

June 10, 2015

VIA HAND DELIVERY, ELECTRONIC MAIL & U.S. MAIL

Peter N. Maurer
Planning Director
Calaveras County Planning Dept.
891 Mountain Ranch Road
San Andreas, CA 95249

Brian S. Moss
Env. Mgmt. Agency Administrator
Calaveras County EMA
891 Mountain Ranch Road
San Andreas, CA 95249

Re: Appeals of CEQA Determinations under Section 17.42.035 and the Calaveras County Air Pollution Control District Authority to Construct Permit for the Proposed Hogan Quarry Asphaltic Concrete Batch 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 Asphaltic Concrete Batch Plant ("Batch Plant"). By this letter, CB Asphalt and Ford appeal each of the following: (1) the initial California Environmental Quality Act ("CEQA") determination made under Section 17.42.035 for the Batch Plant ("Zoning Appeal"); and (2) the initial CEQA determination for the Calaveras County Air Pollution Control District's ("APCD") Authority to Construct ("ATC") Permit for the Batch Plant ("ATC Appeal").

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 asphaltic batch 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 Batch Plant will process a quantity of materials as allowed and processed historically.

Mr. Maurer & Mr. Moss
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Appeals

I. Zoning Appeal

Pursuant to Section 17.98.020 of the Calaveras County Code, CB Asphalt and Ford appeal the Calaveras County Environmental Management Agency (“EMA”) Administrator’s May 29, 2015, determination that the Batch Plant’s evaluation under Calaveras County Code section 17.42.035 is a “project” requiring environmental analysis under the California Environmental Quality Act (“CEQA”). The determination letter is attached hereto as **Exhibit 1**. Section 17.98.020 provides an appeal avenue to the Planning Commission “within fifteen (15) days following the determination.”

II. ATC Appeal

Pursuant to Section 17.98.020 of the Calaveras County Code and/or California Health & Safety Code section 42302.1, CB Asphalt and Ford appeal the Calaveras County Environmental Management Agency (“EMA”) Administrator’s May 29, 2015, determination that the APCD’s approval of the ATC Permit is not exempt from the requirements of CEQA. The determination letter is attached hereto as **Exhibit 1**. Section 17.98.020 provides an appeal avenue to the Planning Commission “within fifteen (15) days following the determination.” Health & Safety Code section 42302.1 provides an appeal avenue “within thirty (30) days of any decision”

Filing Fees

As required, enclosed is a check in the amount of Two Hundred Dollars (\$200.00) to satisfy filing fee requirements for both appeals.

Supplemental Documentation

Pursuant to the June 8, 2015, letter from Deputy County Counsel Julie Moss-Lewis (attached as **Exhibit 2**), 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 Kindermann Henderson

cc: Julie Moss-Lewis, Deputy County Counsel
Enclosures

Exhibit 1



Calaveras County
Environmental Management Agency

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

May 29, 2015

Shawn Simmons
CB Asphalt, Inc.
6739 CR 423
Palmyra, MO 63461

Re: Proposed Portable Hot Mixed Asphalt Plant - Authority to Construct Application Review

Dear Mr. Simmons,

Thank you for your recent submittal of the Authority to Construct (ATC) to the Calaveras County Air Pollution Control District (District) for construction of a Portable Hot Mixed Asphalt Plant to be located at the Foothill Materials Quarry in Valley Springs. Upon initial review, the District has determined that the application is incomplete and that additional information is required.

Please submit the following information:

- Identify all materials used in the process, including estimated average quantity used per year (i.e. type of solvents, resin, paints, raw product processed, etc.)
- Provide Material Safety Data Sheets (MSDS) for all materials.
- Identify chemical nature of air pollution emissions generated from asphalt production.
- Describe fuel and material storage sites (size, temperature, pressure)
- Identify fuel specifications
- Identify the input heating capacity of the burner in mmBtu/hour
- Identify baghouse details including the air to cloth ratio and air flow rate.
- Specify annual production.
- Identify anticipated amount of onsite asphalt storage.
- Identify number of additional truck trips.
- Provide a site map depicting exact location of batch plant and storage of all hazardous materials.

Once the District receives this information, the application will be reviewed and then forwarded to the District's contracted engineer for further engineering review. As discussed, you will be billed at the rate of \$87.00 per hour for this review with an amount not to exceed \$1,044.00 without prior authorization.

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

♦ **Environmental Health Department** ♦ **Onsite Wastewater Department** ♦ **Agriculture & Weights and Measures** ♦ **Air Pollution Control District** ♦ **Animal Services** ♦
(209) 754-6399 Ext. 1 (209) 754-6400 Ext. 2 (209) 754-6399 Ext. 3 (209) 754-6509 Ext. 4 (209) 754-6509
(209) 754-6722 Fax (209) 754-6722 Fax (209) 754-9256 Fax (209) 754-6722 Fax (209) 754-6615 Fax

Submittal of the above requested information will also assist the Health Officer to make a determination pursuant to Calaveras County Code Section 17.42.035. Section 17.42.035 states, "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 significant effect on the environment associated with the substance."

After consultation with the Planning Department and County Counsel, the County has determined that issuance of the ATC and the determination under Section 17.42.035 is a project, as defined by the California Public Resources Code, Section 21065 and Section 15378 of the CEQA Guidelines, and subject to the California Environmental Quality Act (CEQA). Upon submittal of the above requested information, the County will conduct an Initial Study, pursuant to Section 15063 of the CEQA Guidelines to determine the type of environmental document that must be prepared.

If you have any questions, please don't hesitate to call me at (209)754-6399.



Brian S. Moss, REHS
Environmental Management Agency Administrator
Director of Environmental Health/Air Pollution Control Officer

Cc: Jerry Middleton, Ford Construction

Exhibit 2

COUNTY OF CALAVERASOFFICE OF COUNTY COUNSEL

Megan K. Stedtfeld
County Counsel

David E. Strias, Assistant County Counsel
Julie L. Moss-Lewis, Deputy County Counsel
Michael B. Hansell, Deputy County Counsel

June 8, 2015

Via Facsimile and First Class Mail
(916) 456-9599

Diane Kindermann
Abbott & Kindermann
2100 Twenty First Street
Sacramento, CA 95818

Re: Hogan Quarry Asphalt Batch Plant

Dear Ms. Kindermann:

Please let me know as soon as possible whether your client has indeed chosen to abandon its proposed asphalt batch plant project at Hogan Quarry.

As we discussed last week on the phone, it would be most efficient to hear your client's appeal of the Air Pollution Control Officer's determination at the June 25th Planning Commission meeting--at the same time the appeals of the Planning Director's determination are being heard. This would allow the parties to respond to each other's appeals at one hearing rather than two. While technically you have fifteen calendar days after the decision was issued to file an appeal under 17.98.020 (which would give you until Saturday, June 13th), we will need your appeal by Wednesday, June 10th if it is to be heard at the June 25th hearing. If your initial appeal is submitted after June 10th, it will be scheduled for a Planning Commission hearing in July. You may supplement an initial appeal after you've filed it.

As we also discussed last week, while the County does believe that the nature of the environmental health director's decisionmaking process is a discretionary action requiring CEQA analysis, our arguments supporting this determination have not yet been articulated in a final staff report. Therefore, you should not rely on our phone conversation as a "binding" statement of our legal arguments.

I look forward to hearing from you soon.

Sincerely,

JULIE MOSS-LEWIS

JML/pea