



CALAVERAS COUNTY PLANNING DEPARTMENT
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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