

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (this "Agreement") is made as of the Effective Date (herein defined) by and among the BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF SANDOVAL, a political subdivision of the State of New Mexico (the "County"); LAFARGE NORTH AMERICA INC., a Maryland corporation, LAFARGE WEST, INC., a Delaware corporation, LAFARGE SOUTHWEST, INC., a New Mexico corporation (collectively, "Lafarge"); VULCAN MATERIALS COMPANY, a New Jersey corporation ("Vulcan"); CALMAT CO., a Delaware corporation ("CalMat"); MT. ADAMS HOLDINGS, LLC, a Washington limited liability company ("Mt. Adams"), EASTERN SANDOVAL CITIZENS ASSOCIATION, INC., a New Mexico non-profit corporation ("ESCA"); RICHARD ULMER, an individual ("Ulmer"); and STEPHEN VAUGHAN, an individual ("Vaughan"); (the foregoing parties are sometimes referred to individually as a "Party" and collectively as the "Parties" with the understanding that Party and Parties shall include each of the Party's assigns and/or successor in interest).

RECITALS

A. The Parties are parties to that certain lawsuit in the Thirteenth Judicial District Court, County of Sandoval, State of New Mexico (the "Court"), which lawsuit is captioned Board of County Commissioners v. Lafarge North America, et al., Case No. D-1329-CV-2014-00589 (the "Lawsuit"); and

B. The County has filed its First Amended Verified Complaint to Abate Zoning Ordinance Violation, which, together with its previously filed Verified Complaint to Abate Zoning Ordinance Violation are herein collectively referred to as the "Complaint", against Lafarge, Mt. Adams, CalMat and Vulcan (M.T. Investments was dismissed) related to sand and gravel mining operations conducted by Lafarge and most recently CalMat within the mining limits indicated on certain real property as more particularly shown on EXHIBIT A attached hereto (the "Property") located in Sandoval County, New Mexico, and owned by Mt. Adams; and

C. CalMat is presently conducting the sand and gravel mining operation on the Property; and

D. The County, in its Complaint, alleges that the sand and gravel mining business on the Property has failed to operate in compliance with a January 11, 1988, Non-Conforming Use Certificate ("1988 Certificate") issued by the Bernalillo Extraterritorial Commission; and

E. Lafarge, Vulcan, CalMat, and Mt. Adams deny that the 1988 Certificate is still in effect because it was superseded by the subsequent November 3, 2008 Certificate, grandfathering the sand and gravel operation, and, in any event, deny the County's allegations regarding non-compliance with the 1988 Certificate by the sand and gravel mining business on the Property; and,

F. Pursuant to an Order Allowing Intervention granted by Judge Cindy Mercer, filed with the District Court Clerk on August 11, 2016, Vaughan, Ulmer and ESCA were allowed to intervene in the Lawsuit; and,

G. The Parties wish to settle any and all issues and claims arising from the Lawsuit and memorialize the rights and responsibilities of the Parties with respect to the Property, upon the terms set forth in this Agreement.

NOW, THEREFORE, for the consideration set forth herein, the receipt, sufficiency, and fairness of which are hereby acknowledged, the Parties AGREE as follows:

1. Settlement Terms:

- a. Within five (5) days of the Effective Date, as hereinafter defined, the Parties will jointly seek and obtain a Final Decree dismissing, with prejudice, the claims set forth in the Complaint, but retaining jurisdiction for the sole purpose of enforcing the provisions of this Settlement Agreement, which shall be attached, as an exhibit, to the Final Decree.
- b. Mining¹ may be phased as CalMat deems appropriate, but all Mining, which shall be conducted in Reclamation Areas shown on EXHIBIT B within the mining limits shown on EXHIBIT A, will cease on the Property and each of the following areas of the Property shall be reclaimed pursuant to the following schedule:
 - i. Reclamation Areas 1 and 2: Mining and reclamation in Reclamation Areas 1 and 2 completed within six (6) years following the Effective Date, including the relatively small area extending beyond the mining limit line. Note the irregular shaped incursion into Reclamation Area 1, which reflects the location of a power tower which will not be disturbed.
 - ii. Reclamation Area 3 and 4: All mining in Reclamation Areas 3 and 4 completed within nine (9) years and reclamation in these areas completed within nine (9) years and nine (9) months following the Effective Date. Note the thin rectangular incursion into Reclamation Area 3, which reflects the location of a power tower which will not be disturbed and reclamation shall include the arroyo area shown between Reclamation Areas 1 and 2 on the west and Reclamation Areas 3 and 4 on the east (the "Arroyo Area"), if and to the extent disturbed during Mining operations.

The four "Areas" referenced above to be reclaimed within the timeframes set forth above (as to each the "Reclamation Period," and collectively the "Reclamation Periods") are shown on the map, attached as EXHIBIT B to this Agreement and incorporated by reference.

¹ "Mining" means the right to mine, quarry, excavate, remove, process, transport, sell and distribute sand, gravel, rock, aggregates, and other natural materials which are ordinarily and customarily used as building materials.

With the possible exception of the Arroyo Area, those areas within the Property but outside of depicted Reclamation Areas 1, 2, 3, and 4 have not been disturbed and will not be intentionally disturbed for Mining purposes ("Non-Disturbed Areas"). If at any point in time in the future any land within the Non-Disturbed Areas is disturbed, such area will be reclaimed within the time frame of the Reclamation Area to which it is most proximate. It is agreed and understood that all areas within the Property will be reclaimed no later than nine (9) years and nine (9) months following the Effective Date whether within or without a depicted Reclamation Area.

- c. CalMat will certify to the County at the end of each of the Reclamation Periods (Areas 1 and 2 and Areas 3 and 4), set forth above, that Reclamation in the Area for which reclamation was to be completed, has been completed in accordance with the reclamation work ("Reclamation") described in attached **EXHIBIT C** (the "Reclamation Plan") and in accordance with the Sandoval County Zoning reclamation requirements in effect as of the Effective Date.
- d. County employee representatives with a need or right to know shall be entitled to access to the Property, at any time, upon 48 hours advance written notice to CalMat to confirm the status of the Reclamation. However, in October of each year during the term of this Settlement Agreement, upon request of the County, representatives of CalMat, and the County shall meet in person to discuss the status of the Reclamation and plans for the completion thereof, during which CalMat will provide the County written materials on the status of the Reclamation and plans for the completion thereof. Mt. Adams may, at its option, have its representative(s) attend any such County requested meeting, and the County shall, following any such meeting, provide ESCA, Ulmer and Vaughan, for information purposes only, copies of written materials on the status of the Reclamation and plans for the completion thereof prepared by CalMat for the meeting.
- e. In the event that Reclamation, which CalMat has certified as complete, has not been accomplished in accordance with the Reclamation Plan and the County requirements, the County may seek specific performance against CalMat to force compliance, which compliance must be accomplished at CalMat's cost.
- f. In the event that Reclamation has not been accomplished in a timely fashion pursuant to the schedule set forth herein, CalMat agrees to pay to the County \$300 per day for each day beyond the Reclamation schedule required to complete the Reclamation in each Reclamation Area.
- g. In the event the County is successful in establishing that the Reclamation has not been completed as agreed or that the Reclamation is not timely, the County shall be entitled to recover its reasonable attorney's fees and out-of-pocket costs in establishing non-compliance and/or non-timely compliance.

- h. When CalMat's Mining approaches the northeast mining limits line of Reclamation Area 3, as shown on Exhibit B to this Agreement, CalMat agrees not to mine in the buffer area shown on Exhibit B as the area between the red mining limits line and the parallel blue line within Reclamation Area 3 (the "Buffer Area"). The Buffer Area is approximately one hundred feet (100') wide and separates the sand and gravel mining operation from the mining limit. A berm or berms will be constructed within the Buffer Area along, and parallel to, the blue line as required by the United States Department of Labor, Mine Safety and Health Administration, or as determined by CalMat to be reasonable or necessary. The berm(s) shall be maintained at approximately ten feet (10') in height. The area between the berm and the mining limits line will remain as open space, except that an unpaved road will be constructed within the area, so that pickup trucks or comparable vehicles can access the area, from time to time, for safety and security inspections and to ensure that the integrity of the berm is maintained. Larger equipment necessary for the construction, maintenance and repair of the berm also will be permitted access to the Buffer Area as necessary. There will also be inspections for housekeeping issues such as trash dumping, etc., with appropriate cleanup, if and as necessary.
- i. CalMat may not place and operate a crushing and screening plant in Reclamation Area 3 comparable to the plant CalMat is operating in Reclamation Area 2 as of the Effective Date, with the understanding that CalMat may otherwise operate and use all equipment and vehicles necessary or desirable to conduct Mining and reclamation in Reclamation Area 3, including, but not limited to, loaders, dozers, feed hoppers, grizzly screens, and conveyors, none of which, individually or collectively, shall constitute a plant. The limitations set forth in the preceding sentence on CalMat's ability to place and operate a crushing and screening plant in Reclamation Area 3 do not apply to Reclamation Areas 1, 2 and 4. A crushing and screening plant may not be located in Reclamation Areas 1 and 2, after said areas have been reclaimed.

2. **Full and Complete Settlement:** This binding agreement specifies the obligations of the Parties and constitutes full and complete settlement and release of any and all claims between the Parties related to the subject matter of the Lawsuit.

3. **Memorandum of Final Decree.** A Memorandum of Final Decree, in the form attached as **EXHIBIT D** to this Agreement, shall be recorded in the Office of the County Clerk of Sandoval County upon issuance of the Final Decree.

4. **Representations:**

- a. The Parties represent, warrant, and acknowledge to each other that they have not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or portion of the claims set forth in the Lawsuit.
- b. The Parties agree that this Agreement may be entered into evidence in any subsequent proceeding in which either Party alleges a breach of this Agreement or

is required to be produced pursuant to legal process or court order or as required by state law.

- c. The Parties acknowledge that: they have had an opportunity to be represented by an attorney of their own choice throughout all of the negotiations preceding the execution of this Agreement; they have been involved in the drafts of the Agreement; they have read this Agreement in its entirety; they have had the opportunity to have the provisions of the Agreement explained to them by their own attorney; they understand the terms of this Agreement; they are not relying on the statements or representations of a Party or of any third party(ies); they voluntarily assent to all terms and conditions contained herein; and they are signing the Agreement of their own free will and voluntarily. This Agreement and its attachments represent the complete terms and conditions of the settlement reached among the Parties, it being agreed that all prior discussions, negotiations, statements and other information are merged into and replaced by this Agreement.
 - d. Each Party that is a governmental or business entity is duly organized and validly existing under the laws of the state in which it is organized as stated above.
 - e. The execution and delivery of this Agreement by each Party and the performance by each Party of its obligations hereunder and the consummation of this Agreement has been duly authorized.
5. **Binding Agreement:** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, predecessors, successors and/or assigns. The Parties agree to execute such other and further documents reasonably necessary to carry out the intent of this Agreement.
6. **Entire Agreement:** This Agreement, the terms of which expressly include the Recitals and all exhibits to this Agreement, contains the entire agreement of settlement between the Parties, and it is agreed that all terms of this Agreement are contractual and not a mere recital.
7. **Governing Law; Jurisdiction; Venue; Attorney's Fees and Costs:** This Agreement shall be construed and enforced in accordance with New Mexico law. The Parties hereby voluntarily submit themselves to the jurisdiction of and consent to the venue of the state district court in Sandoval County or the federal court for the District of New Mexico for litigation of any dispute related to or arising from this Agreement. The Parties agree that in any dispute arising from this Agreement, the prevailing Party is entitled to recover reasonable attorney's fees and costs from the non-prevailing Party. Except as provided in the preceding sentence, the Parties each shall bear their respective attorney's fees and costs in this matter.
8. **Counterparts:** This Agreement may be executed in any number of counterparts, including facsimile and/or electronic counterparts, each of which, when so executed and delivered, shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument.

9. **Notice.** Notices to any Party hereunder shall be in writing and effective upon receipt (a) after being mailed by certified U.S. mail, prepaid, return receipt requested, (b) when personally delivered; or (c) after being sent for delivery by a nationally recognized commercial courier service which provides evidence of delivery. In each case, the notice shall be sent or delivered to the address stated below, directed to the attention of the office or person identified below for such Party, with a copy sent or delivered to such Party's attorney (if identified below) at the same time. A Party may change its address and/or addressees for notice by written notice to the other Parties. Notice received after 5 P.M. local time or on a Saturday, Sunday, state or federal holiday will be deemed to have been received the next business day:

<p>Board of County Commissioners of Sandoval County, New Mexico 1500 Idalia Road, Building D Bernalillo, New Mexico 87004-0040 Attn: Chairman of the Commission</p>	<p>With a copy to at the same address: Natalia Sanchez Downey Sandoval County Attorney</p> <p>With A Copy To: Marcus J. Rael, Jr. Robles, Rael & Anaya, P.C. 500 Marquette Ave. NW, Suite 700 Albuquerque, New Mexico 87102</p>
<p>Eastern Sandoval Citizens Association, Inc. P.O. Box 215 Placitas, New Mexico 87043 Attn: ES-CA President</p> <p>Eastern Sandoval Citizens Association, Inc. 5 Petroglyph Place Placitas, New Mexico 87043 Attn: Chairman, ES-Land Use Protection Trust</p>	<p>With a copy to: Floyd D. Wilson Myers, McCready & Myers PC 1401 Central Avenue NW, Suite B Albuquerque, New Mexico 87104</p>
<p>Richard Ulmer 5 Petroglyph Place Placitas, New Mexico 87043</p>	<p>With a copy to: Floyd D. Wilson Myers, McCready & Myers PC 1401 Central Avenue NW, Suite B Albuquerque, New Mexico 87104</p>
<p>Stephen Vaughan 1 White Mesa Trail Placitas, New Mexico 87043</p>	<p>With a copy to: Floyd D. Wilson Myers, McCready & Myers PC 1401 Central Avenue NW, Suite B Albuquerque, New Mexico 87104</p>

Attention: Legal Department	<p>And with a copy to: John Salazar Rodey, Dickason, Sloan, Akin & Robb, P.A. 201 Third Street NW, Suite 2200 Albuquerque, New Mexico 87102</p>
Vulcan Materials Company CalMat Company 1200 Urban Center Drive Birmingham Alabama 35242 Attention: General Counsel	<p>With a copy to: Mark F. Reardon Vice President and Assistant General Counsel Vulcan Materials Company 2526 East University Drive Phoenix, Arizona 85034</p> <p>And with a copy to: Gary J. Van Luchene Keleher & McLeod, P.A. 201 Third Street NW, 12th Floor Albuquerque, New Mexico 87102 Telephone: 505.346.4646</p>
Mt. Adams Holdings, LLC 2365 Carillon Point Kirkland, Washington 98033 Attention: Head of Real Estate	<p>With a copy at the same address to: Legal Counsel (Scott R. Vokey)</p> <p>And with a copy to: Richard Leverick Leverick & Musselman 5120 San Francisco Road NE Albuquerque, NM 87109</p>

10. Discovery Suspended. The Parties agree to suspend all forms of discovery in this Lawsuit, including depositions, pending County approval and the Court's entry of a Final Decree.

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IN WITNESS WHEREOF, THE PARTIES HERETO EXECUTE THIS AGREEMENT WITH THE EFFECTIVE DATE TO BE THE DATE OF THE LAST SIGNATURE AFFIXED HERETO.

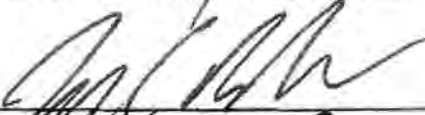
**BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF SANDOVAL**, a political
subdivision of the State of New Mexico

By: 
Don G. Chapman, Chairman

8-10-17
Date

By: 
David J. Heil, Vice-Chairman

8/10/17
Date

By: 
Jay C. Block, Commissioner

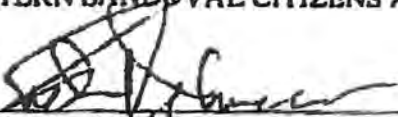
AUG 10, 2017
Date

By: 
F. Kenneth Eichwald, Commissioner

8/10/17
Date

EASTERN SANDOVAL CITIZENS ASSOCIATION, INC.

By:


Richard Ulmer

July 24, 2017

and

By:


Stephen Vaughan

July 24, 2017

STEPHEN VAUGHAN

By:


Stephen Vaughan

July 24, 2017

RICHARD ULMER

By:


Richard Ulmer

July 24, 2017

LAFARGE NORTH AMERICA INC.,
a Maryland corporation

By:


Jodie Earle
Director, Litigation & Assistant
Corporate Secretary

July 25, 2017
Date

LAFARGE WEST, INC.,
a Delaware corporation

By:


Jodie Earle
Director, Litigation & Corporate Secretary

July 25, 2017
Date

LAFARGE SOUTHWEST, INC.,
a New Mexico corporation

By: Jodie Earle
Jodie Earle
Director, Litigation & Corporate Secretary

July 25, 2017
Date

VULCAN MATERIALS COMPANY,
a New Jersey corporation

By: _____
Mark Reardon
Authorized Representative

Date

CALMAT CO., a Delaware corporation

By: _____
Mark Reardon
Vice-President

Date

MT. ADAMS HOLDINGS, LLC,
a Washington limited liability company

By: _____ [name]
Authorized Signatory

Date

LAFARGE SOUTHWEST, INC.,
a New Mexico corporation

By: _____
Jodie Enrie
Director, Litigation & Corporate Secretary

Date

VULCAN MATERIALS COMPANY,
a New Jersey corporation

By: _____
Mark Reardon
Authorized Representative

7/25/17

Date

CALMAT CO., a Delaware corporation

By: _____
Mark Reardon
Vice-President

7/25/17

Date

MT. ADAMS HOLDINGS, LLC,
a Washington limited liability company

By: _____
SCOTT R. Voke (name)
Authorized Signatory

7.25.2017

Date

EXHIBIT A

**To Settlement Agreement
(Depiction of Mining Limits)
*(follows this page)***

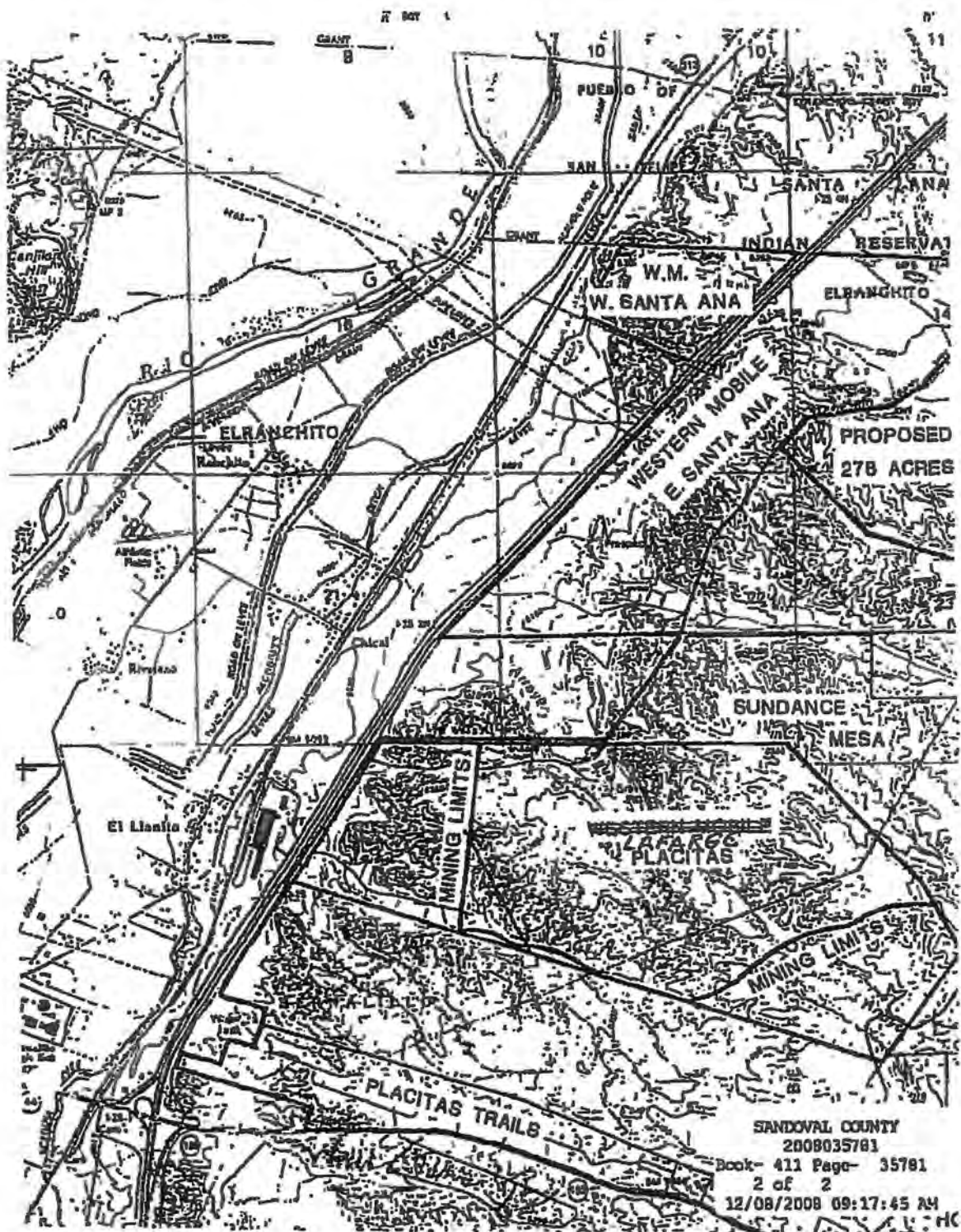


EXHIBIT B

To Settlement Agreement
(Depiction of Reclamation Areas)
(follows this page)

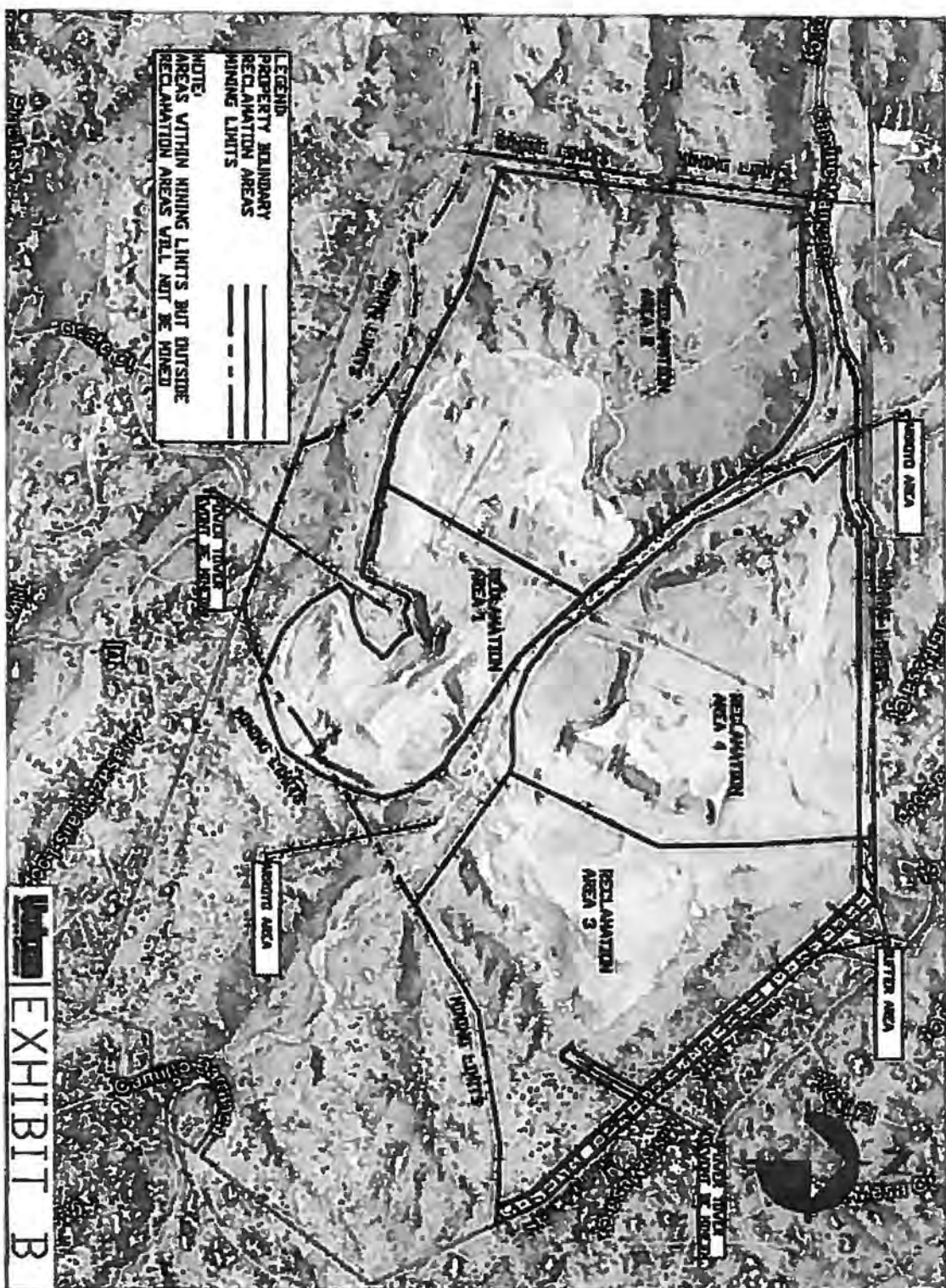


EXHIBIT C

**To Settlement Agreement
(Reclamation Plan)
(*follows this page*)**

Reclamation Guidelines

Location: Sandoval County, New Mexico
Portions of Sections 21,22,23,26,27,28, T. 13N – R4E, New Mexico

Property Owner: Mt. Adams Holdings, LLC
P.O. Box 654
Kirkland, WA 98033

Operator: CalMat Company
1500 North Renaissance Blvd.
Albuquerque, NM 87107

Introduction

The intent of this document is to set forth requirements and procedures for mine site reclamation at the conclusion of mining, and return of the site for future land development opportunities.

A. Regulatory Standards

Federal, state and local laws and regulations applicable to Operator's operations, including reclamation ("Standards") shall be complied with during Reclamation. Operator shall be responsible for complying with the Standards and shall maintain all permits, licenses and other federal, state and local authorizations required for operation and reclamation of the site ("Permits").

B. Site Grading

Without limiting the aforementioned Standards, site grading operations, at a minimum, shall be performed in accordance with the following:

1. Mark site corners.
2. Delineate site on Map.
3. The settling pond used during extraction operations currently established on the site shall be delineated within the Map and accurately located using the standard State Plane Coordinate system. Unless the Property Owner approves in writing in advance (including any abandonment procedures), the settling pond location shall remain the same, its lateral footprint shall not be expanded and the pond shall not be relocated.
4. Overburden / waste soil ("Overburden") shall be placed at such locations where the Overburden is needed to establish sloping and drainage in accordance with Operator's standard, current operating practices.
5. Overburden shall be placed with a finish depth of either (i) 0 to 5' or (ii) greater than 5'. Overburden with a finish depth of 0' to 5' also shall be subject to the requirements of Section B.8. below.
6. Final mine face / wall sloping shall not exceed a maximum slope of 3:1.
7. Final reclaimed slopes shall be prepared in a manner that minimizes the potential for head-cut erosion and, where feasible, shall be contoured to be aesthetically similar to the area's native topography.

8. Final rock faces may be at 1:1 maximum if stability is approved in writing by a professional geologist registered in the state and every written approval is addressed and furnished to the Property Owner.
9. Final cut and fill banks shall result in the establishment of structurally stable slopes and soils through the use of EPA Best Management Practices, in effect from time to time, as may be recommended or required by the Standards.
10. All areas that either are (i) removed from extraction activities or (ii) have been disturbed but where no additional extraction shall take place shall be left in a final (no further extraction) condition ("Final Condition") that is stabilized and protected in a manner that will ensure air, surface water and ground water quality will not be degraded.
11. All Final Condition areas shall be re-vegetated.
12. A pedestrian barrier, e.g. fence, shall be provided at the top of slopes with a gradient steeper than 3:1.
13. The site shall be sloped to drain toward the existing arroyo at a 2% minimum.

c. Site Clearing and Re-vegetation Standards

1. Retain all vegetative cover in those areas not involved in mining activities.
2. Preserve existing grade and native vegetation in and around arroyo/wash. Maintain a 25-foot buffer required from the arroyo/wash seasonal high water elevation.
3. All Final Condition shall be:
 - a. Re-vegetated in such a way as to establish a diverse, effective, and long-lasting vegetative cover that is capable of reseeding itself and spreading.
 - b. Re-vegetated to an extent at least equal in cover to that of the natural vegetation of the non-disturbed surrounding area.
 - c. Replanted with a seed mixture the largest proportion of which is native species.
 - d. Re-planted where plants die or are not established within a two year period.
4. Re-vegetation shall be deemed successful if 80% or greater vegetation coverage is obtained within two seasonal cycles from the time of planting.

EXHIBIT D
To Settlement Agreement
(Memorandum of Final Decree)

(follows this page)