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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF PLACER

MEADOW VISTA PROTECTION,

Petitioner and Plaintiff,

v.

CHEVREUX AGGREGATES, INC.;
COUNTY OF PLACER; COUNTY OF
PLACER PLANNING DEPARTMENT;
and DOES 1 through 50, inclusive,

Respondents and Defendants.

Case No.: SCV 19614

Complaint filed: 7/12/06

PETITIONER AND PLAINTIFF
MEADOW VISTA PROTECTION'S
OPPOSITION TO DEFENDANT
CHEVREUX, INC.'S
DEMURRER TO COMPLAINT

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INTRODUCTION

Petitioner and plaintiff Meadow Vista Protection (MVP) seeks declaratory, injunctive and other relief for injuries caused by defendant Chevreux Aggregates, Inc.'s (Chevreux) ongoing operations in Meadow Vista, California. Specifically, MVP has alleged that Chevreux is in violation of several conditional use permits (CUPs), and that the ongoing violations and operations cause continuing harm to MVP members.

Using smoke-and-mirrors arguments and irrelevant or inapposite case authorities, Chevreux attempts to distract this Court from specific allegations in the complaint and the causes of action. Moreover, Chevreux has improperly introduced additional allegations and facts regarding its long-standing operations in the area to paint itself in a more favorable light. In so doing, Chevreux has attempted to convert its demurrer into a motion for summary judgment by introducing purported facts that are not germane to a demurrer ruling, including the following:

- Chevreux is a "local family owned company."
- MVP is seeking to "shut down" the entire quarry operation, "Chevreux's lifeblood."
- Chevreux's rights under its permits are "vested."
- The permits were issued "pre-SMARA."
- "Chevreux's vested operations are based upon decades of entitlements."
- The quarry is protected in the Community Plan, SMARA and a reclamation plan.
- Chevreux is the "company which built the roads MVP drives upon."
- Chevreux "regularly maintains these roads" and contributes materials.
- Chevreux's operations cover 440 acres.

(Memorandum of Points and Authorities in Support of Chevreux Aggregates, Inc.'s General Demurrer and Special Demurrer (Chevreux Demurrer) at pp. 1:7-2:2.) In addition to being irrelevant to MVP's causes of action, the introduction of these additional facts in a demurrer is improper. (*Ion Equipment Corp. v. Nelson* (1980) 110 Cal.App.3d 868, 881 [error for court to consider facts asserted in memorandum supporting demurrer].) These facts should not be considered by the Court in ruling on Chevreux's demurrer.

Chevreux further obfuscates the allegations in the complaint by erroneously contending that Placer County's zoning code contains an administrative remedies mechanism, when it does not. Chevreux also erroneously contends that MVP seeks invalidation of the CUPs issued in

1 1965 and 1972, and that the 90-day statute of limitations has long run. However, the complaint
2 contains no such prayer. To the contrary, MVP merely seeks to ensure that Chevreux complies
3 with the conditions upon which the permit was granted.

4 For the foregoing reasons, and the reasons set forth below, the demurrer should be
5 overruled.

6 ARGUMENT

7
8 I.

9 THE DEMURRER MUST BE OVERRULED IN ITS ENTIRETY BECAUSE MVP HAS
10 ALLEGED FACTS SUFFICIENT TO SUPPORT ITS CAUSES OF ACTION, AND
SUCH ALLEGATIONS SHOULD BE LIBERALLY CONSTRUED

11 A. Demurrer Standards

12 In evaluating the strength of a demurrer, the allegations of the complaint are liberally
13 construed so as to achieve substantial justice. (Code Civ. Proc., § 452; *Stevens v. Superior Court*
14 (1999) 75 Cal.App.4th 594, 601.) A plaintiff is entitled to his or her “day in court.” Thus, a
15 demurrer should only be sustained when the complaint clearly shows that *no* action can be
16 pursued on the facts as alleged. (*Yolo County Department of Social Services v. Municipal Court*
17 (1980) 107 Cal.App.3d 842, 847.) “All that is required of a plaintiff . . . is that he set forth in his
18 complaint the essential facts of his case with *reasonable precision*, and with particularity
19 sufficiently specific to acquaint the defendant of the nature, source, and extent of his cause of
20 action.” (*Goldstein v. Healy* (1921) 187 Cal. 206, 210, emphasis added.) Therefore, “[i]f there is
21 any reasonable possibility that the plaintiff can state a good cause of action, it is error to sustain a
22 demurrer without leave to amend.” (*Youngman v. Nevada Irrigation District* (1969) 70 Cal.2d
23 240, 245.)

24 MVP’s complaint contains over four full pages of factual allegations, clearly detailing the
25 long history of Chevreux’s operations in the Meadow Vista area and describing the course of
26 events which led to the filing of MVP’s complaint. (Petition for Writ of Mandate and Complaint
27 for Declaratory and Injunctive Relief, Public Nuisance, Private Nuisance and Trespass
28 (Complaint) at ¶ 17-37, attached hereto as Exhibit 1.) Moreover, the prayer of the complaint is

1 explicit with respect to the remedies sought. (*Id.* at pp. 12-14.) Chevreaux has been fully
2 apprised of the nature of the complaints against it and the facts as stated in the complaint tend to
3 show that MVP is entitled to relief.

4
5 II.

6 SECOND AND THIRD CAUSES OF ACTION—DECLARATORY RELIEF

7 At the outset of its general demurrer to the declaratory relief causes of action, Chevreaux
8 asserts, without legal citation, that “damage allegations are inconsistent with a Declaratory Relief
9 Cause of Action.” (Chevreaux Demurrer at p. 2:18.) Not only does Chevreaux fail to cite any
10 authority to support this assertion, the statement is patently false. A complaint may allege
11 alternative theories of recovery for a single injury. (*Bay Cities Paving & Grading, Inc. v.*
12 *Lawyers Mutual Insurance Co.* (1993) 5 Cal.4th 854, 860 [demands arising out of same
13 transaction were one cause of action with two forms of relief].) The demurrer is further defective
14 as described below.

15 A. A General Demurrer for Failure to State a Cause of
16 Action Is Improper As to a Declaratory Relief Action

17 Chevreaux seeks to summarily dismiss both of MVP’s causes of action for declaratory
18 relief through a general demurrer based on alleged failure to pursue a writ of administrative
19 mandate, failure to exhaust administrative remedies, statute of limitations objections, absence of
20 a justiciable controversy and unripeness. However, Chevreaux’s demurrer must fail regardless of
21 the merit of these allegations because a general demurrer may not be used to dismiss a
22 declaratory relief cause of action.

23 General allegations that disclose an “actual controversy” between the parties defeat a
24 general demurrer to a declaratory relief action.

25 “It is the general rule that in an action for declaratory relief the complaint is
26 sufficient if it sets forth facts showing the existence of an actual controversy . . .
27 and requests that the rights and duties be adjudged If these requirements are
28 met, the court *must* declare the rights of the parties whether or not the facts
alleged establish that the plaintiff is entitled to a favorable declaration.”

(*Lockheed Corp. v. Continental Insurance Co.* (2005) 134 Cal.App.4th 187, 221, quoting *Bennett v. Hibernia Bank* (1956) 47 Cal.2d 540, 549-550, emphasis added.)

Lockheed further states, “[s]trictly speaking, a demurrer is a *procedurally inappropriate* method for disposing of a complaint for declaratory relief.” (*Lockheed Corp. v. Continental Insurance Co.*, *supra*, 134 Cal.App.4th at p. 221, emphasis added.) The rationale for this rule is discussed in Witkin’s treatise on California Procedure:

[A] demurrer would leave the parties where they were, with no binding determination of their rights This would defeat a fundamental purpose of declaratory relief, to remove uncertainties as to legal rights and duties before breach and without the risks and delays that it involves. In brief, the object of declaratory “relief” is not necessarily a beneficial judgment; rather, it is a determination, favorable or unfavorable, that enables the plaintiff to act with safety. This theory has prevailed, and *the rule is now established that the defendant cannot, on demurrer, attack the merits of the plaintiff’s claim.* The complaint is sufficient if it shows an actual controversy; it need not show that plaintiff is in the right.

(5 Witkin, Cal. Procedure (4th ed. 1997) Pleading § 831, p. 289, Exhibit 2 attached hereto, emphasis added.)

MVP has established an actual controversy with respect to LD-1030 and LDA-786 through the allegations in the complaint. MVP and Chevreaux take opposing positions as to Chevreaux’s compliance with all terms and conditions of LD-1030 and the continuing validity of LDA-786. Under the authorities cited above, such allegations sufficiently support the declaratory relief cause of action.

B. Even If the Demurrer Is a Proper Mechanism for
Dismissing Declaratory Relief Causes of Action, Chevreaux’s
Demurrer Must Be Overruled Because Its Alleged Bases Are Erroneous

1. Declaratory Relief Is a Proper Procedure to Invalidate a Conditional Use
Permit, and Is More Speedy and Adequate Than Administrative Mandate

Chevreaux claims that MVP’s *only* remedy to contest compliance with its use permits is to pursue a writ of administrative mandate. In support of this claim, Chevreaux cites *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, *City of Santee v. Superior Court of San Diego County* (1991) 228 Cal.App.3d 713, and *Goat Hill*

1 *Tavern v. City of Costa Mesa* (1992) 6 Cal.App.4th 1519, 1526. However, all of these cases, and
2 the cause of action for administrative mandate itself (Code Civ. Proc., § 1094.5), deal with
3 challenges to *administrative decisions* and are therefore irrelevant to the case at bar. MVP is not
4 contesting the original *issuance* of either LD-1030 or LDA-786, so an action for administrative
5 mandate would be inappropriate.

6 Chevreaux also contends:

7 MVP also has not stated any allegations in its [verified complaint] that assert
8 anything regarding the validity of the use permits or the Zoning Code as applied
9 to all the property in Placer County in order to save these two causes of action
10 from demurrer because what MVP wants is an as-applied judicial determination
of invalidity applied just to Chevreaux.

11 (Chevreaux Demurrer at p. 3:14-17.) Aside from being nearly unintelligible, this statement has
12 no significance. Chevreaux cites to *Santee*, apparently alleging by analogy that MVP must seek
13 a declaration that a “statute or ordinance controlling development” is “facially unconstitutional”
14 as to “all property” or else declaratory relief “may not be had.” (Chevreaux Demurrer at p. 3:17-
15 20, quoting *City of Santee v. Superior Court of San Diego County*, *supra*, 228 Cal.App.3d
16 at p. 718.)

17 Chevreaux’s use permits are not “statute[s] or ordinance[s] controlling development” and
18 therefore any attempt by MVP to declare them “facially unconstitutional” or to apply them to “all
19 property” would be absurd. (*City of Santee*, *supra*, 228 Cal.App.3d at p 718.) This argument
20 does nothing to prove that MVP must pursue a writ of administrative mandate prior to bringing
21 the declaratory relief causes of action.

22 In contrast, several cases confirm that declaratory relief is a proper mechanism for
23 enforcing a conditional use permit. (See, e.g., *Residents of Beverly Glen, Inc. v. City of Los*
24 *Angeles* (1973) 34 Cal.App.3d 117, 120.) Neither does the fact that a party has another remedy
25 deprive the court of the power to grant declaratory relief. (*Bess v. Park* (1955) 132 Cal.App.2d
26 49, 53, citing *Ermolieff v. R.K.O. Radio Pictures, Inc.* (1942) 19 Cal.2d 543, 547.)

27 Whether to grant declaratory relief is squarely within the discretion of the trial court.
28 (*Lumbermen’s Mutual Casualty Co. v. McIver* (1939) 27 F.Supp. 702, 706.) However, “[t]he

1 discretion to refuse to entertain an action in declaratory relief vested in the trial court by [Code of
2 Civil Procedure section] 1061 is not unlimited. It may be exercised only when there is a basis in
3 fact for the conclusion that the declaration is not necessary or proper.” (*Warren v. Kaiser*
4 *Foundation Health Plan, Inc.* (1975) 47 Cal.App.3d 678, 683.)

5 For example, the *Warren* court found that a court may refuse to entertain an action for
6 declaratory relief where “‘the rights of the complaining party have crystallized into a cause of
7 action for past wrongs, [and] all relationship between the parties has ceased to exist . . .’
8 [Citation]” but it may *not* exclude the action where the alternative remedy is not as “‘speedy and
9 adequate or as well suited to the plaintiff’s needs as declaratory relief.’ [Citations.]” (*Warren v.*
10 *Kaiser Foundation Health Plan, Inc., supra*, 47 Cal.App.3d at p. 683.) Any doubt as to whether
11 declaratory judgment is proper should be resolved *in favor* of granting declaratory relief. (*Ibid.*)

12 As the complaint indicates, MVP’s declaratory relief actions seek to prevent future
13 wrongful conduct, not to recover for or correct past wrongs. MVP’s members are very much in
14 danger of future harm as long as Chevreaux’s operations are permitted to continue unchecked
15 and without enforcement of relevant conditions.

16 The complaint also indicates that MVP members have made repeated attempts to obtain
17 the County’s assistance in investigating Chevreaux’s permit validity and compliance. These
18 attempts have been largely fruitless, with the County taking no meaningful steps to address or
19 resolve the concerns presented by MVP and its members. Pursuing relief through a writ of
20 mandate proceeding, especially with regard to the asphalt plant, would only place the matter back
21 in the hands of the County, which would then take the same apathetic approach toward resolution
22 and enforcement as it has in the past. In the meantime, MVP members continue to suffer on a
23 daily basis from health and safety hazards and the ongoing nuisance and trespass caused by
24 Chevreaux’s operations. Declaratory relief, in this instance, is much more “speedy and
25 adequate” than pursuing a writ of administrative mandate and much more well-suited to the
26 needs of the plaintiff.
27
28

2. MVP Has Either Exhausted All Available Administrative
Remedies, or Is Excused from Exhausting Administrative Remedies

Exhaustion of administrative remedies is a prerequisite to pursuing a writ of administrative mandate. However, MVP does not seek administrative mandate because MVP is not challenging the decision of an administrative body. MVP is merely seeking a determination of the rights and duties of the parties, and the relevant declaratory relief statute makes no mention of an exhaustion of administrative remedies requirement. (See Code Civ. Proc., § 1060.)

Furthermore, as discussed above, Chevreaux's demurrer is restricted to the facts as alleged in MVP's complaint. (*Ion Equipment Corp. v. Nelson, supra*, 110 Cal.App.3d at pp. 881-882.) Thus, unless the complaint discloses an available administrative remedy, a demurrer is not proper on that basis. This rule was propounded in *Yolo County Department of Social Services. v. Municipal Court, supra*, 107 Cal.App.3d 842, "The complaint and exhibits do not establish that plaintiff had an administrative remedy . . . and liberal construction of the complaint *in favor of the plaintiff* tends to indicate otherwise. The municipal court did not err in overruling the demurrer . . ." (*Id.* at p. 847, emphasis added.) MVP's complaint discloses no available administrative remedy and in fact, effectively alleges the opposite. Therefore, pursuant to the rule in *Yolo*, Chevreaux cannot introduce extrinsic evidence of administrative remedies as the basis for its demurrer.

Moreover, the purported "administrative remedies" referenced by Chevreaux do not even exist. Chevreaux engages in an imaginative extrapolation of the Placer County Zoning Code by creating from thin air two "administrative remedies" and then claiming MVP has failed to exhaust both. These "remedies," however, do not appear anywhere in the actual text of the Zoning Code.

First, Placer County Code § 17.62.010 et. seq. makes it quite clear that it is the responsibility of the *code enforcement* officer to initiate enforcement of any zoning violations "where *he or she* has determined" that such a violation exists. (Placer County Code § 17.62.120, emphasis added; see also Placer County Code § 17.62.030.) There is nothing in the entire

1 chapter that would indicate that a private individual can initiate such enforcement. Indeed, this
2 has been the County's express position when MVP has requested enforcement in the past.

3 Similarly, Placer County Code §17.02.050 makes no mention of a private citizen's right
4 to seek "a formal determination" on the validity of or compliance with a use permit. (Chevreaux
5 Demurrer at p. 4:18-20.) If such a right were guaranteed by the Placer County Code, MVP
6 would have exercised it. To the contrary, the County has repeatedly told members of MVP and
7 counsel for MVP that it has no duty to perform what it terms "discretionary" functions outlined
8 in the Placer County Code. Indeed, the co-defendant County of Placer has espoused this very
9 position in its own demurrer. (Demurrer to Petitioner's Petition/Complaint (County Demurrer)
10 at pp. 6-10; Complaint at ¶ 7.)

11 MVP cannot be expected to exhaust administrative remedies which do not exist. MVP
12 can do no more than what its members have already done, which is make repeated requests to the
13 County for its involvement and assistance, and these requests have been met with very little
14 response. If this Court determines that MVP needs to amend its complaint to allege further
15 specific instances of attempts to exhaust administrative remedies, it is prepared to do so.

16 Even if MVP was required to exhaust unknown administrative remedies, it may be
17 excused from doing so on the basis of one or more applicable exceptions.

18 It is well established that an "aggrieved party is not required to exhaust administrative
19 remedies before bringing a declaratory relief action where the party can positively state what the
20 administrative agency's decision would be." (*Baxter Healthcare Corporation v. Denton* (2004)
21 120 Cal.App.4th 333, 362, citing *Venice Town Council, Inc. v. City of Los Angeles* (1996)
22 47 Cal.App.4th 1547, 1567.)

23 As specifically pled in plaintiff's complaint, the County has made its position regarding
24 the validity of LDA-786 quite clear. (Complaint at ¶ 37.) The County's position with respect to
25 LD-1030, though never formally expressed to MVP, appears to also be set in stone, with the
26 County either refusing to take investigative action or claiming that investigative action was taken
27 at some point and no violations were found. Therefore, MVP can positively state that the
28 County's determination on both of the permits would be adverse to MVP's interests. Indeed,

1 Chevreaux has conceded as much: "MVP admits that County concluded that there is presently
2 nothing to investigate or enforce with respect to Chevreaux's permits." (Chevreaux Demurrer
3 at p. 5:22-23.)

4 Failure to exhaust administrative remedies may also be excused when there is
5 "a significant public interest in obtaining a definitive resolution of [a] fundamental legal
6 question." (*Coachella Valley Mosquito and Vector Control District v. California Public*
7 *Employment Relations Board* (2005) 35 Cal.4th 1072, 1082; see also *Lindeleaf v. Agricultural*
8 *Labor Relations Board* (1986) 41 Cal.3d 861, 871 [exhaustion excused when the case raises
9 "important questions of public policy"].)

10 Chevreaux's operations affect not only MVP members and residents of Meadow Vista
11 but also residents of surrounding communities. Furthermore, a private corporation should not be
12 permitted to willfully violate the terms and conditions of conditional use permits issued to it, no
13 matter how long the governing county has allowed the violations or to what extent the county
14 sanctions the use. Whether a municipality may turn a blind eye to such abuses and violations is a
15 question of important legal significance with a profound effect upon the public.

16 For these reasons, MVP has either exhausted its administrative remedies or is excused
17 from doing so under one of the exceptions discussed above.

18 3. The Actions for Declaratory Relief Are Timely

19 Chevreaux first argues that, under Placer County Code, MVP had only 10 days from the
20 date of the approvals of LDA-786 and LD-1030 to appeal them. Chevreaux then implicates the
21 90-day limitation statute of Government Code section 65009(c)(1)(E) in arguing that LDA-786
22 and LD-1030 cannot be challenged at this time. These theories are patently erroneous.

23 A hypothetical reveals the falsity of Chevreaux's position. Suppose that a sewage
24 treatment plant received a conditional use permit in 1947 and one of the conditions of that permit
25 was that no untreated sewage should be deposited into a nearby river. Suppose that 10 or even
26 50 years later, the plant commences dumping of untreated sewage into the river. Concerned
27 residents appeal to the County to stop the violation of the use permit, but the County refuses to
28 act. Under Chevreaux's flawed logic, those residents would have no recourse, because their case

1 was not initiated within 90 days of the permit's original issuance.

2 Chevreaux has missed the point. MVP is not contesting the *issuance* of either LD-1030
3 or LDA-786, which would subject it to the 10- and/or 90-day limitation periods mentioned
4 above. MVP is merely trying to enforce the terms and conditions of LD-1030 and obtain a court
5 determination as to the continuing validity of LDA-786.

6 The terms and/or conditions of a conditional use permit may be *enforced* even after the
7 90 days for challenging issuance have run. (See *Pacifica Homeowners' Association v. Wesley*
8 *Palms Retirement Community* (1986) 178 Cal.App.3d 1147, 1153.) Moreover, revocation of a
9 CUP due to non- or improper use may be a proper sanction for abuse and has not been subject to
10 the 90-day rule. (See, e.g., *Malibu Mountains Recreation, Inc. v. County of Los Angeles* (1998)
11 67 Cal.App.4th 359, 366.)

12 For these reasons, Chevreaux's assertion that MVP's claims are untimely is without
13 merit.

14 4. A Justiciable Controversy Exists Between the Parties

15 On the one hand, Chevreaux admits that the County has fully and finally acted by
16 concluding there is nothing to investigate with respect to Chevreaux's permits. (Chevreaux
17 Demurrer at p. 5:22-23.) On the other hand, Chevreaux claims there can be no justiciable
18 controversy "between County and Chevreaux" until the County acts. (*Id.* at p. 6:6-8.)

19 Chevreaux cites no authority for its conclusory legal statement as to what creates a
20 justiciable controversy and Chevreaux implicates the wrong parties. There does not need to be a
21 controversy between *County* and Chevreaux (see Chevreaux Demurrer at pp. 6:8, 7:14-15).
22 Chevreaux similarly and wrongfully implies that there must be a justiciable controversy between
23 the County and MVP. (*Id.* at p. 6:24-25.) These statements are incongruous with Chevreaux's
24 admission that the County has not been made a party to the declaratory relief actions. (*Id.*
25 at p. 9:16.)

26 These arguments mistake the requirement of a justiciable controversy. There only need
27 be a justiciable controversy between the actual parties to the cause of action, *i.e.*, MVP and
28 Chevreaux. (See, e.g., *Maguire v. Hibernia Savings & Loan Society* (1944) 23 Cal.2d 719, 728.)

1 Curiously, the presence of a controversy between these two actual parties is something
2 Chevreaux did not discuss.

3 However, a present, justiciable controversy does exist between MVP and Chevreaux as to
4 both causes of action for declaratory relief. Chevreaux quoted *Selby Realty Co. v. City of San*
5 *Buenaventura* (1973) 10 Cal.3d 110:

6 The “actual controversy” referred to in this statute [Code Civ. Proc., § 1060] is
7 one which admits of definitive and conclusive relief by judgment within the field
8 of judicial administration, as distinguished from an advisory opinion upon a
9 particular or hypothetical state of facts. *The judgment must decree, not suggest,*
10 *what the parties may or may not do.*

11 (*Id.* at p. 117, emphasis added.) This is precisely what MVP is seeking here. The complaint
12 does not concern a hypothetical situation, but rather one which has been in existence for some
13 time. A declaration by the Court as to what Chevreaux “may or may not do” under its permits
14 LD-1030 and LDA-786 is exactly the sort of “definitive and conclusive” judgment MVP seeks to
15 obtain. Even if the Court’s declaration is adverse to MVP’s positions, the ambiguity surrounding
16 the permits would at least be finally dispelled.

17 In any event, if there is any doubt as to the justiciability of the controversy between MVP
18 and Chevreaux, such doubt should be resolved in favor of adjudication, because the public is
19 interested in resolution of this dispute. (*California Water & Telephone Co. v. County of Los*
20 *Angeles* (1967) 253 Cal.App.2d 16, 26.)

21 Chevreaux’s citation to *Zetterberg v. State Department of Public Health* (1974)
22 43 Cal.App.3d 657 and *Potter v. City Council of the City of Port Hueneme* (1951) 102
23 Cal.App.2d 141, are likewise somewhat confusing. *Zetterberg* dealt with the interpretation of a
24 *statute* (not a permit) and *Potter* with an asserted failure to allege a particular interest or right to
25 be preserved or protected by a *writ of mandate*. Neither case is relevant.

26 Moreover, Chevreaux mischaracterizes the goal of the declaratory relief actions. MVP
27 does not, as Chevreaux claims, want this Court to direct the *County* on how it should or should
28 not interpret or enforce Chevreaux’s use permits. (Chevreaux Demurrer at p. 7:9-10.) The
prayer of MVP’s complaint is explicit. MVP wants this Court to judicially determine the extent

1 of Chevreaux's rights under its use permits and whether or not Chevreaux is in compliance with
2 the terms and conditions of those permits, without regard to any action or enforcement by the
3 County. As MVP has alleged in its complaint, the County has consistently failed to enforce the
4 permits and conditions or even investigate Chevreaux's compliance, leaving MVP with no
5 choice but to pursue judicial determination.

6 Chevreaux's purported argument that there is no justiciable controversy is really a
7 surreptitious attempt to distract and confuse the Court as to the issues, and even the parties, in the
8 declaratory relief actions.

9 5. The Declaratory Relief Causes Of Action Are Ripe

10 Chevreaux alleges that MVP has failed to pursue enforcement of Chevreaux's permits
11 through Placer County code enforcement, and thus MVP's declaratory relief actions are not ripe.
12 This is not the law.

13 A controversy is ripe for declaratory relief adjudication if it has reached a point where the
14 facts are sufficiently congealed to permit an intelligent and useful decision to be made. (*BKHN,*
15 *Inc. v. Department of Health Services* (1992) 3 Cal.App.4th 301, 308.) The parties have reached
16 such a point here. For purposes of evaluating its demurrer, Chevreaux has conceded that the
17 facts as stated in the complaint are true. (*Aubry v. Tri-City Hospital District* (1992) 2 Cal. 4th
18 962, 966-967.) Those facts are not subject to change absent either County or Court intervention,
19 and some of them have existed for decades. Thus, they are "sufficiently congealed" for this
20 Court to make an intelligent and highly useful determination.

21 In any event, MVP and its members have made repeated entreaties to the County to
22 address the issues presented in MVP's complaint, to no avail. This fact is generally alleged in
23 MVP's complaint at paragraphs 7, 36 and 37. However, if this Court requests that MVP amend
24 its complaint to include more specific allegations of steps that were taken to gain the County's
25 assistance prior to filing this action, it will do so.

26 C. The Actions for Declaratory Relief Are Properly Within the Jurisdiction of This Court

27 Chevreaux concedes that when MVP can establish that a justiciable controversy exists
28 regarding the two use permits, then this Court will have subject matter jurisdiction to adjudicate

1 the declaratory relief actions. (Chevreaux Demurrer at p. 9:13-15.)

2 MVP has already established the existence of such a controversy previously in this brief.
3 Furthermore, MVP is not asking this Court to direct the County to do anything with respect to
4 the causes of action for declaratory relief.

5 Finally, the cases cited by Chevreaux are inapposite, addressing in turn the County's
6 jurisdiction over the matter at hand, its control over zoning regulations, and the respective
7 powers of judicial and executive agencies. (Chevreaux Demurrer at pp. 8:16-9:10.) MVP does
8 not dispute any of these issues. However, the County has relinquished its jurisdiction either by
9 taking a final position on Chevreaux's permits or refusing to take any position at all. Thus, MVP
10 is left with no recourse except to pursue this matter in this Court, which is why the issue of
11 subject matter jurisdiction must necessarily be determined in MVP's favor.

12 D. The County of Placer Is Not an Indispensable Party to These Causes of Action

13 Chevreaux claims that "County is the only entity that can lawfully interpret, enforce,
14 revoke, or amend permits issued by it" (Chevreaux Demurrer at p. 10:3-4) but cites no authority
15 to support this claim. What is more, such a claim is illogical. How is an aggrieved citizen to
16 pursue enforcement of a use permit if the County refuses to take any action? His or her only
17 legitimate recourse is to the courts. The County is not the "only entity" that can order
18 compliance with use permits and therefore is not an indispensable party.

19 Moreover, Chevreaux may not be the appropriate party to raise this objection. Code of
20 Civil Procedure section 389(a) is aimed at avoiding prejudice to a party which has been excluded
21 from a lawsuit directly affecting his or her rights or duties. Contrary to the situation in
22 Chevreaux's cited authority, *Welch v. Bodeman* (1986) 176 Cal.App.3d 833, here the County is
23 on notice of the pending actions. If the County believes that this Court's adjudication of the
24 declaratory relief causes of action will be prejudicial to its interests, the County is welcome to
25 intervene. However, as discussed above, MVP does not seek any relief against or action by the
26 County in the declaratory relief causes of action and does not believe that the County is
27 necessary to their full and complete adjudication.
28

III.

FOURTH CAUSE OF ACTION—INJUNCTIVE RELIEF

A. The Facts Are Sufficient To Support A Claim For Injunction

Chevreaux misstates the language of MVP's injunction cause of action. MVP did not allege ambiguous "violations" of use permits LD-1030 and LDA-786, but specific, precise facts tending to show how the permits had been violated:

- There is an implied condition of 20 trucks per day and Chevreaux regularly exceeds this limit;
- LDA-786 was either never implemented properly, or has lapsed;
- The asphalt plant's new location is materially different from that allowed by LDA-786;
- Chevreaux is mining outside the bounds of LD-1030; and
- Chevreaux is not complying with the *water, blasting* and *dust* conditions of LD-1030.

(Complaint at ¶¶ 19, 21, 27, 28, 35, 51.)

Moreover, the fourth cause of action incorporates by reference the general allegations contained in paragraphs 1 through 37 of MVP's complaint. These allegations contain very specific facts regarding the nonuse and lapse of LDA-786, Chevreaux's noncompliance with the location originally permitted by LDA-786, Chevreaux's noncompliance with the conditions of LD-1030 and Chevreaux's mining operations outside the boundaries of LD-1030. (Complaint at ¶¶ 19, 21, 27-29, 32 and 35.) Furthermore, both the general allegations of the complaint and the fourth cause of action contain facts showing the imminence of the harm anticipated from the operation of the asphalt plant. (*Id.* at ¶¶ 34 and 51.)

Since Chevreaux has admitted the truth of these allegations for the purposes of its demurrer, it may not assert, as it attempts to, that MVP's injunction cause of action is "without any factual basis." (Chevreaux Demurrer at p. 11:17-18.) A substantial number of facts have been alleged to support MVP's cause of action for injunction. Consequently, both of Chevreaux's cited authorities (*Bank of America National Trust and Savings Association v. Williams* (1948) 89 Cal.App.2d 21, 23 and *Willis v. Lauridson* (1911) 161 Cal. 106, 117), and the rules they propound, have been satisfied by MVP. Chevreaux may seek a motion for summary judgment, but the complaint sufficiently states facts in support of the causes of action.

IV.

FIFTH THROUGH SEVENTH CAUSES OF ACTION—
PUBLIC NUISANCE, PRIVATE NUISANCE AND TRESPASS

A. MVP Has Adequate Standing To Sue On Behalf Of Its Members;
Therefore, Joinder Of Individual Plaintiffs Is Unnecessary

MVP is a nonprofit California corporation and represents the interests of approximately 260 residents of Meadow Vista and the surrounding area. California case law contains many examples of similar associations being permitted to sue on behalf of their members, even in cases where damages were sought.

For example, in *Residents of Beverly Glen, Inc. v. City of Los Angeles, supra*, 34 Cal.App.3d 117, the sole plaintiff was “a non-profit civic corporation whose membership consist[ed] of approximately 300 families resident in the area within Beverly Glen. . . .” (*Id.* at pp. 120-121.) As in this case, the plaintiff in *Beverly Glen* sought to set aside an otherwise valid conditional use permit due to anticipated injuries the permit would cause to plaintiff’s individual members. The defendant City alleged that the plaintiff had no standing to sue, but the court disagreed, basing its decision on the fact that plaintiff was a corporation whose members lived in the affected area and that its members would suffer injury if the project permitted by the CUP was allowed to continue. (*Id.* at p. 121.) Furthermore, the court noted that *environmental* concerns underlay the action and therefore,

[s]uch matters are the proper subject of judicial consideration. “. . . Aesthetic and environmental well-being, like economic well-being, are important ingredients of the quality of life in our society, and the fact that particular environmental interests are shared by the many rather than the few does not make them less deserving of legal protection. . . .”

(*Id.* at p. 122, quoting *Sierra Club v. Morton* (1972) 405 U.S. 727, 734.) In other words, the potential environmental threat to the community was so great, it would have been unconscionable and unduly burdensome to require each separately affected individual to be joined as a party to avert the anticipated harm. Other cases are in accord with this rule. (See, e.g., *Twain Harte Homeowners Association v. Patterson* (1987) 193 Cal.App.3d 184 [association

1 held to have standing to pursue quiet title and declaratory relief even though association was not
2 record title holder of subject real property]; *Independent Roofing Contractors of California*
3 *Unilateral Apprenticeship Committee v. California Apprenticeship Council* (2004) 114
4 Cal.App.4th 1330 [association has standing to pursue writ of mandate independent of harm to
5 itself if members' rights are threatened as a result of the challenged action].)

6 This rule is not confined to causes of action for mandate and/or equitable relief, as in
7 *Beverly Glen* and the other cases cited above. It also holds true in several cases seeking
8 monetary relief.

9 Specifically, in *Salton City Area Property Owners Association v. M. Penn Phillips Co.*
10 (1977) 75 Cal.App.3d 184, the plaintiff property owners' association brought suit for *damages* as
11 well as equitable relief. The association's complaint alleged authorization to bring suit on behalf
12 of its members in a representative capacity but *contained no allegation that the association itself*
13 *suffered any damages from the activities of the defendants.* (*Id.* at p. 186.) The court then
14 pointed out that "a plaintiff's standing to sue as a representative should be considered in terms of
15 the particular plaintiff's ability to fairly protect the rights of the group he purports to represent."
16 (*Id.* at p. 187.)

17 Similarly, in *Property Owners of Whispering Palms, Inc. v. Newport Pacific, Inc.* (2005)
18 132 Cal.App.4th 666, the plaintiff residents' association sought, among other relief, *damages* for
19 breaches of agreement, fiduciary duty and covenants of good faith and fair dealing. The
20 *Whispering Palms* court pointed out that the U.S. Supreme Court "has repeatedly recognized that
21 an association has standing to sue when 'its members, *or any one of them*, are suffering
22 immediate or threatened injury as a result of the challenged action of the sort that would make
23 out a justiciable case had the members themselves brought suit.'" (*Id.* at p. 673, quoting *Hunt v.*
24 *Washington State Apple Advertising Commission* (1977) 432 U.S. 333, 343-344, emphasis in
25 original.) Thus the residents' association was permitted to maintain the action.

26 Especially analogous to this case is *Pacifica Homeowners' Association v. Wesley Palms*
27 *Retirement Community*, *supra*, 178 Cal.App.3d 1147, where the plaintiff homeowners'
28 association sought damages and injunctive relief for nuisances resulting from violation of certain

1 conditions of the landowners' CUP. The defendants argued that the association did not have
2 standing, but the court ruled to the contrary. Likening violations of CUP conditions to violations
3 of zoning ordinances, the court found that the homeowners' association was a "member of the
4 community for whose particular welfare the ordinance was enacted." (*Id.* at p. 1153, quoting
5 *McIvor v. Mercer-Fraser Co.* (1946) 76 Cal.App.2d 247, 254.) In other words, the conditions in
6 the CUP were put in place to protect the plaintiff association and others similarly situated;
7 therefore, the association had standing to sue to enforce the permit conditions and thereby enjoin
8 the nuisances.

9 The situation is similar here. Chevreaux's continued operations in and around the site,
10 including mining outside the boundaries of LD-1030, constructing and operating an asphalt plant
11 and generating a high volume of truck traffic, are all activities which cause nuisance and/or
12 trespass to certain MVP members. A CUP's conditions are imposed for nothing if not to protect
13 the public and, specifically, nearby neighbors, from harm resulting from the conditional use.
14 Thus, the fact that MVP's complaint seeks damages for nuisance and trespass without joining
15 individual property owners does not subject it to Chevreaux's general demurrer based on
16 standing.

17 However, assuming *arguendo* that MVP does not have standing to sue for nuisance and
18 trespass on behalf of its members, these causes of action may not be dismissed without leave to
19 amend, as Chevreaux has requested. "Whether or not a representative plaintiff does and can in
20 fact adequately represent others is a question of fact for the trial court. And if the trial court
21 decides that a named plaintiff cannot suitably represent the class, it should afford an opportunity
22 for amendment." (*Residents of Beverly Glen, Inc. v. City of Los Angeles, supra*, 34 Cal.App.3d
23 at p. 129.) Though this statement applies to a class action lawsuit, its rule is analogous here.
24 Therefore, even if it is found that MVP cannot adequately represent the interests of its members
25 as to the fifth through seventh causes of action, MVP must be given the opportunity to amend its
26 complaint accordingly.

27 B. The Allegations in MVP's Complaint Are Sufficiently Definite
28 To Apprise Defendant Chevreaux of the Nature of the Actions

1 Against It, and Any Uncertainties or Ambiguities in the
2 Complaint, If They Exist, May Be Resolved Through Discovery

3 A demurrer on the ground that the complaint is ambiguous, uncertain and unintelligible
4 cannot be sustained unless *all* of these imperfections exist. (*Kraner v. Halsey* (1889) 82 Cal.
5 209.) Defendant Chevreux has alleged all three of these imperfections with respect to MVP's
6 complaint, and thus its demurrer must fail if even *one* of these "imperfections" is not present.

7 However, none of these objections are well founded. Even the portions of MVP's
8 complaint which are quoted by defendant Chevreux to support its claims of uncertainty are
9 easily capable of being understood in light of the entirety of MVP's factual allegations.

10 For example, Chevreux claims that it cannot be expected to know the basis for MVP's
11 assertion that "Chevreux is in violation of conditions regarding blasting, protection of water
12 quality, and dust mitigation at the quarry site." (Chevreux Demurrer at p. 14:15-16.) The
13 obvious inference is that these violations have given rise to plaintiff's several causes of action, as
14 fully set forth in the complaint.

15 If, on the other hand, Chevreux is claiming not to know *what* these conditions are or
16 *how* it is in violation, this uncertainty is not MVP's responsibility to resolve. A demurrer for
17 uncertainty does not lie if the ambiguous facts alleged are presumptively within the knowledge of
18 the demurring party. (*Merlino v. West Coast Macaroni Manufacturing Co.* (1949)
19 90 Cal.App.2d 106, 108.) "[L]ess particularity is required when the facts lie more in the
20 knowledge of the opposite party than of the party pleading." (*Turner v. Milstein* (1951)
21 103 Cal.App.2d 651, 658.) Chevreux is in a much better position than MVP to know exactly
22 what the conditions and restrictions of its use permits are and whether or not it has sufficiently
23 complied with them.

24 Chevreux relies on the case of *Ankeny v. Lockheed Missiles and Space Co.* (1979)
25 88 Cal.App.3d 531, 537, but in *Ankeny* the court was dealing with obviously ambiguous and
26 conclusory statements such as "conspired to tortiously cause." (*Id.* at p. 537.) In contrast, each
27 MVP statement quoted by Chevreux at pp. 14-15 of its demurrer contains straightforward
28 factual allegations showing the perceived wrongfulness of Chevreux's conduct and the resulting

1 injury to MVP's members.

2 Demurrers for uncertainty are strictly construed, because ambiguities can be clarified
3 under modern discovery procedures. (*Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th
4 612, 616.) Chevreux's alleged ignorance regarding some of the nitty-gritty details of MVP's
5 injuries may easily be resolved during the discovery process. It is sufficient that a plaintiff
6 alleges facts sufficiently clear to apprise defendant of the issues he or she must defend. (*Smith v.*
7 *Williams* (1961) 55 Cal.2d 617, 619.)

8 In short, the factual allegations in the complaint and the plain language of the six causes
9 of action against Chevreux, when taken as a whole, clearly apprise Chevreux of the nature of
10 the actions against it. MVP has not used ambiguous language or conclusory legal statements like
11 those at issue in Chevreux's cited authority, *Ankeny*. In addition, if any ambiguities or
12 uncertainties do exist, they may easily be resolved through the normal discovery process.
13 Therefore, Chevreux's demurrer on the grounds of uncertainty must be overruled.

14 C. The Essential Elements of Nuisance and Trespass Have Been Properly Alleged

15 Chevreux has complained that each of MVP's fifth, sixth and seventh causes of action
16 lack essential elements. However, each of these causes of action has been pled with sufficient
17 particularity to withstand Chevreux's general demurrer on this basis.

18 1. Public Nuisance

19 Chevreux contests MVP's cause of action for public nuisance solely on the basis of an
20 alleged failure to allege facts showing special injury. However, its cited authority, *Brown v.*
21 *Petrolene, Inc.* (1980) 102 Cal.App.3d 720, 725, specifically distinguishes its rule requiring such
22 "special injury" pleading as applying only to cases "[w]here the nuisance alleged *is not also a*
23 *private nuisance . . .*" (Emphasis added.)

24 However, MVP has alleged in its complaint that Chevreux's activities also constitute a
25 private nuisance. This is in conformance with other cases where such activities have been held to
26 constitute both a public and private nuisance:

27 The transcript is replete with evidence as to dust and grit from the plant pervading
28 the homes of the residents . . . and of loud noises of motors, trucks, falling gravel,
pounding with hammers and late operation disturbing them, which fully support .

1 . . the findings of a nuisance as to the public in general and as to plaintiff . . .
2 privately.

3 (*Markey v. Danville Warehouse & Lumber, Inc.* (1953) 119 Cal.App.2d 1, 7.)

4 Thus, Chevreaux's insistence that MVP's allegations of special injury (Complaint at ¶ 56)
5 are insufficient to support its claim for public nuisance does not appear to comport with the very
6 rule cited by Chevreaux in *Brown v. Petrolene, Inc.*, *supra*, 102 Cal.App.3d 720.

7 2. Private Nuisance

8 The elements allegedly omitted from MVP's pleading of private nuisance are "substantial
9 and unreasonable interference" and "injury, damage, loss or harm." (Chevreaux Demurrer
10 at p. 19:14-15, 21-22.)

11 The element of substantial or unreasonable interference is effectively pled in MVP's
12 complaint at paragraph 58. Specifically, Chevreaux's operations are alleged to cause excessive
13 noise and ground vibrations, compromise the air quality in and around Meadow Vista, and cause
14 traffic congestion, noise, pollution and garbage.

15 Moreover, MVP does not need to plead "injury, damage, loss or harm" to support an
16 action for private nuisance. It is sufficient that an unreasonable interference with the enjoyment
17 of property has been alleged. "[L]iability for nuisance does not require proof of damage to the
18 plaintiff's property; proof of interference with the plaintiff's use and enjoyment of that property
19 is sufficient." (*San Diego Gas & Electric Company v. Superior Court of Orange County* (1996)
20 13 Cal.4th 893, 937.)

21 Chevreaux also makes the assertion that the noise and pollution are the responsibility of
22 the state of California and "do not constitute an injury to MVP." (Chevreaux Demurrer at p.
23 19:15-18.) However, Chevreaux cites no authority to support this assertion and indeed, it
24 appears to be contrary to law. (See, e.g., *Markey v. Danville Warehouse & Lumber, Inc.*, *supra*,
25 119 Cal.App.2d at p. 7 [holding that dirt and grit from cement mixing plant and loud noises of
26 motors, trucks, falling gravel, pounding with hammers and late operations constituted nuisance].)

27 3. Trespass

28 Chevreaux alleges that MVP has omitted two "essential elements" from its pleading

1 regarding trespass—namely, that Chevreaux “knowingly trespassed” on MVP members’
2 property and the “amount of damages” suffered as a result of the trespass. (Chevreaux Demurrer
3 at p. 20:23-25.)

4 First, knowledge is not necessary to create liability. Applicable case law also imposes
5 liability where the entry is caused recklessly, negligently or as the result of an extra-hazardous
6 activity. (*Staples v. Hoefke* (1987) 189 Cal.App.3d 1397, 1406.)

7 Second, the case authority Chevreaux cites which purports to require a dollar figure
8 allegation as to damages is not applicable to this case. *Mallory v. Thomas* (1893) 98 Cal. 644
9 specifically limited its holding to cases where there was a “destruction of property” (*Id.* at p. 646)
10 and went on to say,

11 [O]nly such damages as are the natural consequences of the act which constitutes
12 [plaintiff’s] right of recovery can be recovered *without special averment* . . .
13 whenever the *special damages* which the plaintiff seeks to recover do not all flow
14 from the same facts, but depend upon the proof of different circumstances, the
grounds for each claim of *special damage* should be alleged.

15 (*Id.* at p. 647.) MVP seeks no special damages here and, in any event, the properties impacted by
16 the encroachment of dust, silt and litter have not been “destroyed.” The damages sought are
17 merely those which are the “natural consequences” of Chevreaux’s trespass and do not require
18 special pleading.

19
20 V.

21 IN THE EVENT ANY PART OF CHEVREUX’S DEMURRER
22 IS SUSTAINED, MVP SHOULD BE PERMITTED TO AMEND ITS COMPLAINT

23 Denial of leave to amend constitutes an abuse of discretion unless the complaint shows
24 on its face it is incapable of amendment. (*Angie M. v. Superior Court of San Diego County*
25 (1995) 37 Cal.App.4th 1217, 1227; *McDonald v. Superior Court of Los Angeles County* (1986)
26 180 Cal.App.3d 297, 303.) Liberality in permitting amendment is the rule, if a fair opportunity
to correct any defect has not been given. (*Id.* at p. 304.)

27 Similarly, *Stevens v. Superior Court of Los Angeles County, supra*, 75 Cal. App. 4th 594
28 states:

1 In reviewing the sufficiency of a complaint against a general demurrer ... we
2 [must] determine whether the complaint states facts sufficient to constitute a cause
3 of action. [Citation.] And when it is sustained without leave to amend, we decide
4 whether there is a reasonable possibility that the defect can be cured by
amendment; if it can be, the trial court has abused its discretion and we reverse; if
not, there has been no abuse of discretion and we affirm.

5 (*Id.* at p. 601, quoting *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

6 "If we conclude that the complaint does not state a claim, but there is a reasonable
7 possibility that the defects can be cured by amendment, leave to amend **must** be granted."
8 (*Stevens v. Superior Court of Los Angeles County, supra*, 75 Cal. App. 4th at p. 601, emphasis
9 added, quoting *Quelimane Company, Inc. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26,
10 39.)

11 Chevreux has not alleged any deficiencies which, if they truly exist, cannot be remedied
12 by the filing of an amended complaint. Therefore, Chevreux's request that its demurrer be
13 sustained without leave to amend is inappropriate.

14 CONCLUSION

15 In sum, MVP's complaint should not be dismissed on the basis of smoke-and-mirrors
16 arguments and questionable applications of the case authorities. Chevreux has misstated some
17 of MVP's positions, created remedies which do not exist and stretched and twisted irrelevant
18 rules of law to make them applicable to this case.

19 Moreover, MVP has expressed its willingness to amend its complaint if and when this
20 Court deems it necessary. Therefore, there is no need for the harsh result sought by Chevreux in
21 filing its demurrer.

22 For these reasons, MVP respectfully requests that this Court overrule Chevreux's
23 demurrer with respect to each objection raised therein and order Chevreux to file an answer
24 within 15 days of the Court's ruling, pursuant to Local Rule 20.1.6(C).

25 DATED: September 20, 2006. Respectfully submitted,

26 By Angela C. Thompson
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FILED
PLACER COUNTY
SUPERIOR COURT OF CALIFORNIA

JUL 12 2006

JOHN MENDES
EXECUTIVE OFFICER & CLERK
By  Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF PLACER

11 MEADOW VISTA PROTECTION,

Case No.: **SCV 19814**

12 Petitioner and Plaintiff,

13 v.

14 CHEVREAUX AGGREGATES, INC.;
15 COUNTY OF PLACER; COUNTY OF
16 PLACER PLANNING DEPARTMENT;
17 and DOES 1 through 50, inclusive,

PETITION FOR WRIT OF MANDATE
AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF, PUBLIC NUISANCE, PRIVATE
NUISANCE AND TRESPASS

18 Respondents and Defendants.

19 Petitioner and plaintiff Meadow Vista Protection hereby alleges as follows:

20 INTRODUCTION

21 1. Petitioner and plaintiff Meadow Vista Protection (MVP) brings this action against
22 respondents and defendants County of Placer and County of Placer Planning Department
23 (together County) to compel the County to engage in a thorough factual and legal inquiry as to
24 the validity and scope of entitlements held by defendant ChevreauX Aggregates, Inc. (ChevreauX)
25 and to enforce the relevant permit conditions and County ordinances regarding the same.

26 2. In addition, petitioner and plaintiff brings this action against defendant ChevreauX to
27 enjoin ChevreauX from conducting operations in violation of its use permits and County
28

1 ordinances and to seek damages for public nuisance, private nuisance and trespass resulting from
2 previous and continuing violations.

3 3. MVP is a local grass roots organization comprised of residents of the unincorporated
4 Placer County community of Meadow Vista, California, and the surrounding area, as well as
5 nonresident supporters. MVP was organized in 2005 for the purpose of protecting the interests
6 of its members from activities proposed or conducted in the area that would pose an adverse risk
7 to the health, safety and welfare of Meadow Vista residents.

8 4. Chevreux currently operates a quarry at its site in Meadow Vista, California,
9 pursuant to a conditional use permit issued in 1965. Upon information and belief, Chevreux is
10 currently conducting surface mining outside the boundaries authorized by that permit. In
11 addition, the output of the quarry currently exceeds that anticipated at the permit's issuance.
12 Also upon information and belief, Chevreux is in violation of conditions regarding blasting,
13 protection of water quality, and dust mitigation at the quarry site.

14 5. Chevreux also currently operates a concrete batch plant at its quarry site, pursuant to
15 a conditional use permit issued in 1994. Both the quarry operation and the concrete plant
16 adversely impact the Meadow Vista community through excessive noise, dust, pollution and
17 heavy truck traffic.

18 6. Chevreux has recently obtained an air pollution permit to begin operation of an
19 asphalt plant under a conditional use permit issued in 1972. This conditional use permit was
20 either never implemented or has lapsed due to many years of nonuse, making the operation of
21 such a plant illegal. Moreover, Chevreux intends to position the new asphalt plant 1,000 feet
22 away from the site originally permitted in 1972 and has not applied for a new permit for this
23 material deviation from the original permit.

24 7. In September 2005, legal counsel for MVP sent a letter to Deputy County Counsel
25 Scott Finley outlining MVP's concerns regarding Chevreux's 1972 permit and requesting a
26 specific determination of whether the proposed asphalt plant was still a permissible use. The
27 County never responded to this letter in writing, but in a telephone call to MVP's legal counsel,
28 indicated that no action would be taken on the letter.

1 8. Meanwhile, Chevreaux has continued multiple operations in violation of its
2 applicable permits and attendant permit conditions, resulting in substantial and continuing injury
3 to the residents of Meadow Vista, MVP, and its members.

4 9. Therefore, petitioner and plaintiff MVP seeks a writ of mandate directing the County
5 to evaluate the scope of Chevreaux's use permit LD-1030 and to enforce the relevant permit
6 conditions and County ordinances regarding the same or, in the alternative, a declaratory
7 judgment that Chevreaux is not properly operating within LD-1030; a declaratory judgment that
8 the conditional use permit issued in 1972 is no longer valid and that Chevreaux has no vested
9 right to operate an asphalt plant in Meadow Vista; injunctive relief preventing Chevreaux from
10 further violations of the applicable use permits and County code provisions; damages for public
11 and private nuisance and trespass; and attorneys' fees, among other requested relief as set forth in
12 the prayer.

13 PARTIES

14 10. Petitioner and plaintiff Meadow Vista Protection is a California nonprofit
15 corporation, organized and existing by virtue of the laws of the State of California, with its
16 principal place of business in Placer County, California.

17 11. Defendant Chevreaux Aggregates, Inc., is a California for-profit corporation,
18 organized and existing by virtue of the laws of the State of California, with its principal place of
19 business in Placer County, California.

20 12. Respondent and defendant County of Placer is a political subdivision of the State of
21 California.

22 13. Respondent and defendant County of Placer Planning Department (Planning
23 Department) is responsible for the regulation and enforcement of all zoning and planning matters
24 within the County.

25 14. MVP is ignorant of the true names and capacities of respondents and defendants
26 named as DOES 1 through 50 and therefore sues said respondents and defendants by such
27 fictitious names. Petitioner and plaintiff will amend this petition and complaint to allege the true
28 names of DOES 1 through 50 when they are ascertained. Petitioner and plaintiff is informed and

1 believes that each of the fictitiously named respondents and defendants is responsible in some
2 capacity for the acts and events alleged herein or is an indispensable party thereto.

3 15. MVP is informed and believes, and based thereon alleges, that at all times
4 mentioned herein respondents and defendants, and each of them, were acting on their own behalf,
5 in concert with each other, and concurrently as the agents, servants, or employees of the
6 remaining respondents and defendants, and of each other, in committing the acts alleged and
7 were acting within the course and scope of their authority as such agents, servants or employees.

8 JURISDICTION AND VENUE

9 16. Jurisdiction of this Court is invoked pursuant to Code of Civil Procedure section
10 1085. This complaint's request for injunctive relief is authorized by Code of Civil Procedure
11 section 526 and the request for declaratory relief by Code of Civil Procedure section 1060.
12 Venue in the County of Placer is appropriate, as it is the residence of all defendants.

13 STATEMENT OF FACTS

14 (Gravel Operation)

15 17. Chevreux commenced an in-stream sand and gravel dredging and processing
16 operation (Gravel Operation) in the Bear River near Lake Combie in or about 1947.

17 (Quarry Operation)

18 18. In 1965, an Edward Pruss (Pruss) applied for and obtained conditional use permit
19 (CUP) LD-1030 to commence a surface mining and processing operation on APNs 72-020-01
20 and 72-030-01 (the Quarry). (Attached hereto as Exhibit 1 is LD-1030, incorporated herein by
21 reference.) The County's records for LD-1030, including the minutes of the public hearing by
22 the Zoning Administrator, give no indication that surface mining activities had occurred at the
23 Quarry prior to the issuance of LD-1030.

24 19. LD-1030 was subject to six conditions of approval with which Pruss was required to
25 comply. These conditions included restrictions on blasting, water quality control requirements
26 and dust mitigation requirements. In addition, LD-1030 was approved on the understanding that
27 the number of trucks leaving and entering the site would not exceed 20 per day. (Attached hereto
28 as Exhibit 2 are the Minutes from the 1965 hearing, incorporated herein by reference.)

8 (Asphalt Operation)

23. In 1972, Chevreux obtained a different CUP (LDA-786) to authorize the permanent relocation of the Asphalt Plant from the Gravel Operation to a canyon area located on APN 72-030-01 (a separate parcel), a point approximately 600 feet away. (Attached hereto as Exhibit 3 is LDA-786, incorporated herein by reference.) By its express terms, LDA-786 allowed only one asphalt plant to be operational at any given time; i.e., the new permit was for relocation of the previously permitted plant, not for a new plant.

21 24. In 1988, Chevreaux sought a permit (CUP 1199) to operate a portable concrete batch
22 plant (the Concrete Plant) at the Gravel Operation but withdrew the application in early 1989 in
23 the face of opposition from local residents and demands that an environmental impact report
24 (EIR) be prepared for the project.

25 25. In 1993, Chevreux reapplied for a permit to operate a portable concrete batch plant.
26 Again there was significant opposition from Meadow Vista residents. County staff made several
27 requests to Chevreux for additional information, ultimately determining that an EIR was
28 required. In early 1994, Chevreux filed an appeal objecting to the EIR requirement.

27. At the time Cheveraux received its CUP for the Asphalt Plant, the Placer County Code provided that a conditional use permit must be implemented within two years of its issuance or it expires and becomes void. Upon information and belief, Cheveraux never properly implemented LDA-786 within the first two years of its issuance.

28. The current Placer County Code (which became effective in 1995) also provides that a conditionally permitted use which is discontinued for more than 12 consecutive months causes the permit to lapse. (Placer County Code 17.58.160 B.2.b. and B.3.) The use may not resume until a new CUP is obtained and the applicant complies with all conditions.

29. On information and belief, no asphalt plant was operated from 1976 through 2001 or from 2002 through the present. Furthermore, aerial photographs of the site from 1998 and 1999 confirm that no asphalt plant was present or operative during those years. (Attached hereto as Exhibit 5 are aerial photographs, incorporated herein by reference.)

30. In October 2004, Chevreux applied to the Air Pollution Control District (APCD) for an Authority to Construct/Temporary Permit to Operate an asphalt plant. Chevreux's operation was to generate approximately 40,000 tons of asphalt per quarter. The APCD granted this application and issued the requested permit.

31. In January of 2005, Teichert Aggregates (Teichert) also applied for an asphalt plant permit from the APCD for the Chevreux site, pursuant to a contract with CalTrans to repair a nearby section of Interstate 80. The Teichert operation was to manufacture approximately

1 213,000 tons of asphalt per quarter and would involve continuous trucking into and out of the
2 plant between the hours of 7:00 p.m. and 5:00 a.m.

3 32. Due to the detrimental noise, health and environmental effects of such a massive
4 operation, the Meadow Vista area residents raised objections to the operation of the Teichert
5 asphalt plant. In the face of local opposition and due to the questionable validity of LDA-786,
6 Teichert eventually abandoned its intent to use the Chevreaux site, deciding instead to import
7 asphalt for the project from elsewhere in California. Teichert withdrew its APCD application in
8 April 2005, so a permit was never issued.

9 33. Chevreaux's 2004 APCD permit was scheduled to expire in June 2005, but
10 Chevreaux requested, and was granted, a one-year extension until June 30, 2006.

11 34. Nevertheless, in April 2006, Chevreaux applied for, and received, another APCD
12 permit to operate a portable Asphalt Plant. Currently, Chevreaux is amassing the equipment
13 necessary to begin operation of the plant and could begin producing asphalt in a matter of days.

14 35. The 2004, 2005, and 2006 Chevreaux and Teichert applications all designate the
15 Asphalt Plant as a "new" plant to be relocated more than 1,000 feet from the original site
16 permitted by LDA-786. (Attached hereto as Exhibit 6 are the maps attached to the three APCD
17 applications, incorporated herein by reference.) The new site is 1,000 feet closer to nearby
18 homes and schools in Meadow Vista. Chevreaux does not have, and has not applied for, a CUP
19 to move the Asphalt Plant to this new location.

20 36. The Meadow Vista Municipal Advisory Council (MAC) sent a letter to the Board on
21 April 12, 2005 formally requesting the Board to direct the Planning Department to "initiate
22 public hearings to determine the validity and scope of Chevreaux's permit LDA-[786]."
23 However, the Board issued no such directive, or at least no such hearing was ever held by the
24 Planning Department.

25 37. Members of MVP and residents of Meadow Vista have repeatedly requested that the
26 Planning Department evaluate Chevreaux's entitlements to the Asphalt Plant and the Quarry and
27 enforce the permit conditions and Placer County Code provisions of which Chevreaux is in
28 violation. Legal counsel for MVP sent a comprehensive report and request for action to the

1 County in September 2005. However, the County has taken no action to investigate Chevreaux's
2 use permits or enforce the conditions of those permits. To the contrary, at a MAC meeting on
3 June 1, 2006, Michael Johnson, the current Placer County Planning Director, stated
4 unequivocally, "[LDA-786] will never lapse."

5 FIRST CAUSE OF ACTION

6 (Mandate – Quarry Operation)

7 38. Petitioner and plaintiff hereby incorporates by reference the allegations of
8 paragraphs 1 through 37 as though fully set forth herein.

9 39. Respondent and defendant Planning Department is the agency responsible for
10 approving development projects within the County and for enforcing the zoning provisions of the
11 Placer County Code against violators.

12 40. Despite requests from MVP, the Planning Department has failed or refused to take
13 any action to investigate or to enforce Chevreaux's compliance with the conditions of LD-1030
14 or its adherence to the boundaries imposed by LD-1030. Such refusal to act is a violation of the
15 duties of respondent and defendant Planning Department as defined in Placer County Code
16 17.60.020.

17 41. Review of administrative refusals to act under Code of Civil Procedure section 1085
18 extends to refusals to perform a duty resulting from an office, trust or station. The Planning
19 Department has refused to perform the duties attendant to its office, as the representative and
20 agent of the residents of the County of Placer.

21 WHEREFORE, petitioner and plaintiff prays for judgment against respondents and
22 defendants as hereinafter set forth.

23 SECOND CAUSE OF ACTION

24 (Declaratory Relief – Quarry Operation)

25 42. Petitioner and plaintiff hereby incorporates by reference the allegations of
26 paragraphs 1 through 41 and paragraphs 46 through 63 as though fully set forth herein.

27 43. An actual controversy has arisen and now exists between MVP and defendant
28 Chevreaux regarding Chevreaux's Quarry operation. Petitioner and plaintiff MVP contends that

1 defendant Chevreux is surface mining outside the boundaries approved by its conditional use
2 permit LD-1030. In addition, petitioner and plaintiff contends that the current output of the
3 Quarry operation exceeds that allowed by LD-1030, based on representations made by Pruss at
4 the hearing on the CUP. Petitioner and plaintiff also contends that Chevreux is not in
5 compliance with the conditions of LD-1030 regarding blasting, water quality control and dust
6 mitigation at the site. Defendant Chevreux maintains that its current operations and output at
7 the Quarry are completely compliant with the terms and conditions of LD-1030.

8 44. No adequate remedy, except as set forth in the Prayer herein, exists by which the
9 rights of the parties heretofore may be determined.

10 45. Petitioner and plaintiff therefore prays for a judicial determination of its rights and
11 Chevreux's duties in connection with the operations listed herein.

12 WHEREFORE, petitioner and plaintiff prays for judgment against defendant Chevreux
13 as hereinafter set forth.

14 THIRD CAUSE OF ACTION

15 (Declaratory Relief – Asphalt Operation)

16 46. Petitioner and plaintiff hereby incorporates by reference the allegations of
17 paragraphs 1 through 45 and paragraphs 50 through 63 as though fully set forth herein.

18 47. An actual controversy has arisen and now exists between MVP and defendant
19 Chevreux regarding Chevreux's Asphalt Plant operation. Petitioner and plaintiff MVP
20 contends that defendant Chevreux's permit LDA-786 has lapsed due to long periods of nonuse.
21 Alternatively, MVP contends that the relocation of the plant 1,000 feet from the originally
22 permitted site is a material deviation requiring Chevreux to apply for a new CUP. Defendant
23 Chevreux maintains that its rights to the Asphalt Plant are vested and the new plant site is
24 within the parameters of LDA-786.

25 48. No adequate remedy, except as set forth in the Prayer herein, exists by which the
26 rights of the parties heretofore may be determined.

27 49. Petitioner and plaintiff therefore prays for a judicial determination of its rights and
28 Chevreux's duties in connection with the operations listed herein.

1 WHEREFORE, petitioner and plaintiff prays for judgment against defendant Chevreux
2 as hereinafter set forth.

3 FOURTH CAUSE OF ACTION

4 (Injunction)

5 50. Petitioner and plaintiff hereby incorporates by reference the allegations of
6 paragraphs 1 through 49 and paragraphs 53 through 63 as though fully set forth herein.

7 51. The actions of defendant Chevreux in mining outside the boundaries permitted by
8 LD-1030, in failing to abide by the conditions imposed by LD-1030, and in operating an asphalt
9 plant in violation of LDA-786 will cause and have caused irreparable injury and harm to MVP
10 members and other Meadow Vista residents. With its recently obtained APCD permit,
11 Chevreux has been amassing equipment necessary to begin production of asphalt and could
12 begin producing asphalt at any time. Petitioner and plaintiff therefore seeks temporary,
13 preliminary and permanent injunctive relief enjoining defendant Chevreux from further
14 violating its conditional use permits and their conditions and from operating an asphalt plant at
15 any site on its property.

16 52. No adequate remedy, except as set forth in the Prayer herein, exists by which the
17 rights of the parties heretofore may be determined.

18 WHEREFORE, petitioner and plaintiff prays for judgment against defendant Chevreux
19 as hereinafter set forth.

20 FIFTH CAUSE OF ACTION

21 (Public Nuisance)

22 53. Petitioner and plaintiff hereby incorporates by reference the allegations of
23 paragraphs 1 through 52 and paragraphs 57 through 63 as though fully set forth herein.

24 54. Defendant Chevreux's blasting activities at the Quarry cause excessive noise and
25 ground vibrations on and near the property of nearby residents, including members of MVP.
26 Chevreux's failure to mitigate dust from its Quarry and Concrete Plant excessively
27 compromises the air quality in and around Meadow Vista. The combined operations cause
28 hundreds of truckloads to leave and enter the site every day at all hours, resulting in traffic

1 congestion and speeding in this rural community, excessive wear and tear on local taxpayer-
2 maintained roads, air brake and engine noise, dust pollution, significant air pollution from diesel
3 fuel, and littering of garbage on private property by Chevreaux's truck drivers. In so doing,
4 defendant Chevreaux has interfered with the comfortable enjoyment and use of MVP members'
5 property.

6 55. Moreover, by operating outside the scope of its use permits, Chevreaux's operations
7 constitute a continuing nuisance that is a separate offense every day.

8 56. This interference with the property rights of MVP members is ongoing and
9 continuous in nature and affects the entire Meadow Vista community of property owners. As
10 such, these activities constitute a public nuisance. The public nuisance nevertheless is uniquely
11 injurious to each individual member of MVP.

12 WHEREFORE, petitioner and plaintiff prays for judgment against defendant Chevreaux
13 as hereinafter set forth.

14 SIXTH CAUSE OF ACTION

15 (Private Nuisance)

16 57. Petitioner and plaintiff hereby incorporates by reference the allegations of
17 paragraphs 1 through 56 and paragraphs 60 through 63 as though fully set forth herein.

18 58. Defendant Chevreaux's blasting activities at the Quarry cause excessive noise and
19 ground vibrations on and near the property of nearby residents, including members of MVP.
20 Chevreaux's failure to mitigate dust from its Quarry and Concrete Plant excessively
21 compromises the air quality in and around Meadow Vista. The combined operations cause
22 hundreds of truckloads to leave and enter the site every day at all hours, resulting in traffic
23 congestion and speeding in this rural community, excessive wear and tear on local taxpayer-
24 maintained roads, air brake and engine noise, dust pollution, significant air pollution from diesel
25 fuel, and littering of garbage on private property by Chevreaux's truck drivers. In so doing,
26 defendant Chevreaux has interfered with the comfortable enjoyment and use of MVP members'
27 property.
28

WHEREFORE, petitioner and plaintiff prays for judgment against defendant Chevreux
as hereinafter set forth.

SEVENTH CAUSE OF ACTION

(Trespass)

60. Petitioner and plaintiff hereby incorporates by reference the allegations of Paragraphs 1 through 59 as though fully set forth herein.

61. Defendant Chevreux owes a duty to plaintiff and petitioner MVP's members to refrain from unlawfully interfering with their rights of possession, access and use of their property.

62. Chevreaux's failure to mitigate dust from its Quarry and Concrete Plant has caused dust and silt to encroach and settle on MVP members' property. Furthermore, the littering of garbage on private property by Chevreaux's truck drivers is also an encroachment onto the private property of MVP members.

63. This conduct by defendant Chevreux constitutes trespass and an unlawful interference with MVP members' possession, access and use of their property and has proximately caused injury to said property as alleged herein, including but not limited to diminution in value.

WHEREFORE, petitioner and plaintiff prays for judgment against defendant Chevreux as hereinafter set forth.

PRAYER

WHEREFORE, petitioner and plaintiff prays for judgment against respondents and defendants as follows:

1. as to the First Cause of Action (Mandate – Quarry Operation),
 - a. that a peremptory writ of mandate issue, under Code of Civil Procedure sections 1085 and 1087, directed to respondents and defendants County of Placer and the County of Placer Planning Department, and compelling respondents and defendants to perform the duties required by their offices, including holding a public hearing to:
 - i. evaluate Chevreaux’s entitlements under its existing conditional use permit LD-1030,
 - ii. determine whether Chevreaux is operating within the boundaries of LD-1030,
 - iii. determine whether the current volume of truck traffic from the Quarry is permitted under LD-1030,
 - iv. determine whether Chevreaux is in compliance with the blasting, water quality control and dust mitigation conditions of its conditional use permit,
 - v. sanction Chevreaux for violations of Placer County Code provisions and conditions of its permit,
 - vi. modify or revoke said use permit in accordance with the provisions of Placer County Code 17.62.170, and
 - vii. enjoin Chevreaux from further violating provisions of its use permit and/or the Placer County Code; and
 - b. that petitioner and plaintiff recover its costs in this action, including attorneys’ fees;
2. as to the Second Cause of Action (Declaratory Relief – Quarry Operation), in the alternative to issuance of a writ of mandate, for declaratory judgment that:
 - a. LD-1030 restricts surface mining to the area(s) and parcel(s) delineated in the CUP application and Chevreaux is, and has been, mining outside of those boundaries,

- b. LD-1030 limits the Quarry to generating no more than 20 truckloads per day and Chevreux consistently generates significantly more volume and traffic than 20 truckloads per day, and
 - c. LD-1030 imposes conditions on blasting, water quality control and dust mitigation and Chevreux is not in compliance with these conditions;
 3. as to the Third Cause of Action (Declaratory Relief – Asphalt Operation), for declaratory judgment that:
 - a. LDA -786 was never implemented after issuance as required by the Placer County Code and is therefore void or, in the alternative,
 - b. LDA-786 has lapsed due to nonuse and pursuant to the provisions of Placer County Code,
 - c. Chevreux does not have any right under LDA-786 to operate an asphalt plant at the site, and
 - d. No asphalt plant shall be permitted to operate at the site at any time in the future unless a new CUP application is filed and a new hearing held;
 4. as to the Fourth Cause of Action (Injunction), for temporary, preliminary and permanent injunctive relief enjoining defendant Chevreux from:
 - a. surface mining outside the boundaries of LD-1030 and violating conditions attendant to that permit, and
 - b. constructing, maintaining or otherwise operating an asphalt plant at any site on the property;
 5. as to the Fifth Cause of Action (Public Nuisance) and the Sixth Cause of Action (Private Nuisance), for an award of damages to be proven at trial against defendant Chevreux Aggregates, Inc., according to proof; additionally, petitioner and plaintiff seeks abatement of any continued nuisance;
 6. as to the Seventh Cause of Action (Trespass), for injunctive relief and damages against defendant Chevreux;

THE ZUMBRUN LAW FIRM
A Professional Corporation
3800 Watt Avenue, Suite 101
Sacramento, CA 95821

1 7. for costs and expenses of suit, including those authorized by Code of Civil
2 Procedure section 1021.5, including expert witness fees and reasonable attorneys' fees; and for
3 such other and further relief as the Court deems just and proper.

4 DATED: July 11, 2006.

5 Respectfully submitted,

6 RONALD A. ZUMBRUN
7 TIMOTHY V. KASSOUNI
8 ANGELA C. THOMPSON
9 THE ZUMBRUN LAW FIRM

10 By Angela C. Thompson
11 ANGELA C. THOMPSON
12 Attorneys for Petitioner and Plaintiff

VERIFICATION

I, Jeff Evans, declare that I am the President of Meadow Vista Protection, plaintiff and petitioner in the above-entitled action. I have read the foregoing Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief, Public Nuisance, Private Nuisance and Trespass and know its contents. The matters stated therein in support of the First Cause of Action (Writ of Mandate) are true of my own knowledge and belief except as to those matters stated on information and belief, and as to those matters, I believe them to be true. If called upon to do so, I could competently testify to all matters stated herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed this 10th day of July, 2006, at Sacramento, California.


JEFF EVANS

Meadow Vista Protection v. Chevreux Aggregates, Inc.

Exhibits to Petition for Writ of Mandate and Complaint
for Declaratory and Injunctive Relief,
Public Nuisance, Private Nuisance, and Trespass

- Exhibit 1 LD-1030
- Exhibit 2 Minutes from the 1965 hearing
- Exhibit 3 LDA-786
- Exhibit 4 CUP 1772
- Exhibit 5 aerial photographs
- Exhibit 6 maps attached to the three APCD applications

EXHIBIT 1

PLACER COUNTY PLANNING DEPARTMENT
219 Maple St., Auburn - Tel. 885-5149

NOTICE - ALL APPLICANTS
Land Development Permit is:
- Subject to designated conditions
- Granted for specific purpose

Permit No. 1224 (11)
Date Filed April 8, 1965
Hearing Date April 22, 1965

SPECIAL PERMIT FOR LAND DEVELOPMENT

Full Name of Applicant Edward P. Barber Telephone 878-1159
Address of Applicant P.O. Box 117 Town Meadow Vista
Name of Property Owner Edward & Barbara G. Barber
Address of Property Owner P.O. Box 117 Town Meadow Vista
Property Zoned FB-43 Acreage 140
Proposed Development (Describe fully) Quarry for spot
rock crushing, screening & washing plant
for grading materials, etc.

Method of Sewage Disposal Dry Hole
Assessor's Parcel No. 72-030-014-02-030-030 General Location of Property: SW
West Half of the NW Quarter of Section 31 T 14 N - R 9 E M D B 7 M
West Half of the SW Quarter of Section 30 T 14 N - R 9 E M D B 7 M
Located North of County Dump in Meadow Vista

PLEASE SUBMIT WELL-DETAILED PLOT PLAN

\$25.00 Filing Fee

7316
Received by Don Miller
Placer County Planning Department

Edward P. Barber
Signature of Applicant
Drivers License No. B651999

Date of Meeting April 22, 1965

☒ Approved ☐ Denied

Summary: Conditions of approval: 1) Meet requirements of Public Works
Department. 2) Driveway be cleared for visibility. 3) All blasting be
done in such a manner as not to be injurious to neighboring property.
4) Adequate control of dust. 5) All screening and washing operations
subject to State Agencies having jurisdiction. 6) Provision be made for
return of soil cover to allow re-growth of vegetation or show some future
design solution.

Date: April 23, 1965

PLACER COUNTY PLANNING COMMISSION
JUSTIN F. BARBER, JR., Planning Director

Richard M. Heikka
RICHARD M. HEIKKA, Zoning Administrator

I have read the above conditions and will comply.

(Please return 1 signed copy)

Edward P. Barber
Signature of Applicant

cc: Applicant

20-1030

4-6-1965
Meadow Vista

Placer Co. Planning Dept.
Regrard Land Development Permit

I Edward Pruss desire to open
a shot rock quarry for the purpose of
grading & selling materials from same.
located in sections 31 & 30 T14N-R9E

The operation will consist of crushing
and screening plant for grading etc.
Blasting will be required to loosen
material. The blasting will be controlled
thru the use of delay type electric
caps so as to cause the least noise
and ground shock. It is est. there will
be less than six shots a year.

An estimated 40 million ^{cu yds} of rock
will be involved. This operation will
be year round.

There is no home within a 1/4 mile
of this property at the present time. None
are intended that I know of at this
time.

Materials to be produced will be
road base and sized rock all material
will be crushed.

Edward Pruss
P.O. Box 117
Meadow Vista, Calif. 94553

EXHIBIT 2

Heikka then advised, for the record, that this action can be appealed within five (5) working days from this date. An appeal should be filed with the Clerk of the Planning Commission whose office is located in the Placer County Planning Department, 219 Maple Street, Auburn, Calif. Mr. Melee requested a written statement of Mr. Heikka's opinion and was advised that a written copy would be forwarded to him.

LAND DEVELOPMENT PERMIT - Edward Pruss - Meadow Vista area - Southern shot rock. A crushing, screening, and washing plant for grading materials, etc. 140 acres; located north of County Dump in Meadow Vista; AR# 72-020-01 and 72-030-01; on Road and S. P.

Mr. Edward Pruss was present.

Mr. Heikka reviewed the file and noted that written notice was sent to the County Departments, the Meadow Vista Property Owners Assn., Meadow Vista Planning Committee, State Division of Fish and Game, Meadow Vista Fire Department, State Division of Industrial Safety, and 8 surrounding property owners. Affidavit of Posting filed.

Mr. Heikka stated that Mr. Pruss was the present owner of part of the property and has use or control of use of property to the north. Recommendations of the Department of Public Works are as follows: 1) Commercial type access, drainage and adequate off street parking; 2) Post \$5000 maintenance bond for the Dump Road in favor of the Department of Public Works.

Mr. Hodel, of the Public Works Department, asked Mr. Pruss if intended to use the County Road for access to his property? Mr. Pruss replied yes he did and asked why the Public Works Department required the posting of a bond.

Mr. Hodel advised that a commercial type access was needed because this was a commercial development as proposed. The road was originally constructed as a single layer on native material and the Department did not feel that it would withstand the heavy loads of a quarry operation.

Mr. Pruss requested a copy of this requirement and was advised that if his application was granted the requirements would be shown.

Mr. Heikka asked for a brief description, for the record, of the proposed development.

Mr. Pruss stated that the entire rock crusher set up would be a stationary one. He would be using the particular road to the County Dump known as Combie Road. He said that there will be a shooting process. For the first year about three (3) to six (6) shots put off and in the future there will normally be one (1) shot a year put off. Everything will be electrically operated except the loader and power equipment. As far as he knows there is nobody living in the area and he could not see that it would be detrimental in regard to dust or noise or anything else caused by this operation.

Mr. Heikka asked for any opposition to this application and noted that there was none.

Mr. Heikka then asked about the over-burden on the site and if there would be a peeling off to get to the rock.

Mr. Pruss replied that there is no over-burden confronting their the operation for the next 12 to 14 years.

Mr. Heikka asked if there would be any problems in regard to denuding of vegetation. Mr. Pruss replied that there is only a grove of trees on the site and that will be removed as the operation goes along.

Mr. Heikka said that what he was trying to arrive at was the extent of excavation.

Mr. Pruss answered that the extent of excavation contemplated for the next 20 years or so would be on the southern 100 feet and that is higher than that. He said that they will be taking all of that down and leaving one area, on the eastern slope, a 100 foot cut. All the rest for the present time will be an open day-light situation.

Mr. Heikka commented that he would have a situation where he would be working right into the hill, so to speak. Mr. Pruss replied that this is correct.

Mr. Heikka asked what would be the estimated number of trips per day for trucking into and out of the facility.

Mr. Pruss stated that this was pretty hard to answer. The operation would be starting out slow. Actually, this business never really stabilizes. They take the material out as it is used and there will be times when this will be accelerated for a few days then drop back to normal. He added that he did not expect more than 20 truck loads per day.

Mr. Heikka asked if this would be an operation on the basis of sales from the site or would it be a situation where the operator of the quarry would control hauling.

Mr. Pruss replied that this would be sales from the premises basis.

In reply to Mr. Heikka's query of anticipated time to begin operations Mr. Pruss stated it would be 60 days.

Mr. Heikka advised that a land development permit must be exercised within one (1) year from the date granted. Regarding stream pollution from the washing and screening operation will this meet the requirements of the Department of Fish and Game?

Mr. Pruss replied that he had contacted the Department of Fish and Game and he planned to use settling ponds. Possibly two (2) or three (3) will be needed.

Mr. Heikka asked Mr. Pruss if he anticipated any problems from the blasting and Mr. Pruss said that he did not expect any but that he will be insured for this.

Mr. Heikka asked if there would possibly be a limited number of shots per year. Mr. Pruss said that that is correct. He added that further back the shots will be larger. The first shots will be smaller, just enough to produce a workable area. The back shots will be large enough to produce the most haulage. The effects are the same but the shots bring more haulage.

Mr. Heikka commented that the development shows only one point of access and asked if it were anticipated a need for any others in the future? Mr. Pruss felt that there would be no need for more in the future, that the access was quite sufficient to serve the use.

Mr. Heikka asked about the placement of the equipment on the property and the placement of the crushing plant. Mr. Pruss indicated that it would be towards the north end of the south parcel of the property involved. As far as taking the material out at the time the operation starts at one end it will move on around the hill with the stationary washing operation approximately in the middle of the southern 52 acres.

Mr. Joe Chevreux stated that he had no objections to this proposed land development permit but that he was concerned about establishing this use in RF zoning. As he understood it this particular zoning permitted recreation, farming and single family dwellings and he did not think that a quarrying operation is compatible with single family dwellings. He said that he did not question the quarry as being the highest and best use of this property but he felt that there had been an oversight in allowing single family dwellings in an area where quarrying operations can be conducted. He said that he felt that the single family requirement in this zone should be eliminated or else this particular parcel should be rezoned.

Mr. Chevreux didn't think that there were any objections to zoning in this area but as growth continues in the Meadow Vista area there will be people building in and around this quarrying operation and then

See page 2 of 2

LD-103c

there will be trouble. As there is nobody out in that area now to speak of there are no objections but some thought ought to be given to other possible rezoning of this area.

Mr. Heikka stated that Mr. Chevreux's comments were well taken and advised that the County anticipates, in the near future, working with the Meadow Vista Group for a Master Plan in that area. It would be well to relate to any study that there could be a real potential conflict under what the ordinance now established as the RF District. It is something the County should well take under consideration. Mr. Chevreux asked if this proposed development might ask for a reclassification of zoning and Mr. Heikka replied that the opportunity does exist for rezoning but that it would have been a longer procedure for Mr. Pruss.

Mr. Chevreux asked what if a single family residential house was built within 100 feet of the property developed as a quarry? A quarrying operation would run these people right out of their houses. People are going to be very concerned about that because in the old days the ordinance protected the residences. Now residential developments are encroaching around the gentlemen in the industrial business. You could have home owners come in and ask for a different use of the land. Mr. Chevreux queried what would happen with the sale of the land and Mr. Heikka replied that the use would continue, as the permit runs with the land not the individual.

Mr. Chevreux asked if the use permit is a permanent thing. Mr. Heikka advised that it can be or it can be temporary. Mr. Chevreux asked when the new zoning comes up and Mr. Heikka advised that it is anticipated that a Master Plan will probably be starting this summer at the staff level.

Mr. Mike Mapa stated that his immediate concern would be how the blasting and noise from the work would affect the future development of his 20 acre parcel.

Mr. Heikka asked where Mr. Mapa's property was in relation to all the applicants and was advised that it was approximately 1/2 mile south east.

Mr. Pruss stated that the blasting will be with electric caps and will have a minimum affect. The 600' type shot gives the least amount of noise and ground vibration.

Mr. Heikka closed the hearing and took action to grant the application subject to the following conditions:

- 1) Meet requirements of Public Works Department for the development.
- 2) Driveway be cleared for visibility.
- 3) All blasting be done in such a manner as not to be injurious to neighboring property.
- 4) Adequate control of dust.
- 5) All screening and washing operations subject to State Agencies.
- 6) Provision be made for return of soil cover to all re-growth of vegetation or show some future plan whereby area be utilized for recreation use of some nature.

There being no further business the hearing was adjourned to the next regular hearing, on May 13, 1965.

RICHARD M. HEIKKA,
PLACER COUNTY ZONING ADMINISTRATOR

EXHIBIT 3

PURSUANT TO POL. OF BOARD OF SUPERVISORS, PLANNING DEPARTMENT
CANNOT ACCEPT APPLICATIONS ON TAX DELINQUENT PROPERTY

PLACER COUNTY PLANNING DEPARTMENT
County Administrative Center, Auburn
Telephone: 885-7711, Ext. 221

NOTICE - ALL APPLICANTS

Conditional Use Permit is:

- Subject to designated conditions
- Granted for specific purpose
- Granted for limited time (see reverse)

Permit No. LD1-786
Date Filed May 1, 1972
Hearing Date 5-25-72
Hearing Jurisdiction 279

CONDITIONAL USE PERMIT

Full Name of Applicant Joe Chevreaux Telephone 885-3716
Address of Applicant 890 Grass Valley Highway Town Auburn, Cal.
Zip Code 95603
Name of Property Owner Joe Chevreaux Telephone 885-3716
Address of Property Owner 890 Grass Valley Highway Town Auburn, Cal.
Zip Code 95603
Property Zoned RP Acreage Approx. 14.0
Proposed Development (Describe fully) Asphalt Concrete Plant

Method of Sewage Disposal Portable toilets
Assessor's Parcel No. 72-030-01 & 72-020-01 (S3-12)
General Location of Property present Chevreaux Gravel Plant & Quarry Plant and Placer County Dump, Meadow Vista, Cal.

PLEASE SUBMIT WELL-DETAILED PLOT PLAN
(See Reverse)

\$25.00 Filing Fee

Receipt No. 35667

Received by: [Signature]

Placer County Planning Department

Date of Action 5-25-72

[Signature]
Signature of Applicant

XXXXX Approved _____ Denied _____

Summary:

SUBJECT TO ATTACHED CONDITIONS.

JUNE 5, 1972 THOMAS D. MCMAHAN, ZONING ADMINISTRATOR, PLACER CO.
(FOR USE AFTER PUBLIC HEARING)

I have read the above conditions and will comply.

(Please return 1 signed copy)

Signature of Applicant _____

Permits granted for an indefinite period automatically expire one (1) year after the date of issuance if not exercised by that time.
See Subchapter 30, Section 1208(2) Placer County Code, 1967.

LDA-786, CONDITIONAL USE PERMIT, JOE CHEVREUX

Conditions of approval as recommended by the Development Review Committee and as amended at the Zoning Administrator hearing on May 25, 1972.

1. This is to be a permanent location for an asphalt batch plant.
 2. Provide adequate emission control to meet requirements of the Air Pollution Control District (APCD).
 - A) Emissions not to exceed 0.3 GM/FT^3 or Ringelmann smoke density laws of county APCD and State Health and Safety Codes.
 3. All equipment that sends emissions into the atmosphere must register with the APCD.
 4. Submit plans of proposed plant, showing in detail all emission control equipment and its expected efficiency. Plans to be approved by APCD prior to operation.
 5. There shall be no direct discharge of wash water, scrubber water or other water from the proposed operation to the Bear River or its tributaries.
 6. Excavation for aggregate shall not cause an increase in the turbidity of the Bear River.
 7. Apply to the State Water Quality Control Board, Central Valley Region, for discharge requirements, should there be any.
 8. Confine all hauling operations to the following roads:
 - A) Combie Road
 - B) Placer Hills Road
 9. Applicant to cooperate in maintaining the surface of the hauling route during the period of hauling on Combie Road only and shall periodically repair damage caused to roads by hauling.
- NOTE: Placer Hills Road is designed and constructed for the appropriate traffic index to accommodate this type of hauling operation; however, Combie Road is not.
10. Dike shall be constructed around the liquid asphalt storage tank to the satisfaction of the Department of Public Works.
 11. Water and sewerage to comply with County Health Department requirements.
- ADDITIONAL: There will be only one plant in operation. If the plant granted under LDA-691 is reopened, the second plant will be closed.

ADVISORY COMMENT:

The Department of Public Works recognizes that it would be desirable to widen the shoulder on Combie Road at certain locations because of the pedestrian and equestrian traffic, with the increased hauling, and especially the intensive hauling of asphalt material which will occur during the next two or three years because of construction on Interstate 80. Request concurrence in writing by the applicant and the county and the applicant work together in an attempt to resolve this condition, thus making it safer for the pedestrian and equestrian traffic.

EXHIBIT 4



PLACER COUNTY PLANNING DEPARTMENT

11414 "B" Avenue, Auburn, CA 95603

JUL 7 1994

ENVIRONMENTAL HEALTH

**SUPPLEMENTAL ENTITLEMENT DETAIL
CONDITIONAL USE PERMIT**

Required maps: (see instructions) Required applications: 4 Filing fee: \$ 1880.00
File # CUP- 1772 Hearing Date 6-28-94 Receipt # 13660

TO BE COMPLETED BY THE APPLICANT

1. Project Name Concrete Batch Plant
2. Applicant Joe Chevreux
3. Project Description Add a portable concrete batch plant to the existing gravel and quarry operation in Meadow Vista. Plant will operate as set forth in EIAQ-3059, dated February 1, 1994.

PLEASE SUBMIT WELL DETAILED PLOT PLAN (see instructions for requirements)

4. Applicable County Code section requiring C.U.P. Zoning Ordinance Section 1636.2

Signature of Applicant

BASIS FOR GRANTING CONDITIONAL USE PERMITS

Conditional Use Permits can be approved by the County if certain findings are made. Sections 1201 of the Placer County Code, Chapter 30, states that Conditional Use Permits can be approved if it is found that the proposed project will not be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood of such use, or be detrimental or injurious to the area or to the general welfare of the County.

DATE OF HEARING BODY'S ACTION: June 23, 1994

Approved X Denied _____ Summary/Conditions of approval: The Planning commission approved this project subject to the attached list of 21 conditions and modified findings as follows:

1. That the use proposed herein constitutes an appropriate additional or accessory use to the currently pre-existing use; and
2. That this CUP will likely result in fewer trip ends by transporting trucks on Hwy 49 and Placer Hills Road; and (see attached)

PERMITS GRANTED FOR AN INDEFINITE PERIOD AUTOMATICALLY EXPIRE ONE YEAR AFTER DATE OF ISSUANCE IF NOT EXERCISED BY THAT TIME. (See Subchapter 30, Subsection 1208(a)(1) of the Placer County Code.)

FOR USE AFTER PUBLIC HEARING

I have read the above/attached conditions and will comply

****PLEASE RETURN ONE SIGNED COPY****

Signature of Applicant

PAGE TWO OF TWO

CONDITIONAL USE PERMIT FINDINGS - CONTINUED

3. This project will not be detrimental to the health, safety, or general welfare of those working/residing in the area.

NEGATIVE DECLARATION - FINDINGS

The Negative Declaration (EIAQ-3059) satisfies the requirements of CEQA for this project and is, therefore, approved. It has been considered and found adequate in addressing the environmental impacts and mitigations for the project prior to its approval. The project with the conditions of approval to be attached to the Conditional Use Permit, will not have a significant effect on the environment. In making this finding, the Planning Commission specifically acknowledges that the preliminary findings in the initial study have been considered and the conclusions overturned where that initial study indicated that the project may have a significant adverse impact on the environment.

CONDITIONS OF APPROVAL - CONDITIONAL USE PERMIT - JOE CHEVREAU
BATCH PLANT (CUP-1772)

THE FOLLOWING CONDITIONS SHALL BE SATISFIED BY THE APPLICANT, OR AN AUTHORIZED AGENT. THE SATISFACTORY COMPLETION OF THESE REQUIREMENTS SHALL BE DETERMINED BY THE DEVELOPMENT REVIEW COMMITTEE (DRC), COUNTY SURVEYOR, AND/OR THE PLANNING COMMISSION.

1. The project consists of adding a concrete batch plant to the existing gravel/quarry operation to allow a 2-plant (Auburn Hwy 49 site plus Meadow Vista gravel plant site) concrete delivery system owned by the same operator, and serving market areas "A" and "B", as depicted in the environmental review submittals. Concrete truck washing will be done on-site and the drainage from this activity will go to ponds provided for that purpose.

2. The following Standard Conditions #ip22 (pw7), mc12 (pw44), eh13 (eh21), and eh17 (eh26) apply to this project as printed in Volume 3, Number 1, dated May 24, 1994.

A) Provide the DPW with a letter from the appropriate fire protection district describing conditions under which service will be provided to this project. Said letter shall be provided prior to the approval of Improvement Plans, and a fire protection district representative's signature shall be provided on the plans.

B) This project is located within a "State Responsibility Area" and, as such, is subject to fire protection regulations established by the State Board of Forestry. Compliance with these regulations shall be evidenced by submittal of a letter from California Department of Forestry (CDF) to the Department of Public Works prior to Improvement Plan approval/Building Permit issuance.

C) Prior to Building Permit approval, the applicant shall submit to the Division of Environmental Health, a solid waste management plan. A plan form specifying required information can be obtained in the DEH office.

D) Construction noise emanating from any construction activities for which a Building Permit is required is prohibited on Sundays and Federal Holidays, and shall only occur:

A. Monday through Friday, 6:00 AM to 8:00 PM;

B. Saturdays, 8:00 AM to 6:00 PM

ADVISORY COMMENT: Essentially, quiet activities, which do not involve heavy equipment or machinery, may occur at other times. Work occurring within an enclosed building, such as a house under construction with the roof and siding on, can occur at other times as well.

The Planning Director is authorized to waive the time frames based on special circumstances, such as adverse weather conditions.

3. The applicant shall prepare and submit improvement plans, specifications and cost estimates (per Section II of the Land Development Manual [LDM]) to the Department of Public Works (DPW) for review and approval. The plans shall show all conditions for the project as well as pertinent topographical features both on- and off-site. All existing and proposed utilities on-site and adjacent to the project shall be shown on the plans. The applicant shall pay plan check and inspection fees. "As built" plans shall be prepared and signed by a California Registered Civil Engineer at the applicant's expense and shall be submitted to the DPW prior to acceptance by the County of site improvements.

4. All proposed grading, drainage improvements, vegetation and tree removal shall be shown on the improvement plans and all work shall conform to provisions of the County Grading Ordinance (Chapter 29, Placer County Code). All cut/fill slopes shall be 2:1 (horizontal:vertical) unless otherwise approved by DPW.

A winterization plan shall be provided with project improvement plans. Provide for erosion control where roadside drainage is off of the pavement, to the satisfaction of the DPW.

Submit to the DPW a cash deposit in the amount of 110% of an approved engineer's estimate for winterization and permanent erosion control work prior to improvement plan approval to guarantee protection against erosion and improper grading practices. Upon the completion and acceptance of improvements, any unused portions of said deposit shall be refunded to the project applicant or his agent.

If, at any time during construction, a field review by County personnel indicates a significant deviation from the proposed grading shown on the improvement plans, specifically with regard to slope heights, slope ratios, and pad elevations and configurations, the plans shall be reviewed by the DRC for a determination of substantial conformance to the approved project prior to any further work proceeding. Failure of the DRC to make a determination of substantial conformance may serve as grounds for the revocation/modification of the project approval by the appropriate hearing body.

5. (mm) Prepare and submit with the project improvement plans, a drainage report (per Section 5 of the LDM) to the DPW for review and approval. The report shall be prepared by a registered civil engineer and shall, at a minimum, include: A written text addressing existing conditions, the effects of the improvements, all appropriate calculations, a watershed map, increases in downstream flows, proposed on- and off-site improvements and drainage easements to accommodate flows from this project. The report shall address storm drainage during construction and thereafter and shall propose "best management practice" (BMP) measures to reduce erosion, water quality degradation, etc. Said BMP measures for this project shall include minimizing drainage concentration from impervious surfaces, construction management techniques, erosion protection at culvert outfall locations and other measures as required by the Central Valley Water Quality Control Board.
6. Concrete truck washing and retention ponds shall be constructed generally in accordance with the criteria described in the project EIAQ response to questions 13, 19 and 20 dated February 1, 1994. These ponds shall be designed to prevent natural inflow-outflow of stormwater runoff and to fully collect and retain concrete truck wash water. Retained fines and solids shall be removed and recycled, or disposed of, in a manner which will not impact water quality. Final pond design and location shall be subject to the approval of DPW and the Central Valley Regional Water Quality Control Board.
7. Waste water and stormwater runoff from the area surrounding the batch plant shall be routed through a retention basin in order to minimize waterborne transport of cement products. Overflow from this retention basin shall then be directed to a settling basin before discharge into any other water body. The design and location of said facility shall be subject to DPW review and approval.
8. This Use Permit authorizes the importation of cement and concrete additives to the site necessary for the production of concrete, but precludes the importation of aggregate from off-site for that purpose.
9. During peak concrete production and delivery periods, the permittee shall route delivery trucks in a manner which minimizes trips along Placer Hills Road through Meadow Vista.
10. No concrete sales to outside vendors shall occur from this plant except under emergency or hardship circumstances.
11. Provide to DPW a will serve letter from Pacific Gas and Electric Company prior to improvement plan approval, indicating their ability to provide service to this facility, and under what circumstances said service will be provided.
12. In the event access to Nevada County via Rutherford Road is restricted or prohibited by actions of that jurisdiction, all affected concrete deliveries shall originate at the Highway 49 (Auburn) batch plant.
13. Domestic water quality and quantity shall be subject to approval by the Division of Environmental Health.
14. The project shall conform to the Placer County General Plan Noise Element and the following maximum noise levels. These noise levels shall apply at the nearest residential property lines outside of the Special Purpose Zone boundary:
 - A) The concrete batch plant shall not exceed 60 dB Leg.
 - B) Mobile noise sources which operate at various locations around the plant vicinity and roadways, shall not exceed 60 dB Ldn.

JUNE, 1994

15. The project hours of operation shall be limited to 5:30 AM to 10 P.M. during the months of June 1 through October inclusive, except for rare occasions when emergency work is necessary, otherwise project hours shall be 6:00 A.M. to 10:00 P.M.
16. Sewage disposal shall be reviewed and approved by the Division of Environmental Health.
17. The discharge of cement, fuels, oils, or other petroleum products, chemicals, detergents, cleaners, or similar chemicals to the surface of the ground or to drainageways on, or adjacent to, the site is prohibited.
18. "Hazardous" or "Extremely Hazardous" materials listed in the California Code of Regulations, Title 22, Sections 66680 and 66685, shall not be allowed on any premises in quantities of 55 gallons, 500 pounds, 200 cubic feet compressed gas, or more, whichever is the lesser, without notification to the Division of Environmental Health. Submit payment of required fees and a Business Plan to the Division of Environmental Health Hazardous Materials Section, for review and approval.
19. The applicant shall insure that adequate dust controls are implemented during all phases of project construction and operation. Dust controls must be reviewed and approved by the APCD prior to groundbreaking. A booklet on Fugitive Dust is available from the APCD.
20. The project must conform to all APCD Rules and Regulations. Contact the APCD to review any rules that may apply to specific types of projects.
21. The applicant has 36 months from the date of approval of this Conditional Use Permit to exercise this Permit (Section 1208[a][i], Chapter 30 PCC). The Permit is considered exercised when the applicable conditions of approval have been met and the on-site construction of the concrete plant has been commenced.

JUNE, 1994

EXHIBIT 5



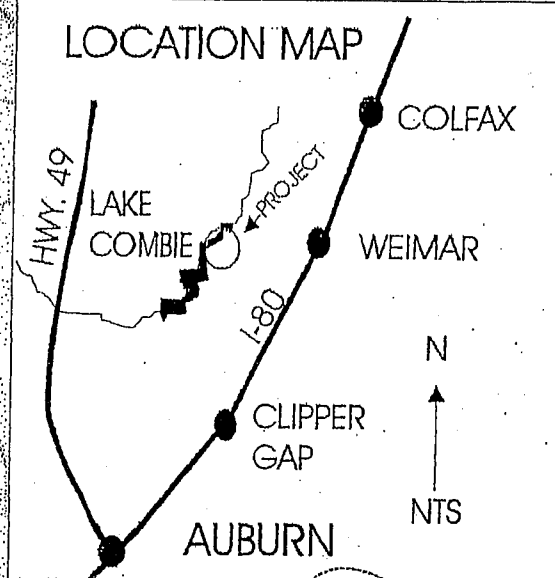
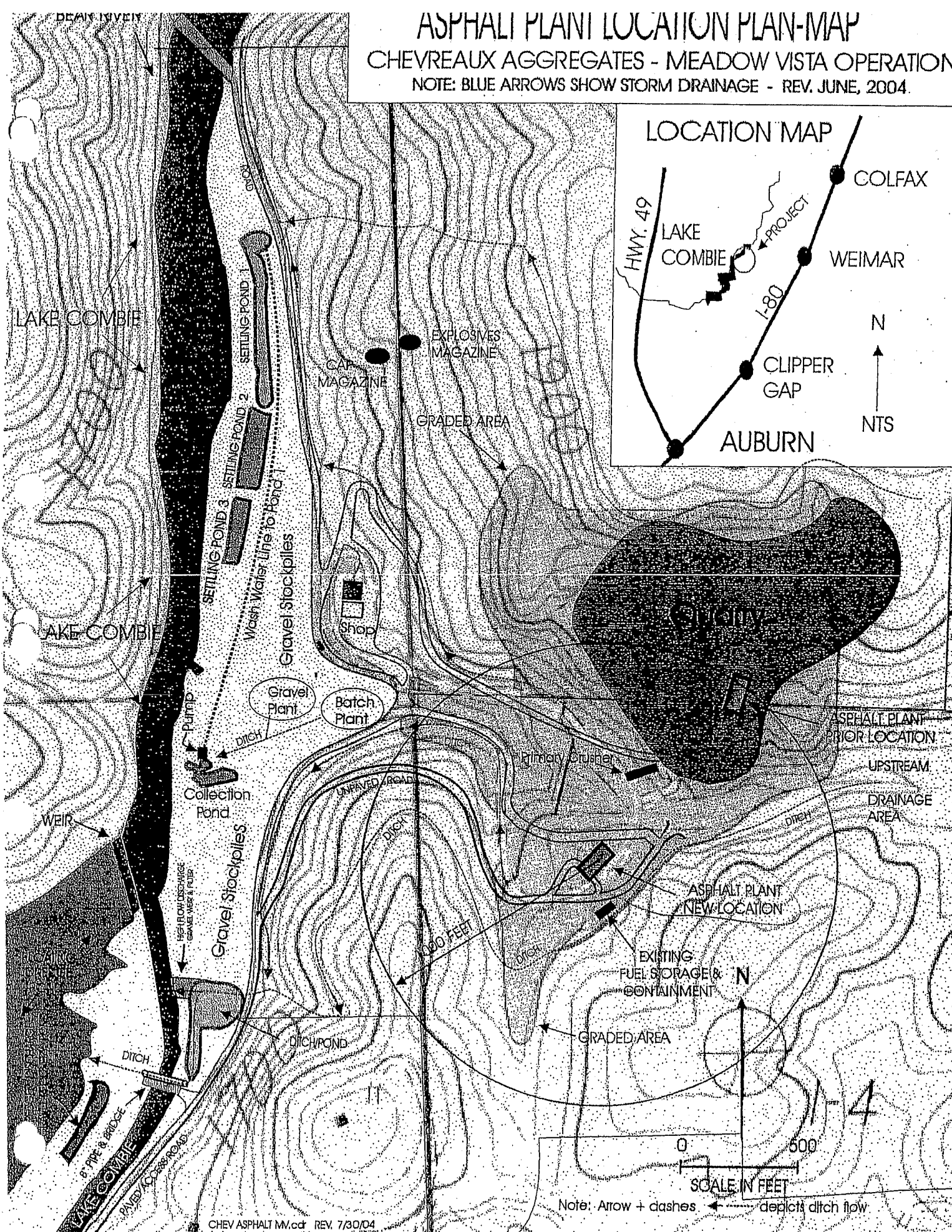


EXHIBIT 6

ASPHALT PLANT LOCATION PLAN-MAP

CHEVREAU AGGREGATES - MEADOW VISTA OPERATION

NOTE: BLUE ARROWS SHOW STORM DRAINAGE - REV. JUNE, 2004.





RIVER
GRAVEL PLANT



CONCRETE
BATCH PLANT

SHOP
FACIL
ITY

GRAVEL
OFFICE
& SCALE

WASH WATER SUPPLY LINE

SAND PLANT

ASPHALT PLANT &
SCALE

FREE
HOLDING
AGGREGATE
STORAGE
17341

OFFICE &
CONTROL

ASPHALT AND SAND PLANTS
AT CHEVREUX QUARRY IN
MEADOW VISTA

ASPH & SAND PLANTS CDR

ROCK
QUARRY

N 2138375
BR 39045

DITCH CARRIES
UPSTREAM
DRAINAGE
AROUND
WORK AREA

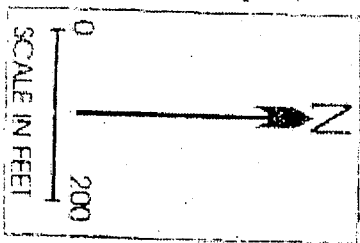


EXHIBIT 2

CALIFORNIA PROCEDURE

4th EDITION

WITKIN



control matters within the authority of municipal or county governmental boards, such as classification and selection of employees, or determination of their rates of pay. (See *Monahan v. Department of Water & Power* (1941) 48 C.A.2d 746, 750, 120 P.2d 730 [interference with charter powers of civil service commission]; *Carrier v. Robbins* (1952) 112 C.A.2d 32, 35, 245 P.2d 676; *Zetterberg v. State Dept. of Public Health* (1974) 43 C.A.3d 657, 662, 118 C.R. 100.)

(d) *Moot Case*. In *Burke v. San Francisco* (1968) 258 C.A.2d 32, 34, 65 C.R. 539, relief was sought by administrative mandamus to review a determination of a city board of equalization, and the same relief was sought by a civil action against the city for declaratory relief. The mandamus proceeding terminated adversely to plaintiffs. *Held*, the matter was moot and declaratory relief was not available.

(e) *Anticipating Adverse Party's Action Not Filed*. In the usual case of attempted circumvention of jurisdictional limitations by a suit for declaratory relief, a creditor or other claimant of a small sum files the suit for declaratory relief in the superior court despite his matured cause of action triable in the municipal court. (See *supra*, §826, and 2 *Cal. Proc.* (4th), *Jurisdiction*, §53.) In *Watson v. Sansone* (1971) 19 C.A.3d 1, 96 C.R. 387, a more extravagant theory of bypassing the proper trial court was rejected.

Plaintiff received an allegedly exorbitant doctor's bill for \$514, together with a threat from the doctor's attorney of action to collect unless it was paid. Plaintiff thereupon sued for a declaration that there was no contractual obligation and that the doctor was entitled only to the reasonable value of his services. *Held*, the superior court had no jurisdiction and the suit should be dismissed. Plaintiff was attempting to set up defenses, in the superior court, to an action triable in a different court which the doctor "may, or may never, bring against him." (19 C.A.3d 5.)

(e) Plaintiff Not Entitled to Favorable Declaration.

(1) [§831] Declaratory Judgment May Be
Rendered.

At first glance, it might seem that, if the claim of the plaintiff set forth in the complaint is untenable, he has failed to state a cause of action for any relief, ordinary or declaratory. And, as a practical matter, it seems hardly desirable to force the defendant to go to trial if the complaint discloses that the plaintiff's claim cannot prevail.

There is some merit, therefore, in the position that a demurrer should lie if the complaint shows on its face that the plaintiff is not entitled to a favorable declaration. (See *Moss v. Moss* (1942) 20 C.2d 640, 128 P.2d 526, *supra*, §830.)

The opposing theory is that to dismiss the action after sustaining a demurrer would leave the parties where they were, with no binding determination of their rights, to await an actual breach and ensuing litigation. This would defeat a fundamental purpose of declaratory relief, to remove uncertainties as to legal rights and duties before breach and without the risks and delays that it involves. In brief, the object of declaratory "relief" is not necessarily a beneficial judgment; rather, it is a determination, favorable or unfavorable, that enables the plaintiff to act with safety. This theory has prevailed, and the rule is now established that the defendant cannot, on demurrer, attack the merits of the plaintiff's claim. The complaint is sufficient if it shows an actual controversy; it need not show that plaintiff is in the right.

As the court said in *Maguire v. Hibernia Savings & Loan Soc.* (1944) 23 C.2d 719, 146 P.2d 673: "To hold that a plaintiff on the wrong side of a controversy is not entitled to the security and relief against uncertainty which a declaratory judgment affords would require us to read into the statute a limitation not there present." (23 C.2d 729.) And in *Bennett v. Hibernia Bank* (1956) 47 C.2d 540, 549, 305 P.2d 20, this position was reaffirmed: "It is the general rule that in an action for declaratory relief the complaint is sufficient if it sets forth facts showing the existence of an actual controversy relating to the legal rights and duties of the respective parties under a contract and requests that the rights and duties be adjudged. . . . If these requirements are met, the court must declare the rights of the parties whether or not the facts alleged establish that the plaintiff is entitled to a favorable declaration." (47 C.2d 549.)

Other opinions are to the same effect. (See *Columbia Pictures Corp. v. De Toth* (1945) 26 C.2d 753, 760, 161 P.2d 217; *LaHue v. Dougherty* (1949) 34 C.2d 1, 6, 206 P.2d 640; *Photochart v. Del Riccio* (1949) 94 C.A.2d 315, 319, 210 P.2d 547; *Sullivan v. San Francisco Art Assn.* (1950) 101 C.A.2d 449, 455, 225 P.2d 993 ["For that is what a declaratory relief action is about, to determine and declare the respective rights and duties of the parties, at the end, not at the beginning, of the inquiry"]; *Dudley (C.) De Velbiss Co. v. Kraitz* (1951) 101 C.A.2d 612, 615, 225 P.2d 969; *Coruccini v. Lambert* (1952) 113 C.A.2d 486, 489, 248 P.2d 457; *Salsbery v.*

Ritter (1957) 48 C.2d 1, 7, 306 P.2d 897; *Jefferson v. Torrance* (1968) 266 C.A.2d 300, 301, 72 C.R. 85, *infra*, §833; *Berkeley v. Alameda County Bd. of Supervisors* (1974) 40 C.A.3d 961, 964, 115 C.R. 540, *infra*, §832, citing the text; *Teachers Management & Inv. Corp. v. Santa Cruz* (1976) 64 C.A.3d 438, 449, 134 C.R. 523, citing the text; *Wellenkamp v. Bank of America* (1978) 21 C.3d 943, 947, 148 C.R. 379, 582 P.2d 970; *VTN Consol. v. Northbrook Ins. Co.* (1979) 92 C.A.3d 888, 893, 155 C.R. 172, citing the text [judgment of dismissal modified to declare that plaintiff entitled to no relief]; and see 15 So. Cal. L. Rev. 271; 18 So. Cal. L. Rev. 54.)

(2) [§832] Determination Without Declaration.

(a) *In General.* The rule stated in the preceding section is subject to a practical modification where the plaintiff seeks ordinary remedies and declaratory relief on the same facts, and the trial court, on the pleadings or at the trial, properly decides that he has stated no cause of action for the ordinary remedies. A careful judge would render an expressly unfavorable judgment on the declaratory relief demand. But his failure to do so is an immaterial procedural lapse and not reversible error. Thus, in *Davis v. Santa Ana* (1952) 108 C.A.2d 669, 684, 239 P.2d 656, plaintiff sought an injunction against defendant city acting under an allegedly void municipal contract, and also a declaration of rights under the contract. The trial court correctly determined that the contract was valid and that there was no right to an injunction, and granted judgment on the pleadings. The judgment was upheld, for the adverse ruling on the injunction demand determined all the issues.

The point was definitively stated in *Anderson v. Stansbury* (1952) 38 C.2d 707, 242 P.2d 305, where plaintiff failed to make out a case for accounting or establishment of a trust, and a nonsuit was granted without mention of the declaratory relief count. "While the trial court therefore erred in entering a nonsuit rather than a declaratory judgment in disposition of the count for declaratory relief, such error cannot be deemed prejudicial here. Any declaration of the rights of the parties would necessarily have been unfavorable to plaintiffs in conformity with the disposition of the other two counts, which latter disposition constituted the equivalent of an express declaration that plaintiffs had failed to establish any rights." (38 C.2d 717.)

In *Wilson v. Board of Retirement* (1957) 156 C.A.2d 195, 319 P.2d 426, plaintiff brought a class suit seeking a declaration of the right of county civil service employees to certain benefits. Defen-