

UNCLASSIFIED CONDITIONAL USE PERMIT NO. 367

Conditions for Area "A"

1. Extraction operations shall be allowed for a maximum of 20 years from the date extraction commences pursuant to Conditional Use Permit No. 367 (as modified hereby) or Conditional Use Permit No. 2032.
2. Excavation operations shall be limited to weekdays during the hours of 7:00 a.m. to 6:00 p.m., except that within a 700-foot radius of the southwest corner of APN 300-310-17, the hours of operation shall be 7:00 a.m. to 4:30 p.m. Routine maintenance of excavation equipment shall be allowed Monday through Sunday limited to the hours of 7:00 a.m. to 8:00 p.m.
3. No extraction shall be allowed east of Friant Road.
4. All extraction operations, including stockpiling, shall be set back a minimum of 200 feet from the existing San Joaquin River Channel. Riparian vegetation within 200 feet of said Channel shall not be disturbed.
5. Any areas of significant riparian vegetation within the site and not within said 200 foot river setback shall be preserved until sand and gravel excavation requires removal or destruction.
6. A berm shall be construed between the 310-foot and 320-foot contour lines on the north property line adjoining Lost Lake Park.
7. A 50-foot wide setback shall be provided from the Friant Road right-of-way line which will be established by the Site Plan Review. A berm and/or landscaping consisting of trees and shrubs shall be provided within the setback area to effectively screen the extraction site from Friant Road. The Director of the Resources and Development Department may allow the width of the berm or landscaped area to be less than 50 feet if effective screening can be demonstrated. The berm and/or landscaping shall be completed within six months from the date excavation commences pursuant to Conditional Use Permit No. 2032 or Conditional Use Permit No. 367 (as modified hereby).
8. A single, two-way driveway access shall be allowed on Friant Road at a point approximately 1,400 feet north of the south boundary of Section 19. The connection to

Friant Road shall be designed with a free right-turn minimum design radius of 30 mph.

9. A 150-foot, left-turn storage lane shall be constructed on Friant Road at the entrance to the extraction site.
10. A 2,500-foot acceleration lane, 14 feet in width, shall be constructed on Friant Road to accommodate trucks leaving the extraction site. The existing five-foot wide southbound bike lane shall be relocated and separated from the acceleration lane by a distance of ten feet to the west.

Note: Approximately 1,000 feet of the acceleration lane may be on-site.

11. Additional right-of-way for Friant Road shall be dedicated to the County as determined by the Site Plan Review approval.
12. Stockpiling of material shall not be allowed within 200 feet of Friant Road or that portion of the north property line adjoining Lost Lake Park unless Permittee screens any such closer stockpiling with approved landscaping so that it is not visible from Friant Road and the north property line of Lost Lake Park.
13. A dust palliative shall be applied to all haul roads as frequently as necessary to control dust. Dust palliatives may include road oil, water, magnesium chloride, or other proven materials.
14. The use shall be operated in compliance with the requirements of the Fresno County Air Pollution Control District.
15. The use shall be operated in such a manner as to avoid creating a dust or noise nuisance.
16. The Permittee shall allow the County Staff to periodically monitor the proposed use to assure all applicable standards of the General Plan Noise Element and the Noise Ordinance are being met. A recordable agreement allowing for this monitoring must be executed before excavation authorized by this permit is begun. Cost of this periodic monitoring shall be at the expense of the Permittee.
17. A drip irrigation system or its equivalent approved by the Director of the Resources and Development Department shall be provided to ensure maintenance of all landscaping.

18. A detailed rehabilitation plan shall be submitted prior to excavation. The plan shall specify proposed phasing and show the number of lakes and islands, and proposed final slopes, contours, and landscaping of the site. Final slopes above the seasonal lowest water line shall be 3:1 or flatter, and contouring shall provide an appearance consistent with the surrounding area. Landscaping shall be designed by an architect or landscape architect and shall include riparian-type species.
19. Each phase must be rehabilitated in accordance with the rehabilitation plan within one year after initiation of the subsequent phase. The berm on the north property line shall be retained until rehabilitation of entire site is completed.
20. The transport of material shall be conducted in a manner so as to avoid spillage on County roads. If spillage does occur, the Permittee shall provide for removal of sand and gravel from the roadway between the extraction site access road and the plant site as frequently as needed. A cash deposit shall be maintained in an amount of \$1,000 to allow the County to remove sand and gravel if corrective action is not taken by the operator within 24 hours of notification by the County.
21. All water bodies shall be designed to avoid stagnant water or shall be improved with appropriate circulation systems.
22. An archaeological survey shall be conducted prior to excavation.
23. All equipment shall be equipped with mufflers to minimize noise generation.
24. Prior to excavation, a Site Plan Review Application shall have been submitted to and approved by the Director of Resources and Development pursuant to Section 874 of the Zoning Ordinance.
25. Structural design of all improved public roads shall be in accordance with County standards and approved by the Director of Public Works.
26. The perimeter of the site shall be enclosed with a barbwire fence and maintained in good condition.

NOTES:

1. The proposed use is also subject to the mandatory conditions and standards of Zoning Ordinance Section 858 as specified on the attachment.
2. Discharge of water into the San Joaquin River shall be subject to a permit from the California Regional Water Quality Control Board.

ATTACHMENT

Unclassified Conditional Use Permit Application No. 367

Applicable standards and conditions of Zoning  
Ordinance Section 858-C and E

858-C:

1. No extraction of material or overburden shall be permitted within twenty-five (25) feet of any property boundary nor within fifty (50) feet of a boundary contiguous with a public road right-of-way or recorded residential subdivision.
2. No stockpiled soil or material shall be placed closer than twenty-five (25) feet from a property boundary.
3. No production from an open pit shall create a slope steeper than 2:1 within fifty (50) feet of a property boundary nor steeper than 1-1/2:1 elsewhere on the property, except steeper slopes may be created in the conduct of extraction for limited periods of time prior to grading the slope to its rehabilitation configuration, and slopes of 1:1 may be maintained five (5) feet below the lowest water table on the property experienced in the preceding three (3) years.
4. The first one hundred (100) feet of access road(s) intersecting with a County-maintained road shall be surfaced in a manner approved by the Board and shall not exceed a two (2) percent grade and shall have a width of not less than twenty-four (24) feet.
7. Traffic control and warning signs shall be installed as required by the Commission at the intersection of all private roads with public roads. The placement, size, and wording of these signs shall be approved by the Fresno County Department of Public Works.
8. Security fencing four (4) feet in height consisting of not less than three (3) strands of barbwire, or an approved equivalent, shall be placed along any property line abutting a public right-of-way and around any extraction area where slopes steeper than two (2) feet horizontal to one (1) foot vertical are maintained. Such interior fencing will not be required where exterior fencing surrounds the property.
19. The operator shall comply with all existing and future laws, ordinances, regulations, orders, and decrees of bodies or tribunals.

- 22b. Sufficient topsoil shall be saved to perform site rehabilitation in accordance with the rehabilitation plan.
- 22c. All reasonable and practical measures shall be taken to protect the habitat of wildlife.
- 22d. Temporary stream or watershed diversion shall be restored.

2. Security, as herein specified, shall be deposited by the operator of a permanent material extraction site in the event any phase of the rehabilitation plan is not completed in accordance with the approved permit, and upon notification of the amount of security by the Director. Pending the deposit of security, the operator shall not conduct any further activity on or from the premises. Said security shall be in the form of cash deposited by the operator with the County or in an approved irrevocable escrow or its equivalent and shall be in an amount determined by the Director equal to one hundred (100) percent of the total cost of completing the subject phase of rehabilitation. Said security may be partially released during the progress of rehabilitation as long as the same ratio is maintained on deposit for all completed work.
3. Where the rehabilitation work as to any phase is not completed within the time period set forth in the approved rehabilitation plan or as extended by the Director, the County may enter upon the operator's premises to perform said work and use said funds deposited as security to pay for the cost thereof. In the event the operator fails to complete rehabilitation work as required herein and has not deposited security as specified herein for the cost of rehabilitation work, the operator shall then be liable to the County for the cost of any rehabilitation work required to be performed by the County in accordance with the rehabilitation plan. Where the County is authorized to enter upon property to cause rehabilitation work to be done, the Conditional Use Permit may be revoked by the Board of Supervisors upon thirty (30) days written notice first being given to the operator.
4. Prior to the excavation of any material, the operator of each parcel shall execute a recordable agreement, binding upon his successors or assigns, covenanting to perform all rehabilitation in the manner prescribed by the approved Conditional Use Permit. Said person shall agree to pay all court costs, attorney fees, and interest at the legal rate from the date in which such costs have been incurred and further shall waive any and all defenses, legal or equitable, if an action at law is instituted to enforce the provisions of said agreement. The owner shall execute a recordable agreement, binding upon his successors, or assigns, which shall permit the County to enter upon the property to enforce completion of the rehabilitation plan.

6. All material extraction sites in the County of Fresno are subject to a periodic inspection once every two years or such other period as required in a Conditional Use Permit to determine compliance with operational and rehabilitation plans.

The required periodic inspections shall not impair the County's right to perform additional on-site inspections as may be necessary and appropriate to ensure compliance of the requirements of the Conditional Use Permit or other provisions of law. The Board of Supervisors may adopt by resolution a schedule setting forth the fees that may be imposed for required periodic inspections.





UNCLASSIFIED CONDITIONAL USE PERMIT NO. 367

Conditions for Area "B"

1. The processing plant operation shall be discontinued upon completion of material extraction allowed pursuant to Conditional Use Permit No. 2032, Conditional Use Permit No. 367 or upon the twentieth (20th) anniversary of the date of County approval of these Conditions, whichever occurs last. In no event shall the life of the operation exceed 20 years.
2. All operations shall be limited to weekdays during the hours of 6:00 a.m. to 6:00 p.m. except that in the event of any emergency as determined by any governmental body or agency, excavation and processing may proceed as needed notwithstanding the aforesaid.
3. Except for the main sand pile, the height of material stockpiles shall not exceed 25 feet unless the Permittee is able to satisfy County that it will plant landscaping which will, within five (5) years of planting, effectively screen such stockpiles from view from Friant Road.
4. Landscaping consisting of riparian-type trees shall be provided along the frontage of Friant Road and Birkhead Avenue to effectively screen the view of the plant and the stockpiles from the highway user within five years. A landscape plan shall be prepared by an architect or landscape architect and shall be submitted within 90 days of the date of this agreement. The landscaping shall be completed within six months of the approval of the plan.
5. A dust palliative shall be applied to all internal circulation roads as frequently as necessary to control dust. Dust palliatives may include road oil, water, magnesium chloride, or other proven materials.
6. The use shall be operated in compliance with the requirements of the Fresno County Air Pollution Control District.
7. The use shall be operated in such a manner as to avoid creating a dust or noise nuisance.
8. The Permittee shall allow the County Staff to periodically monitor the proposed use to assure all applicable standards of the General Plan Noise Element and the Noise Ordinance are being met. A recordable agreement allowing for this monitoring must be executed before excavation authorized by this permit is begun. Cost of this periodic monitoring shall be at the expense of the Permittee.

9. A drip irrigation system or surface ditch irrigation system or their equivalent approved by the Director of the Resources and Development Department shall be provided to ensure maintenance of all landscaping.
10. Within 90 days of the date of approval of this agreement, a Site Plan Review Application shall have been submitted to the Director of Resources and Development pursuant to Section 874 of the Zoning Ordinance.
11. A detailed rehabilitation plan shall be submitted as part of the required Site Plan Review. The plan shall show the number of lakes and islands, and proposed final slopes, contours, and landscaping of the site. Slopes shall be rounded and contoured to provide an appearance consistent with the surrounding area. The rehabilitation work shall be done in such a way as to preserve existing riparian vegetation. All rehabilitation work in areas where mining activity has been completed shall be finished within one year of the date of plan approval.
12. Subject to the approval of the Director of Development, Permittee shall take such corrective measures as may be necessary, if at all, to eliminate any stagnant water conditions in any existing or proposed ponds created or to be created by Permittee.
13. The perimeter of the site shall be enclosed with a barbwire fence and maintained in good condition.
14. Structural design of all improved public roads shall be in accordance with County standards and approved by the Director of Public Works.
15. Road improvements shall be made by Permittee in accordance with the schematic plan attached hereto and marked as Exhibit A. In no event shall Permittee be required to expend more than \$50,000 on such improvements.

Notes:

1. The proposed use is also subject to the mandatory conditions and standards of Zoning Ordinance Section 858 as specified on the attachment.
2. Discharge of water into the San Joaquin River shall be subject to a permit from the California Regional Water Quality Control Board.

ATTACHMENT

Unclassified Conditional Use Permit Application No. 367

Applicable standards and conditions of Zoning  
Ordinance Section 858-C and E

858-C:

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2. No stockpiled soil or material shall be placed closer than twenty-five (25) feet from a property boundary.
3. No production from an open pit shall create a slope steeper than 2:1 within fifty (50) feet of a property boundary nor steeper than 1-1/2:1 elsewhere on the property, except steeper slopes may be created in the conduct of extraction for limited periods of time prior to grading the slope to its rehabilitation configuration, and slopes of 1:1 may be maintained five (5) feet below the lowest water table on the property experienced in the preceding three (3) years.
4. The first one hundred (100) feet of access road(s) intersecting with a County-maintained road shall be surfaced in a manner approved by the Board and shall not exceed a two (2) percent grade and shall have a width of not less than twenty-four (24) feet.
7. Traffic control and warning signs shall be installed as required by the Commission at the intersection of all private roads with public roads. The placement, size, and wording of these signs shall be approved by the Fresno County Department of Public Works.
8. Security fencing four (4) feet in height consisting of not less than three (3) strands of barbwire, or an approved equivalent, shall be placed along any property line abutting a public right-of-way and around any extraction area where slopes steeper than two (2) feet horizontal to one (1) foot vertical are maintained. Such interior fencing will not be required where exterior fencing surrounds the property.
19. The operator shall comply with all existing and future laws, ordinances, regulations, orders, and decrees of bodies or tribunals.

- 22b. Sufficient topsoil shall be saved to perform site rehabilitation in accordance with the rehabilitation plan.
- 22c. All reasonable and practical measures shall be taken to protect the habitat of wildlife.
- 22d. Temporary stream or watershed diversion shall be restored.

ATTACHMENT

Unclassified Conditional Use Permit Application No. 367

Applicable standards and conditions of Zoning

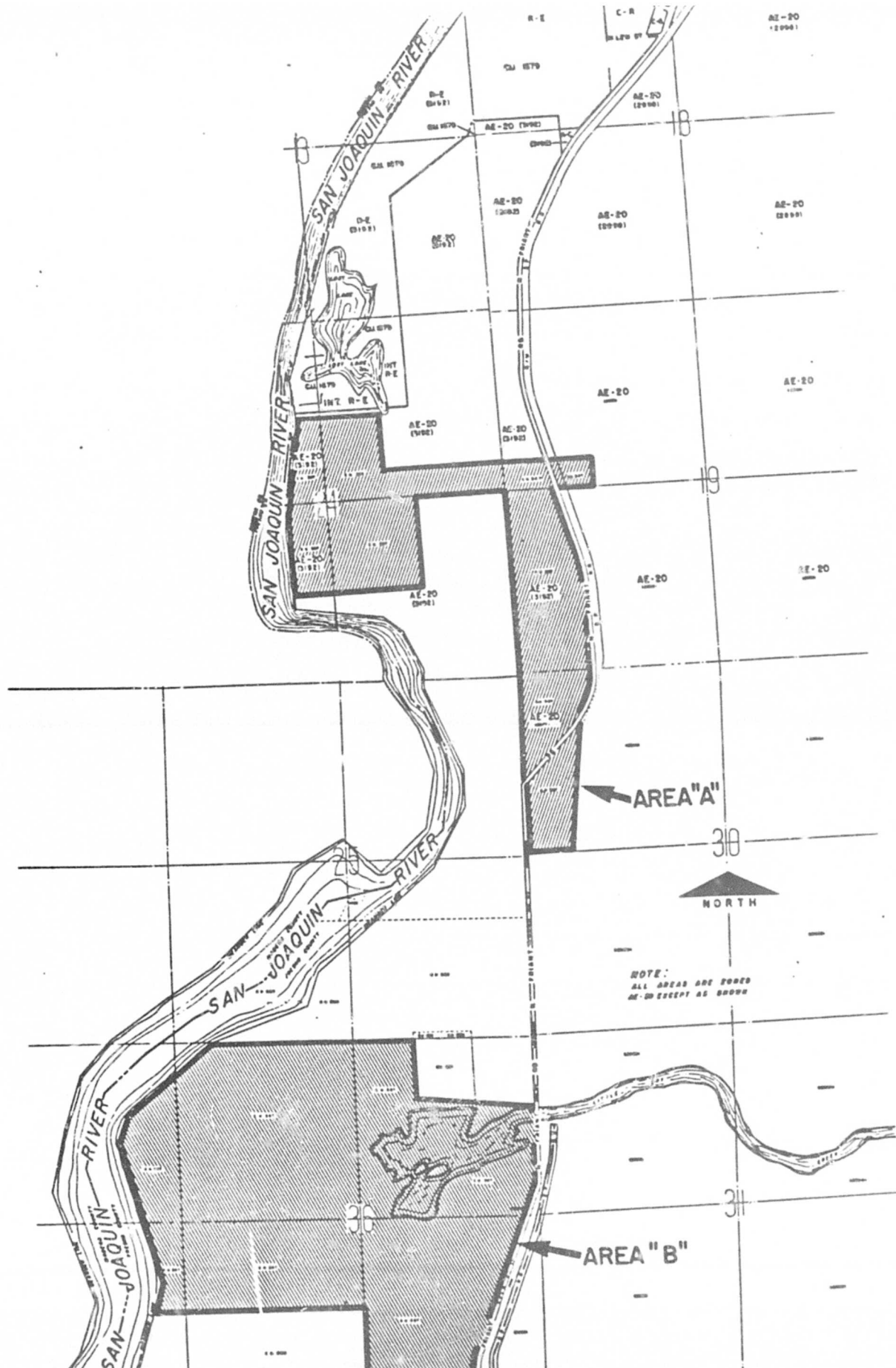
Ordinance Section 859-E

2. Security, as herein specified, shall be deposited by the operator of a permanent material extraction site in the event any phase of the rehabilitation plan is not completed in accordance with the approved permit, and upon notification of the amount of security by the Director. Pending the deposit of security, the operator shall not conduct any further activity on or from the premises. Said security shall be in the form of cash deposited by the operator with the County or in an approved irrevocable escrow or its equivalent and shall be in an amount determined by the Director equal to one hundred (100) percent of the total cost of completing the subject phase of rehabilitation. Said security may be partially released during the progress of rehabilitation as long as the same ratio is maintained on deposit for all completed work.
  
3. Where the rehabilitation work as to any phase is not completed within the time period set forth in the approved rehabilitation plan or as extended by the Director, the County may enter upon the operator's premises to perform said work and use said funds deposited as security to pay for the cost thereof. In the event the operator fails to complete rehabilitation work as required herein and has not deposited security as specified herein for the cost of rehabilitation work, the operator shall then be liable to the County for the cost of any rehabilitation work required to be performed by the County in accordance with the rehabilitation plan. Where the County is authorized to enter upon property to cause rehabilitation work to be done, the Conditional Use Permit may be revoked by the Board of Supervisors upon thirty (30) days written notice first being given to the operator.

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6. All material extraction sites in the County of Fresno are subject to a periodic inspection once every two years or such other period as required in a Conditional Use Permit to determine compliance with operational and rehabilitation plans.

The required periodic inspections shall not impair the County's right to perform additional on-site inspections as may be necessary and appropriate to ensure compliance of the requirements of the Conditional Use Permit or other provisions of law. The Board of Supervisors may adopt by resolution a schedule setting forth the fees that may be imposed for required periodic inspections.



AREA "A"



NOTE:  
ALL AREAS ARE ZONED  
AE-20 EXCEPT AS SHOWN

AREA "B"



November , 1960

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FRESNO COUNTY PLANNING COMMISSION

IN THE MATTER OF CONDITIONAL )  
USE PERMIT APPLICATION NO. 367 )  
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The matter of the application of Pacific Cement & Aggregates, Inc. for a Conditional Use Permit to excavate and process sand, gravel and crushed gravel, etc., (Conditional Use Application Permit No.367), upon the following described property, to-wit:

(DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF), under the provisions of County Zoning Ordinance No. 490, as amended, coming on regularly for hearing before this Board of Supervisors this 7th day of November, 1960, at the hour of 2:00 P. M.; and

It appearing that notice of said hearing has been given in accordance with law and the order of this Board, the Board hears all interested parties, and no one appearing to protest the granting of said application and no written protests having been received in connection therewith; and

It further appearing, after hearing all of the evidence adduced, that the recommendation of the Fresno County Planning Commission made in said matter should be adopted;

NOW, THEREFORE, upon motion of Supervisor McCormick, seconded by Supervisor Olsen, and carried, IT IS ORDERED that the recommendation of the Fresno County Planning Commission be and the same hereby is adopted and the application of Pacific Cement & Aggregates, Inc. for a Conditional Use Permit to excavate and process sand, gravel and crushed gravel including washing-screening and grading facilities, batching plant and appurtenant facilities, upon the hereinabove described property be, and the same hereby is, granted, subject to the following conditions:

1. That the applicant and the owners of the subject property develop a plan for orderly development of the property by stages.
2. That a margin of land be provided on the periphery of the property sufficient to prevent hazard to abutting properties, subject to approval of the Fresno County Public Works Department.

November 1960

3. Southern and Western boundaries to be fenced except along the river.
4. Northern area approved, subject to examination of methods of operation at a future date.

AYES: Supervisors McCormick, Olsen, Malm, Foley

NOES: None

ABSENT: Supervisor Andreas

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NOV 22 1960

Fresno County Planning Commission

FRESNO COUNTY PLANNING COMMISSION  
Room 102 - Hall of Records Annex  
FRESNO, CALIFORNIA  
AM 8-6011

**October 20, 1960**

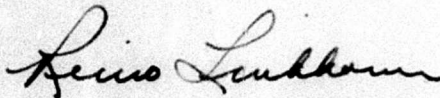
Board of Supervisors  
County of Fresno

Gentlemen:

Attached hereto is a copy of Resolution No. **2178** recording the action of the Fresno County Planning Commission in recommending approval of Conditional Use Permit No. **367** upon application of **Pacific Cement and Aggregates, Inc.**

In accordance with Section 873-E-4 of the Zoning Division of the Fresno County Ordinance Code final decision on this matter is the responsibility of the Board of Supervisors.

Sincerely,



REINO LIUKKONEN  
Director of Planning

RL: **ea**

Attach: Notices (6)  
Resolutions (6)  
Property List

cc: **Pacific Cement & Aggregates, Inc.**  
**John F. Gray, District Operator Manager**  
**P. O. Box 552**  
**Fresno, California**

FRESNO COUNTY PLANNING COMMISSION  
RESOLUTION NO. 2178

Conditional Use Permit Application No. 367 (Approved)

WHEREAS, the Fresno County Planning Commission did, on 22 September and 6 October 1960, conduct public hearings to consider the following application:

Applicant: Pacific Cement and Aggregates, Inc. Filed on: 16 August 1960

Request: Excavating and processing of sand, gravel and crushed gravel including washing-screening and grading facilities, batching plant and appurtenant facilities.

Location: Southern Pacific Railroad Rockfield Station between Pinedale and Friant

Property Description: See legal description attached hereto and made a part hereof.

Present Zoning: A-1 (Agricultural) District

and established existence of the following circumstances:

1. The application covers two sites totaling 300 acres on the San Joaquin River four miles south of Friant. The existing land use in the area is predominantly agricultural with five separate gravel removal operations and some recreational use of the river valley.
2. The applicant has been in operation at the site for several decades and expects to be in operation some 75 more years, based on estimated gravel resources. Existing development is confined to the southerly 530 acre parcel; the northerly site is to be developed concurrently only if demand outstrips the capacity of the existing plant. The removal of gravel requires a conditional use permit under both Ord. 322 and the present zoning code. The staff explained the removal of gravel itself is a nonconforming right but the augmentation of the physical plant necessitates a conditional use permit for the entire operation.
3. The staff reported a plan of future reuse of the property is required for a conditional use permit; while no plan has been submitted by the applicant, the necessity of preserving the San Joaquin River valley for future reuse is evident because it is one of the few recreational and scenic resources immediately available to the Fresno metropolitan area. The County Public Works Department also requested such a plan to prevent development of wasteland. The staff suggested that redevelopment plans be required as a condition for the permit.
4. Representatives of the applicant further reviewed the existing and proposed operation. Two abutting owners complained about existing steep cuts adjacent to their property lines and a third expressed concern about ultimate development of the gravel site adjacent to his property.

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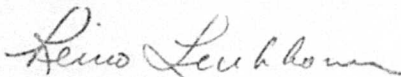
5. The Commission determined that a field trip would be necessary to more adequately assess the problems and possible solutions and the hearing was continued to October 6, 1960.
6. At the October 6 hearing, following the Commission's field trip to the P.C.A. property, the Commission again discussed the need for controls assuring future redevelopment of the property. The owners of the property asserted they intended to reclaim the land for farming but did not wish to be legally committed to such action. The applicant and owners also protested the expense entailed when similar operators along the San Joaquin River were not yet required to observe the same conditions. After considerable discussion, the Commission determined the applicant and the property owners should work with the planning staff and the permit should be approved subject to the drafting of the necessary agreements and redevelopment plans.

NOW, THEREFORE, BE IT RESOLVED that Conditional Use Permit Application No. 367 be recommended for approval by the Board of Supervisors, subject to the following conditions:

1. That the applicant and the owners of the subject property develop a plan for orderly development of the property by stages.
2. That a margin of land be provided on the periphery of the property sufficient to prevent hazard to abutting properties, subject to approval of the Fresno County Public Works Department.
3. That a written agreement be evolved fixing the responsibility for redevelopment of the property for future use.

The foregoing resolution was approved by the Fresno County Planning Commission upon motion by Commissioner Mann, seconded by Commissioner McNulty.

VOTING: YES: Commissioners Mann, McNulty, Forkner, Preuss  
NO: None  
Absent: Commissioners Barr, Mar, O'Neal

  
REINO LIUKKONEN  
Director of Planning-Secretary  
Fresno County Planning Commission

DATED: 6 October 1960  
RES: 2178  
CU: 367  
JS:ea:seb

COPY

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7  
Agreement 84-547  
(U 367)  
See also  
17/10 film file

COMPROMISE, SETTLEMENT AND MUTUAL RELEASE

This Agreement is entered into this 8th day of January, 1985, at Fresno, California, by and between LONE STAR INDUSTRIES, INC., a corporation ("Lone Star") and the COUNTY OF FRESNO ("County").

Lone Star has filed suit (the "Suit") and is pursuing the same against County in the Superior Court of the State of California in and for the County of Fresno, Action No. 311755-3. Subject to the following terms and conditions, Lone Star and County (the "Parties") now desire to, and hereby do, enter into a complete settlement of the Suit and release each other from any and all liability arising from said Suit and the facts pleaded therein.

NOW, THEREFORE, the parties agree as follows:

1. Lone Star is a corporation organized under the laws of the State of Delaware, authorized to do business and doing business in the State of California.
2. County is a political subdivision of the State of California, created and existing under and by virtue of the laws of the State of California.
3. Lone Star operates a sand, gravel and related materials extraction and processing business in the County of Fresno, which business is known as "Rockfield." Lone Star owns a portion of the real property upon which the business is operated and it leases the balance. Rockfield

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has been in use since approximately 1924 and consists of sand and gravel quarries and a processing facility.

4. Among other permits issued to Lone Star by the County is a certain use permit numbered 367 (the "Use Permit") which permit applies to five (5) parcels of real property at Rockfield, which parcels are more particularly described in the Use Permit (a copy of which is attached hereto, marked as Exhibit 1 and incorporated herein by reference). The parcels are identified as being parcels A, B, E, F and G. Lone Star's processing facilities are located on parcels A and B (the "Southern Parcels"). Lone Star has extracted sand and gravel from the Southern Parcels and now desires to extract sand and gravel from parcels E, F and G (the "Northern Parcels").

5. The Suit was filed because a dispute had arisen between Lone Star and County over whether or not the Use Permit was valid and subsisting or had been terminated by operation of law. Conditioned upon the satisfaction of all of the terms and conditions set forth in paragraph 6 infra, County agrees that the Use Permit has not been terminated, is valid and subsisting and that Lone Star may therefor continue its operations now underway on the Southern Parcels and as permitted in the Use Permit and may commence extraction operations on the Northern Parcels.

6. County has requested that Lone Star limit and condition its use under the Use Permit as provided in

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Exhibit 2 attached hereto and incorporated herein (the "Conditions") and that such Conditions be deemed to be part of the Use Permit as though made by amendment thereto. The Conditions require the execution of a recordable agreement between the Parties, the possible dedication of right of way, and plan submittals by Lone Star to the County; the completion of such requirements and the approval by County thereof is a condition subsequent to the effectiveness of this Agreement. Subject to such condition subsequent, Lone Star hereby agrees to the County's request and Conditions and specifically agrees to be bound by them and further agrees that Use Permit 367 shall be deemed amended by such Conditions.

Should the condition subsequent not be timely satisfied, this Agreement shall be of no further force and effect and Lone Star may pursue the Suit. Prior to any such failure of the condition subsequent, if at all, all applicable statutes of limitation including, without limitation, Code of Civil Procedure § 583, shall be tolled.

The condition subsequent shall be satisfied, if at all, within ninety days from the date hereof or such later date as the Parties may agree to in writing.

Notwithstanding the above, the Parties hereto will use all due diligence to accomplish the satisfaction of the condition subsequent.



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7. Upon the satisfaction of the condition subsequent described in paragraph 6 above, Lone Star shall dismiss the Suit and each side shall bear its own costs.

8. Subject to the terms and conditions hereinabove stated, each of the parties hereto, on behalf of itself, its agents, successors and assigns fully releases and discharges the other party and its agents, successors, and assigns from all rights, claims and actions which each may have against the other arising out of the Suit and the facts therein pleaded.

9. This Agreement is a compromise of the above-mentioned Suit and shall never be treated as an admission of liability by either party for any purpose.

10. Upon satisfaction of the condition subsequent, this Agreement shall be a full settlement of the Suit and it shall act as a release of future claims which might otherwise arise from the Suit and the dispute therein described, whether such claims are currently known, unknown, foreseen or unforeseen and notwithstanding Section 1542 of the California Civil Code. Section 1542 provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

The Parties understand and acknowledge the significance and consequence of the specific waiver of

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Section 1542 and hereby assume full responsibility for any damages, losses or liability that they may hereafter incur from the matters described in and underlying the Suit.

This Agreement is hereby executed as of the day and date above specified.

LONE STAR INDUSTRIES, INC.

By Ronald L. Blick  
Ronald L. Blick  
Regional President

COUNTY OF FRESNO

By Adrian Padua  
CHAIRMAN, BOARD OF SUPERVISORS

Approved as to Form:

PILLSBURY, MADISON & SUTRO

By Thomas P. O'Donnell  
THOMAS P. O'DONNELL

Approved as to Form:

FRESNO COUNTY COUNSEL

By Thomas J. [Signature]

ATTEST:

DARLENE BLOOM, Clerk to  
the Board of Supervisors

By Arline Kiepa  
Deputy

Approved as to Accounting Form:  
GARY W. PETERSON,  
AUDITOR-CONTROLLER/TREASURER

By [Signature]  
ASSOCIATE AUDITOR-CONTROLLER

85092829

## UNCLASSIFIED CONDITIONAL USE PERMIT NO. 367

## Conditions for Area "A"

1. Extraction operations shall be allowed for a maximum of 20 years from the date extraction commences pursuant to Conditional Use Permit No. 367 (as modified hereby) or Conditional Use Permit No. 2032 whichever commences first.
2. Excavation operations shall be limited to weekdays during the hours of 7:00 a.m. to 6:00 p.m., except that within a 700-foot radius of the southwest corner of APN 300-310-17, the hours of operation shall be 7:00 a.m. to 4:30 p.m. Routine maintenance of excavation equipment shall be allowed Monday through Sunday limited to the hours of 7:00 a.m. to 8:00 p.m.
3. No extraction shall be allowed east of Friant Road.
4. All extraction operations, including stockpiling, shall be set back a minimum of 200 feet from the existing San Joaquin River Channel. Riparian vegetation within 200 feet of said Channel shall not be disturbed.
5. Any areas of significant riparian vegetation within the site and not within said 200 foot river setback shall be preserved until sand and gravel excavation requires removal or destruction.
6. A berm shall be construed between the 310-foot and 320-foot contour lines on the north property line adjoining Lost Lake Park.
7. A 50-foot wide setback shall be provided from the Friant Road right-of-way line which will be established by the Site Plan Review. A berm and/or landscaping consisting of trees and shrubs shall be provided within the setback area to effectively screen the extraction site from Friant Road. The Director of the Resources and Development Department may allow the width of the berm or landscaped area to be less than 50 feet if effective screening can be demonstrated. The berm and/or landscaping shall be completed within six months from the date excavation commences pursuant to Conditional Use Permit No. 2032 or Conditional Use Permit No. 367 (as modified hereby).
8. A single, two-way driveway access shall be allowed on Friant Road at a point approximately 1,400 feet north of the south boundary of Section 19. The connection to

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Friant Road shall be designed with a free right-turn minimum design radius of 30 mph.

9. A 150-foot, left-turn storage lane shall be constructed on Friant Road at the entrance to the extraction site.
10. A 2,500-foot acceleration lane, 14 feet in width, shall be constructed on Friant Road to accommodate trucks leaving the extraction site. The existing five-foot wide southbound bike lane shall be relocated and separated from the acceleration lane by a distance of ten feet to the west.

Note: Approximately 1,000 feet of the acceleration lane may be on-site.

11. Additional right-of-way for Friant Road shall be dedicated to the County as determined by the Site Plan Review approval.
12. Stockpiling of material shall not be allowed within 200 feet of Friant Road or that portion of the north property line adjoining Lost Lake Park unless Permittee screens any such closer stockpiling with approved landscaping so that it is not visible from Friant Road and the north property line of Lost Lake Park.
13. A dust palliative shall be applied to all haul roads as frequently as necessary to control dust. Dust palliatives may include road oil, water, magnesium chloride, or other proven materials.
14. The use shall be operated in compliance with the requirements of the Fresno County Air Pollution Control District.
15. The use shall be operated in such a manner as to avoid creating a dust or noise nuisance.
16. The Permittee shall allow the County Staff to periodically monitor the proposed use to assure all applicable standards of the General Plan Noise Element and the Noise Ordinance are being met. A recordable agreement allowing for this monitoring must be executed before excavation authorized by this permit is begun. Cost of this periodic monitoring shall be at the expense of the Permittee.
17. A drip irrigation system or its equivalent approved by the Director of the Resources and Development Department shall be provided to ensure maintenance of all landscaping.

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18. A detailed rehabilitation plan shall be submitted prior to excavation. The plan shall specify proposed phasing and show the number of lakes and islands, and proposed final slopes, contours, and landscaping of the site. Final slopes above the seasonal lowest water line shall be 3:1 or flatter, and contouring shall provide an appearance consistent with the surrounding area. Landscaping shall be designed by an architect or landscape architect and shall include riparian-type species.
19. Each phase must be rehabilitated in accordance with the rehabilitation plan within one year after initiation of the subsequent phase. The berm on the north property line shall be retained until rehabilitation of entire site is completed.
20. The transport of material shall be conducted in a manner so as to avoid spillage on County roads. If spillage does occur, the Permittee shall provide for removal of sand and gravel from the roadway between the extraction site access road and the plant site as frequently as needed. A cash deposit shall be maintained in an amount of \$1,000 to allow the County to remove sand and gravel if corrective action is not taken by the operator within 24 hours of notification by the County.
21. All water bodies shall be designed to avoid stagnant water or shall be improved with appropriate circulation systems.
22. An archaeological survey shall be conducted prior to excavation.
23. All equipment shall be equipped with mufflers to minimize noise generation.
24. Prior to excavation, a Site Plan Review Application shall have been submitted to and approved by the Director of Resources and Development pursuant to Section 874 of the Zoning Ordinance.
25. Structural design of all improved public roads shall be in accordance with County standards and approved by the Director of Public Works.
26. The perimeter of the site shall be enclosed with a barbwire fence and maintained in good condition.

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NOTES:

1. The proposed use is also subject to the mandatory conditions and standards of Zoning Ordinance Section 858 as specified on the attachment.
2. Discharge of water into the San Joaquin River shall be subject to a permit from the California Regional Water Quality Control Board.

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## ATTACHMENT

Unclassified Conditional Use Permit Application No. 367

Applicable standards and conditions of zoning  
Ordinance Section 858-C and F:

## 858-C:

1. No extraction of material or overburden shall be permitted within twenty-five (25) feet of any property boundary nor within fifty (50) feet of a boundary contiguous with a public road right-of-way or recorded residential subdivision.
2. No stockpiled soil or material shall be placed closer than twenty-five (25) feet from a property boundary.
3. No production from an open pit shall create a slope steeper than 2:1 within fifty (50) feet of a property boundary nor steeper than 1-1/2:1 elsewhere on the property, except steeper slopes may be created in the conduct of extraction for limited periods of time prior to grading the slope to its rehabilitation configuration, and slopes of 1:1 may be maintained five (5) feet below the lowest water table on the property experienced in the preceding three (3) years.
4. The first one hundred (100) feet of access road(s) intersecting with a County-maintained road shall be surfaced in a manner approved by the Board and shall not exceed a two (2) percent grade and shall have a width of not less than twenty-four (24) feet.
7. Traffic control and warning signs shall be installed as required by the Commission at the intersection of all private roads with public roads. The placement, size, and wording of these signs shall be approved by the Fresno County Department of Public Works.
8. Security fencing four (4) feet in height consisting of not less than three (3) strands of barbwire, or an approved equivalent, shall be placed along any property line abutting a public right-of-way and around any extraction area where slopes steeper than two (2) feet horizontal to one (1) foot vertical are maintained. Such interior fencing will not be required where exterior fencing surrounds the property.
19. The operator shall comply with all existing and future laws, ordinances, regulations, orders, and decrees of bodies or tribunals.

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- 22b. Sufficient topsoil shall be saved to perform site rehabilitation in accordance with the rehabilitation plan.
- 22c. All reasonable and practical measures shall be taken to protect the habitat of wildlife.
- 22d. Temporary stream or watershed diversion shall be restored.



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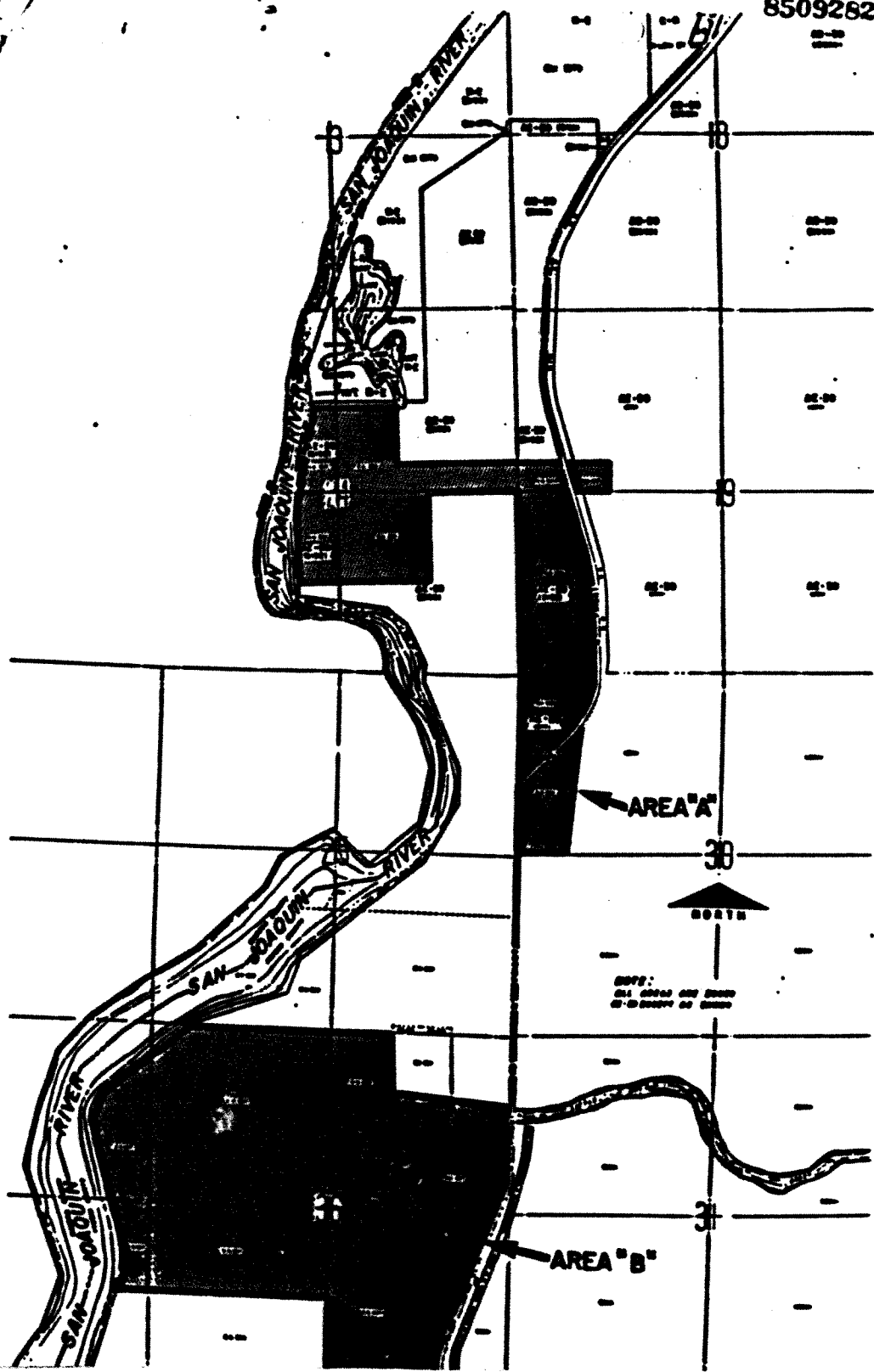
2. Security, as herein specified, shall be deposited by the operator of a permanent material extraction site in the event any phase of the rehabilitation plan is not completed in accordance with the approved permit, and upon notification of the amount of security by the Director. Pending the deposit of security, the operator shall not conduct any further activity on or from the premises. Said security shall be in the form of cash deposited by the operator with the County or in an approved irrevocable escrow or its equivalent and shall be in an amount determined by the Director equal to one hundred (100) percent of the total cost of completing the subject phase of rehabilitation. Said security may be partially released during the progress of rehabilitation as long as the same ratio is maintained on deposit for all completed work.
3. Where the rehabilitation work as to any phase is not completed within the time period set forth in the approved rehabilitation plan or as extended by the Director, the County may enter upon the operator's premises to perform said work and use said funds deposited as security to pay for the cost thereof. In the event the operator fails to complete rehabilitation work as required herein and has not deposited security as specified herein for the cost of rehabilitation work, the operator shall then be liable to the County for the cost of any rehabilitation work required to be performed by the County in accordance with the rehabilitation plan. Where the County is authorized to enter upon property to cause rehabilitation work to be done, the Conditional Use Permit may be revoked by the Board of Supervisors upon thirty (30) days written notice first being given to the operator.
4. Prior to the excavation of any material, the operator of each parcel shall execute a recordable agreement, binding upon his successors or assigns, covenanting to perform all rehabilitation in the manner prescribed by the approved Conditional Use Permit. Said person shall agree to pay all court costs, attorney fees, and interest at the legal rate from the date in which such costs have been incurred and further shall waive any and all defenses, legal or equitable, if an action at law is instituted to enforce the provisions of said agreement. The owner shall execute a recordable agreement, binding upon his successors, or assigns, which shall permit the County to enter upon the property to enforce completion of the rehabilitation plan.

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6. All material extraction sites in the County of Fresno are subject to a periodic inspection once every two years or such other period as required in a Conditional Use Permit to determine compliance with operational and rehabilitation plans.

The required periodic inspections shall not impair the County's right to perform additional on-site inspections as may be necessary and appropriate to ensure compliance of the requirements of the Conditional Use Permit or other provisions of law. The Board of Supervisors may adopt by resolution a schedule setting forth the fees that may be imposed for required periodic inspections.

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UNCLASSIFIED CONDITIONAL USE PERMIT NO. 367

Conditions for Area "B"

1. The processing plant operation shall be discontinued upon completion of material extraction allowed pursuant to Conditional Use Permit No. 2032, Conditional Use Permit No. 367 or upon the twentieth (20th) anniversary of the date of County approval of these Conditions, whichever occurs last. In no event shall the life of the operation exceed 20 years.
2. All operations shall be limited to weekdays during the hours of 6:00 a.m. to 6:00 p.m. except that in the event of any emergency as determined by any governmental body or agency, excavation and processing may proceed as needed notwithstanding the aforesaid.
3. Except for the main sand pile, the height of material stockpiles shall not exceed 25 feet unless the Permittee is able to satisfy County that it will plant landscaping which will, within five (5) years of planting, effectively screen such stockpiles from view from Friant Road.
4. Landscaping consisting of riparian-type trees shall be provided along the frontage of Friant Road and Birkhead Avenue to effectively screen the view of the plant and the stockpiles from the highway user within five years. A landscape plan shall be prepared by an architect or landscape architect and shall be submitted within 90 days of the date of this agreement. The landscaping shall be completed within six months of the approval of the plan.
5. A dust palliative shall be applied to all internal circulation roads as frequently as necessary to control dust. Dust palliatives may include road oil, water, magnesium chloride, or other proven materials.
6. The use shall be operated in compliance with the requirements of the Fresno County Air Pollution Control District.
7. The use shall be operated in such a manner as to avoid creating a dust or noise nuisance.
8. The Permittee shall allow the County Staff to periodically monitor the proposed use to assure all applicable standards of the General Plan Noise Element and the Noise Ordinance are being met. A recordable agreement allowing for this monitoring must be executed before excavation authorized by this permit is begun. Cost of this periodic monitoring shall be at the expense of the Permittee.

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9. A drip irrigation system or surface ditch irrigation system or their equivalent approved by the Director of the Resources and Development Department shall be provided to ensure maintenance of all landscaping.
10. Within 90 days of the date of approval of this agreement, a Site Plan Review Application shall have been submitted to the Director of Resources and Development pursuant to Section 874 of the Zoning Ordinance.
11. A detailed rehabilitation plan shall be submitted as part of the required Site Plan Review. The plan shall show the number of lakes and islands, and proposed final slopes, contours, and landscaping of the site. Slopes shall be rounded and contoured to provide an appearance consistent with the surrounding area. The rehabilitation work shall be done in such a way as to preserve existing riparian vegetation. All rehabilitation work in areas where mining activity has been completed shall be finished within one year of the date of plan approval.
12. Subject to the approval of the Director of Development, Permittee shall take such corrective measures as may be necessary, if at all, to eliminate any stagnant water conditions in any existing or proposed ponds created or to be created by Permittee.
13. The perimeter of the site shall be enclosed with a barbwire fence and maintained in good condition.
14. Structural design of all improved public roads shall be in accordance with County standards and approved by the Director of Public Works.
15. Road improvements shall be made by Permittee in accordance with the schematic plan attached hereto and marked as Exhibit A. In no event shall Permittee be required to expend more than \$50,000 on such improvements.

Notes:

1. The proposed use is also subject to the mandatory conditions and standards of Zoning Ordinance Section 858 as specified on the attachment.
2. Discharge of water into the San Joaquin River shall be subject to a permit from the California Regional Water Quality Control Board.

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ATTACHMENT

Unclassified Conditional Use Permit Application No. 367

Applicable standards and conditions of Zoning Ordinance Section 858-C and E

858-C:

1. No extraction of material or overburden shall be permitted within twenty-five (25) feet of any property boundary nor within fifty (50) feet of a boundary contiguous with a public road right-of-way or recorded residential subdivision.
2. No stockpiled soil or material shall be placed closer than twenty-five (25) feet from a property boundary.
3. No production from an open pit shall create a slope steeper than 2:1 within fifty (50) feet of a property boundary nor steeper than 1-1/2:1 elsewhere on the property, except steeper slopes may be created in the conduct of extraction for limited periods of time prior to grading the slope to its rehabilitation configuration, and slopes of 1:1 may be maintained five (5) feet below the lowest water table on the property experienced in the preceding three (3) years.
4. The first one hundred (100) feet of access road(s) intersecting with a County-maintained road shall be surfaced in a manner approved by the Board and shall not exceed a two (2) percent grade and shall have a width of not less than twenty-four (24) feet.
7. Traffic control and warning signs shall be installed as required by the Commission at the intersection of all private roads with public roads. The placement, size, and wording of these signs shall be approved by the Fresno County Department of Public Works.
8. Security fencing four (4) feet in height consisting of not less than three (3) strands of barbwire, or an approved equivalent, shall be placed along any property line abutting a public right-of-way and around any extraction area where slopes steeper than two (2) feet horizontal to one (1) foot vertical are maintained. Such interior fencing will not be required where exterior fencing surrounds the property.
19. The operator shall comply with all existing and future laws, ordinances, regulations, orders, and decrees of bodies or tribunals.

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- 22b. Sufficient topsoil shall be saved to perform site rehabilitation in accordance with the rehabilitation plan.
- 22c. All reasonable and practical measures shall be taken to protect the habitat of wildlife.
- 22d. Temporary stream or watershed diversion shall be restored.

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ATTACHMENT

Unclassified Conditional Use Permit Application No. 367

Applicable standards and conditions of Zoning

Ordinance Section 858-E

2. Security, as herein specified, shall be deposited by the operator of a permanent material extraction site in the event any phase of the rehabilitation plan is not completed in accordance with the approved permit, and upon notification of the amount of security by the Director. Pending the deposit of security, the operator shall not conduct any further activity on or from the premises. Said security shall be in the form of cash deposited by the operator with the County or in an approved irrevocable escrow or its equivalent and shall be in an amount determined by the Director equal to one hundred (100) percent of the total cost of completing the subject phase of rehabilitation. Said security may be partially released during the progress of rehabilitation as long as the same ratio is maintained on deposit for all completed work.
  
3. Where the rehabilitation work as to any phase is not completed within the time period set forth in the approved rehabilitation plan or as extended by the Director, the County may enter upon the operator's premises to perform said work and use said funds deposited as security to pay for the cost thereof. In the event the operator fails to complete rehabilitation work as required herein and has not deposited security as specified herein for the cost of rehabilitation work, the operator shall then be liable to the County for the cost of any rehabilitation work required to be performed by the County in accordance with the rehabilitation plan. Where the County is authorized to enter upon property to cause rehabilitation work to be done, the Conditional Use Permit may be revoked by the Board of Supervisors upon thirty (30) days written notice first being given to the operator.

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6. All material extraction sites in the County of Fresno are subject to a periodic inspection once every two years or such other period as required in a Conditional Use Permit to determine compliance with operational and rehabilitation plans.

The required periodic inspections shall not impair the County's right to perform additional on-site inspections as may be necessary and appropriate to ensure compliance of the requirements of the Conditional Use Permit or other provisions of law. The Board of Supervisors may adopt by resolution a schedule setting forth the fees that may be imposed for required periodic inspections.