

July 10, 2015

VIA ELECTRONIC MAIL & U.S. MAIL

Peter N. Maurer
Planning Director
Calaveras County Planning Dept.
891 Mountain Ranch Road
San Andreas, CA 95249
pmaurer@co.calaveras.ca.us

Brian S. Moss
Env. Mgmt. Agency Administrator
Calaveras County EMA
891 Mountain Ranch Road
San Andreas, CA 95249
bmoss@co.calaveras.ca.us

Re: **Appeal of July 2, 2015 Determinations Made Under Section 17.42.035 for the Proposed Hogan Quarry Hot Mixed Asphaltic Concrete Plant**

Dear Mr. Maurer & Mr. Moss:

This firm represents CB Asphalt, Inc. ("CB Asphalt") and Ford Construction ("Ford") in matters pertaining to the proposed Hogan Quarry Hot Mixed Asphaltic Concrete Plant ("Asphalt Plant"). By this letter, CB Asphalt and Ford appeal the determinations made under Section 17.42.035 that approval of the Asphalt Plant at Hogan Quarry requires the issuance of a Conditional Use Permit ("CUP").

Background Facts

On September 6, 1990, the Calaveras County Planning Commission approved Reclamation Plan No. "90-15" for the Hogan Quarry, an existing gravel quarry which has been in operation since 1965 as the construction material rock source for the construction of New Hogan Dam. The quarry is located on a 149+ acre parcel located at 3650 Hogan Dam Road, Valley Springs, CA. CB Asphalt and Ford propose to place a portable Asphalt Plant at the south-east portion of the existing quarry operations at the site of a former portable concrete batch plant on approximately 2 acres of previously graded area. The proposed Asphalt Plant will process a quantity of materials as allowed and processed historically.

Mr. Maurer & Mr. Moss
Calaveras County Planning Dept. & EMA
July 10, 2015
Page 2

Appeal

Pursuant to Section 17.98.020 of the Calaveras County Code, CB Asphalt and Ford appeal: (1) the Calaveras County Environmental Management Agency (“EMA”) Administrator’s July 2, 2015 determination that the “applicant’s proposal to add a Hot Mixed Asphalt Plant will involve the use of a hazardous material that may have a significant effect on the environment...”; and (2) the Calaveras County Planning Director’s July 2, 2015, determination that “[b]ecause the Health Officer did make this finding...” the Asphalt Plant requires the issuance of a CUP. The determination letters are attached hereto as **Exhibits 1 & 2**. Section 17.98.020 provides an appeal avenue to the Planning Commission “within fifteen (15) days following the determination.”

We are filing a single appeal letter on these determinations because the County Code provisions upon which these Determinations are based are intended to work in conjunction with each other.

Filing Fees

As required, enclosed are two checks equaling Two Hundred Dollars (\$200.00) to satisfy filing fee requirements for the appeals.

Supplemental Documentation

CB Asphalt and Ford further reserve the right to submit supporting facts, law, and other documentation as soon as feasible after filing this appeal.

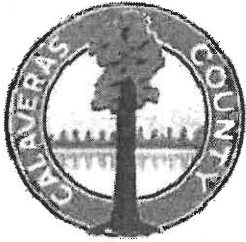
Very truly yours,


Diane G. Kindermann

cc: Julie Moss-Lewis, Deputy County Counsel (*Via Email*)

Enclosures

Exhibit 1



Calaveras County Environmental Management Agency

Brian S. Moss ♦ Agency Administrator / Director of Environmental Health / Air Pollution Control Officer

Date: July 2, 2015

CB Asphalt
Attn: Shawn Simmons
39 California Street, PMB 118
Valley Springs, CA. 95252

Ford Construction
Attn: Jerry Middleton
300 W. Pine Street
Lodi, Ca 95240

Diane G. Kindermann Henderson
Abbott & Kindermann, LLP
2100 21st Street
Sacramento, CA 95818

Subject: Calaveras County Health Officer Determination
Air Pollution Control District - Authority to Construct

I. Health Officer's Determination Under Calaveras County Code 17.42.035

Pursuant to Calaveras County Code 17.42.035, when there is a proposed change of use in an industrial zone, the project proponent must submit to the Health Officer a list or plan of all substances to be used or produced by the proposed business. Thank you for the recent submittal of this information.

As the Health Officer, I am required to review the submitted information to determine whether 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. If so, I am required under 17.42.035 to notify the Planning Director of this determination.

In my letter of May 29, 2015, I initially asserted that both the ATC and my determination under 17.42.035 are "projects" under CEQA and that this project would automatically require an Initial Study. After further research with County Counsel and the Planning Department in the wake of both Ford's and CB Asphalt's appeals to the Planning Commission, I will be recommending that the Planning Commission make a partial amendment to my determination.

With respect to my determination under 17.42.035, I concur with Ford and CB Asphalt that this is "not a project" under CEQA because, despite the fact that it requires me to apply my expertise and render judgment as the Health Officer, the determination does not contemplate "approval" of a project or any portion of a project. In making that determination, I have no discretion to approve, disapprove, or

Government Center, 891 Mountain Ranch Road, San Andreas, CA 95249-9709

Environmental Health Department ♦ Onsite Wastewater Department ♦ Air Pollution Control District ♦ Animal Services ♦ Department of Agriculture & Weights and Measures
(209) 754-6399 Ext. 1 (209) 754-6400 (209) 754-6399 Ext. 4 (209) 754-6509 (209) 754-6504
(209) 754-6722 Fax (209) 754-6722 Fax (209) 754-6722 Fax (209) 754-6815 Fax (209) 754-9256 Fax

impose conditions on the project based on its potential to impact the environment. What I am required to do under 17.42.035 is to determine whether or not a project involves the production or use of hazardous or toxic materials that have the potential to impact the environment. If I, as the Health Officer, determine that "yes" a project involves the production or use of hazardous or toxic materials that may have a significant impact on the environment, the Code requires me to notify the Planning Director—who, in turn, must direct the project proponent to apply for a Conditional Use Permit (CUP). It is the issuance of the CUP, not my preliminary determination about the hazardous nature of the materials, which would be the "project" under CEQA for purposes of Title 17 of the Calaveras County Code. It is through the issuance of the CUP application process that potential impacts to the environment would be addressed and, if necessary, mitigated. Therefore, I will be recommending that the Planning Commission reverse my initial determination that the finding I am required to make under 17.42.035 for purposes of this proposal is a "project" under CEQA.

However, based on the information I received from the CB Asphalt on June 25, 2015, I have determined that applicant's proposal to add a Hot Mixed Asphalt Plant will involve the use of a hazardous material that may have a significant effect on the environment absent the imposition of mandatory conditions and requirements designed to reduce the risk associated with the use of that material.

It should be noted that Section 17.42.035 predates Assembly Bill (AB) 1082 that was passed during the 2000 legislative session. This bill enacted the Unified Hazardous Waste Program and delegated local Certified Unified Program Agencies (CUPA's) to carry out the program under California Health and Safety Code, Chapter 6.95. Therefore, as Health Officer, I currently rely upon state law and state definitions to determine whether substances and materials related to a land use are hazardous and may have a significant effect on the environment. Chapter 6.95, Section 25501 (n) (1) states: "Hazardous material" means a material listed in paragraph (2) 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, or a material specified in an ordinance adopted pursuant to paragraph (3). Asphalt is considered a hazardous material.

The hazard summary for Asphalt is as follows:

Hot material can cause severe eye and skin burns on contact. Hydrogen sulfide from heated material can accumulate in vapor space of tanks and containers. Contact between heated material and water can cause a violent eruption. Fumes from heated material can cause irritation to the eyes, skin, and respiratory system, and can increase susceptibility to sunburn.

Asphalt is also considered hazardous by the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard (29 CFR 1910.1200).

A copy of this determination will be forwarded to the Planning Director as required by Section 17.42.035 of the Calaveras County Code.

II. Application to Air Pollution Control Board for Authority to Construct

With respect to my issuance of an Authority to Construct (ATC) on behalf of the Calaveras County Air Pollution Control District, I maintain that this proposal is a "project", as defined under California Public Resources Code, Section 21065 and Section 15378 of the CEQA Guidelines, and subject to further analysis under the California Environmental Quality Act. I concur with Ford and CB Asphalt that it was premature as of May 29, 2015 for me to conclude *that an Initial Study will be required*, as the Air

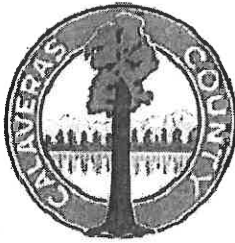
Pollution Control District had yet to receive a complete ATC application. Therefore, I will be recommending that the Planning Commission amend my determination with respect to issuance of the ATC to read as follows: "The County has determined that issuance of an ATC is a project, as defined by the California Public Resources Code, Section 21065 and Section 15378 of the CEQA Guidelines, and subject to further analysis under the California Environmental Quality Act."

Since the County has determined that the project is subject to a CUP under 17.42.035, no ATC will be issued by the Air Pollution Control District until a CUP is approved by the Planning Department. The Planning Department will, upon receipt of a complete application for a CUP, complete preliminary CEQA review of whether or not an exemption applies or whether an Initial Study and environmental document will be required. Should the Health Officer's determination under 17.42.035 be reversed, the Calaveras County Air Pollution Control District will complete preliminary CEQA review as part of the ATC process.



Brian S. Moss, Administrator
Environmental Management Agency

Exhibit 2



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

July 2, 2015

Nick Jones, President
Ford Construction Company, Inc.
300 W. Pine Street
Lodi, CA 95240

Re: Determination of Use Under Section 17.42.035

Dear Mr. Jones:

On July 2, 2015, I received a determination by the Health Officer under Calaveras County Code Section 17.42.035 that the proposed addition of an asphalt plant to Hogan Quarry will involve a hazardous material that may have a significant effect on the environment.

Section 17.42.035 provides:

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. The health officer shall review the plan or list 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. If there is a significant effect, the health officer shall notify the planning director. Such uses shall require approval and validation of a conditional use permit, regardless of whether the use is prescribed as a permitted or conditional use in this chapter.

Because the Health Officer did make this finding, I am required by ordinance to inform you that approval and validation of a conditional use permit through the Planning Department will be required as a precondition to constructing or operating an asphalt plant at Hogan Quarry despite the fact that it is a permitted use in the M2 zone.

Sincerely,

Peter N. Maurer
Planning Director

Cc: Shawn Simmons, CB Asphalt
Diane Kindermann, Abbott & Kindermann, LLP
Julie Moss-Lewis, Deputy County Counsel
Brian Moss, Administrator, Environmental Management Agency