

Comments on revised Resolution and new Findings - 12/17/15 Planning Commission
Joyce Techel, MyValleySprings.com

1) Revised Resolution 2015-019 is not supported with findings and evidence. The new resolution says, "...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..." This statement is not supported by the findings and evidence. On page 3 under Finding 3, Evidence, it says the engineers reports concluded "**not likely to be** significant effects", and then says "**chances...** of a release or mishap **that would result** in a significant effect...is **sufficiently remote** to not trigger a finding of potentially significant impact..." and continues, "when **the chance of** a significant impact...**is as remote** as the Commission finds it to be under these facts." The words "**not likely to be**" and "**Remote chances...that would result**" in significant impact do not add up to the Resolution's "**will not have a significant effect.**". These "**chances**" remain the same as "**may result in a significant effect.**"

During the hearing, County Counsel Julie Moss-Lewis said, "the Appellant has the legal burden of proof to show that staff was incorrect and the burden of proof of proving that there is **no potential** for significant impacts." This proof has not been demonstrated in the Finding and Evidence with "not likely" or "remote chance" of significant effects.

2) The Findings and Evidence referenced also do not prove staff was incorrect. The text misquotes the Environmental Management Agency Director, Jason Boetzer and **leaves out** most of his testimony. It says the EMA Director testified that he interpreted 035 as requiring him to find there "may be a significant effect if there is any potential, **however remote, for an accident or mechanical mishap** involving hazardous materials." That is not accurate and was not all the Director said. When questioned about the remote possibility of releases and accidents, the Director said no, the possibility was not just from accidents, but from "normal operations"-- "things that can happen" as part of operations. When accused by a commissioner of "living in a closet" in his interpretation of code section 035, the Director responded, "We have to look at every operation based on the method, type and quantity of materials, and type of operation. I've inspected asphalt plants before...I didn't live in a vacuum in Calaveras County... and seen some of the releases and just ongoing—it's part of the operations. It's looking at this—the ability to have a significant effect on the environment...even looking at compliance with all rules and regulations. Hiccups occur in the operations and there may be a significant effect."

3) Staff provided substantial evidence to support a finding that the project.... MAY have a significant effect on the environment. Finding 3 states "...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." When commissioners asked what the word "may" meant and if the standard was "**remote possibility of**", the Director responded that "**may**" meant "**the ability to**" have an effect, **plus the quantity, type of material, and process.**" This ability to have an effect was clearly demonstrated in the Director's staff report and testimony at the hearing. Finding 3 is in error.

The statements we quote can be verified on the videos posted on the CalaverasCAP website. The revised Finding, Evidence, and Resolution **do not prove** that staff was incorrect, and do not prove there **is no potential** for significant impacts from the asphalt plant.