

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

1 RONALD A. ZUMBRUN, SBN 32684
2 TIMOTHY V. KASSOUNI, SBN 142907
3 ANGELA C. THOMPSON, SBN 238708
4 THE ZUMBRUN LAW FIRM
5 3800 Watt Avenue, Suite 101
6 Sacramento, California 95821
7 Telephone: (916) 486-5900
8 Facsimile: (916) 486-5959
9 Attorneys for Petitioner and Plaintiff

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF PLACER

MEADOW VISTA PROTECTION,

Petitioner and Plaintiff,

v.

CHEVREAU 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 RESPONDENT
COUNTY OF PLACER'S DEMURRER
TO MVP'S COMPLAINT

Date: 10/3/06

Time: 8:30 a.m.

Dept.: 3

TABLE OF CONTENTS

Page No.:

1	TABLE OF AUTHORITIES	ii
2		
3		
4		
5	INTRODUCTION	1
6		
7	ARGUMENT	2
8	I. THE COUNTY'S DEMURRER IS PROCEDURALLY DEFFECTIVE	2
9	A. The County Failed To Satisfy Applicable Meet And Confer	
10	Requirements And Failed To File A Declaration Regarding The	
	Same As Required By Local Rule 20.3.1.	2
11	II. THE COUNTY'S DEMURRER MUST BE OVERRULED BECAUSE	
12	MVP HAS ALLEGED FACTS SUFFICIENT TO SUPPORT ITS	
13	CAUSES OF ACTION AND SUCH ALLEGATIONS SHOULD BE	
	LIBERALLY CONSTRUED	4
14	III. THE COUNTY'S DUTY TO INVESTIGATE AND/OR HOLD A	
15	HEARING REGARDING CHEVREAUX'S COMPLIANCE WITH LD-	
16	1030 IS NOT A DISCRETIONARY FUNCTION, AND A WRIT OF	
	MANDATE PROCEEDING IS A PROPER REMEDY	5
17	IV. MVP'S CHALLENGES TO LD-1030 ARE NOT TIME-BARRED	
18	BECAUSE MVP IS NOT CHALLENGING THE <i>ISSUANCE</i> OF LD-1030.....	7
19	V. MVP HAS EXHAUSTED ITS ADMINISTRATIVE REMEDIES, OR IS	
20	EXCUSED FROM EXHAUSTING ADMINISTRATIVE REMEDIES ON	
	THE BASIS OF ONE OR MORE EXCEPTIONS	7
21	VI. IF THE DEMURRER IS SUSTAINED, MVP SHOULD BE PERMITTED	
22	TO AMEND ITS COMPLAINT	10
23	CONCLUSION	10
24		
25		
26		
27		
28		

TABLE OF AUTHORITIES

Cases

<i>Abelleira v. District Court of Appeal, Third Dist.</i> (1941) 17 Cal.2d 280	7
<i>Angie M. v. Superior Court of San Diego</i> (1995) 37 Cal.App.4 th 1217	10
<i>Baxter Healthcare Corporation v. Denton</i> (2004) 120 Cal.App.4 th 333	8
<i>Bess v. Park</i> (1955) 132 Cal.App.2d 49.....	5, 6
<i>Blank v. Kirwan</i> (1985) 39 Cal.3d 311	10
<i>California Correctional Peace Officers Association v. State Personnel Board</i> (1995) 10 Cal.4 th 1133	6
<i>City of Oakland v. Superior Court of Alameda County</i> (1996) 45 Cal.App.4 th 740	9
<i>Coachella Valley Mosquito and Vector Control District v. California Public</i> <i>Employment Relations Board</i> (2005) 35 Cal.4 th 1072	9
<i>Goldstein v. Healy</i> (1921) 187 Cal. 206	4, 5
<i>Ion Equipment Corp. v. Nelson</i> (1980) 110 Cal.App.3d 868.....	7
<i>Lindeleaf v. Agricultural Labor Relations Board</i> (1986) 41 Cal.3d 861.....	9
<i>Lindell Company v. Board of Permit Appeals of City and County of San Francisco</i> (1943) 23 Cal.2d 303	5
<i>Malibu Mountains Recreation, Inc. v. County of Los Angeles</i> (1998) 67 Cal.App.4 th 359	7
<i>McDonald v. Superior Court of Los Angeles</i> (1986) 180 Cal.App.3d 297.....	10
<i>Nevada Power Company v. Monsanto Company</i> (D.Nev. 1993) 151 F.R.D. 118	3
<i>Pacifica Homeowners' Association v. Wesley Palms Retirement Community</i> (1986) 178 Cal.App.3d 1147	7
<i>Quelimane Co. v. Stewart Title Guaranty Company</i> (1998) 19 Cal.4 th 26	10
<i>Stevens v. Superior Court of Los Angeles County</i> (1999) 75 Cal.App.4 th 594	4, 10
<i>Townsend v. Superior Court of the County of Santa Barbara</i> (1998) 61 Cal.App.4 th 1431	3
<i>Venice Town Council, Inc. v. City of Los Angeles</i> (1996) 47 Cal.App.4 th 1547	8

1	<i>Yolo County Department of Social Services. v. Municipal Court for the Yolo</i>	
2	<i>County Judicial District</i> (1980) 107 Cal.App.3d 842.....	4, 7
3	<i>Youngman v. Nevada Irrigation District</i> (1969) 70 Cal.2d 240	4
4	<u>Statutes</u>	
5	Code Civ. Proc., § 452.....	4
6	Code of Civ. Proc. § 2016.040.....	3
7	Placer County Code § 17.60.110	8
8	Placer County Code § 17.62.030	5
9	Placer County Code §17.60.020	6
10	Placer County Local Rule § 20.3.1	2
11	Placer County Local Rule 20.1.6(C).....	11

INTRODUCTION

County of Placer and Placer County Planning Department (County) are defendants as to only the first cause of action for writ of administrative mandamus. Meadow Vista Protection (MVP) seeks a writ of mandate requiring “respondents and defendants to perform the duties required by their offices, including holding a public hearing” (Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief, Public Nuisance, Private Nuisance and Trespass (Complaint) at p. 13:4-6, attached hereto as Exhibit 1.) MVP requests a public hearing to (1) evaluate Chevreux’s entitlements under its existing conditional use permit LD-1030, (2) determine whether Chevreux is operating within the boundaries of LD-1030, (3) determine whether the current volume of truck traffic from the Quarry is permitted under LD-1030, (4) determine whether Chevreux is in compliance with the blasting, water quality control and dust mitigation conditions of LD-1030, (5) sanction Chevreux for violations of Placer County Code provisions and conditions of LD-1030, (6) modify or revoke LD-1030 in accordance with the provisions of Placer County Code 17.62.170, and (7) enjoin Chevreux from further violating provisions of LD-1030 and/or the Placer County Code.

The County effectively contends that it has no affirmative duties whatsoever with respect to its residents. It disclaims any responsibility to investigate or respond to MVP’s *bona fide* concerns as to use permit compliance and the legality of certain land use operations. In short, if the County’s arguments are followed to their logical conclusion, the result is complete autonomy for the County, devoid of accountability to the very residents it is in place to serve. This is not the proper role or function of local government. The County’s attempt to disclaim its responsibility to even hold a hearing on the issue of Chevreux’s permit compliance should not be sanctioned by the Court.

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ARGUMENT

I.

THE COUNTY'S DEMURRER IS PROCEDURALLY DEFECTIVE

A. The County Failed To Satisfy Applicable Meet And Confer Requirements And Failed To File A Declaration Regarding The Same As Required By Local Rule 20.3.1.

The Placer County Superior Court Local Rules (Local Rules) provide:

Prior to filing any motion or demurrer, the moving party *must* make a reasonable and good faith attempt to resolve the matter, and if resolution is not possible, must attempt to coordinate hearing dates with any opposing parties. *A declaration setting forth facts supporting such attempt must be filed with the motion.*

(Local Rule § 20.3.1, emphasis added.) Not only did the County fail to meaningfully meet and confer before filing the demurrer, County's counsel also neglected to file any declaration showing compliance with the meet and confer requirement.

County's counsel served MVP's counsel with a letter on August 1, 2006, purporting "to meet and confer regarding [the County's] intention to file a demurrer to [MVP's] Petition/Complaint." (August 1, 2006 letter from Richard Crabtree to Angela Thompson, attached as Exhibit 1 to accompanying Declaration of Angela C. Thompson (Thompson Declaration).) On August 11, 2006, MVP's counsel responded to the letter, requesting further clarification of the anticipated grounds for the County's demurrer. (Exhibit 2 to Thompson Declaration.) Counsel for the County *never responded* to this letter or attempted any further resolution of the issues now raised in its demurrer. (Thompson Declaration at ¶ 4.)

Without the requested clarification from the County, MVP could not meaningfully respond to the letter or amend its complaint. The County's "meet and confer" letter contained only vague objections to the complaint:

We plan to demur on the grounds that an action cannot properly lie against the County for alleged discretionary failure to enforce the law. In addition, the Complaint is barred by the applicable statute of limitations and by the failure to exhaust administrative remedies.

1 (Exhibit 1 to Thompson Declaration.) Thus, MVP was unable to resolve these issues before the
2 County filed its demurrer.

3 The local rule requiring counsel to meet and confer prior to filing a motion or demurrer is
4 analogous to the meet and confer requirement for discovery motions. (See Code of Civ. Proc. §
5 2016.040.) In ruling on a previous version of the applicable statute, one court held:

6 [T]he parties must present to each other the merits of their respective positions
7 with the same candor, specificity, and support during informal negotiations as
8 during the briefing of discovery motions. Only after all the cards have been laid
9 on the table, and a party has meaningfully assessed the relative strengths and
weaknesses of its position in light of all available information, can there be a
“sincere effort” to resolve the matter.

10 (*Townsend v. Superior Court of the County of Santa Barbara* (1998) 61 Cal.App.4th 1431, 1435,
11 quoting *Nevada Power Company v. Monsanto Company* (D.Nev. 1993) 151 F.R.D. 118, 120.)
12 The court further held: “[T]he law requires that counsel attempt to talk the matter over, compare
13 their views, consult, and deliberate.” (*Townsend v. Superior Court of the County of Santa*
14 *Barbara, supra*, at p. 1439.)

15 The County’s so-called “meet and confer” letter does not even approach the level of
16 specificity required of meet and confer attempts before bringing discovery motions. It could be
17 argued that where, as here, the meet and confer requirement is a condition precedent to filing a
18 demurrer (a much more significant pleading than a discovery motion, with potentially harsher
19 consequences), it should be even more stringent.

20 In any event, the County’s Notice of Demurrer, Memorandum of Points and Authorities
21 and Request for Judicial Notice filed together on August 23, 2006, do not include a declaration
22 from County’s counsel showing that the meet and confer requirement was satisfied.
23 For these reasons, the County’s demurrer is procedurally defective and should be overruled.

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II.

THE COUNTY'S DEMURRER MUST BE OVERRULED BECAUSE MVP HAS ALLEGED
FACTS SUFFICIENT TO SUPPORT ITS CAUSES OF ACTION AND SUCH ALLEGATIONS
SHOULD BE LIBERALLY CONSTRUED

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

The County attacks the sufficiency of MVP's cause of action for administrative mandate by asserting a failure to allege (1) a beneficial interest and/or (2) absence of another adequate remedy at law.

It is true that this specific language does not appear in the paragraphs constituting MVP's cause of action for administrative mandate; however, it is clearly inferred from the facts as alleged. For example, the beneficial interest is implied from MVP's statement that it represents the interests of residents of Meadow Vista and Placer County. (Complaint at ¶ 3.) Most, if not all, of MVP's members have a beneficial interest in the actions of the County with respect to Chevreux. Moreover, it is not a requirement that all affected individuals be residents of Placer County. Residents of nearby Nevada County (just across the Bear River from Chevreux's quarry operation), some of whom are also MVP members, are similarly impacted by Chevreux's activities.

1 Similarly, the inadequacies of other remedies may also be inferred from the general
2 allegations in MVP's complaint. As the County itself concedes, informal requests for the
3 County's assistance in this matter have been unfruitful. These informal attempts have been
4 generally pled at paragraphs 7, 36 and 37 of MVP's complaint.

5 The County has been fully apprised of the nature of the complaints against it as required
6 by *Goldstein, supra*, and the facts as stated in the complaint tend to show that MVP is entitled to
7 relief.

8 In any event, regardless of whether the deficiencies alleged by County are actually
9 present in the complaint, County's demurrer may not be sustained without leave to amend, as
10 discussed more fully below.

11
12 III.

13 THE COUNTY'S DUTY TO INVESTIGATE AND/OR HOLD A
14 HEARING REGARDING CHEVREAU'S COMPLIANCE WITH
15 LD-1030 IS NOT A DISCRETIONARY FUNCTION, AND A WRIT
OF MANDATE PROCEEDING IS A PROPER REMEDY

16 MVP's action against the County is not based on a failure to perform a discretionary
17 function, but rather the dereliction of a statutory duty. (See Placer County Code § 17.62.030.)

18 The County argues that the decision to initiate investigative or enforcement proceedings
19 is wholly discretionary and may not be the subject of a writ of mandate proceeding. However,
20 relevant case law is *contra*.

21 Though courts may not dictate *how* an agency exercises its discretion, they can force an
22 agency to act. "The court in response to appropriate application may compel [an administrative]
23 agency to act," even though it cannot "substitute its discretion for the discretion properly vested
24 in the administrative agency." (*Lindell Company v. Board of Permit Appeals of City and County*
25 *of San Francisco* (1943) 23 Cal.2d 303, 315.) This includes the authority to compel an
26 administrative agency to hold a hearing.

27 For example, in *Bess v. Park* (1955) 132 Cal.App.2d 49, 55, the plaintiffs sought a writ of
28 mandamus requiring the Labor Commissioner to hold a hearing and make a determination

1 regarding an employment dispute. The Commissioner refused to do so, based on an internal
2 policy of the agency and the unanimous opinion of the Commission's legal staff. However, the
3 Court ruled that the Commissioner was under a duty to hear and determine such controversies
4 and did not have the right to arbitrarily refuse to do so.

5 While it is true . . . that the courts will not attempt to compel a public official to
6 exercise his discretion in any particular manner, nevertheless, *where the law*
7 *imposes upon him specific duties* and he either whimsically or arbitrarily *refuses*
8 *to perform those duties*, or where *his refusal is based upon an erroneous*
9 *conclusion of his legal duties*, or where *the right of the individual is so fixed that*
10 *the refusal of the official to act amounts to a clear abuse of discretion*, such error
11 will be corrected in a proper judicial proceeding. [Citations.] If the case before us
12 were one in which there was any doubt, and the [administrative agency] had
13 exercised [its] discretion and determined upon an award one way or the other in
14 the pending controversy, there would be no authority for judicial interference with
15 such determination, but when [it] refused to act at all under a misconception of the
16 duty imposed upon [it] by law, the courts will correct the error.

17 (*Id.* at p. 55, emphasis added.)

18 The County notes that it cannot take any action against Chevreux without satisfying
19 Chevreux's rights to due process. (County Demurrer, p. 10:6.) Due process implies notice and
20 a hearing. Therefore, compelling the County to hold a hearing regarding Chevreux's
21 compliance with LD-1030 would satisfy this due process requirement, and traditional mandate is
22 a proper remedy. (See *California Correctional Peace Officers Association v. State Personnel*
23 *Board* (1995) 10 Cal.4th 1133 [traditional mandate is proper to compel State Personnel Board to
24 hold hearing].)

25 Argue as it might that Placer County Code §17.60.020 confers only "general authority" to
26 enforce the provisions of the Code, the fact remains that absent such enforcement, violations of
27 the Code will go unremedied. Where the County possesses the sole statutory authority to enforce
28 land use permit conditions, that authority takes the form of a *duty*, in the interest of protecting the
public.

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IV.

MVP'S CHALLENGES TO LD-1030 ARE NOT TIME-BARRED
BECAUSE MVP IS NOT CHALLENGING THE ISSUANCE OF LD-1030

Respondent County contends that MVP's "window of opportunity" to appeal the issuance of LD-1030 has "long since passed." (County Demurrer, p. 10:13-14.) However, MVP is not challenging the *issuance* of LD-1030. The County goes on to complain that MVP seeks to make a "back-door" challenge to a 1965 CUP. (*Id.* at p. 11:7-8.)

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

The further discussion at pp. 9:20-10:15 of MVP's Opposition to Chevreaux's Demurrer, filed together with this brief, is hereby incorporated by reference.

For these reasons, the 10- and 90-day limitation periods County cites are inapplicable to this cause of action.

V.

MVP HAS EXHAUSTED ITS ADMINISTRATIVE
REMEDIES, OR IS EXCUSED FROM EXHAUSTING ADMINISTRATIVE
REMEDIES ON THE BASIS OF ONE OR MORE EXCEPTIONS

The County states, "where an administrative remedy is provided by statute, relief must be sought . . . and the remedy exhausted before the courts will act." (County Demurrer, p. 11:15-18, quoting *Abelleira v. District Court of Appeal, Third Dist.* (1941) 17 Cal.2d 280, 292.)

However, the County's demurrer is restricted to the facts as alleged in MVP's complaint. (*Ion Equipment Corp. v. Nelson* (1980) 110 Cal.App.3d 868, 881.) Thus, unless the complaint discloses an available administrative remedy, a demurrer is not proper on that basis. This rule

1 was propounded in *Yolo County Department of Social Services. v. Municipal Court for the Yolo*
2 *County Judicial District, supra*, 107 Cal.App.3d 842: “The complaint and exhibits do not
3 establish that plaintiff had an administrative remedy . . . and liberal construction of the complaint
4 *in favor of the plaintiff* tends to indicate otherwise. The municipal court did not err in overruling
5 the demurrer” (*Id.* at p. 847, emphasis added.) MVP’s complaint discloses no available
6 administrative remedy and in fact, effectively alleges the opposite. Therefore, pursuant to the
7 rule in *Yolo*, the County cannot introduce extrinsic evidence of any administrative remedy as a
8 basis for its demurrer.

9 In any event, the supposed statutory remedy proposed by the County only applies to
10 situations where the *issuance* of a conditional use permit is contested. Indeed, the remedy for
11 appealing permit *issuance* is the *only* remedy the County proposes:

- 12 • “Placer County Code § 17.60.110 provides the appeal process for appealing the
13 *issuance* of a CUP.” (County Demurrer, p. 11:26-28, emphasis added.)
- 14 • “[I]f Petitioner believes it is, in fact, adversely affected by the *issuance* of CUP
15 LD-1030” (*Id.* at p. 12:2-3, emphasis added.)
- 16 • “Petitioner did not appeal the *issuance* of the CUP” (*Id.* at p. 12:5-6,
17 emphasis added.)

18 The County’s attempt to misconstrue MVP’s purpose in bringing its mandate cause of action is
19 apparent. The *issuance* of LD-1030 is not, and has never been, at issue in this lawsuit.
20 Therefore, the one administrative remedy the County insists must be exhausted is not even
21 appropriate in this case.

22 In light of this, the County may try to improperly argue for the first time in its reply brief
23 that there are other administrative remedies MVP should have pursued. However, the County
24 has effectively conceded that MVP has already exhausted any other applicable administrative
25 remedies. At page 3 of County’s demurrer, County states: “The County . . . incorporates by
26 reference the Memorandum of Points & Authorities filed by Defendant Chevreux in support of
27 its demurrer” (County Demurrer, at p. 3:16-18.) Chevreux’s demurrer asserts: “County
28 concluded that there is presently nothing to investigate or enforce” (Chevreux Demurrer, p.

1 5:22-23) and that “County’s own investigations found no violations related to LD-1030” (*Id.* at
2 p. 6:17).

3 If that is the case, MVP does not have to pursue any additional administrative remedy.
4 “An aggrieved party is not required to exhaust administrative remedies before bringing a
5 declaratory relief action where the party can **positively state** what the administrative agency’s
6 decision would be.” (*Baxter Healthcare Corporation v. Denton* (2004) 120 Cal.App.4th 333,
7 362, citing *Venice Town Council, Inc. v. City of Los Angeles* (1996) 47 Cal.App.4th 1547, 1567,
8 emphasis added.)

9 In this case, MVP does not need to “positively state” what the County’s decision would
10 be with respect to LD-1030 because County has already “positively stated” its position by
11 incorporating Chevreux’s demurrer into its own.

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

18 Chevreux’s operations affect not only MVP and residents of Meadow Vista, but also
19 residents of surrounding communities. Moreover, a private corporation should not be permitted
20 to willfully violate the terms and conditions of conditional use permits issued to it, no matter
21 how long the governing County has allowed the violations or to what extent the County
22 sanctions the use. (See *City of Oakland v. Superior Court of Alameda County* (1996) 45
23 Cal.App.4th 740, 756 [holding that a city may properly control and abate nuisance activities,
24 despite the fact that the business to be regulated possessed grandfather rights that might
25 ordinarily render it immune from compliance].) Whether a County may turn a blind eye to such
26 abuses and violations is a question of important legal significance with a profound effect upon
27 the public.
28

1 For these reasons, it is clear that MVP has either exhausted its administrative remedies or
2 is excused from doing so under one of the exceptions discussed above.

3
4 VI.

5 IF THE DEMURRER IS SUSTAINED, MVP SHOULD
6 BE PERMITTED TO AMEND ITS COMPLAINT

7 Denial of leave to amend constitutes an abuse of discretion unless the complaint shows
8 on its face it is incapable of amendment. (*Angie M. v. Superior Court of San Diego* (1995) 37
9 Cal.App.4th 1217, 1227; *McDonald v. Superior Court of Los Angeles* (1986) 180 Cal.App.3d
10 297, 303.) Liberality in permitting amendment is the rule, if a fair opportunity to correct any
11 defect has not been given. (*Id.* at p. 304.)

12 Similarly, *Stevens v. Superior Court of Los Angeles County, supra*, 75 Cal.App.4th 549
13 held:

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

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

21 "If we conclude that the complaint does not state a claim, but there is a reasonable
22 possibility that the defects can be cured by amendment, leave to amend *must* be granted."
23 (*Stevens* at p. 601, emphasis added, quoting *Quelimane Company v. Stewart Title Guaranty*
24 *Company* (1998) 19 Cal.4th 26, 39.)

25 The County has not alleged any deficiencies which, if they exist, cannot be remedied by
26 the filing of an amended complaint. Therefore, the County's request that its demurrer be
27 sustained without leave to amend is inappropriate.

28 CONCLUSION

In sum, the County has failed to comply with applicable meet and confer requirements
prior to filing its demurrer, which renders the demurrer procedurally defective. In addition, the

1 County has presented no valid arguments for sustaining its demurrer to MVP's writ of mandate
2 cause of action. The County has misstated MVP's position with respect to the relief sought and
3 has attempted to disclaim all responsibility for enforcing the provisions of its own Code. Taking
4 the County's arguments to their logical conclusion reveals the unconscionability of the County's
5 position. The result the County seeks—complete autonomy free from accountability—would
6 result in substantial injustice to its residents and taxpayers.

7 These procedural defects and misplaced legal theories should not be rewarded with a
8 dismissal of the complaint without leave to amend.

9 Moreover, MVP is willing to amend its complaint if and when this Court deems it
10 necessary. Therefore there is no need for the harsh result sought by the County in filing its
11 demurrer.

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

16 DATED: September 20, 2006.

17 Respectfully submitted,

18 RONALD A. ZUMBRUN
19 TIMOTHY V. KASSOUNI
20 ANGELA C. THOMPSON
21 THE ZUMBRUN LAW FIRM

22 By Angela C. Thompson
23 ANGELA C. THOMPSON
24 Attorneys for Petitioner and Plaintiff
25
26
27
28

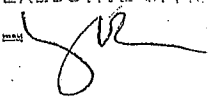
EXHIBIT 1

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

RONALD A. ZUMBRUN, SBN 32684
TIMOTHY V. KASSOUNI, SBN 142907
ANGELA C. THOMPSON, SBN 238708
THE ZUMBRUN LAW FIRM
3800 Watt Avenue, Suite 101
Sacramento, California 95821
Telephone: (916) 486-5900
Facsimile: (916) 486-5959
Attorneys for Petitioner and Plaintiff

FILED
PLACER COUNTY
SUPERIOR COURT OF CALIFORNIA

JUL 12 2006

JOHN MENDES
EXECUTIVE OFFICER & CLERK
By  Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF PLACER

MEADOW VISTA PROTECTION,

Petitioner and Plaintiff,

v.

CHEVREAUX AGGREGATES, INC.;
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and DOES 1 through 50, inclusive,

Respondents and Defendants.

Case No.:

SCV

19814

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

Petitioner and plaintiff Meadow Vista Protection hereby alleges as follows:

INTRODUCTION

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

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

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, Chevreux 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 Chevreux'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 Chevreux 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 Chevreux has no vested
9 right to operate an asphalt plant in Meadow Vista; injunctive relief preventing Chevreux 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 Chevreux 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.)

21. On information and belief, Chevreux is mining outside the boundaries of LD-1030. Also on information and belief, Chevreux is not complying with the conditions regarding blasting, water quality and dust mitigation. Current production at the Quarry is in the hundreds of truckloads per-day range, which far exceeds the 20 trucks per-day figure represented at issuance of the CUP.

(Asphalt Operation)

22. In 1971, Chevreaux sought and obtained a CUP (LDA-691) to purportedly "reinstall" an asphalt batch plant (the Asphalt Plant) at the Gravel Operation. Even though Chevreaux had purportedly operated an asphalt batch plant at the Gravel Operation on an "intermittent" basis in years prior to 1971, the County determined that a CUP was necessary for this activity.

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.

(Concrete Operation)

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

25. In 1993, Chevreux reapplied for a permit to operate a portable concrete batch plant. Again there was significant opposition from Meadow Vista residents. County staff made several requests to Chevreux for additional information, ultimately determining that an EIR was 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.)

21 30. In October 2004, Chevreux applied to the Air Pollution Control District (APCD)
22 for an Authority to Construct/Temporary Permit to Operate an asphalt plant. Chevreux's
23 operation was to generate approximately 40,000 tons of asphalt per quarter. The APCD granted
24 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 Chevreaux 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 Chevreux 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. Chevreux's 2004 APCD permit was scheduled to expire in June 2005, but
10 Chevreux requested, and was granted, a one-year extension until June 30, 2006.

11 34. Nevertheless, in April 2006, Chevreux applied for, and received, another APCD
12 permit to operate a portable Asphalt Plant. Currently, Chevreux 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 Chevreux 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. Chevreux 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 Chevreux'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 Chevreux's entitlements to the Asphalt Plant and the Quarry and
27 enforce the permit conditions and Placer County Code provisions of which Chevreux 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 Chevreaux 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 Chevreaux is not in
5 compliance with the conditions of LD-1030 regarding blasting, water quality control and dust
6 mitigation at the site. Defendant Chevreaux 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 Chevreaux's duties in connection with the operations listed herein.

12 WHEREFORE, petitioner and plaintiff prays for judgment against defendant Chevreaux
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 Chevreaux regarding Chevreaux's Asphalt Plant operation. Petitioner and plaintiff MVP
20 contends that defendant Chevreaux'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 Chevreaux to apply for a new CUP. Defendant
23 Chevreaux 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 Chevreaux's duties in connection with the operations listed herein.

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

(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 Chevreux's entitlements under its existing conditional use permit LD-1030,
 - ii. determine whether Chevreux 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 Chevreux is in compliance with the blasting, water quality control and dust mitigation conditions of its conditional use permit,
 - v. sanction Chevreux 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 Chevreux 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 Chevreux is, and has been, mining outside of those boundaries,

- 1 b. LD-1030 limits the Quarry to generating no more than 20 truckloads per day
- 2 and Chevreux consistently generates significantly more volume and traffic
- 3 than 20 truckloads per day, and
- 4 c. LD-1030 imposes conditions on blasting, water quality control and dust
- 5 mitigation and Chevreux is not in compliance with these conditions;
- 6 3. as to the Third Cause of Action (Declaratory Relief – Asphalt Operation), for
- 7 declaratory judgment that:
 - 8 a. LDA -786 was never implemented after issuance as required by the Placer
 - 9 County Code and is therefore void or, in the alternative,
 - 10 b. LDA-786 has lapsed due to nonuse and pursuant to the provisions of Placer
 - 11 County Code,
 - 12 c. Chevreux does not have any right under LDA-786 to operate an asphalt plant
 - 13 at the site, and
 - 14 d. No asphalt plant shall be permitted to operate at the site at any time in the
 - 15 future unless a new CUP application is filed and a new hearing held;
- 16 4. as to the Fourth Cause of Action (Injunction), for temporary, preliminary and
- 17 permanent injunctive relief enjoining defendant Chevreux from:
 - 18 a. surface mining outside the boundaries of LD-1030 and violating conditions
 - 19 attendant to that permit, and
 - 20 b. constructing, maintaining or otherwise operating an asphalt plant at any site
 - 21 on the property;
- 22 5. as to the Fifth Cause of Action (Public Nuisance) and the Sixth Cause of Action
- 23 (Private Nuisance), for an award of damages to be proven at trial against defendant Chevreux
- 24 Aggregates, Inc., according to proof; additionally, petitioner and plaintiff seeks abatement of any
- 25 continued nuisance;
- 26 6. as to the Seventh Cause of Action (Trespass), for injunctive relief and damages
- 27 against defendant Chevreux;
- 28

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

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

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A Professional Corporation
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Sacramento, CA 95821

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. Rust Telephone 878-1157
Address of Applicant P.O. Box 117 Town Meadow Vista
Name of Property Owner Edward & Barbara E. Rust
Address of Property Owner P.O. Box 117 Town Meadow Vista
Property Zoned FR-15-43 Acreage 140
Proposed Development (Describe fully) Quarry for split
rock crushing, screening & washing plant
for grading materials, etc.

Method of Sewage Disposal Dry Hole
Assessor's Parcel No. 72-03014-000-8 General Location of Property: West Half of the NW Quarter of Section 31 T14N-R9E MDB4 M+
West Half of the SW Quarter of Section 30 T14N-R9E MDB7 M+
Located south of County Dump in Meadow Vista

PLEASE SUBMIT WELL-DETAILED PLOT PLAN

\$25.00 Filing Fee

#7316
Received by R. M. Heikka
Placer County Planning Department

Edward P. Rust
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. Rust
Signature of Applicant

cc: Applicant

4-6-1965
Meadow VistaPlacer Co. Planning Dept.
Regrard Land Development Permit

I Edward Puss 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 Puss
P.O. Box 117
Meadow Vista, Calif.

EXHIBIT 2

Heikka 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. Meloe 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 - quarry for shot rock. A crushing, screening and washing plant for grading materials, etc. - 140 acres located north of County Dump in Meadow Vista. AP# 72-020-01 and 72-030-01.

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 a \$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

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, would quarrying operation would run these people right out of their house. 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. They 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 1600 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 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. LD-786
Date Filed May 1, 1972
Hearing Date 5-25-72
Hearing Jurisdiction 299

CONDITIONAL USE PERMIT

Full Name of Applicant Joe Chevreaux Telephone 885-3716
Address of Applicant 890 Grass Valley Highway Town Auburn, Cal.
Name of Property Owner Joe Chevreaux Zip Code 95603
Address of Property Owner 890 Grass Valley Highway Telephone 885-3716
Property Zoned RP Town Auburn, Cal.
Proposed Development (Describe fully) Asphalt Concrete Plant Zip Code 95603
Acreage Approx 140

Method of Sewage Disposal Portable toilets
Assessor's Parcel No. 72-030-01 & 72-020-08 (63-12)
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

[Signature]
Signature of Applicant

Date of Action 5-25-72

XXXXX Approved _____ Denied _____

Summary:

SUBJECT TO ATTACHED CONDITIONS.

[Signature]
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]
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/FT³ 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.

NOTE: 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

(916) 889-7470 FAX (916) 889-7499

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 6-22-94 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 ☒ 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.

JUNE, 1994

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 BIAQ 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.

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

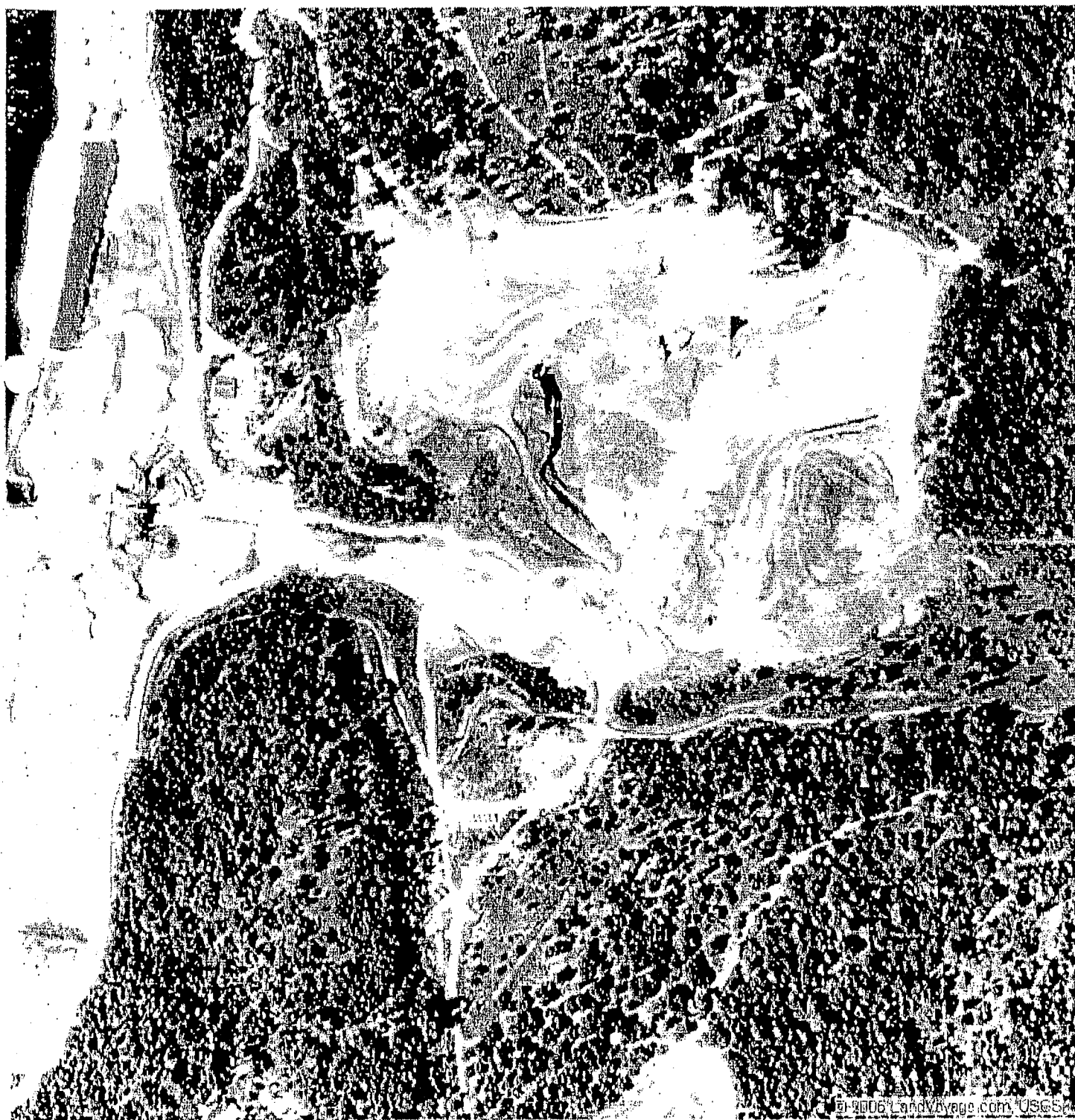


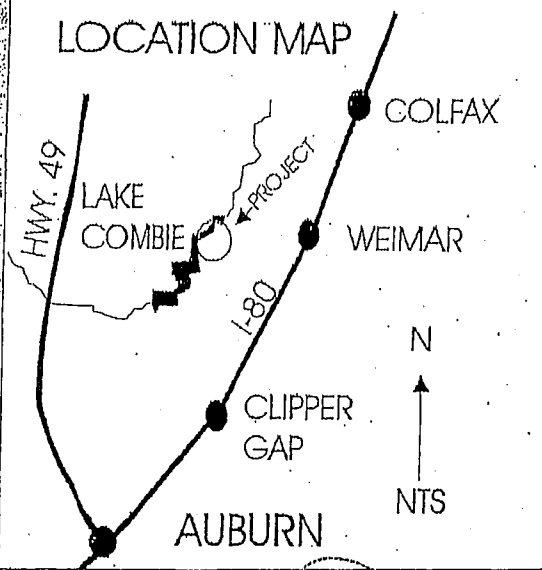
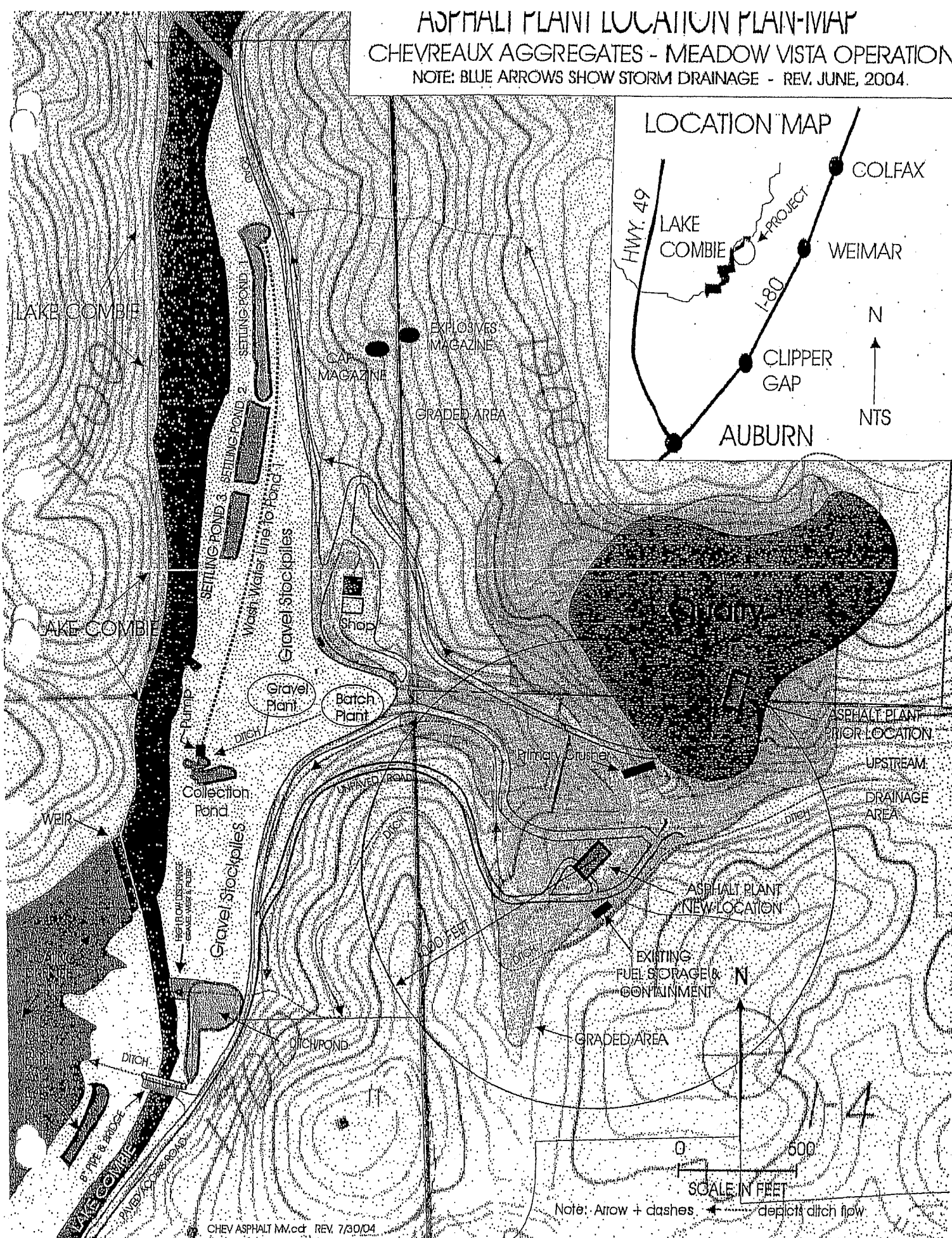


EXHIBIT 6

ASPHALT PLANT LOCATION PLAN-MAP

CHEVREAUX AGGREGATES - MEADOW VISTA OPERATION

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



Note: Arrow + dashes depict ditch flow

CHEV ASPHALT MV.cdr REV. 7/30/04

