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Calaveras County
Planning Department

The Honorable Fawn McLaughlin
Chair, Calaveras County Planning Commission
891 Mountain Ranch Road
San Andreas, California 95249

**Re: Supplement to Appeals of the Decision of Planning Director
Peter N. Maurer dated April 30, 2015**

Dear Chairwoman McLaughlin:

This letter supplements the appeals from Joyce Techel, MyValleySprings.com, John A. Walker, and the Calaveras County Water District (collectively, "Appellants") to the decision of Peter N. Maurer, Planning Director, in his letter dated April 30, 2015, to Nick Jones, President of Ford Construction Company, Inc. Appellants challenged the Planning Department's determination "that an asphaltic concrete batch plant, or 'hot plant', is permitted at the site of the [Hogan] quarry." In addition to the issues Appellants previously raised, in accordance with Calaveras County Municipal Code (the "Code") sections 17.98.020, 17.98.060.A, and 17.98.070, Appellants respectfully request the Planning Commission address the following issues in responding to these appeals.

A High Speed Continuous Asphalt Plant is Not a Permitted Use.

Mr. Maurer's April 30, 2015 letter asserts that the Commission's decision was that an asphalt batch plant is a permitted use under Code section 17.40.020.A.8, which permits "concrete mixing and *batch plant*, ready mix" (emphasis added). Based on photographs dated on or around May 22, 2015, of the plant equipment that recently arrived at the Hogan Quarry, the plant is not a batch plant at all, but rather a continuous asphalt plant or a "drum mix asphalt plant." As such, the basic premise of the Commission's decision is inapplicable. In other words, even if an asphalt batch plant is a permitted use under the Code, an asphalt continuous plant is not a permitted use, and a conditional use permit is required. See Code § 17.40.020.A.8.

As the name implies, a continuous plant operates continuously rather than manufacturing asphalt in batches. By operating without interruption, a continuous plant produces almost double the output of a batch plant, more than 300 hundred tons per hour, magnifying the environmental impacts of the proposed plant. EPA, Office of Air Quality Planning and Standards, Emissions Monitoring and Analysis Division, *Hot Mix Asphalt Plants - Emission Assessment Report* 1, December 2000, available at www.epa.gov/ttnchie1/ap42/ch11/related/ea-report.pdf (noting a drum mix plant produces

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about 200,000 tons of hot mix asphalt per year compared to a batch plant, which produces approximately 100,000 tons per year) [hereinafter EPA-EAR].

The design of a continuous plant also may create greater environmental impacts than a batch plant. In a batch plant, the mixing of aggregate and asphalt takes place in a separate mixing chamber. In a continuous plant, the dryer is used not only to dry aggregate but to mix hot and dry aggregate with liquid asphalt. As a result, emissions of gaseous and liquid aerosols may be greater in a continuous plant than in a batch mix plant. Combustion emissions from the dryer include hazardous air pollutants, such as benzene, toluene, and xylene. See Robert Harrison & Theresa Kemmer Moody, *Preferred and Alternative Methods for Estimating Air Emissions from Hot-Mix Asphalt Plants 3.2-4-5*, Final Report, July 1996, available at www.epa.gov/ttnchie1/eiip/techreport/volume02/ii03.pdf; EPA-EAR Table 1-2 (finding a drum mix facility emits approximately three times as many hazardous air pollutants as a batch mix facility).

The Code Requires a Conditional Use Permit Prior to a Change in Use.

Prior to a change of use, a project proponent must submit to the county health officer a list or plan of all substances to be used or produced by the proposed business. Code § 17.42.035. The health officer must review the plan or list to determine if the type, method of use, or quantity of substances are such that there may be a significant effect on the environment associated with the substances. If there is a significant effect, the health officer must notify the planning director. Such uses require approval and validation of a conditional use permit, regardless of whether the use is prescribed as a permitted or conditional use. See *id.*

The proposal here is for a change of use—an asphalt plant at the Hogan Quarry. See, e.g., *San Remo Hotel v. City & Cnty. of S.F.*, 27 Cal. 4th 643, 660 (2002) (finding a change from partial tourist use to complete tourist use would be a significant alteration or enlargement of the existing use, requiring a new conditional use permit). To comply with the Code, Ford Construction Company must submit a list of all substances it will use and produce to Brian Moss with Environmental Health, the Calaveras County health officer. Mr. Moss must determine if there may be a significant environmental effect associated with the production of asphalt, and if so, Mr. Moss must notify Mr. Maurer, and the asphalt plant requires a conditional use permit. See Code § 17.42.035.

Based on the petrochemicals involved in manufacturing asphalt, such as bitumen, and the known hazardous emissions of an asphalt plant, such as benzene, the plant requires a conditional use permit, even if an asphalt batch plant is a permitted use under the Code. Regardless, if Ford Construction has not submitted a list of all the substances involved to the County's health officer, and the health officer has not conducted an environmental review, the Code prohibits any approval of the proposed plant until the applicant makes the disclosures, and the County completes the review in compliance with applicable law.

An Asphalt Plant Would Trigger Revisions to the Hogan Quarry's Existing Use Permit and Existing Mining Reclamation Plan.

In Mr. Maurer's May 12, 2015 letter to me, he wrote that because an asphaltic batch plant was "a permitted use by right, as opposed to a conditional use under the County's

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Zoning Code, no CUP or other discretionary permit is required through the Planning Department" (emphasis added). The Hogan Quarry has an existing Mining Use Permit and an existing Mining Reclamation Plan. The Calaveras County Planning Commission approved the Mining Reclamation Plan, for example, in September 1990.

The addition of an asphalt plant to the Hogan Quarry operations would require an amendment to the existing permit and plan. See Supervisor Minutes from October 12, 1993, Agenda Item 13 ("A.C. hot plants are not included" in the existing Use Permit for aggregate mining operations). Indeed, the existing Mining Reclamation Plan provides for the following purposes: (a) a gravel operation; (b) appurtenant structure equipment; (c) associated reclamation; (d) offsite hauling on average ten (10) trips per day; and (e) all other activities as described in the reclamation plan, consistent with conditions of approval. The existing Mining Reclamation Plan never mentions a concrete batch plant or asphalt batch plant. Accordingly, contrary to Mr. Maurer's assertion, the proposed asphalt plant requires discretionary approvals through the Planning Department, specifically modifications or revisions to the existing Mining Use Permit and Mining Reclamation Plan. All such discretionary approvals are subject to review under the California Environmental Quality Act (Cal. Pub. Res. Code §§ 21000 – 21189.3).

Modifying either the permit or the plan requires a discretionary action through the Planning Department. See Calaveras County Planning Fees, available at <http://planning.calaverasgov.us/Fees.aspx> (last visited May 27, 2015) (listing the Planning Department's fees for revisions or modifications to a Mining Use Permit and a Mining Reclamation Plan). These fees prove it is the Planning Department's responsibility to review revisions and modifications to mining use permits and mining reclamation plans.

The Plant Will Result in the Taking of Steelhead Trout in the Calaveras River, a Federally Listed Threatened Species, Requiring an Incidental Take Permit.

The proposed plant will require water either as a cooling mechanism or to control dust or both, and water from the plant will drain into the Calaveras River. See California Regional Water Quality Control Regional Board Central Valley Region Order No. R5-2002-0226, December 2002, at 4. The Calaveras River serves as warm and cold freshwater habitat for a number of species, including steelhead trout. Steelhead trout in the Central Valley region of California are a federally listed threatened species. See Department of Fish and Wildlife, Natural Resources Agency, California, *State & Federally Listed Endangered & Threatened Animals of California* 5, March 2015, available at www.dfg.ca.gov/biogeodata/cnddb/pdfs/TEAnimals.pdf. The proposed plant, therefore, will adversely affect steelhead trout, a federally listed threatened species.

Section 9 of the Endangered Species Act ("ESA") generally prohibits the unauthorized "take" of a listed species. "Take" is defined broadly and includes harassing or harming any threatened species. The prohibition on taking threatened species applies to non-federal entities, and therefore, the ESA applies here. EPA, *Endangered Species Act Requirements for Construction Activities* 81, available at <http://www.cicacenter.org/links> (last visited May 27, 2015). The plant will adversely affect steelhead trout in the Calaveras River, and therefore, under Section 10 of the ESA, Ford Construction Company must obtain an Incidental Take Permit.

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Mr. Maurer Cited the Incorrect Assessor's Parcel Number for the Hogan Quarry.

Briefly, in response to a letter I wrote to the Chair of the Calaveras County Board of Supervisors, Mr. Maurer sent me a letter dated May 12, 2015. In his letter, Mr. Maurer identified the Hogan Quarry by Assessor's Parcel Number 050-003-031. The correct APN for the property is 050-003-001. Unfortunately, the Calaveras County Water District incorporated the incorrect APN into its appeal. The point here is not to identify typos, but to highlight the error and ensure it in no way affects the outcome of Appellants' appeals.

Sincerely,

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