioners@bouldercounty.org <commissioners@bouldercounty.org>; tglowacki@bouldercounty.org <tglowacki@bouldercounty.org>; dcase@bouldercounty.org <dcase@bouldercounty.org>; L'Orange, Pete <plorange@bouldercounty.org>; congressmanjoeneguse@mail.house.gov <congressmanjoeneguse@mail.house.gov>; ca@bouldercounty.org <ca@bouldercounty.org>; Dolores Vasquez <DVasquez@townoflyons.com>; Hollie Rogin <hrogin@townoflyons.com>; Victoria Simonsen <vsimonsen@townoflyons.com>; Michael Booth <booth@coloradosun.com>; Matthew Bennett <mbennett@prairiemountainmedia.com>; Shannon Young <shannon@kgnu.org>; Rossana Longo-Better <rossana@kgnu.org>; Bart Lorang <lorangb@gmail.com>
Subject: SU-22-0003 - Letter and Supporting Documents

Dear Planning Commission,
Please find my response to the Planning Staff's Supplemental Memo in the attached letter.

I have also attached my personal assessment of the Special Review Criteria for this application, as well as my interpretation of this application's compliance with the Boulder County Comprehensive Plan (Special Review Criteria item #3). I strongly believe that 11 of the 13 criteria cannot be met. Additionally, I have identified at least 29 policies in the Boulder County Comprehensive Plan that I find this application to be in direct conflict with.

Thank you for your time.

Sincerely,
Sarah Lorang

--

Sarah Lorang
Cell: 303-476-0089
Email: lorang.sarah@gmail.com

To: Victoria Simonsen[vsimonsen@townoflyons.com]
From: Kim Mitchell[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5D83C9F0487641FB9CA855D0A74E2D99-KIM MITCHEL]
Sent: Wed 6/8/2022 2:20:43 PM (UTC-06:00)
Subject: FW: URGENT - Time Sensitive Request

FYI

Kim

From: Brianna Hoyt <bhoyt@townoflyons.com>
Sent: Wednesday, June 8, 2022 2:14 PM
To: Paul Dreyer <paul@avid4.com>; Asa Firestone <asa@a-lodge.com>; Erin Foudy <foudyaz@gmail.com>; grace@bluegrass.com; Uniquely Lyons <laura.levy@coloradohomes.com>; Mary Huron Hunter <mary@maryhuronhunter.co>
Cc: Kim Mitchell <KMitchell@townoflyons.com>
Subject: FW: URGENT - Time Sensitive Request

Hello EVC members,

In case you were not on Sarah’s mailing list, please see her outreach about CEMEX and the informational meeting below.

Thank you,
Brianna

From: Sarah Lorang <lorang.sarah@gmail.com>
Sent: Wednesday, June 8, 2022 1:24 PM
Subject: URGENT - Time Sensitive Request

Hello!

As a fellow Boulder County resident, I am reaching out to ask for a little of your time to get involved regarding some very recent developments with the CEMEX cement plant and adjacent mining in Lyons.

On May 3rd, 2022, CEMEX applied to extend its Dowe Flats Mining Permit **another 15 years**, until 2037, instead of its current expiration date of September 30, 2022. Boulder County Open Space has already purchased options on all the Dowe Flats land, and would be converted to open space if the permit is not extended. It’s worth noting that CEMEX is the number one polluter in Boulder County, making up about 7.5% of all greenhouse gas emissions in the county.

The deadline for public comment to the Boulder County Community Planning & Permitting Division regarding this application and proposal is **Friday, June 10th**. For something with such a **huge impact** on the local community and its future, this feels like an **incredibly swift timeline**. The proposal raises many critical questions, and we think it’s important that our community understands the proposal, our options, and how to share your thoughts ahead of this deadline.

As neighbors in Boulder County, we ask you to please visit www.GoodNeighborsLyons.com to learn more and join us for an informational Zoom meeting on **Thursday, June 9th at 11AM, 2PM or 7PM**. During the meeting we’ll be reviewing the mine and plant’s history, the facts, our analysis of the proposal, and discussing next steps we can take as community members to ensure everyone’s voice is heard.

Please share this email freely, as we would like as many Boulder County residents as possible to get involved.

We hope to see you tomorrow!

Sincerely,
Sarah Lorang
<https://www.goodneighborslyons.com/>

--

Sarah Lorang

Cell: 303-476-0089

Email: lorang.sarah@gmail.com

To: Amanda Dumenigo[amanda@horsense.net]
From: Kathleen Sands[solasands@gmail.com]
Sent: Tue 7/25/2023 3:24:48 PM (UTC-06:00)
Subject: Fwd: [EXTERNAL] Dowe Flats Reclamation Update
[2023-02-21_INSPECTION - M1993041 \(1\).pdf](#)

Hi there,
I called Boulder County Planner, Dale Case, to find out the status of reclamation at Dowe Flats. Below is the email I got back. See attachment of inspection as well.

Kathleen Sands
[Lyons Climate Action Group.com](#)
720-731-2488 Landline
303-642-6144 Cell

----- Forwarded message -----
From: **Case, Dale** <dcase@bouldercounty.gov>
Date: Tue, Jul 25, 2023 at 9:54 AM
Subject: RE: [EXTERNAL] Dowe Flats Reclamation Update
To: Kathleen Sands <solasands@gmail.com>

Hi Kathleen,

We are investigating the status of the nonconforming use. At this time, a determination has not been made. We hope to wrap up the investigation this summer.

The state has primary responsibility for oversight of the reclamation process. The County has an interest as a future landowner so our Parks and Open Space Department will be involved and provide input if there are changes to the reclamation plan. From the county land use regulatory portion, we have some requirements of when the process must be completed but again the state has control over timing and actions within that window. If we can get a tentative reclamation schedule from CEMEX we will post on our site. At this point we don't have that level of detail. It does look like from an inspection report posted on the state site they are actively reclaiming the mine area (attached inspection report from February of this year).

The website is [CEMEX Lyons Cement Plant and Dowe Flats Quarry - Boulder County](#)

The state website to search inspection reports, etc. -- [Data Search | Colorado Division of Reclamation, Mining and Safety](#)

Please let me know if you have other questions.

Dale Case

From: Kathleen Sands <solasands@gmail.com>
Sent: Friday, July 21, 2023 3:17 PM
To: Case, Dale <dcase@bouldercounty.gov>
Subject: Re: [EXTERNAL] Dowe Flats Reclamation Update

Hello,

I am still wondering what's up with the non conforming issue that I wrote about in February. Also, I thought Cemex was supposed to start reclamation of mine immediately. I still see the conveyor belt and buildings up at the mine from Highway 36. Wasn't there supposed to be a website link for these updates?

Thank your Dale.

Kathleen Sands

Lyons Climate Action Group.com

720-731-2488 Landline

303-642-6144 Cell

On Fri, Feb 10, 2023 at 7:31 PM Kathleen Sands <solasands@gmail.com> wrote:

Thank you for the update. Have a nice weekend.

Kathleen Sands

Lyons Climate Action Group.com

720-731-2488 Landline

303-642-6144 Cell

On Fri, Feb 10, 2023 at 5:43 PM Case, Dale <dcase@bouldercounty.org> wrote:

We did receive complaints about increased traffic and stockpiling for the cement plant. We have sent an investigation letter to CEMEX for them to respond and are working on investigating the allegations and to what ends it might impact their Non-conforming status. They have 30-days to respond to our initial investigation letter.

From: Kathleen Sands <solasands@gmail.com>
Date: Thursday, February 9, 2023 at 4:41 PM
To: Case, Dale <dcase@bouldercounty.org>
Subject: Re: [EXTERNAL] Dowe Flats Reclamation Update

Thank you Dale for your quick reply.

We're still wondering about the non conforming piece as well; I was told by SOSVV that it's under investigation. When you have any specifics on that, we would be quite interested. The CO2 coming from that plant is very very concerning not to mention all the traffic. Because of their decades long track record of violations and frankly, lies, we want to make sure they are being monitored and then eventually closed down. Cemex is not welcome in this pristine agricultural community. What the county was thinking when they extended them special uses in the first place is beyond us.

When I attended the POSAC retreat last weekend, Janice from POS said that we should name land after Cemex in honor of them. This was after a POS indigenous based committee presented on their values and said that land that was taken from indigenous people (that we are now benefiting from) should be named in honor of the people we took it from. Obviously Janice missed the point, but didn't get any comment back from staff. A chasm as large as the Grand Canyon between the public and BCPOS who has been out of compliance with the weed management plan for 20 years! When POSAC mentioned this, Therese Glowacki said that it would take them at least 6 months to get to that even though we updated it for them and took out pesticides and emphasised the natural/indigenous (other) ways that were already in their plan which states they use minimum pesticides. This is despite them aerial spraying Lyons for 6 hours 2 weeks after the mine was closed while children were walking to school--with South winds bringing drift across the street to our town. They also have a plan under Restore Colorado 22 to continue aerial spraying through 2023 for cheatgrass which our CU Professor Tim Seastead says is NOT a problem for fire nor elk/deer. I am happy to send you the proposal if you are interested. It is in partnership with POS, and a couple of Bayer employees who benefit directly from the sale of the product being sprayed (Indaziflam/Rejuvra) that they sprayed the wrong time of year according to Bayer themselves. Bayer said it should be applied in Spring otherwise precipitation will wash it away and they applied on Nov 1. So they spent tens of thousands of dollars to spray completely against the will of the Town of Lyons and Bayer is saying it won't work. This is why as a community we are asking for a community based and appointed expert oversight committee. I hope you will be supportive of this endeavor. It could save you all a lot of work!

I welcome them rebuilding of Cemex in Casper to a newer, more pollution controlled plant if they must continue doing business in this country. I personally would not support cement at all since there are several other viable options like Hempcrete which is being widely used in Canada and the UK over the past 10 years--successfully.

Thank you for your work there Dale. I hope you will take the climate and environment into consideration for all of your decisions from here on out for our kids and grandkids.

Kathleen Sands

Lyons Climate Action Group.com

720-731-2488 Landline

On Thu, Feb 9, 2023 at 3:41 PM Case, Dale <dcase@bouldercounty.org> wrote:

Hi Kathleen,

The common communication piece – website it not yet set up. We have formed the group of folks to work on the information and get it going. We will work at getting the basic information, links to files, etc. up in the next 4-6 weeks. In the meantime I'm happy to respond to specific questions and work to direct folks to the correct person to answer the question.

I will check if there is any specific timing requirement on the removal of the conveyor and let you know.

Dale Case.

From: Kathleen Sands <solasands@gmail.com>
Sent: Thursday, February 09, 2023 2:50 PM
To: Case, Dale <dcase@bouldercounty.org>
Subject: [EXTERNAL] Dowe Flats Reclamation Update

Hi Dale,

I have been looking for the website that was supposed to be set up for the public on the progress of the Dowe Flats mine. It has been 5 months of the three years and we are anxious to see this. Also the conveyor, we thought was supposed to be removed right away. We've been looking at that ugly "brown worm" for 25 years and would ld like to see that go before Summer when millions of tourists will be passing by to visit Rocky Mountain Park. Please advise us on this matter.

Thank you.

--

Kathleen Sands

Lyons Climate Action Group.com

720-731-2488 Landline

303-642-6144 Cell

To: Guyleen Castriotta[gcastriotta@broomfieldcitycouncil.org]
From: Hollie Rogin[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=955FA234C14B454295963FA95788C39D-HOLLIE ROGI]
Sent: Mon 3/6/2023 5:16:27 PM (UTC-07:00)
Subject: Fwd: Case ZON-23-0003 (CEMEX) Follow Up

Hi, thought you would find the below details of interest. Great seeing you today!

Sent from my iPhone

Begin forwarded message:

From: Sarah Lorang <lorang.sarah@gmail.com>
Date: March 6, 2023 at 5:08:15 PM MST
To: Hollie Rogin <hrogin@townoflyons.com>
Subject: Fwd: Case ZON-23-0003 (CEMEX) Follow Up

FYI.

I hope all is well with you - would love to catch up soon if you have time!

Sarah

----- Forwarded message -----

From: **Sarah Lorang** <lorang.sarah@gmail.com>
Date: Mon, Mar 6, 2023 at 10:22 AM
Subject: Fwd: Case ZON-23-0003 (CEMEX) Follow Up
To: Pearlman, Ben <bpearlman@bouldercounty.org>
CC: <mloachamin@bouldercounty.org>, Levy, Claire <clevy@bouldercounty.org>, Stolzmann, Ashley <astolzmann@bouldercounty.org>

Hi Ben,

I hope all is well with you. I just wanted to make sure you were aware of the below as well. Please let me know if you have any questions.

Sincerely,
Sarah Lorang

----- Forwarded message -----

From: **Sarah Lorang** <lorang.sarah@gmail.com>
Date: Mon, Mar 6, 2023 at 10:16 AM
Subject: Case ZON-23-0003 (CEMEX) Follow Up
To: Harden, Dyan <dharden@bouldercounty.org>, Laws, Martin <mlaws@bouldercounty.org>
Cc: #CodeCompliance <codecompliance@bouldercounty.org>, Case, Dale <dcase@bouldercounty.org>

Dear Dyan and Martin,

I hope all is well with you both and that the investigation regarding CEMEX Lyons (ZON-23-0003) is going smoothly. I had some new (to us) information I wanted to share with you in regard to your on-going efforts; 2 of the 3 are related to termination triggers of the plant's non-conforming status, and the third is just something to consider as you investigate.

1. New Alteration of Non-Conforming Use: Selling/Transporting CKD:

On March 2, 2023 CEMEX shared that they have made another operational change that may have impacts on

their non-conforming status, as well as other Boulder County regulations regarding the transport of hazardous materials. CEMEX has indicated to the Colorado Division of Reclamation, Mining, and Safety (DRMS) that they are now selling some portion of the cement kiln dust (CKD) generated onsite to the oil and gas industry. We do not have insight as to where, exactly, this material is being sent or how (by truck or rail), but we do know that CKD is highly toxic when airborne (and dust is very likely to become airborne if transported via truck or rail), and CEMEX has a long history of not taking necessary measures to protect the general public from fugitive dust events as evidenced recently in the email I sent you on February 21, 2023.

- Confirmation of this operational alteration can be found [here](#) on page 3.
- [Link to Dust Event](#): Video taken on February 20, 2023; video speed sped up to 50x.

2. Past Alteration and Enlargement of Non-Conforming Use:

1998 “Lyons Capacity Increase” Project

In reviewing a [2008 petition on file with the EPA](#), we found confirmation that CEMEX's predecessor, Southdown, documented its plans for what they referred to as the “Lyons Capacity Increase” project (ref. page 7). These plans were documented in an Authorization for Expenditure (AFE 98097), which stated that the project will increase capacity by 125,000 tons to 575,000 tons per annum, an increase of 360%. Why is this relevant?

- This alteration and enlargement happened in 1998/1999 after the Land Use Code was adopted (1994).
- There is no question that it is both an alteration and enlargement as it is explicitly described as such in Southdown's own documentation, as well as the EPA's. The EPA's [Notice of Violation \(NOV\) dated March 2007](#) also confirms that the Lyons Plant Expansion was a “major modification” as per their internal definitions of such.
- The above also documents the plant's capacity at 125,000 tons of cement per year when it received its legal non-conforming status in 1994. This is important as CEMEX often claims, ‘we trucked in materials before Dowe Flats opened, so we can do it again’. The maximum amount of material being trucked in when they received their non-conforming status in 1994 is ~21% of what it is today. This frequent argument by CEMEX should also be rejected on the grounds that ‘ceasing of a specific intensity of use for more than 6 months, then resumption, does indeed constitute a ceasing or alteration/enlargement of that non-conforming use’.
- As a result of the Lyons Capacity Increase project, net annual emissions of NOx from the plant increased by 563 tons per year over the 1995/1996 baseline levels. For some context, prior to the production turndown in 2008, CEMEX emitted over 1,700 tons (per year) of NOx from the Lyons facility. A clear enlargement and potential threat to public health.
- Boulder County may not have been made aware of these significant changes that were components of the expansion project, as we have not yet been able to locate permits approving these changes (key elements listed below). A Southdown monthly status report, dated April 9, 1999, for the Lyons Plant Expansion showed no major changes in the scope of the project with the clinker cooler project at 100% complete, the finish mill project at 95% complete, the raw feed preparation circuit at 25% complete and the oxygen plant at 10% complete. Completion of the oxygen plant was projected to be completed September 1, 1999 and the materials for the raw mill upgrades were ordered and installation was expected to begin in early May 1999. The [EPA's 2007 NOV](#) alleged that Southdown made major modifications to the Lyons facility resulting in increased emissions of NOx without first obtaining a pre-construction permit and installing required pollution control equipment, so we believe it's reasonable to assume they also failed to obtain the necessary permits with Boulder County.
 - Raw Mill System - increase production rate from 130 to 140 tons per hour by upgrading the existing raw material driver circuit or adding an additional flash dryer circuit.
 - Kiln System - upgrade cooler drag chains, upgrade cooler fans, and upgrade cooler grates.
 - Finish Mill System - install a high efficiency separator to increase production by 10% on the mill system, install a new baghouse for the separator in order to maximize use of the new separator.
 - Oxygen Plant - purchase two 50 ton per day oxygen plants, one in 1998 and one in 1999.
- As a friendly reminder, Land Use Code Article 4-1003.H.2 states, “...any failure by the Director to provide a notification of a determination of termination as provided for in this Section shall in no way entitle the property owner to continue or resume a nonconforming use terminated by operation of this Section 4-1003(H).” We believe that this means any past failures to enforce the above codes do not give the property owner the right to continue those alterations of use.

3. Traffic Slowdown

We have many neighbors monitoring the daily truck traffic in and out of CEMEX and have noticed some significant abnormalities that we want to bring to your attention as past abnormalities have seemingly coincided

with the beginning of investigations and/or the potential time period of traffic studies taking place. We just ask that you reference these dates when comparing against your own observations and recorded data:

- Approximately February 1-12: Shale trucking on Highways 36 and 66 slowed to a near stop during this time period.
- Approximately February 20 to present: Shale trucking on Highways 36 and 66 has slowed to a near stop during this time period.
- As a reminder, CEMEX has publicly stated that it requires about 2500 tons of raw material per day in order to operate the plant; this equates to roughly 80+ trucks of raw material per day. There is no onsite or adjacent mining at CEMEX, so 100% of their materials must be trucked in.

Thank you for your time. As always, please do not hesitate to contact me if you have any questions, or if I can provide any necessary additional details.

Sincerely,
Sarah Lorang
Good Neighbors of Lyons
www.goodneighborslyons.com

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Sarah Lorang
Cell: 303-476-0089
Email: lorang.sarah@gmail.com

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Sarah Lorang
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To: Dawn Weller[weller.dawn@gmail.com]; David Decoster[dcdecoaster@gmail.com]; Jeff Christy[jeffwchristy@gmail.com]; David Hatchimonji[dhatchimonji@bouldercounty.org]; Dan Matsch[dan@ecocycle.org]; Kara Bauman[baumankara@gmail.com]; Ed Kean[edkean@yahoo.com]; Ted Elson[telson@townoflyons.com]; Kim Mitchell[KMitchell@townoflyons.com]
From: Dawn Weller[weller.dawn@gmail.com]
Sent: Fri 9/30/2022 4:07:30 PM (UTC-06:00)
Subject: Fwd: Cemex's Application was DENIED!

fyi

----- Forwarded message -----

From: **Sarah Lorang** <lorang.sarah@gmail.com>
Date: Fri, Sep 30, 2022 at 10:48 AM
Subject: Cemex's Application was DENIED!
To:

Good Morning!

I am thrilled to share that our Boulder County Commissioners voted (2 to 1) to DENY Cemex's application for an additional 15 years of mining at Dowe Flats, which means that today, September 30th, is the final day of mining at the site and reclamation should begin!

[Colorado Sun Article](#), by Michael Booth

[Daily Camera Article](#), by Matthew Bennett

One thing that was very clear when listening to the Commissioners' discussion is that we could not have accomplished this without the community all working together towards this common goal. There was no single silver bullet that won over the Commissioners, so it truly was the sheer number of people who showed up and offered different perspectives, concerns, and well thought out reasoning for why this application needed to be rejected. Your voice matters! Thank you! Even before yesterday's decision, we already began shifting our focus to the cement plant, to make sure it begins winding down as soon as possible. Save Our St. Vrain Valley's (SOSVV) attorney issued a letter to Dale Case, the Boulder County Land Use Director, to begin a formal review of the cement plant's legal nonconforming ("grandfathered") status. Any past or forthcoming changes to the structure or use of the cement plant (like trucking in material, or accessory structures) should trigger a review of the nonconforming status, giving the County the power and *obligation* to terminate the plant's nonconforming status and force a Special Use Review.

We are working hard to make sure this happens ([see our nonconforming matrix](#)), but are also tackling several other legal angles as well. If you are able, [please donate to our friends at SOSVV](#) to help fund this legal fight. All donations are tax-deductible, and all money goes directly to legal and other related expenses.

While our mission isn't yet complete, last night was a very big win and we are beaming with pride for this amazing community, and filled with optimism for what lies ahead. The Town of Lyons is going to begin renegotiating their IGA (Intergovernmental Agreement) with Boulder County regarding the land around the plant to protect its future interests in the Eastern Corridor, and should CEMEX decide to reapply for mining at Dowe Flats, we have done our work to ensure both the Town of Lyons will be at the negotiating table, and also that an environmental impact study must be completed with the application so we can actually discuss what impact more mining may have. As Commissioner Levy so astutely pointed out last night when talking about the 'intensive use' of CEMEX's permit application, 'there is nothing more intensive than basically destroying the land.'

Thank you again for your time, support, and energy invested in this very important cause. You have played an important role in the first step of eliminating 30,000 lifetimes of CO2 from our atmosphere. This is the epitome of thinking globally and acting locally, and you should feel incredibly proud because YOU made a difference. A big difference.

With gratitude,
Sarah Lorang
Good Neighbors of Lyons
www.goodneighborslyons.com

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Sarah Lorang
Cell: 303-476-0089
Email: lorang.sarah@gmail.com

To: Hollie Rogin[hrogin@townoflyons.com]; Victoria Simonsen[vsimonsen@townoflyons.com]
From: Bart Lorang[lorangb@gmail.com]
Sent: Fri 8/26/2022 4:56:01 PM (UTC-06:00)
Subject: Fwd: DRAFT Comments on Supplemental Memo for September 1st

FYI and heads up - we are going to have SoSVV attorneys take a look and see if the position we have outlined in the Doc stands legal muster. I have been super deep on this the past 7 days or so and do think there's an angle and a realistic shot at making a good case.

If we can demonstrate non-conforming status for the Plant requiring Special Review, that would be tantamount to checkmate.

----- Forwarded message -----

From: **Bart Lorang** <lorangb@gmail.com>

Date: Fri, Aug 26, 2022 at 16:30

Subject: DRAFT Comments on Supplemental Memo for September 1st

To: Amanda Dumenigo <amanda@horsense.net>, Sarah Lorang <lorang.sarah@gmail.com>, Hunter Lovins <hunterlovins@gmail.com>, Kathy Leonard <kathyleonard60@gmail.com>

CC: Sheldon Sands <sheldonjsands@gmail.com>, Steve Bross <steveb108@gmail.com>, Ed Kean <edkean@yahoo.com>, John Steiner and Margo King <steinerking33@gmail.com>, Paul Tamburello <paul@thinkgenerator.com>, Rene Doubleday <rene@thinkgenerator.com>, RCargill@aol.com <rcargill@aol.com>, Roger Flynn <Roger@wmaplaw.org>

All:

Please see this [Google Doc](#) we have put together to start collaboratively reviewing/commenting on the [Supplemental Memo](#) issued today.

I have been working hard the past week analyzing the Non-Conforming Issue, and so I chose to start making the argument against legal, non-conforming status inside this document given that Mr. L'Orange chose to surface it as item #1 in his memo.

As you will read, I believe that the Land Use Director's findings that the CEMEX Plant ("Lyons Quarry") is legal, pre-existing, non-conforming use could very likely be incorrect. I believe it's possible that Boulder County has erred in their application of both the letter and the spirit of the Land Use Code since 1994 and should have insisted on a Special Use Review (starting with the Conveyor "accessory structure" physically connecting Dowe Flats to the Plant when Dowe Flats opened in 1997), and should today. Once you've reviewed the document, I welcome feedback on this position from our own attorneys and citizens alike. As this would cause a bit of a stir within Boulder County and squash any Open Space Acquisition deals, I would advise against sending it to Boulder County Attorneys until we've reviewed from a legal perspective on our end.

You will see comments extensively in the right-hand pane when viewed on a desktop Web Browser. Everyone has comment privileges, so you can comment on specific passages and make specific arguments.

Please forward along to others you trust for their comments/review as well.

Lots of work to do to put together a cogent written response ahead of September 1st meeting!

Thanks, and have a great weekend

Bart

On Fri, Aug 26, 2022 at 1:44 PM Kathleen Sands <solasands@gmail.com> wrote:

Here is a link to this document showing their 4 questions. Sheldon and I didn't know that Lyons Quarry was synonymous with the plant; is that your understanding Amanda & Sarah? INTERESTING

--

303-642-6144 Cell

To: Victoria Simonsen[vsimonsen@townoflyons.com]
Cc: Hollie Rogin[hrogin@townoflyons.com]
From: Jocelyn Farrell[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=333103D042964B539C03BC11CACF09E4-JOCELYN FAR]
Sent: Mon 1/23/2023 6:29:31 PM (UTC-07:00)
Subject: Fwd: Formal Letter of Support from the Town of Lyons
[Letter to Boulder County Commissioners FINAL.pdf](#)

Hi Victoria, Can we add this to general business to see if the board would like to respond with a formal letter?

Many thanks, Jocelyn

Get [Outlook for iOS](#)

From: Sarah Lorang <lorang.sarah@gmail.com>
Sent: Monday, January 23, 2023 2:11:14 PM
To: Hollie Rogin <hrogin@townoflyons.com>; Jocelyn Farrell <JFarrell@townoflyons.com>
Subject: Formal Letter of Support from the Town of Lyons

Hello Hollie and Jocelyn,
I'll preface this with, I know Hollie is off grid at the moment, so I'll just note that there isn't a huge rush with this. First, I wanted to say thank you for all of your support with our CEMEX efforts. We officially launched our next phase, and I am hoping to gain the formal support of the Town to request that the County Commissioners require Director Case to issue a letter of termination to CEMEX. 'Formal Support' would be via a jointly signed letter from the Town of Lyons (or each individual Board member) and the governing bodies of several other Boulder County municipalities. I've attached a copy of the letter for your review.
In regard to the logistics of how to 'sign' this letter, I am opting to keep it really simple and just list the names/title/municipality or organization of those in support in lieu of collecting electronic signatures. An email (to me) confirming support from each willing member of the Town's Board of Trustees should be sufficient.
Just for your own information, I have already filed this as a formal complaint with Boulder County Land Use, and I also shared this letter and our overall approach with one of the Commissioners to collect feedback. She was supportive and reiterated that the show of force we are attempting to collect will help the Commissioners make this a priority for the County. I didn't get the impression there are any concerns with what we are actually requesting.
Related, we are hosting some webinars to explain our strategy in more detail, and also to share many of the other things we've been doing behind the scenes if you or any Board Members would like to attend. [Click here to register](#) for one of our webinars on Thursday, January 26th (11am, 2pm, 7pm). If you're inclined to sign and share our petition (it's the same as the letter attached) [here is the link](#) for that!
Thank you again and please let me know if you have any questions, or if there is anything else I can do.
Sincerely,
Sarah Lorang
[Good Neighbors of Lyons](#)

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Sarah Lorang
Cell: 303-476-0089
Email: lorang.sarah@gmail.com

Dear Commissioners Levy, Loachamin, and Stolzmann,

We are writing to formally request that you take action and uphold the Boulder County Land Use Code regarding the termination of Nonconforming Use (article 4-1003) as it relates to the CEMEX Lyons property, located at 5134 Ute Highway.

After the closure of its Dowe Flats mine, in October 2022, CEMEX Lyons began trucking in all of their raw materials from remote locations. County residents have observed and complained publicly on Facebook and other forums about 10-20 'new' 35-ton trucks driving to CEMEX Lyons via Highways 36 and 66 every hour. This includes significant traffic through the City of Boulder from a shale operation south of Boulder County.

This is a significant alteration and enlargement from the baseline use, as the truck traffic has roughly doubled. These changes are so substantial that they have caused CDOT to require a new access permit.

CEMEX's recent operational changes have resulted in:

- Significantly more intensive use of their land and/or its services,
- Hazards and public nuisance on/off the property,
- Increased threats to public health and safety, and
- An adverse impact on the character of the neighborhood.

CEMEX has also created new shale stockpiles, and the size and land area occupied by the stockpiles of other materials has increased dramatically. These new and increased stockpiles are now highly visible from US-36, Hygiene Road, and by numerous neighbors. This is an enlargement and alteration of use, affects the character of the neighborhood, and is a visual nuisance off the property.

These new, intensive uses clearly trigger the non-conforming use termination clause (Article 4-1003.C.1.d) for CEMEX's Lyons-based plant on a number of fronts, which now compels the Boulder County Director of Land Use to send a notice of termination (Article 4-1003.H.1) determining that the property owner's right to continue a non-conforming use has, or may have, been terminated because of violations of Section 4-1003 (alterations of use) of the Land Use Code. Upon receiving the letter, the property owner has 30 days to provide evidence to the Director of Land Use to the contrary, appeal to the Boulder County Commissioners, or apply for a Special Use Permit.

Termination of the non-conforming use and denial of a Special Use Permit would ultimately result in the closure and demolition of the plant as the cessation of operations would trigger CEMEX's DRMS (Colorado Department of Reclamation, Mining, and Safety) Reclamation Plan.

What we are asking of you, our Boulder County Commissioners: Require that Boulder County Land Use Director, Dale Case, act on Article 4-1003.H.1 (notice of termination) by sending a letter to CEMEX Lyons indicating that nonconforming use *has or may have* terminated in accordance with Section 4-1003 of the Boulder County Land Use Code (alteration of use). For your convenience, we have included a draft letter that Director Case may use for reference. As a reminder, per Land Use Article 4-1001.A, the County has a duty to eliminate nonconformity "*as speedily as justice will permit*".

It is also worth noting that Article 4-1003.H.2 states, "...any failure by the Director to provide a notification of a determination of termination as provided for in this Section shall in no way entitle the property owner to continue or resume a nonconforming use terminated by operation of this Section 4-1003(H)." This means that any past failures to enforce the above codes do not give the property owner the right to

continue those alterations of use. [Click here for a matrix](#) of 15 past alterations that may have met the criteria in Article 4-1003 (alteration of use) and could have triggered Section 4-1003.H.1 (notice of termination).

We are simply asking that you enforce policies that were thoughtfully put into our Land Use Code to protect the community at large. Taking this step may very likely be one of the most impactful things you will have the opportunity to do in your lifetime to fight climate change. CEMEX Lyons is the #1 CO₂ emitter in Boulder County (representing > 7% of all emissions), with annual greenhouse gas emissions equal to the annual emissions of ~30,000 people, and they have every intention of hanging around 'indefinitely' if we let them.

Thank you for your time and attention to this incredibly urgent and important matter.

Sincerely,

[Name], [Title]
[Organization]

References

- [Boulder County Land Use Code, Article 4-1000 Nonconforming Structures and Uses](#)
- [Matrix of Nonconforming Use Violations](#)
- [Documentation of Increased Truck Traffic](#)

To: Mark Browning[mbro6161@gmail.com]
From: Hollie Rogin[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=955FA234C14B454295963FA95788C39D-HOLLIE ROGI]
Sent: Sun 9/4/2022 6:23:17 AM (UTC-06:00)
Subject: Fwd: SU-22-0003 - [Article 4-1003.C.1.d, Lack of Environmental Impact Survey, Cherry Picking]]
[SU-22-0003 Special Review Criteria Compliance 8.31.22.pdf](#)
[SU-22-0003 BCCP Compliance 8.31.22.pdf](#)

Sent from my iPhone

Begin forwarded message:

From: Sarah Lorang <lorang.sarah@gmail.com>
Date: September 3, 2022 at 10:31:22 PM MDT
To: planner@bouldercounty.org, commissioners@bouldercounty.org
Cc: Ed Kean <edkean@yahoo.com>, case@bouldercounty.org, Matthew Bennett <mbennett@prairiemountainmedia.com>, Sarah Lorang <lorang.sarah@gmail.com>, Michael Booth <booth@coloradosun.com>, "Pearlman, Ben" <bpearlman@bouldercounty.org>, Victoria Simonsen <vsimonsen@townoflyons.com>, Hollie Rogin <hrogin@townoflyons.com>, "James, Liana" <ljames@bouldercounty.org>, tglowacki@bouldercounty.org, "Whisman, Janis" <jwhisman@bouldercounty.org>, "Sanchez, Kimberly" <ksanchez@bouldercounty.org>, "Hughes, David" <dhughes@bouldercounty.org>, Bart Lorang <lorangb@gmail.com>
Subject: SU-22-0003 - [Article 4-1003.C.1.d, Lack of Environmental Impact Survey, Cherry Picking]]

Hello - my name is Sarah Lorang and my address is 12800 Foothills Highway. I am one of the founding members of Good Neighbors of Lyons (www.goodneighborslyons.com).

For the sake of clarity, my ask is this: **Reject this application, and begin a NEW negotiation with the Town of Lyons at the negotiating table. I am fully supportive of the counter proposal the Town of Lyons provided in their Referral Response.**

Given that the public was unable to speak at September 1st's Planning Commission hearing, I wanted to share what I planned to say, as I still think it needs to be heard.

Please see the attached matrix of Special Review Criteria. I provided this to the Planning Commission as well, but it was clear that it was not read along with a great majority of other public comments. I have literally spent HUNDREDS of hours diving into all the details surrounding this application, and can say with great confidence that it does not meet 11 of the 13 Special Review Criteria. I've provided a significant amount of supporting detail to each point. Related to that, this application also fails to comply with at least 29 different policies in the Boulder County Comprehensive Plan. That list, and my supporting detail, is also attached.

As for my response to Staff's supplemental memo, which also touch on some of my biggest concerns, I would like to quickly touch on 3 things:

1) Mr. L'Orange brought up the plant's legal non-conforming status in his memo, as did the applicant during the last hearing.

In the event this application is rejected, which I strongly urge, the Lyons Quarry nonconforming use should be immediately terminated on October 1st in accordance with Article 4-1003.C.1.d, which provides for termination based on "*Any alteration of the nonconforming use*". This could, for example, include a change in source material/trucking in material. To summarize, **Boulder County has the power to be in control of the Lyons Quarry/Cement Plant wind down.** I am going to assume you would rather have that as your legacy than allowing the County's #1 polluter to operate for another 15 years.

On this point, I would also like to add that this Article is why when answering Commissioner Goldfarb's question on September 1st about addressing the Department of Public Health's suggestions, **Mr. Renic said CEMEX would do "what is required as a mitigation measure". If CEMEX voluntarily made those changes, it would also trigger a review of their non-confirming status. Something they would never risk, so those improvements will never be made.**

2) Staff was asked by Commissioner Fitch to provide more information about the cumulative impact to public health with 15 more years of mining at Dowe Flats. Staff failed to provide anything meaningful on this point, as the memo only included a half hearted attempt at a desktop review of macro level impact. Staff waved off future impact by saying, the impact has already been done. But deeper digging WILL have more impact. Just take the water table for instance. There are residences in the area with water tables as shallow as 12 feet. Staff can't assume that an additional 30 feet of digging won't have an impact on the well water that nearby residents depend on.

A full environmental impact study should have been completed when this application was filed. Absent that kind of detail, Staff cannot make recommendations. Full stop. Special Review Criteria 2, 4, 12, and 13 cannot be met. The absence of a full environmental impact study on 15 years of additional mining also makes this application incomplete.

3) In the Supplemental Memo, Staff continued to use the future benefit of the plant ceasing operations in 15 years as evidence to support criteria being met, but also repeatedly said that the plant is not part of this application, so its negative impact should not be considered. **It would be an error of law to allow Staff to approve criteria based on a future impact of the plant, without also applying the plant's immense environmental impact to that very same criteria. This is a legal doctrine called cherry picking.**

If we remove the plant from consideration in its entirety, as Staff has asserted we must do, then Special Review Criteria 2, 3, 4, 8, and 10 cannot be met.

In summary, by rejecting this application, the County has the opportunity to apply Article 4-1003.C.1.d to review the non-conforming use of the plant, and thus control its wind down and imminent demolition.

By acknowledging that an environmental impact study should have been completed as part of this application, you are also saying that its absence makes this application incomplete. It also means the criteria for 4 of the 13 Special Review items cannot be met.

And last, by using consistent logic when deciding to weigh the impacts of the plant against Special Review Criteria, it results in 5 of the 13 criteria not being met.

The amount of data and supporting facts that negate Staff's position in their recommendation and memo to accept this application CANNOT BE IGNORED. Boulder County cannot approve this application without also expecting noteworthy legal ramifications.

Thank you for your time.

Sincerely,

Sarah Lorang

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Sarah Lorang

Cell: 303-476-0089

Email: lorang.sarah@gmail.com

To: Gregg Oetting[goetting@townoflyons.com]
From: Bart Lorang[lorangb@gmail.com]
Sent: Mon 2/6/2023 9:08:31 PM (UTC-07:00)
Subject: Good Neighbors petition/letter

Greetings Trustee Oetting:

I appreciate your feedback tonight in the BoT meeting re: the Good Neighbors Lyons petition and letter compelling the BoCo Commissioners to investigate and enforce its Land Use Code. I can also certainly understand your frustration with additional trucking. Trust me, we experience it every day! But, I hope you and others didn't feel that cement production would stop *immediately* after Dowe Flats was closed. This is why the alternative counter proposal (e.g. 3rd choice) of 5 years was put forth, as that was a good, practical compromise to a long drawn out judicial process.

A few additional things:

1. You may recall that in a Lyons BoT Meeting several months ago, when asked, I estimated that trucking would indeed continue for a substantial period of time.
2. I also indicated in that same meeting that depending on the size of the stockpiles in place, dollar cost averaging would be used (mix more expensive trucked in materials with inexpensive materials from Dowe Flats) to boost financial results. The photographic evidence shows that in Sep '22, piles were furiously being created from Dowe Flats to that effect.
3. Land Use attorneys reviewed the termination of nonconforming use provisions.

If it's any comfort, from our vantage point, the chess board is actually playing out as we anticipated, and now come the next moves. We believe the decision to continue operating under a nonconforming (e.g. Grandfathered) use rather than *voluntarily* apply for a Special Use Permit under the Land Use Code is a calculated risk. The calculation is that the public won't complain about nonconforming use termination triggers, and/or violations, people and/or officials won't have patience/attention-span for a judicial process and/or many won't have the stomach for legal sparring. But, I can assure you, we will steadfastly continue down the path, and we have the patience for the process.

Always happy to grab a beverage and discuss this in person if you wish! Also happy to fill you in on other developments - [this article from the Colorado Sun](#) this morning does a pretty good job summarizing, in addition to [this document](#) from the meeting tonight.

Regards,
Bart Lorang

Bart

Bart

From: Sarah Lorang[lorang.sarah@gmail.com]
Sent: Sun 1/22/2023 3:26:28 PM (UTC-07:00)
Subject: Help with CEMEX Petition

Hello!

As you may or may not know, Bart and I have sort of become accidental community activists over the past year and have been working very hard to shut down Boulder County's #1 polluter: the CEMEX Lyons cement plant. We had [success in closing their adjacent mine](#) this past Fall, and are now working to finish the job by closing the plant.

I would really appreciate your support by signing [this petition](#), and sharing it with other Boulder County residents.

CEMEX is now trucking in 100% of their raw material, which has resulted in 10-20 'new' 35-ton trucks arriving into CEMEX **every hour** traveling on 28th Street, US-36, HWY 66 with numerous complaints from residents about the resulting noise, dust, and diesel fumes because of this heavy increase in traffic.

This change is a **clear trigger** to terminate the plant's non-conforming ("Grandfathered") status based on Article 4-1003.C, which states:

"The right to continue a nonconforming use terminates immediately ... [when there is] any enlargement or alteration of the nonconforming use which has the effect or threatened effect of creating a hazard or nuisance on or off the property, of adversely affecting the character of the neighborhood, or of intensifying the use of the land or its need for services"

It is time for the Boulder County Land Use Director to send a notice of termination (Article 4-1003.H.1) determining that the property owner's right to continue a non-conforming use has, or may have, been terminated because of violations of Article 4-1003 (alterations of use) of the Land Use Code. Upon receiving the letter, the property owner will have 30 days to provide evidence to the Director of Land Use to the contrary, appeal to the Boulder County Commissioners, or apply for a Special Use Permit. Termination of the non-conforming use and denial of a Special Use Permit would ultimately result in the closure and demolition of the plant as the cessation of operations would trigger CEMEX's DRMS (Colorado Department of Reclamation, Mining, and Safety) Reclamation Plan.

If you're interested in learning more, we will be hosting 3 webinars on Thursday, January 26th at 11am, 2pm, and 7pm to explain this specific strategy in more detail, but also highlight many of the other things we are doing behind the scenes at the County and State levels. [Click here to register to attend!](#)

Thank you so much for your time and support! Please do not hesitate to reach out with any questions.

Sincerely,
Sarah Lorang
Good Neighbors of Lyons
www.goodneighborslyons.com

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Sarah Lorang
Cell: 303-476-0089
Email: lorang.sarah@gmail.com

To: Tara Schoedinger[mayor@jamestownco.org]
Cc: Sarah Lorang[lorang.sarah@gmail.com]
From: Hollie Rogin[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=955FA234C14B454295963FA95788C39D-HOLLIE ROGI]
Sent: Mon 1/16/2023 6:51:23 PM (UTC-07:00)
Subject: Introduction

Hi Michael,

Hope all is well in your neck of the woods, and looking forward to our Jamestown field trip next month.

I'm writing this evening to introduce you to Sarah Lorang of [Good Neighbors of Lyons](#). Sarah and Good Neighbors were instrumental in the success of the movement to deny CEMEX its Dowe Flats mining extension permit last fall. I thought you would be interested in connecting with to her to hear about the affects the currently operating CEMEX cement plant has on the whole of Boulder County, including Jamestown, and what the future may bring.

You may already know this because I talk about it kind of incessantly, but the short story is that CEMEX is Boulder County's #1 CO2 polluter. It burns seven tons of coal per hour, every hour of every day. Aside from the egregious emissions, it's also located closest to our poorest and most marginalized community members in the Shady Lane mobile home park off of HWY 66. The long story involves a special use permit that's overdue for review by the County, but I'll let Sarah fill you in on that.

Sorry I'll be missing this month's happy hour; I will be on a beach in Nicaragua.

Take care,
Hollie

Hollie Rogin (she, her, hers)
Mayor, Town of Lyons
970-617-3168 c

My working time may not be your working time. Please don't feel obligated to respond outside of your working hours.

Cc: Bart Lorang[lorangb@gmail.com]; Sarah Lorang[lorang.sarah@gmail.com]
To: Hollie Rogin[hrogin@townoflyons.com]
From: Jocelyn Farrell[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=333103D042964B539C03BC11CACF09E4-JOCELYN FAR]
Sent: Wed 9/14/2022 11:47:05 AM (UTC-06:00)
Subject: Jocelyn's CEMEX response

Finally, here's my pitch. Feel free to edit...

Jocelyn Farrell
140 Stone Canyon Drive, Lyons

Mayor Pro Tem, Town of Lyons
Current Liaison to the Lyons Planning Community Development Commission
Former Lyons Planning Commissioner
Former Board of Trustee
Private Citizen of Lyons for 15 years

Lyons and Boulder County have been fortunate to share a long standing partnership that has always fostered mutual respect and collaboration. BOCO has been an incredible source of support through the 2013 flood and recovery. Nine years later, we are finishing up our last project. With so much optimism, Lyons is now looking forward.

For the past year and a half, I've been leading the development of the Lyons Comprehensive Plan. We are developing a 10 year plan and a 20 year vision. The plan is expected to be finalized and adopted in early 2023.

One major component of the new plan is updating our three mile municipal boundary. As you know, Lyons is land locked by steep terrain and Open Space. Per the State of Colorado, Department of Local Affairs, a comprehensive plan takes into account all land that is functionally related to the growth of the municipality, not just land within the three miles of the municipal boundary. For Lyons to have any future viable functionality and municipal growth, it is the land East of Hwy 36 and along Hwy 66 that is critical to us.

CEMEX is directly in the town's future three mile planning area. In fact, Dowe Flats and the plant are ONLY two miles from our town limits.

This is important, because approximately, two years ago, an agreement was made between the parties to allow Lyons time to complete its 2023 Comp Plan before we all come together to update the 2012 Lyons CEMEX Area IGA.

In the 2012 LYONS CEMEX IGA the first WHEREAS states, "the Parties are authorized to enter into intergovernmental agreements to plan for and regulate land uses in order to minimize the negative impact on the surrounding areas and to protect the environment, and specifically to cooperate and contract with each other for the purpose of planning and regulating the development of land."

Throughout the IGA and in particular section 2.0 regarding Annexation and Development of Property, there is a consistent THEME OF COLLABORATION. A couple of examples are, "The County finds and declares that a community of interest exist between the Town and all property located within the CEMEX PPA." It also says, "The County will cooperate and consult with the Town and lend its expertise, if requested, on potential development proposals for the CEMEX PPA."

So in the collaborative spirit of the IGA and our longstanding good will, I am requesting that you do not approve CEMEX'S application and proposal, and instead bring all parties (including Lyons) to the table. Let's negotiate a plan that includes land remediation of Dowe Flats, the permanent closure and remediation of the plant site, and proper environmental remediation for future land use.

Without this, Lyons' 10 year comprehensive municipal growth opportunity and 20 year vision will be significantly stunted.

Jocelyn Farrell, Mayor Pro Tem
Town of Lyons

Sent from my iPad