

RECEIVED

DEC 28 2015

CALAVERAS COUNTY
BOARD OF SUPERVISORS

Lora A. Most
4114 Farris Dr.
P. O. Box 1137 (Mailing Address)
Valley Springs, Ca. 95252

Cliff Edson, Chairman Board of Supervisors
Calaveras County Board of Supervisors
891 Mountain Ranch Road
San Andreas. Ca. 95249
(Delivered by Hand)

RE: Appeal of the Decision of the Planning Commissioners dated Dec 17, 2015. The Planning Commission resolution finding that the use of hazardous substances at the asphalt proposed to be operated at the Hogan Quarry will not have a significant effect on the environment, and because of that determination a conditional use permit is not required pursuant to Calaveras County Code Section 17.42.035.

Board of Supervisors Chairman Cliff Edson:

My name is Lora Most. I am a 15 year old resident of Rancho Calaveras. I reside at 4114 Farris Drive in Rancho Calaveras. My husband Don and I moved from Tracy, California in 2000 to get away from the smog and fog. Here are my concerns on the proposed Asphalt Plant at the Hogan Quarry.

These are precious letters that my late husband Don Most and I either read or send to the Planning Commissioners or the Board of Supervisors.

A letter dated August 11, 2015 to the Board of Supervisors meeting by Lora Most. (Copy of the county parcels –M1 and M2 193 parcels).

A letter dated August 13, 2015 by Lora Most to the Planning Commissioners Allred, (District 1) Chair McLaughlin, (District 2), Muetterties, (District 3), Wooster (District 4), and Tunno (District 5). There is a copy of Dr. Estoesta's letter to the Board of Supervisors Dated August 10, 2015 stating his medical concerns.

A letter dated August 20, 2015 by Donald E Most to the Planning Commissioners Walter Allured (District 1), Fawn McLaughlin (District 2), Lisa Muetterties, (District 3), Kelly Wooster (District 4), and David Tunno (District 5).

A letter dated August 25, 2015 By Lora Most August 25, 2015 to Supervisors Cliff Edson (Chair District 1), Supervisors Chris Wright (District 2), Supervisor Michael Oliveira (district 3), Supervisor Debbie Ponte (District 4) and Supervisor Steve Kearney (District 5).

1. There is not an adopted Revised General Plan.

A. P. Pereira letter dated June 02, 2015 to the Planning Commissions, Chair Fawn McLaughlin, Ted Allred, Lisa Muetterties, Kelly Wooster, David Tunno and Chair McLaughlin. Supervisors Steve Kearney and Cliff Edson.

It is a 7 page document stating that there is not an adequate General Plan. (This letter enclosed) She also enclosed a case summary of litigation filed by the Neighborhood Action Group vs. The County of Calaveras, California Court of Appeal, 1984/156 Cal. App. 3d 1176. (Copy Enclosed) The county has been working on a general plan for several years. Spending taxpayers' dollars and as yet No Revised General Plan.

2. If this project proceeds there are 192 parcels that are zoned either M 1 or M 2 that potentially could become asphalt plants. (Thomas P. Infusino's testimony dated June dated 6, 24, 2015.

3. The planning Commission Staff Report (15 pages included)

December 10, 2015

2015-029 Appeal by Ford Construction and CB Asphalt of the Environmental Management Agency's determination that installation and operation of a hot mix asphalt plant at the Hogan Quarry, 3650 Hogan Dam Road, Valley Springs. APN 050-003-001, will involve the use of hazardous materials that may have a significant effect on the Planning Director's determination that the finding by the Health Officer requires a Conditional Use Permit pursuant to Calaveras County Code Sec. 17.42.035. Supervisorial District Number 5, Assessor's Parcel Number 050-003-001. EDH Director Jason Boetzer, Environmental Health Director.

It is very disturbing to me when the Planning Commissions will go against the recommendation of the Environmental Health Director Jason Boetzer and Dr. Kelaita, (Calaveras County Health Officer) not to require a Conditional Use permit and not to address the concerns that have been brought up at many meetings of the Planning

Commissioners. (Copy of Dr. Kelaita letter to the Editor of the Calaveras Enterprise dated December 17, 2015.

The language in the Revised resolution 2015-019 is also very disturbing
A Resolution Finding that the use of Hazardous substances at the Asphalt Plant
Proposed to be operated at the Hogan Quarry WILL NOT HAVE A SIGNIFICANT EFFECT
ON THE ENVIRONMENT, and Because of that Determination a Conditional Use permit is
Not Required Pursuant to Calaveras County Code Section 17.42.035.
I fell that a Conditional Use Permit and an Environmental Impact Report should be
required of every project.

Lora A. Most

Lora A. Most

Enclosures by
Lora A. Most

In the Calaveras County board of supervisors Meeting

August 11, 2015

1. My Letter dated August 6, 2015 (that I emailed the 5 Calaveras County Board of Supervisors: Supervisors Edson, Supervisor Wright, Supervisor Oliveira, Supervisor Ponte and Supervisor Kearney. Brian Moss (Asst. CAO)(former Environmental Officer) and Peter Maurer (Calaveras Planning Director)
2. 2. My Letter dated August 11, 2015
3. Letter to Brett S. Jolley Re: Stockton East Water District Appeal of Asphaltic Concrete Batch Plant at Hogan Quarry by Peter Maurer (Calaveras planning Director).
4. Flyer in Valley Springs News dated May 22, 2015
5. The Valley Springs News newspaper article dated Friday May 29, 2015 MVS.com upset asphalt parts delivered to quarry.
6. P. Pereira letter in protest to the Appeal Asphalt Plant Hogan Quarry (Dated June 02, 2015)
7. Thomas P. Infusino Re: CPC Support for the Techel/Walker Appeal of the Planning Director's interpretation that Asphalt plants are allowed by right in the M1 and M2 Industrial Zones.
8. Calaveras County Planning Commission (Summary Minutes for meeting of June 16, 2011. (Item 4 2011-014 Appeal of planning Staff Decision for Coe Shooting Center.
9. Dr. Estoesta Letter (For the Record)
10. The Wall Street Journal (Asphalt proposal Draws Complaints from Neighbors by Jim Carlton Aug. 15, 2012)
11. Calaveras Enterprise Record Dated Tues. June 23, 2015—Proposed asphalt plant needs public review. (by Muriel Zeller)
12. Calaveras—s Enterprise Record Dated Tues June 23, 2015 Quarry is taking risks with lives and business (by Brock Estes)

13. Calaveras Enterprise Dated Friday July 10, 2015----Many Chemicals on federal list of asphalt plant emissions (James Van Sant)
14. Flyer in Valley Springs News Dated August 7, 2015---Hogan Asphalt plant Appeal Hearings.

P. O. Box 1137
4114 Farris Dr.
Valley Springs, Ca. 95252
August 11, 2015

To the Calaveras Board of Supervisors: Supervisor Edson (Chair), Supervisor Wright (Vice Chair), Supervisor Oliveira, Supervisor Ponte, and Supervisor Kearney. (For the Record)

Good Morning Board Members:

I would like to introduce myself. My name is Lora Most, I moved to Rancho Calaveras from Tracy, Ca. in 2000. My husband and I relocated because we wanted to get out of the fog and smog, and move into a more rural area. We chose Rancho Calaveras. My husband is a licensed Contractor. He worked in construction all of his adult life, 20 years in Bridge Construction and 30 years in the Housing Industry. In 2013, he was diagnosed with COPD and Congestive Heart Failure. His Palomary Dr. said that his illness was because of all the years working around the building materials. He is on oxygen 24/7. I was a licensed Real Estate Agent for several years in Tracy. We reside at Farris Drive, close to Highway 26.

I oppose the proposed Asphalt Plant at the Hogan Dam Quarry because of many reasons. We as residents of the community were not notified, not even Stockton East Water District was notified. They turned in their appeal but it was late, so their money was returned. (Document Enclosed) Mr. Moody, the General Manager of Stockton East Water District stated in a Declaration that he heard about the proposed Asphalt Plant at Hogan Dam Quarry on the evening news.

We the residents heard about the proposed Asphalt Plant in a flyer in the Valley Springs News along with an article MVS.com upset asphalt parts deliver to quarry. (Both enclosed) Dated May 22, 2015.

Here are some of my concerns:

1. Air Quality
2. Water Safety
3. Increased Truck Traffic
4. No General Plan (Enclosed P. Pereira letter dated June 2, 2015) (Re. Asphalt Plant Hogan Quarry for the Record Protest).
5. If this Asphalt Plant is approved without an Environmental Impact Report, it would open the door for ~~185~~¹⁹³ parcels (8980 Acres) that are zoned M2 to become Asphalt Plants without an Environmental Impact Report. Tom Infusino testimony dated June 24, 2015. (Enclosed)
Reference in Calaveras County Planning Commission (Summary Minutes for Meeting of June 16, (Coe shooting Range proposed project). (Document enclosed). Commissioner Wallace asked if the Commissioners' interpretation applied only to this project and not all M2 Parcels across the board. Planner Darcy Goulart responded by saying that the Commissioners are not amending the code, but is making an interpretation to this parcel and all M2 Parcels across the board. She stated you can't grant the applicant something that you can't grant somebody else that has the same designation.

Dr. Estoesta, was the previous Medical Director of Mark St. Joseph Hospital and Clinics from 1999 to 2003 and now he is a full time Primary Care Physician serving Valley Springs and the neighboring communities, has a NO TO THE PROPOSED ASPHALT PLANT petition in his office. Dr. Estoesta's letter is enclosed with my presentation stating that he is very concerned about his patients who will be breathing the toxic chemicals in the air. He goes into detail but for limited time, his letter is included for the record. He says for our know patients with Chronic Obstructive Lung disease, Bronchial Asthma, Congestive Heart Failure and Primary Lung Diseases, these toxic Pollutants will quadruple their frequency of wheezing, shortness of breath, Difficulty of breathing, wheezing, coughing to all age groups but in particular could damage the lungs of our young children doing their outdoor sporting events and physical education classes outside their classrooms. This will aggravate established lung and heart patients for more frequent intensive hospitalization.

aggravate established lung and heart patients for more frequent intensive hospitalization.

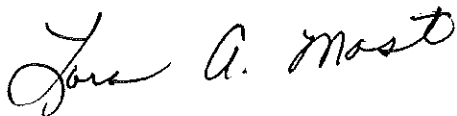
All these known medical diseases, aggravated by toxic pollutants have been substantiated in various medical and occupational textbooks and journals. The U. S. Department of Human Services has a full display of medical literature concerning Asphalt Plant pollution.

In closing, I am enclosing an article Entitled ASPHALT PROPOSAL DRAWS COMPLAINTS FROM NEIGHBORS (Santa Rosa) in the Wall Street Journal dated Aug. 15, 2012. But many residents in the surrounding West end neighborhood say the project would allow BoDean to increase its production rate up to threefold, exacerbating what they say is a long-running problem of dust, noise, and noxious fumes.

"The hardest part is the smell," says Sara Sugrue, 37, an event consultant who lives across the street from the plant with her husband, Tyler, and their two young sons. "I'd describe it as someone tarring a roof inside my house, to the point even my 4-yr-old complains of the smell and headaches.

I have included several other newspaper articles in my letter.

Thank you

A handwritten signature in cursive script that reads "Lora A. Most".

Lora A. Most

twomost@comcast.net

P. O. Box 1137
Valley Springs, Ca. 95252
August 6, 2015

To the Calaveras Board of Supervisors, Supervisor Edson (Chairman), Supervisor Wright (Vice Chairman), Supervisor Oliveira, Supervisor Ponte, and Supervisor Kearney:

I would like to introduce myself. My name is Lora Most, I moved to Rancho Calaveras from Tracy, Ca. in 2000. My husband and I relocated because we wanted to get out of the fog and the smog, and move into a more rural area. We chose Rancho Calaveras. My husband is a licensed Contractor with a B License. He worked in construction all of his adult life, 20 years in Bridge Construction and 30 years in the Housing Industry. In 2013, he was diagnosed with COPD and Congestive Heart Failure. His Palomary Dr. said that his illness was because of all the years working around the building materials. He is on oxygen 24/7. I wonder if this proposed asphalt plant goes in, if we will be able to live here in the area. I was a licensed Real Estate Agent for several years in Tracy. We reside on Farris Drive, close proximately to highway 26.

I oppose the proposed Asphalt Plant at the Hogan Dam Quarry because of many reasons. We as residents of the community were not notified, not even Stockton East Water District was notified. They turned in their appeal, but it was a day late, so their money was returned.

Here are some of my concerns.

1. Air Quality
2. Water Safety
3. Increased Truck Traffic
4. No General Plan (Enclosed P. Pereira Letter dated June 2, 2015 (Re: Asphalt Plant Hogan Quarry for the Record: Protest)
5. If this Asphalt Plant goes in without an Environmental Impact Report, it would open the door for ~~185~~¹⁹³ parcels (8980 acres) that are zoned M1 or M2 to become Asphalt Plants without an Environmental Impact Report.

(Reference in Calaveras County Planning Commission (Summary Minutes for Meeting of June 16, 2011) Coe Shooting Range proposed project) and Tom Infusino testimony dated June 24, 2015. (Enclosed)

SAFETY CONCERNS

1. Increased truck traffic through a residential neighborhood.
2. School Children buses that travel on Silver Rapids Road
3. Trucks not following posted signs and speeding.
4. Highways 12 and 26, mostly two lane highway that was not designed for the amount of truck traffic.
- 5 The smell of the asphalt—if the meeting on Tuesday that Ford Construction and CB Asphalt had. They said that the trucks may or may not be tarped when the asphalt was loaded to be taken down Silver Rapids Road into Highway 26.
5. Ford Construction/ CB Asphalt did not notify adjacent land owners
6. They did not notify the community.
7. They are preparing the Asphalt Plant while the community awaits the appeal process.

HEALTH ISSUES

- A. Calaveras County is Home to a large number of Senior Citizens.
- B. Many adults and children in Valley Springs Community have asthma and allergies.
- C. Many of the Residents have Heart and Lung Problems.

DR ESTOESTA, A Valley Springs Physician, has the No to the Proposed Asphalt Plant Petition (and a sign in his window) in his office getting his patients to sign the Petition. As of July 9, 2015, there were approximately 794 who had signed the on line petition and petition. He is very concerned for the health of his patients. The Manager of CB Asphalt, Shawn Simmons, said that Dr. Estoesta was his Dr. in the meeting that they held on Tues. July 28, (2015) by Ford Construction and CB Asphalt at the LaContenta Events Center.

Last but not least, if this Proposed Asphalt Plant goes into operation without an Environmental Impact Report, it will set a precedent and will open the door for 185 parcels to be potential Asphalt Plants. (On page 5 of the Calaveras County Planning Commission, Summary Minutes for Meeting of June 16, 2011) Staff Discussion (Document enclosed) (Coe Shooting Range)

Project Planner Darcy Goulart stated that the Planning Department received several letters in opposition of the project and some letters in favor of the project. She spoke in regards to the action the Planning Commission would be taking. She stated that if the Commission granted the appeal, they would need to keep in mind that they are interpreting the Code, not amending the Code. Amending the Code would require board action and would require a separate process. This interpretation would apply to any parcel within the County that is zoned M2 (General Industry). You would not be able to grant Mr. Coe the ability to put a shooting range on his property and then tell somebody else they couldn't do it. She stated that there were 185 parcels zoned M2 throughout the County which equaled 8,980 acres of property. Commissioner Wallace asked if the Commissioner's interpretation applied only to this project and not all M2 parcels. Darcy Goulart responded by saying that the Commissioner's are not amending the code, but are making an interpretation to this parcel and all M2 Parcels across the board. She stated you can't grant the applicant something that you can't grant somebody else that has the same designation.

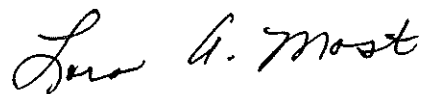
In Mr. Tom Infusino's testimony, dated 6/24/15, Re. CPC (Calaveras Planning Coalition) Support for the Techel/Walker Appeal of the Planning Directors' Interpretation that Asphalt Plants are allowed by right in the M1 and M2 Industrial Zones.

(In page 2 of his document)

In addition, when one looks at the County's land use and zoning maps, it is evident that the Planning Directors' interpretation could have ludicrous and harmful results. For example, here in San Andreas, there is M2 zoned land adjacent to the Mountain Oaks School. There is also M1 zoned land across the street from the MATC Medical Clinic. (Attachment 8 & 9-zoning Maps and photos

for school and clinic facility.) Does it really make sense to allow asphalt plants by right, without any use permits, in such close proximity to the young and the ill, who may be at greater risk from harmful air pollution emissions? If it were your hospital, or your grandchild's school, would you want a noisy asphalt plant next door? Would you want kids and ill people trying to cross the road amidst the truck traffic?

If such plants are allowed by right in the M1 Zone, people may justifiably call for changes to the zoning maps to remove existing M1 and M2 zones near schools, clinics, and residential areas. It would not be good for the local economy to eliminate the potential for so many compatible light industrial developments simply because the Planning Director made a bad decision regarding asphalt plants.

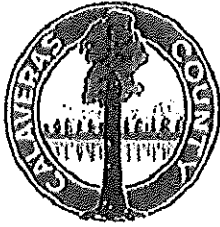


Lora A. Most

Rancho Calaveras Property owner and Resident

Please respond so that I will know that you got my email

My letter with attachments will be handed to the Board of Supervisors at the Appeal Hearing of the proposed Asphalt Plant on Hogan Dam Road on August 11, 2015, but I wanted you to have an opportunity to review my letter prior to the meeting. (In this email sent Wed. August 6, 2015)



County of Calaveras Department of Planning

Peter N. Maurer ~ Planning Director
Phone (209) 754-6394 Fax (209) 754-6540
website: www.co.calaveras.ca.us

June 2, 2015

Brett S. Jolley
Herum Crabtree Sunitag Attorneys
5757 Pacific Avenue
Stockton, CA 95207

Re: Stockton East Water District Appeal of Asphaltic Concrete Batch Plant at Hogan Quarry

Dear Mr. Jolley:

On behalf of the Chair of the Planning Commission we are returning your check for the appeal of the Planning Director's determination that an asphaltic concrete plant is a permitted use in the M2 zone. Pursuant to Section 17.98.020 of the Calaveras County Code an appeal of the Planning Director's decision may be appealed to the Planning Commission within 15 calendar days of the staff decision. The decision was made on April 30, 2015, and the appeal period ended on May 15, 2015.

Your letter will be included as a part of the public record and you and the District may participate as members of the public in the appeal hearings that will be held based on the three other appeals that were timely filed. The hearing date is expected to be on June 25, 2015. Please be advised that the application for Authority to Construct, filed with the Calaveras County Air Pollution Control District, has been determined to be a project under CEQA, and an appropriate environmental document will be prepared prior to constructing and operating the plant.

Sincerely,

Peter N. Maurer
Planning Director

Cc: Fawn McLaughlin, Chair, Planning Commission
County Counsel
File 2015-029

RECEIVED

JUN 02 2015

Calaveras County
Planning Department

Brell S. Jolley
bjolley@herumcrabtree.com

VIA OVERNIGHT DELIVERY

June 1, 2015

Chair Fawn McLaughlin
Calaveras County Planning Commission
C/O Planning Department
891 Mountain Ranch Road
San Andreas, CA 95249

Re: Stockton East Water District: Objection to and Appeal of Asphaltic Concrete
Batch Plant at Hogan Quarry

Dear Chair McLaughlin:

This office represents Stockton East Water District ("District"). The District operates a water treatment plant and wholesales treated surface water to the City of Stockton, California Water Service Company, Lincoln Village Maintenance District, and Colonial Heights Maintenance District in the greater Stockton Area. A substantial portion of the District's water supply comes from the Calaveras River.

On May 20, 2015 District officials first became aware of Ford Construction Company's ("Ford") plans to establish and operate a hot asphalt "batch plant" at Hogan Quarry from press reports (see accompanying declaration of Scot A. Moody).¹ The Hogan Quarry sits along the Calaveras River upstream from the District's point of diversion. Any degradation to the quality of the Calaveras River from the Quarry's operations will substantially impact the District and its customers.

While the District does not necessarily oppose the operations at Hogan Quarry, it does disagree with and object to the County's non-public review and approval of the *asphalt* batch plant as a permitted *concrete* batch plant. In its April 30, 2015 letter to

¹ Although Section 17.98.020 of the County Code requires an appeal of a staff decision be filed within 15 calendar days from the date of that decision, here, because the County did not provide any public notice of the Determination or otherwise advise the District of the Determination, assuming an appeal deadline applies as all, the District's time to appeal must be tolled until the District knew or reasonably could have known about the Determination. See, *Concerned Citizens of Costa Mesa v. 32nd Dist. Ag. Ass'n* (1986) 42 Cal.3d 929. Because the District did not learn of the Determination until May 20, 2015, its time to appeal will expire on June 4, 2014 and this appeal is timely.

Ford ("Determination"), the County concluded that the asphalt plant would be treated as a permitted "concrete mixing and batch plant, ready mix" in the Quarry's M-2 zoning.

Concrete and asphalt are two distinct substances – with distinct manufacturing and mixing processes. The former consisting of aggregate, cement, and water, and the latter consisting of aggregates mixed with a petroleum-based tar-like binder (sometimes referred to a "bituminous mixture"). Hot mix asphalt, like that proposed for the Quarry, is described in the paving industry as follows:

Hot-mix asphalt (HMA) is produced in a hot asphalt mixing plant (or hot-mix plant) by mixing a properly controlled amount of aggregate with a properly controlled amount of asphalt at an elevated temperature. The mixing temperature has to be sufficiently high such that the asphalt is fluidic enough for proper mixing with and coating the aggregate, but not too high as to avoid excessive aging of the asphalt. A HMA mixture must be laid and compacted when the mixture is still sufficiently hot so as to have proper workability. HMA mixtures are the most commonly used paving material in surface and binder courses in asphalt pavements.²

Asphalt is different from concrete. And like obscenity, the average person knows asphalt when she sees it (see dissent of Justice Potter Stewart in *Jacobellis v. Ohio*, 378 U.S. 184 (1964)).

"In interpreting a statute where the language is clear, courts must follow its plain meaning," (*Torres v. Parkhouse Tire Service, Inc.* (2001) 26 Cal.4th 995, 1003) and the plain language of the Ordinance discloses the M-2 zone permits only concrete batch plants and not asphalt batch plants. Moreover, "[C]ourts should give meaning to every word of a statute if possible." *Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1155. Here, the Determination notes that the County Code previously listed asphalt batch plants and concrete batch plants and permitted uses, but that asphalt batch plants have been removed from this list of permitted uses. Interpreting the current ordinance to include asphalt batch plants within the scope of concrete batch plants, particularly where the drafters were aware of and could have included the term "asphalt" but chose to exclude this word while keeping concrete, erroneously treats the term "concrete" as mere surplusage in the statutory scheme.

Accordingly, the County erred in determining that Ford's proposal is permitted at the site. Instead, the asphalt batch plant would more appropriately fall into one of two categories: (1) petrochemical processing or (2) mineral extraction and production – each of which is conditionally permitted in the M-2 zone. See Calaveras County Code §17.42.030(A)(15) and (D), respectively. The former because, as discussed above, the asphalt mixing process entails processing petrochemical binders. The latter because

² <http://civil-engg-world.blogspot.com/2009/06/types-of-bituminous-mixtures.html>

Chair Fawn McLaughlin
June 1, 2015
Page 3

the batch plant is not free standing, but rather a modification of an existing quarry operation which, as the District understands, currently operates without a conditional use permit. To the extent the prior quarry operations predated zoning regulations on the property; the batch plant is a material change in use that triggers the need for a conditional use permit. Indeed, as the Determination notes, "while batch plants may be common with quarry operations, there are many quarries where such uses are strictly prohibited."

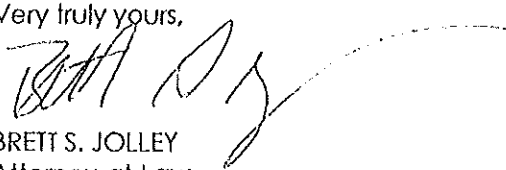
Additionally, the District submits that the proposed batch plant is beyond the scope of the Quarry's Central Valley Regional Water Quality Control Board waste discharge requirements (WDRs) and its San Joaquin Valley Air Pollution Control District Permit to Operate (PTO) and cannot be approved until these regulatory documents are modified as part of CEQA compliance to address the batch plant impacts.

Accordingly, the District disagrees with, objects to, and hereby appeals from the County's April 30, 2015 Determination. Alternatively, the District joins in the pending appeal of Calaveras County Water District.

Please provide notice of any further determinations, hearings, notices, or other documents related to the Hogan Quarry to the undersigned.

Pursuant to Chapter 17.98, please also find enclosed a check in the amount of \$100 for the appeal filing fee.

Very truly yours,



BRETT S. JOLLEY
Attorney-at-Law

Enclosure: Declaration of Scot A. Moody

cc: . Scot A. Moody, General Manager, Stockton East Water District
Matthew Weber, Counsel, Calaveras County Water District
Central Valley Regional Water Quality Control Board
San Joaquin Valley Air Pollution Control District

1 Jeanne M. Zolezzi - SBN: 121282
2 Brett S. Jolley - SBN: 210072
3 HBRUM\CRABTREE\SUNTAG
4 A California Professional Corporation
5 5757 Pacific Avenue, Suite 200
6 Stockton, CA 95207
7 Telephone: (209) 472-7700
8 jzolezzi@herumcrabtree.com
9 bjolley@herumcrabtree.com
10 Attorneys for Stockton East Water District

11 IN THE MATTER OF:

12 Stockton East Water's District's
13 Appeal of and Objection to
14 County's April 30, 2015
15 Determination Re Asphalt Batch
16 Plant at Hogan Quarry

17 Declaration of Scot A. Moody in Support
18 of Appeal and Objection

19 I, Scot A. Moody, declare as follows:

20 1. I have personal knowledge of the matters set forth in this
21 declaration, except for those matters stated on information and belief, and as to
22 those matters, I do believe them to be true.

23 2. I currently am, and at all times mentioned herein was, the General
24 Manager of Stockton East Water District ("District").

25 3. I make this declaration in support of District's appeal of and
26 objection to the County's April 30, 2015 letter authorizing adding an asphalt
27 "batch plant" to the Hogan Quarry.

28 4. Stockton East Water District relies on water from the Calaveras
River to treat and wholesale surface water to the City of Stockton, California.

Declaration of Scot A. Moody in Support of Appeal and Objection
1

1 Water Service Company, Lincoln Village Maintenance District, and Colonial
2 Heights Maintenance District.

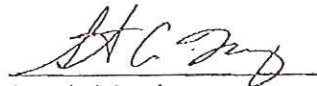
3 5. The Hogan Quarry and its proposed batch plant are located along
4 the Calaveras River, upstream of the District's diversion points.

5 6. The District believes the addition of an asphalt batch plant - a
6 petroleum-based operation - to the Quarry is likely to cause significant
7 environmental impacts to the District's downstream water supply absent
8 sufficient review and mitigation.

9 7. The District did not receive any notice of the proposed batch plant
10 or of the County's April 30, 2015 letter. In fact, the District did not discover the
11 existence of the proposed batch plant until on or about the evening of May 20,
12 2015 when I was watching the evening news and saw a story about the batch
13 plant and the appeals filed by the Calaveras County Water District and
14 Myvalleysprings.com.

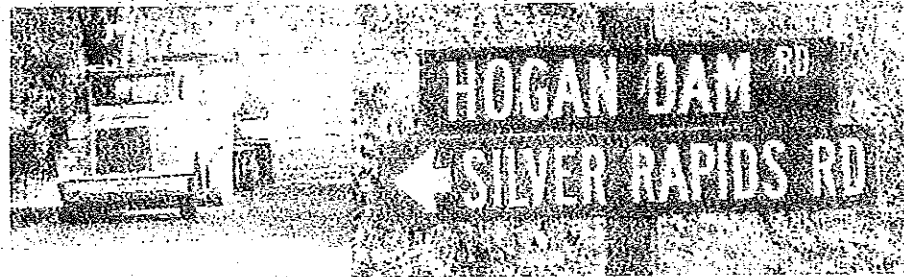
15 8. The foregoing facts are true and correct and are based on my
16 personal knowledge; and, if called as a witness, I could and would testify
17 competently thereto.

18 Executed by me under penalty of perjury under the laws of the State of
19 California, on May 28, 2015, at Stockton, California.

20 
21 Scot A. Moody

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NEW ASPHALT PLANT AT HOGAN QUARRY??



RISKS:

Contamination of CCWD Drinking Water
Increased Truck Traffic Day or Night
Loss of Property Values
Air Pollution/ Fumes/ Odors/ Noise
Toxins and Health Risks

- NO PUBLIC NOTICE OF PLANT APPROVAL!
- Two separate Appeals filed, MyValleySprings.com and CCWD
- Planning Commission Hearing to be scheduled
- Letters and emails needed NOW to let County officials know what you think

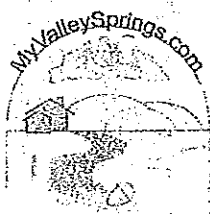
Contact All:

Fawn McLaughlin, PC Chair
Ted Allured, District 1
David Tunno, District 5
Supervisor Steve Kearney
Board Chair Cliff Edson

plancomm2@co.calaveras.ca.us
plancomm1@co.calaveras.ca.us
plancomm5@co.calaveras.ca.us
swkearney@co.calaveras.ca.us
cedson@co.calaveras.ca.us

Mailing address for above contacts:

891 Mountain Ranch Road, San Andreas, CA 95249



P.O. Box 1501, Valley Springs, CA 95252 –
Joyce Techel President 772-1463
www.MyValleySprings.com

THE Valley Springs NEWS

MVS.com upset asphalt parts delivered to quarry

By Nick Baptista

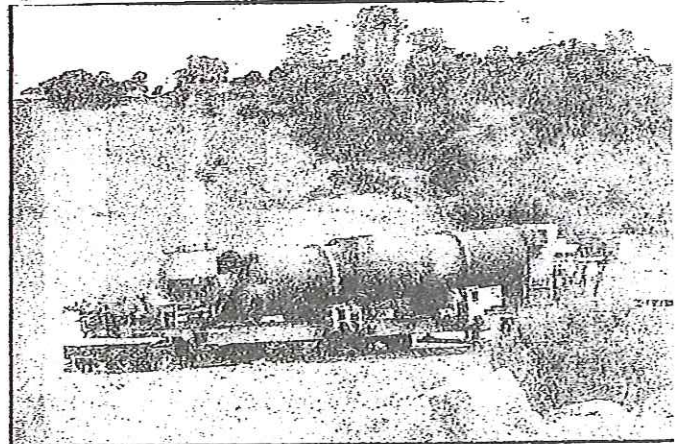
Concerns over a proposal to place an asphalt "hot plant" at the Hogan Quarry in Valley Springs increased with last week's delivery of equipment to the site.

MyValleySprings.com, the Calaveras County Water District and neighbors near the quarry are appealing a recent administrative decision to approve a request by Ford Construction Co. out of Lodi

to expand operations at the quarry to include running the asphalt "hot plant."

Calaveras County Planning Director Peter Maurer on April 30 sent a letter to Nick Jones, Ford Construction Co. president, saying the "hot plant" is a permitted use at the Foothill Materials Inc. quarry located at 3650 Hogan Dam Road. Foothill Materials is

(See Page 14)



MyValleySprings.com photo of equipment delivered to Hogan Quarry.

Asphalt

From Page 1

a subsidiary of Ford Construction.

Maurer's decision was subject to appeal and the matter is scheduled to go before the Calaveras County Planning Commission at its June 25 meeting, according to Colleen Platt, MyValleySprings.com secretary.

She approached the Calaveras County Board of Supervisors Tuesday morning to outline her organization's worries over placement of the "hot plant" near residential areas and a CCWD water treatment plant.

In addition, she expressed concern Ford Construction is moving ahead with its plans before the matter goes before the county Planning Commission.

"Despite the fact that two appeals were filed, a large asphalt drum was trucked in and discovered parked inside the quarry gates last Friday," she told the board.

Calls to Ford Construction by The Valley Springs News about its plans have gone unanswered.

In her comments to the board on Tuesday, Platt said, "We have been researching the issues and trying to find out everything we can about the asphalt plant to inform people in the area, because nothing was made public. Folks don't appreciate the way the asphalt plant was pushed forward so quickly, and they don't like the lack of information available. This looks to them like an attempt to sneak the project through by avoiding public scrutiny."

She also presented the board with a list of questions that should be taken under consideration.

Those questions are:

- How many new truck trips a day will be generated?
- What hours will the asphalt plant and trucks be allowed to operate—day or night?
- How much will the asphalt plant produce? Are there limits to production?
- What is the projected volume of export off-site, and will this exceed the existing annual permit limit of 10 trucks a day for export of materials?
- What are current daily trip averages for offsite hauling, and what could averages and maximums be with expected use?
- What hazardous and toxic materials will be on-site & how will we be protected?
- How will air pollution and emissions be prevented?
- What conditions will protect the adjacent Calaveras River water from runoff and air born

particulates? This is the drinking water for La Contenta, Creek, and Rancho Calaveras and the spawning grounds for federally listed steelhead salmon.

- What about fire protection measures for the hot asphalt plant and surrounding dry vegetation? Will there be fire drills?
 - What are the size, type, manufacturer, and model number of the asphalt plant?
 - What will be the new noise levels generated?
 - Is this asphalt plant from out of state, and does it meet California state requirements?
- "Your constituents deserve better than this," Platt told the board. "They deserve and require public notice and environmental view of the asphalt plant before it begins operation at the Hogan Quarry."

Center for Integrative Medicine

55 South Hwy 26

Suite 1

Valley Springs, CA 95252

209-772-8906

FAX 209-772-8950

Benedicto M. Estoesta, M.D, F.A.A.F.P., D.A.B.H.I.M.

August 10, 2015

Calaveras County Board of Supervisors
891 Mountain Ranch Road
San Andreas, CA 95249-9709

Re: Asphalt Plant

Dear Board of Supervisors,

This letter is in reference to the proposed Asphalt Plant by the Calaveras River. My name is Dr. Benedicto M. Estoesta, Fellow Academy of Family Practice, Diplomate of Holistic and Integrative Medicine, I was a previous medical director of Mark Twain St. Joseph Hospital and Clinics from 1999-2003 and now a full time primary care physician serving Valley Springs and neighboring sites for the past 15 years. I am writing to you about the medical concerns of having an Asphalt Plant by our community.

Asphalt Plant's release millions of chemicals into the air during their yearly production, many of which can cause Chronic Illness and Cancers. In particular ARSENIC and CADMIUM are known respiratory carcinogens causing lung cancer, mesothelioma, cancers of the Bronchial Tree, mouth, esophagus and pharynx. These toxic chemicals when inhaled together with nicotine from cigarette smokers double the chance of early production of cancer to the above symptoms mentioned.

BENZENE is another toxic byproduct that can cause cancer of the urinary bladder, prostate, uterus and kidney and has been shown in numerous medical journals of cumulative effects in the genital urinary system to cause cancer, and in reproductive organs, this toxic agent can cause birth defects in babies and children.

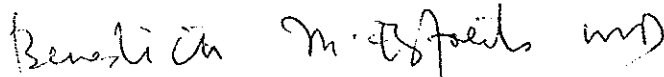
FORMALDEHYDE and POLYCYCLIC AROMATIC HYDROCARBONS are fine particulate toxic substances emitted into the air as Asphalt is loaded into trucks and hauled from the plant site. Together with fine condensed particulate matter and fine organic compounds, these air toxins could cause shortness of breath, difficulty of breathing, wheezing, coughing to all age groups but in particular could damage the lungs of our young children doing their outdoor sporting events and physical education classes outside their classroom. For our known patients with Chronic Obstructive Lung Disease, Bronchial Asthma, Congestive Heart Failure and Primary Lung Diseases, these toxic

pollutants will quadruple their frequency of wheezing, shortness of breath and their emergent need to use their hand held nebulizing therapies frequently. This will aggravate established lung and heart patients for more frequent intensive hospitalization and will double the rate of intubation and premature deaths.

Common to these air toxins include varying degree of nausea, vomiting, dizziness, and loss of cognitive function as we inhale these matters in and out of our lungs. Since they are not as easily excreted by the urine they tend to accumulate toxic residues in the liver, kidney and the skin. Skin irritations are common in the form of redness, swelling, excoriations and eczema like reactions that are hard to treat with a standard steroid treatment.

All these known medical diseases, aggravated by toxic pollutants have been substantiated in various medical and occupational textbooks and journals. The US Department of Human Services has a full display of medical literature concerning Asphalt Plant Pollution.

Yours Truly,

A handwritten signature in cursive script that reads "Benedicto M. Estoesta M.D." with a stylized flourish at the end.

Benedicto M. Estoesta, M.D., F.A.A.F.P., D.A.B.H.I.M.

*P.Pereira
PO Box 27
Campo Seco, Ca 95226*

*Planning Commission
891 Mt. Ranch Road
San Andreas, California 95249*

June 2, 2015

Dear Chairwoman: Fawn McLaughlin, District 2

Board Members:

Ted Allured: District 1

Lisa Muetterties: District 3

Kelly Wooster: District 4

David Tunno: District 5

In addition Supervisors:

Supervisor: Steve Kearney, District 5

BOS Chairman: Cliff Edson, District 1

*Re: Appeal: Asphalt Plant Hogan Quarry
For the Record: Protest*

I will refer to the newspaper article in the Enterprise dated Tuesday, May 19, 2015 regarding the determination of the Calaveras County Planning Director Peter Maurer that an Asphalt Concrete Plant is a permitted use in the industrially zoned land at the site.

1 of 4

Issue No. 1

There is not an adopted Revised General Plan.

Approval of the Asphalt Quarry would have been approved under the existing General Plan which is inadequate.

I am enclosing a case summary of litigation filed by the Neighborhood Action Group vs the County of Calaveras. California Court of Appeal, 1984/ 156 Cal. App.3d 1176. Copy enclosed.

The Court of Appeals held that:

- 1. A Use Permit is governed by the zoning law, which in turn must comply with the adopted general plan which in turn must conform to state law. When a general plan lacks relevant criteria, the validity of a CUP issued is questionable.*
- 2. EIR prepared for the CUP could not assess the potential noise impacts of the project without noise standards that should be provided by the noise element.*
- 3. According to the Court, the CUP was not issued in the manner required by law since it was based on an inadequate general plan.*

I believe Calaveras County has been working on a Revised General Plan since 2007? It's common knowledge the General Plan is inadequate costing taxpayers over a million dollars with no resolution. Decisions are based on the old existing general plan opening the door to litigation against the County of Calaveras and proponents of projects.

In addition the Concerned Citizens of Calaveras County vs the Board of Supervisors of Calaveras County, March 26, 1985, 166 Cal.App.3d 90, Third District Court of Appeal.

The Calaveras County BOS adopted a new general plan for the county, a writ of mandate filed that the general plan was inadequate. The Third District Court of Appeal concluded that the general plan could not identify substantial shortcomings in the circulation system, further report that no known funding sources (or other alternatives) were available to remedy the problem and still achieve statutorily mandated correlation with its land use element (which provides for substantial population increases) simply by containing a policy that the county will seek funds. Therefore, the Court determined that the land use and the circulation elements were not sufficiently correlated and violated Section 65302(b). Copy enclosed.

These litigation cases are examples that the citizenry needed to make changes and were rewarded by their persistence by the Third District Court of Appeal.

The County has raised the red flag. As a taxpayer, it's aggravating watching the red carpet rolled out as an invitation to litigation. You are repeating past mistakes.

Issue No. 2

Deputy County Counsel Julie Moss-Lewis stated (Enterprise)

The power of appeal is not "conferred on the basis of an organization's general concern about all land within a region".

Freedom of Speech and the contamination of air and water has no boundaries and is the responsibility and scrutiny of every citizen regardless of where you live and work. That's why an EIR is necessary for public review and full disclosure for a CUP. This is an opportunity to review the existing CUP, if there is one, update, revise and improve on standards.

You have a legal issue and case summary. Learn from prior mistakes costing taxpayers money spent on litigation and perhaps future damages based on an inadequate general plan.

Sincerely,



P.Pereira

*Enclosures: Neighborhood Action Group, 1984
Concerned Citizen of Cal. Co., 1985*

*Copies to: Appellants: 1. Dave Eggerton, General Mgr. CCW
Box 846, San Andreas, Ca 95249
2. J. Techel, PO Box 1501, VS 95252*



Governor George Deukmejian



Governor's Office

OFFICE OF PLANNING AND RESEARCH

PARTNERSHIP NEWSLETTER

AUGUST/SEPTEMBER 1985

LAND USE Litigation News

GENERAL PLANS

Concerned Citizens of Calaveras County v. Board of Supervisors of Calaveras County,
March 26, 1985, 166 Cal.App.3d 90, Third District Court of Appeal.

The Facts: In April 1982, the Calaveras Board of Supervisors adopted a new general plan for the county. Subsequently, a citizens' group, Concerned Citizens of Calaveras County and a resident, James Cox, (plaintiffs), filed for a writ of mandate, alleging that the general plan was inadequate because 1) the circulation and the land use elements were internally inconsistent and insufficiently correlated, 2) solid and liquid waste disposal facilities were not designated, and 3) the plan omitted population density standards for three areas of the county.

The trial court concluded that the circulation element was adequate, the land use element's omission of population density standards rendered it legally inadequate and areas for waste disposal need not be designated in the general plan until they were identified by the county. The Court therefore ordered the county to adopt proper density standards but denied the plaintiffs' request for attorney fees. The plaintiffs appealed.

The Holding: The Court of Appeal affirmed the lower court's ruling on population density standards and on waste disposal designations, but

reversed the remainder of the decision. The Court based its decision primarily on Sections 65300.5 and 65302(b) of the Government Code. Section 65300.5 requires that a general plan and its elements comprise an integrated, internally consistent and compatible statement of policies. Section 65302(b) requires that a general plan contain a circulation element which addresses transportation infrastructure and which is correlated with the land use element.

In reviewing the circulation element, the Court found that one portion of the element indicated that county roads were sufficient to accommodate the projected traffic while another portion of the element described a worsening traffic situation aggravated by continued subdivision activity and development in areas served by inadequate roads. Therefore, the Court found the circulation element internally inconsistent and in violation of Section 65300.5.

Next, the Court examined the issue of correlation between the land use and the circulation elements. The Court interpreted Section 65302(b) to mean that the circulation element must describe, discuss, and set forth standards and

NEIGHBORHOOD ACTION GROUP V. COUNTY OF CALAVERAS
156 Cal.App.3d 1176
(California Court of Appeal, 1984)

The Facts: In 1980, Teichert Construction Company submitted an application for a conditional use permit (CUP) to the Calaveras County Planning Commission. The application requested authorization to process sand and gravel from hydraulic mine tailings near the town of Jenny Lind. On October 16, 1980, the commission approved the CUP and certified the final environmental impact report (EIR). The Neighborhood Action Group (NAG), an association of taxpayers residing in the vicinity of the project site, appealed the matter to the county board of supervisors. The board upheld the commission's decision.

Subsequently, NAG filed a suit claiming that: 1) the permit was invalid because the county's general plan did not comply with state statute; 2) the EIR was inadequate; and 3) the CUP did not conform to the current general plan. The trial court concurred with the county's contention that the facts submitted by NAG did not justify a lawsuit regarding the first allegation — the issue of an adequate general plan. The two other claims proceeded to trial and the court ruled for the county. NAG appealed.

The Holding: The California Court of Appeal reversed and held as follows:

(1) Upon reviewing relevant law, the Court held that although there is no explicit requirement that the CUP be consistent with an adequate general plan, its validity is derived from compliance with the hierarchy of planning laws — a use permit is governed by the zoning law, which in turn must comply with the adopted general plan which in turn must conform to state law. According to the Court, a general plan that fails to provide the required statutory criteria relevant to the use being sought, will not provide a valid measure by which a permit can be evaluated. Thus, when a general plan lacks relevant criteria, the validity of a CUP issued is questionable.

(2) The Court examined the county noise element and found it lacking. The EIR prepared for the CUP could not assess the potential noise impacts of the project without the noise standards that should be provided by the noise element.

(3) Having established that granting of a CUP must be based on an adequate general plan, the Court sought the legal alternatives available to Neighborhood. The Court noting Section 1094.5(b) of the Code of Civil Procedure, held that an administrative act, such as the issuance of a CUP, may be challenged if the respondent did not proceed in the manner required by law. According to the Court, the CUP was not issued in the manner required by law since it was based on an inadequate general plan.

proposals respecting any change in demands on the various roadways or transportation facilities of the county as a result of changes in uses of land contemplated by the plan. The Court noted that the land use element, which provided for substantial growth, did not discuss the potential inadequacy of the roadways nor contain proposals by which growth would be restricted in the event the road system was overwhelmed. At the same time, the circulation element pointed out current and expected deficiencies in the state highways serving the county. Further, the element's only policy involved with rectifying the situation was to "lobby for funds."

The Court concluded that the general plan could not identify substantial shortcomings in the circulation system, further report that no known funding sources (or other alternatives) were available to remedy the problem and still achieve statutorily mandated cor-

relation with its land use element (which provides for substantial population increases) simply by containing a policy that the county will seek funds. Therefore, the Court determined that the land use and the circulation elements were not sufficiently correlated and violated Section 65302(b).

On the matter of attorney fees, the Court awarded the fees noting that the citizens' group should have prevailed in its challenge to the land use and circulation elements.

The Significance: This decision emphasized the land use/circulation correlation requirement in determining the adequacy of a general plan. Cities and counties in reviewing or preparing their general plans should evaluate their circulation plans to check to see if it can accommodate the future traffic demands associated with the uses designated in the land use element.

Thomas P. Infusino
P.O. Box 792
Pine Grove, CA 95665
(209) 295-8866
tomi@volcano.net

6/24/15

Calaveras County Planning Commission
C/o Calaveras County Planning Department
891 Mountain Ranch Road
San Andreas, CA 95249

(transmitted by email)

Re: CPC Support for the Techel/Walker Appeal of the Planning Director's interpretation that Asphalt Plants are allowed by right in the M1 and M2 Industrial Zones.

Dear Commissioners:

My name is Tom Infusino, and I am submitting these comments on behalf of the Calaveras Planning Coalition (CPC). I have a degree in planning from UC Davis, and a law degree from University of the Pacific. I have been involved in resource management and planning efforts in the Sierra for over 20 years.

The CPC is a group of community organizations and individuals who want a healthy and sustainable future for Calaveras County. We believe that public participation is critical to a successful planning process. United behind eleven land use and development principles, we seek to balance the conservation of local agricultural, natural and historic resources, with the need to provide jobs, housing, safety, and services.

Attached are our arguments and evidence in support of the Techel/Walker appeals of the Planning Director's interpretation that Asphalt Plants are allowed by right in the M1 and M2 Industrial Zones.

In some respects we agree with the staff report. For example, we agree with the staff report that the proposed project does involve discretionary decisions that may have a significant impact on the environment, and thus triggers CEQA review. We agree that more information is needed about the project to determine the level of CEQA review, and whether it is exempt from CEQA review. (Staff

Report, pp. 10-12.) **We hope that the Planning Commission will concur that the asphalt plant is a project under CEQA.**

We agree with the staff report that the ultimate findings of the Planning Commission should not be crafted on the fly, but should be done in accordance with the Planning Commission's direction, and include a thorough factual and legal analysis. (Staff Report, p. 5.)

We disagree that asphalt plants should be allowed in the M1 and M2 zones by right, without the benefit of a use permit.

The M1 Zone is for light industrial uses that can be "In proximity to commercial and residential areas" and that are not "obnoxious by reason of smoke, noise odor, or similar objectionable effects."

(Calaveras County Code, Section 17.40.010.) Things like bakeries, nurseries, warehouses, catering companies, and feed stores are allowed by right in this zone. (Calaveras County Code, Section 17.40.020.) By contrast, EIR's on asphalt plants from other counties indicate that asphalt plants can have significant noise, air quality, and traffic impacts. (See Attachments 1 through 5, EIRs parts on Asphalt Plants for Amador and Sonoma Counties with significant and unavoidable impacts to air quality, noise, transportation, greenhouse gases.) Asphalt plants have impacts that are far more analogous to the manufacturing uses that require a use permit in the M2 Zone. For example, plants that manufacture chemicals, fertilizer, glue, plastics, rubber; or process sewage require a use permit in the M2 zone. The Planning Director can and should have determined that asphalt plants require a use permit in the M2 Zone. (Calaveras County Code, Section 17.42.030.) This would make Calaveras County consistent with other counties that require use permits for asphalt plants, including Amador and Sonoma. (Attachments 6 and 7, EIR parts identifying permit requirement for asphalt plants in Amador & Sonoma counties.)

In addition, when one looks at the County's land use and zoning maps, it is evident that the Planning Director's interpretation could have ludicrous and harmful results. For example, here in San Andreas, there is M2 zoned land adjacent to the Mountain Oaks School. There is also M1 zoned land across the street from the MATC Medical Clinic. (Attachment 8 & 9 - Zoning Maps and photos for school and clinic facility.) Does it really make sense to allow asphalt plants by right, without any use permits, in such close proximity to the young and the ill, who may be at greater risk from harmful air pollution emissions? If it were your hospital, or your grandchild's school, would you want a noisy asphalt plant next door? Would you want kids and ill people trying to cross the road amidst the truck traffic?

If such plants are allowed by right in the M1 Zone, people may justifiably call for changes to the zoning maps to remove existing M1 and M2 zones from near schools, clinics, and residential areas. It would not be good for the local economy to eliminate the potential for so many compatible light industrial developments, simply because the Planning Director made a bad decision regarding asphalt plants.

The staff report correctly notes that the project will subject to a specialized discretionary permit regarding air pollution, and may trigger a conditional use permit requirement to address the use of hazardous materials. (Staff Report, pp. 10 – 11.) If we are going to have to deal with these issues in permits anyway, wouldn't make more sense to address the other asphalt plant issues (like noise and traffic) in a conditional use permit as well? Doesn't it make sense to interpret the code to resolve as many of the issues associated with a project as possible? **We hope that the Planning Commission will overrule the Planning Director's interpretation of the County Code, and call for the Planning Director to require a conditional use permit for asphalt plants in the M1 and M2 industrial zones.**

Furthermore, the issues raised in this appeal call out for a much broader set of remedies than the mere application for a use permit by the project proponent. The issues raised by this appeal go directly to problems that have repeatedly arisen regarding:

The undue influence of individual County Supervisors on County staff in the performance of their professional duties;

The inadequate pre-deprivation notice afforded county residents and property owners regarding County decisions adversely affecting their health, safety, property rights, property interests, and property values;

The failure to adopt findings of fact that properly draw the connection between supportive substantial evidence in the record as a whole, and the ultimate decision of the County; and

The lack of early and open public processes aimed at finding fair resolutions of valid concerns regarding the health, safety, and wellbeing of County residents, property owners, workers and visitors.

Some in Calaveras County feel that a "business friendly" environment by necessity means one in which the County approves all applications as quickly and as quietly as possible, without any serious regard for the rights or interests of any neighboring residents or property owners.

We at the CPC disagree. Over the past nine years, we have watched while attempts to shortcut approval procedures have repeatedly resulted in highly publicized and justified community discord, adversarial appeals, project delays, project denials, and litigation. (Attachment 10 – Articles re Trinitas, Shooting Center, & Asphalt Plant.) Rather than a "business friendly" environment, the fallout from these "shortcut" procedures has warned-off wise investors and undermined the public's confidence that its government is watching out for its best interests.

We at the CPC strongly believe that good projects and good project proponents will succeed when the rights and interest of both project proponents and local residents alike are openly considered and accounted for in a fair public process. We also feel that collaboration is more likely to result if the early public processes are designed to promote collaboration rather than adversarial confrontations. Below we provide our suggestion for improved Planning Department procedures for making such findings in the future. **We hope that the Planning Commission will begin the process to amend Planning Department procedures to put these reforms in place.**

We at the CPC also believe that many simple projects will be processed more efficiently when the County establishes clear and fair impact mitigation standards and measures that protect public health,

safety, and wellbeing; while also providing safe harbors for project applicants. Unfortunately, the 2014 Draft General Plan provides us with very little hope for such a future. The small glimmer of hope is that the draft plan calls for the development of many impact mitigation measures and standards. However, the plan does not consistently identify the department or departments responsible for doing so. Nor does the draft plan make commitments to perform these tasks at any particular pace (e.g. two a year). Nor does the draft plan make commitments to complete these task by any particular deadline (e.g. within the first five years of plan adoption). Nor does the draft plan provides clear and fair standards for application in the interim. Moreover, the few mitigation standards that do exist in some of the community plans were left out of the 2014 Draft General Plan. **We hope that the Planning Commission will constructively address these draft plan shortcomings during your upcoming general plan hearings.**

Sincerely,

Thomas P. Infusino, Facilitator

Calaveras Planning Coalition

- I. An asphalt plant should need a use permit in the M2 Zone.
 - A) Any and all asphalt plants are not necessarily consistent with purpose of the light industrial zone.

Remember when determining if asphalt plants are allowed by right in the M1 Zone, the question is not, 'Will the applicant's proposed asphalt plant on the applicant's proposed site be "obnoxious by reason of smoke, noise, odor, dust, or similar objectionable effects." (Calaveras County Code, Section 17.40.010.) The question is, "Could any asphalt plant on any M1 zoned land anywhere in the county have those adverse effects?"

The M1 Zone is for light industrial uses that can be "In proximity to commercial and residential areas" and that are not "obnoxious by reason of smoke, noise odor, or similar objectionable effects." (Calaveras County Code, Section 17.40.010.) Things like bakeries, nurseries, warehouses, catering companies, and feed stores are allowed by right in this zone. (Calaveras County Code, Section 17.40.020.) By contrast, EIR's on asphalt plants from other counties indicate that asphalt plants can have significant noise, odor, and traffic impacts. (See Attachments 1 through 5, EIRs parts on Asphalt Plants for Amador and Sonoma Counties with significant and unavoidable impacts to air quality, noise, transportation, greenhouse gases.)

- B) Properly conditioned asphalt plants belong with other manufacturing plants in the M2 Zone.

Asphalt plants have impacts that are far more analogous to the manufacturing uses that require a use permit in the M2 Zone. For example, plants that manufacture chemicals, fertilizer, glue, plastics, rubber; or process sewage require a use permit in the M2 zone. The Planning Director can and should have determined that asphalt plants require a use permit in the M2 Zone. (Calaveras County Code, Section 17.42.030.) This would make Calaveras County consistent with other counties make that require use permits for asphalt plants, including Amador and Sonoma. (Attachments 6 and 7, EIR parts identifying permit requirement for asphalt plants in Amador & Sonoma counties.)

The staff report correctly notes that the project will subject to a specialized discretionary permit regarding air pollution, and may trigger a conditional use permit requirement to address the use of hazardous materials. (Staff Report, pp. 10 – 11.) If we are going to have to deal with these issues in permits anyway, wouldn't make more sense to address the other asphalt plant issues (like noise and

traffic) in a conditional use permit as well? Doesn't it make sense to interpret the code to resolve as many of the issues associated with a project as possible? **We hope that the Planning Commission will overrule the Planning Director's interpretation of the County Code, and call for the Planning Director to require a conditional use permit for asphalt plants in the M1 and M2 industrial zones.**

C) Unconditioned asphalt plants in the M1 an M2 zones may harm neighbors.

In addition, when one looks at the County's land use and zoning maps, it is evident that the Planning Director's interpretation could have ludicrous and harmful results. For example, here in San Andreas, there is M2 zoned land adjacent to the Mountain Oaks School. There is also M1 zoned land across the street from the MATC Medical Clinic. (Attachment 8 & 9 - Zoning Maps and photos for school and clinic facility.) Does it really make sense to allow asphalt plants by right, without any use permits, in such close proximity to the young and the ill, who may be at greater risk from harmful air pollution emissions? If it were your hospital, or your grandchild's school, would you want a noisy asphalt plant next door? Would you want kids and ill people trying to cross the road amidst the truck traffic?

D) Application of the Noise Ordinance may be more restrictive than use permit.

The restrictions of the County Noise Ordinance are waived when there are specific conditions applied to a project in a use permit. This is because the noise limits worked out specifically in a use permit are properly tailored to the specific circumstances of the project. Thus, the strict general limitations from the noise ordinance are not needed.

However, when there is no use permit, the strict regulations of the ordinance apply. (Calaveras County Code, Section 9.02.060.) The applicant may be better off getting a use permit with site specific conditions than having to live under the strict limitations of the County Noise Ordinance.

II. The Planning Director's determination is insufficient.

A) Concrete is not asphalt by definition.

The staff report indicates that concrete is not defined in the County Code so that an ordinary use of the word should be applied. The staff report then provides a common definition of concrete that includes both traditional concrete and tar based products. (Staff Report, pp. 4-5.) From this, the staff report concludes that the Planning Director was correct in saying that a concrete plant is the same as an asphalt plant.

However, the County Code states that the "common and approved" usage of words do not apply when words "may have acquired a peculiar and appropriate meaning in the law." (Calaveras County Code, Section 1.04.030.) In addition, the Calaveras County Code incorporates the California Building Standards Code, Title 24, of the California Code of Regulations. (Calaveras County Code, Section 15.04.050.) Neither the current nor the previous definition of concrete in Title 24 include asphalt. (Attachment 11 – Building Code Concrete Definitions) Thus, concrete has a "peculiar and appropriate meaning in the law"

that is recognized by the County Code. That meaning does not include asphalt. Thus, the Planning Director was in error when he determined that a concrete plant and an asphalt plant are the same under the County Code.

B) The Planning Director's finding is inadequate.

The standard of review for administrative findings, like the one made by the Planning Director and the ones to be made by the Planning Commission, were set by the California Supreme Court in *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 514-515.) Substantial evidence in the record must support the agency's findings and the findings must support the agency decision. The agency findings must bridge the analytical gap between the raw evidence and the ultimate decision. There must be a sound analytical route between the evidence in the record and the finding made.

The April 30, 2015 letter from the Planning Director neither leads us to the evidence in the record that supports his decision, nor provides us a logical roadmap from that evidence to the ultimate findings. (Staff Report, Attachment 2) **We hope and expect that the Planning Commission's findings following these appeals will provide the requisite explanation.**

It would be an exercise in futility for the Planning Director to try to fabricate a legally defensible finding that an asphalt plant is allowed by right (without a use permit) from the facts and law in this instance. Rather than directing him to do so, **the Planning Commission should rule that a use permit is required.**

III. The Project as a whole needs CEQA review.

When determining if CEQA review is required for a project, the impacts of the whole of the project: its planning, its approval, and its implementation are considered, not merely each individual permit. (CEQA Guidelines, Section 15378; *Bozung v. Local Agency Formation Commission* (1975) 13 Cal. 3d 263, 283-284.) Thus, the proper procedure when this matter came to the Planning Department would be to consult with all the other County, regional, and state departments that may have to provide a discretionary approval for the entire project. Thus, Public Works, Environmental Health, and any other relevant department would have been able to indicate if the project required them to exercise discretion and if it might have a significant impact on the environment, and if it might qualify for an exemption to CEQA. Because this interdepartmental consultation did not occur, there was confusion as to whether the proposed project is subject to CEQA review.

We agree with the Techel Walker appeal, with the Staff Report, and with the Director of the Environmental Health Department, that the approval of the proposed asphalt plant requires discretionary action on the part of the County, and may have a significant impact on the environment. More factual investigation is needed to determine the proper level of environmental review, and if an exception to CEQA exists for the project. **We urge the County to carefully investigate the facts, to discover the entire scope of the project, and to proceed accordingly with the CEQA review of the entire project.**

IV. A valid general plan is needed to support approval of the asphalt plant.

Over the last nine years we have repeatedly reminded the County that it does not have the authority to approve development projects that have a nexus to substandard aspects of the General Plan. (For example, Infusino, letter to BOS, 4/24/07, p. 5; Infusino, Letter to BOS, 10/5/09, pp. 17-20; Infusino, Letter to Planning Commission, 6/16/11, pp. 2-3; incorporated herein by reference.) As explained in the Calaveras County General Plan Evaluation prepared by Mintier and Associates, the current general plan has numerous substandard aspects in its Land Use, Circulation, Conservation, and Noise elements. (Mintier and Associates, Calaveras County General Plan Evaluation, 10/12/06, incorporated herein by reference.) There is confusion regarding the industrial land use designation. (Mintier, *Ibid.*, p. 24.) There is no clear correlation between the land use and circulation elements, and the circulation diagrams are outdated. (Mintier, *Ibid.*, pp. 30-32.) The Noise Element lacks up to date noise contours. (Mintier, *Ibid.*, p. 39.) The Safety Element lacks evacuation routes, peak-load water supplies for emergencies, and minimum road widths for emergency vehicle access. (Mintier, *Ibid.*, pp. 42-43.)

While there is still much to learn about the details of the proposed asphalt plant, it is very likely that the proposed facility will have a nexus to the aforementioned flaws in the current general plan, as it is in the industrial zone, it will generate traffic and noise, it will need to provide for emergency access, emergency water, and emergency evacuation.

The wisest option for the Planning Commission is to encourage the applicant to seek project approval after the completion of the General Plan Update. This would be quicker and cheaper than trying to defend an approval under the current general plan. It would also be very wise for the Planning Commission to give careful scrutiny to the 2014 Draft General Plan Update to ensure that it unequivocally fixes all the substandard problems with the current general plan. A failure to do so will only delay future project proposals.

V. Please establish Fair and Clear Procedures for Planning Director Findings.

A) Begin with a publicly noticed Technical Advisory Committee with public participation.

We have heard many and repeated requests for a "One-Stop-Shop" for project applicants. Whereas other counties have the building space for such an operation, regrettably such facilities are not likely to be available in Calaveras County for some time.

However, we can and have had a Technical Advisory Committee comprised of representatives from Planning, Environmental Health, Public Works, and some emergency responders. They met collectively with project applicants to review issues of concern, to identify the types of permits and conditions needed, and to decide the appropriate level of CEQA review. This process can be enhanced by including the public at this early time of project processing. This gives the applicant and concerned citizens plenty of time to work out issues while the County departments are processing the project application.

B) Notice designed to reach all potentially impacted.

On past occasions we have called to the County's attention the fact that the County Code notice requirements do not serve as a safe harbor for satisfying procedural due process. (For example, Infusino, Letter to Planning Commission, 6/16/11, pp. 8-9; incorporated herein by reference.)

Because a zoning code interpretation could trigger completion of a proposed project at a specified site, we encourage the County to broaden the circle of notice when the impacts are the type that are felt far afield like noise or odors. Because these zoning code interpretations affect not only one local project, but uses allowed at similarly zoned property throughout the county, we strongly encourage the County to provide notice in newspapers of record in the county. When the potential impacts may be felt outside the county (e.g. traffic congestions, water pollution, or air pollution) we strongly encourage the County to provide notices in the newspapers of record in adjacent counties.

C) Public hearing before the Planning Commission.

We encourage the Planning Commission to hold a hearing on the subject before the Planning Director makes the finding regarding the interpretation of the zoning code. This allows all those with useful evidence to provide it to the County prior to the Planning Director's determination. A fair decision is more likely to result if both sides of a story are heard.

D) Proper Findings of Fact

1) Must be properly formatted.

As noted above, findings of fact must meet specified standards. This is not just a paper pushing exercise. By following the proper format, it forces the decision-maker to ensure that his decision is logically sound and supported by evidence. It also provides an explanation of the action to the public, so they can see that the decision is logically sound and supported by facts. Such findings can be useful in convincing people on both sides of an issue that their interests have been protected.

2) Must be made by a decisionmaker without fear of retribution.

Calaveras County has apparently had a recent history of individual Supervisors using their power to hire and fire as leverage to unduly influence Department heads in the exercise of their professional duties. We had two supervisors reprimand a Planning Director for hours in a private meeting after voting publicly in favor of her staff recommendation. She resigned. We had two supervisors privately express their lack of support for a Public Works Director, after publicly voting in favor of his staff recommendation. He resigned. When three Supervisors can fire a Department head on any given Tuesday without cause, individual Supervisors can exert undue influence over specific decisions by Department heads. Department heads need to be free to use their objective professional judgment to protect the health, safety, and wellbeing of the people of Calaveras County, without fear of retribution from political officials.

The Planning Director's determination in this matter is tainted by the fact that one Supervisor urged the Planning Director not only to give the project review priority, but also to "avoid a lengthy examination process." (Attachment 12, Email Kearny to Maurer & Moss.) The result was not merely that the plant got a more expeditious CEQA review. The result was not that the plant merely got a more expeditious route to the well noticed public hearings by Planning Commission or the Board of Supervisors. The result was that the plant was given an approval by right by the unilateral act of one man, that any such plants got approval by right throughout the M1 and M2 zones in the County, and that the public received no notice and no prior hearing on the merits of the decision. It is amazing that the Techel/Walker appellants found out about this back room deal in time to appeal.

Supervisors Kearny, as a planning commissioner, spent more than his fair share of time sitting through sometimes acrimonious hearings regarding controversial projects. I doubt that in his wildest dreams he could have imagined that his email would result the Planning Director's wholesale abandonment of the public process. However, that is just the sort of adverse result that can and did occur, because our public servants' professional judgement is constantly held hostage by three Supervisors, with the power to terminate employment on a whim.

Until Department heads get contracts for a specific term of years, and can only be removed for cause in the interim, we will continue to have overreaching individual supervisors exerting undue influence over public employees. The public should be able to rely upon our Department heads to exercise their objective professional judgement, to protect our health, safety, and wellbeing, without fear of retribution. **We strongly encourage the Planning Commission to recommend to the CAO that the objective judgement of Department heads be given such protection.**

3) Appeal rights should be broadly noticed.

The right to appeal means nothing if the Planning Director's decision is not broadly noticed, and if people are not made aware of their opportunity to appeal the decision. Due process requires notice and meaningful opportunity to be heard. **We at the CPC thank the Planning Commission for holding this appeal hearing and providing people with a meaningful opportunity to be heard.** In the future, we recommend that future Planning Director's determinations regarding the zoning code be broadly noticed in a newspaper of record, along with an explanation of appeal rights. If the determination will result in particular adverse effects to select properties due to their proximity to a proposed project, we encourage the County to notice those property owners directly.

E) Then appeals if necessary.

1) Broadly notice of appeal hearings.

When appeals are filed, we encourage the County to broadly notice the appeals and the appeal hearing dates. These Planning Director determinations affect people in the zones throughout the county. People throughout the county deserve to have a notice and a meaningful opportunity to be heard.

2) Broadly recognize standing.

We at the CPC were particularly disappointed that the original appeal by Joyce Techel of MyValleySprings.com was rejected for lack of standing. Their organizations and members reside and own property throughout the Valley Springs, La Contenta, and Rancho Calaveras areas. They have been consistent participants in land use planning activities in that area, including issues regarding the use of industrial zones. A decision to allow asphalt plants by right in the M2 zone can have adverse impacts on their property interests, as well as the water quality, air quality, traffic, and noise they experience on a regular basis.

We at the CPC understand that the County prevailed in one frivolous case alleging violation of due process and civil rights, brought by parties who received multiple public hearings to address their concerns. However, the threat of such due process and civil rights cases is no less real, simply because the county prevailed in one frivolous suit. In these cases, plaintiffs can use federal civil rights law to strip public officials of their immunity from suit, and make them personally liable for damages. **We strongly urge the Planning Commission to generously allow parties standing to appeal, to provide people with more than sufficient notice of appeal opportunities, and to provide more than an adequate opportunity to be heard.** The risks to you personally, and to our civil rights, are too great not to.

3) Briefing schedule for supplementary written arguments and evidence.

The 15-day appeal period affords the appealing parties only the time to provide basic notice of their intent to appeal, and only minimal opportunity to explain the legal and factual grounds of the appeal. That is followed by days of factual investigation and legal research. Yet the current procedures provide no deadlines for the submission of supplementary arguments and evidence by the appellant, and no deadlines for responding parties to provide supplementary arguments and evidence. This can make the actual hearings chaotic and full of surprises. Such situations can lead to the need for continuances and more delay. **We recommend that the Planning Commission have the Planning Department and County Counsel bring back to them a recommended appeal briefing schedule to reduce the surprise and chaos.**

4) Restrictions on Ex Parte Communications.

After an appeal has been filed, the Planning Commissioners will be hearing the appeal, and the Board of Supervisors are likely to hear the appeal. When acting on an appeal, the Commissioners and Supervisors are in a quasi-judicial mode; that is they act like judges. As judges, they are supposed to make their decision based upon the arguments and evidence provided through the appeals process. They are not supposed to gather evidence or listen to arguments from either side alone. Thus, things like meetings with one side to resolve issues, or field trips to a project site with only one side present, could seriously prejudice the fairness of the appeal hearing. Those hearing an appeal are not supposed to come to any conclusions regarding the appeal before hearing all the evidence and arguments. We strongly encourage the Planning Commission to have County Counsel produce some guidelines for Commissioners and Supervisors to follow once an appeal has been filed. We encourage County Counsel to remind Planning Commissioners and the Supervisors of these guidelines as soon as an appeal is filed.

5) Public Comments submitted with the staff report.

We were dismayed that the original staff report provided to the Planning Commissioners and the public for this appeal did not include the public comment letters on file with the Planning Department as attachments. As we have noted above, these zoning determinations have impacts in the entire zone throughout the County. People have a right to be heard on the way these changes will harm them. The Planning Commission must consider all the facts in the administrative record as a whole when evaluating the Planning Director's determination. **We encourage the Planning Commission to direct the Planning Department to attach all public correspondences to staff reports in the future.** This will help to demonstrate both the County and the Planning Commission's respect for the rights of the public.

- F) Please remind individual Supervisors that they are to act as a Board, and to run staff tasks through the CAO's office.

In an effort to build some wall of protection between professional staff and individual political officials, the Board of Supervisors agreed with the CAO to adopt Rule of Procedure 42. It states that individual Board member referrals to staff that involve "a departure from established county or departmental policy" must be first approved by a majority of the Board. (Board Rules of Procedure, 1/28/14, #42, pp. 10-11.) We encourage the Planning Commission to remind the Board of Supervisors of this rule, and to encourage them to send directions to Department heads through the CAO.

We at the CPC recognize that the Supervisors and department staff will often be together when receiving information from constituents. We also recognize that Supervisors sometimes need quick advice from department staff. These sorts of convenient interactions are allowed under Rule 42. We hope that the individual Supervisors will recognize that they cross the line when they begin to privately and unilaterally direct staff to short circuit required project review and due process procedures. The Board of Supervisors properly exercises its authority when it act as a Board, on matters within its jurisdiction, in public.

VI. In Calaveras County, we must provide our first line of protection.

The project proponent's attorney indicates that the County's procedure for conditional use permits, to protect people's health and safety from the threat of toxic substances, are redundant of state and federal regulations, and therefore are unnecessary. (Kindermann, Letter to Maurer, 4/29/15, pp. 5-6.) That solution is exactly backwards.

Both the police power responsibilities to protect the health, safety, and wellbeing of the good people of Calaveras County; and the jurisdiction to make local land use decisions, rest first and foremost with county government. The principle of subsidiarity, considered by some the most compelling principle of our federalist system, posits that government authority should reside at the lowest level capable of exercising it, not at the highest.

The people of Valley Springs are well aware of the wisdom of the subsidiarity principle. For years they have waited for the State of California to fix the intersection of State Routes 12 and 26. Construction is finally underway. For decades they have waited to the State of California to re-route State Route 12

past the downtown. They are still waiting. For years they have waited for clearance from the federal government to proceed with flood control projects on Cosgrove Creek. They are still waiting. The people of Calaveras County, about 1/840th of the California population, are well aware of the degree to which state and federal agencies can get pre-occupied with the problems of more populous and politically influential regions, while leaving us on our own to address local problems.

The good people of Calaveras County cannot effectively alter or direct the priorities of state and federal regulatory agencies. As a result, we rely on our own Environmental Health Department to protect our health and safety. We rely on our own Public Works Department to protect our roads. We depend on our own Planning Department, Building Department, and Code Enforcement to ensure that our structures are safe and sound. We depend on our County Sheriff and our fire districts to respond to our emergencies. While we at the CPC may not always agree that the efforts of our local agencies are sufficient to protect the people and the environment, we also recognize that the efforts that these agencies do agree to make are indispensable.

If there are state or federal regulations that overlap with our local practices, then it is incumbent upon the project proponent to make arguments to the state and federal governments for regulatory relief. We cannot afford to surrender the sole protection of our local people and resources to overwhelmed state and federal agencies, preoccupied with the interests of those more influential than ourselves. In these challenging fiscal times, every level of government needs to pull together. When it comes to protecting the health, safety, and wellbeing of local citizens; our local governments cannot answer in the affirmative a call to abandon their responsibilities. When it comes to protecting the health, safety, and wellbeing of its citizens; our local governments must lead the way.

CALAVERAS COUNTY PLANNING COMMISSION

Summary Minutes for Meeting of June 16, 2011

An audio recording of the meeting is on file at the Planning Department, 891 Mountain Ranch Road, San Andreas, CA 95249. To schedule an appointment to review it, please contact the Planning Department at 209-754-6394. Approved minutes also may be viewed at:

www.co.calaveras.ca.us/planning_commission.asp

Planning Commission decisions may be appealed to the Board of Supervisors, and must be filed with the Board Clerk within fifteen (15) days of the Planning Commission hearing. For more information, contact the Board Clerk's office at 209-754-6370.

A. CALL TO ORDER AND ROLL CALL

The regularly scheduled meeting of the Calaveras County Planning Commission was called to order at 9:00 a.m. in the Board Chambers located at 891 Mountain Ranch Road, San Andreas, California.

Present:

Planning Commissioners: Bill Mason, District 4
Suzanne Kuehl, District 3
Ted Allured, District 1
Lyle Wallace, District 5
Fawn McLaughlin, District 2

Planning Department: Gina Kathan, Planner II
Darcy Goulart, Planner III

Legal Staff None

Recording Secretary: Annette Huse, Planner I

B. AGENDA CHANGES/ANNOUNCEMENTS:

- Commissioner Kuehl addressed the public and asked if there would be any objections in moving Items 2, 3, and 4 to the beginning of the Meeting and placing Item 1 at the end. There were not any objections.

C. PUBLIC COMMENT PERIOD:

- None

D. CONSENT AGENDA:

1. APPROVAL of MINUTES from the June 2, 2011 Planning Commission Meeting.

MOTION: Commissioner Mason moved to approve the June 2, 2011 minutes as amended and Commissioner Wallace seconded the motion. Motion was approved 5-0-0-0.

E. PUBLIC HEARINGS:

1. 2005-130 TENTATIVE PARCEL MAP FOR KESTERSON: The applicants are requesting approval to divide 128.39± acres into two parcels, 40 acre and 88.39± acre in size. The subject parcel is currently zoned A1 (General Agriculture) and is in a Future Single Family Residential land use designation. The subject parcel is located at 4722 Pettinger Road about one-quarter mile south of Highway 12 in Burson. APN: 048-025-279, portion of Section 30, T4N, R10E, MDM. (Gina Kathan, Planner II)

STAFF DISCUSSION:

- Project planner Gina Kathan stated that the recommendation stands for approval.

PUBLIC COMMENT:

- Applicant, Norma Kesterson stated that they were present to answer any questions.

MOTION: A motion was made by Commissioner McLaughlin and seconded by Commissioner Mason authorizing the Chair to sign Resolution 2011-028 to adopt the proposed Mitigated Negative Declaration prepared for the project, subject to the findings contained therein. Motion was approved 5-0-0-0.

MOTION: A motion was made by Commissioner Allured and seconded by Commissioner McLaughlin authorizing the Chair to sign Resolution 2011-029 to approve 2005-130 Tentative Parcel Map, based upon the findings contained therein. Motion was approved 5-0-0-0.

2. 2008-054 ZONING AMENDMENT AND TENTATIVE PARCEL MAP FOR DAVE PETERS The applicant is requesting approval a Zoning Amendment for 15 acres of a 20 acre parcel from A-1 (General Agriculture) to RA (Residential Agriculture). The request also includes a Tentative Parcel Map to divide 15 acres of the 20 acre parcel into two lots of 5 acres and 10 acres. The remaining 5 acres will retain the A-1 zoning designation and be merged with to the adjacent property to the west (APN

048-025-279) as part of a court mandated settlement. This action will be done through a Boundary Line Adjustment, which is currently being processed by the County Assessor's office. The property is located at 4480 Messing Road, approximately three-quarter miles south of Highway 12 in Burson. APN: 048-025-280, portion of Section 30, T4N, R10E, MDM. (Darcy Goulart, Planner III)

STAFF DISCUSSION:

- Project Planner Darcy Goulart stated the Planning Department received a letter from Cal Trans, but stated that there isn't anything new that needs to happen regarding that correspondence. She stated that recommendation still stands.

PUBLIC COMMENT:

- Applicant, Dave Peters stated that he had no intention of further splitting the remaining 10 acres.

MOTION: A motion was made by Commissioner Allured and seconded by Commissioner Mason authorizing the Chair to sign Resolution 2011-031 recommending that the Board of Supervisors adopt the proposed Mitigated Negative Declaration and MMRP prepared for the project, subject to the findings contained therein. Motion was approved 5-0-0-0.

MOTION: A motion was made by Commissioner Mason and seconded by Commissioner Wallace authorizing the Chair to sign Resolution 2011-032 recommending the Board of Supervisors adopt an Ordinance to approve 2008-054 Zoning Amendment for Dave Peters based upon the findings contained therein. Motion was approved 5-0-0-0.

MOTION: A motion was made by Commissioner Wallace and seconded by Commissioner McLaughlin authorizing the Chair to sign Resolution 2011-033 recommending approval of Tentative Parcel Map 2008-054 for Dave Peters based upon the findings and conditions contained therein. Motion was approved 5-0-0-0.

3. **2007-014 TENTATIVE SUBDIVISION TRACT MAP FOR GEORGE ROSE**
The applicant is requesting approval to subdivide 239 acres into 6 parcels, ranging in size from 20.10 acres to 138.83 acres. The subject property is located on the south side of South Gulch Road and east of Milton Road, and is approximately 7.6 miles South Southwest of Valley Springs in Calaveras County. APN's: 050-019-048 & 063, 050-020-026, 050-025-033, 050-026-023 & 029 is a portion of Section 34, T03N, R10E, MDM. (Darcy Goulart, Planner III)

STAFF DISCUSSION:

- Project Planner Darcy Goulart stated that the Planning Department received the same Cal Trans letter as received for the previous project and no changes were made. She also spoke regarding an amended condition on page 3 of the resolution for the map. She stated that it should say "the roadway conforms to template F, two twelve foot travel lanes, and a 4 foot shoulder". She stated that the changes were approved by Public Works in a memo and it was her oversight for not changing that condition.

PUBLIC COMMENT:

- Applicant, George Rose stated that he had been working on this project for seven years and the staff has been very thorough. He commented on all of the studies that were required and asked for the Commission's support. He also stated that Planner, Darcy Goulart was very helpful, always answering her phone and returning phone calls.
- Commissioner Wallace asked what the proposal is of the remaining 38 acres. He also asked about the number of parcels that were reduced and asked if the parcels are going to be sold.
- Applicant George Rose replied by stating that he had no proposal at this time and stated that the reduction of parcels was under the advice of the engineer. He also stated that the parcels will eventually be divided amongst family members.

MOTION: A motion was made by Commissioner McLaughlin and seconded by Commissioner Mason authorizing the Chair to sign Resolution 2011-034 adopting the proposed Mitigated Negative Declaration and MMRP prepared for Tentative Subdivision Tract Map 2007-014 for George Rose, subject to the findings contained therein. Motion was approved 5-0-0-0.

MOTION: A motion was made by Commissioner Allured and seconded by Commissioner McLaughlin authorizing the Chair to sign Resolution 2011-035 approving Tentative Subdivision Tract Map 2007-014 for George Rose based upon the findings and conditions contained therein including the modified condition. Motion was approved 5-0-0-0.

4. 2011-014 APPEAL OF PLANNING STAFF DECISION FOR COE SHOOTING CENTER: Thomas Coe is appealing a decision made by Planning Department staff that provides a determination on the location of a firearm target or shooting range located in an M-2 zoning designation. The subject parcel is a 131 acre parcel located adjacent to Watertown Road near the community of Campo Seco. The subject parcel is currently zoned M-2 (General Industrial) and designated in the County's General Plan as Future Single Family Residential with a 5 acre minimum parcel

size. APN: 048-002-068 is a portion of Section 11 & 12, T4N, R10E, MDM. (Darcy Goulart, Planner III)

STAFF DISCUSSION:

- Project Planner Darcy Goulart stated that the Planning Department received several letters in opposition of the project and some letters in favor of the project. She spoke in regards to the action the Planning Commission would be taking. She stated that if the Commission granted the appeal, they would need to keep in mind that they are interpreting the Code, not amending the Code. Amending the Code would require Board action and would require a separate process. This interpretation would apply to any parcel within the County that is zoned M2 (General Industry). You would not be able to grant Mr. Coe the ability to put a shooting range on his property and then tell somebody else they couldn't do it. She stated that there were 185 parcels zoned M2 throughout the County which equaled 8,980 acres of property. She spoke regarding performance standards in the M2 zone in regards to parking, landscaping, exterior lighting (shall be shielded and directed in such a manner that it does not directly shine into adjoining residences), and conformance with noise standards in the General Plan. She stated that having these standards does not give the County the ability to stop a project that is permitted, but it does help in the enforcement process. She spoke regarding the Public Notice and stated that the required legal noticing was mailed to everybody within 300 feet. She stated that this doesn't always capture a lot of adjoining parcel holders because of the large parcels. She stated that six were captured and Noticed. She stated that the Resolution was brought back per the Commission's direction.
- Commissioner Wallace asked if the Commissioner's interpretation applied only to this project and not all M2 parcels.
- Darcy Goulart responded by saying that the Commissioner's are not amending the code, but are making an interpretation to this parcel and all M2 parcels across the board. She stated you can't grant the applicant something that you can't grant somebody else that has the same designation. She stated that the Commissioner's would be making an interpretation on a particular use in this particular zone.
- Commissioner Mason spoke regarding several M2 zones in the County and referred to road issues. He stated that several parcels including Camp Nine would not meet the road issue standards. He talked about making interpretations on an individual parcel basis. He asked why conditions couldn't be placed on an individual basis.

- Darcy Goulart stated that there wouldn't be any further discretionary action by the County so you couldn't look at each one individually. She stated that if this were a permitted use in the M2 zone, there is nothing that the County could do at the building permit phase. She stated that conditions could not be placed because this is not a Conditional Use Permit, it's only an interpretation of the code. She stated that there is no mechanism in this action to place conditions because this is not a Conditional Use Permit or entitlement, this is only an appeal.
- Commissioner Kuehl stated that not only do we notify property owners within 300 feet, but we are required to Notice our meetings in the newspaper and the County website. She added that in addition to the 300 feet, this project was sufficiently Noticed on the website and in the newspaper. She commented on the inaccuracy of information in the comment letters received from the public. She stated that at the previous Planning Commission Meeting, the Commissioner's instructed Planning staff to come back to this meeting with a Resolution that the Commissioner's would consider and take action on. She stated that the purpose of this hearing is to discuss the Resolution only and that this meeting is not a repeat of the public hearing that was held previously. She stated that the public could only testify on the merits of the Resolution and the particulars of the Resolution. She mentioned that the public has the right to appeal any decision made by the Planning Commission to the Board of Supervisors.

PUBLIC COMMENT:

- Dave Tanner, Agent stated that the minimum acreage requirement for a shooting range is 15 acres so this may reduce the number of M2 properties that could be considered for shooting ranges. In regards to the Resolution, he stated he was pleased with the wording that was used. He stated that his intentions were to have non-nuisance lighting on the sight. He thanked the Commission for going through the process and mentioned the property being zoned industrial and the impacts that this zoning can take.
- Lonnie Adams asked for a continuance of the project, and stated he will appeal if approved. He submitted letters in opposition to the Commission.
- Joseph Bechelli asked for a continuance because of the vagueness of the situation. He stated that no one got the Notice as far as he knew. He also stated that he is an attorney but is only representing himself. He spoke in regards to the Resolution and the determination that this project is similar to other uses in the M2 zone. He also mentioned that he did not get a Notice and stated a year earlier, Mr. Coe gave him a map of the shooting range which depicted a portion of the range adjoining his parcel. He mentioned

civil code 3482.1 regarding noise and nuisance, and suggested that everyone read it. He asked for specific limitations and testing on this project so that the range is non-disturbing to neighbors.

- Sandy Gleason stated that she wasn't totally against the project, but was concerned about the noise and the interruption of riding her horse. She stated she would like more time. She stated that she did not receive a Notice. She mentioned that she was aware that her property was zoned industrial. She expressed that this project is a great idea, just not so close to her pasture.
- Rusty McGhee, local gun shop owner stated that he receives several inquiries a day regarding shooting ranges. He mentioned that there are very few locations in this County to shoot firearms. He stated that most locations are either BLM lands, private property, national forest, and a few shooting ranges that are private.
- Commissioner Kuehl reminded the public to make comments on the Resolution only.
- Pat Perreira stated that she lives a mile away from the site and can hear the shooting. She mentioned that she submitted a comment regarding the Resolution and spoke about the terminology of evening verses nighttime shooting in the California Civil Code 3480-3482.1. It stated that nighttime means between the hours of 10:00 p.m. and 7:00 a.m. Her concern would be the evening nighttime hours without discussion with the neighbors and homes within hearing distance. She stated that Mr. Coe is setting the standard for nighttime shooting of two days a week to 9:00 p.m. If Mr. Coe sets the standard without neighbor approval, he may use the Civil Code to increase those nighttime hours of shooting. She talked about the noise being the biggest complaint and suggested that the public needed more time and dialogue to go over all of the information. She stated that she has had similar experiences with the Bureau of Land Management shooting range that was illegal and later closed down. She stated that if the County doesn't have a Noise Ordinance then they should have a Shooting Range Noise Standard to enforce these issues. She closed by saying that she allows many people to shoot on her property and is not against shooting on private property, but is against allowing an extra use in an M2 zoning that will affect the whole County.
- Teresa Nunes, retired officer from Mule Creek State Prison spoke regarding the shooting range at the Mule Creek State Prison. She stated that they did academy training that ran through 600 cadets, twenty-five days out of the month, for six to eight hours daily. She stated that twenty-five to thirty-five officers shot rapid fire on the line. She stated that shooting range berms were used to decrease the noise and mentioned the sound at roughly 1200 yards away

resembled a popping noise. She stated that the berms really took the noise away and that she could barely hear it. She mentioned that she is a property owner and expressed the importance of property rights. She stated that she has been to several ranges and mentioned that the noise is very minimal. She also stated that there are ways to make sure that the shooting ranges and berms are safe, sane, and without noise.

- Tammy Drew spoke regarding the M2 zone and the permitted uses which include a manufacturing plant. She mentioned that she grew up next to a cannery which made a considerable amount of noise all day long which would be a lot more than a shooting range in her opinion. She stated that property owners should have done more research in regards to the M2 zone when purchasing their property. She mentioned that she sees no reason to not allow a shooting range in the M2 zone when it won't make as much noise as a cannery.
- Ron Randall stated that he has put on the Valley Springs Pow Wow for the last thirty-five years. He mentioned that fifteen years ago, one of the fire officials who testified at the June 2, 2011 Planning Commission Meeting, contacted him, and asked if a shooting group could shoot on his land. He stated that he had told them yes, as long as they supplied the insurance. Mr. Randall stated that they could not find insurance. Mr. Randall submitted a comment to the Commissioners and stated that he is not opposed to the shooting, but went on to discuss permitted uses and Conditional Uses in the M1 and M2 zone. He stated that a shooting range is comparable to several other uses that require a Conditional Use Permit in these zones and spoke of the importance of requiring a Conditional Use Permit for a shooting range in the M2 zone. He stated by allowing a shooting range on all M2 zones, every parcel that is zoned M2 has the potential of having a shooting range next door and these property owners should be notified of this.
- Rodney Greenough stated that he was the one who Mr. Randall was previously talking about. He stated the reason he could not get insurance for his 4-H group was because the UC Regents would not let him have a policy for private property. He stated that the noise is a big factor, but when noise travels, it decreases in decibels. He spoke regarding The Angels Gun Club and how there is never a problem with grazing cattle and wild turkeys on the adjoining parcels. He felt that this project is something that the County needs to bring revenue and jobs to the community.
- Austin Greenough spoke regarding M2 zoning and the permitted

use of manufacturing. He stated that residences should have known that manufacturing is allowed, and with it comes, noise, traffic and other impacts. He stated that a shooting range use is similar to manufacturing and would have less noise if proper barriers were constructed.

- Tonya Dausnd stated that she agrees with others that people need to be aware of their zoning when they purchase property. She mentioned that Mr. Coe shopped hard finding a piece of property suitable for the shooting range. She expressed that public opinion should not take priority over individual property rights.
- Linda Jennings stated that she has no problem with the kids needing a place to shoot, and mentioned that she would address the Resolution if she could understand it. She stated that the Resolution is not clear on its meaning. She expressed her concern with noise and traffic and stated that the road has only been paved twice in twelve years. She spoke regarding the road being narrow and full of pot holes. She stated that large delivery trucks, buses, and individual cars will be impacting the road. She also mentioned that she did not receive a Notice. She expressed her concern regarding her rights to have peace and quiet. She asked the Commission to explain the Resolution.
- Commissioner Kuehl responded by asking Darcy Goulart to explain the appeal. She stated that the public is confused as to why they were not discussing specifics of the project.
- Darcy Goulart, Project Planner explained that Mr. Coe submitted a grading permit application to the Public Works Department which was forwarded to the Planning Department. The Planning Department noticed that a shooting range was not specifically allowed in the M2 zoning. She stated a meeting was held with Planning, several department heads, Mr. Coe, and Supervisor Tofanelli at which time Mr. Coe was asked to submit a detailed project description for Phase 1 (research and development of clay shooting targets). After receiving and analyzing the project description against the code, she stated that they provided a determination to Mr. Coe about what we could do for him for Phase 1 in the larger scheme. Mr. Coe appealed the decision of the Planning Department because he did not agree with the determination. She explained that the appeal is the Planning Departments determination that Mr. Coe could not have the shooting range opened for public use and that it had to be part of the research and development. She stated that the interpretation made by the Planning Commissioners is whether or not a shooting range is a use that fits under an industrial use category and is similar to the other uses listed, and that it is an industrial use similar to these uses enumerated in the code because it provides a retail service.

- Linda Jennings resumed speaking and mentioned future uses mentioned by Mr. Coe which include an R.V. Park with hookups and hotel, and asked how these uses are considered manufacturing. She asked if she could see all of the information on this project and suggested research and development on sound levels of repeated shooting.
- Commissioner Kuehl reminded the public that it was the Commission's job to determine if the shooting range is similar in nature to other permitted uses in the M2 zone. She stated that if it is determined that it is similar in nature to other permitted uses in the M2 zone, the applicant has the right to proceed with his project. She added that he would then have to meet limited standards. She also asked Darcy Goulart if it is determined that the project is not similar enough in nature to a permitted M2 use, could the issue of a Conditional Permit Use be explored in the future.
- Darcy Goulart, Project Planner responded by saying that if this project was permitted on this site, there would be no way to go back in time and require him to get a Conditional Use Permit in the future. She mentioned that if the appeal is granted, Mr. Coe would only have to abide by the performance standards. She also mentioned that if the code changes, future permits would require a Conditional Use Permit.
- Don Elsner stated that he agrees with his neighbors and is not against shooting, he is just concerned with the constant noise. He stated that he would like to see some testing done while he is home, so he could see how loud the noise will be.
- Tom Infusino, Calaveras Planning Coalition, commented on the Resolution and stated that there were findings missing in reference to the substantial evidence in the record that led the Planning Commission to those conclusions. He stated that the Coalition was proposing additions to cure the defect. He encouraged the Commission to review each of the provisions of the additional language individually, and to adopt as many of the provisions as the Commission finds acceptable. The idea was to have the Commission explain why they came to this conclusion. He stated that the majority of items were representations made by the applicant, in written materials, or during the previous Planning Commission Meeting. He stated that this would explain why the Commission is approving the Resolution. He added that a lot of promises have been made by the applicant in regards to what is going to happen, but without a Conditional Use Permit, there is no way to enforce those promises. He stated that in addition to curing the defects in the findings, they believe that the additional language provides each party involved, a list of their rights, duties, and obligations. He added that the additional language makes the

approval of the project more project specific rather than generally applicable throughout the M2 zone.

- Billy Burdick stated that team is required to take a safety course in the beginning of the season, and if the coach feels that a member is not ready for shooting, they are required to take a hunter's safety course. He also stated that they are required to have a coach on the line while shooting.
- Katie Tanner spoke regarding shooting ranges in general. She stated that they aren't open 24/7, and only three to four days a week. She stated that most ranges close by 9:00 p.m. and added, each shooting range would have only one tournament per season between February and May. She mentioned that since the land is zoned M2, a rock quarry could be there blasting dynamite. She stated that noise from one day of shooting in a tournament, shouldn't be compared to the blasting of potential dynamite every day.
- Brandon Olson spoke regarding the shooting club "Los Banos" and stated that there is a housing development next to them and assumed there hasn't been any problem. He stated that the applicant has the right to put a shooting range on his property and he didn't see anything wrong with it. He mentioned that the effects would be very similar to a manufacturing plant if not less, so the Commission should approve it.
- Holly Mines stated that the Board of Supervisors decided a month ago, because it is no longer required by law, that the Planning Commission Agenda's will not be posted in the newspapers.
- Commissioner Kuehl responded saying she had thought they had rescinded that.
- Holly Mines responded by saying no. She also spoke about public comments regarding the applicant's rights and stated that the applicant's neighbors also have property rights. She mentioned the importance when making decisions, of balancing the interests of the applicant and neighbors. She mentioned that she expected to see the Staff Report on the website from the June 2, 2011 Planning Commission Meeting, but only found the Resolution and a statement below the Resolution that read, "All correspondence received since June 2, 2011". She stated that there were only two correspondence posted and the one that she submitted was omitted. She spoke regarding informing the public of projects, and stated that when something is stated online, it should be produced online. She stated that this would educate the public before they come to meetings and comment on them. She mentioned that if the Commission makes their decision today, there will be many people who live on or next to M2 properties that did not know when

they bought it, that a shooting range was an allowed permitted use without conditions. She urged the Commission to continue, examine, or include Tom Infusino's additions to the Resolution before approving the project.

- Peter Racz expressed his support for the project, life, and liberty. He stated that the neighbors should have done due diligence when they purchased their property. He stated you don't take away someone's right to do what they want on their property. He suggested that the Commission let the applicant proceed, and don't start precedence for future commercial enterprises.
- Sandy Gleason stated that her husband's family has owned property out there for over seventy years. She stated that when the Cement Plant relocated to Watertown Rd. in the sixties, they asked the owners if they could rezone the property to M2 to house a pond, warehouse, and store clinkers. She mentioned that the family was not opposed to this change. She stated that when the Cement Plant closed down, the zoning was never changed. She expressed that she isn't opposed to the shooting range, but feels that this project needs conditions. She expressed her concern about this project being below legal.
- Commissioner Kuehl responded to Ms. Gleason's comment about the project being below legal. She stated that there is a process in place in law, which allows the applicant, if he's received a determination from planning staff that he didn't like, to appeal the determination because the staff are not appointed or elected officials. The appeal then comes to the Planning Commission, but the ultimate authority is the Board of Supervisors. She went on to say that if the Planning Commission makes a decision today, that decision doesn't automatically go to the Board of Supervisors, only if there is an appeal of the Planning Commission's determination. She mentioned again, that the Commission is being asked to make a determination whether a shooting range is similar in nature to other allowed M2 uses. She also mentioned that they always follow the letter of the law and consult County Counsel throughout the process to make sure they are doing the people's business.
- Dave Tanner stated that many issues have already been addressed at the previous meeting, but stated that they came to the County and asked for direction from the Planning Director, George White, before starting the process. He stated that Mr. White made the determination that the shooting range was doable under the M2 zone. He stated that Mr. White instructed the applicant to move forward and pull a grading permit. He stated that Mr. White said "I don't need to see you again". He mentioned since Mr. White left the County, Planning staff was left not knowing what to do and felt it needed to be addressed by a Planning Director. He stated that after planning staff made the determination that it was not similar to

other allowable uses, the applicant then filed the appeal so it could be brought before the Planning Commission. Mr. Tanner mentioned that Recreational zoning allows shooting ranges. He mentioned that shooting ranges are not an easy project to take on. He spoke regarding insurance, liabilities, and stated they had several consultations with The National Rifle Association and The National Shooting Sports Federation and were given direction in regards to planning and design which is a requirement to purchase insurance. Mr. Tanner stated that many of the public concerns of have already been addressed in the design alone. He stated that they don't have intentions on moving forward right now on other issues, but when the time comes, they will follow the same process when submitting plans and follow the County's strict guidelines. He stated that the idea for a shooting range originally came with a request from Delta College. Delta College wanted to have a police science program and having the shooting range was a necessary tool for them to consider our facility. He stated that this facility will prove to be a great asset for Calaveras County.

- Commissioner Kuehl asked Mr. Tanner to address evening hours.
- Dave Tanner responded by saying that Angels Gun Club has been doing shooting at night for years. He mentioned that they have an excellent league program which goes well into the evening several nights throughout the week. He stated that Mr. Coe's facility doesn't see the need to go past 9:00 p.m. on Wednesdays and Fridays. He also stated that weekend hours would be from 9:00 a.m. to 5:00 p.m..
- Ron Randall spoke regarding a planning staff letter dated December 2, 2010 which mentioned four zoning designations that permitted shooting ranges. He also invited the league to shoot on his property as long as they could provide insurance.
- Pat Perreira spoke regarding evening hours and nighttime shooting. She stated that The Angels Gun Club set their own standards and mentioned that this project is a new shooting range which will have their own set of standards. She spoke of the evening hours that have been set by Mr. Coe and stated that the standard of nighttime shooting will come into the civil code of 10:00 p.m. to 7:00 a.m. which allows shooting during these hours. She stated that this will interfere with private lives of the people who live there. She would like to see some discussion on whether those evening hours would be allowable and expressed that it should have been discussed sooner. She stated that once the standard is set, it's locked in and you can't void it. She mentioned that because law enforcement is involved in it, it voids a lot of the requirements.

- Tom Infusino stated that there is a conflict between the land use designation and the zoning for these parcels. He stated that the General Plan Land Use Designation for this land is Future Single Family Residential and the zoning is M2 which is manufacturing. He went on to say that the General Plan states that M2 does not belong in Future Single Family Residential and spoke regarding the comments that were made regarding property owners not being educated on their zoning and permitted uses. He stated that property owners did do their due diligence and that their comments did not apply here. He mentioned that you can do blasting and move minerals in the M2 zone, but not without a Conditional Use Permit. He also stated that the Fifth Amendment states that no person shall be deprived of life, liberty, or property without due process of law. He mentioned that this is why we are here today, to insure that the government does not deprive the applicant of his property right to make noise, and his neighbors are not deprived of their property rights to the quiet and enjoyment of their lands. He also thanked the Commissioners for their service.
- Austin Greenough stated that there will be no shooting past 9:00 p.m..
- Tonya Dausnd stated that the General Plan has not been adopted yet. She also spoke regarding the government's right to change land use without property owner's permission or just compensation. She stated that another part of the Fifth Amendment requires just compensation from the government if they do infringe on property rights. She stated that it's not just due process; the government is responsible to pay just compensation to the property owner if property rights are limited.
- Tom Coe, applicant, commented on the noise. He stated that machine shops are permitted uses in this zoning and feels that a shooting range is less offensive than the majority of uses allowed in the M2 zone.
- Rodney Greenough spoke regarding the many uses on the M2 zone. He stated that Mr. Coe was working with Delta College to put a satellite campus on his property and nobody was opposed to that project. He also mentioned that the shooting range could work back in with the satellite campus in the future. He commented that the shooting range is a use that could fit in with the zoning, and it should move forward.
- Joseph Bochelli stated that he had hoped to have written restrictions that say what Mr. Tanner said are going to be followed. He also mentioned that he would like to see a Conditional Use approach.

- Pat Perreira spoke in regards to the nuisance laws of the curfew. She stated that it is an issue of disturbing the peace, and shooting ranges are exempt.
- Peter Racz thanked Mr. Tanner and Mr. Coe for following the Constitution. He spoke of the proposed General Plan and stated that it was up in the air. He stated that both the General Plan is vague, and the people who might approve it are up for re-election. He expressed his appreciation to the Commissioners and asked them to consider this project. He commented that this was a zoning question and stated that this will go to the supervisors for the conditions of the permit.
- Teresa Nunes stated that with the National Rifle Association and the Department of Justice, there are bi-laws, and strict regulations in the state of California to the letter. She stated that the Firing Range Master has to be on the range and makes sure that every policy, regulation, and rule is followed. She commented that there will not be noise, and at the most, it will be a popping noise.
- Holly Mines stated that she wanted to correct some misinformation that was presented by two of the rebuttal speakers. She stated that the current General Plan designates land use for this land as Future Single Family Residential. She mentioned that the zoning is M2. She commented that Tom Infusino is correct in saying that land use is the predominant characterization and the zoning follows that. She stated that if there is a trumping process, it is the land use designation which takes priority over the zoning. She stated that this should be clear to the Commissioners and the public before the discussion continues. She asked if Mr. Tanner would consent to putting down the list of conditions for the Resolution to be passed.
- Commissioner Kuehl responded by saying that they have been advised that they can't do that.
- Commissioner Wallace mentioned that the Commissioners have been advised that they can't add conditions but asked if the applicant can state those conditions voluntarily.
- Commissioner Kuehl responded by saying that the applicant can state his intentions, but staff was advised that there is no mechanism by which we can enforce self-imposed restrictions. She stated that the noise decibel level can be enforced as it is on all M2 properties. As far as the conditions that the applicant places on himself, she stated the Commission can't enforce them. If the Commission determines that this use is similar in nature to the other permitted uses in the M2 zone, then the applicant can proceed with his plans with very few conditions.

- Commissioner McLaughlin asked Darcy Goulart, Project Planner if the zones where shooting ranges are allowed are permitted outright or with a Conditional Use Permit.
- Darcy Goulart, Project Planner responded by saying that they are only allowed with a Conditional Use Permit.
- Commissioner McLaughlin responded by asking if a shooting range is permitted outright in any zone.
- Darcy Goulart, Project Planner stated that there wasn't a zone that permitted a shooting range outright without a Conditional Use Permit.
- Commissioner McLaughlin stated that the reason she asked is because a shooting range can potentially be a nuisance and believes that the reason why they are not permitted outright is for fact that they can be a nuisance. She stated that for the protection of people that use the range, as well as people who live near the range, have guidelines that would be followed to insure neighbors have peaceful and quiet enjoyment of their property. She expressed her concern regarding traffic, noise, safety, and light and allowing this use without a Conditional Use Permit. She stated that she didn't feel a shooting range was a similar use to other permitted uses in the M2 zone. She mentioned that she can't interpret the code to say so, in reference to the Resolution.
- Commissioner Mason stated that it was great to see the kids speak before a big crowd intelligently and follow the directions of the Chair. He commented on the NRA guidelines and suggested that the neighbors being affected get together with the range team and give input. He asked Darcy Goulart, Project Planner if #2 and #3 under evidence, "Shooting ranges, such as" from the Resolution could be eliminated to make it more general.
- Darcy Goulart, Planner Project responded by saying that if he wanted to make in general in nature he could, but stated that her direction would be to leave "shooting ranges" because it was written in part with County Counsel.
- Commissioner Allured stated that the direction he was going in comparing this proposed usage to other uses of M2, was that if mining were active on this parcel, he would find that a shooting range to be less intrusive in regards to traffic, and noise.

- Commissioner Kuehl stated that she felt a shooting range is a similar use to several of the outright uses in the M2 zone. She stated that once you determine that a shooting range is compatible, than we cannot condition concerns that were brought up. She mentioned that the one that can be monitored is the noise decibel level. But stated in terms of dust, roads, etc., once this project is permitted as an outright use, the landowner has the right to proceed with his plans. She mentioned that she disagreed with Holly Mines in reference to Holly's interpretation of what is an overriding factor. Commissioner Kuehl agreed that the current plan (Future Single Family Residential) designation is not compatible with the M2 zoning. She mentioned that she does believe in what the County has always done with revised general plans, by making the zoning compatible with the adopted general plan land use. She stated that it was not done in this case and the Board preferred to leave the property zoned as industrial. She stated the property owner has the right to make use of the land as an industrially zoned land. She mentioned that she is concerned with Darcy Goulart, Project Planner's belief that if the Commission allows this use as an outright use, they would be allowing this use on all M2 zones. She also stated that she strongly feels that a project of this nature would be more compatible with the neighbor's desires than many of the potential uses that could be under the M2 zone. She mentioned all of the empty storefronts in the County, and stated that she sees this project as something that is compatible with the rural lifestyle that could bring jobs to the county. She stated that maybe it is time that we look at the zoning and take into consideration what Calaveras County's all about. She stated that she firmly believes that if the applicant is required to apply for a Conditional Use Permit, it would be the kiss of death. She stated that it is a very costly, lengthy process, and he would have to wait for the General Plan to be revised so there could be a finding of compatibility. She closed by saying that she wants to see this project come about because it would be a good project for Calaveras County.
- Commissioner McLaughlin stated that most people would like to see this project come about. But stated that there are people who live there who are concerned with the impacts that it will have on them. She expressed that she didn't feel that it was fair to push this project forward on the backs of people who are going to be impacted. She stated that the County could provide the assurances and proof that they are going to have a facility with appropriate conditions placed on the property. She mentioned that if the noise were too loud without a Conditional Use Permit, you could not go to the NRA and complain.

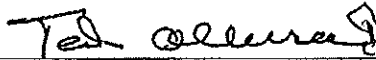
MOTION: A motion was made by Commissioner Mason and seconded by Commissioner Allured authorizing the Chair to sign Resolution 2011-036 A Resolution approving 2011-014 an Appeal for the proposed Thomas Coe Shooting Center regarding permitted uses in the M-2 Zoning designation for APN: 048002068. Motion was approved 4-1-0-0.

F. PUBLIC COMMENT:

- None.

G. ADJOURNMENT:

The meeting was adjourned at 11:52 a.m.

Planning	Date
	2-21-11
Suzanne Kuehl, Planning Commissioner Chair	Date

THE WALL STREET JOURNAL.

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SAN FRANCISCO BAY AREA

Asphalt Proposal Draws Complaints From Neighbors

By JIM CARLTON

Aug. 15, 2012 7:04 p.m. ET

SANTA ROSA—A project by a local asphalt plant to make itself greener has sparked a feud with surrounding neighbors, underlining the controversy environmentally oriented projects sometimes face in the eco-friendly Bay Area.

The dispute involves a plant run by BoDean Co., a supplier of asphalt and other construction materials based in Santa Rosa. BoDean plans to build three new, 82-foot-high silo buildings to quadruple the amount of asphalt the plant can hold temporarily in Sonoma County's largest city.



Tyler and Sara Sugrue, with their two sons, live across the street from the BoDean asphalt plant in Santa Rosa, in the background, and oppose its plans to add three storage silos. RAMIN RAHIMIAN FOR THE WALL STREET JOURNAL

Plant officials say the \$1.5 million project, approved by the Santa Rosa City Council in June, is designed to cut its greenhouse gas emissions while lowering energy costs as much as 40%.

Asphalt is made by heating a combination of rock, sand and a crude oil-based product called asphalt binder. Once mixed, the material is either poured into waiting trucks to go out to a road-paving site or put into storage until it can be picked up, says BoDean general manager Bill Williams.

BoDean's existing silo is designed like a giant thermos, he says, to keep the asphalt hot enough so it can be loaded into trucks without having to be reheated. The company needs the three additional silos to reduce its current energy-intensive practice of using natural gas to reheat asphalt that won't fit in the single silo, he says.

The company hopes to begin constructing the new silos, which can hold up to 280 tons of asphalt each, this fall.

But many residents in the surrounding West End neighborhood say the project would allow BoDean to increase its production rate up to threefold, exacerbating what they say is a long-running problem of dust, noise and noxious fumes.

"The hardest part is the smell," says Sara Sugrue, 37, an event consultant who lives across the street from the plant with her husband, Tyler, and their two young sons. "I'd describe it as someone tarring a roof inside my house, to the point even my 4-year-old complains of the smell and headaches."

Mr. Williams says no increase in production is planned. The plant already has equipment that can produce up to about 2.5 million tons of asphalt annually with no permit required, he adds, but the company has kept production in line with the market demand of about 250,000 tons annually the past two years and under 200,000 tons before that.

BoDean has made a request to expand the silo facility to the Bay Area Air Quality Management District, which as part of granting that approval proposes capping the production at 759,000 tons annually. That district, created by the state to regulate the region's air emissions, is still considering the authorization, says agency spokesman Ralph Borrmann.

Last month, a residents' group called Citizens for Safe Neighborhoods sued the city in state Superior Court in Santa Rosa, asking that the silo project be blocked on the grounds that adequate city and state environmental reviews weren't prepared in advance of the City Council's June 19 vote to approve the project. The case is pending.

Hogan Quarry is taking risks with lives and business

Jan and Dan Foster wrote a letter published June 12 that was headlined "Asphalt plant needs environmental review."

They addressed their health and quality-of-life concerns regarding the expansion of the Hogan Quarry into a hot asphalt plant.

A rock quarry is one thing. I knew it was there when I bought my house on Laurent Lane five years ago. A hot asphalt plant is something else altogether. I can assure you that I never would have made my purchase had I known that this expansion was in the offing.

Jan and Dan's letter referred to "Valley Springs residents."

To be fair, it is only about 20 homes (on Laurent Drive and Harper Street) that will be directly affected health-wise (others will be affected by noise and traffic). But before you skip on by this letter thinking, "not my concern," I'd like to ask you how you would feel if it were your kids at risk.

These are not keyboard kids addicted to indoor video games. All of these kids (over 20 in total) are outdoorsy, athletic children at a vulnerable age (mostly 7 to 16). As I write this at 5 p.m. on June 11, it is 91 degrees. Yet the young boy at the end of Harper is outside on his trampoline, as he is every day. His house is closest to the quarry.

Next door to him, the little girl is doing her usual bike ride back and forth (and back and forth, again and again, almost like a rat in a maze) from the end of Harper to the end of Laurent, repeating endlessly. That little girl may grow up to be a cycling champion unless she inhales too much particulate matter from hot asphalt discharge. The three other closest houses to the quarry all have multiple kids who play organized baseball. As a result, one of the dads has made his backyard into a regulation infield and they are out practicing all the time. The four younger boys on Laurent and two on Harper who hang together are always outside on bicycles or taking turns on that little go-cart. Another family has a pool that the kids all use.

I'm serving notice that if my quality of life (and health) are in any way affected by excessive smells, additional noise pollution or carbon pollution from excess trucking or particularly, floating particulate matter, that I will bring suit and force

Hogan Rock Quarry to either cease and desist or buy me out at a price including my initial cost, the difference in what I will have to pay now to find a comparable, the cost of the time, effort and expenses that I have put into my current house and the costs of moving twice, plus an inconvenience fee.

Multiply that times 20 and that is your risk factor. I am old enough to remember Love Canal and it usually happens that the companies can't pay when they change lives by polluting and the burden falls on the taxpayers. So everyone in this county has reason to question the risk versus the reward of this proposed expansion.

As such, I call on whoever approved this expansion to explain themselves on these pages within two weeks, because your job may be in jeopardy if you did not take into account what I have described

about the neighborhood kids' athletic habits and activities and the possible risk to the health of children with an active outdoor lifestyle.

Winds can be pretty strong around here. Did you even measure and assess those risks regarding airborne pathogens? When we ask you to produce any studies you made in this regard, will you have anything at all? That is, are you doing your job?

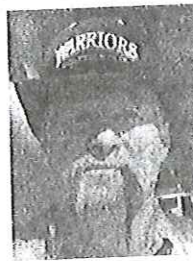
And then I call upon Hogan Quarry to reply on these pages and tell us what kind of guarantees you are willing to offer us. But really, this is a residential, not an industrial neighborhood.

I have no problem with Hogan Quarry harvesting rock at this site. I knew that when I bought my house. I put up with the dynamiting. Yeah, my whole house shakes and I wonder about the foundation, but this was a risk that I knowingly took. I am not knowingly taking the risks associated with your expansion.

Your future as a company and our futures as healthy, happy families may well depend on how accurate your information turns out to be and what decisions you choose to make regarding the risk that you are willing to take with the lives of these kids.

We await your responses.

Brock Estes is a resident of Valley Springs who drives a taxi in San Francisco on weekends. You can reach him at brockestes@yahoo.com.



BROCK ESTES
GUEST OPINION

*Colovert Enterprise
Juno. June 23, 2015*

Proposed asphalt plant needs public review

Calaveras Enterprise June 23, 2015

There's controversy in the air, and it smells like asphalt. Ford Construction has proposed an asphalt batch plant at the Hogan Quarry near Valley Springs, adjacent to the Calaveras River and situated between the La Contenta and Rancho Calaveras subdivisions. It has been alleged that a hot asphalt plant at this location could mean unacceptable noise levels, air and water pollution, traffic congestion, road degradation and adverse impacts to tourism at New Hogan Reservoir.

On April 30, Calaveras County Planning Director Peter Maurer sent a letter to Ford Construction that "concluded that an asphaltic concrete hot asphalt batch plant, or 'hot plant,' is permitted" by right under the quarry's General Industrial zoning. Maurer rejected the argument by Ford's attorney that the asphalt plant was a vested right but considered the point "moot." Maurer's decision is facing multiple appeals. If the asphalt plant is permitted by right, it would not be subject to environmental review under the California Environmental Quality Act or require public notice.

Prior to Maurer's decision, he was contacted via email by District Five Supervisor Steve Kearney who wanted to facilitate approval of the asphalt plant, because he believed it would mean "10 plus" local jobs. In the same email exchange, Kearney learned from Brian Moss, director of Environmental Health and the local air pollution control officer, that Ford Construction would also need to apply to the Calaveras County Air Pollution Control District for authority to construct. More than Planning Department approval would be required for the asphalt plant.

Economic development and job creation are two of the main talking points for proponents of the asphalt plant. Yet, in the cover letter to its application for authority to construct, dated May 18, the western division manager of C.B. Asphalt, one of the Ford affiliates, wrote, "Most typically, without this opportunity, the quarry and crusher personnel struggle to work full 40-hour work weeks." The letter also said, "The operations will not be steady or every weekday as there is simply not enough demand or expected sales volumes to justify the same." This doesn't sound like 10 plus jobs.

Maurer's decision was appealed by the Calaveras County Water District; MyValleySprings.com, a local nonprofit dedicated to smart growth and preservation of rural character; John Walker, a resident who owns property near the quarry; and Stockton East Water District, which, like CCWD, depends on the Calaveras River for a substantial portion of its water supply.

com board of directors and remain a supporter. I am presently a member of the Calaveras Community Action Project Governing Committee. MyValleySprings.com is a member of the Calaveras Planning Coalition, which is CAP's primary program. I'm also a resident of La Contenta and a CCWD customer.

The appeal by Stockton East was denied because it was not filed in a timely manner. However, the Stockton East appeal letter raised two primary issues: the lack of public notice and the decision that asphalt and concrete are the same or similar.

In his June 2 response to the Stockton East appeal, Maurer reassures them, "Please be advised that the application for authority to construct, filed with the Calaveras County Air Pollution Control District, has been determined to be a project under CEQA, and an appropriate environmental document will be prepared prior to constructing and operating the plant."

So if I understand this correctly, the Planning Department determined that the asphalt plant is a permitted use under the zoning, because it equated asphalt with concrete. In that case, there would be no need for a conditional use permit and, therefore, no need for CEQA compliance, hence no public notice. However, the Air Pollution Control District determined, at least from the standpoint of air pollution, that the asphalt plant is a project under CEQA with all that entails, including environmental review.

Not surprisingly, Ford Construction is appealing the finding of the Air Pollution Control District that CEQA applies to its application. All appeals will be heard by the Calaveras County Planning Commission at 9 a.m. June 25 in the Board of Supervisors Chambers at the Government Center in San Andreas. The decision of the commission may be appealed to the Board of Supervisors. In any case, this process allows for a much-needed public discussion of the proposed asphalt plant.

CEQA charges the public with its enforcement. In other words, without public scrutiny, government entities may skirt or ignore the requirements of CEQA with impunity. As the state's Natural Resources Agency explains, "Public agencies are entrusted with compliance with CEQA and its provisions are enforced, as necessary, by the public through litigation and the threat thereof." Frankly, I've always thought this puts a heavy burden on the public, but I'm glad there are those who are willing to step up.

Muriel Zeller is a poet, writer and Valley Springs resident. Contact her at murielzeller52@gmail.com



**MURIEL
ZELLER**
TAKE A LODE OFF

Many chemicals on federal list of asphalt plant emissions

Posted: Friday, July 10, 2015 6:00 am

Building a hot mix asphalt next to suburban homes in Rancho Calaveras may benefit county tax revenues but what harm will it cause to local people and wildlife?

What environmental impact reports have been submitted to the county and state and Federal Environmental Protection Agency for the local public to review?

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All the readers of the Calaveras Enterprise and all the citizens of the county deserve full public awareness of the potential hazards from the proposed asphalt plant!

James Van Sant

Rancho Calaveras

Hogan Quarry is taking risks with lives and business

Jan and Dan Foster wrote a letter published June 12 that was headlined "Asphalt plant needs environmental review."

They addressed their health and quality-of-life concerns regarding the expansion of the Hogan Quarry into a hot asphalt plant.

A rock quarry is one thing. I knew it was there when I bought my house on Laurent Lane five years ago. A hot asphalt plant is something else altogether. I can assure you that I never would have made my purchase had I known that this expansion was in the offing.

Jan and Dan's letter referred to "Valley Springs residents."

To be fair, it is only about 20 homes (on Laurent Drive and Harper Street) that will be directly affected health-wise (others will be affected by noise and traffic). But before you skip on by this letter thinking, "not my concern," I'd like to ask you how you would feel if it were your kids at risk.

These are not keyboard kids addicted to indoor video games. All of these kids (over 20 in total) are outdoorsy, athletic children at a vulnerable age (mostly 7 to 16). As I write this at 5 p.m. on June 11, it is 91 degrees. Yet the young boy at the end of Harper is outside on his trampoline, as he is every day. His house is closest to the quarry.

Next door to him, the little girl is doing her usual bike ride back and forth (and back and forth, again and again, almost like a rat in a maze) from the end of Harper to the end of Laurent, repeating endlessly. That little girl may grow up to be a cycling champion unless she inhales too much particulate matter from hot asphalt discharge. The three other closest houses to the quarry all have multiple kids who play organized baseball. As a result, one of the dads has made his backyard into a regulation infield and they are out practicing all the time. The four younger boys on Laurent and two on Harper who hang together are always outside on bicycles or taking turns on that little go-cart. Another family has a pool that the kids all use.

I'm serving notice that if my quality of life (and health) are in any way affected by excessive smells, additional noise pollution or carbon pollution from excess trucking or particularly, floating particulate matter, that I will bring suit and force

Hogan Rock Quarry to either cease and desist or buy me out at a price including my initial cost, the difference in what I will have to pay now to find a comparable, the cost of the time, effort and expenses that I have put into my current house and the costs of moving twice, plus an inconvenience fee.

Multiply that times 20 and that is your risk factor. I am old enough to remember Love Canal and it usually happens that the companies can't pay when they change lives by polluting and the burden falls on the taxpayers. So everyone in this county has reason to question the risk versus the reward of this proposed expansion.

As such, I call on whoever approved this expansion to explain themselves on these pages within two weeks, because your job may be in jeopardy if you did not take into account what I have described

about the neighborhood kids' athletic habits and activities and the possible risk to the health of children with an active outdoor lifestyle.

Winds can be pretty strong around here. Did you even measure and assess those risks regarding airborne pathogens? When we ask you to produce any studies you made in this regard, will you have anything at all? That is, are you doing your job?

And then I call upon Hogan Quarry to reply on these pages and tell us what kind of guarantees you are willing to offer us. But really, this is a residential, not an industrial neighborhood.

I have no problem with Hogan Quarry harvesting rock at this site. I knew that when I bought my house. I put up with the dynamiting. Yeah, my whole house shakes and I wonder about the foundation, but this was a risk that I knowingly took. I am not knowingly taking the risks associated with your expansion.

Your future as a company and our futures as healthy, happy families may well depend on how accurate your information turns out to be and what decisions you choose to make regarding the risk that you are willing to take with the lives of these kids.

We await your responses.

Brock Estes is a resident of Valley Springs who drives a taxi in San Francisco on weekends. You can reach him at brockestes@yahoo.com.



BROCK ESTES
GUEST OPINION

*Calaveras Enterprise -
Tues. June 23, 2015*

Proposed asphalt plant needs public review

Calaveras Enterprise Sun June 23, 2015

There's controversy in the air, and it smells like asphalt. Ford Construction has proposed an asphalt batch plant at the Hogan Quarry near Valley Springs, adjacent to the Calaveras River and situated between the La Contenta and Rancho Calaveras subdivisions. It has been alleged that a hot asphalt plant at this location could mean unacceptable noise levels, air and water pollution, traffic congestion, road degradation and adverse impacts to tourism at New Hogan Reservoir.

On April 30, Calaveras County Planning Director Peter Maurer sent a letter to Ford Construction that "concluded that an asphaltic concrete hot asphalt batch plant, or 'hot plant,' is permitted" by right under the quarry's General Industrial zoning. Maurer rejected the argument by Ford's attorney that the asphalt plant was a vested right but considered the point "moot." Maurer's decision is facing multiple appeals. If the asphalt plant is permitted by right, it would not be subject to environmental review under the California Environmental Quality Act or require public notice.

Prior to Maurer's decision, he was contacted via email by District Five Supervisor Steve Kearney who wanted to facilitate approval of the asphalt plant, because he believed it would mean "10 plus" local jobs. In the same email exchange, Kearney learned from Brian Moss, director of Environmental Health and the local air pollution control officer, that Ford Construction would also need to apply to the Calaveras County Air Pollution Control District for authority to construct. More than Planning Department approval would be required for the asphalt plant.

Economic development and job creation are two of the main talking points for proponents of the asphalt plant. Yet, in the cover letter to its application for authority to construct, dated May 18, the western division manager of C.B. Asphalt, one of the Ford affiliates, wrote, "Most typically, without this opportunity, the quarry and crusher personnel struggle to work full 40-hour work weeks." The letter also said, "The operations will not be steady or every weekday as there is simply not enough demand or expected sales volumes to justify the same." This doesn't sound like 10 plus jobs.

Maurer's decision was appealed by the Calaveras County Water District; MyValleySprings.com, a local nonprofit dedicated to smart growth and preservation of rural character; John Walker, a resident who owns property near the quarry; and Stockton East Water District, which, like CCWD, depends on the Calaveras River for a substantial portion of its water supply.

com board of directors and remain a supporter. I am presently a member of the Calaveras Community Action Project Governing Committee. MyValleySprings.com is a member of the Calaveras Planning Coalition, which is CAP's primary program. I'm also a resident of La Contenta and a CCWD customer.

The appeal by Stockton East was denied because it was not filed in a timely manner. However, the Stockton East appeal letter raised two primary issues: the lack of public notice and the decision that asphalt and concrete are the same or similar.

In his June 2 response to the Stockton East appeal, Maurer reassures them, "Please be advised that the application for authority to construct, filed with the Calaveras County Air Pollution Control District, has been determined to be a project under CEQA, and an appropriate environmental document will be prepared prior to constructing and operating the plant."

So if I understand this correctly, the Planning Department determined that the asphalt plant is a permitted use under the zoning, because it equated asphalt with concrete. In that case, there would be no need for a conditional use permit and, therefore, no need for CEQA compliance, hence no public notice. However, the Air Pollution Control District determined, at least from the standpoint of air pollution, that the asphalt plant is a project under CEQA with all that entails, including environmental review.

Not surprisingly, Ford Construction is appealing the finding of the Air Pollution Control District that CEQA applies to its application. All appeals will be heard by the Calaveras County Planning Commission at 9 a.m. June 25 in the Board of Supervisors Chambers at the Government Center in San Andreas. The decision of the commission may be appealed to the Board of Supervisors. In any case, this process allows for a much-needed public discussion of the proposed asphalt plant.

CEQA charges the public with its enforcement. In other words, without public scrutiny, government entities may skirt or ignore the requirements of CEQA with impunity. As the state's Natural Resources Agency explains, "Public agencies are entrusted with compliance with CEQA and its provisions are enforced, as necessary, by the public through litigation and the threat thereof." Frankly, I've always thought this puts a heavy burden on the public, but I'm glad there are those who are willing to step up.

Muriel Zeller is a poet, writer and Valley Springs resident. Contact her at murielzeller52@gmail.com



**MURIEL
ZELLER**
TAKE A LODE OFF

Many chemicals on federal list of asphalt plant emissions

Posted: Friday, July 10, 2015 6:00 am

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James Van Sant

Rancho Calaveras

THE WALL STREET JOURNAL.

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SAN FRANCISCO BAY AREA

Asphalt Proposal Draws Complaints From Neighbors

By JIM CARLTON

Aug. 15, 2012 7:04 p.m. ET

SANTA ROSA—A project by a local asphalt plant to make itself greener has sparked a feud with surrounding neighbors, underlining the controversy environmentally oriented projects sometimes face in the eco-friendly Bay Area.

The dispute involves a plant run by BoDean Co., a supplier of asphalt and other construction materials based in Santa Rosa. BoDean plans to build three new, 82-foot-high silo buildings to quadruple the amount of asphalt the plant can hold temporarily in Sonoma County's largest city.



Tyler and Sara Sugrue, with their two sons, live across the street from the BoDean asphalt plant in Santa Rosa, in the background, and oppose its plans to add three storage silos. RAMIN RAHIMIAN FOR THE WALL STREET JOURNAL

Plant officials say the \$1.5 million project, approved by the Santa Rosa City Council in June, is designed to cut its greenhouse gas emissions while lowering energy costs as much as 40%.

Asphalt is made by heating a combination of rock, sand and a crude oil-based product called asphalt binder. Once mixed, the material is either poured into waiting trucks to go out to a road-paving site or put into storage until it can be picked up, says BoDean general manager Bill Williams.

BoDean's existing silo is designed like a giant thermos, he says, to keep the asphalt hot enough so it can be loaded into trucks without having to be reheated. The company needs the three additional silos to reduce its current energy-intensive practice of using natural gas to reheat asphalt that won't fit in the single silo, he says.

The company hopes to begin constructing the new silos, which can hold up to 280 tons of asphalt each, this fall.

But many residents in the surrounding West End neighborhood say the project would allow BoDean to increase its production rate up to threefold, exacerbating what they say is a long-running problem of dust, noise and noxious fumes.

"The hardest part is the smell," says Sara Sugrue, 37, an event consultant who lives across the street from the plant with her husband, Tyler, and their two young sons. "I'd describe it as someone tarring a roof inside my house, to the point even my 4-year-old complains of the smell and headaches."

Mr. Williams says no increase in production is planned. The plant already has equipment that can produce up to about 2.5 million tons of asphalt annually with no permit required, he adds, but the company has kept production in line with the market demand of about 250,000 tons annually the past two years and under 200,000 tons before that.

BoDean has made a request to expand the silo facility to the Bay Area Air Quality Management District, which as part of granting that approval proposes capping the production at 759,000 tons annually. That district, created by the state to regulate the region's air emissions, is still considering the authorization, says agency spokesman Ralph Borrmann.

Last month, a residents' group called Citizens for Safe Neighborhoods sued the city in state Superior Court in Santa Rosa, asking that the silo project be blocked on the grounds that adequate city and state environmental reviews weren't prepared in advance of the City Council's June 19 vote to approve the project. The case is pending.

Hogan Asphalt Plant Appeal Hearings

August 11, 9:30 a.m., before the Board of Supervisors

2015-029A Appeal by Ford Construction and CB Asphalt of the Planning Commission's determination that an Authority to Construct (ATC) is a project, as defined by CEQA, and the issuance of an ATC for a proposed asphalt plant located at 3650 Hogan Dam Road, Valley Springs, APN050-003-001 is subject to the provisions of CEQA (California Environmental Quality Act).

2015-029A Appeal by MyValleySprings.com of the determination made by the Planning Commission that an asphalt plant is a permitted use in the M2, General Industrial zone, that no mining use permit is required for the installation of an asphalt plant at Hogan Quarry, and that no amendment to the existing reclamation plan for the quarry, located at 3650 Hogan Dam Road, Valley Springs, APN050-003-001.

August 13, 9 a.m., before the Planning Commission

2015-029D Appeal by Ford Construction and CB Asphalt of the Environmental Management Agency's determination that installation and operation of a hot mix asphalt plant at the Hogan Quarry, 3650 Hogan Dam Road, Valley Springs, APN 050-003-001, will involve the use of hazardous materials that may have a significant effect on the environment and therefore requires a Conditional Use Permit pursuant to Calaveras County Code Sec. 17.42.035.

**All hearings will be held in the Board of Supervisors
Chambers, Government Center, San Andreas**

Please Be there!

County parcels-M1-M2-M2ME Zoning_sorted APN_GIS parzone.xls

	A	B	C	D	E	F
1	APN	SITUS1	SITUS2	SUPDIST	APN_1	ZONING
2	08015012			DISTRICT 2	08015012	M1
3	26001031	1191 LINEBAUGH RD	ARNOLD CA	DISTRICT 3	26001031	M1
4	26001033	1470 LINEBAUGH RD	ARNOLD CA	DISTRICT 3	26001033	M1
5	26001041	1145 DUNBAR RD	ARNOLD CA	DISTRICT 3	26001041	M1
6	26001045	1301 LINEBAUGH RD	ARNOLD CA	DISTRICT 3	26001045	M1
7	26001047	1241 DUNBAR RD	ARNOLD CA	DISTRICT 3	26001047	M1
8	26001053			DISTRICT 3	26001053	M1
9	26001055	1495 LINEBAUGH RD	ARNOLD CA	DISTRICT 3	26001055	M1
10	26001056	1355 LINEBAUGH RD	ARNOLD CA	DISTRICT 3	26001056	M1
11	26001058	1231 LINEBAUGH RD	ARNOLD CA	DISTRICT 3	26001058	M1
12	26001065	1149 DUNBAR RD	ARNOLD CA	DISTRICT 3	26001065	M1
13	26001066	1153 DUNBAR RD	ARNOLD CA	DISTRICT 3	26001066	M1
14	26001094	1286 LINEBAUGH RD	ARNOLD CA	DISTRICT 3	26001094	M1
15	26001095	1301 DUNBAR RD	ARNOLD CA	DISTRICT 3	26001095	M1
16	40003002	2400 DOUBLE SPRINGS RD	VALLEY SPRINGS CA	DISTRICT 1	40003002	M1
17	40004027	3601 DOUBLE SPRINGS RD	VALLEY SPRINGS CA	DISTRICT 1	40004027	M1
18	46022015			DISTRICT 1	46022015	M1
19	46022016	2918 HWY 12	SAN ANDREAS CA	DISTRICT 1	46022016	M1
20	48018027	5476 HWY 12	WALLACE CA	DISTRICT 1	48018027	M1
21	48023004	5475 HWY 12	WALLACE CA	DISTRICT 1	48023004	M1
22	54012003	223 BAKER ST	COPPEROPOLIS CA	DISTRICT 4	54012003	M1
23	54012006	223 BAKER ST	COPPEROPOLIS CA	DISTRICT 4	54012006	M1
24	54012036			DISTRICT 4	54012036	M1
25	57003061	110 LONE DOVE LN	MURPHYS CA	DISTRICT 4	57003061	M1
26	66007007	969 HWY 4	MURPHYS CA	DISTRICT 3	66007007	M1
27	38014001			DISTRICT 2	38014001	M2
28	38015035			DISTRICT 2	38015035	M2
29	38015053	4784 OLD GULCH RD	SAN ANDREAS CA	DISTRICT 2	38015053	M2
30	40004002	3371 HWY 12	VALLEY SPRINGS CA	DISTRICT 1	40004002	M2
31	40004017	3466 HWY 12	VALLEY SPRINGS CA	DISTRICT 1	40004017	M2
32	40004039	3466 HWY 12	VALLEY SPRINGS CA	DISTRICT 1	40004039	M2
33	40004046	3474 TOYON CIR	VALLEY SPRINGS CA	DISTRICT 1	40004046	M2
34	40004047			DISTRICT 1	40004047	M2
35	40004051	3304 HWY 12	VALLEY SPRINGS CA	DISTRICT 1	40004051	M2
36	40004052	135 VALLEY VISTA DR	VALLEY SPRINGS CA	DISTRICT 1	40004052	M2
37	40004057			DISTRICT 1	40004057	M2
38	40004058			DISTRICT 1	40004058	M2
39	40004059	3463 DOUBLE SPRINGS RD	VALLEY SPRINGS CA	DISTRICT 1	40004059	M2
40	42004002	746 POOL STATION RD	SAN ANDREAS CA	DISTRICT 1	42004002	M2
41	42004003	806 POOL STATION RD	SAN ANDREAS CA	DISTRICT 1	42004003	M2
42	42004004	928 POOL STATION RD	SAN ANDREAS CA	DISTRICT 1	42004004	M2
43	44001011	2286 POOL STATION RD	SAN ANDREAS CA	DISTRICT 1	44001011	M2
44	44001012	2288 POOL STATION RD	SAN ANDREAS CA	DISTRICT 1	44001012	M2
45	44001018			DISTRICT 1	44001018	M2
46	44001025	1250 POOL STATION RD	SAN ANDREAS CA	DISTRICT 1	44001025	M2
47	44001030	1765 POOL STATION RD	SAN ANDREAS CA	DISTRICT 1	44001030	M2
48	44001035	680 CHURCH HILL RD	SAN ANDREAS CA	DISTRICT 1	44001035	M2
49	44001036	714 CHURCH HILL RD	SAN ANDREAS CA	DISTRICT 1	44001036	M2
50	44001037	746 CHURCH HILL RD	SAN ANDREAS CA	DISTRICT 1	44001037	M2
51	44001038	780 CHURCH HILL RD	SAN ANDREAS CA	DISTRICT 1	44001038	M2
52	44001039	812 CHURCH HILL RD	SAN ANDREAS CA	DISTRICT 1	44001039	M2
53	44001040	846 CHURCH HILL RD	SAN ANDREAS CA	DISTRICT 1	44001040	M2

County parcels-M1-M2-M2ME Zoning_sorted APN_GIS parzone.xls

	A	B	C	D	E	F
54	44001043	968 CHURCH HILL RD	SAN ANDREAS CA	DISTRICT 1	44001043	M2
55	44001046	2171 POOL STATION RD	SAN ANDREAS CA	DISTRICT 1	44001046	M2
56	44001047			DISTRICT 1	44001047	M2
57	44001050			DISTRICT 1	44001050	M2
58	44001053	924 CHURCH HILL RD	SAN ANDREAS CA	DISTRICT 1	44001053	M2
59	44001060			DISTRICT 1	44001060	M2
60	44001061	1845 POOL STATION RD	SAN ANDREAS CA	DISTRICT 1	44001061	M2
61	44001062	1951 POOL STATION RD	SAN ANDREAS CA	DISTRICT 1	44001062	M2
62	44001063			DISTRICT 1	44001063	M2
63	44001064	1775 POOL STATION RD	SAN ANDREAS CA	DISTRICT 1	44001064	M2
64	44001065	1811 POOL STATION RD	SAN ANDREAS CA	DISTRICT 1	44001065	M2
65	44008001			DISTRICT 1	44008001	M2
66	44008003			DISTRICT 1	44008003	M2
67	44008004			DISTRICT 1	44008004	M2
68	44008008			DISTRICT 1	44008008	M2
69	44008021			DISTRICT 1	44008021	M2
70	44008024			DISTRICT 1	44008024	M2
71	44008025			DISTRICT 1	44008025	M2
72	44008026			DISTRICT 1	44008026	M2
73	44008029			DISTRICT 1	44008029	M2
74	44008037			DISTRICT 1	44008037	M2
75	44008062			DISTRICT 1	44008062	M2
76	44008067			DISTRICT 1	44008067	M2
77	44032001	178 WENDELL CT	SAN ANDREAS CA	DISTRICT 1	44032001	M2
78	44032002	160 WENDELL CT	SAN ANDREAS CA	DISTRICT 1	44032002	M2
79	44032003	140 WENDELL CT	SAN ANDREAS CA	DISTRICT 1	44032003	M2
80	44032004	116 WENDELL CT	SAN ANDREAS CA	DISTRICT 1	44032004	M2
81	44032005	133 WENDELL CT	SAN ANDREAS CA	DISTRICT 1	44032005	M2
82	44032006	165 WENDELL CT	SAN ANDREAS CA	DISTRICT 1	44032006	M2
83	44032007	182 WENDELL CT	SAN ANDREAS CA	DISTRICT 1	44032007	M2
84	44032008	115 GEORGE REED DR	SAN ANDREAS CA	DISTRICT 1	44032008	M2
85	44032009	151 GEORGE REED DR	SAN ANDREAS CA	DISTRICT 1	44032009	M2
86	44032012	303 GEORGE REED DR	SAN ANDREAS CA	DISTRICT 1	44032012	M2
87	44032013	321 GEORGE REED DR	SAN ANDREAS CA	DISTRICT 1	44032013	M2
88	44032014	334 GEORGE REED DR	SAN ANDREAS CA	DISTRICT 1	44032014	M2
89	44032015	320 GEORGE REED DR	SAN ANDREAS CA	DISTRICT 1	44032015	M2
90	44032016	270 GEORGE REED DR	SAN ANDREAS CA	DISTRICT 1	44032016	M2
91	44032021	116 GEORGE REED DR	SAN ANDREAS CA	DISTRICT 1	44032021	M2
92	44032022	206 GEORGE REED DR	SAN ANDREAS CA	DISTRICT 1	44032022	M2
93	44032023	120 TOMA CT	SAN ANDREAS CA	DISTRICT 1	44032023	M2
94	46001003			DISTRICT 1	46001003	M2
95	46001015	6360 DE LOS ANGELES RD	CAMPO SECO CA	DISTRICT 1	46001015	M2
96	46001089	1201 HWY 12	VALLEY SPRINGS CA	DISTRICT 1	46001089	M2
97	46001095			DISTRICT 1	46001095	M2
98	46003002	2268 EVANS RD	VALLEY SPRINGS CA	DISTRICT 1	46003002	M2
99	46015024	214 HWY 12	VALLEY SPRINGS CA	DISTRICT 1	46015024	M2
100	46015025			DISTRICT 1	46015025	M2
101	46015026			DISTRICT 1	46015026	M2
102	46015050	42 HWY 26	VALLEY SPRINGS CA	DISTRICT 1	46015050	M2
103	46020009			DISTRICT 1	46020009	M2
104	46020010			DISTRICT 1	46020010	M2
105	46020012	3330 HWY 12	VALLEY SPRINGS CA	DISTRICT 1	46020012	M2
106	46020014			DISTRICT 1	46020014	M2

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	A	B	C	D	E	F
107	46024004			DISTRICT 1	46024004	M2
108	46024005	1250 POOL STATION RD	SAN ANDREAS CA	DISTRICT 1	46024005	M2
109	46024006			DISTRICT 1	46024006	M2
110	46024018			DISTRICT 1	46024018	M2
111	46026012			DISTRICT 1	46026012	M2
112	46026013			DISTRICT 1	46026013	M2
113	46026014	1250 POOL STATION RD	SAN ANDREAS CA	DISTRICT 1	46026014	M2
114	46026015			DISTRICT 1	46026015	M2
115	46027013			DISTRICT 1	46027013	M2
116	46027014			DISTRICT 1	46027014	M2
117	46027015			DISTRICT 1	46027015	M2
118	46036022	148 MAIN ST	VALLEY SPRINGS CA	DISTRICT 1	46036022	M2
119	46036023	148 MAIN ST	VALLEY SPRINGS CA	DISTRICT 1	46036023	M2
120	46036024	138 MAIN ST	VALLEY SPRINGS CA	DISTRICT 1	46036024	M2
121	46036025	116 MAIN ST	VALLEY SPRINGS CA	DISTRICT 1	46036025	M2
122	46036026	94 MAIN ST	VALLEY SPRINGS CA	DISTRICT 1	46036026	M2
123	46036027	76 MAIN ST	VALLEY SPRINGS CA	DISTRICT 1	46036027	M2
124	46036028	42 MAIN ST	VALLEY SPRINGS CA	DISTRICT 1	46036028	M2
125	46036029	18 MAIN ST	VALLEY SPRINGS CA	DISTRICT 1	46036029	M2
126	46036059	10 MAIN ST	VALLEY SPRINGS CA	DISTRICT 1	46036059	M2
127	48002024	1611 WATERTOWN RD	CAMPO SECO CA	DISTRICT 1	48002024	M2
128	48002066	100 COE CENTER DR	CAMPO SECO CA	DISTRICT 1	48002066	M2
129	48002067	1275 PALOMA RD	CAMPO SECO CA	DISTRICT 1	48002067	M2
130	48002068			DISTRICT 1	48002068	M2
131	48003017	12313 CAMANCHE PW S	BURSON CA	DISTRICT 1	48003017	M2
132	48003190	12114 CAMANCHE PW S	BURSON CA	DISTRICT 1	48003190	M2
133	48008007	1109 PALOMA RD	CAMPO SECO CA	DISTRICT 1	48008007	M2
134	48009044			DISTRICT 1	48009044	M2
135	48009045			DISTRICT 1	48009045	M2
136	50003001			DISTRICT 5	50003001	M2
137	57020039			DISTRICT 4	57020039	M2
138	66029003			DISTRICT 4	66029003	M2
139	66029013			DISTRICT 4	66029013	M2
140	66029024			DISTRICT 4	66029024	M2
141	66029026			DISTRICT 4	66029026	M2
142	66030036			DISTRICT 4	66030036	M2
143	66030037			DISTRICT 4	66030037	M2
144	66031013			DISTRICT 4	66031013	M2
145	66031020			DISTRICT 4	66031020	M2
146	66031035			DISTRICT 4	66031035	M2
147	66031036			DISTRICT 4	66031036	M2
148	48016009	3365 HWY 12	BURSON CA	DISTRICT 1	48016009	M2-2.5
149	38013006			DISTRICT 2	38013006	M2-ME
150	38016041			DISTRICT 2	38016041	M2-ME
151	38016042	6634 FLINTKOTE HILL RD	SAN ANDREAS CA	DISTRICT 2	38016042	M2-ME
152	44001024			DISTRICT 1	44001024	M2-ME
153	44001066	1250 POOL STATION RD	SAN ANDREAS CA	DISTRICT 1	44001066	M2-ME
154	44001067	150 OLD OAK RD	SAN ANDREAS CA	DISTRICT 1	44001067	M2-ME
155	44008019			DISTRICT 1	44008019	M2-ME
156	50031011			DISTRICT 4	50031011	M2-ME
157	50031018			DISTRICT 4	50031018	M2-ME
158	53009001			DISTRICT 4	53009001	M2-ME
159	53009002			DISTRICT 4	53009002	M2-ME

County parcels-M1-M2-M2ME Zoning_sorted APN_GIS parzone.xls

	A	B	C	D	E	F
160	53009003			DISTRICT 4	53009003	M2-ME
161	53009004	4463 ROCK CREEK RD	COPPEROPOLIS CA	DISTRICT 4	53009004	M2-ME
162	53009008			DISTRICT 4	53009008	M2-ME
163	53009009			DISTRICT 4	53009009	M2-ME
164	53010001			DISTRICT 4	53010001	M2-ME
165	53010002			DISTRICT 4	53010002	M2-ME
166	53010003			DISTRICT 4	53010003	M2-ME
167	53010004			DISTRICT 4	53010004	M2-ME
168	53010005	HODSON RD	COPPEROPOLIS CA	DISTRICT 4	53010005	M2-ME
169	53010006			DISTRICT 4	53010006	M2-ME
170	53010007			DISTRICT 4	53010007	M2-ME
171	53010008			DISTRICT 4	53010008	M2-ME
172	53011018			DISTRICT 4	53011018	M2-ME
173	53011035	1549 HODSON RD	COPPEROPOLIS CA	DISTRICT 4	53011035	M2-ME
174	53011037			DISTRICT 4	53011037	M2-ME
175	53012001			DISTRICT 4	53012001	M2-ME
176	53012004			DISTRICT 4	53012004	M2-ME
177	53022002			DISTRICT 4	53022002	M2-ME
178	53022005			DISTRICT 4	53022005	M2-ME
179	64027002			DISTRICT 4	64027002	M2-ME
180	64027006			DISTRICT 4	64027006	M2-ME
181	64028011			DISTRICT 4	64028011	M2-ME
182	64028014			DISTRICT 4	64028014	M2-ME
183	68002004	7845 CAMP NINE RD	VALLECITO CA	DISTRICT 4	68002004	M2-ME
184	68002012			DISTRICT 4	68002012	M2-ME
185	68002013			DISTRICT 4	68002013	M2-ME
186	68002016			DISTRICT 4	68002016	M2-ME
187	68002017			DISTRICT 4	68002017	M2-ME
188	68002018			DISTRICT 4	68002018	M2-ME
189	68002019			DISTRICT 4	68002019	M2-ME
190	68002020	4400 PONDEROSA WY	VALLECITO CA	DISTRICT 4	68002020	M2-ME
191	68002023	8864 CAMP NINE RD	VALLECITO CA	DISTRICT 4	68002023	M2-ME
192	68002024			DISTRICT 4	68002024	M2-ME
193	68002025			DISTRICT 4	68002025	M2-ME

P... O. Box 1137
Valley Springs, Ca.
August 13, 2015

To the Planning Commissioners: Commissioner Allured (District 1), Planning Commissioner McLaughlin (Chair, District 2), Planning Commissioner Muettertides (District 3), Planning Commissioner Wooster (District 4), Planning Commissioner Tunno (District 5)

Good Morning Commissioners: My name is Lora Most and I reside at 4114 Farris Dr. in Rancho Calaveras.

I oppose the proposed Asphalt Plant at the Hogan Dam Quarry because of these issues and concerns:

1. Air Quality
2. Water Safety
3. Increased truck traffic
 - a. Dangerous egress and ingress going from Highway 26 onto Silver Rapids Road and from Silver Rapids onto Highway 26.
4. No General Plan

Health Issues:

Dr. Estoesta was a previous Medical Director of Mark Twain St. Joseph Hospital and Clinics from 1999 to 2003 and now he is a full time Primary Care Physician serving Valley Springs and the neighboring communities, has a NO TO THE PROPOSED ASPHALT PLANT petition in his office. He also has a sign in his window opposing the proposed Asphalt Plant. Dr. Estoesta is very concerned about his patients who are breathing the toxic chemicals in the air. He goes into detail but for limited time, his letter is included for the record. He says for our known patients with Chronic Obstructive Lung Disease, Bronchial Asthma, Congestive Heart Failure and Primary Lung Diseases, these toxic pollutants will quadruple the frequency of wheezing, shortness of breath, Difficulty of breathing. Coughing to

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CALAVERAS COUNTY BOARD OF SUPERVISORS AUG 21 2015

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ENVIRONMENTAL HEALTH CALAVERAS COUNTY

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AUG 21 2015

Calaveras County Planning Department

Received 6 copies for P. Maurer + Commissioners -ACR1

P. O. Box 1137
Valley Springs, Ca. 95252
August 20, 2015
For the Record:

Planning Commissioners: Walter Allured (District 1), Fawn McLaughlin (District 2), Lisa Muetterties (District 3), Kelly Wooster (District 4), David tunno (District 5).

My name is Donald Most; I live at 4114 Farris Dr. in Rancho Calaveras Subdivision.

I have been in construction for 60 years with the last 38 yrs. A general building contractor.

I keep hearing from this Planning Commission, who is failing to keep our environment and our Community safe from Hazardous and toxic pollution.

For 60 years I have been told by our government that our workplace environment is safe and well within the environmental limits set by the powers that be. (EPA).

If our environment is safe within the limits set by our government, why for the last 25 yrs. has the American taxpayer been charged hundreds of billions of dollars to clean up an environment deemed safe by the same government (EPA) that is now being declared toxic and needs to be cleaned up.

In spite of the entire safeguard to ensure our environment remain safe, who picks up the cost of their environmental disasters? In most disaster the American taxpayer is charged for the cleanup.

For 60 years my government has told me they have everything under control and our workplace and communities are within the save limits set by our government.

I am 76 yrs. Old and because of my safe environment set by our government I have several health issues.

Because of our toxic workplace I have developed severe Lung and respiratory problems. I am now on oxygen 24/7-and struggling to get enough oxygen to prolong life.

I hope you people who preach we have enough environmental safeguards will understand why I don't believe you. If you want a window into the future, look at past history.

Each business that want to operate with toxic materials need to have an EIR (Environmental Impact Report) report so the people and Community will know and understand how these businesses will affect their lives going forward.

Issues need to be mitigated before a project goes on line not after. A conditional use permit needs to be required so the county will have some control over regulating the business.

My Issues with the Planning Commission

The Planning Commissioners are not elected by the people of Calaveras County. We elect a board of Supervisor who appoints a person to sit on the planning commission.

Since they are appointed and not elected they are not obligated to make decisions that are best for the people and our communities.

They have authority to make decisions which affects our community and its people.

This present Planning Commissioners are voting to fast track projects without gathering the necessary facts to make a wise decision.

Their job is to gather evidence to make a determination whether the project should be accepted or rejected. By this 4-1 yes vote they shifted the responsibility and liability to the Calaveras County taxpayer with no oversight or condition against Ford Construction, Inc. and CB Asphalt, Inc.

The final decision should be made by the Board of Supervisors who are elected by the people and can be held accountable for their actions.


The Ford Construction, Inc. and AB Asphalt, Inc. Plant is a perfect example of what happens when you fast track a project without notifying the people who live in the Project Area.

By a 4-1 decision The Planning Commissioners voted to let Ford Construction, Inc. and CB Asphalt, Inc. to proceed without a Conditional use permit or an EIR.

If Appeals had not been filed we would have an Asphalt Plant operating at the Hogan Dam Rock Quarry without a Conditional Use Permit or an EIR, the board of

Supervisors would have accepted the Planning Commission decision and approved the Asphalt Plant.

Donald E. Most (Resident and Property Owner of Rancho Calaveras since 2000)



CC. Supervisor Cliff Edson (District 1 Chair), Planning Commissioner Walter Allured, (District 1)

CC Supervisor Christopher Wright (District 2) Planning Commissioner Fawn McLaughlin (District 2)

CC Supervisor Michael Oliveira (District 3), Planning Commissioner Lisa Muetterties (District 3)

CC Supervisor Debbie Ponte (District 4) Planning Commissioner Kelly Wooster District 4

CC Supervisor Steve Kearney (District 5) Planning Commissioner David Tunno (District 5)

CC Brian Moss (Former Environmental health Officer and now Asst. CAO. Of Calaveras County)

CC. Peter Maurer (Calaveras Planning Director)

CC. Diane Severud (Record Clerk of the Calaveras County Supervisors Board)

CC. Megan Stedfeld/Julie Moss-Lewis (Calaveras County Counsel)

CC. Shirley Ryan (Cao of Calaveras County)

CC. Jason Boetzer (Calaveras Environmental Management Agency Director)

P. O. Box 1137
Valley Springs, Ca 95252
August 26, 2015

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Planning Department

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CALAVERAS COUNTY

Supervisors, Cliff Edson, (Chair) (District 1), Supervisor Chris Wright (Vice Chair), (District 2) Supervisor Michael Oliveira (District 3), Supervisor Debbie Ponte (District 4) and Supervisor Steve Kearney (District 5)
Reference: Proposed Asphalt Plant at Hogan Dam Quarry
(For the Record)

Good Morning Supervisors,

My name is Lora Most and I reside in Rancho Calaveras. Supervisors, I come to you this morning with some information that Tom Infusino presented to the Planning Commissioners on June 24, 2015.

He stated in his letter that M1 zone is for light industrial uses that can be "in proximity to commercial and residential areas" and that not "obnoxious by reason of smoke, noise, odor or similar objectable effects." (Calaveras county Code, Section 17.40.010. Things like bakeries, nurseries, warehouses, catering companies and feed stores are allowed by right in this zone. (Calaveras County Code, Section 17.40.020.) By contrast, EIR's on asphalt plants from other counties indicate that asphalt plants can have significant noise, air quality and traffic impacts. Asphalt plants have impacts that are far more analogous to the manufacturing uses that require a use permit in the M2 zone. For example plants that manufacture chemicals, fertilizer, glue, plastics, and rubber: or process sewage requires a use permit in the M2 zone."

Did you realize that there are 193 parcels that potentially could become Asphalt Plants should this project be approved without a Conditional Use Permit and Environmental Impact Report? Should this project be approved without conditions, it shifts the burden and liability against the developer for all 193 parcels onto Calaveras County and the taxpayers.

San Andreas has 44 parcels. (12 of those parcels being on Pool Station Road. For example there is M2 zoned land adjacent to the Mountain Oaks School on Pool Station Road. 8 of those parcels being on Church Hill Road in San Andreas. The Valley springs area has 20 zoned M1 or M2. (9 of those parcels being on Main ST. in the downtown of Valley Springs). Arnold has 12, Wallace has 2, Copperopolis has 5, Vallecito has 2, Campo Seco has 5, Murphy's has 2 and Burson has 3.

Joyce Techel got up and attempted to read in her 5 minute allotted time, as many zoned M1 and M2 Parcels at the Planning Commissioners Meeting August 13, (2015) as she could.

Please Board members, Think about the Impacts that this would have on our whole County?

Thank you



Lora A. Most

CC County Counsel Megan Stedfelt and Julie Moss-Lewis
Clerk of the Calaveras Board of Supervisors Diane Severud
Calaveras County Planning Director Peter Maurer
Calaveras County Environmental Management Agency Jason Boetzer,
Calaveras Administrative Officer Shirley Ryan
Calaveras Assistant Administrative Officer Brian Moss
Planning Commissioners: Walter Allured (District 1), Fawn McLaughlin (Chair, District 2), Lisa Muetterties (District 3), Kelly Wooster (District 4) and David Tunno (District 5)

*P.Pereira
PO Box 27
Campo Seco, Ca 95226*

*Planning Commission
891 Mt. Ranch Road
San Andreas, California 95249*

June 2, 2015

*Dear Chairwoman: Fawn McLaughlin, District 2
Board Members:*

Ted Allured: District 1

Lisa Muetterties: District 3

Kelly Wooster: District 4

David Tunno: District 5

In addition Supervisors:

Supervisor: Steve Kearney, District 5

BOS Chairman: Cliff Edson, District 1

*Re: Appeal: Asphalt Plant Hogan Quarry
For the Record: Protest*

*I will refer to the newspaper article in the Enterprise dated
Tuesday, May 19, 2015 regarding the determination of the
Calaveras County Planning Director Peter Maurer that an
Asphalt Concrete Plant is a permitted use in the industrially
zoned land at the site.*

Issue No. 1

There is not an adopted Revised General Plan.

Approval of the Asphalt Quarry would have been approved under the existing General Plan which is inadequate.

I am enclosing a case summary of litigation filed by the Neighborhood Action Group vs the County of Calaveras. California Court of Appeal, 1984/ 156 Cal. App.3d 1176. Copy enclosed.

The Court of Appeals held that:

- 1. A Use Permit is governed by the zoning law, which in turn must comply with the adopted general plan which in turn must conform to state law. When a general plan lacks relevant criteria, the validity of a CUP issued is questionable.*
- 2. EIR prepared for the CUP could not assess the potential noise impacts of the project without noise standards that should be provided by the noise element.*
- 3. According to the Court, the CUP was not issued in the manner required by law since it was based on an inadequate general plan.*

I believe Calaveras County has been working on a Revised General Plan since 2007? It's common knowledge the General Plan is inadequate costing taxpayers over a million dollars with no resolution. Decisions are based on the old existing general plan opening the door to litigation against the County of Calaveras and proponents of projects.

In addition the Concerned Citizens of Calaveras County vs the Board of Supervisors of Calaveras County, March 26, 1985, 166 Cal.App.3d 90, Third District Court of Appeal.

The Calaveras County BOS adopted a new general plan for the county, a writ of mandate filed that the general plan was inadequate. The Third District Court of Appeal concluded that the general plan could not identify substantial shortcomings in the circulation system, further report that no known funding sources (or other alternatives) were available to remedy the problem and still achieve statutorily mandated correlation with its land use element (which provides for substantial population increases) simply by containing a policy that the county will seek funds. Therefore, the Court determined that the land use and the circulation elements were not sufficiently correlated and violated Section 65302(b). Copy enclosed.

These litigation cases are examples that the citizenry needed to make changes and were rewarded by their persistence by the Third District Court of Appeal.

The County has raised the red flag. As a taxpayer, it's aggravating watching the red carpet rolled out as an invitation to litigation. You are repeating past mistakes.

Issue No. 2

Deputy County Counsel Julie Moss-Lewis stated (Enterprise)

The power of appeal is not "conferred on the basis of an organization's general concern about all land within a region".

Freedom of Speech and the contamination of air and water has no boundaries and is the responsibility and scrutiny of every citizen regardless of where you live and work. That's why an EIR is necessary for public review and full disclosure for a CUP. This is an opportunity to review the existing CUP, if there is one, update, revise and improve on standards.

*You have a legal issue and case summary.
Learn from prior mistakes costing taxpayers money spent on litigation and perhaps future damages based on an inadequate general plan.*

Sincerely,



P. Pereira

*Enclosures: Neighborhood Action Group, 1984
Concerned Citizen of Cal. Co., 1985*

*Copies to: Appellants: 1. Dave Eggerton, General Mgr. CCW
Box 846, San Andreas, Ca 95249
2. J. Techel, PO Box 1501, VS 95252*

NEIGHBORHOOD ACTION GROUP V. COUNTY OF CALAVERAS
156 Cal.App.3d 1176
(California Court of Appeal, 1984)

The Facts: In 1980, Teichert Construction Company submitted an application for a conditional use permit (CUP) to the Calaveras County Planning Commission. The application requested authorization to process sand and gravel from hydraulic mine tailings near the town of Jenny Lind. On October 16, 1980, the commission approved the CUP and certified the final environmental impact report (EIR). The Neighborhood Action Group (NAG), an association of taxpayers residing in the vicinity of the project site, appealed the matter to the county board of supervisors. The board upheld the commission's decision.

Subsequently, NAG filed a suit claiming that: 1) the permit was invalid because the county's general plan did not comply with state statute; 2) the EIR was inadequate; and 3) the CUP did not conform to the current general plan. The trial court concurred with the county's contention that the facts submitted by NAG did not justify a lawsuit regarding the first allegation -- the issue of an adequate general plan. The two other claims proceeded to trial and the court ruled for the county. NAG appealed.

The Holding: The California Court of Appeal reversed and held as follows:

(1) Upon reviewing relevant law, the Court held that although there is no explicit requirement that the CUP be consistent with an adequate general plan, its validity is derived from compliance with the hierarchy of planning laws -- a use permit is governed by the zoning law, which in turn must comply with the adopted general plan which in turn must conform to state law. According to the Court, a general plan that fails to provide the required statutory criteria relevant to the use being sought, will not provide a valid measure by which a permit can be evaluated. Thus, when a general plan lacks relevant criteria, the validity of a CUP issued is questionable.

(2) The Court examined the county noise element and found it lacking. The EIR prepared for the CUP could not assess the potential noise impacts of the project without the noise standards that should be provided by the noise element.

(3) Having established that granting of a CUP must be based on an adequate general plan, the Court sought the legal alternatives available to Neighborhood. The Court noting Section 1094.5(b) of the Code of Civil Procedure, held that an administrative act, such as the issuance of a CUP, may be challenged if the respondent did not proceed in the manner required by law. According to the Court, the CUP was not issued in the manner required by law since it was based on an inadequate general plan.



Governor George Deukmejian



Governor's Office

OFFICE OF PLANNING AND RESEARCH

PARTNERSHIP NEWSLETTER

AUGUST/SEPTEMBER 1985

LAND USE Litigation News

GENERAL PLANS

Concerned Citizens of Calaveras County v. Board of Supervisors of Calaveras County,
March 26, 1985, 166 Cal.App.3d 90, Third District Court of Appeal.

The Facts: In April 1982, the Calaveras Board of Supervisors adopted a new general plan for the county. Subsequently, a citizens' group, Concerned Citizens of Calaveras County and a resident, James Cox, (plaintiffs), filed for a writ of mandate, alleging that the general plan was inadequate because 1) the circulation and the land use elements were internally inconsistent and insufficiently correlated, 2) solid and liquid waste disposal facilities were not designated, and 3) the plan omitted population density standards for three areas of the county.

The trial court concluded that the circulation element was adequate, the land use element's omission of population density standards rendered it legally inadequate and areas for waste disposal need not be designated in the general plan until they were identified by the county. The Court therefore ordered the county to adopt proper density standards but denied the plaintiffs' request for attorney fees. The plaintiffs appealed.

The Holding: The Court of Appeal affirmed the lower court's ruling on population density standards and on waste disposal designations, but

reversed the remainder of the decision. The Court based its decision primarily on Sections 65300.5 and 65302(b) of the Government Code. Section 65300.5 requires that a general plan and its elements comprise an integrated, internally consistent and compatible statement of policies. Section 65302(b) requires that a general plan contain a circulation element which addresses transportation infrastructure and which is correlated with the land use element.

In reviewing the circulation element, the Court found that one portion of the element indicated that county roads were sufficient to accommodate the projected traffic while another portion of the element described a worsening traffic situation aggravated by continued subdivision activity and development in areas served by inadequate roads. Therefore, the Court found the circulation element internally inconsistent and in violation of Section 65300.5.

Next, the Court examined the issue of correlation between the land use and the circulation elements. The Court interpreted Section 65302(b) to mean that the circulation element must describe, discuss, and set forth standards and

proposals respecting any change in demands on the various roadways or transportation facilities of the county as a result of changes in uses of land contemplated by the plan. The Court noted that the land use element, which provided for substantial growth, did not discuss the potential inadequacy of the roadways nor contain proposals by which growth would be restricted in the event the road system was overwhelmed. At the same time, the circulation element pointed out current and expected deficiencies in the state highways serving the county. Further, the element's only policy involved with rectifying the situation was to "lobby for funds."

The Court concluded that the general plan could not identify substantial shortcomings in the circulation system, further report that no known funding sources (or other alternatives) were available to remedy the problem and still achieve statutorily mandated cor-

relation with its land use element (which provides for substantial population increases) simply by containing a policy that the county will seek funds. Therefore, the Court determined that the land use and the circulation elements were not sufficiently correlated and violated Section 65302(b).

On the matter of attorney fees, the Court awarded the fees noting that the citizens' group should have prevailed in its challenge to the land use and circulation elements.

The Significance: This decision emphasized the land use/circulation correlation requirement in determining the adequacy of a general plan. Cities and counties in reviewing or preparing their general plans should evaluate their circulation plans to check to see if it can accommodate the future traffic demands associated with the uses designated in the land use element.



CALAVERAS COUNTY PLANNING DEPARTMENT
891 Mountain Ranch Road,
San Andreas, California 95249
(209) 754-6394

Planning Commission Staff Report

Hearing Date	December 10, 2015
Project Number/Name	2015-029 Appeal by Ford Construction and CB Asphalt of the Environmental Management Agency's determination that installation and operation of a hot mix asphalt plant at the Hogan Quarry, 3650 Hogan Dam Road, Valley Springs, APN 050-003-001, will involve the use of hazardous materials that may have a significant effect on the environment and the Planning Director's determination that the finding by the Health Officer requires a Conditional Use Permit pursuant to Calaveras County Code Sec. 17.42.035.
Supervisorial District Number	5
Assessor's Parcel Number(s)	050-003-001
EHD Director	Jason Boetzer, Environmental Health Director

Date: November 30, 2015

PROJECT DESCRIPTION:

Appeal by Ford Construction and CB Asphalt (applicant) of the Environmental Management Agency's (EMA) determination that installation and operation of a hot mix asphalt plant at the Hogan Quarry, 3650 Hogan Dam Road, Valley Springs, APN 050-003-001, will involve the use of hazardous materials that may have a significant effect on the environment and the Planning Director's determination that the finding by the Health Officer requires a Conditional Use Permit pursuant to Calaveras County Code Sec. 17.42.035.

INTRODUCTION:

On August 13, 2015 the Planning Commission heard the appeal by Ford Construction and CB Asphalt. The previous staff report is attached (Attachment 1), which was prepared for the August 13, 2015 hearing, at which the majority of the legal issues raised by Ford and CB Asphalt were disposed of. The remaining issue is whether or not, assuming the applicant complies with all existing rules and regulations concerning the type, method of use and quantity of substances for the proposed asphalt plant, there may be a significant effect on the environment. The Planning Commission interpreted 17.42.035 as requiring EMA to assume compliance with existing rules and regulations when analyzing whether or not there "may be a significant effect". The Planning Commission directed EMA to obtain

from the applicant whatever additional information would be necessary in order to make a determination consistent with its interpretation of .035.

EMA met with the Applicant and, shortly thereafter, formally requested additional information on August 24, 2015. The written request for additional information was vetted by the Applicant in draft form before it was formally sent out, the purpose being to make sure the written request reflected the consensus all parties reached at our in-person meeting about what additional information was necessary. EMA did not receive information from the applicant until November 5, 2015. As a result, all parties stipulated to request the Planning Commission to continue the matter multiple times. Shortly after receiving the information from the applicant, the Director of Environmental Health and staff reviewed the additional information submitted by the applicant and found it to be both incomplete and inconsistent with prior information they submitted (See Table 1-for a summary of submittals). On November 24, EMA informed the applicant of the deficiencies in the information received November 5 and offered to request another continuance if they wished to correct the deficiencies and provide complete information. The applicant asserted that they did not wish to agree to another continuance.

EMA received additional information from the applicant on November 30 which still did not address all of the information requested by virtue of the jointly developed letter of August 24th. After reviewing and further analyzing the additional information with the assumption that the applicant will comply with all relevant laws and regulations, the EMA's determination continues to be that the proposed asphalt plant--based on the type, method of use and quantity of hazardous materials proposed-- may have a significant effect on the environment associated with these materials. The reasons for this are discussed in the "Analysis" section below.

EMA also received a letter, (Attachment 2), from Dr. Dean Kelaita, Calaveras County Health Officer, supporting EMAs determination that the installation and operation of a hot mix asphalt plant at the Hogan Quarry may have a significant effect on the environment from the types and quantities of hazardous substances used. Dr. Kelaita states in his letter to the Planning Commission, "After review of the plan for the plant in the M2 zone, EMA staff analysis and briefings, and the subsequent follow-up materials submitted by the asphalt plant applicants, the potential for significant impacts and risks to the public have not been addressed to my satisfaction".

For all of these reasons, EMA cannot rule out the potential for the substances proposed to be used by the applicant—by virtue of their type, quantity, and method of use—to have a significant effect on the environment. EMA therefore recommends that the application require the approval and validation of a conditional use permit.

PROJECT LOCATION:

3650 Hogan Dam Road, Valley Springs, Assessor's Parcel No. 050-003-001. Approximately 521 residences are within one mile of the proposed project location, and ingress and egress from the site requires traveling 1.6 miles through a residential area. The Calaveras County Water District's intake for the Jenny Lind Water Treatment facility is

approximately 2,000 feet from the proposed asphalt plant and processes 3-5 million gallons of drinking water per day.

BACKGROUND:

Section 17.42.035 requires the County Health Officer to review plans for uses proposed in the M1, M2 and M4 zones to determine if the “type, method of use or quantity of substance(s) is such that there may be a significant effect on the environment associated with the substances”. The following is a timeline of our request—and applicant’s submittal—for additional relevant information.

May 18, 2015 - Calaveras County Air Pollution Control District (District) received an application from Ford Construction and CB Asphalt for an Authority to Construct for an asphalt plant at the site of the Hogan Quarry, 3650 Hogan Dam Road, Valley Springs, Assessor’s Parcel No. 050-003-001, a change of use for the site. (See Attachment 2: Table 1-for summary of correspondence).

May 29, 2015 - The District reviewed the initial application and deemed it incomplete.

June 25, 2015 - The applicant resubmitted the application which was reviewed by District staff and a contract engineer.

July 2, 2015 - The Environmental Management Agency Administrator, acting as the Health Officer, having reviewed the proposed type, quantity, and method of use of materials and substances for the asphalt plant, determined that there may be a significant environmental effect. The Health Officer communicated the finding to the Planning Director, who, pursuant to Sec. 17.42.035 of the County Code, notified the applicant that a conditional use permit is required. The applicant filed a timely appeal of these determinations.

July 14, 2015 – The Calaveras Air Pollution Control District deemed the ATC application complete.

July 23, 2015 - A cease and desist letter was sent to the applicants following a July 21st inspection for the construction of the asphalt plant.

August 13, 2015 – Planning Commission heard an appeal by Ford Construction and CB Asphalt of the EMA’s determination that installation and operation of a hot mix asphalt plant at the Hogan Quarry may have a significant environmental effect. The Planning Commission disposed of most legal issues raised by applicant but directed the EMA to assume applicant’s compliance with existing rules and regulations and—in that light—to analyze whether the type, method of use and quantity of substances related to the proposed asphalt plant may give rise to a significant effect.

August 21, 2015 – EMA met with CB Asphalt, Ford Construction and Diane Kindermann to discuss and agree upon the request for the additional information needed to complete the analysis requested by the Planning Commission.

August 24, 2015 – Letter from EMA to Abbott & Kindermann LLP, CB Asphalt, Ford Construction request for additional information. (Attachment 3) This letter reflects consensus based on discussion at the August 21, 2015 meeting and applicant's review of the draft letter prior to being sent.

November 5, 2015 – EMA receives some of the additional information (Attachment 4) requested in the August 24, 2015 letter.

Based on the length of time it took for EMA to receive the information requested of applicant, continuances were agreed to for the September 10, October 8, and Nov 19. Planning Commission Meetings.

November 24, 2015 – EMA notifies Abbott and Kindermann that the supplemental information is incomplete.

November 25, 2015 – EMA received an email from Diane Kindermann, as a follow-up to our phone conversation with Dan Cucchi. EMA responded to Miss Kindermann's email. (Emails attached-Attachment 5)

November 30, 2015 - Cover letter from Kindermann states no waste oil will be stored onsite (which is inconsistent with the applicant's prior submittal) and states diesel will be used for diesel burner fuel tank and generator. Applicant now asserts that no tank will dispense fuel. However, supplemental information for the ATC (June 25) states diesel tank will be used for dispensing fuel into loaders

December 3, 2015 – EMA receives "Clarification on Operations Processes of HMA Plant at Hogan Quarry". The information documents significant changes to the inventory of diesel and asphalt oil, and the map submitted does not match the inventory (See Table 1).

ANALYSIS:

In order to evaluate and consider existing regulations and statutes, additional information was requested by the EMA on August 24, 2015. Prior to sending the request, EMA had a meeting with Dianne Kindermann and the applicants to go over the additional information. All parties agreed on the information requested, and changes requested by Dianne Kindermann were incorporated into the final letter. A response to the request for additional information was received on November 5, 2015. As part of this response, a report was prepared by Yorke Engineering, LLC. Yorke's report failed to answer specific questions listed, and agreed upon, in the August 24 letter. The applicant continues to submit constantly changing and inconsistent information on the type of hazardous materials, quantity, and method of use, including transportation of hazardous materials and location of tanks.

Air Quality:

a. Stationary Source (Plant Emissions)

On May 18, 2015, an Authority to Construct application was submitted to the Air Pollution Control District (Air District) by Shawn Simmons of CB Asphalt and Jerry Middleton of Ford Construction. This application depicts a batch plant as described word-for-word in the EPA-42 guidance for calculating emissions from asphalt plants. It did not depict the actual asphalt plant proposed by the applicant. This application was deemed incomplete, and a letter requesting additional information was sent by the Air District on May 29th. This additional information was submitted to the Air District on the day of the June 25 Planning Commission Meeting.

The Air District's contract engineer, Ray Kapahi, used the submitted information to prepare an evaluation for purposes of the ATC, which he acknowledged was narrowly focused on compliance with the Air District's rules and regulations. The Air District's rules and regulations and Mr. Kapahi's report do not consider the questions asked by 17.42.035-- whether or not there may be potential significant effects to the environment. The .035 analysis is a broader review that looks at all potential impacts to public health and the environment. Based on an applicant's asserted annual maximum production of 250,000 tons, the Kapahi report found that the operation of the plant, if operated as proposed, would be able to comply with Calaveras County Air District rules and regulations, which are specific to ambient air quality standards and concomitant human health risks.

The asphalt plant is a stationary source. Therefore, the Kapahi report estimated combustion emissions from the stack, emissions from the diesel generator, and fugitive emissions from the plant. A portion of this analysis evaluated the incremental health risk to residents due to the emission of toxic air contaminants from this stationary source.

Hazardous air pollutants (HAPs) or toxic air contaminants (TACs) are one category of air pollutants. The California Health and Safety Code 39655, defines Toxic Air Contaminant as an air pollutant that may cause or contribute to an increase in mortality or an increase in serious illness, or which may pose a potential hazard to human health. A substance that is listed as a hazardous air pollutant pursuant to subsection (b) of Section 112 of the federal act (42 U.S.C. Sec. 7412 (b)) is a toxic air contaminant. TACs are suspected, or known, to cause cancer, birth defects, neurological damage, or death. There are no established ambient air quality standards for TACs; instead they are managed on a case-by-case basis depending on the quantity and type of emissions, and proximity to potential receptors. This is important to understand, as it is one example of how existing rules and regulations do not suffice to mitigate all potential effects. Their effects tend to be localized and directly attributable to a specific stationary source. Health risks, are human health risks, cancer and non-cancer risks, such as emphysema or reproductive disorders, but does include short or long term environmental impacts, such as impacts to land, air, water, minerals, flora, fauna, noise, or objects of historic or aesthetic significance.

Based on the information submitted by the applicant, the Kapahi report calculated health risks to nearby residents from TACs emitted from the stationary source to be below the threshold of significance. With respect to human health risks, the Kapahi report uses a risk model and, in calculating risk, assumes that the stationary source will be functioning properly at all times. The Kapahi report does not eliminate *the potential* for a significant health impact if the plant is not working properly. Because there are no ambient air quality standards for TACs, existing rules and regulations would not adequately protect the public against their health effects. Instead, the public would need to rely upon the imposition of permit conditions requiring regular testing.

Most importantly, however, the Kapahi report does not address potential impacts to the environment as a whole and there is no determination on the impacts to adjacent water bodies that serve as a public drinking water source.

b. Fugitive emissions

Fugitive emissions are associated with material handling/transfer of aggregate from the storage piles or storage bins into the conveyor belt where it is transferred into the mixing drum, at the dryer burner, and during loading of the trucks, as well as, any leaks in the air pollution control equipment system. Fugitive emissions also come off of the hot mix asphalt during transport. Fugitive emissions contain TACs, such as benzene. TACs are discussed above. Fugitive emissions are also the cause of odors, which are discussed below.

c. Odors

An odor is a type of impact on the environment. Both the Kapahi report and the Yorke report acknowledge that there is a potential for odors from the plant assuming normal operating conditions. While Yorke cites to and discusses the San Joaquin Air Pollution Control District's Guidance for Assessing and Mitigating Air Quality Impacts, this report does not discuss the portion of the Guidance that specifically addresses odors related to asphalt plants specifically. In Chapter 8, Table 6, this document recommends a more detailed analysis when an Asphalt Batch Plant lies within one mile of sensitive receptors (residences, schools, hospitals, etc). There are 521 sensitive receptors (residences) within one mile of the proposed asphalt plant. Neither engineer, to date, has conducted this more detailed analysis.

Table 6 from SJVAPCD Guidance for Assessing and Mitigating Air Quality Impacts:

Type of Facility	Distance
Wastewater Treatment Facilities	2 miles
Sanitary Landfill	1 mile
Transfer Station	1 mile
Composting Facility	1 mile
Petroleum Refinery	2 miles
Asphalt Batch Plant	1 mile
Chemical Manufacturing	1 mile

Fiberglass Manufacturing	1 mile
Paint/Coating Operations (e.g. auto body shops)	1 mile
Food Processing Facility	1 mile
Feed Lot /Dairy	1 mile
Rendering Plant	1 mile

A similar table from the BAAQMD, that recommends a more detailed analysis for a 2 mile radius from an Asphalt Batch Plant (See table below).

Table from BAAQMD Guidelines:

Screening Distances for Potential Odor Sources	
Wastewater Treatment Plant	2 miles
Wastewater Pumping Facilities	1 mile
Sanitary Landfill	2 miles
Transfer Station	1 mile
Composting Facility	1 mile
Petroleum Refinery	2 miles
Asphalt Batch Plant	2 miles
Chemical Manufacturing	2 miles
Fiberglass Manufacturing	1 mile
Painting/Coating Operations	1 mile
Rendering Plant	2 miles
Food Processing Facility	1 mile
Confined Animal Facility/ Feed Lot/ Dairy	1 mile
Green Waste and Recycling Operations	1 mile
Coffee Roaster	1 mile

There are 2,047 homes within two miles of the proposed asphalt plant. As part of the normal commute to and from the facility, trucks would go down Silver Rapids Road, a residential street, exposing those residents to potential odors as well. Manifestations of a person's reaction to odors can range from psychological (e.g. irritation, anger, or anxiety) to physiological (e.g., circulatory and respiratory effects, nausea, vomiting and headache). The material safety data sheet (MSDS) for asphalt cautions that breathing vapors or fumes from the hot material may cause headaches, dizziness, and lung irritation. The Hazard Communication Standard (HCS) requires chemical manufacturers, distributors, or importers to provide Safety Data Sheets (SDSs) (formerly known as Material Safety Data Sheets or MSDSs) to communicate the hazards of hazardous chemical products.

Yorke's report also discusses asphalt odors during transport, quoting from San Joaquin Air Pollution Control District's Guidance for Assessing and Mitigating Air Quality Impacts: "Odor impacts on residential areas and other sensitive receptors, such as hospitals, day-care centers, schools, etc., warrant the closest scrutiny, but consideration should also be given to other land uses where people may congregate, such as recreational facilities, worksites, and commercial areas. Any project with the potential to frequently expose

members of the public to objectionable odors should be deemed to have a significant impact." Because there is an acknowledged potential for members of the public to be frequently exposed to objectionable odors as a result of the asphalt plant, and the odors are the product of substances to be used in the production of asphalt, this odor issue alone requires a finding that there may be a significant impact on the environment.

To the extent that the asphalt plant exposes the public to frequent objectionable odors, the applicant will not be able to comply with Air District Rule 205.

- Rule 205- Nuisance: A person shall not discharge from any source whatsoever such quantities of air contaminants or other material which cause injury, detriment, nuisance or annoyance to any considerable number of persons, or to the public, or which endanger the comfort, repose, health or safety of any such persons, or the public, or which cause to have a natural tendency to cause injury or damage to business or property.

The proposed source involves diesel fuel combustion and production of asphaltic concrete. There is potential for odors from these processes.

d. Long-term mobile source emissions- diesel exhaust

Mobile source emissions are not analyzed when the Air District reviews a stationary source of air contaminants for purposes of an ATC, but EMA did analyze mobile source emissions as part of "method of use" for the .035 determination. This information was requested to assess the potential health and environmental effects of diesel particulate matter from trucks. California listed Particulate Emissions from Diesel-Fueled Engines as a TAC in 1998. Diesel exhaust contains over 40 listed HAPs or TACs. The Asphalt plant will generate Diesel exhaust from the stationary diesel generator at the plant, and mobile emissions from the transport of materials to the plant as well as from the transport of HMA to jobsites.

The applicant was asked to estimate fugitive asphalt emissions during transport, and to estimate long-term mobile source emissions. However, the Yorke report not only neglected to look at outgoing asphalt transportation, it failed to estimate TACs, either from diesel particulate or fugitive asphalt emissions. Kapahi memo dated November 15, 2015 (Attachment 12) discussed the incomplete report submitted by Yorke. EMA requested the information in the August 24, 2015 letter and the November 24, 2015 call with Dan Cucchi. The only airborne contaminant the report looks at is hydrogen sulfide, which is a criteria pollutant, not a TAC. In addition, outgoing truck trips are not captured in any calculations.

For long-term mobile source emissions, Yorke's calculations were based on only two incoming trucks carrying an unspecified amount of liquid asphalt per day. However, the supplemental report provided by Yorke on November 30, estimates that, assuming the plant is operating at maximum capacity of 300 tons/hour, six incoming trucks carrying liquid asphalt per day would be required. Trucks leaving the facility carrying hot mix asphalt were not calculated.

The applicant asserts the addition of an asphalt plant will not increase production at the quarry. Ford Construction's current Air District permit for the quarry limits annual production to 300,000 tons of aggregate per year. The applicant has stated repeatedly that the asphalt plant will not increase quarry production, but rather 250,000 tons of aggregate will now leave the facility as asphalt rather than as aggregate. It should be noted that, at the asserted maximum daily production of 3,000 tons of asphalt per day, the 250,000 ton benchmark for the quarry would be reached in just 83 working days—meaning that only 50,000 tons of aggregate production could occur, at the existing quarry, throughout the remainder of the year. If the asphalt plant operates beyond the 250,000 tons per year, the health risk, and risk to the environment may increase.

Because Yorke did not calculate outgoing trips, EMA attempted to. Using technical paper T-135 (publication for hot mix asphalt industry) "Hot Mix Asphalt Trucking", an estimate of 20 tons HMA per truck was used to estimate truck trips by the Air District. If the plant is capable of producing 3,000 tons per day, as applicant asserts, that translates into 150 truck trips per day. The Air District's contract engineer calculated a preliminary estimate of mobile emissions of diesel particulate (not fugitive emissions) based on 150 truck trips per day (Attachment 5). The engineer looked at 2 scenarios, the estimated trucks required to transport 250,000 tons per year, (13,000), and if the plant operated at maximum capacity for 310 days per year, (48,500). Mr. Kapahi states, "Since these emissions are released over the length of the trip, health exposure to the public is expected to be insignificant." He did not complete a health risk assessment, nor did he look at the cumulative impact of the trucking and plant emissions on human health. Kapahi conducted a narrow analysis that merely quantified mobile emissions; he did not provide an analysis that would rule out the potential for a significant impact on the environment based on the annual emissions from truck travel over a period of years. Odors from diesel exhaust and fugitive emissions from asphalt will be generated during production and transport, and may have a significant effect on the environment. The emissions, such as diesel particulate matter, are airborne pollutants from human sources that can deposit back onto land and water bodies, sometimes at a great distance from the source, and can be an important contributor to declining water quality and other environmental impacts. This is critical due to the proximity of the Calaveras River (approximately 800 feet away) and the Jenny Lind Water Treatment Plant (approximately 2,000 feet away).

Hazardous Materials:

Because of the inconsistencies in the applicant's various communications, this analysis has proven to be a moving target. Assuming the heaviest use described by applicant, and assuming maximum capacity, the EMA concludes that there continues to be a potential for a significant effect on the environment vis-à-vis their accidental release into the environment.

The following is a summary of the hazardous material submittals, along with Table 1 (Attachment 2):

- The cover letter from Miss. Kindermann (Nov 30) states no waste oil will be stored onsite, which is inconsistent with the submittal on November 5, 2015 documenting the facility will store waste oil.
- The hazardous materials listed by applicant for the August 13, 2015 hearing included a diesel tank of 27,162 gallons, located at the proposed site. The asphalt oil tank size was not specified.
- The November 5, 2015 submittal listed an 18,033 gallon asphalt oil tank and a 12,000 gallon diesel tank. The site map included in the submittal does not document any diesel tank at the proposed asphalt plant, yet the chemical inventory documents a 12,000 gallon tank. This differs from the 27,162 gallon tank described August 13th.
- Nov 30 cover letter states diesel will be used for diesel burner fuel tank and generator. It also says no tank will dispense fuel. However, the ATC supplemental info (June 25) states diesel tank will be used for loaders (dispensing fuel). The November 30 submittal now once again lists a 27,162 gallon asphalt oil tank and also a 5,800 gallon diesel tank.

The applicant proposes to store and handle diesel fuel in total capacity of either 27,162 gallons, 12,000 gallons or 5,800 gallons (depending on which submission is correct), and the applicant proposes to store and handle asphalt oil in an amount of either 18,083 gallons or 27,162 gallons (depending on which submission is correct). These two materials, diesel fuel and asphalt oil, meet the definition of hazardous materials pursuant to the California Health and Safety Code, (H&SC) Chapter 6.95, Section 25501(n) (1) (2) et. seq.

"Hazardous material" means any material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment. "Hazardous materials" include, but are not limited to, hazardous substances, hazardous waste, and any material that a handler or the unified program agency has a reasonable basis for believing would be injurious to the health and safety of persons or harmful to the environment if released into the workplace or the environment. In addition, the MSDS sheet provided by Abbott & Kindermann, LLP (Exhibit 11 on July 31, 2015), documents that *asphalt cements contains ingredient(s) which is on the California Proposition 65 lists and is known to the State of California to cause cancer or reproductive harm*. It is important to consider not just the type of material or the amount stored on-site, but also the amount that will be used, processed and transported in and out of the site due to the addition of the asphalt plant.

The letter dated November 4, 2015, from Abbott and Kindermann includes a table (Attachment 5) of Hazardous Materials Regulations. The first page of the table refers only to asphalt, and hydrogen sulfide as a component of asphalt, as an "extremely hazardous"

substance. The applicant references only a specific set of federal regulations for *extremely* hazardous substances--not the totality of substances which are deemed "hazardous" under the law. Applicant also argues that asphalt is not on the Cal ARP list of hazardous materials, which happens to be only the California list for *extremely* hazardous substances.

Finally, Abbott and Kindermann state, "*The Calaveras County Environmental Health Department alleges that asphalt "is considered a hazardous material" under the CUPA provisions. (Even though it is not according to Cal ARP, a component of CUPA)*". This assertion that asphalt oil is not considered a hazardous material under CUPA is false. It is regulated, along with diesel fuel, as a hazardous chemical/material under California Law, H&SC Chapter 6.95 (Component of the CUPA programs). In short, applicant bases its repeated assertion that asphalt is not hazardous on the fact that it does not appear on lists of materials that are *extremely* hazardous. This may be true, but this is not the bar at which EMA's analysis is conducted. We are asked under .035 merely to determine whether there "may be a significant effect on the environment". Asphalt oils and diesel fuel are indeed defined as "hazardous materials", and their accidental release therefore has the potential to result in significant effects on the environment—even assuming compliance with existing rules and regulations.

The hazardous chemical reporting requirements under H&SC, Chapter 6.95, Article 1 (Business Plan), are separate and distinct from those under Article 2 of the same chapter (CalARP). Hazardous Material Business Plan (HMBP) chemical inventory reporting applies to all hazardous substances, as defined by H&SC § 25501. Information reported under the hazardous chemical inventory regulations includes the types and amounts of hazardous chemicals, location and storage information, and facility contact information. The intent of the HMBP is to provide basic information necessary for use by first responders in order to prevent or mitigate damage to the public health and safety and to the environment from a release or threatened release of a hazardous material and to satisfy federal and state Community Right-To-Know laws. If a facility handles a hazardous material at any one time during the reporting year greater than 55 gallons of a liquid, 500 pounds of a solid or 200 cubic feet of a compressed gas, the facility shall submit a HMBP. The Cal ARP Risk Management Program applies to a distinct set of regulated substances listed in Title 19, § 2770.5. The risk management program requirements go beyond emergency planning and reporting; they require a holistic approach to accident prevention and mitigation. Elements required under the risk management program regulations vary for individual stationary sources, but generally include a hazard assessment, a prevention program, an emergency response program, and a management system. Attached (Attachment 6) is a letter from the United States Environmental Protection Agency Region IX of equivalency stating that regulated HMBP facilities in California by definition meet the federal reporting requirements of EPCRA by complying with the California Hazardous Material Business Plan Program.

Because the applicant proposes to use hazardous materials in sufficient quantities to trigger the HMBP requirement, applicants submitted a draft HMBP on November 5, 2015 and December 5, 2015. Applicant did not object at any point to having to submit this Plan or deny that their proposal involved sufficient quantities to trigger this requirement. It should be noted that applicant's December 5th submittal materially differs from their

November 30th submittal. The site maps are inconsistent with respect to the chemical inventory and information is missing regarding the diesel generator.

Even assuming compliance with HMBP requirements, spills and releases such as piping leaks, overfills, and spills of hazardous materials do regularly occur at facilities working with hazardous materials. The type, quantity and method of use concerning the hazardous materials proposed for the asphalt plant do give rise to a potentially significant impact on the environment, and it would be disingenuous to assert that there is no potential for a significant accidental release. Environmental statutes and regulations recognize that, even assuming compliance with rules and regulations, releases of hazardous materials into the environment may occur due to human and mechanical failure.

H&SC Chapter 6.95 states, for example, that a handler or an employee, authorized representative, agent, or designee of a handler, shall, upon discovery, immediately report any release or threatened release of a hazardous material to the unified program agency. Due to the amount of diesel fuel and asphalt oil stored and processed at the proposed asphalt plant, a spill may be significant and would result in a response by a hazardous materials response team. This impact may require shutdown of a State regulated water system, due to the proximity of the Calaveras River, and limit drinking water supplies to over 10,000 residents. The proposed storage for diesel fuel and asphalt oils are well above the 55 gallon reporting threshold in H&SC Chapter 6.95. These spills/leaks can occur during filling of the diesel and or asphalt oil tanks, the generator day tank, and/or piping leak/breakage. I have personally investigated spills from aboveground storage tanks systems that have complied with environmental laws, but due to equipment failure and operator error significant releases occur. While existing rules and regulations may serve to reduce the impact of an accidental release of hazardous materials, their existence certainly does not remove the potential for a significant release to occur—even assuming a vigilant and proactive applicant.

The applicant states the diesel fuel will be used for the generator and the diesel burner fuel tank. Their information, however, did not specify if the piping is single wall or double wall to either of these two appurtenances. The applicant did not state if the piping will be aboveground or underground or the type of piping. The Underground Storage Tank (UST) program has a very prescriptive monitoring program for tanks and piping, more so than the aboveground storage tank program and HMBP program. For example, UST systems are required to be continuously monitored by third party certified electronic equipment and to be tested and inspected annually by an independent licensed contractor. These requirements are not set forth in the HMBP laws or the aboveground storage tank laws. This past year, a permitted UST site in Calaveras County that passed the annual monitoring system certification suffered a piping leak. This leak was not due to non-compliance but a leak occurred at a joint in the underground piping from mechanical failure. This is just one example that documents that even with compliance, spills and leaks do occur, and the greater amount of hazardous materials stored and processed increases the risk to the environment.

The amount of proposed throughput of diesel and asphalt oils, the handling and storage of diesel and asphalt oils, the piping from tanks to the generator, the filling and unloading of tanks and vehicles at the proposed asphalt plant are all processes where a significant and dangerous release may occur and/or a series of cumulative releases may occur—each of which may have a significant effect on the environment. These releases have the potential to occur even assuming compliance with all laws and regulations.

If the plant operates at maximum production 83 days a year, (based on maximum production information provided by the applicant), that would result in an annual throughput of 262,280 gallons of diesel fuel. If the asphalt plant operated 310 days a year, based on the maximum production information provided in the Yorke report that would result in annual throughput of 979,600 gallons of diesel fuel. These numbers, whichever is accurate, represent a significant increase of diesel fuel that will be used at the site beyond what the applicant is currently using at its quarry, and this increased use may result in a significant effect if leaks and/or overfills occur. The proposed plant will be situated on top of gravel, which is permeable. The applicant has not discussed the potential of waste discharges from the process both to surface and sub-surface areas, which may impact both surface water and/or groundwater. In addition, the applicant did not discuss the potential long-term effects to the environment from day-to-day operations, including long-term effects to the Calaveras River, which is a public drinking water source. The fact that a drinking water source is approximately 800 feet away and that 521 homes are within 1 mile, signifies that there may be both short-term and long-term significant effects to the environment and public health. The Calaveras River is a sensitive receptor and a drinking water source for over 10,000 local residents, along with serving as a drinking water source for Stockton East Water District-City of Stockton. The water intake for the Jenny Lind drinking water plant, operated by the Calaveras County Water District (CCWD), is less than 2,000 feet down river and processes up to 3.5 million gallons of drinking water per day. This is not addressed in any of the documents submitted by the applicant nor is it adequately addressed by laws enforced by the local Health Officer. Even assuming applicant's compliance with all laws and regulations, EMA cannot responsibly assert that there is no potential for a significant impact to this source of drinking water.

After reviewing and further analyzing the additional information with the assumption that the applicant will comply with all relevant laws and regulations, the EMA's determination continues to be that the proposed asphalt plant--based on the type, method of use and quantity of hazardous materials proposed-- may have a significant effect on the environment associated with these materials. Therefore, EMA recommends that the application require the approval and validation of a conditional use permit.

Dr. Dean Kelaita, Calaveras County Health Officer and a California licensed physician, shares EMA's concerns. He also recommends in his letter to the Calaveras County Planning Commission (Attachment 1), that the proposed asphalt plant at the Hogan Quarry be subject to a conditional use permit. Dr. Kelaita states, "In summary, after reviewing the plan and the additional information submitted, my determination is that the proposed asphalt plant poses a risk to the public health due to the insufficient description of the safeguards to be used to prevent unintended environmental effects from the types and

quantities of substances used in this type of facility”.

CONCLUSION:

The language of 17.42.035 is very broad and does not limit the Health Officer's focus to human health risks or potential air impacts. It requires the Health Officer to consider “the environment” as a whole, considering whatever potential impacts may arise from the new industrial land use vis-à-vis its use, storage, or production of “substances”. The Planning Commission directed EMA to assume, for purposes of its analysis, that the applicant would comply with all rules and regulations related to environmental protection—including those that were passed after the Board of Supervisors adopted .035. EMA has done so and cannot in good conscience assert that the applicant's compliance with all existing rules and regulations would preclude the potential for a significant environmental impact—be it an air quality impact, a hazardous materials impact, an odor impact, or a water quality impact. The addition of the proposed asphalt plant to the existing quarry site involves a significant increase in the amount of diesel fuel and asphalt oil being stored onsite and a significant increase in the potential for toxic levels of TACs to be released into the air. The proximity of a major source of drinking water to the plant heightens the risk of a potentially significant impact despite applicant's best efforts at compliance with existing rules. Finally, the potential for noxious odors as a result of the applicant's proposed use of asphalt oil is acknowledged by both engineers, and—depending on which air quality management district's guidelines one wishes to rely on—either hundreds or thousands of sensitive receptors reside within a radius of concern. The applicant has not adequately demonstrated its ability to comply with Rule 205 regarding nuisance odors, and—even if Rule 205 did not exist—has not demonstrated how it will eliminate the potential for a significant environmental effect related to the release of noxious odors.

RECOMMENDATION:

Adopt Resolution 2015-019 (Attachment 11), upholding the Environmental Management Agency Administrator/Health Officer's determination that the asphalt plant proposed to be operated at the Hogan Quarry involves a type, quantity, and/or method of use of hazardous materials that may have a significant effect on the environment and, because of that determination, upholding the Planning Director's determination that a Conditional Use Permit is required pursuant to Section 17.42.035 of the Calaveras County Code.

ATTACHMENTS:

1. Staff Report for August 13, 2015 PC Meeting
2. Letter from Dr. Kelaita, Health Officer, December 7, 2015
3. Table 1- Summary of Submittals
4. August 24 Letter from EMA
5. November 4th submittal
6. Nov 25th emails
7. November 30th submittal
8. Kapahi's Engineering Evaluation, August 13th
9. December 3rd, Kapahi Memo

10. Equivalency letter from EPA
11. Resolution 2015-019
12. November 15th Kapahi Memo

COUNTY OF CALAVERAS, STATE OF CALIFORNIA
PLANNING COMMISSION

RESOLUTION NO. 2015-019

>>A RESOLUTION FINDING THAT THE USE OF HAZARDOUS SUBSTANCES AT THE ASPHALT PLANT PROPOSED TO BE OPERATED AT THE HOGAN QUARRY WILL NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT, AND BECAUSE OF THAT DETERMINATION A CONDITIONAL USE PERMIT IS NOT REQUIRED PURSUANT TO CALAVERAS COUNTY CODE SECTION 17.42.035

WHEREAS, the Calaveras County Code, Section 17.42.035, requires that prior to a change of use, issuance of a business license, or issuance of a building permit, whichever occurs first, a project proponent shall submit to the county health officer or his designee a list or plan of all substances to be used or produced by the proposed business; and

WHEREAS, on May 18, 2015, the Calaveras County Air Pollution Control District received an application for an Authority to Construct for an asphalt plant at the site of the Hogan Quarry, 3650 Hogan Dam Road, Valley Springs, Assessor's Parcel No. 050-003-001, a change of use of the site; and

WHEREAS, pursuant to Section 17.42.035, the Health Officer shall review the plan or list of substances to determine if the type, method of use, or quantity of the substance(s) is such that there may be a significant effect on the environment associated with the substances; and

WHEREAS, the information submitted by the project proponent to complete the application for an Authority to Construct contained the information required by the Health Officer to complete his determination under Section 17.42.035; and

WHEREAS, on July 2, 2015, the Health Officer reviewed the application and determined that the asphalt plant's use of hazardous materials may have a significant effect on the environment; and

WHEREAS, Section 17.42.035 requires that when the Health Officer finds that there may be a significant effect he shall notify the Planning Director and requires approval and validation of a conditional use permit, regardless of whether the use is prescribed as a permitted use or a conditional use; and

WHEREAS, the applicants for the asphalt plant, Ford Construction and CB Asphalt, filed a timely appeal of that determination; and

WHEREAS, On August 13, 2015, the Planning Commission determined that the addition of an asphalt plant is a "change of use" triggering Section 17.42.035; and

WHEREAS, On August 13, 2015, the Planning Commission determined that the language of .035 is not plain and unambiguous and therefore requires analysis of legislative history to assist in its interpretation of the drafter's intent; and

WHEREAS, On August 13, 2015, the Planning Commission determined that Section 17.42.035 requires the Health Officer to notify the Planning Director if there may be a significant effect on the environment (as opposed to only if there is a significant effect on the environment) and that it requires the Planning Director to require a conditional use permit upon receiving such notification from the Health Officer; and

WHEREAS, On August 13, 2015, the Planning Commission determined that Section 17.42.035 is not unconstitutionally vague and is not an unlawful delegation of the Board's authority to the Health Officer; and

WHEREAS, On August 13, 2015, the Planning Commission determined that Section 17.42.035 requires the Health Officer to presume, in determining whether or not there may be a significant effect on the environment, that an applicant would abide by all laws and regulations that existed at the time of the proposed change of use and were relevant to the Health Officer's determination; and

WHEREAS, On August 13, 2015, the Planning Commission directed the EMA to assume applicant's compliance with existing rules and regulations for the purpose of the Health Officer completing his determination under Section 17.42.035 and to obtain from the project proponent whatever additional information it deems necessary to conduct that new analysis; and

WHEREAS, The Health Officer has duly attempted to obtain all additional information necessary to the new analysis and has duly re-analyzed applicant's proposed use applying the presumption directed by the Planning Commission, and his determination continues to be that the type, quantity, and/or method of use of hazardous materials proposed by the project proponent may have a significant effect on the environment; and

WHEREAS, the Planning Commission considered all of the information presented to it, including its staff report, information presented by the appellants and project proponent, and public testimony presented in writing and at the meeting;

BE IT THEREFORE RESOLVED, that the Planning Commission grants the project proponents' appeal, finding that—assuming project proponents' compliance with all relevant laws and regulations--there was not substantial evidence to support a finding that the project, by virtue of the type, quantity, and/or method of use of substances to be used in conjunction with it, may have a significant effect on environment, based on the following findings:

1. The County Health Officer must review with, in conjunction with a proposed change of use in the General Industrial (M2) zone, a list or plan of all substances to be used or produced by the proposed business.

Evidence: The proposed asphalt plant is a change of use at the Hogan Quarry. The Health Officer, who is also the Air Pollution Control Officer, obtained the necessary information about substances in the project proponent's application with the Air Pollution Control District for an Authority to Construct and in the project proponent's November 5 and November 30 submittals of additional information to the EMA.

2. The list of substances proposed to be used at the proposed asphalt plant includes asphalt, also known as bitumen, and diesel fuel.

Evidence: CB Asphalt submitted a list of substances to be used at the plant. Asphalt and diesel fuel are on the list of materials. These materials meet the definition of hazardous materials pursuant to the California Health and Safety Code, Chapter 6.95, Section 25501(n) (1) (2) et seq.

3. After considering all the evidence and testimony presented by project proponents and the Environmental Management Agency Administrator, acting as Health Officer, and assuming the project proponents' compliance with all relevant laws and regulations, there was no substantial evidence presented to the Planning Commission to support the Health Officer's determination that the type, method of use, and/or quantity of hazardous substances that will accompany the proposed change in use, such that there may be a significant effect on the environment.

Evidence:

Both the County's engineer and project proponents' engineer issued reports quantifying emissions and other potential hazards related to the proposed asphalt plant, and both reports concluded that there were not likely to be significant effects. While the Environmental Management Agency Director and the County's Public Health Officer have relevant training and experience, their documentation and reports were not as persuasive and did not include as much relevant quantification as the reports of the two engineers. The Environmental Management Agency Director testified that he interpreted 17.42.035 as requiring him to find that there may be a significant effect if there is any potential, however remote, for an accident or mechanical mishap involving hazardous materials. The evidence, including but not limited to the engineer's reports, suggests that the chances of an accidental release or mechanical mishap involving the asphalt plant that would result in a significant effect on the environment—and assuming project proponents' compliance with the myriad of applicable laws and regulations related to the project—is sufficiently remote to not trigger a finding of potentially significant impact under 17.42.035. The Planning Commission does not believe that the intended result of 17.42.035 is to require a CUP when the chance of a significant impact on the environment is as remote as the Commission finds it to be under these facts.

4. Section 17.42.035 of the County Code does not operate as unconstitutional delegation of its land use policymaking authority to the Health Officer.

Evidence: A County Board of Supervisors is endowed under California law with broad discretion to create land use policies within its jurisdiction. The language and legislative history of 17.42.035 evidence a policy decision by the Board of Supervisors to require otherwise permitted uses in industrial zones to obtain conditional use permits in those circumstances where materials or substances involved with the proposed use have the potential to significantly affect the environment. The Board of Supervisors lawfully implemented this policy by assigning its Environmental Health Officer, whose routine duties include the assessment and mitigation of risks pertaining to hazardous materials in the County, the task of reviewing a project proponent's proposed use of hazardous materials in industrial zones and determining whether this use involves a potentially significant effect on the environment.

5. Section 17.42.035 of the County Code is not unconstitutionally vague.

Evidence: Section 17.42.035 clearly and unambiguously requires a project proponent to provide the Health Officer with lists or plans describing substances and materials to be used in conjunction with the project. Section 17.42.035 does not prohibit any conduct by the public or subject the public to punishment for failure to comply with its terms.

PASSED AND ADOPTED by the Planning Commission of the County of Calaveras, at a regular meeting of the Planning Commission held on December 17, 2015 on a motion by Commissioner _____ and seconded by Commissioner _____.

AYES:
NOES
ABSTAIN:
ABSENT:

Chair, Planning Commission

ATTEST:

Peter N. Maurer, Planning
Director

The project files are available for public review in the Planning Department, County of Calaveras, Government Center, 891 Mountain Ranch Road, San Andreas, CA. 95249, between the hours of 8:00 a.m. and 4:00 p.m.

http://www.calaverasenterprise.com/opinion/article_82c78bba-a524-11e5-bad9-3b2a70e13407.html

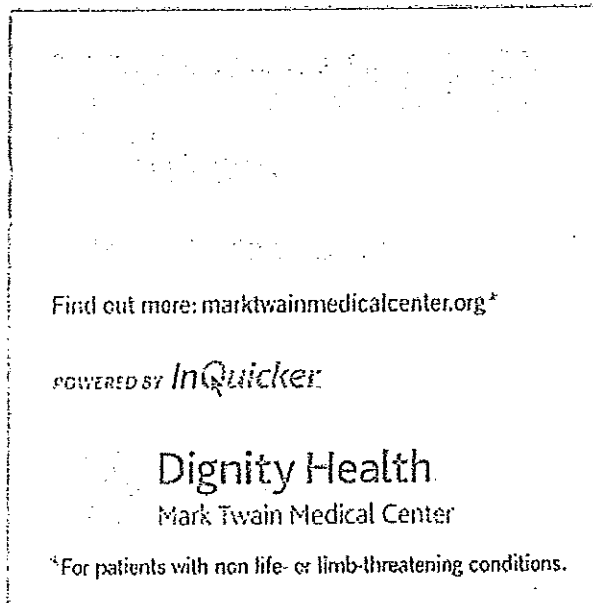
New: Letter to the Editor

Dec 17, 2015

Editor's note: Dr. Dean Kelaita, the Calaveras County health officer, sent this letter to the Calaveras County Planning Commission before the commission was scheduled to consider whether to require proponents of an asphalt plant near Valley Springs to obtain a conditional use permit for the plant. Kelaita concluded that a conditional use permit is needed to address risks to public health. A majority of commissioners disagreed with Kelaita. The commission voted 4-1 on Dec. 10 that it intends to allow the plant to operate without a conditional use permit. The commission was expected to formalize this decision on Thursday.

To: Calaveras County Planning Commission

From: Dean Kelaita, M.D., health officer



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RE: Recommendation that the proposed asphalt plant at the Hogan Quarry be subject to a conditional use permit

Date: Dec. 7, 2015

The installation and operation of a hot mix asphalt plant at Hogan Quarry in Valley Springs will involve the use of a variety of hazardous materials that may have a significant effect on the environment and public health. After review of the plan for the plant in the M2 zone, Environmental Management Agency staff analysis and briefings and the subsequent follow up materials submitted by the asphalt plant applicants, the potential for significant impacts and risks to the public have not been addressed to my satisfaction.

In summary, after reviewing the plan and the additional information submitted, my determination is that the proposed asphalt plan poses a risk to the public health due to the insufficient description of the safeguards to be used to prevent unintended environmental effects from the types and quantities of substances used in this type of facility.

As Calaveras County health officer, it is my determination at this time that the proposed asphalt plant to be operated at the Hogan Quarry involves hazardous materials that have the potential for significant environmental and public health effects. I recommend the application to be subject to a conditional use permit before being allowed to move forward.

Dean Kelaita, M.D.

Calaveras County health officer, Public Health Services