



County of Calaveras Department of Planning

Peter N. Maurer ~ Planning Director

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website: www.co.calaveras.ca.us

June 2, 2015

Brett S. Jolley
Herum Crabtree Suntag 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,

A handwritten signature in black ink, appearing to read "Peter N. Maurer".

Peter N. Maurer
Planning Director

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

RECEIVED

JUN 02 2015

Calaveras County
Planning Department

Brett 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
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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

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6 Attorneys for Stockton East Water District
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10 IN THE MATTER OF:

11 Stockton East Water's District's
12 Appeal of and Objection to
County's April 30, 2015
13 Determination Re Asphalt Batch
Plant at Hogan Quarry
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**Declaration of Scot A. Moody in Support
of Appeal and Objection**

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

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

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

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

26 4. Stockton East Water District relies on water from the Calaveras
27 River to treat and wholesale surface water to the City of Stockton, California
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Declaration of Scot A. Moody in Support of Appeal and Objection

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

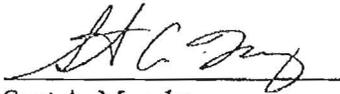
3 5. The Hogan Quarry and its proposed batch plant are located along
4 the Calaveras River, upstream of the District's diversion points.

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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