

# Divided council keeps South Tahoe SUP at Lakeview

By Kathryn Reed

South Lake Tahoe Standup Paddle will continue to be the concessionaire at Lakeview Commons unless legal action is taken to prevent that from happening.

The South Lake Tahoe City Council this week on a 3-2 vote rejected the bid protests. Councilmembers Wendy David and Brooke Laine were in the minority.

Before the council were two protests that followed the council's **Feb. 20 decision**. One was from Anthony Spatucci of Day Go Adventures and the other by Andrew Laughlin of Tahoe City Kayak and Paddleboard.

The choices before the council on March 20 were:

- Award the contract to the selected bidder, South Tahoe SUP.
- Award the contract to the next responsible bidder, Tahoe City Kayak.
- Reject all bids, and begin the process over.

The first option is what was selected.

Resident Rich Hodge questioned the whole process going back to when the concession was first awarded. While he has worked for Kayak Tahoe, one of the bidders, he said he was there representing himself. He questioned how a company with perfect credit didn't score well, while one with questionable financials gets to keep operating. His questions as to who did the scoring and the reasoning went unanswered.

Spatucci told the council a one-year extension should be given to South Tahoe SUP, which has had the concession for five years, or start over.

Laughlin said had he known he should have filled the council chambers with friends like South Tahoe SUP owner Chris Brackett did in February, he would have. He was shocked the "court of public" opinion swayed the electeds to go with South Tahoe SUP instead of his company. After all, it was Tahoe City Kayak that scored the most points by the judges, even though it was by less than one point.

"You asked the city attorney (last month) whether you could select a bidder who is not recommended today. Without citing legal authority, she said yes," Jacqueline Mittelstadt told the council. She is the attorney representing Tahoe City Kayak, and the former city attorney for South Lake Tahoe so she has a familiarity with how the city works. "At the end of the hearing [your attorney] stated doing so was 'within your allowable discretion.' I see no legal authority for this assertion."

One of the issues brought up by Tahoe City Kayak is the **lawsuit pending** against South Tahoe SUP in relation to a drowning in 2015.

Brackett said the allegations in that lawsuit have no merit and he is confident he will prevail.

After the decision was made, Mittelstadt told *Lake Tahoe News*, "It's unfortunate that the council does not follow its own regulations and RFP. Council member [Brooke] Laine had the most fair suggestion to redo the RFP process allowing the one-year extension to their favored contractor. Tahoe City Kayak will evaluate whether to seek court intervention for the council's misplaced approach and to restore fairness to the city's process."

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# 16 things to know before betting the Sweet 16

By Case Keefer, Las Vegas Sun

Don't be fooled by photos of money line tickets and high-priced parlays still circulating on social media a few days after the initial weekend of the NCAA Tournament.

Sports books aren't hurting through the first 52 games of March Madness.

Sure, they may have taken a hit on a few highly-shared bets like UMBC at 25-to-1 to beat Virginia last Friday night but they more than made up for all the minor bumps before the weekend concluded. It remains to be seen if casinos can top last March's record \$41.2 million win on basketball, but they're probably at least on pace.

**[Read the whole story](#)**

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## Rain brings flooding concerns in Tahoe, Truckee



South Lake Tahoe crews assess the Whole Foods project site on March 21.  
Photo/LTN

### **By Lake Tahoe News**

The National Weather Service in Reno has issued a flood warning for the greater Lake Tahoe area, including South Lake Tahoe, Truckee, Stateline and Incline Village. The warning is in effect through late Thursday.

“Right now the city is looking good. We have cut snow berms in known zones and have a team clearing drains and pipe in low areas. We do not anticipate river or creek flooding, just the normal low zones and micro areas,” Jim Marino, South Lake Tahoe deputy public works director, told *Lake Tahoe News*.

According to the Weather Service, “A warm and wet winter storm with a deep tap of sub-tropical moisture will bring moderate to heavy rain to areas below 7,500 feet tonight and early Thursday. The snow levels fall to 7,000 feet Thursday, but the moderate to heavy rain continues into Thursday evening. Rainfall amounts of up to 3 inches are possible below 7,000 feet around the Tahoe basin.”

The added problem is this is rain on snow, which means all that snow is being turned into water. As this happens, creeks, rivers and streams start to rise even faster.

Jason Burke, the storm water manager for the city, and another official were at the Whole Foods site at Highway 50 and Ski Run Boulevard the morning of March 21. Burke told *LTN* everything there is holding up, with the bulk of the water being clear – which is a good thing.

City officials will be talking to Tahoe Regional Planning Agency officials and other regulatory agencies to brief them on how things are working.

Infrastructure was put in last summer/fall in this area to help with what is a known area for flooding. A significant part of the project is environmental improvements.

City crews will also be out clearing drains and pipes to ensure water flows where it should.

In low lying areas and places with poor drainage sump pumps are at work.

**Sand bags are available** for residents.

The rain is expected to turn to snow later on Wednesday, with a winter storm warning issued from 5pm March 21 through 5am Friday. The Weather Service says 2 to 3 feet could fall above 7,500 feet, with localized amounts up to 4 feet near the Sierra Crest.

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# Chateau project on track to be completed

By Kathryn Reed

In less than four years it's possible the much maligned

Chateau project in South Lake Tahoe will be completely built out with a hotel that includes a rooftop pool, condos that come with another pool, a high-end bowling alley where the convention center once was planned, outdoor movie theater showing family-friendly films, restaurants and retail.

Developers for the site were before the South Lake Tahoe City Council on Tuesday requesting 15,770 square feet of commercial floor area to help bring the project to fruition. After much discussion, the council agreed to set aside the CFA for the project with the caveat that if the project isn't developed, the CFA returns to the city.

CFA is something the Tahoe Regional Planning Agency came up with years ago as a way to curtail development. Instead these commodities just escalate the price of a project.

Midkiff and Associates, the local planners representing the developers, contend the CFA was part of earlier deals and that there should be no charge today because it was already promised for this project. While the city had no proof one way or the other, staff and electeds relied on what was presented and gave the CFA to the project.

Now being called the Resort at Tahoe, the plan is for a \$500 million infusion of cash into South Lake Tahoe. The goal is to have a second village on the other side of Highway 50 near the state line.

Developers say the project will bring in \$13 million a year in transient occupancy tax and \$1.4 million in sales tax. The hotel tax is based on 14 percent TOT on hotel rooms that could go for \$550 a night, a one-bedroom condo for \$850/night and possibly \$2,500/night for a four-bedroom condo. They are expecting to be priced competitively with neighboring Zalanta.

"The project is ready to start the first phase this summer. We are intending to submit to design review to staff in the next week or two," Gary Midkiff with Midkiff and Associates told

the council March 20. This would be 16 units above the current retail.

According to the developer, the preliminary parking analysis calls for there to be enough parking already planned to accommodate what they want to do.

This is surprising considering when the project was first approved the plan was to use casino parking lots to handle overflow from the site. It's a much different world today with the Stateline casinos charging for parking at various times and no longer wanting non-patrons leaving their vehicles there.

Planning consultant Lyn Barnett was at the meeting representing neighboring Stardust hotel. He said that property has about 50 vehicles a year towed because they've parked there illegally. He is worried parking will just get worse with more development.

"Until there is an application and some type of analysis of the application, it's hard to know the impact on neighbors in the area," Barnett said.

That's one of the unusual things about what transpired on Tuesday. This item was brought to the council just days after being requested by the planner and there was no application. This is practically unheard of in the planning world, especially in the Lake Tahoe Basin.

Barnett was with the TRPA as a planner when the two amendments were made to the operating agreement for the Chateau project.

"We have concerns about the 1998 document even being valid. I think it's stale. We have a new Regional Plan, a new city General Plan, we have a community plan that replaces an area plan," Barnett said. "There should be a scoping for an environmental document if there is a third addendum."

The developers believe because they have a valid building permit they can go forward without further review even though changes are being made to the project.

When the project was first approved it was to include two hotels, a convention center, retail and open space. The city was going to be the operator of the center and take care of the common areas. Since the original developer filed for bankruptcy the city no longer has a financial stake other than collecting taxes.

But the city does have the responsibility to ensure the project conforms to approved permits, to ensure further analysis is not required, and to insist financing is in place before construction permits are issued.

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## **Nev. woman sues, fears missing horse could be slaughtered**

**By Scott Sonner, AP**

A Nevada woman who fears her missing horse could end up at the slaughterhouse has joined a lawsuit challenging state plans to transfer ownership of thousands of free-roaming mustangs to private hands

Lawyers for the California-based American Wild Horse Campaign and Cynthia Ashe of Silver Springs filed the lawsuit Monday in state court in Carson City seeking an injunction to block what they say would be “a giveaway of a valuable and cherished Nevada asset.”

The lawsuit accuses Nevada's Department of Agriculture of breaching a contract that called for the wild horse group to manage the nearly 3,000 mustangs in the Virginia Range east and south of Reno through 2020 in a humane manner under a joint agreement emphasizing fertility control.

**Read the whole story**

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## **SLT's VHR fines redefining town's image**

**By Carolyn Said, San Francisco Chronicle**

The knock on the front door of the South Lake Tahoe vacation rental was a surprise.

It was the first family getaway together for Gus Pries and his extended family. With six adults, four children ranging from 3 months to 5 years old, suitcases, snow gear and groceries, the San Jose residents took three cars for their Presidents Day weekend trip.

A police officer said they were receiving a \$1,000 ticket for having one too many cars on site, and the property's owner would be fined an additional \$1,000. The family members' explanation that it was just temporary and they planned to move the third car fell on deaf ears, Pries said.

"It's preposterous and unfair," said Pries, a San Jose dentist. "I've never been treated so poorly as a tourist. It's not like we were having a big party or the 3-year-olds were doing a beer bong."

# Opinion: SLT deserves better council members

By Kathryn Reed

Thank goodness the employees of South Lake Tahoe are proficient at their jobs because the elected officials are anything but that.

Two employees report directly to the five council members – the city manager and the city attorney. This council has managed to run both of these women off.

One has to wonder if the council's actions will spill over to the department heads and then down the ladder.

Former City Manager Nancy Kerry assembled a capable team, having hired all but one of the directors. Plus, there are employees who have been with the city for decades.

Still, it depends where one works as to whether things are chugging along smoothly or sputtering in chaos.

Part of this has do with the alleged poison pill who helped usher the city manager out the door.

Remember how on the last council meeting **Mayor Wendy David blew it** with calling a special closed session meeting? It was not agendized properly so it could not be held on March 6.

On March 10, *Lake Tahoe News* emailed her asking: Was the meeting solely your idea? David's response was, "No, I was

contacted by our city clerk and asked to call this meeting because of an anticipated litigation. Only the mayor can call for a special meeting. I gave my approval to call this special meeting.”

This is highly unusual. Anticipated litigation usually goes through the city manager or city attorney. Though, the city clerk could have been the one bringing the litigation.

David was also asked if the litigation item would be on a future agenda – after all, somehow it was so urgent it required a special meeting. David said she didn’t know. If she doesn’t know, who the heck does?

It’s not on the agenda for today, nor was that meeting ever rescheduled any time in the last two weeks.

So, one has to wonder did the threat of litigation disappear with Kerry’s resignation? In other words, did the city clerk’s “problem” no longer work for the city.

The clerk, Suzie Alessi, has an interesting position. She’s elected. She has no set hours. She can come and go when she wants. She has the luxury to show up for work or not. No matter what, she still collects her paycheck.

Of the 478 incorporated cities in California, about 90 have an elected city clerk. Maybe it’s time South Lake Tahoe joined the majority of cities and did away with this elected official and brought in a professional who would be accountable to a real boss, not the electorate who pays no attention and has almost zero recourse to get rid of this individual.

As for the city attorney, she is choosing to quit. It’s possible the council would have shown her the door after the questionable legal advice she’s provided. If only there were some teeth to the Brown Act. It’s up to the district attorney to enforce the open meeting law, and he’s up for re-election this year – though he is being challenged by one of his

deputies.

Anyway, interim City Attorney Nira Doherty, who was once the deputy city attorney here, has given her notice. Her staff report for today's meeting says, "I recommend the City Council discuss its city attorney position as I will be returning to my practice with various other cities and am unable to serve [as] the city's permanent city attorney."

Doherty is a partner with Burke, Williams and Sorensen. That firm was hired last fall to take over when Tom Watson left the city. Doherty was assigned to South Lake Tahoe because she was familiar with its issues. The firm has also worked for the city as special counsel for various cases.

This means the city is in need of a city manager and city attorney.

The City Council seems to have run both women out of town for different reasons, and reasons that remain shrouded in secrecy.

It's a bit of a soap opera these days with the electeds – it's more like "Days of Our Lives" or "As the World Turns."

As one staff member told *Lake Tahoe News*, "Now we are faced once again with leadership change, which will delay any forward progress on any key issues as new leadership will be very conservative until a certain comfort zone is realized. Couple that with a council leadership change coming in November and forward progress may be a long time in limbo. We as staff are not in chaos, we know what we are doing, and we know what needs to be done. It just seems that there is always personal conflict invading plans and process. No holistic thinking within the leadership."

Some fear a paralysis is beginning to grip the city which will stall the momentum that had been generated under Kerry's leadership. The group in town that is so good at saying no to

everything, but never has any answers or solutions, might be able to take over with the leadership vacuum at the council level.

It's so bizarre that on today's agenda is the item "discussion and possible direction/action regarding a cannabis ordinance and regulations." There is no staff report – no supporting documents.

*Lake Tahoe News* asked David, Doherty and acting City Manager Jeff Meston to explain where the supporting documents are and what exactly the council would be taking action on. No one responded.

Ultimately, an agenda is up to the city manager to approve.

The council can't legally vote on anything regarding the cannabis ordinance because the public has not been made aware of what would be voted on. They can, however, give direction.

Councilmembers Brooke Laine and Tom Davis were the cannabis subcommittee members. Laine has been lobbying for her colleagues to move forward with writing an ordinance for recreational marijuana. Her colleagues, for reasons they have not expressed, are dragging their feet and seem to be playing politics as they let Laine flounder by herself.

Three members of this council are up for re-election in November – David, Davis and Austin Sass.

My predictions:

- David won't run because at 70 years old she's never lost an election and doesn't have the ego to handle doing so now. She will have to be accountable for running one of the better city managers out of town and spending about \$300,000 in taxpayer money to do so, and for reasons that still have not come to light. David is a nice woman who has done wonders in the social services area, but clearly is not a leader and

is so far in over her head on council it's scary. We need a leader.

- Davis will run because the council is his life. After 20 years or so, it's time for him to go. But he'll run. And depending on who else does, he just might get re-elected.

- Sass will campaign on having gotten rid of Kerry. There are so many anti-Kerry folks – many who are also in the “just say no” crowd – that they were celebrating her departure. It remains to be seen if there are enough of those people to vote for Sass.

It's time the residents of South Lake Tahoe become more engaged before it's too long of a climb to crawl out of the abyss we seem to be slipping into. Anyone can run for office when things are sailing along smoothly. True leaders jump in to right the ship, not sink it or let it flounder.

Here's to hoping there are at least three new names on the ballot in November for South Lake Tahoe City Council because from where I'm sitting I'm scared for our little town based on who's running the show today.

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## **Nature hits it out of the ballpark**



Skiers have been flocking to Tahoe area resorts. Photo/Sierra-at-Tahoe

**By Tom Stienstra, San Francisco Chronicle**

Nature bats last and the weather in March is hitting a grand slam for the outdoors.

The latest storms to sweep across the Bay Area, Sierra Nevada and Northern California are a game changer for the snowpack, reservoir levels – and the imminent blossoming of spring across the parklands and greenbelt in the Bay Area.

In a two-week span, the bottom of the ninth for winter, the storms arrived in time to transform the prospects for camping, hiking, boating, fishing and wilderness for the spring and summer recreation season.

**[Read the whole story](#)**

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# What sustainable cities really need

**By Trina Hamilton and Winifred Curran, The Conversation**

There are many indexes that aim to rank how green cities are. But what does it actually mean for a city to be green or sustainable?

We've written about what we call the "parks, cafes and a riverwalk" model of sustainability, which focuses on providing new green spaces, mainly for high-income people. This vision of shiny residential towers and waterfront parks has become a widely-shared conception of what green cities should look like. But it can drive up real estate prices and displace low- and middle-income residents.

As scholars who study gentrification and social justice, we prefer a model that recognizes all three aspects of sustainability: environment, economy and equity. The equity piece is often missing from development projects promoted as green or sustainable. We are interested in models of urban greening that produce real environmental improvements and also benefit long-term working-class residents in neighborhoods that are historically underserved.

Over a decade of research in an industrial section of New York City, we have seen an alternative vision take shape. This model, which we call "just green enough," aims to clean up the environment while also retaining and creating living-wage blue-collar jobs. By doing so, it enables residents who have endured decades of contamination to stay in place and enjoy the benefits of a greener neighborhood.

### **'Parks, cafes and a riverwalk' can lead to gentrification**

Gentrification has become a catch-all term used to describe neighborhood change, and is often misunderstood as the only path to neighborhood improvement. In fact, its defining feature is displacement. Typically, people who move into these changing neighborhoods are whiter, wealthier and more educated than residents who are displaced.

A recent spate of new research has focused on the displacement

effects of environmental cleanup and green space initiatives. This phenomenon has variously been called environmental, eco- or green gentrification.

Land for new development and resources to fund extensive cleanup of toxic sites are scarce in many cities. This creates pressure to rezone industrial land for condo towers or lucrative commercial space, in exchange for developer-funded cleanup. And in neighborhoods where gentrification has already begun, a new park or farmers market can exacerbate the problem by making the area even more attractive to potential gentrifiers and pricing out long-term residents. In some cases, developers even create temporary community gardens or farmers markets or promise more green space than they eventually deliver, in order to market a neighborhood to buyers looking for green amenities.

Environmental gentrification naturalizes the disappearance of manufacturing and the working class. It makes deindustrialization seem both inevitable and desirable, often by quite literally replacing industry with more natural-looking landscapes. When these neighborhoods are finally cleaned up, after years of activism by longtime residents, those advocates often are unable to stay and enjoy the benefits of their efforts.

### **Tools for greening differently**

Greening and environmental cleanup do not automatically or necessarily lead to gentrification. There are tools that can make cities both greener and more inclusive, if the political will exists.

The work of the Newtown Creek Alliance in Brooklyn and Queens provides examples. The alliance is a community-led organization working to improve environmental conditions and revitalize industry in and along Newtown Creek, which separates these two boroughs. It focuses explicitly on social

justice and environmental goals, as defined by the people who have been most negatively affected by contamination in the area.

The industrial zone surrounding Newtown Creek is a far cry from the toxic stew that The New York Times described in 1881 as “the worst smelling district in the world.” But it is also far from clean. For 220 years it has been a dumping ground for oil refineries, chemical plants, sugar refineries, fiber mills, copper smelting works, steel fabricators, tanneries, paint and varnish manufacturers, and lumber, coal and brick yards.

In the late 1970s, an investigation found that 17 million gallons of oil had leaked under the neighborhood and into the creek from a nearby oil storage terminal. The U.S. Environmental Protection Agency placed Newtown Creek on the Superfund list of heavily polluted toxic waste sites in 2010.

The Newtown Creek Alliance and other groups are working to make sure that the Superfund cleanup and other remediation efforts are as comprehensive as possible. At the same time, they are creating new green spaces within an area zoned for manufacturing, rather than pushing to rezone it.

As this approach shows, green cities don’t have to be postindustrial. Some 20,000 people work in the North Brooklyn industrial area that borders Newtown Creek. And a number of industrial businesses in the area have helped make environmental improvements.

### **Just green enough**

The “just green enough” strategy uncouples environmental cleanup from high-end residential and commercial development. Our new anthology, “Just Green Enough: Urban Development and Environmental Gentrification,” provides many other examples of the need to plan for gentrification effects before displacement happens. It also describes efforts to create

environmental improvements that explicitly consider equity concerns.

For example, UPROSE, Brooklyn's oldest Latino community-based organization, is combining racial justice activism with climate resilience planning in Brooklyn's Sunset Park neighborhood. The group advocates for investment and training for existing small businesses that often are Latino-owned. Its goal is not only to expand well-paid manufacturing jobs, but to include these businesses in rethinking what a sustainable economy looks like. Rather than rezoning the waterfront for high-end commercial and residential use, UPROSE is working for an inclusive vision of the neighborhood, built on the experience and expertise of its largely working-class immigrant residents.

This approach illustrates a broader pattern identified by Macalester College geographer Dan Trudeau in his chapter for our book. His research on residential developments throughout the United States shows that socially and environmentally just neighborhoods have to be planned as such from the beginning, including affordable housing and green amenities for all residents. Trudeau highlights the need to find "patient capital" – investment that does not expect a quick profit – and shows that local governments need to take responsibility for setting out a vision and strategy for housing equity and inclusion.

In our view, it is time to expand the notion of what a green city looks like and who it is for. For cities to be truly sustainable, all residents should have access to affordable housing, living-wage jobs, clean air and water, and green space. Urban residents should not have to accept a false choice between contamination and environmental gentrification.

*Trina Hamilton is an associate professor of geography at the University at Buffalo, State University of New York. Winifred Curran is associate professor of geography at DePaul*

# Residents, regulatory agencies disagree whether South Lake Tahoe asphalt plant is a good neighbor

By Joann Eisenbrandt

*"I feel trapped in Paradise. I live in Tahoe in the mountains, but I live by an asphalt plant. I want the spectacular clean air and water that was the Tahoe promise."*

*—Jeff Marcus, Julie Lane  
resident*

Tahoe Asphalt is the only asphalt plant in the Lake Tahoe Basin. It produces the asphalt used by public agencies, businesses and individuals to pave the roads, parking lots and driveways. It began as a rock quarry and has been in operation at its 12-acre location on Industrial Avenue at the Y in South Lake Tahoe since the mid-1960s.

Many South Shore residents don't even know Tahoe Asphalt exists. But for Jeff Marcus and others who live in the residential neighborhoods on its east border, it is an ongoing source of concern. More than 150 residents living on streets like Julie Lane, Dedi, D Street, Tata Lane, Bonanza, and

Margaret or in the Tahoe Verde Mobile Home Park signed a petition first circulated by Marcus in 2015 asking that the air and water pollution and noise they say the plant generates be addressed.

Adam Henriques moved from Dedi because of the plant.

"I was living in a neighborhood affected by noise and air pollution. I had to sleep with my windows closed. They would run trucks out to construction sites that needed fresh asphalt at 2am," Henriques said. "They accept fill soil there. Trucks would unload it and then drop the truck gate and make loud noises throughout the neighborhood at 5am"

Tahoe Asphalt plant manager Dale Linkous told *Lake Tahoe News*, "We are a good steward of the land. Everyone who works here is local and we all moved here for the same reasons—what we have around us at Lake Tahoe. We have an open door policy. There is nothing toxic on the property. We wouldn't have the permits we do if we were doing anything wrong. It is absolutely necessary to have an asphalt plant in this area. The closest other plant on the California side is in Sacramento. There is a small plant in Gardnerville, Nev., but it can't meet the California specifications for state paving jobs.

"Without the plant here, it would be a three-hour turnaround just to do pothole maintenance ... it would triple the cost of the infrastructure in town. There would also be no place to recycle the asphalt that is torn up from old projects or from roadbeds. We currently have an agreement with South Tahoe Refuse to take and recycle almost 100 percent of the concrete and broken asphalt they receive."



Tahoe Asphalt plant has been operating in South Lake Tahoe for more than 50 years. Photo/Provided

### **Plant upgrade brings questions**

In 2016, Tahoe Asphalt requested a special use permit from the city of South Lake Tahoe to replace its aging facility which had “outlived its usefulness.” The new plant would be constructed at the same location; the materials they produced would remain the same but the way they were produced would change.

Residents near the plant believed the better option would be to relocate it away from any residential neighborhoods or even move it out of the basin entirely. In a letter to the city regarding Tahoe Asphalt’s request one resident insisted, “The smell is so bad you can’t open your windows or go outside. There is no way that it is not dangerous to be breathing the air during those times. Please say no to the special permit and relocate this cancer causing, environmentally harmful plant somewhere else.”

The South Lake Tahoe Planning Commission approved the Tahoe Asphalt replacement project in August 2016, and the new plant began operation in late July 2017. The plant operates to produce asphalt from May through October of each year.

Marcus believes the years of exposure to dangerous emissions from the plant are a contributing factor to his many health issues and to those of a number of his neighbors. He calls those who live near the asphalt plant the “living proof” that it is a danger to them and to the larger community. “The politicians are hiding behind written rules that have nothing to do with our reality.”

Diana Bowler, a Julie Lane resident for 40 years, has MS and is in a wheelchair. “You can’t even go out on the back deck and have a cup of coffee and enjoy Lake Tahoe,” she said. “The odor is so bad in the summer, you want to leave, but I have no way of leaving. I have to close all my doors and windows because of the dust in the air. (Tahoe Asphalt) sent out a letter saying the plant was perfectly fine. We went to the meetings and said we wanted it closed and moved. I recently sent a letter to the president. We’ve tried all the other avenues but nothing has worked.”

City Planning Manager John Hitchcock disagrees.

“The plant has been modernized and is a more efficient and cleaner plant than the one constructed in 1965. I am aware of residents’ concerns but the plant met all the standards (of the special use permit) and with the mitigation measures required it showed there would be no negative effects. There were no grounds to deny the permit,” Hitchcock told *Lake Tahoe News*.

### **How asphalt is produced**

Hot mix asphalt (HMA) is a mixture of aggregate (crushed rock, gravel and sand) and liquid asphalt cement, an oil-based product, which is heated and mixed in a burner in measured

amounts. The aggregate often includes RAP (reclaimed asphalt pavement) taken from old road beds and other construction sites.

Emissions from the asphalt production process can come from the steam that evaporates from the aggregate or from the products of the combustion process itself. They can also come from truck beds during the loading or unloading process or from the dust created by vehicular traffic at the plant.

Linkous explained the process. "We dry and preheat the aggregate material in a natural gas burner. In the process, steam is discharged. There is no free-flowing dust coming off the belts. Once it is preheated, blue smoke is created when the oil hits the hot aggregate. The 'baghouse' is a collection container for dust particles with two capture systems. The heavier particulates fall out and are reintroduced into the asphalt. What is left goes into 364 bags on a wire frame in the baghouse. The dust hits the bags and the bags hold it. A pulse hits the bags and it goes down and out and into the finished asphalt. The pulse creates an air burst and that is what escapes out of the baghouse. The only problem comes if a bag is broken."



Storm water runoff near the asphalt plant. Photo/Provided

### **Who's minding the store?**

Asphalt plants are regulated by an often-confusing array of federal, state and local agencies including the city of South Lake Tahoe, Tahoe Regional Planning Agency, EPA, California Air Resources Board, El Dorado County Air Quality Management District (AQMD) and Lahontan, the local office of the California Water Quality Control Board. In addition to the special use permit approved by the city and TRPA, Tahoe Asphalt has a permit to operate from the AQMD and a Storm Water Pollution Prevention Plan (SWPPP) and an industrial wastewater discharge permit from Lahontan.

These are intended to mitigate any potential hazards to people or negative impacts on the sensitive Lake Tahoe environment. Hazardous emissions found at different levels in asphalt

plants can include hydrogen sulfide, benzene, chromium, formaldehyde, polycyclic aromatic hydrocarbons (PaHS), cadmium and arsenic.

## Untangling the regulatory matrix

Because there are so many fingers in the regulatory pie it can be challenging for residents to know where to report concerns. Marcus has been struggling to work his way through the public agency quagmire for the 16 years he's lived on Julie Lane. His written comments submitted in opposition to the project argue, "The common layperson (community citizens) does not use legalese or terms like 'mitigated negative declaration' or 'batch plant.' This language is confusing to the general public."

The mitigated negative declaration (MND) he refers to is the environmental document prepared for the replacement project under the requirements of the California Environmental Quality Act (CEQA). It assesses a project's potential for significant effects on the environment and ways they can be mitigated.

There are different levels of environmental review under CEQA. The lowest level is a categorical exemption reserved for projects generally considered to have no significant environmental effects.

Hitchcock explained, "We considered a categorical exemption under replacement of an existing facility. Then we heard the specific concerns people brought up including noise, emissions and the height and stability of the tailings (piles of material) on the property. At that point, we thought it was best to slow down. There was enough controversy to do an IS/MND."

## Role of the city and TRPA

Project approvals are coordinated through an MOU (memorandum of understanding) between the two agencies. As Tom Lotshaw,

TRPA spokesman, explains it, "The city of South Lake Tahoe reviewed and approved the Tahoe Asphalt project under TRPA's delegation MOU with the city. In these cases, it is not just a matter of the city taking the lead in reviewing and permitting a project. The city is entirely responsible to review proposed projects and to ensure that they meet both city of South Lake Tahoe requirements and TRPA requirements."

Two public hearings were held by the city Planning Commission and a community meeting was sponsored by Tahoe Asphalt. Henriques attended the meetings and communicated frequently with Hitchcock, raising a number of technical questions about the level of environmental review and the adequacy of the mitigation measures proposed.

"I not only had the general desire to protect Lake Tahoe, but I was also personally impacted. It was in my back yard. I had the right skill set and I wanted to use it," Henriques told *Lake Tahoe News*. He has a bachelor's in environmental management with a focus on soil and water quality conservation.

He also contacted Midkiff and Associates, a consultant for Tahoe Asphalt that prepared the plant's responses to the environmental document.

"As a result of your questions at the public hearing," Nick Exline, senior planner for Midkiff and Associates, told Henriques in an email, "the project is going through the CEQA review as we speak."

Exline told *Lake Tahoe News*, "John Hitchcock was very supportive of the idea to take it to a higher level of environmental review to try to provide more confidence to the entire community."



A map of South Lake Tahoe showing the asphalt plant in the residential neighborhood. Image/Provided

### **Is it a good tradeoff?**

Despite the view of the city, Tahoe Asphalt, and their consultants that the environmental review would “instill confidence in the community,” not everyone is convinced the plant is safe or that the tradeoff is a fair one. Henriques terms it an example of the failure to ensure “environmental justice.” The Tahoe Valley/Y area of the city where Tahoe Asphalt and adjoining residential neighborhoods are located was identified in the 2010 Census as a “severely disadvantaged community.” Residents of such lower-income or industrial areas often bear the environmental impacts of development at a greater rate than others.

Marcus agrees, contending that residents living near the Tahoe Asphalt plant are not getting the equal protection under the law they deserve, especially those who are most vulnerable such as pregnant women, young children, seniors, the disabled

and those with compromised immune systems.

## **Two separate questions**

There are approximately 3,500 asphalt plants located throughout the country. Are they being sufficiently regulated and monitored? Even when they comply with all regulations, do their emissions still constitute short or long-term health hazards to those living in close proximity to them or damage to the environment?

NAPA, the **National Asphalt Pavement Association**, says there is “misleading and often daunting information about asphalt plants and asphalt products. Hundreds of communities across the country coexist peacefully with asphalt plants ... most of them are known as good neighbors.” The industry, its website says, is well-regulated, with closely monitored emissions control systems. Asphalt plants provide local employment and are essential to the country’s infrastructure. Their emissions, it adds, are well below those from other common community and industrial sources such as fireplaces or gas stations.

In its 2001 Minority Report on Fugitive Emissions from Asphalt Plants to the EPA, a multi-state coalition of environmental groups reached a very different conclusion.

“Hot mix asphalt plants (HMA plants) and asphalt terminals have numerous characteristics that result in a large number of the general public being exposed to their hydrocarbon and particulate emissions ... such plants are often located in urban areas close to homes, schools and playgrounds with minimal setbacks. Further, the plants operate around the clock when fulfilling certain types of contracts so that the neighbors breathe in the fumes day and night. While the operation of an asphalt plant might be seasonal, particularly in northern latitudes, the intensity of exposure during the peak production months is quite acute.”

*Lake Tahoe News* reached out to all the agencies that have some oversight of Tahoe Asphalt for their input on how the local plant is regulated and how its potential impacts are mitigated.

### **Water quality impacts**

“There used to be a big sludge pond the size of a football field on (the Tahoe Asphalt) property between the fence and a big dirt pile,” a resident noted. “There was oil on the pond. The aquifer off of Twin Peaks runs through the plant and this gets into the water system.” Another resident agreed, “Things are seeping from the retention ponds. There is oil and grease in the water and it runs through the meadow down to D Street and ends up in Taylor Creek or Lake Tahoe.”

Cathe Pool, senior water resource control engineer at the Lahontan office in South Lake Tahoe, told *Lake Tahoe News* that she has visited the plant when it was operating and, “there was no runoff” and no violations were written up. “There are two retention basins that are designed to catch overflow. The way the permit is written, there has to be specific weather conditions. It can’t have rained in the last 48 hours and the storm had to cause runoff. Then they have to sample (for contaminants).”

In the late 1990s, Lahontan investigated reports of contaminated storage tanks remaining underneath the site. It found that seven underground storage tanks, including two used oil underground storage tanks, were removed from the property in 1993. TPH (total petroleum hydrocarbons) and PCE (tetrachloroethene) were found in extracted soils. Subsequent excavation activities were found to have removed the majority of the PCE source. The Industrial Well No. 2 affected by the PCE was taken offline and later decommissioned. The case was closed in 2004.

In June 2015, Lahontan made a site inspection at the plant and

listed work items that needed to be completed including a revision of their SWPPP, completion of a Facility Water Generation and Discharge Systems Report, and stabilization of their on-site stockpiles of materials.

“We identified some issues. We told them to fix them and they have,” Pool explained. “I feel like this is a success story.”

Jeff Brooks, Lahontan senior engineering geologist, is now in charge of Tahoe Asphalt’s compliance with its permits. He said there are currently no violations or outstanding investigative orders for the new plant. Brooks said he plans to send an inspector out to the plant once the snow melts.



Dust rises from Tahoe Asphalt in summer 2017. Photo/Provided

## **Air quality impacts**

The EPA sets nationwide air quality and emissions standards and oversees state efforts and enforcement. The California Air Resources Board (CARB) is focused on California's air quality and sets the state's own stricter emissions standards. It oversees the 35 local air pollution control districts that are in charge of local regulation and enforcement. The El Dorado County AQMD is the responsible agency for the air control district that includes Lake Tahoe.

Marcus reached out to a number of EPA officials in Washington, D.C., the San Francisco Region 9 office, and to the local Lake Tahoe EPA liaison. He wanted his concerns to also be addressed at the regional and national levels. He told *Lake Tahoe News* that he was referred back to the county AQMD or Lahontan. *Lake Tahoe News* made inquiries to four of the EPA officials Marcus had contacted, but was referred to the Region 9 public information officer. "EPA doesn't have a role in the local permitting decisions made by the city," she said, adding that residents concerned with Tahoe Asphalt's Clean Air Act or Clean Water Act compliance should contact the AQMD or Lahontan. "The public is also welcome to contact EPA Region 9's environmental information center at 415.947.8000 and [r9.info@epa.gov](mailto:r9.info@epa.gov) with general questions."

## **The county response**

Dave Johnston, AQMD air pollution control officer, did respond in detail to Lake Tahoe News' questions: "Our role is to assist all source operators with achieving and maintaining compliance with the applicable requirements in order to minimize exposures to residents. We are very proactive in that role."

Before equipment can be installed or replaced, he explained, the operator submits an Authority to Construct (A/C) application to AQMD, which is evaluated for compliance with

all applicable state, federal and local rules and regulations. Once the equipment is installed, AQMD issues a permit to operate (P0). An initial inspection is conducted to verify compliance with the P0. Compliance inspections are conducted annually and re-inspections verify that required corrective actions have taken place.

On July 19, 2017, an initial compliance inspection for the new upgraded plant took place. The most recent site visit was on Sept. 13, 2017, as the plant does not operate during the winter season.

### **How emissions are calculated**

On-site “source testing” is not a regulatory requirement for Tahoe Asphalt. Emissions are calculated based on a standardized mathematical formula which considers the potency, toxicity, quantity and volume of all hazardous air pollutants that are emitted from a facility based on how many tons of asphalt they produce, the specific design of the plant and how close a facility is to complainants. Scores for acute, chronic and cancer effects are also calculated. A “prioritization” is then done based on the scores, with plants being rated from low priority to high priority according to their overall facility score.

AQMD performed a “prioritization” of Tahoe Asphalt in 2013. It was rated as a “low priority facility.” In April 2016, a “full toxics emissions screening” generated lower scores than those for the old plant. Johnston noted, “We do not and we are not aware of any federal, state or local air agency that has conducted toxicity determinations on each individual batch of asphalt produced by a plant.”

The **Blue Ridge Environmental Defense League**, a nonprofit focused on environmental issues in rural areas, finds this unacceptable. “In the majority of cases, it is unknown whether the ‘theoretical’ air emissions predicted by computer models

and used by plant owners accurately reflect air emissions from a plant's daily operations. We must put safety first and shut down or overhaul the current system that fails to protect communities from the daily health hazards of asphalt plant pollution."

In 2002, the EPA "delisted" emissions from asphalt plants from the hazardous air pollutant (HAP) list under the federal Clean Air Act. The EPA is required to list all categories of major sources emitting HAP and those that warrant regulation. The initial list of 174 categories was published in 1993. The Feb. 12, 2002, update in the Federal Register notes, "...we are deleting the source category Asphalt Concrete Manufacturing because available data indicate that no asphalt concrete manufacturing facility has the potential to emit HAP approaching major source levels."

The Blue Ridge website notes, "Organizations are working to improve federal and state standards and add asphalt plant fumes to the hazardous air pollutant (HAP) list under the federal Clean Air Act."



Steam is a byproduct in the manufacturing of asphalt.  
Photo/Provided

### **The numbers**

*Lake Tahoe News* asked Johnston how many complaints have been received and violations issued to Tahoe Asphalt in recent years. In the 2015 operating season they received 17 complaints from five complainants; in 2016, they received 17 complaints from six complainants and in 2017, they received 49 complaints from 25 complainants.

The AQMD issued three violation notices to the new Tahoe Asphalt plant during the 2017 operating season. The last one was on Sept. 20, 2017. "AQMD staff confirmed odors coming from the asphalt plant concurrent with the receipt of a considerable number of public complainants. A mitigation plan was submitted by the operator. The plan was determined to be insufficient and was returned to Tahoe Asphalt for revision."

## Visits but not enough action

Like Diana Bowler, Marcus contacted the White House. His October 2017, letter to President Trump pointed to visits to his neighborhood by the South Lake Tahoe Fire Department as evidence there were serious issues. "Now, with our fire marshal, battalion chief, fire chief and several other firemen all as eye witnesses to our toxic environmental problems," it stated, "would it be possible for you to help us get a proper investigation from the correct federal agency for further action. Again, the EPA has refused!"

Jeff Meston, South Lake Tahoe fire chief, and now acting city manager, told *Lake Tahoe News* about visits by his department to the Julie Lane neighborhood.

"When the plant first starts up, it produces a lot of heavy smoke, so neighbors would call 911. We went to make smoke check calls. A gentleman pulled us aside and said it was a public safety hazard with pollutants and discoloration of ground water and he wanted us to do something about it," Meston said. "We told him about Environmental Health and Lahontan and directed him down that path. He shared photographs. The water didn't look clean to us. When you see a picture of the ground with brackish water, it's not what we normally see. It leads me to believe there is possibly something there. But the hazard is in the county's hands."

Dave Johnston indicated his agency has visited the area numerous times. "In 2016 AQMD staff began performing frequent unannounced odor patrol observations in the neighborhood where the complainants reside. We did not verify an odor violation."

This also continued in 2017, with staff visiting the site and surrounding area 76 times during the last two years "to determine compliance/noncompliance," including one day in which staff drove from Placerville to South Lake Tahoe twice to investigate odor complaints.

The city's Hitchcock has also visited the Y neighborhood during the daytime and looked at Tahoe Asphalt from the residential and industrial sides. He noted that all the planning inspections of the new plant are not complete since some of the special use permit's mitigation measures have longer terms for implementation.

### **Better or worse?**

The city, Lahontan, county AQMD and Tahoe Asphalt all believe the new plant is an improvement. Linkous points to the differences between the old batch type plant and the new continuous drum mix plant. "The old plant would run not quite all day, depending on the tons (of asphalt) ordered for that day. With the new plant, we make the tonnage first thing, then store it in silos and shut down operations."

Still, residents in the immediate area of the plant see noise as a continuing problem. The plant's permits with the AQMD limit the total hours they can operate each day, quarter and year and how much tonnage of asphalt can be produced. It does not limit what time of day they operate.

Linkous says night operations are necessary because paving jobs on major roadways are now being done more at night to avoid traffic congestion and impacts on local businesses. He points to the ongoing three-year Caltrans Highway 50 project as an example. Trucks are not allowed to dump on the side of the plant nearest the residential neighborhood at night. "I don't want the noise going out to the neighborhood."

But according to residents, it clearly is. "It's the banging on the tanks in the middle of the night," one resident complained. "That should not have to happen; if they could just muffle that in some way." Another agreed, "They need to make it so we don't hear their trucks all night: beep, beep, beep."

A Y area resident told *Lake Tahoe News*, "I have awakened at

3am and they are still working at the asphalt plant with all their big equipment. There should not be noise after 10pm. That's what the city noise ordinance says. They should not be running excavators at night when those in the residential neighborhood have to get up and go to work. They are not paving at that time. They are just moving dirt and grinding up cement. Saying they are paving at night is just an excuse."

One of the mitigation measures required by the special use permit is the installation of a 24-hour noise complaint line at the plant. Complaints must be referred to the city and noise monitoring equipment put on the plant site closest to the complainant's location. Linkous said these requirements are in place. Hitchcock noted that residents can also file noise complaints directly with the city either online or in person at city offices. He plans to follow up to ensure that the noise monitoring procedures are in place for the upcoming season.

### **Other concerns**

Some have said that the city and county approvals for Tahoe Asphalt are a conflict of interest. Both of them use the plant for their paving projects and don't want to lose the convenience. They also make significant sales tax revenue from the plant.

Others questioned how homes were even allowed to be built so close to an existing asphalt plant. While large residential subdivisions do require the preparation of environmental documents and review under CEQA, single family homes do not. They also do not require a finding of no significant environmental effects by TRPA.

"In a nutshell," one resident said, "the plant just doesn't belong here anymore. The smells are ghastly. The stuff that's vaporized and is flying through the air isn't healthy. A lot of people in South Lake Tahoe don't even know there's an

asphalt plant here. I hope now the fire's lit. We need to keep it lit. The more the public knows about it being here the more the city will need to take action to get it out."

The plant is currently in its off-season and will resume the production of asphalt in May.