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6
7 SUPERIOR COURT OF CALIFORNIA
8 IN AND FOR THE COUNTY OF PLACER
9

10 MEADOW VISTA PROTECTION,

Case No. SCV 19614

11 Petitioners and Plaintiffs,

12 v.

**NOTICE OF HEARING OF CHEVREAU
AGGREGATES, INC.'S GENERAL
DEMURRER AND SPECIAL
DEMURRER TO SECOND THROUGH
SEVENTH CAUSES OF ACTION IN
PLAINTIFF'S VERIFIED COMPLAINT**

13 CHEVREAU AGGREGATES, INC.;
14 COUNTY OF PLACER; COUNTY OF
PLACER PLANNING DEPARTMENT; and
15 DOES 1- 50, inclusive,

DATE: October 3, 2006
TIME: 8:30 a.m.
DEPT.: 3

16 Respondents and Defendants.

17 Date Action Filed: 7/12/06

18 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

19 NOTICE IS HEREBY GIVEN that on October 3, 2006, at 8:30 a.m., or as soon thereafter
20 as the matter may be heard in Department 3 of this Court, located at 101 Maple Street, Auburn,
21 California, Defendant CHEVREAU AGGREGATES, INC. ("CHEVREAU") will, and
22 hereby does, demur to the second through seventh causes of action of Plaintiff MEADOW
23 VISTA PROTECTION's Verified Complaint, a copy of which is attached hereto.

24 The demurrer will be based on this Notice, the Memorandum of Points and Authorities in
25 support of the General and Special Demurrer, the Declaration of Karin E. Schwab, and the
26 Request for Judicial Notice filed herewith; on the records and file herein; and on such evidence
27 that may be presented at the hearing of the demurrer.

1 CHEVREAU demurrers on the second through seventh causes of action as follows:

2 SECOND AND THIRD CAUSES OF ACTION – DECLARATORY RELIEF:

3 General Demurrer for Failure to State a Cause of Action (Code of Civil Procedure section
4 (“CCP §”) 430.10(e)).

5 A. An Action for Administrative Mandamus, not Declaratory Relief, is the Exclusive
6 Remedy for Challenging Conditional Use Permits.

7 B. Plaintiff Failed to Exhaust its Administrative Remedies.

8 C. The Underlying Action is Barred by the Statute of Limitations.

9 D. Under the Circumstances Alleged in the Complaint, No Justiciable Controversy
10 Exists.

11 E. Declaratory Relief Under the Circumstances Alleged in the Complaint is not Proper at
12 this Time.

13 Special Demurrer Because This Court has no Jurisdiction of Subject Matter for
14 Declaratory Relief (CCP §430.10(a)).

15 Special Demurrer based on Non-Joinder of Parties due to Failure to Join an Indispensable
16 Party (CCP §430.10(d)).

17 FOURTH CAUSE OF ACTION FOR INJUNCTION:

18 General Demurrer for Failure to State a Cause of a Action for Failure to Allege Sufficient
19 Facts or Circumstances to Sustain an Application for Injunction. (CCP §430.10(e)).

20 FIFTH THROUGH SEVENTH CAUSES OF ACTION FOR PUBLIC AND PRIVATE

21 NUISANCE AND TRESPASS:

22 General Demurrer for Failure to State a Cause of Action because Plaintiff Lacks Standing
23 to Sue Because it is not the Real Party in Interest (CCP §430.10(e)).

24 Special Demurrer Because all Three Causes of Action are Uncertain Leaving Allegations
25 of Material Facts to Surmise. (CCP §430.10(f)).

26 Special Demurrer due to Defect or Non-Joinder of Parties. (CCP §430.10(d)).

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1 FIFTH CAUSE OF ACTION FOR PUBLIC NUISANCE:

2 General Demurrer for Failure to State a Cause of Action because Essential Elements for a
3 Public Nuisance Cause of Action are Lacking in Plaintiff's Complaint. (CCP §430.10(e)).

4 General Demurrer for Failure to State a Cause of Action because Plaintiff Lacks Standing
5 to Sue (CCP §410.10(e)).

6 Special Demurrer Because Pleading is Uncertain. (CCP §430.10(f)).

7 SIXTH CAUSE OF ACTION FOR PRIVATE NUISANCE:

8 General Demurrer for Failure to State a Cause of Action because Plaintiff Lacks Standing
9 to Sue (CCP §410.10(e)).

10 General Demurrer for Failure to State a Cause of Action because Essential Elements for a
11 Private Nuisance Cause of Action are Lacking in Plaintiff's Complaint. (CCP §430.10(e)).

12 Special Demurrer Because Pleading is Uncertain. (CCP §430.10(f)).

13 SEVENTH CAUSE OF ACTION FOR TRESPASS:

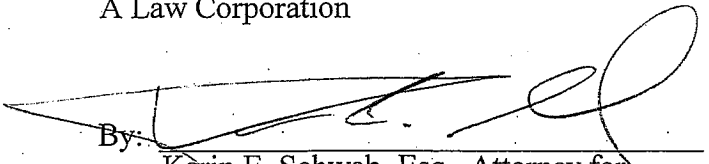
14 General Demurrer for Failure to State a Cause of Action because Plaintiff Lacks Standing
15 to Sue (CCP §410.10(e)).

16 General Demurrer for Failure to State a Cause of Action because Essential Elements for a
17 Trespass Cause of Action are Lacking in Plaintiff's Complaint. (CCP §430.10(e)).

18 Special Demurrer Because Pleading is Uncertain. (CCP §430.10(f)).

19 DATED: August 22, 2006

BRIGIT S. BARNES & ASSOCIATES, INC.,
A Law Corporation

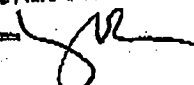
20
21 By: 

Karin E. Schwab, Esq., Attorney for
Defendant Chevreux Aggregates, Inc.

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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,

Case No.: **SCV 19814**

Petitioner and Plaintiff,

v.

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

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

Respondents and Defendants.

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, 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.)

1 20. Chevreux acquired the Quarry sometime between 1965 and 1971. All rights and
2 obligations under LD-1030 were transferred to Chevreux upon the acquisition of the Quarry.

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

8 (Asphalt Operation)

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

14 23. In 1972, Chevreux obtained a different CUP (LDA-786) to authorize the permanent
15 relocation of the Asphalt Plant from the Gravel Operation to a canyon area located on APN 72-
16 030-01 (a separate parcel), a point approximately 600 feet away. (Attached hereto as Exhibit 3 is
17 LDA-786, incorporated herein by reference.) By its express terms, LDA-786 allowed only one
18 asphalt plant to be operational at any given time; i.e., the new permit was for relocation of the
19 previously permitted plant, not for a new plant.

20 (Concrete Operation)

21 24. In 1988, Chevreux 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.

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

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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 usc 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 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

1 59. This interference with the property rights of MVP members is ongoing and
2 continuous in nature and uniquely affects the property interests of each member of MVP. As
3 such, these activities constitute a private nuisance. Each individual member of MVP is
4 singularly injured by this nuisance.

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

7 SEVENTH CAUSE OF ACTION

8 (Trespass)

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

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

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

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

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

24 PRAYER

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

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Sacramento, CA 95821

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,

- 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 
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

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

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

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 22, 1965
Hearing Date April 22, 1965

SPECIAL PERMIT FOR LAND DEVELOPMENT

Full Name of Applicant Edward P. Rust Telephone 898-1159
Address of Applicant P.O. Box 117 Town Meadow Vista
Name of Property Owner Edward & Beatrice G. Rust
Address of Property Owner P.O. Box 117 Town Meadow Vista
Property Zoned FR-13-43 Acreage 140
Proposed Development (Describe fully) Quarry for stone & rock crushing & screening & washing plant for grading materials
Method of Sewage Disposal Dry Hole
Assessor's Parcel No. 72-63619-00-00 General Location of Property West Half of the N.W. Quarter of Section 31 T.14 N. - R.9 E. M.D.B. 11
West Half of the S.W. Quarter of Section 30 T.14 N. - R.9 E. M.D.B. 11
Located north of County Dump in Meadow Vista

PLEASE SUBMIT WELL-DETAILED PLOT PLAN

\$25.00 Filing Fee

7316
Received by D. M. Liller
Placer County Planning Department

Signature of Applicant Edward P. Rust
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. Liller
RICHARD M. HEIKKA, Zoning Administrator

I have read the above conditions and will comply.

(Please return 1 signed copy)

Signature of Applicant Edward P. Rust

cc: Applicant

4-6-1965

Meadow Vista

Placer Co. Planning Dept.
Re: 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 21 & 30 T14N-R7E

The operation will consist of crushing
and screening plant for grading etc.
Blasting will be required to loosen
material. The blasting will be controlled
thus 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 ⁴⁰⁰ cu yd of rock
will be involved. This operation will
be year round.

There are no homes 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.

EXHIBIT 2

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. Malae 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 of the property. 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 he 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 were there any. Mr. Pruss replied 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 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 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 other 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 the proposed land development permit but that he was concerned about zoning in this use in R 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 use of this property but he felt that there had been an overemphasis on allowing single family dwellings in an area where quarrying operations can be conducted. He said that he felt that the single family dwellings 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 the 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

LD-103

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 the 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 the study that there could be a real potential conflict under the ordinance now established as the R-F 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 road 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. 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. Mr. Heikka replied that the use would continue as the permit runs with the land not the individuals.

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 concerns 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 the applicant's 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 effect. The 1600 type shot gives the least vibration and 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. 7) A separate 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. 409-786
Date Filed May 1, 1972
Hearing Date 5-25-72
Hearing Jurisdiction 27

CONDITIONAL USE PERMIT

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

Method of Sewage Disposal Portable toilets
Assessor's Parcel No. 72-030-01 & 72-020-05 (S&12)
General Location of Property present Chavreux 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

XXXXX Approved _____ Denied _____

Summary:

SUBJECT TO ATTACHED CONDITIONS.

JUNE 21, 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

Permit granted for an indefinite period automatically expires 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: This 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
PLACER COUNTY

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 Chevreaux
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

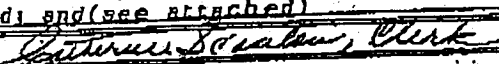
BASIS FOR GRANTING CONDITIONAL USE PERMITS

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:

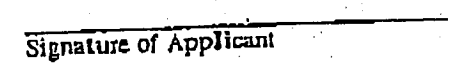
1. That the use proposed herein constitutes an appropriate additional or accessory use to the currently pre-existing use; and
2. That this CUP will likely result in fewer trip ends by transporting trucks on Hwy 49 and Placer Hills Road and (see attached)


Catherine S. Watson, Clerk

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][1], 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.

EXHIBIT 5



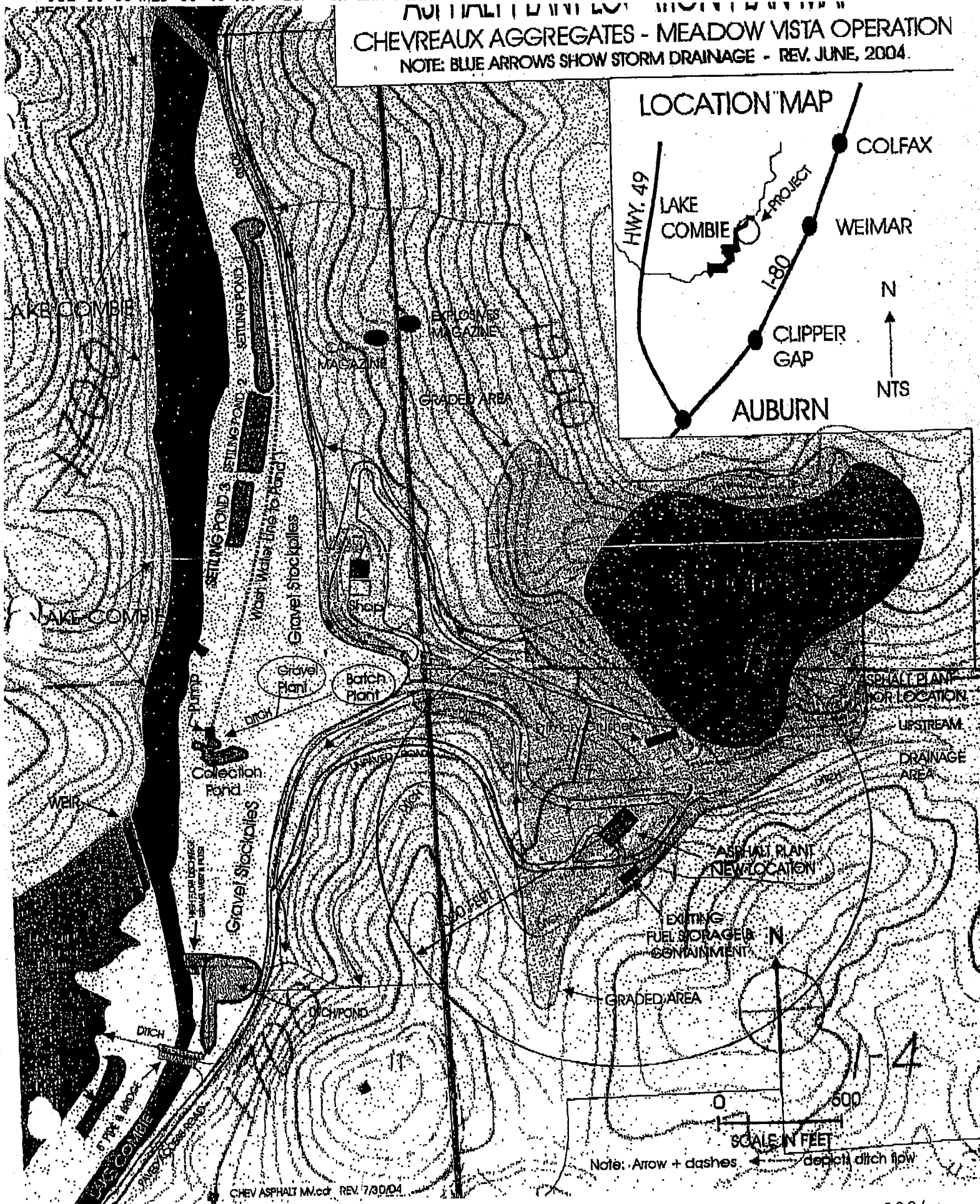
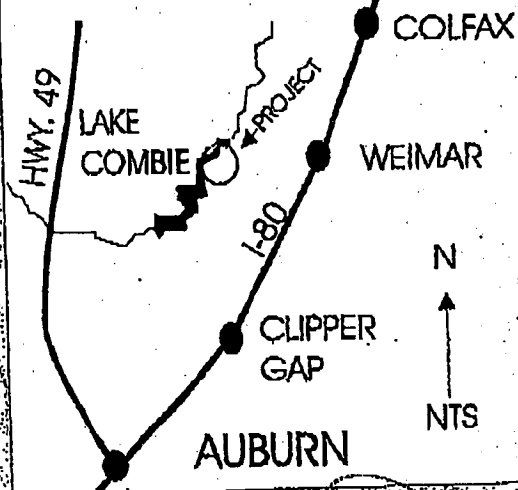


EXHIBIT 6

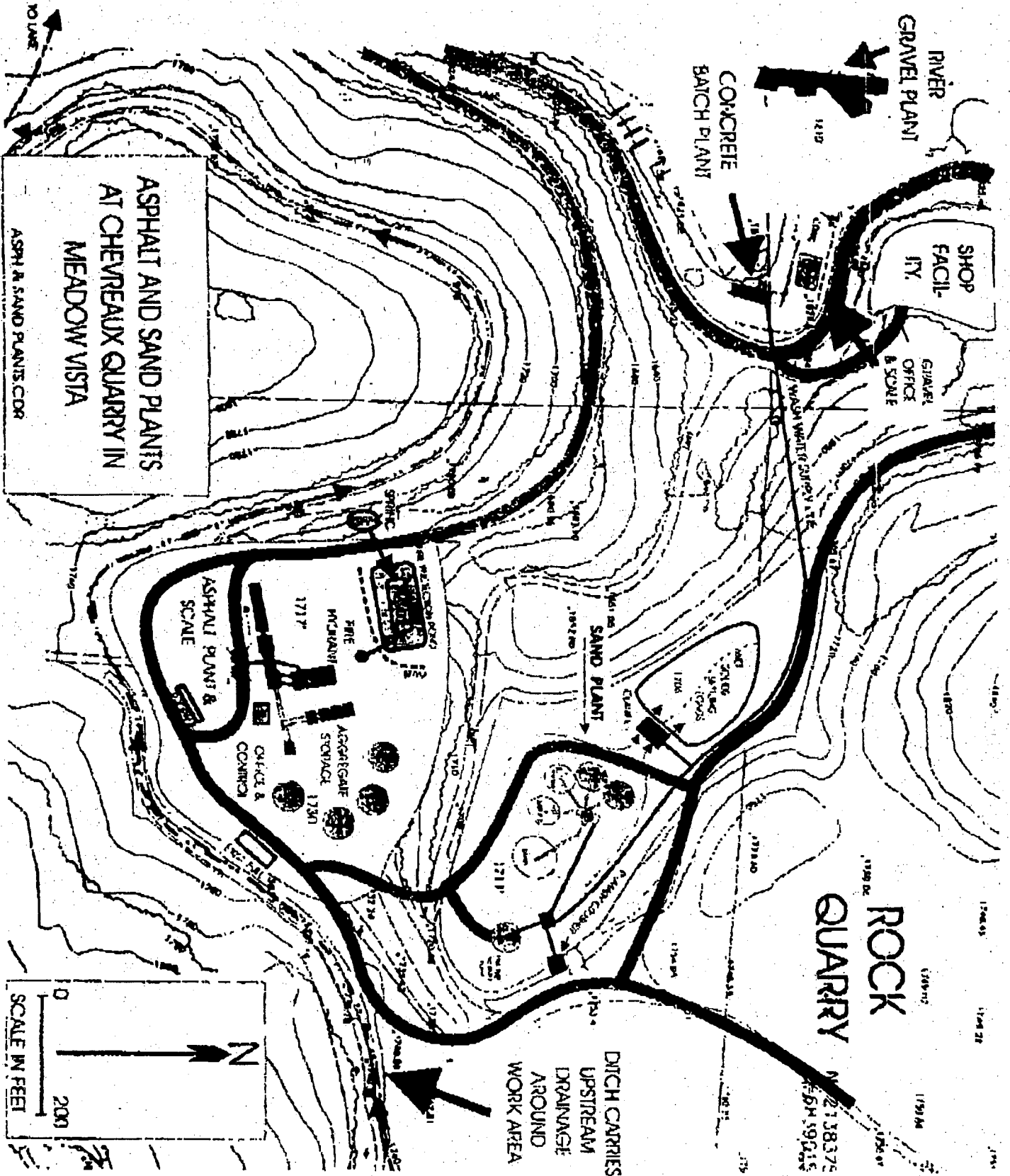
CHEVREUX AGGREGATES - MEADOW VISTA OPERATION

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

LOCATION MAP







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6
7 SUPERIOR COURT OF CALIFORNIA
8 IN AND FOR THE COUNTY OF PLACER
9

10 MEADOW VISTA PROTECTION,

Case No. SCV 19614

11 Petitioners and Plaintiffs,

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF CHEVREAUX
AGGREGATES, INC.'S GENERAL
DEMURRER AND SPECIAL
DEMURRER**

12 v.

13 CHEVREAUX AGGREGATES, INC.;
14 COUNTY OF PLACER; COUNTY OF
PLACER PLANNING DEPARTMENT; and
15 DOES 1- 50, inclusive,

DATE: October 3, 2006
TIME: 8:30 a.m.
DEPT.: 3

16 Respondents and Defendants.

/ Date Action Filed: 7/12/06

17
18 Defendant CHEVREAUX AGGREGATES, INC. by and through its attorneys, hereby
19 respectfully requests that the Court take judicial notice of the following document pursuant to
20 Evidence Code §452(h):

21 1. Placer County Zoning Ordinance, Edition #9, Chapter 17, Placer County Code;
22 Articles 17.02, 17.60 and 17.62. A true and correct copy of which is attached hereto as **Request**
23 **for Judicial Notice 1 ("RJN 1")**.

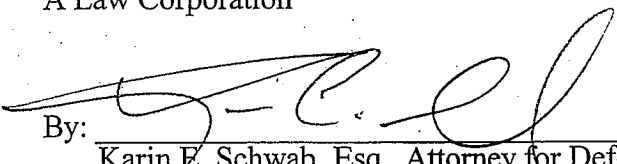
24 The above request is judicially noticeable under Evidence Code section 452(h) as
25 "containing facts and propositions that are not reasonably subject to dispute and are capable of
26 immediate and accurate determination by resort to sources of reasonably indisputable accuracy."

27 ///

28 ///

1 Date: August 22, 2006

BRIGIT S. BARNES & ASSOCIATES, INC.
A Law Corporation

By: 

Karin E. Schwab, Esq., Attorney for Defendant
CHEVREAUX AGGREGATES, INC.

Placer County Zoning Ordinance

Edition #9



**Initially adopted by the
Placer County Board of
Supervisors on July 15, 1995
(Ordinance #4669-B)**

Printed: February 2005

*This is a reformatted excerpt of Chapter 17
of the Placer County Code, original
effective date (Edition 1): August 24, 1995*

Placer County Zoning Ordinance
Chapter 17, Placer County Code

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PART 1 - GENERAL PROVISIONS**Article 17.02 - INTRODUCTORY PROVISIONS****Sections:**

17.02.010	Title and purpose
17.02.020	Authority and general plan consistency
17.02.030	Applicability of zoning chapter
17.02.040	Responsibility for administration
17.02.050	Interpretation
17.02.060	Partial invalidation of Zoning Ordinance

17.02.010 Title and purpose

This chapter shall be known and may be cited as the "Placer County Zoning Ordinance," Chapter 17 of the Placer County Code. This chapter is enacted to protect and promote the public health, safety, peace, comfort, convenience and general welfare; and more particularly to:

- A. Carry out the goals and objectives of the Placer County general plan and the community plans adopted pursuant to the general plan, and to guide and manage the future growth of the County in accordance with those plans;
- B. Manage land use in a manner that will assure the orderly development and beneficial use of the unincorporated areas of Placer County for residential, commercial, industrial, agricultural, forestry, open space and other purposes;
- C. Manage the distribution of population in accordance with the availability of the natural resources, and public facilities and services necessary to support a growing population;
- D. Protect and preserve important features of the Placer County natural environment and the natural beauty of the area;
- E. Reduce hazards to the public resulting from the inappropriate location, use or design of buildings and land uses in relation to natural and built hazards, and the County highway system;
- F. Attain the physical, social, and economic advantages resulting from comprehensive and orderly land use and resource Planning. (ZO § 1.010)

17.02.020 Authority and general plan consistency

- A. This chapter is adopted based on the authority vested in Placer County by the state of California, including but not limited to the State Constitution; Section 65800 et seq. of the California Government Code; the California Environmental Quality Act (CEQA), the Housing Act, the Subdivision Map Act, the Health and Safety Code, and the Surface Mining and Reclamation Act (SMARA).
- B. It is the intent of the Placer County Board of Supervisors that this chapter be adopted and maintained so as to be consistent with the Placer County general plan and applicable community plans, and that any land use or development approved according to the requirements of this chapter will also be consistent with the Placer County general plan and any applicable community plan. (ZO § 1.020)

17.02.030 Applicability of Zoning Chapter

This chapter applies to all land uses and development within the unincorporated areas of Placer County as provided by this section, including land uses and development undertaken by units of government; except that uses and development located within the areas covered by the community plans listed below, in which case the regulatory provisions of such plans (or land use ordinances adopted pursuant to such plans) shall apply, unless such regulations conflict with Section 17.02.050(D) or defer to the provisions of this chapter, or unless such regulations are silent regarding land use matters otherwise governed by the provisions of this chapter:

1. Squaw Valley General Plan/Squaw Valley Land Use Ordinance, Appendix A to Chapter 17 of the Placer County Code;
 2. Tahoe City Community Plan or the Tahoe City Area General Plan, Appendix B to Chapter 17 of the Placer County Code;
 3. North Tahoe Community Plan, Appendix C to Chapter 17 of the Placer County Code.
 4. West Shore Area General Plan, Appendix D to Chapter 17 of the Placer County Code.
- A. **New Land Uses and Changes to Existing Uses.** It is unlawful, and a violation of the Placer County Code, for any person or public agency to establish, construct, reconstruct, alter, replace or allow any use of land, building or structure, or divide any land, unless:
1. The proposed use of land is allowed by Articles 17.06 through 17.52 (Zone Districts and Allowable Uses of Land) within the zone district and any combining districts that apply to the subject site; and
 2. The proposed use of land, building or structure, or division of land satisfies all applicable requirements of this chapter, including but not limited to minimum parcel size, height limits, required setbacks, parking standards, residential density, sign standards, specific use requirements; and
 3. Any land use permit or other approval required by Articles 17.06 through 17.52 (Zone Districts and Allowable Uses of Land) is first obtained as provided by Article 17.58 (Discretionary Land Use Permit Procedures), and any applicable conditions of approval are first satisfied.
- B. **Issuance of Building Permits.** No building permit shall be issued by the building official pursuant to Chapter 15 of this code unless the proposed land use and/or construction satisfies the provisions of this chapter.
- C. **Continuation of an Existing Use.** It is unlawful and a violation of this code for any person to operate or maintain a land use established according to the requirements of the Zoning Ordinance in any manner that violates any provisions of this chapter. However, the requirements of this chapter are not retroactive in their effect on a use of land that was lawfully established before this chapter or any applicable amendment became effective, except where an alteration, expansion or modification to an existing use is proposed, and except as provided by Sections 17.60.120, et seq. (Nonconforming Uses).
- D. **Effect of Zoning Ordinance Changes on Projects in Progress.** The enactment of this chapter or amendments to its requirements may have the effect of imposing different standards on development or new land uses than those that applied to existing development (e.g., this chapter or a future amendment could require more off-street parking spaces for a particular land use than former Zoning Ordinance provisions). This subsection determines how the requirements of this chapter apply to development project in progress at the time requirements are changed.

1. **Projects With Pending Applications.** All land use permit applications that have been determined to be complete as provided by California Government Code Section 65943 before the effective date of this chapter or any amendment, shall be processed according to the regulations and requirements in effect at the time the application was accepted as complete. Applications for land use permit extensions of time shall be consistent with the requirements of the Zoning Ordinance in effect when the time extension application is accepted as complete (see BOS Minute Order #93-02).
 2. **Approved Projects Not Yet Under Construction.** Any use authorized by an administrative review permit, minor use permit, conditional use permit or variance, for which construction has not begun as of the effective date of this chapter, or any amendment, may still be constructed as provided by the approved permit, as long as the permit is exercised before the expiration of the permit pursuant to Section 17.58.160 (Permit time limits and extensions), or, where applicable, before the expiration of any time extension granted under Section 17.58.160.
 3. **Completion of Projects Under Construction.** A building or structure that is under construction as of the effective date of this chapter or any amendment, need not be changed to satisfy any new or different requirements of this chapter as long as the building permit remains valid and current.
- E. **Other Requirements May Still Apply.** Nothing in this chapter shall eliminate the need for obtaining any other required permits, including but not limited to those required by Chapters 15 and 16 of this code, such as building permits, plumbing, electrical, or mechanical permits, grading permits, the approval of a parcel or final map, or any permit, approval or entitlement required by other chapters of this code or the regulations of any County department or other public agency, including but not limited to authority to construct or permit to operate from the Placer County air pollution control district, or streambed alteration agreements from the California Department of Fish and Game. Where a California Land Conservation Act (Williamson Act) Agreement exists that includes a specific parcel of land, the provisions of that Agreement, as well as the provisions of Chapter 6, Placer County Administrative Rules and Section 51200 et seq. of the California Government Code also apply. (ZO § 1.030)

17.02.040 Responsibility for Administration

This chapter shall be administered by the Planning Director and the Placer County Planning Department, Board of Supervisors, Planning Commission, Zoning Administrator, Development Review Committee, Design Site Review Committee and Parcel Review Committee, as provided in Article 17.60 of this chapter. (ZO § 1.040)

17.02.050 Interpretation

The Planning Director is assigned the responsibility and authority to interpret the requirements of this chapter. Questions about the meaning or applicability of any part of this chapter shall be resolved as provided by this section.

A. Language

1. **Construction.** When used in this chapter, the word "shall," is always mandatory and "may" is discretionary. The present tense includes the past and future tenses; and the future tense includes the present. The singular number includes the plural number, and the plural the singular, unless the natural construction of the word indicates otherwise.
2. **Number of Days.** Whenever a number of days is specified in this chapter, or in any permit, condition of approval or notice issued or given as provided in this chapter, such number of days

General Provisions

shall be construed as calendar days, except that such time limits shall extend to the following working day where the last of the specified number of days falls on a weekend or holiday.

3. **Minimum Requirements.** When interpreting and applying the regulations of this chapter, all provisions shall be considered to be the minimum requirements, unless stated otherwise (e.g., height limits for buildings and structures, building coverage, and the numbers and size of signs allowed are maximums, not minimums).
- B. **Map Boundaries.** If there is uncertainty about the location of any zoning boundary or other line on the official zoning maps, the following procedures shall be used in resolving the uncertainty:
1. Where a boundary is shown as approximately following a lot line, the lot line shall be deemed to be the boundary.
 2. Where a zone district boundary is not shown to include an adjacent street or alley, the district boundary shall be deemed to extend to the centerline of the right-of-way.
 3. Where a boundary is shown as approximately following a physical feature such as a stream, drainage channel, topographic contour line, power line, railroad right-of-way, street or alleyway, the boundary location shall be determined by the Planning Director, based upon the character of the particular feature used as a boundary.
 4. Where a zoning boundary crosses a parcel rather than following a property line, so that a single parcel is covered by two separate zone districts, the larger of the minimum parcel sizes required in the two zones by Articles 17.06 through 17.52 (Zone Districts and Allowable Uses of Land) shall apply to any proposed parcel within more than one zone district.
 5. Where the Planning Director determines through review of the public record of the Board of Supervisors hearing and action on a rezoning that a zoning boundary, line, or other information on an official zoning map has been drafted in error, the Planning Director shall have the authority to correct the error to make the official map consistent with the action of the Board of Supervisors.
- C. **Allowable Uses of Land.** If a proposed use of land is not specifically listed in Articles 17.06 through 17.52 (Zone Districts and Allowable Uses of Land), the use shall not be allowed, except as follows:
1. The Planning Director may determine that a proposed use not listed in Articles 17.06 through 17.52 is allowable if the director finds all of the following:
 - a. The proposed use will be consistent with the goals, objectives and policies of the general plan;
 - b. The proposed use will meet the purpose and intent of the zoning district that is applied to the site;
 - c. The proposed use will share characteristics common with those listed in the zoning district, and will not be of greater intensity, density, or generate more environmental impact than the uses listed in the district.
 - d. If the use of land involves an agricultural or related use, the director shall consult with the Agricultural Commissioner.
 2. When the Planning Director determines that a proposed unlisted use is equivalent to a listed use, the proposed use will be treated in the same manner as the listed use in determining where it is allowed, what permits are required and what other standards and requirements of this chapter apply.

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3. Determinations that specific unlisted uses are equivalent to listed uses will be recorded by the Planning Department, and will be incorporated into the land use definitions of the Zoning Ordinance when amendments to the ordinance are next considered.
4. The Planning Director may forward questions about equivalent uses directly to the Planning Commission for determination at a public hearing. Notice of such hearing shall be provided by posting at least seventy-two (72) hours prior to the hearing, and by the matter being listed on the commission agenda.

D. Conflicting Provisions.

1. **Other Code Provisions.** If conflicts occur between different requirements of this chapter, or between this chapter and other provisions of the Placer County Code or between the Placer County Code and any applicable state law, the most restrictive shall apply.
2. **Community Plan Standards.** When conflicts occur between the provisions of this chapter and standards adopted by ordinance in any applicable community plans, including those areas within the jurisdiction of the Tahoe Regional Planning Agency (TRPA), the provisions of the community plans shall apply.
3. **Specific Plans.** When conflicts occur between the provisions of this chapter and standards adopted as part of any specific plan, the provisions of the specific plan shall apply.
4. **Private Agreements.** The requirements of this chapter are not intended to interfere with, repeal, abrogate or annul any easement, covenant, or other agreement that was in effect when this chapter became effective. Where this chapter imposes a greater restriction on the development or use of structures or land than a private requirement, the provisions of this chapter shall apply. Where a covenant or private agreement imposes a greater restriction than this chapter, the provisions of this chapter shall still apply (without diminishing any private agreements or restrictions). The County will not enforce any private covenant or agreement unless it is a party to the covenant or agreement.
5. **Tahoe Basin.** Within the Lake Tahoe Basin, in any area covered by a TRPA "Plan Area Statement," any use not specifically listed within this chapter may be permitted if such use is allowed by the applicable plan area statement and a conditional use permit (CUP) is first obtained.

E. Record of Interpretations. Whenever the Planning Director determines that the applicability or meaning of any of the requirements of this chapter are unclear generally or as applied to a specific case, the Planning Director may issue an official interpretation. Official interpretations shall be:

1. In writing, and shall quote the provisions of this chapter being interpreted, together with an explanation of their meaning or applicability in the particular or general circumstances that caused the need for interpretation; and
2. Distributed to the Board of Supervisors, Planning Commission, Development Review Committee, and members of the Planning Department staff.
3. Any Zoning Ordinance provisions that are determined by the Planning Director to be unclear will be corrected by amending the Zoning Ordinance as soon as is practical. Until amendments can occur, the Planning Director shall maintain a complete record of all official interpretations, available for public review, and indexed by the number of the Zoning Ordinance section that is the subject of the interpretation.

- F. **Appeal and Referral.** Any determinations or interpretation by the Planning Director may be appealed as provided by Section 17.60.110 (Appeal). The Planning Director may refer any interpretation of this chapter to the Planning Commission for a decision. (ZO § 1.050)

17.02.060 Partial invalidation of Zoning Ordinance

If any chapter, section, subsection, paragraph, subparagraph, sentence, clause, phrase or portion of the Zoning Ordinance is for any reason held to be invalid, unconstitutional or unenforceable, such decisions shall not affect the validity of the remaining portions of the Zoning Ordinance. It is declared that the Zoning Ordinance and each chapter, section, subsection, paragraph, subparagraph, sentence, clause, phrase and portion thereof would have been adopted irrespective of the fact that one or more of such portions of the Zoning Ordinance be declared invalid, unconstitutional or unenforceable.

(ZO § 1.060)

17.60.110 Appeals

Decisions of the Planning Director, the Zoning Administrator, the Environmental Review Committee, the Parcel Review Committee, the Design/Site Review Committee, the Development Review Committee and the Planning Commission may be appealed by an applicant or by any aggrieved person as provided by this section.

A. Appeal Subjects and Jurisdiction. Actions and decisions that may be appealed, and the authority to act upon an appeal shall be as follows:

1. **Administration and Interpretation.** The following actions of the Planning Director and his/her staff may be appealed to the Planning Commission and then to the Board of Supervisors:
 - a. Determinations on the meaning or applicability of the provisions of this chapter that are believed to be in error, and cannot be resolved with staff;
 - b. Any determination that a permit application or information submitted with the application is incomplete, pursuant to California Government Code Section 65943.
2. **Land Use Permit and Hearing Decisions.** Rulings of the Planning Director, the Zoning Administrator, the Design/Site Review Committee, or the Parcel Review Committee (other than road improvement requirements) may be appealed to the Planning Commission and then to the Board of Supervisors. Rulings of the parcel review Committee related to road improvement requirements may be appealed to the director of Public Works (see Section 16.20.090 of the Placer County Code) and then to the Board of Supervisors. Rulings of the Planning Commission may be appealed directly to the Board of Supervisors. Rulings of the Development Review Committee and the environmental review Committee may be appealed to the hearing body having original jurisdiction in the matter being appealed. [Note: See Section 17.60.050 (Decisions of the Planning Commission and Board of Supervisors) for a discussion of the voting requirements of appeal bodies.]

B. Who May Appeal

1. An appeal may be filed by any person affected by a Planning Department administrative action or interpretation as described in Subsection (A)(1).
2. A hearing decision described in Subsection (A)(2) may be appealed by anyone who, in person or through a representative explicitly identified as such, appeared at a public hearing in connection with the decision being appealed, or who otherwise informed the County in writing of the nature of his/her concerns before the hearing.
3. A representative of a County department presenting departmental recommendations at a hearing shall not be authorized to appeal a decision reached at such hearing.

C. Filing of Appeals:

1. **Timing and Form of Appeal.** An appeal must be filed within ten days of the decision that is the subject of the appeal; appeals filed more than ten days after the decision shall not be accepted by the Planning Department. A notice of appeal shall be in writing, shall specify the decision or portion of the decision being appealed, shall include a detailed statement of the factual and/or legal grounds upon which the appeal is being taken and shall include other information required by the Planning Director, and may include any explanatory materials the appellant may wish to furnish. Within thirty (30) days of the date of filing the appeal, the appellant shall provide to the Planning Department all written materials which the appellant desires the appellate body to consider at the appeal hearing, including, if applicable, any proposed changes to the project. The

appeal shall be accompanied by the filing fee set by the most current Planning Department fee schedule.

2. **Filing and Processing.** An appeal shall be filed with the Planning Director, who shall process the appeal pursuant to this section, including scheduling the matter before the appropriate appeal body.
3. **Effect of Filing.** In the event of an appeal, the decision being appealed shall be set aside and of no effect until final action by the appeal body pursuant to this section.
4. **Appellant not project applicant.** In the event that the person filing the appeal is not the applicant for the project that is the subject of the appeal, a copy of the notice of appeal shall be provided to the applicant within ten (10) days after receipt by the Planning Director. A copy of all materials received from the appellant pursuant to Subsection (c)(1) herein shall also be provided to the applicant upon the applicant's request. Not later than ten (10) days prior to the date of the hearing, the applicant shall submit to the Planning Department any responsive materials to the appeal that the applicant wishes the appellate body to consider.

D. Processing of Appeals:

1. **Extension of Prior Permit.** Where the subject of an appeal is a business or activity in continuous or ongoing seasonal operation pursuant to a previously issued permit, the Board of Supervisors may grant a temporary extension of the previously issued permit pending the outcome of the appeal, but no longer than sixty days from the date of expiration. The temporary extension may be granted only in a public meeting of which all appellants of record have been individually notified, and at which all interested parties are given an opportunity to be heard.
2. **Report and Scheduling of Hearing.** When an appeal has been filed, the Planning Director shall prepare a report on the matter and shall schedule the matter for consideration by the appropriate appeal body identified in Subsection A of this section after completion of the report.
3. **Board Assumption of Appeal Hearing Authority.** In any case where a ruling of the Planning Director or Zoning Administrator has been appealed to the Planning Commission, the Board of Supervisors may determine that they shall hear and decide upon the appeal instead of the Planning Commission. A decision for the board to assume appeal authority shall occur through the vote of three or more board members at a regular meeting of the Board of Supervisors, either before the distribution of public notice for the Planning Commission hearing, or within ten days after a continued hearing before the Commission.
4. **Action and Findings**
 - a. **General Procedure.** After an appeal has been scheduled for consideration by an appellate body, the appellate body shall conduct a public hearing pursuant to the provisions of Section 17.60.140 (Public hearing). At the hearing (a hearing conducted "over again"), the appellate body shall initiate a discussion limited to only those issues that are the specific subject of the appeal, and, in addition, the specific grounds for the appeal. For example, if the permit for a project approval or denial has been appealed, the entire project will be the subject of the appeal hearing; however, if a condition of approval has been appealed, then only that condition and issues directly related to the subject of that condition will be allowed as part of the discussion by the appellate body.
 - i. The appeal body may affirm, affirm in part, or reverse the action, decision or determination that is the subject of the appeal, based upon findings of fact about the particular case. The findings shall identify the reasons for the action on the appeal, and verify the compliance or noncompliance of the subject of the appeal with the provisions of this chapter.

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- ii. When reviewing a decision on a land use permit (Article 17.58), the appellate body may adopt additional conditions of approval that may address other issues or concerns than the subject of the appeal, only if such other issues or concerns are substantially related to the subject of the appeal.
 - iii. A decision on an appeal by an appeal body may also be appealed as provided by Subsection A of this section, provided that the decision of the Board of Supervisors on an appeal shall be final.
- b. **Appeals to Board.** When a decision of the Planning Commission has been appealed to the Board of Supervisors, the board may choose to not conduct a hearing on the appeal, based on their review of the report and action of the Planning Commission. Such action by the board shall constitute affirmation of the decision being appealed.
- c. **Time Limits on Appeals.** Upon receipt of an appeal in proper form, the Planning Director or clerk of the Board of Supervisors, as applicable, shall schedule the matter for consideration by the appropriate appeal body. The appeal body shall commence a public hearing on the appeal within ninety days of its proper filing, or within such other time period as may be mutually agreed upon by the appellant, in writing, and the appeal body, in writing. If the public hearing is not commenced within ninety days, or an alternative time period is not agreed upon by the appellant and the appeal body, the decision rendered by the last hearing body shall be deemed affirmed. [Note: Once commenced, a public hearing on an appeal may be continued from time to time for good cause.]
5. **Withdrawal of Appeal—Hearing Decisions.** After an appeal of a decision has been filed, an appeal shall not be withdrawn except with the consent of the appropriate hearing body. (ZO § 25.140)

17.60.120 Nonconforming Uses

No land use permit shall be approved pursuant to Article 17.58 (Discretionary Land Use Permit Procedures) which results in the creation of a nonconforming use of land or building, or which makes any existing use, building or structure nonconforming as to the provisions of this chapter. A nonconforming use of land or buildings may be continued, changed or replaced only as provided by this section. Nonconforming mobile homes are covered by Section 17.56.150(E).

- A. **Nonconforming Uses of Land.** A nonconforming use of land may be continued, transferred or sold, provided that no such use shall be enlarged or increased, nor be extended to occupy a greater area than that which it lawfully occupied before becoming a nonconforming use. Additionally, non-conforming uses shall not be enlarged, extended expanded nor increased to occupy a larger area, nor a more intensive use than that which it was characterized by in the prior twelve months.
- B. **Nonconforming Buildings.** A nonconforming building may continue to be used as follows:
- 1. **Changes to Building.** The enlargement, extension, reconstruction or structural alteration of a building that is nonconforming only as to height and setback regulations, may be permitted if such additions or improvements conform to all other applicable provisions of this chapter (See Sections 17.54.020, 17.54.130, 17.54.140, 17.54.150, and 17.54.160), and the exterior limits of new construction do not encroach any further into the setback or the height limit than the comparable portions of the existing building.

2. **Maintenance and Repair.** A nonconforming building may undergo normal maintenance and repairs, provided that the work does not exceed fifteen percent of the appraised value thereof as shown in the Assessor's records in any one year period.
- C. **Nonconforming Use of a Conforming Building.** The nonconforming use of a building that otherwise conforms with all applicable provisions of this chapter may be continued, transferred and sold, as follows:
 1. **Expansion of Use.** The nonconforming use of a portion of a building may be extended throughout the building provided that a Minor Use Permit is first secured in each case where the expansion exceeds thirty percent of the original size of the nonconforming use.
 2. **Substitution of Use.** The nonconforming use of a building may be changed to a use of the same or more restricted nature.
- D. **Nonconforming Residential Uses in a Commercial or Industrial Zone.** A nonconforming residential use located in a commercial or industrial zone may be expanded, enlarged or remodeled without regard to the limitations provided by Subsections (B)(2) and (C)(1); however, the provisions of Subsection (B)(1) shall apply.
- E. **Industrial Districts.** A nonconforming industrial or agricultural use located in an industrial district may undergo minor alterations or additions, except that such use shall be brought into conformity with all applicable provisions of this chapter if it is proposed to be altered or increased to more than thirty percent of its original size as it existed on the date the use became nonconforming, or to such an extent that the use of land is different from the initial use and the new use would require a Minor or Conditional Use Permit.
- F. **Destroyed Structure.** The reconstruction of a building damaged by fire or calamity which at the time was devoted to a nonconforming use may be authorized by the Zoning Administrator through Minor Use Permit approval, provided that reconstruction shall occur within twenty-four months after the date of the damage and that the reconstructed building shall have no greater floor area than the one damaged.
- G. **Loss of Nonconforming Status.** If a nonconforming use of land or a nonconforming use of a conforming building is discontinued for a continuous period of one year, it shall be presumed that the use has been abandoned. Without further action by the County, further use of the site or building shall comply with all the regulations of the zone district in which the building is located, (Sections 17.60.060 et seq.) and all other applicable provisions of this chapter. (ZO § 25.200)

17.60.130 Nonconforming Lots of Record

A nonconforming parcel of land that does not comply with the access, area or width requirements of this chapter for the zone district in which it is located, shall hereby be considered to be a lawful building site and may be used as a building site if it meets one of the criteria specified by this section. It shall be the responsibility of the applicant to produce sufficient evidence to establish the applicability of one or more of the following.

- A. **Approved Subdivision.** The parcel was created on a subdivision map approved by the parcel review Committee, the Planning Commission and/or the Board of Supervisors as provided by the Placer County Subdivision Ordinance, Chapter 16 of this code or on a subdivision map approved by the Board of Supervisors before the enactment of Chapter 16 of this code.
- B. **Individual Parcel Legally Created by Deed.** Any parcel of land under one ownership and of record, that was legally created by a recorded deed prior to the effective date of the zoning enactment which made the parcel nonconforming.

- C. **Land Conservation Contract.** The nonconforming parcel was withheld from the adjoining land at the time such land was placed under a recorded land conservation agreement, and the parcel was withheld from the contract:
1. To be used as a building site; and
 2. The parcel was withheld before the effective date of the zoning enactment that made the parcel nonconforming.
- D. **Variance or Boundary Line Adjustment.** The parcel was approved through the Variance procedure (Section 17.60.100) or resulted from a boundary line adjustment as provided in the subdivision ordinance.
- E. **Partial Government Acquisition.** The parcel was created in conformity with the provisions of this chapter, but was made nonconforming when a portion of the parcel was acquired by a governmental entity so that the lot size is decreased not more than twenty percent and the yard facing any road was decreased not more than fifty percent.
- F. Where buildings or structures have been erected on a nonconforming parcel, the area where buildings or structures are erected shall not be later divided so as to reduce the building site area and/or frontage below the requirements of the applicable zone district or other applicable provisions of this chapter, or in any way that makes the use of the parcel more nonconforming.

[Note: Judicially created parcels (due to partition actions, divorce decrees, etc.) do not necessarily create valid building sites. Parcels created in such a fashion must be individually analyzed by the County staff for a determination of conformance with this chapter.] (ZO § 25.210)

17.60.140 Public Hearings

When a public hearing is required by this chapter, public notice shall be given and the hearing shall be conducted as provided by this section.

- A. **Notice of Hearing:** Notice of a public hearing shall be given as follows:
1. **Content of Notice.** Notice of a public hearing shall include, but not be limited to: the date, time and place of the hearing; the name of hearing body; a general explanation of the matter to be considered; and a general description, in text or by diagram, of the location of the real property that is the subject of the hearing. If a proposed negative declaration, a final environmental impact report, or any other appropriate environmental document has been prepared for the project pursuant to Chapter 18 of this code (Environmental Review) and the California Environmental Quality Act (CEQA), the hearing notice shall include a statement that the hearing body will also consider approval/certification of such document(s).
 2. **Method of Notice Distribution—Amendments, Plans, Subdivisions, etc.** Notice of a public hearing required by this chapter for Zoning Ordinance amendments (i.e., either Rezoning or Zoning Text Amendment), General/Community/Specific Plan Amendments, Development Agreements, Subdivisions and Parcel Maps, and appeals of decisions on these applications shall be given as follows, as required by California Government Code Section 65090 and Section 65091:
 - a. Notice shall be published at least once in a newspaper of general circulation in the County at least ten days before the hearing; and
 - b. Notice shall be mailed or delivered at least ten days before the hearing to:

- i. The owner(s) of the property being considered or the owners agent, and the applicant;
 - ii. Each local agency expected to provide water, sewage, streets, roads, schools, or other essential facilities or services to the project, whose ability to provide such facilities and services may be significantly affected;
 - iii. Any person who has filed a written request for notice with the Planning Director and has paid the fee set by the most current Planning Department fee schedule for such notice;
 - iv. All owners of real property as shown on the latest equalized assessment roll within three hundred feet of the property that is the subject of the hearing; or, where the number of property owners to whom notice would be mailed is more than one thousand, the Planning Director may choose to provide the alternate notice allowed by California Government Code Section 65091(a)(3);
 - c. Notice shall be posted at least ten days prior to the hearing on the property which is subject of the application, as well as in at least two public places in close proximity to the subject property.
3. **Method of Notice Distribution—Use Permits and Variances.** Notice of a public hearing required by this chapter for conditional or Minor Use Permits, Variances, and appeals of decisions on these applications shall be given as follows, as required by California Government Code Section 65091:
- a. Notice shall be mailed or delivered at least ten days before the hearing to:
 - i. The owner(s) of the property being considered or the owner's agent, and the applicant;
 - ii. Each local agency expected to provide water, sewage, streets, roads, schools, or other essential facilities or services to the project, whose ability to provide such facilities and services may be significantly affected;
 - iii. Any person who has filed a written request for notice with the Planning Director and has paid the fee set by the most current Planning Department fee schedule for such notice;
 - iv. All owners of real property as shown on the latest equalized assessment roll within three hundred feet of the property that is the subject of the hearing; or, where the number of property owners to whom notice would be mailed is more than one thousand, the Planning Director may choose to provide the alternate notice allowed by California Government Code Section 65091(a)(3).
 - b. Notice shall be posted at least ten days prior to the hearing on the property which is subject of the application, as well as in at least two public places in close proximity to the subject property.
4. **Additional Notice.** The Planning Director may also provide any notice with content or using a distribution method in addition to that required by this section as he or she determines is necessary or desirable.
5. **Notice Requirements for Appeals of Other Official Actions.** The legal notice requirements specified in Subsections (A)(1), (A)(2), and (A)(3) of this section are not required for the following

types of appeal hearings: appeals of rulings by the Planning Director; appeals of decisions by the Design/Site Review Committee (D/SRC), the Development Review Committee (DRC) or the Environmental Review Committee (ERC).

6. **Notice to Municipal Advisory Councils.** Any application that requires a public hearing before the Planning Commission shall first be submitted to any local Municipal Advisory Council (MAC) whose boundaries encompass the proposed project area. The Planning Department shall transmit a copy of the project application to the appropriate MAC, and shall request the MAC's general review and comment prior to any scheduled hearing before the Planning Commission. Failure of the MAC to comment prior to the Planning Commission hearing shall not be cause for the Planning Commission hearing to be postponed.
- B. **Scheduling of Hearing.** After the completion of any environmental documents required by the California Environmental Quality Act (CEQA), the matter shall be scheduled for public hearing on the next available Zoning Administrator, Planning Commission or Board of Supervisors agenda (as applicable) reserved for such matters, but no sooner than ten days after the distribution of the public notice or twenty-one days after the posting of a proposed negative declaration. At the discretion of the hearing body, a public hearing may be continued from its scheduled date to a future date as provided by Subsection C of this section.
- C. **Notice of County Action When Hearing Continued.** If a decision on a permit or amendment is continued by the County to a time which is neither previously stated in the public notice of the hearing, nor announced at the hearing as a time certain, the County shall provide notice of the further hearings (or action on the permit) in the same manner and within the same time limits as provided by Subsection A of this section.
- D. **Conduct of Hearing.** The public hearing shall be conducted according to such rules as may be adopted by the hearing body. At the public hearing, interested persons shall be given the opportunity to present information and testimony about the proposed project or amendment. Applications may be scheduled for separate action, or the agenda may be structured such that several applications may be considered and decided at one time. A consent agenda may be used for those items which are routine and/or non-controversial and for which no discussion by the hearing body is required. If an item requires discussion prior to the hearing body's action, the item shall be removed from the consent agenda at the request of any member of the hearing body and shall be added to the agenda for discussion at a later time during the same meeting or shall be continued to a later date. (ZO § 25.300)

Enforcement Administration**17.62.010****Article 17.62 - ZONING ENFORCEMENT****Sections:**

17.62.010	Purpose
17.62.030	Enforcement administration
17.62.040	Penalties
17.62.050	Interference prohibited
17.62.060	Right of entry/access
17.62.070	Enforcement hearings
17.62.080	Notices—Services and release
17.62.090	Recovery of costs
17.62.100	Additional processing fees
17.62.110	Enforcement procedures
17.62.120	Initial enforcement action
17.62.130	Citation
17.62.140	Forfeiture of bonds
17.62.150	Injunction
17.62.160	Nuisance abatement
17.62.170	Permit revocation

17.62.010 Purpose

This establishes procedures for enforcement of the provisions of Chapters 5 (Business Licenses and Regulations), 8 (Health and Sanitation), 12 (Roads—Encroachments), 15 (Building and Development), 16 (Subdivisions), 17 (Zoning), 18 (Environmental Review); Articles 12.16 (Tree Preservation) and 15.48 (Grading), and Chapter 17, Appendices A (Squaw Valley General Plan and Land Use Ordinance), B (Tahoe City Area Land Use Ordinance) and C (North Tahoe Area General Plan), (including the community plans of: Kings Beach, Tahoe Vista, North Stateline, Carnelian Bay and Kings Beach Industrial) of the Placer County Code. The enforcement procedures of this are intended to support timely correction of nuisances and violations of the provisions of this code while assuring due process of law in the abatement or correction of such nuisances and violations. (ZO § 35.010)

17.62.030 Enforcement Administration

It shall be the duty of the Placer County sheriff, the Planning Director, the chief building official, and/or the Health Officer and the employee(s) designated by the sheriff, the Planning Director, the chief building official, and/or the Health Officer as Code Enforcement Officer(s) to enforce the provisions of the Placer County Code as specified by this article. A Code Enforcement Officer has the following responsibilities and authorities in the enforcement and administration of the provisions of this chapter:

- A. To review with affected individuals the provisions of this code through initiation of administrative hearings and other methods to support voluntary compliance with its provisions.
- B. To issue citations for violations of this chapter, and for violations of Chapters 5 (Business Licenses and Regulations), 8 (Health and Sanitation), 12 (Roads—Encroachments), 15 (Building and Development), 16 (Subdivisions), 17 (Zoning), 18 (Environmental Review); Articles 12.16 (Tree Preservation) and 15.48 (Grading), and Chapter 17, Appendices A (Squaw Valley General Plan and Land Use Ordinance), B (Tahoe City Area Land Use Ordinance) and C (North Tahoe Area General Plan), (including the Community Plans of: Kings Beach, Tahoe Vista, North Stateline, Carnelian Bay and Kings Beach Industrial) of the Placer County Code, and to issue stop work orders pursuant to the provisions of the Uniform Building Code;

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- C. To initiate necessary proceedings to forfeit bonds or cash deposits;
- D. To initiate proceedings to revoke land use permits and other entitlements granted under this chapter and Chapters 5, 8, 12, 15, 16, 18 and Chapter 17, Appendices A, B and C of this code;
- E. To initiate and conduct nuisance abatement proceedings and to carry out additional abatement responsibilities regarding violations of this code;
- F. To work with the building official in administering substandard building abatement programs;
- G. To carry out any other special enforcement programs initiated by ordinance, order or resolution of the Board of Supervisors, and any other responsibilities and authorities specified by this subchapter or this code;
- H. To recover enforcement investigation and processing costs. (ZO § 35.100)

17.62.040 Penalties

Unless a different penalty is prescribed for violation of a specific provision of this chapter, or Chapters 5, 8, 12, 15, 16, 18 and Chapter 17, Appendices A, B and C of this code, any person violating any such provisions or failing to comply with the requirements of this code is guilty of an infraction and is subject to penalty as provided by Section 1.24.010 of this code (General penalty—Continuing violations); provided, however, that any person who violates any of the provisions or fails to comply with any of the requirements of this code, and who has previously been convicted and/or has plead guilty on two or more occasions (regardless of the number of separate counts on each occasion) during any twelve-month period for any crime made punishable by this subchapter shall be guilty of a misdemeanor, and subject to penalty as provided by state law. (ZO § 35.110)

17.62.050 Interference Prohibited

No person shall obstruct, impede or interfere with the Code Enforcement Officer or any other County employee, contractor or other authorized representative in the performance of code enforcement and nuisance abatement duties pursuant to this code. (ZO § 35.120)

17.62.060 Right of Entry/Access

When it is necessary to make an inspection to enforce the provisions of this chapter, or when a code enforcement official has reasonable cause to believe that there exists in a building or upon a site a condition which is contrary to or in violation of the sections of this code cited in Section 17.62.010, the official may enter the building or site at reasonable times to inspect or to perform duties imposed by this chapter, provided that if such building or site is occupied at the time of inspection, proper credentials shall be presented to the occupant and entry shall be requested. If such building or premises is unoccupied, the code enforcement official shall first make a reasonable effort to locate the owner or other person having charge or control of the building or site and shall request entry to the building or site. If entry is refused, the enforcement official shall have recourse to the remedies provided by law to secure entry/access. (ZO § 35.125)

17.62.070 Enforcement Hearings

Hearings conducted for the purposes of permit revocation, nuisance abatement, or appeals on the forfeiture of bonds, shall be conducted as follows:

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- A. **Hearing Body.** An enforcement hearing shall be conducted by the hearing body assigned to the specific enforcement procedure by Sections 17.62.100 et seq.
- B. **Conduct of Hearing.** The appropriate hearing body shall conduct an enforcement hearing as follows:
1. The hearing body will hear sworn testimony and consider other evidence concerning the conditions constituting cause to revoke approval or conditional approval, to forfeit bond, or to abate a nuisance.
 2. County officials and respondents to enforcement actions may be present at such hearing, may be represented by counsel, may present testimony, and may cross-examine any and all witnesses.
 3. The hearing need not be conducted according to technical rules relating to evidence and witnesses, and may be continued from time to time.
 4. The hearing body will deliberate upon the evidence and shall make findings upon such evidence to support any action of the hearing body to revoke approval or conditional approval, abate a nuisance, or deny an appeal on the forfeiture of a bond. Thereafter the hearing body shall issue its order to the respondent. (ZO § 35.130)

17.62.080 Notices - Services and Release

- A. **Service of Notice.** Any notice required by this article shall be served by the Code Enforcement Officer in one or more of the methods listed below, except where this subchapter provides otherwise:
1. **Mailed Notice.** A copy of the notice shall be either served personally or by first class mail, postage prepaid, and by registered mail, postage prepaid, certified, return receipt requested, to:
 - a. The owner of the affected premises as shown on the last equalized assessment role. If no address can be found as a result of a good faith effort by the code enforcement official to locate such an address, or if no address is known to the Code Enforcement Officer, then the notice shall be mailed to such person at the address of the premises affected by the proceedings. If the property is uninhabited, then the notice shall be published in a newspaper of general circulation in the area of the property; and
 - b. Any person in real or apparent charge or control of the affected property, mobilehome, recreational vehicle or other vehicles.

The failure of any person to receive a properly mailed notice does not affect the validity of any proceedings taken hereunder.
 2. **Posted Notice.** A copy of the notice shall be prominently and conspicuously placed upon the premises affected by the enforcement proceedings.
- B. **Recorded Notice.** A copy of any notice required by this chapter may be recorded in the office of the County Recorder of Placer County, except for a revocation of a bond or performance guarantee.
1. **Release of Notice.** Where a notice has been served as required by this section and a hearing body has not determined that sufficient grounds exist for nuisance abatement, or where the owner of an affected premises has corrected the condition that was the basis for initiation of enforcement action, the Code Enforcement Officer shall record a satisfaction release and removal of notice of nuisance or notice of nuisance abatement.
 2. **Payment of Costs Prior to Release.** In the event that enforcement costs have been incurred in the investigation/processing of a violation for which a notice is required, the release of such notice shall not be recorded until said costs have been reimbursed to Placer County as provided in Section 17.62.090. (ZO § 35.140)

17.62.090 Recovery of Costs

This section establishes procedures for the recovery of administrative costs incurred by the County in the abatement of conditions defined as a nuisance by Section 17.62.160(A), where no permit is required by this chapter or Chapters 5, 8, 12, 15, 16, 17, or 18 of this code to correct or abate the nuisance, and where a nuisance is abated before initiation of the procedures specified by Section 17.62.160(D) et seq., of this chapter. In cases where a permit is required by Chapters 15 or 17, the procedure for cost recovery set forth in Section 17.62.100 (Additional processing fees) shall be used instead.

- A. **Definition of Costs.** For the purposes of this chapter, costs shall mean administrative costs, including staff time expended and reasonably related to nuisance abatement cases where no permit is required to correct the nuisance, for items including but not limited to investigation, site inspection and monitoring, reports, telephone contacts, correspondence and meetings and hearings with affected parties.
- B. **Cost Accounting and Recovery Required.** The Code Enforcement Officer shall maintain records of all administrative costs incurred by responsible County departments that participate in the enforcement process specified in this subchapter, and shall recover the costs from the property owner as provided by this section. Staff time shall be calculated at an hourly rate as established and revised from time to time by the Board of Supervisors, which shall be stated in the current Planning Department fee schedule.
- C. **Notice of Cost Recovery Requirements.** The Code Enforcement Officer shall include in the notice of violation required by Section 17.62.120 (Initial Enforcement Action) a statement of the intent of the County to charge the property owner for all administrative costs associated with enforcement, and of the owner's right to a hearing if he or she objects to such charges. The notice shall state that the property owner will receive at the conclusion of the enforcement case a summary of administrative costs associated with the processing of the enforcement case at the hourly rate in effect at the time the case is initiated. The notice shall state that the property owner will have the right to object to the charges by filing a request for hearing with the Planning Director within fourteen days of service of the summary of charges, pursuant to Subsection D. of this section.
- D. **Summary of Costs.** At the conclusion of the enforcement case, the Planning Director shall send a summary of costs associated with enforcement to the property owner by certified mail. The summary shall include a notice that states that if the owner objects to the charges, a request for hearing must be filed as provided by Subsection E of this section, and that if no such hearing is requested, the owner's right to object will be waived and he or she will be fully liable for the charges, pursuant to Subsection F of this section.
- E. **Hearing on Objection to Charges.** Any property owner who receives a summary of costs pursuant to Subsection D of this section shall have the right to a hearing before the Planning Director on his or her objections to the proposed costs, as follows:
 - 1. **Request for Hearing.** A request for hearing shall be filed with Planning Director within fourteen days of the service by mail of the summary of costs, in the form of a letter explaining the reasons why the property owner believes the costs are incorrect or that County action to recover the costs is unreasonable.
 - 2. **Scheduling of Hearing.** Within thirty days of the filing of the request for hearing, the director shall hold a hearing to consider the owner's objections and to determine whether the administrative costs shown in the summary of costs for the enforcement action are valid.
 - 3. **Decision by Director.** In determining whether the costs are valid, the director shall consider whether total costs are reasonable in the circumstances of the case. Factors to be considered include, but are not limited to:

- a. Whether the present owner created the violation and/or has the ability to correct the violation; and/or
 - b. Whether the owner moved promptly to correct the violation or otherwise cooperated in the abatement of the nuisance; and/or
 - c. If reasonable, minds can differ as to whether a violation exists in the case at hand.
4. **Appeal.** The property owner may appeal the decision of the Director to the Planning Commission and then to the Board of Supervisors by using the procedure in Section 17.60.110(Appeals).
- F. **Collection of Charges.** If no request for hearing is filed pursuant to Subsection E of this section, or after a hearing the Planning Director affirms the validity of the costs, the property owner shall be liable to the County in the amount stated in the summary or any lesser amount as determined by the director. Such costs shall be recoverable in a civil action in the name of the County, in any court of competent jurisdiction within the County. (ZO § 35.150)

17.62.100 Additional Processing Fees

Any person who establishes a use of land or erects, constructs, allows, enlarges, moves or maintains any building or structure without first having obtained any permit required by this chapter, or Chapters 15 or 17 of this code, shall pay the additional permit processing fees established by the conditions of approval of such permit(s) or by the most current Planning Department fee schedule for the correction of violations, whichever is appropriate, before any permit for any building, structure or use on the site is issued. (ZO § 35.160)

17.62.110 Enforcement Procedures

The Code Enforcement Officer is empowered to use any of the procedures described by Sections 17.62.120 through 17.62.170, where appropriate to correct violations of, and secure compliance with the provisions of this article. (ZO § 35.200)

17.62.120 Initial Enforcement Action

The Code Enforcement Officer shall employ the procedures of this section in the initiation of enforcement action in cases where he or she has determined that real property within the unincorporated areas of the County of Placer is being used, maintained, or allowed to exist in violation of the provisions of this chapter, or Chapters 5, 8, 12, 15, 16, 17 of 18 of this code. It is the objective of these provisions to encourage the voluntary cooperation of responsible parties in the prompt correction of violations of this code, so that the other enforcement measures provided by this chapter may be avoided where prompt correction occurs.

- A. **Notice to Responsible Parties.** The Code Enforcement Officer shall provide the record owner of the subject site and any person having possession or control of the site with a written notice of violation, which shall include the following information:
1. A time limit for correction of the violation pursuant to Subsection B of this section;
 2. A statement that the County intends to: (i) charge the property owner for all administrative costs associated with abatement of conditions defined as a nuisance by Section 17.62.160(A), pursuant to Section 17.62.090 (Recovery of costs); and/or (ii) issue a citation initiating a judicial action;

3. A statement that the property owner may request and be provided a meeting with the Code Enforcement Officer to discuss possible methods and time limits for the correction of identified violations.
- B. **Time Limit for Correction.** The notice of violation pursuant to Subsection A shall state that the violation must be corrected within thirty days from the date of the notice to avoid further enforcement action by the County, unless the responsible party contacts the Code Enforcement Officer within that time to arrange for a longer period for correction. The thirty-day time limit may be extended at the discretion of the Code Enforcement Officer where he or she determines it is likely that the responsible party will correct the violation within a reasonable time. The notice may also state the requirement by the Code Enforcement Officer that correction shall occur within less than thirty days if the Code Enforcement Officer determines that the violation constitutes a hazard to health or safety.
- C. **Use of other Enforcement Procedures.** The enforcement procedures of Sections 17.62.130 through 17.62.170 may be employed by the Code Enforcement Officer after or instead of the provisions of this section in any case where the Code Enforcement Officer determines that the provisions of this section would be ineffective in securing the correction of the violation within a reasonable time. (ZO § 35.210)

17.62.130 Citation

The Code Enforcement Officer is authorized by the Placer County Board of Supervisors to issue a citation in the form of a "Notice to Appear" to any person who violates any of the provisions of this chapter, or Chapters 5, 8, 12, 15, 16, 17 or 18 of the Placer County Code or who violates any conditions that apply to a land use permit issued by the County. Issuance of a citation shall be pursuant to Article 1.16 of the Placer County Code (s). Penalties for violation are established by Section 1.24.010 of the Placer County Code (Penalties), and Section 17.62.030 (Penalties) of this chapter. (ZO § 35.220)

17.62.140 Forfeiture of Bonds

The Code Enforcement Officer may initiate procedures to forfeit all or a portion of a bond or cash deposit that has been required pursuant to Section 17.58.180 (Guarantees of performance) of this chapter or to the provisions of Chapters 5, 8, 12, 15, 16, 17 or 18 of this code. (ZO § 35.230)

17.62.150 Injunction

The Code Enforcement Officer may work with County counsel and/or the district attorney to secure injunctive relief to terminate a violation of the provisions of this chapter. (ZO § 35.240)

17.62.160 Nuisance Abatement

The Code Enforcement Officer may employ the provisions of this section to secure the abatement of nuisances, as defined by this section.

- A. **Nuisance Defined.** A "nuisance" shall be any of the following:
 1. Any condition declared by a statute of the state of California or by an ordinance of Placer County to be a nuisance;
 2. Any public nuisance known at common law or equity;
 3. Any condition dangerous to human life, unsafe, or detrimental to the public health or safety;

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4. Any use of land, buildings, or premises established, operated, or maintained contrary to the provisions of this chapter or Chapters 5, 8, 12, 15, 16, 17 or 18 of the Placer County Code.
- B. Notice of Nuisance.** Upon the determination by the Code Enforcement Officer that a nuisance exists, a notice of nuisance may be prepared and copies served as provided by Section 17.62.070 (Notices—Service and release). A notice of nuisance shall include the following information:
1. A legal description and street address, Assessor's parcel number, or other description sufficient to identify the premises affected;
 2. A description of the conditions causing the nuisance. Where the Code Enforcement Officer has determined that such conditions can be corrected or abated by repair or corrective action, the notice shall identify the repairs or corrective actions that will be required, and the time limit within which the nuisance must be corrected;
 3. An order to complete abatement of the nuisance within thirty days or other reasonable time period as determined by the Code Enforcement Officer;
 4. A statement that if the nuisance is not corrected as specified, a hearing will be held before the building board of appeals for violations of Chapter 15 of this code or before the Planning Commission for violations of this chapter of this code, to consider whether to order abatement of the nuisance and levy a special assessment, which may be collected at the same time and in the same manner as is provided for the collection of ordinary County taxes pursuant to Section 25845 of the California Government Code. Special assessments are subject to the same penalties, interest and procedures of foreclosure and sale in the case of delinquency as is provided for ordinary County taxes;
 5. A statement that the County may charge the property owner for all administrative costs associated with abatement of conditions defined as a nuisance by Subsection A of this section, pursuant to Section 17.62.080;
 6. Where the Code Enforcement Officer, in consultation with appropriate County officials, has determined that the condition causing the nuisance is imminently dangerous to life or limb, or to public health or safety, the notice may include an order that the affected property, building or structure shall be vacated, pending correction or abatement of the conditions causing the nuisance.
- C. Notice of Nuisance Abatement.** If, upon the expiration of the time specified in the notice of nuisance, action to abate the nuisance has not been commenced, or, if it has been commenced, it has not been prosecuted with due diligence nor completed within the time specified, the Code Enforcement Officer shall prepare a notice of nuisance abatement, and serve such notice as provided by Section 17.62.070 (Notices—Service and release). The notice of nuisance abatement shall contain the following:
1. A heading, "Notice of Nuisance Abatement";
 2. A notice to appear before hearing body identified in Subsection (D)(1) of this section at a stated time and place not less than ten nor more than thirty days after service of the notice, to show cause why stated conditions should not be found to be a nuisance, and why the nuisance should not be abated by the Code Enforcement Officer;
 3. The same information specified in Subsection B of this section for a notice of nuisance.
- D. Abatement Proceedings.** When a notice of nuisance abatement has been prepared and served pursuant to Subsection C of this section, nuisance abatement shall proceed as follows:

1. **Hearing.** A hearing on nuisance abatement shall be conducted by the building board of appeals for violations of Chapter 15 of this code, and by the Planning Commission for violations of this chapter. A decision to abate a nuisance shall be at the discretion of the applicable hearing body after a hearing is conducted pursuant to Section 17.62.070 (Enforcement hearings).
2. **Order by Hearing Body.** Upon the conclusion of the hearing, the appropriate hearing body may terminate the abatement proceedings or it may order:
 - a. That the owner or affected person shall abate the nuisance, prescribing a reasonable time (not less than thirty days) for completion of abatement;
 - b. That a request for additional time to complete abatement by a person subject to an abatement order shall be granted only if the affected person guarantees abatement within the time to be granted by submitting a performance guarantee instrument acceptable to the hearing body (e.g., a letter of credit, a certificate of deposit, etc.) or, where applicable, a performance guarantee instrument pursuant to the requirements of Chapter 17 of this code;
 - c. That, in the event abatement is not commenced, conducted and completed in accordance with the terms set by the board, the Code Enforcement Officer is empowered and authorized to abate the nuisance.
3. **Service of Order.** The order of the hearing body shall be served as provided by Section 17.62.070 (Notices—Service and release), except that the order need not be posted on the property or recorded pursuant to Section 17.62.070(A)(2) or 17.62.070(A)(3).
4. **Commencement of Time Limits.** The time limits set by the hearing body for completion of abatement or other required actions shall begin upon service of the notice, unless the order of the hearing body sets specific dates for completion of abatement.
5. **Compliance with Order Required.** It is unlawful and a violation of this code for any person to fail to comply with the provisions of an order of the building board of appeals or the Planning Commission pursuant to this section. The penalty for failure to comply with such an order shall be as set forth in Section 17.62.030 (Penalties).

E. **Abatement Penalties and Costs.** Upon expiration of the time limits established by Subsection (D)(4) of this section, the Code Enforcement Officer shall acquire jurisdiction to abate the nuisance, and shall carry out the following as appropriate:

1. **Disposal of Materials.** Any materials in or constituting any nuisance abated by the Code Enforcement Officer may be disposed of, or if directed by the hearing body and where such materials are of substantial value, sold directly by the general services department or the Planning Director in a manner approved by County counsel, or sold in the same manner as surplus County personal property is sold.
2. **Account of Costs and Receipts and Notice of Assessment.** The Code Enforcement Officer will keep an itemized account of the costs of enforcing the provisions of this ordinance, and of the proceeds of the sale of any materials connected therewith. Upon completion of abatement, the Code Enforcement Officer shall prepare a notice to be served as provided in Section 17.62.080(A) and (B), specifying:
 - a. The work done;
 - b. An itemized account of the costs and receipts of performing the work;
 - c. An address, legal description, or other description sufficient to identify the premises;

- d. The amount of the assessment proposed to be levied against the premises, or the amount to be refunded, if any, due to excess proceeds over the expenses;
 - e. The time and place where the Code Enforcement Officer will submit the account to the Board of Supervisors for confirmation. The time and place specified shall be not less than fifteen days after service of the notice;
 - f. A statement that the Board of Supervisors will hear and consider objections and protests to said account and proposed assessment or refund.
3. **Hearing on Account and Proposed Assessment.** At the time and place fixed in the notice, the Board of Supervisors will hear and consider the account and proposed assessment, together with objections and protests thereto. At the conclusion of the hearing, the board may make such modifications and revisions of the proposed account and assessment as it deems just, and may order the account and proposed assessment confirmed or denied, in whole or in part, or as modified and revised. The determination of the board as to all matters contained therein is final and conclusive.
4. **Notice of Lien.** Upon confirmation of an assessment by the board, the Code Enforcement Officer shall notify the owners by certified mail, return receipt requested, of the amount of the pending lien confirmed by the board, and advise them that they may pay the account in full within thirty days to the Planning Department in order to avoid the lien being recorded against the property. If the lien amount is not paid by the date stated in the letter, the Code Enforcement Officer shall prepare and have recorded in the office of the County recorder of Placer County a notice of lien. The notice shall contain:
- a. A legal description, address and/or other description sufficient to identify the premises;
 - b. A description of the proceeding under which the special assessment was made, including the order of the board confirming the assessment;
 - c. The amount of the assessment;
 - d. A claim of lien upon the described premises.
5. **Lien.** Upon the recordation of a notice of lien, the amount claimed shall constitute a lien upon the described premises, pursuant to Section 25845 of the California Government Code. Such lien shall be at a parity with the liens of state and County taxes.
6. **Collection With Ordinary Taxes.** After recordation, the Notice of Lien shall be delivered to the County auditor, who will enter the amount of the lien on the assessment roll as a special assessment. Thereafter the amount set forth shall be collected at the same time and in the same manner as ordinary County taxes, and is subject to the same penalties and interest, and to the same procedures for foreclosure and sale in case of delinquency, as are provided for ordinary County taxes; all laws applicable to the levy, collection and enforcement of County taxes are hereby made applicable to such assessment. (ZO § 35.250)

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17.62.170 Permit Revocation

The Code Enforcement Officer may initiate proceedings as provided by this section to revoke the approval of any land use permit issued pursuant to Articles 17.58 or 17.60 of this chapter, or Chapters 5, 8, 12, 15, 16, 17 or 18 of this code, in any case where it is determined that the permit was obtained through misrepresentation, or where a use of land has been established or is conducted in a manner that violates or fails to comply with the provisions of this code or a condition of approval, or where the use of land is undertaken in violation of any local, state or federal law which affects the health, safety, peace, morals or general welfare of the public.

- A. **Notice of Pending Revocation.** The Code Enforcement Officer shall notify the permittee of the intended revocation of the approval of a land use permit at least twenty-one days before a revocation hearing (Section 17.62.070, Enforcement hearings). Such notice shall contain the following:
1. A heading reading, "Notice of Revocation Hearing";
 2. The provisions and/or conditions violated and the means to correct the violation(s), if any;
 3. The date and place of the revocation hearing.
- B. **Revocation Hearing.** Before any action is taken to revoke an approved land use permit, a hearing shall be conducted pursuant to Section 17.62.070 (Enforcement hearings). If the land use permit to be revoked is a Conditional Use Permit, the revocation hearing shall be conducted by the Planning Commission. If revocation of a Minor Use Permit, an Administrative Review Permit or zoning clearance is being considered, the hearing shall be conducted by the Planning Director or designee acting as Zoning Administrator.
- C. **Action to Revoke.** If, after the revocation hearing has been conducted, the hearing body finds that grounds for revocation have been established, the hearing body may:
1. Allow the permitted additional time to correct the violation or noncompliance; or
 2. Modify conditions of approval on the basis of evidence presented at the hearing; or
 3. Revoke the approved land use permit and order the discontinuance or removal of the approved use within a time specified by the hearing body. In the absence of an appeal pursuant to Subsection D of this section, the revocation shall become effective fourteen days after the action of the hearing body. Upon the effective date of revocation, the Code Enforcement Officer shall initiate nuisance abatement proceedings by preparing and serving a notice of nuisance pursuant to Section 17.62.150, with the time limit for action by the permittee specified in the notice being that set by the hearing body in the revocation order.
- D. **Appeal.** The permittee may appeal the decision of the hearing body to the Board of Supervisors. Upon appeal, revocation shall not take effect until affirmed by the Board. After the hearing, the Board may affirm, modify or reverse the decision to revoke the permit.
- E. **Use after Revocation.** When an approved land use permit has been revoked, no further development or use of the property authorized by the revoked permit shall be continued, except pursuant to approval of a new land use permit and any other authorizations or permits required by this chapter, or Chapters 5, 8, 12, 15, 16, 17 or 18 of this code. (ZO § 35.260)

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6
7 SUPERIOR COURT OF CALIFORNIA
8 IN AND FOR THE COUNTY OF PLACER
9

10 MEADOW VISTA PROTECTION,

Case No. SCV 19614

11 Petitioners and Plaintiffs,

12 v.

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
CHEVREAUX AGGREGATES, INC.'S
GENERAL DEMURRER AND SPECIAL
DEMURRER**

13 CHEVREAUX AGGREGATES, INC.;
14 COUNTY OF PLACER; COUNTY OF
PLACER PLANNING DEPARTMENT; and
15 DOES 1- 50, inclusive,

DATE: October 3, 2006
TIME: 8:30 a.m.
DEPT.: 3

16 Respondents and Defendants.

/ Date Action Filed: 7/12/06
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1 TO PLAINTIFF AND THEIR ATTORNEY OF RECORD:

2 CHEVREAU AGGREGATE, INC. ("CHEVREAU") hereby demurs to the Second
3 through Seventh Causes of Action of the Verified Complaint (hereinafter referred to as "VC")
4 filed by MEADOW VISTA PROTECTION ("MVP") pursuant to Code of Civil Procedure
5 ("CCP") Section 430.10 as follows:

6 **INTRODUCTION**

7 CHEVREAU, a local family owned company operating since 1946, urges this court to
8 notice what is not hinted at in the complaint against CHEVREAU. MVP is seeking to shut
9 down the entire Combie quarry operations, and, thus, CHEVREAU's lifeblood. MVP
10 concedes that a surface mining operation has operated since 1947 at CHEVREAU's Combie
11 site¹ (VC 4:15-16), and the permits issued for aspects of the excavation, dredging and mining
12 operations date back to 1965 and 1972 (VC 4:18-28; 5:1-2). Yet, MVP's VC avoids any
13 discussion of CHEVREAU's vested rights to operate its mining operations, including its
14 asphalt concrete plant, and is trying to attack the validity of use permits issued pre-SMARA².
15 CHEVREAU's vested operations are based upon decades of entitlements including specific
16 identification and protection of the quarry in the Meadow Vista Community Plan, identification
17 of the quarry operations under SMARA by State Department of Geology and Mines, and
18 identification of the entire CHEVREAU operations as part of the reclamation plan.

19 MVP instead claims that either this Court or Placer County ("COUNTY"), it is unclear
20 which, should construct CHEVREAU's operations so as to benefit undefined members, with
21 no showing how these members are damaged by ongoing operations, or why these unnamed
22 members' claims should take precedence over the rights of a company which built the roads
23 MVP drives upon, and which regularly maintains these roads, often contributing materials under
24

25 ¹ The sand and gravel operation began in 1946 when NID and Joe Chevreau, Sr. executed a lease agreement to
26 annually remove up to 100,000 cubic yards of gravel, sand, and silt from Combie Reservoir. This lease is a public
record.

27 ² The Surface Mining and Reclamation Act of 1975 (SMARA) became effective in January 1976. Under SMARA,
28 all areas in which mining operations were conducted prior to January 1, 1976 became a vested right. "Mined lands"
are defined to include the "surface, subsurface, and groundwater of an area in which surface mining operations will
be, are being, or have been conducted, including private ways and roads appurtenant to any such area," and including
all other operations, facilities and equipment relating thereto. Public Resources Code §2729

1 the very permits with which MVP takes issue. MVP makes no showing of where these members
2 live in relation to CHEVREAU's 440-acre operations in Placer County so that claims of noise
3 and dust can be seriously considered.

4 Procedurally, MVP has made no attempt to exhaust the administrative remedies provided
5 in the Placer County Zoning Code ("Zoning Code")³; and to the extent that it has failed to
6 exhaust these statutory remedies, its claims are not ripe. However, even if the court grants leave
7 to amend to allow for such exhaustion against COUNTY, MVP's claims against the permits fail
8 on statute of limitations grounds. For all the above reasons, this court should grant
9 CHEVREAU's demur without leave to amend.

10 The defects in pleadings as they apply to CHEVREAU are addressed below.

11 LEGAL ARGUMENTS

12 I. GENERAL DEMURRER OF ACTION FOR DECLARATORY RELIEF

13 MVP seeks declaratory relief with respect to Conditional Use Permits LD-1030 and
14 LDA-786, which the COUNTY granted to CHEVREAU in 1965 and 1972, respectively. MVP
15 has named CHEVREAU, not COUNTY, despite the fact that COUNTY is the administrative
16 agency that granted the use permits and who has the authority to enforce the terms and conditions
17 thereof. CHEVREAU is being sued, ostensibly, because its daily operations somehow damage
18 MVP, but damage allegations are inconsistent with a Declaratory Relief Cause of Action.
19 CHEVREAU has no ability to determine the validity of previously issued permits, except to
20 point out the obvious which is that all statutes of limitation against all permits under which
21 CHEVREAU operates have long since run.

22 **A. Failure to State a Cause of Action--An Action for Administrative Mandamus, 23 Not Declaratory Relief, is the Exclusive Remedy for Challenging Conditional 24 Use Permits. CCP §430.10(e).**

25 Rather than file a writ against the COUNTY to enforce the provisions of the use
26 permits and/or determine their validity, MVP urges this court to assume the role of COUNTY to
27 determine MVP's "rights" and CHEVREAU's "duties". (VC 9:10-11, 9:27-28.)

28 ³ All further references to "Zoning Code" are intended to mean the Placer County Code, Chapter 17, Placer County
Zoning Ordinance, unless specifically identified.

1 MVP alleges that CHEVREAUX is in violation of the LD-1030 conditions of approval
2 (VC 2:12-13), that LD-786 has lapsed (VC 2:20), and seeks a “declaratory judgment that
3 CHEVREAUX is not properly operating within LD-1030; [and] a declaratory judgment that the
4 conditional use permit issued in 1972 is no longer valid [LD-786]”. (VC 3:6-9.) MVP’s motive
5 is clear – it is challenging the validity of these use permits. However, MVP cannot bring such a
6 challenge through declaratory relief. “The grant or denial of a conditional use permit is an
7 administrative or quasi-judicial act.” Topanga Assn. for a Scenic Community v. County of Los
8 Angeles (1974) 11 Cal.3d 506, 517. “[A] proceeding under Code of Civil Procedure section
9 1094.5 is the **exclusive remedy** for judicial review of the quasi-adjudicatory administrative
10 action of the local-level agency.” City of Santee v. The Superior Court of San Diego County
11 (1991) 228 Cal.App.3d 713, 718. (Emphasis added.) As a result, “[j]udicial review must be in
12 accordance with Code of Civil Procedure section 1094.5”. Goat Hill Tavern v. City of Costa
13 Mesa (1992) 6 Cal.App.4th 1519, 1526.

14 MVP also has not stated any allegations in its VC that assert anything regarding the
15 validity of the use permits or the Zoning Code as applied to all the property in Placer County in
16 order to save these two causes of action from demurrer because what MVP wants is an as-applied
17 judicial determination of invalidity applied just to CHEVREAUX. “Unless a party seeks a
18 declaration, a statute or ordinance controlling development is facially unconstitutional as applied
19 to *all property* governed and not to a particular parcel of land, an action for declaratory relief *may*
20 *not be had*.” City of Santee, 228 Cal.App.3d at 718. (Emphasis added.) As a result, demurrer
21 should be granted without leave to amend because of the fatal procedural flaw of having failed to
22 file an action for administrative mandamus.

23 **B. Failure to State a Cause of Action--Failure to Exhaust. CCP §430.10(e).**

24 MVP ignores its obligations to exhaust administrative remedies, hop scotching to this
25 court, which renders both the second and third causes of action subject to general demurrer.
26 “[I]t is settled that the exhaustion of an administrative remedy, where one is available, is a
27 condition precedent to obtaining judicial relief and that ‘a court violating the rule acts in excess
28 of jurisdiction.’” Morton v. The Superior Court of Fresno County (1970) 9 Cal.App.3d 977, 981

1 quoting in part Hollon v. Pierce (1967) 257 Cal.App.2d 468, 475. MVP alleges that it sent a
2 letter to the COUNTY regarding LD-1030 (VC 2:24-26) and that the Meadow Vista Municipal
3 Advisory Council ("MAC") sent a letter to the Placer County Board of Supervisors on April 12,
4 2005 "formally requesting the Board to direct the Planning Department to 'initiate public
5 hearings to determine the validity and scope of CHEVREAU's permit LDA-[786]'" (VC 7:20-
6 22.) The MAC is not an agent of MVP, and writing letters is not the equivalent of the exhaustion
7 of administrative remedies. MVP will no doubt try and argue that they fall within one of the
8 limited exceptions to the requirement to exhaust administrative remedies. However, MVP has
9 failed to allege in its complaint which exception applies in this case⁴. None of the
10 recognized exceptions to the doctrine of administrative remedies applies in this situation. In fact,
11 MVP has one of two recourses available to it, neither of which it alleges in its VC that it pursued
12 prior to filing this lawsuit. MVP could have filed an enforcement proceeding, pursuant to Zoning
13 Code §17.62. (Attached hereto as Request for Judicial Notice 1 ("RJN 1").) §17.62.010
14 specifically provides that:

15 [t]he enforcement procedures of this [Article] are intended to support timely
16 correction of nuisances and violations of the provisions of this code while
17 assuring due process of law in the abatement or correction of such nuisances and
18 violations.

19 The VC is devoid of any mention of this process because no request for abatement of nuisances
20 has ever occurred. MVP could have also sought a formal determination on one or both of
21 CHEVREAU's use permits pursuant to Zoning Code §17.02.050⁵. If disappointed, MVP must
22 at that point exhaust its administrative remedies by filing an appeal to the Planning Commission
23 and then to the Board of Supervisors *before* seeking judicial remedies. Zoning Code §17.60.110.
24 MVP fails to allege any attempt to exhaust its administrative remedies before filing this VC.

25 COUNTY's alleged failure to answer MVP's letter does not relieve MVP of its
26 jurisdictional requirement to exhaust as identified in Zoning Code. As noted above, the Zoning

26 ⁴ The court in Ogo Associates v. City of Torrance (1974) 37 Cal.App.3d 830, 834; outlines the exceptions when the
27 doctrine of administrative remedies does not apply: (1) the controversy lies outside the jurisdiction of the
28 administrative agency, (2) to pursue such remedies would result in irreparable harm, (3) the administrative agency
cannot grant an adequate remedy, and (4) the aggrieved party can positively state that the administrative agency's
decision in the particular matter would be adverse to him/her on it.

⁵ Pursuant to Zoning Code Section 17.02.050: "The planning director is assigned the responsibility and authority to
interpret the requirements of this chapter [Chapter 17 of the County Code – Zoning]". (See RJN 1.)

1 Code provides an administrative avenue of redress for grievances regarding violations of use
2 permits, and exhaustion is a mandatory predicate. MVP's "failure to exhaust an administrative
3 remedy is a jurisdictional defect" and "dismissal [is] mandatory in view of the jurisdictional
4 infirmities." Pan Pacific Properties, Inc. v. County of Santa Cruz (1978) 81 Cal.App.3d 244,
5 251. Because MVP failed to allege and cannot exhaust its administrative remedies until it
6 follows the procedures of the Zoning Code, CHEVREAU's demurrer on the second and third
7 causes of action must be sustained.

8 **C. Failure to State a Cause of Action--Underlying Action Is Barred by the**
9 **Statute of Limitations. CCP §430.10(e).**

10 MVP knows exhaustion will not help its case because MVP failed to appeal the approval
11 of either LD-1030 or LDA-786 within the ten days mandated by Zoning Code §17.60.110.C.
12 LD-1030 was granted in 1965, and LDA-786 was granted in 1972. CA Government Code
13 §65009.c.1.E provides: "No action or proceeding shall be maintained in any of the following
14 cases by *any* person *unless* the action or proceeding is commenced and service is made on the
15 legislative body **within 90 days after the legislative body's decision.**" (Emphasis added.)
16 MVP failed to challenge the validity of CHEVREAU's use permits within the time period set
17 forth in either Zoning Code or State law, thus MVP's causes of action for declaratory relief are
18 barred. Pan Pacific, 81 Cal.App.3d at 252-253. [Held: An action challenging the validity of a
19 local zoning ordinance if not commenced within the time prescribed by local ordinance and/or
20 state law is barred.]

21 **D. Failure to State Cause of Action Under Circumstances alleged in VC--No**
22 **Justiciable Controversy Exists. CCP §430.10(e)**

23 MVP admits that COUNTY concluded that there is presently nothing to investigate or
24 enforce with respect to CHEVREAU's permits (VC 2: 26-28, 8:3-4.) For the court to exercise
25 its discretion to declare the rights and duties of the parties, the controversy involved must be one
26 which admits of specific and conclusive relief by judgment within the field of judicial
27 determination. CCP§1060.

28 The 'actual controversy' referred to in this statute [CCP §1060] is one which
admits of definitive and conclusive relief by judgment within the field of judicial
administration, as distinguished from an advisory opinion upon a particular or

1
2 hypothetical state of facts. The judgment must decree, not suggest, what the
3 parties may or may not do. Selby Realty Co. v. San Buenaventura (1973) 10
4 Cal.3d 110, 117.

5 MVP has alleged no such controversy in its lawsuit. In fact, MVP's allegations support
6 the opposite. MVP's VC admits COUNTY has taken no formal actions on either LD-1030 or
7 LDA-786 because it has found no legal justification to do so. (VC 2:24-28, 8:1-4.) The fact that
8 COUNTY has not acted means that, by definition, there is *no present justiciable controversy*
9 between COUNTY and CHEVREAU. It is "entirely within the discretionary power of the trial
10 court to refuse to entertain the count for declaratory relief" when the allegations do not provide a
11 compelling reason for the court to interject itself to mandate how an administrative agency shall
12 administer the law. Paraco, Inc. v. Department of Agriculture (1953) 118 Cal.App.2d 348, 358.

13 While MVP may be dissatisfied with the County "[a] citizen's mere dissatisfaction with
14 the performance of either the legislative or executive branches, or disagreement with their
15 policies does not constitute a justiciable controversy." Zetterberg v. State Dept. of Public Health
16 (1974) 43 Cal.App.3d 657, 662. [Held: The Zetterberg court concluded that plaintiffs failed to
17 establish the existence of any justiciable controversy affecting their rights.] MVP is frustrated
18 because COUNTY's own investigations found no violations related to LD-1030. MVP admits
19 that the "traffic condition" it seeks to impose on LD-1030, was never included as a condition of
20 approval but attempts to patently misrepresent what was included or not included as conditions
21 of LD-1030⁶ by claiming there was an "understanding" (VC 4:26). An "understanding" is not a
22 condition of approval. MVP also disagrees with COUNTY's conclusion that LDA-786 has not
23 lapsed and that the "current Placer County Planning Director, stated unequivocally, '[LDA-786]
24 will never lapse.'" (VC 8:3-4.)

25 MVP's disagreements with COUNTY's conclusions on both of these permits does not,
26 however, rise to the level of a justiciable controversy. A "difference of opinion as to the

27 ⁶ MVP notes that LD-1030 was subject to six conditions of approval. No condition related to traffic exists. To try
28 and cure this defect MVP states "LD-1030 was approved on the understanding that the number of trucks leaving and
entering the site would not exceed 20 per day." (VC 4:26-27.) Whatever "understanding" the Planning Commission
had at the time LD-1030 was granted is irrelevant because no condition of approval limiting the daily truck trips was
ever imposed on LD-1030.

1 interpretation of a statute as between a citizen and a governmental agency does not give rise to a
2 justiciable controversy and provides no compelling reason for a court to attempt to direct the
3 manner by which the agency shall administer the law." Zetterberg, 43 Cal.App.3d at 663.

4 Moreover, MVP's claims that as a "citizen" it can compel an administrative agency to act
5 for the public's benefit is flawed because MVP has failed to allege that MVP, as an entity, "has a
6 private or particular interest to be subserved, or some particular right to be preserved or protected
7 by the writ, independent of that which it holds with the public at large." Potter v. City Council of
8 Port Hueneme (1951) 102 Cal.App.2d 141, 144.⁷

9 In its second and third causes of action, MVP wants this court to direct COUNTY on how
10 it should or should not interpret or enforce the LD-10 AND LD-786 permits or how COUNTY
11 should interpret its own Zoning Code absent any allegation of a controversy between the
12 COUNTY and CHEVREAUUX over CHEVREAUUX's use permits. (VC 43:47.) As a result, this
13 demurrer should be granted because MVP has failed to allege a justiciable controversy and,
14 moreover, has failed to allege such a controversy between the proper parties – the COUNTY and
15 CHEVREAUUX.

16 **E. Failure to State Cause of Action - Declaratory Relief Under the**
17 **Circumstances as alleged in the VC is Not Proper at This Time.**
CCP §430.10(e).

18 A court may refuse declaratory relief in any case where its declaration or determination is
19 not necessary or proper at the time under all the circumstances. CCP §1061. As noted above,
20 Zoning Code §17.62 provides for code enforcement proceedings should any member of the
21 interested public believe that an individual or entity is violating the terms of a permit. MVP's
22 VC makes no allegation that it first utilized the administrative code enforcement process to
23 address its concerns regarding any of CHEVREAUUX's operations before bringing this VC.
24 Where MVP's needs can be addressed by other legal or equitable remedies which are as speedy

25 ⁷ In the Potter case, the City filed a demurrer which was sustained. The court held as follows:
26 "As noted in respondents' brief, the rule as set forth in 16 California Jurisprudence, section 6, page 767, requires that
27 'to authorize the issuance of the writ (of mandamus) there should not only be want of specific legal remedy, but also
28 there should be a specific legal right; the party sought to be coerced must be bound to act. If the existence of the right
is doubtful, the writ will be denied.' On page 853 of the same citation occurs the following: 'It is a settled general rule
that a private individual may apply for this remedy only in those cases where he has some private or particular
interest to be subserved, or some particular right to be preserved or protected by the writ, independent of that which
he holds with the public at large.' Unless this special right is made to appear, the application should be denied."
Potter, 102 Cal.App.2d at 144;

1 and adequate and as well suited, declaratory relief is unnecessary. Communist Party v. Peek
2 (1942) 20 Cal.2d 536, 540. [Held: Trial court properly sustained demurrer to cause of action for
3 declaratory relief when it was evident on the face of the complaint that a speedy and adequate
4 remedy for plaintiff's purpose is provided by Elections Code, §2900⁸.] MVP is frustrated with
5 COUNTY's failure to cite CHEVREUX but that does not eliminate the fact that MVP must
6 follow COUNTY procedures. As MVP has not sought to use zoning enforcement, declaratory
7 judgment is not necessary or proper in this case, this demurrer should be sustained.

8 **II. SPECIAL DEMURRER FOR DECLARATORY RELIEF**

9 **A. This Court has no Jurisdiction of Subject Matter for Declaratory Relief.**
10 **CCP §430.10(a).**

11 The objection that the court lacks jurisdiction of the subject of the action alleged may be
12 made by demurrer CCP §420.10(a), where the defect appears on the face of the complaint or
13 from matters of which the court must or may take judicial notice. CCP §430.30(a). MVP
14 ignores the patent deficiencies related to timing and administrative hearing procedure evident in
15 its VC and is asking this Court to step into the shoes of the COUNTY to review LD-1030 and
16 LDA-786. But this Court lacks jurisdiction until and unless the COUNTY acts; and the Court
17 cannot order the COUNTY to interpret the permits in a certain way just to make MVP happy. "It
18 lies within the power of the administrative agency ... to determine, in the first instance and
19 before judicial relief may be obtained, whether a given controversy falls within its granted
20 jurisdiction." Morton, 9 Cal.App.3d at 982. Controversies regarding the interpretation, validity
21 and/or enforceability of conditional use permits clearly fall within the jurisdiction of the
22 administrative/legislative agency and the courts have historically deferred to the judgment of the
23 administrative agency.

24 If the validity of the legislative classification for zoning purposes be fairly
25 debatable, the legislative judgment must be allowed to control. The test of
26 the validity of comprehensive zoning regulations has consistently been
27 applied and followed by this court, so that whenever we have found that
reasonable minds might differ as to the necessity or propriety of particular
regulations or classifications, we have bowed to the legislative
determination and sustained the regulation. Consolidated Rock Products
Co. v. City of Los Angeles (1962) 57 Cal.2d 515, 522-523.

28 ⁸ A demurrer in this case can be sustained based on Zoning Code (RJN 1) provisions, which are matters that the court may take judicial notice of.

1 It is in excess of this Court's jurisdiction to interpret the provisions of either LD-1030 or LDA-
2 786 prior to, or contrary to, COUNTY's prior determination so as to find CHEVREAUX is in
3 violation of the conditions of either permit⁹. Yet that is exactly what MVP is seeking by asking
4 this Court to tell the COUNTY, the agency which held the hearings to issue permits LD-1030
5 and LDA-786, what CHEVREAUX's "rights and Chevreaux's duties" are in connection with
6 these permits (VC 9:10-11, 9:27-28).

7 It is the prerogative of the Legislature to prescribe the powers and authority of an
8 executive agency created to deal with a specific public problem ... The manner in
9 which this authority is exercised is a matter of administrative discretion. The
10 wisdom or effectiveness of the exercise of either legislative or administrative
discretion is judged essentially by the political process. In short, the judicial
branch of government is **not the overseer** of the other two [branches of the
government]. Zetterberg, 43 Cal.App.3d 657 at 662. (Emphasis added.)

11 This court must sustain the special demurrer without leave to amend because the Court
12 does not have jurisdiction to dictate to the COUNTY how the two use permits granted by it are to
13 be interpreted. Only if and when MVP can establish that a judicable controversy exists
14 regarding these permits, which it cannot do at this time, does the court have jurisdiction to
15 provide declaratory relief to MVP.

16 **B. Non-joinder of Parties--Failure to Join COUNTY as an Indispensable Party
to Both Causes of Action. CCP §430.10(d).**

17 A party is indispensable whenever the court finds that in the absence of a party required
18 to be joined under the provisions of CCP §389(a)¹⁰, it would be preferable to dismiss the action
19 without prejudice, the absent party being thus regarded as indispensable. CCP §389(b).
20 COUNTY Planning Director is charged with the responsibility and authority to interpret all of the
21 provisions of the Zoning Code including whether a particular use, such as CHEVREAUX's
22 quarry is in conformance with the applicable Zoning Code provisions and/or whether
23

24
25 ⁹ "[T]he settled rule of this court is that it will not substitute its judgment for that of the legislative body charged with
the primary duty and responsibility of determining the question." Zahn, et al v. Board of Public Works, et al (1927)
274 U.S. 325, 327.

26 ¹⁰ "A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the
subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be
27 accorded among those already parties or (2) he claims an interest relating to the subject of the action and is so
situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to
28 protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double,
multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the
court shall order that he be made a party." CCP §389(a).

1 CHEVREAUX's asphalt plant use permit has lapsed¹¹. MVPs fails to name COUNTY as a
2 party to either the second and third causes of action. Any determination that this Court may
3 make with respect to LD-1030 or LDA-786 will affect COUNTY, as COUNTY is the only entity
4 that can lawfully interpret, enforce, revoke, or amend permits issued by it. COUNTY may claim
5 an interest relating to the subject of the second and third causes of action pursuant to CCP
6 §389(a) and as a result is an indispensable party to these two causes of action.

7 The cases construing Code of Civil Procedure section 389 have held that the
8 failure to join an 'indispensable' party is not 'a jurisdictional defect' in the
9 fundamental sense.... However, for reasons of equity and convenience, a court
should not proceed with a case where an 'indispensable party' is absent and
cannot be joined. Welsh v. Bodeman (1986) 176 Cal.App.3d 833, 839.

10 The holding of the Welsh case is analogous to the present case. In Welsh, plaintiff filed suit
11 against Robert Bodeman as Finance Director but did not name the City, the City Council, or
12 Planning Commission. The trial court granted Welsh a writ of mandamus. Bodeman appealed
13 and asserted "jurisdiction over the city is absolutely essential to the execution of the judgment."
14 Welsh, 176 Cal.App.3d at 838. The Court of Appeal agreed and concluded:

15 insofar as the judgment mandates the city to provide plaintiff with the process set
16 forth in former section 7-1, the city was never a party to the action. As the
17 California Supreme Court pointed out in Jollie v. Superior Court (1951) 38 Cal.2d
52, 59, a judgment should not be so drafted as 'to purportedly and vainly grant
18 relief against persons who are not parties to the litigation before the court; as to
them the court is without jurisdiction in the cause.' Welsh, 176 Cal.App.3d at 839.

19 The Court of Appeal reversed the trial court judgment and directed the trial court to dismiss the
20 action without prejudice and held that the City was in the Welsh case "a truly indispensable
21 party" and "where the absence of a truly indispensable party has precluded the trial court from
22 rendering an effective judgment between the parties before it, the trial court can be said to lack
23 *jurisdiction of the subject matter*. We appear to be presented with precisely such a situation."
24 Welsh, 176 Cal.App.3d at 840. (Emphasis added.)

25 Any declaratory relief that this court might fashion will likely mandate that the COUNTY
26 perform some action on LD-1030 and/or LD-786, thus rendering the COUNTY an indispensable
27 party to the second and third causes of action. Failure of MVP to join the COUNTY precludes

28 ¹¹ Pursuant to Zoning Code Section 17.02.050: "The planning director is assigned the responsibility and authority to
interpret the requirements of this chapter [Chapter 17 of the County Code – Zoning]".

1 this court from rendering an effective judgment and as a result, this special demurrer should be
2 granted for failure to name an indispensable party.

3 **III. GENERAL DEMURRER ON INJUNCTION—FAILURE TO STATE CAUSE OF**
4 **ACTION—FAILURE TO ALLEGE SUFFICIENT FACTS/CIRCUMSTANCES**
5 **TO SUSTAIN APPLICATION FOR INJUNCTION CCP §430.10(e).**

6 MVP seeks to convince this court that it can not only step into the shoes of COUNTY
7 with respect to interpreting the conditions of LD-1030 and LD-786 but that in the fourth cause of
8 action that this court can also replace the COUNTY and directly enforce the terms and conditions
9 of these two permits. As noted in §II.A of this demurrer, absent a showing of abuse of discretion,
10 which MVP has failed to allege, the courts will not substitute their judgment for that of the
11 legislative body, in this case COUNTY, charged with the primary duty of enforcing the terms and
12 conditions of the use permits that it granted. Yet, that is exactly what MVP is seeking to do in the
13 fourth cause of action. MVP requests that this court enjoin CHEVREAU from “surface mining
14 outside the boundaries of LD-1030 and violating conditions” of that permit and to enjoin
15 CHEVREAU from “constructing, maintaining or otherwise operating an asphalt plant at any
16 site on the property.” (VC 14:18-21.)

17 MVP has not attached affidavits from itself or any of its members to provide a evidentiary
18 basis upon which this court can grant an injunction. Rather, MVP simply states, without any
19 factual basis, that CHEVREAU has violated the conditions of LD-1030 and LD-786 and that
20 this alleged violation “will cause and have caused irreparable injury and harm to MVP members
21 and other Meadow Vista residents. (VC 10:7-10.) This is insufficient to support a cause of
22 action for injunction.

23 Where the complaint is the sole basis of the order, and the complaint is treated as an
24 affidavit, its sufficiency must be tested by the same rules applicable to oral testimony.
25 Conclusions that might stand as a matter of pleading are not competent to justify the
26 issuance of an injunction. *Unless the statement, in the nature of a conclusion, is*
27 *supported by the facts or circumstances on which it rests, it is insufficient to sustain an*
28 *application for injunction. If the complaint, otherwise unsupported, is open to attack on*
general demurrer, it is insufficient. Bank of America v. Williams (1948) 89 Cal.App.2d
21, 23. (Emphasis added.)

////

1 Even though MVP alleges generally that CHEVREAU'S mining and asphalt operations
2 will cause it "irreparable injury" and that there is no "adequate remedy" other than injunction
3 (VC, p.10: 9, 16-27) these allegations do not state facts sufficient to constitute a cause of action.

4 'A complaint for an injunction which does not state facts sufficient to determine
5 how plaintiff's property will be permanently injured by the acts complained of,
6 and which states merely general conclusions, as to multiplicity of suits and
7 irreparable injury, not warranted by any pleading of facts, does not state facts
8 sufficient to constitute a cause of action for equitable relief to enjoin the acts
9 complained of.' Willis v. Lauridson (1911) 161 Cal. 106, 117, quoting Bishop v.
10 Owens (1907) 5 Cal.App.83, 86.

11 As a result of MVP's failure to properly state a cause of action for injunction, CHEVREAU'S
12 demurrer should be granted without leave to amend.

13 **IV. GENERAL DEMURRER TO THE FIFTH THROUGH SEVENTH CAUSES OF**
14 **ACTION FOR PUBLIC AND PRIVATE NUISANCE AND TRESPASS**

15 **A. Failure to State a Cause of Action—MVP Lacks Standing to sue because it is**
16 **not the Real Party In Interest. CCP § 430.10(e).**

17 Every action must, except as otherwise expressly authorized by law, be prosecuted in the
18 name of the real party interest. Ventura County Ry. Co. v. Hadley Auto Transport (1995) 38-Cal.
19 App. 4th 878, 880. In this case, MVP is not the real party in interest and has no right to relief in
20 court. The real party in interest is the person who owns or holds title to the claim or property
21 involved, as opposed to others who may be interested or benefited by the litigation. Gantman v.
22 United Pacific Reliance (1991) 232 CA 3d 1560, 1566. MVP does not have standing to sue in a
23 representative capacity for damages to its members, because the members, their alleged common
24 interest, and the injuries affecting all members represented by MVP are not readily ascertainable.
25 Plaintiffs have standing to sue if they or someone they represent have either suffered or are
26 threatened with an injury of sufficient magnitude to reasonably assure the relevant facts and law
27 common to the members will be adequately represented. (City of Irvine v. Irvine Citizens
28 Against Overdevelopment (1994) 25 Cal App 4th 868, 874.) MVP does not meet the
requirements of a representative suit on behalf of the real parties in interest and, therefore, lacks
standing to sue.

Standing to sue goes to existence of cause of action, i.e., whether plaintiff has right to
relief in court; and a demurrer can be used to challenge standing. Sacramento County Fire

1 Protection Dist. v. Sacramento County Assessment Appeals Bd. (1999) 75 Cal. App. 4th 327,
2 331. The fifth through seventh causes of action fail to state a cause of action because these
3 causes of action allege that someone other than MVP is injured and, therefore, the pleader lacks
4 standing to sue. CCP §367 requires, with specified exceptions that are not applicable to the case
5 at hand, that actions be prosecuted in name of real party in interest.

6 MVP does not fall under the exceptions expressly authorized by law that permit a suit by
7 other than the real party in interest include actions by executors, administrators, trustees of an
8 express trust, and other persons expressly authorized by statute and to actions by owners'
9 associations established in condominium, community apartment, and undivided interest
10 subdivision projects, and planned developments. CCP §369 and CC §1363(c).

11 MVP to also cannot sue in a representative capacity in this case the class represented by
12 MVP is readily ascertainable and the community of interest is not adequately set forth in the
13 complaint¹². MVP alleges that it is "a local grass roots organization comprised of residents of
14 the unincorporated Placer County community of Meadow Vista, California, and the surrounding
15 area, as well as nonresident supporters" organized "for the purpose of protecting the interests of
16 its members from activities proposed or conducted in the area that would pose an adverse risk to
17 the health, safety and welfare of Meadow Vista residents." (VC 3:3-7.) This allegation does not,
18 however, allow the class represented to be readily ascertainable, because it is not clear if all
19 residents of Meadow Vista are represented on a common interest, and what interests nonresidents
20 have in resolving the alleged injuries to Meadow Vista residents and especially how the members
21 of the class are injured.

22 **V. SPECIAL DEMURRER TO PUBLIC AND PRIVATE NUISANCE AND**
23 **TRESPASS**

24 **A. Causes of Action are Uncertain Leaving Allegations of Material Facts to**
25 **Surmise. CCP § 430.10(f).**

26 The term "uncertain" in the context of CCP §§430.10(f), 430.30(a) includes ambiguous

27 ¹² Suits in representative capacity are similar to class actions in many ways—the class represented in the action must
28 be readily ascertainable and the commonality of the questions of law and fact involved in the action, the community
of interest, must be adequately set forth in the complaint. In a representative suit, the only claims belong to its
members. "An association which has not itself been injured has standing to sue on behalf of its members only if it
acts as a class representative." National Solar Equip. Owners' Ass'n, Inc. v. Grumman Corp. (1991) 235 CA3d
1273, 1280.

1 and unintelligible. CCP §430.10(f). A complaint is uncertain when, because of lack of clarity in
2 pleading or inconsistency between allegations, its meaning is doubtful as to the theory of liability
3 or basis of recovery, or as to other material matters. Crow v. Hildreth (1870) 39 Cal. 618, 620;
4 Oppenheimer v. General Cable Corp. (1956) 143 Cal.App.2d 293, 298. The Oppenheimer court
5 concluded that plaintiff must state with clarity how or in what manner he has been damaged is
6 particularly when his pleading is challenged by a special demurrer for ambiguity on such grounds
7 because the defendant is entitled to know the basis of plaintiff's claim for damages to enable it to
8 prepare a defense. Oppenheimer 143 Cal.App.2d at 298.

9 Throughout the VC, MVP fails allege material facts to support its conclusionary
10 allegations. CHEVREAUX is left to surmise, because it cannot be ascertained from the VC, how
11 or in what manner MVP has been injured by CHEVREAUX, or the actual basis for MVP's
12 claims, what specific property is injured, how much or to what degree injuries exist, and which
13 MVP members have been injured. Such conclusionary allegations not supported by facts
14 include, but are not limited to:

15 Chevreaux is in violation of conditions regarding blasting, protection of water
16 quality, and dust mitigation at the quarry site (VC 4);

17 Chevreaux has continued multiple operations in violation of its applicable permits
18 and attendant permit conditions, resulting in substantial and continuing injury to
19 the residents of Meadow Vista, MVP, and its members.(VC 8);

20 Chevreaux is not complying with the conditions regarding blasting, water quality
21 and dust mitigation (VC 21);

22 Chevreaux is not in compliance with the conditions of LD-1030 regarding
23 blasting, water quality control and dust mitigation at the site (VC 43);

24 The actions of defendant Chevreaux in mining outside the boundaries permitted by
25 LD-1030, in failing to abide by the conditions imposed by LD-1030, and in operating
26 an asphalt plant in violation of LDA-786 will cause and have caused irreparable
27 injury and harm to MVP members and other Meadow Vista residents (VC 51);

28 Defendant Chevreaux's blasting activities at the Quarry cause excessive noise and
ground vibrations on and near the property of nearby residents, including
members of MVP" (VC 54)

Chevreaux's failure to mitigate dust from its Quarry and Concrete Plant
excessively compromises the air quality in and around Meadow Vista (VC 54);

The public nuisance nevertheless is uniquely injurious to each individual member
of MVP. (VC 56);

1 Each individual member of MVP is singularly injured by this nuisance.... (VC
2 59);

3 Chevreaux's failure to mitigate dust from its Quarry and Concrete Plant has
4 caused dust and silt to encroach and settle on MVP members' property.
5 Furthermore, the littering of garbage on private property by Chevreaux's truck
6 drivers is also an encroachment onto the private property of MVP members. (VC
7 62);

8 CHEVREUX must surmise what the alleged damages are as to each individual member
9 of MVP. CHEVREUX does not know what specific properties are allegedly injured, how
10 much or to what degree the alleged damages are, and to which individuals. As a result,
11 CHEVREUX cannot adequately defend against these allegations. "A pleading must allege
12 facts and not conclusions and the material facts must be alleged directly and not by way of
13 recital." Ankeny v. Lockheed Missiles & Space Co. (1979) 88 Cal.App.3d 531, 537.

14 "In pleading, the essential facts on which a determination of the controversy depends
15 should be stated with clearness and precision so that nothing is left to surmise" and that "[t]hose
16 recitals, references to, or allegations of material facts that are left to surmise are subject to special
17 demurrer for uncertainty." Ankeny 88 Cal. App.3d at 537.) MVP fails to allege material facts to
18 support its conclusionary allegations and, therefore, the demurrer must be sustained on the
19 grounds of uncertainty.

20 **B. Defect or Non-joinder of Parties. CCP § 430.10(D).**

21 The individual members of MVP must be joined as indispensable parties and failure
22 constitutes a defect, because each of these causes of action is based on alleged injuries to the
23 individual members rather than to MVP. It is the individual members of MVP who may assert a
24 right to relief in this action based on the controversy that is the subject of the action. CCP §364.
25 Absence of an indispensable party precludes the Court from rendering an effective judgment and,
26 as a result, this special demurrer must be granted.

27 **VI. GENERAL DEMURRER FOR PUBLIC NUISANCE**

28 MVP alleges a public nuisance arising out of interference with the property rights of
individual MVP members and the entire Meadow Vista Community and non-residents by noise,
excessive ground vibration, dust, and truck traffic.

1 **A. Failure to State a Cause of Action - Essential Element Omitted.**
2 **CCP §430.10(e).**

3 A nuisance affecting “an entire community or neighborhood, or any considerable number
4 of persons” is a public nuisance. CC §3480. A public nuisance is based on interference with
5 rights of the community at large. Venuto v. Owens-Corning Fiberglas Corp. (1971) 22 Cal. App.
6 3d 116, 124. Actions to abate a public nuisance may be maintained either by a public body
7 authorized by law or by a private party if it is specially injured to himself, but not otherwise.
8 CC §§3493, 3494. “Where the nuisance alleged is not also a private nuisance as to a private
9 individual he does not have a cause of action for public nuisance unless he alleges facts showing
10 special injury to himself in person or property of a character different in kind from that suffered
11 by the general public.” Brown v. Petrolene, Inc. (1980) 102 Cal.App.3d 720, 725 . [Held: Court
12 of Appeal affirmed trial court’s order sustaining demurrer because appellants failed to allege
13 requisite special damage or perceptible injury to their individual property required for their claims
14 of nuisance regarding appellees’s operation of a petroleum gas facility in plaintiff’s
15 neighborhood.] Allegations that the health of the general public and plaintiffs, as members of the
16 public, is being injured by defendant’s activity, but that the health of each plaintiff is being
17 injured to a greater degree, merely alleges damages different in degree, but not kind, suffered by
18 the general public and is insufficient to support a private action based on a public nuisance. See
19 for example Venuto 22 Cal.App.3d at 124.

20 MVP states “...these activities constitute a public nuisance. The public nuisance
21 nevertheless is uniquely injurious to each individual member of MVP.” However, MVP alleges
22 no facts showing special injury to MVP of a character different in kind from that suffered by the
23 general public, and fails to identify any special injury of individual residents in Meadow Vista.
24 As such, MVP does not allege a cause of action based on public nuisance because of the
25 omission of an essential element of special injury to the private party.

26 **B. Failure to State a Cause of Action - MVP Lacks Standing to Sue.**
27 **CCP §430.10(e).**

28 A private plaintiff such as MVP must allege special injury to have standing to bring an
action for public nuisance. In the absence of allegations of facts showing special injury to MVP

1 members different in kind from that suffered by the general public, MVP lacks standing to assert
2 a cause of action for public nuisance.

3 In Frieman v. San Rafael Rock Quarry (2004) 116 Cal. App. 4th 29, plaintiff residents
4 brought suit against defendant Quarry alleging nuisance for dust, noise, blasting vibrations, and
5 truck traffic (the same as MVP's VC) seeking non-economic and economic damages based upon
6 allegations of public nuisance for annoyance, inconvenience, and discomfort. Plaintiffs sought
7 class certification, which requires an ascertainable class and a community of interest in the
8 questions of law and fact. The court held that "common questions of law or fact do not
9 predominate" because proof would vary significantly between the class members. CC §3493.¹³
10 "[W]here, after the common questions have been determined, each class claimant would still
11 have to litigate a number of substantial questions peculiar to himself in order to recover, there
12 does not exist a necessary community of interest and there is no assurance the class
13 representative would indeed be representative." Frieman 116 Cal.App.4th at 40; citing Reyes v.
14 Board of Supervisors (1987) 196 Cal. App. 3d 1263, 1281.

15 In Frieman, the court found that the impacts from blasting and noise levels from the
16 Quarry's operations varied infinitely for the individual residents. Neighbors within a few
17 hundred feet of each other had dramatically different exposure and whether each resident even
18 heard or felt the impact of Quarry's operations was subject to separate and differing matters of
19 proof., thereby depriving residents of commonality. Frieman 116 Cal.App.4th at 39-42.

20 In this case, MVP's standing as a representative suit fails, as in Frieman, because of the
21 same lack of community of interest in the questions of law and fact that are required for standing
22 in both actions. Whether each individual MVP resident (and some are nonresidents) even heard
23 or felt the impact of CHEVREAU's quarry operations is subject to separate and differing
24 matters of proof, and each resident would have to prove interference with the comfortable
25 enjoyment of life or property and that the interference was "substantial and unreasonable."
26 Therefore, MVP's cause of action for public nuisance fails for lack of standing to sue.

27
28 ¹³ Both class actions and representative actions, such as by MVP, require common questions (community of interest) of law or fact by the ascertained represented (class) members. (§V.A.)

1 **VII. SPECIAL DEMURRER FOR PUBLIC NUISANCE**

2 **A. Pleading is Uncertain. CCP §430.10(f).**

3 CHEVREAU demurs on the grounds that VC is uncertain in that MVP does not allege
4 how blasting activities cause excessive noise and ground vibration “near the property of nearby
5 residents” (how nearby is nearby); which members of MVP it is referring to; how has
6 CHEVREAU failed to “mitigate dust”; how does it compromise “the air quality”; and how
7 does the truck traffic and littering interfere with which “MVP members’ property.” (VC 54:24-
8 28;1-5.) , MVP does not allege how or where CHEVREAU is “operating outside its use
9 permits” or how it damages MVP. (VC 55:6-7.) . MVP does not allege how the interference
10 “affects the entire Meadow Vista community of property owners” or how the “public nuisance
11 nevertheless is uniquely injurious to each individual member of MVP” or explain why MVP can
12 sue for nonresidents. (VC 56:8-11.) (§IV.A, V.A.)

13 **VIII. GENERAL DEMURRER FOR PRIVATE NUISANCE**

14 **A. Failure to State a Cause of Action - MVP Lacks Standing to Sue.**
15 **CCP §430.10(e).**

16 A claim for private nuisance can only be brought by the owner of an interest in real
17 property who is injured. MVP fails to allege that it is the owner of an interest in the real
18 property. MVP also fails to allege any facts to indicate that it meets the requirements to represent
19 the members of MVP in a legal action. MVP lacks standing to sue for private nuisance because
20 of the required community of interest in questions of law and fact for a representative suit.

21 **B. Failure to State a Cause of Action - Essential Element Omitted.**
22 **CCP §430.10(e).**

23 The essential elements for a cause of action for private nuisance are: (1) plaintiff is the
24 owner of an interest in real property; (2) defendant interfered with plaintiff’s private use and
25 enjoyment of this interest; (3) the interference to the individual was substantial and unreasonable;
26 and (4) the interference caused plaintiff to suffer injury, damage, loss, or harm. California Jury
27 Instructions for Private Nuisance—Essential Elements Civil Code (“CC”) §§3470-3481.
28 “Substantial” means that the interference caused the individual plaintiff[s] to suffer substantial

1 actual damage. If a normal person in that locality would not be substantially annoyed or
2 disturbed by the situation, then the invasion or interference is not a significant one, even though
3 the idiosyncrasies of the particular plaintiff may make it unendurable to him or her.
4 “Unreasonable” means that the interference must be of a nature, duration or amount that
5 reasonable persons generally, looking at the whole situation impartially and objectively, would
6 consider it unreasonable. The primary test for unreasonableness is whether the gravity or
7 severity of the harm to the plaintiff outweighs the social utility of the defendant’s conduct.
8 California Jury Instructions for Private Nuisance.

9 All these elements require correlation with individual properties. MVP alleges that
10 “blasting activities at the Quarry cause excessive noise and ground vibrations on and *near the*
11 *property of nearby residents*, including members of MVP.” (Emphasis added.) (VC 54) Since
12 the interference must be substantial and unreasonable, noise and ground vibrations *near the*
13 *property of nearby residents* is inconsistent with the claim that “Each individual member of
14 MVP is singularly injured by this nuisance” (VC 56) and does not allege a substantial and
15 unreasonable interference. In relation to the alleged truck traffic—wear and tear on local
16 taxpayer-maintained roads, air brake and engine noise, dust pollution, and air pollution from
17 diesel fuel (VC 54) are the responsibility of the State of California when vehicles are licensed to
18 drive in California and do not constitute an injury to MVP.

19 Finally, other than statements alleging: “This interference with property rights ... and
20 uniquely affects the property interests of each member of MVP” and “Each individual member of
21 MVP is singularly injured by this nuisance” (VC 59), MVP does not allege any facts to support
22 injury, damage, loss, or harm. Therefore, MVP fails to state a cause of action by omission of
23 essential of elements required for the claim of private nuisance.

24 **IX. SPECIAL DEMURRER FOR PRIVATE NUISANCE**

25 **A. Pleading is Uncertain. CCP §430.10(f).**

26 In VC 59, MVP does not state how the alleged interference “uniquely affects the property
27 interest of each member of MVP”; how “these activities constitute a private nuisance”; or how
28

1 “each individual member of MVP is singularly injured by this nuisance.” As a result, MVP’s
2 cause of action for private nuisance is subject to demurrer for uncertainty.

3 **X. GENERAL DEMURRER FOR TRESPASS**

4 MVP alleges trespass arising out encroachment by dust and silt from the Quarry and
5 Concrete Plant and littering of garbage by CHEVREAUX’s truck drivers onto private property of
6 MVP.

7 **A. Failure to State a Cause of Action - MVP Lacks Standing to Sue.**
8 **CCP §430.10(e).**

9 The proper party plaintiff in an action for trespass to real property is the person in actual
10 possession. Lightner Mining Co. v. Lane (1911) 161 Cal. 689, 694-695; Williams v. Goodwin
11 (1974) 41 Cal. App. 3d 496, 509. “The person in possession in an action for trespass to real
12 property can recover no damages for injuries, except such as affect his own right....” Lightner
13 161 Cal. at 695. MVP does not allege that it is in possession of an interest in the real property,
14 and MVP cannot allege any facts to indicate that it meets the requirements to represent the
15 members of MVP in a legal action. Therefore, MVP lacks standing to sue for trespass.

16 **B. Failure to State a Cause of Action - Essential Element Omitted.**
17 **CCP §430.10(e).**

18 The essential elements for an action in trespass are (1) plaintiff is in possession of the real
19 property; (2) trespass occurred; and (3) defendant acted with knowledge that trespass was
20 substantially certain to result. MVP is not the possessor of real property of the alleged trespass.
21 No facts are presented that dust and silt from CHEVREAUX Quarry and Concrete Plant have
22 “encroached and settled” on each and every MVP member’s property (or even any MVP
23 member’s property) let alone property of nonresidents. MVP has also not pleaded any facts to
24 show that CHEVREAUX knowingly trespassed by depositing “dust and silt” and litter onto
25 unnamed individuals’ property. MVP alleges “injury to said property”... “including but not
26 limited to diminution in value” yet has failed to identify the amount of damages. (VC 63:20-21)
27 “In an action for damages resulting from the destruction of property, the pleader should aver the
28 value of the property alleged to have been destroyed, as that is an **essential element** in
determining the amount of ... damage.” Mallory v. Thomas (1893) 98 Cal. 644, 646-647.

(Emphasis in original.) MVP has failed to do so. As a result, the demurrer must be sustained, because MVP failed to state a cause of action due to omission of the above essential elements for a cause of action in trespass.

XI. SPECIAL DEMURRER FOR TRESPASS

A. Pleading is Uncertain. CCP §430.10(f).

CHEVREAU demurs on the ground that VC is uncertain in that MVP does not allege material facts to support its conclusions: "Chevreaux's failure to mitigate dust from its Quarry and Concrete Plant"; what MVP members' property has had "dust and silt" "encroach and settle" or which "private property of MVP members" have been impacted by "littering of garbage" by CHEVREAU's truck drivers (VC 62:14-17); "this conduct by defendant Chevreaux constitutes trespass and an unlawful interference with MVP members' possession, access and use of their property"; which "MVP members' possession"; what is the injury "proximately caused" to which "property"; "including but not limited to diminution in value (VC 63:18-21). It is not even certain what MVP means by "dirt and silt." Dust and silt are not uncommon in rural areas, such as unincorporated Placer County and are not normally considered harmful or cause a diminution in value.

VC 62:16-17 alleges that there is "the littering of garbage on private property by Chevreaux's truck drivers," whereas, it cannot be ascertained from the pleading how and in what manner MVP's property (or whose property) has been proximately injured. Therefore, these conclusory allegations not supported by material facts are left to surmise and are subject to special demurrer for uncertainty.

CONCLUSION

Based on the foregoing, CHEVREAU respectfully requests that this Court sustain its demurrer to the second through seventh causes of action without leave to amend.

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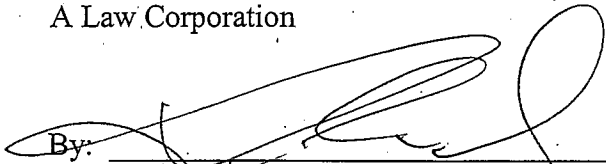
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1 DATED: August 22 2006

Respectfully submitted,

2 BRIGIT S. BARNES & ASSOCIATES, INC.,
3 A Law Corporation

4 By: 

5 Karin E. Schwab, Esq., Attorney for
6 Defendant Chevreux Aggregates, Inc.

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BRIGIT S. BARNES & ASSOCIATES, INC.
BRIGIT S. BARNES, ESQ. CSB #122673
KARIN E. SCHWAB, ESQ. CSB #157779
SUSAN M. VERGNE, ESQ. CSB #236308
3262 Penryn Road, Suite 200
Loomis, CA 95650
Telephone: (916) 660-9555
Facsimile: (916) 660-9554

Attorneys for CHEVREAUX AGGREGATES, INC.

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF PLACER

MEADOW VISTA PROTECTION,

Case No. SCV 19614

Petitioners and Plaintiffs,

v.

**DECLARATION OF KARIN E. SCHWAB
IN SUPPORT OF CHEVREAUX
AGGREGATES, INC.'S GENERAL
DEMURRER AND SPECIAL
DEMURRER**

CHEVREAUX AGGREGATES, INC.;
COUNTY OF PLACER; COUNTY OF
PLACER PLANNING DEPARTMENT; and
DOES 1- 50, inclusive,

DATE: October 3, 2006
TIME: 8:30 a.m.
DEPT.: 3

Respondents and Defendants.

/ Date Action Filed: 7/12/06

I, KARIN E. SCHWAB declare:

1. I am an attorney duly licensed to practice law before all the courts of the State of California.

2. I am one of the attorneys of record herein for Defendant CHEVREAUX AGGREGATES, INC. ("CHEVREAUX") I have personal knowledge of the facts stated herein, and if called upon could and would competently testify thereto.

3. On July 19, 2006, MEADOW VISTA PROTECTION ("MVP") served CHEVREAUX with a Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief, Public Nuisance, Private Nuisance and Trespass.

4. On July 26, 2006, our office sent a meet and confer letter to the Zumbrun Law Firm (attorneys for MVP), with a courtesy copy to Attorney Crabtree (attorney for COUNTY OF

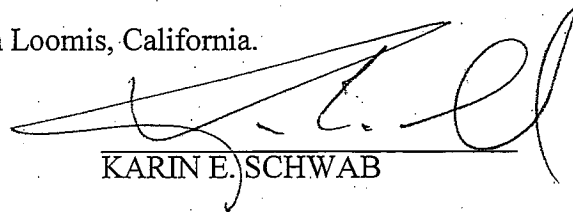
1 PLACER), informing their offices of CHEVREAU's intention of filing a demurrer, the date,
2 time and location of the hearing. In compliance with Placer County Local Rules, our office
3 outlined in this letter the deficiencies of MVP's complaint with respect to the causes of action
4 which name CHEVREAU. (A true and correct copy of the letter is attached hereto as **Exhibit**
5 **"A"**.)

6 4. The Zumbrun Law Firm sent a letter in response on July 31, 2006 acknowledging
7 receipt of our July 26, 2006 letter and requesting clarification of CHEVREAU's objections. (A
8 true and correct copy of their letter is attached hereto as **Exhibit "B"**.)

9 5. On August 11, 2006, our office sent a letter to the Zumbrun Law Firm confirming
10 our conversations regarding stipulating to expand the page limit of the demurrer, opposition and
11 reply, to set respective filing dates and to reschedule the hearing to the mutually convenient date
12 of October 3, 2006. In this letter, our office also provided the clarification requested in
13 Zumbrun's July 31, 2006 letter. (A true and correct copy of the August 11, 2006 letter is
14 attached hereto as **Exhibit "C"**).

15 I declare under penalty of perjury under the laws of the State of California that the
16 foregoing is true and correct.

17 Executed on August 22, 2006 in Loomis, California.

18 
19 KARIN E. SCHWAB
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RECYCLED PAPER MADE FROM 20% POST CONSUMER COI

Brigit S. Barnes & Associates, Inc.

A Law Corporation

July 26, 2006

Via Facsimile and Regular Mail
Fax: (916) 486-5959

Ronald A. Zumbrun, Esq.
Angela C. Thompson, Esq.
The Zumbrun Law Firm
3800 Watt Avenue, Suite 101
Sacramento, CA 95821

Brigit S. Barnes, Esq.
Susan M. Vergne, Esq.

Of Counsel
Karin E. Schwab, Esq.

Re: Meadow Vista Protection v. Chevreux, et al., Case No. SCV 19614
Our Client: Chevreux Aggregates, Inc., File No. 2364.01

Dear Mr. Zumbrun and Ms. Thompson:

As you have been informed, this office represents Defendant Chevreux Aggregates, Inc. in the above-referenced action. Please consider this letter our reasonable and good faith effort to meet and confer prior to filing a demurrer, as required by Placer County's Local Rules. We have reserved September 26 at 8:30 a.m. in Department 3 of the court for the demurrer hearing, pending further communication with you on this subject and possible revisions.

Based upon our preliminary review of the complaint, we believe that the MVP complaint is fatally flawed for the following reasons:

1. Certain causes of action must identify the parties who assert the physical invasion, and especially the properties which are allegedly damaged by Chevreux's activities.
2. The complaint contains representational defects, and does not support adequate standing to bring suit on several causes of action.
3. Certain causes of action in the complaint have been brought by or against the wrong parties.
4. The complaint as presently structured raises real timing issues, as to whether the damages and/or injunction sought are proper until a determination on the writ and/or declaratory relief causes of action are determined.

If you intend to amend the complaint to address these defects, please notify me no later than Monday, July 31.

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Website:
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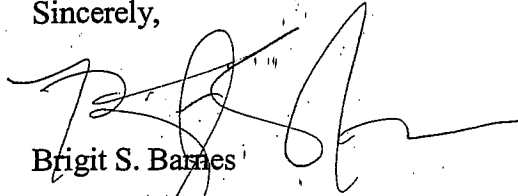
Ronald A. Zumbun, Esq. / Angela C. Thompson, Esq.

July 26, 2006

Page 2

On a related matter, our office is prepared to work with you and the County to request that one judge be assigned for all purposes. If you wish to suggest a judge, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Brigit S. Barnes", written over the typed name.

Brigit S. Barnes

cc [via fax]:

Client

Scott Finley, Deputy County Counsel

Rick Crabtree, Esq.

Chevreux.Combie\zumbrun.L02

FAX REPORT

Fax header name: Brigit S. Barnes & Assoc

Fax number: 916-660-9554

Date	Time	Type	Identification	Duration	Pages	Result
2006-07-26	15:11:59	Fax sent	9,4865959 Ron Zumbren	0:39	2	OK

JUL 26 06 03:12P Brigit S. Barnes & Assoc 916-660-9554 P.1

**Brigit S.
Barnes &
Associates,
Inc.**

A Law Corporation

Brigit S. Barnes, Esq.
Susan M. Verpe, Esq.

Of Counsel
Karin E. Schwab, Esq.

July 26, 2006

Via Facsimile and Regular Mail
Fax: (916) 486-5959

Ronald A. Zumbren, Esq.
Angela C. Thompson, Esq.
The Zumbren Law Firm
3800 Watt Avenue, Suite 101
Sacramento, CA 95821

Re: Meadow Vista Protection v. Chevreux, et al., Case No. SCV 19614
Our Client: Chevreux Aggregates, Inc., File No. 2364.01

Dear Mr. Zumbren and Ms. Thompson:

As you have been informed, this office represents Defendant Chevreux Aggregates, Inc. in the above-referenced action. Please consider this letter our reasonable and good faith effort to meet and confer prior to filing a demurrer, as required by Placer County's Local Rules. We have reserved September 26 at 8:30 a.m. in Department 3 of the court for the demurrer hearing, pending further communication with you on this subject and possible revisions.

Based upon our preliminary review of the complaint, we believe that the MVP complaint is fatally flawed for the following reasons:

1. Certain causes of action must identify the parties who assert the physical invasion, and especially the properties which are allegedly damaged by Chevreux's activities.
2. The complaint contains representational defects, and does not support adequate standing to bring suit on several causes of action.
3. Certain causes of action in the complaint have been brought by or against the wrong parties.
4. The complaint as presently structured raises real timing issues, as to whether the damages and/or injunction sought are proper until a determination on the writ and/or declaratory relief causes of action are determined.

If you intend to amend the complaint to address these defects, please notify me no later than Monday, July 31.

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Exhibit B

THE ZUMBRUN LAW FIRM
A Professional Corporation

July 31, 2006

Ms. Brigit S. Barnes
Brigit S. Barnes & Associates, Inc.
3262 Penryn Road, Suite 200
Loomis, CA 95650

VIA FACSIMILE
(916) 660-9554

Dear Ms. Barnes:

Re: Meadow Vista Protection v. County of Placer,
Case No. SCV 19614

We are in receipt of your letter dated July 26, 2006 advising of the demurrer hearing date of September 26, 2006 and outlining several of your objections to the *Meadow Vista Protection* complaint.

Unfortunately, your objections are too imprecise for us to ascertain what amendments to the complaint, if any, may be warranted. We would appreciate clarification of the following:

1. Which causes of action do you contend must be amended to identify injured parties and damaged property?
2. What is the basis for your assertion that plaintiff MVP lacks standing as to any of the causes of action?
3. Which causes of action do you maintain have been brought by or against the wrong parties, and specifically, who are the "wrong" parties?

We would appreciate a response to these inquiries prior to determining whether to file an amended complaint. Thank you for your anticipated cooperation.

If you have any questions relative to this matter, please do not hesitate to call.

Sincerely,

Ronald A. Zumbun

RONALD A. ZUMBRUN
Managing Attorney

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Tel 916-486-5900
Fax 916-486-5959

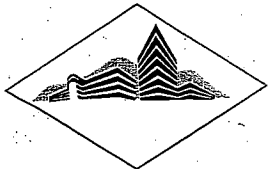
AUG 01 2006

**Brigit S.
Barnes &
Associates,
Inc.**

A Law Corporation

Brigit S. Barnes, Esq.
Summer Kalwani, Esq.

Of Counsel
Karin E. Schwab, Esq.



Paralegal
Jaenelyn Jarvis

Legal Assistant
Noreen Patrignani

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August 11, 2006

Via Facsimile and Regular Mail
Fax: (916) 486-5959

Timothy V. Kassouni, Esq.
Angela C. Thompson, Esq.
The Zumbrun Law Firm
3800 Watt Avenue, Suite 101
Sacramento, CA 95821

Re: Meadow Vista Protection v. Chevreaux, et al., Case No. SCV 19614
Our Client: Chevreaux Aggregates, Inc., File No. 2364.01

Dear Mr. Kassouni and Ms. Thompson:

This letter will confirm the essence of several of our conversations today regarding my request on behalf of Chevreaux Aggregates, Inc. that we concur that defendants may use up to 25 pages in filing the points and authorities in support of their demurrer to the 2nd through 7th causes of action included in your complaint. You agreed to my request if the hearing date could be moved to October 3, 2006. Neither the County nor I object to moving the hearing dates; however, the County will not concur in granting your request for additional time.

What I propose to resolve this impasse is the following:

The hearing date for both demurrers would be moved to October 3, 2006. Normally that would mean that defendants would have until the 25th of August to file and plaintiff would need to have their opposition filed September 20th instead of the 13th. What we propose is that we file our demurs on the 22nd, and you have until September 20th to file oppositions. Plaintiff would be entitled to use up to 25 pages in response to Chevreaux only. The County anticipates completing its pleading within the 15 page limits, so court rules will apply to your briefing with the County. Please let me know by close of business today if this proposal is acceptable to you.

With respect to your request for additional information regarding our asserted defects in your pleadings, I have advised you that because of our tender to insurance carriers it is inappropriate to set out all basis of opposition at this time. However, I will attempt to be more specific, keeping in mind that additional basis of demurrer may be asserted in our responsive pleadings.

1. Plaintiff has no representational authority to assert damages alleged from the physical invasion of certain properties. The owners of those properties must participate in the litigation and identify which properties are allegedly injured by Chevreaux's activities, and how specific individuals are allegedly injured.
[nuisance, trespass]

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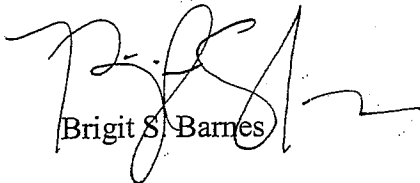
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2. The complaint contains representational defects, and does not support adequate standing to allow MVP to bring suit on several causes of action, but especially the 2nd through 7th causes of action.
3. Certain causes of action in the complaint have been brought by or against the wrong parties. For example, declaratory relief causes of action should not have been brought against Chevreux.
4. The complaint as presently structured raises real timing issues, as to whether the damages and/or injunction sought are proper until a determination on the writ and/or declaratory relief causes of action are determined. There appears to be no exhaustion of remedies plead.
5. Since the complaint acknowledges that the mining activities complained of have been ongoing since 1947 [this is a minor factual error, the date is 1946] and the identified permits dated from the 1960's and 1970's, statute of limitations defects affect the 2nd, 3rd, and 4th causes of action, and may also affect the 5th, 6th, and 7th causes of action.
6. We believe that the court lacks subject matter jurisdiction over the declaratory relief causes of action as they are presently plead.
7. The causes of action for injunction are barred by the civil code.

If you intend to amend the complaint to address these defects, please notify me no later than Tuesday, August 15th.

On a related matter, our office is prepared to work with you and the County to request that one judge be assigned for all purposes. If you wish to suggest a judge, please let me know.

Sincerely,



Brigit S. Barnes

cc [via fax]:

Client

Rick Crabtree, Esq.

Scott Finley, Deputy County Counsel

Brigit S. Barnes & Associates, Inc.

A Professional Law Corporation

Brigit S. Barnes, Esq.

Susan M. Vergne, Esq.

Karin E. Schwab, Esq., Of Counsel

3262 Penryn Road, Suite 200, Loomis, CA 95650

Telephone: (916) 660-9555

FACSIMILE

TO:

Angela C. Thompson, Esq./
Timothy Kassouni, Esq.
Judy Simpson
Scott Finley, Esq.
Richard L. Crabtree, Esq.

COMPANY:

The Zumbrun Law Firm

Chevreaux
Placer County Counsel's Office

TELEFAX NO:

916-486-5959 ✓

530-885-0135 ✓
530-889-4069 ✓
530-566-9203

FROM:

Brigit S. Barnes

TELEFAX NO:

(916) 660-9554

CLIENT/MATTER:

Chevreaux/Lake Combie, File No. 2364.01

NUMBER OF PAGES (Including this cover page): 3

DATE: August 11, 2006

TIME: Within 10 minutes of 3:28 p.m.

HARD COPY TO FOLLOW: Yes

DESCRIPTION OF CONTENTS/COMMENTS:

Letter dated August 11, 2006.

The information contained in this facsimile is confidential and privileged. The information is intended only for the use of the individual or entity to whom it is addressed. If you are not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any use, dissemination, distribution or copying of this communication is strictly prohibited. If you have received the facsimile in error, please notify us immediately by telephone, and return the original message to us at the address below via the U.S. Postal Service. * If you do not receive all of the pages, please call this office immediately. Thank you. *

Chevreaux.Combie\FAX

FAX REPORT

Fax header name: Brigit S. Barnes & Assoc

Fax number: 916-660-9554

Date	Time	Type	Identification	Duration	Pages	Result
2006-08-11	15:39:26	Fax sent	9,4865959	1:05	3	OK

Aug 11 08 03:39p Brigit S. Barnes & Assoc 916-660-9554 p.1

Brigit S. Barnes & Associates, Inc.

A Professional Law Corporation
Brigit S. Barnes, Esq.
Susan M. Vergne, Esq.
Karin E. Schwab, Esq., Of Counsel
3262 Penryn Road, Suite 200, Loomis, CA 95650
Telephone: (916) 660-9555

FACSIMILE

TO: Angela C. Thompson, Esq./ Timothy Kassouni, Esq. Judy Simpson Scott Finley, Esq. Richard L. Crabtree, Esq.	COMPANY: The Zumbun Law Firm Chevreux Placer County Counsel's Office	TELEFAX NO: 916-486-5959 530-885-0135 530-889-4069 530-566-9203
FROM: TELEFAX NO: CLIENT/MATTER:	Brigit S. Barnes (916) 660-9554 Chevreux/Lake Combie, File No. 2364.01	

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Chevreux.Combie\FAX

FAX REPORT

Fax header name: Brigit S. Barnes & Assoc

Fax number: 916-660-9554

Date	Time	Type	Identification	Duration	Pages	Result
2006-08-11	15:40:58	Fax sent	9,15308850135	1:38	3	OK

Aug 11 06 03:41p Brigit S. Barnes & Assoc 916-660-9554 p.1

Brigit S. Barnes & Associates, Inc.

A Professional Law Corporation
Brigit S. Barnes, Esq.
Susan M. Vergne, Esq.
Karin E. Schwab, Esq., Of Counsel
3262 Penryn Road, Suite 200, Loomis, CA 95650.
Telephone: (916) 660-9553

FACSIMILE

TO: Angela C. Thompson, Esq./ Timothy Kassouni, Esq. Judy Simpson Scott Finley, Esq. Richard L. Crabtree, Esq.	COMPANY: The Zumbrun Law Firm Chevreux Placer County Counsel's Office	TELEFAX NO: 916-486-3959 ✓ 530-885-0135 530-889-4069 530-566-9203
FROM: TELEFAX NO: CLIENT/MATTER:	Brigit S. Barnes (916) 660-9554 Chevreux/Lake Combie, File No. 2364.01	

NUMBER OF PAGES (Including this cover page): 3

DATE: August 11, 2006

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Chevreux.Combie@FAX

FAX REPORT

Fax header name: Brigit S. Barnes & Assoc

Fax number: 916-660-9554

Date	Time	Type	Identification	Duration	Pages	Result
2006-08-11	15:42:58	Fax sent	9,15308894069	1:05	3	OK

Aug 11 06 03:43p Brigit S. Barnes & Assoc 916-660-9554 p.1

Brigit S. Barnes & Associates, Inc.

A Professional Law Corporation
Brigit S. Barnes, Esq.
Susan M. Vergne, Esq.
Karin E. Schwab, Esq., Of Counsel
3262 Penryn Road, Suite 200, Loomis, CA 95650
Telephone: (916) 660-9555

FACSIMILE

TO: Angela C. Thompson, Esq./ Timothy Kassouni, Esq. Judy Simpson Scott Finley, Esq. Richard L. Crabtree, Esq.	COMPANY: The Zumbun Law Firm Chevreaux Placer County Counsel's Office	TELEFAX NO: 916-486-5959 ✓ 530-885-0135 ✓ 530-889-4069 530-566-9203
FROM: TELEFAX NO: CLIENT/MATTER:	Brigit S. Barnes (916) 660-9554 Chevreaux/Lake Combie, File No. 2364.01	

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Chevreaux.Combie\FAX

FAX REPORT

Fax header name: Brigit S. Barnes & Assoc

Fax number: 916-660-9554

Date	Time	Type	Identification	Duration	Pages	Result
2006-08-11	15:46:55	Fax sent	9,15305669203	0:41	3	OK

Aug 11 06 09:47p Brigit S. Barnes & Assoc 916-660-9554 p.1

Brigit S. Barnes & Associates, Inc.

A Professional Law Corporation
Brigit S. Barnes, Esq.
Susan M. Vergne, Esq.
Karin E. Schwab, Esq., Of Counsel
3262 Penryn Road, Suite 200, Loomis, CA 95650
Telephone: (916) 660-9555

FACSIMILE

TO:	COMPANY:	TELEFAX NO:
Angela C. Thompson, Esq./	The Zumbrun Law Firm	916-486-5959 ✓
Timothy Kassouni, Esq.		
Judy Simpson	Chevreaux	530-885-0135 ✓
Scott Finley, Esq.	Placer County Counsel's Office	530-889-4069 ✓
Richard L. Crabtree, Esq.		530-566-9203
FROM:	Brigit S. Barnes	
TELEFAX NO:	(916) 660-9554	
CLIENT/MATTER:	Chevreaux/Lake Combie, File No. 2364.01	

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Chevreaux.CombieFAX

1 BRIGIT S. BARNES & ASSOCIATES, INC.
BRIGIT S. BARNES, ESQ. CSB #122673
2 KARIN E. SCHWAB, ESQ. CSB #157779
SUSAN M. VERGNE, ESQ. CSB #236308
3 3262 Penryn Road, Suite 200
Loomis, CA 95650
4 Telephone: (916) 660-9555
Facsimile: (916) 660-9554
5

6 Attorneys for CHEVREAUX AGGREGATES, INC.

7 SUPERIOR COURT OF CALIFORNIA

8 COUNTY OF PLACER

9
10 MEADOW VISTA PROTECTION,

Case No. SCV 19614

11 Petitioners and Plaintiffs,

**NOTICE OF NON-STIPULATION FOR
COMMISSIONER WELLS**

12 v.

13 CHEVREAUX AGGREGATES, INC.;
COUNTY OF PLACER; COUNTY OF
14 PLACER PLANNING DEPARTMENT; and
DOES 1- 50, inclusive,

Date: October 3, 2006

Time: 8:30 a.m.

Dept. 3

15 Respondents and Defendants.
16 _____/

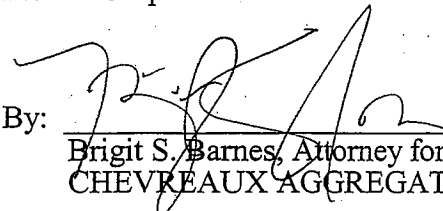
Complaint Filed: 7/12/06

17 Please take notice that CHEVREAUX AGGREGATES, INC.'s counsel does not stipulate
18 to having Commissioner Wells hear this matter. Please set the Demurrer hearing, scheduled for
19 October 3, 2006, and all further matters for hearing in front of an alternate Judge.

20 DATED: August 15, 2006

Respectfully submitted,

21
22 BRIGIT S. BARNES & ASSOCIATES, INC.,
A Law Corporation

23
24 By: 

25 Brigit S. Barnes, Attorney for
CHEVREAUX AGGREGATES, INC.
26
27
28

1 BRIGIT S. BARNES & ASSOCIATES, INC.
BRIGIT S. BARNES, ESQ. CSB #122673
2 KARIN E. SCHWAB, ESQ. CSB #157779
SUSAN M. VERGNE, ESQ. CSB #236308
3 3262 Penryn Road, Suite 200
Loomis, CA 95650
4 Telephone: (916) 660-9555
Facsimile: (916) 660-9554
5

Attorneys for CHEVREAUX AGGREGATES, INC.

6
7
8 SUPERIOR COURT OF CALIFORNIA
9 IN AND FOR THE COUNTY OF PLACER

10 MEADOW VISTA PROTECTION,
11 Petitioners and Plaintiffs,

Case No. SCV 19614

12 v.

PROOF OF SERVICE

13 CHEVREAUX AGGREGATES, INC.;
14 COUNTY OF PLACER; COUNTY OF
PLACER PLANNING DEPARTMENT; and
15 DOES 1- 50, inclusive,

DATE: October 3, 2006
TIME: 8:30 a.m.
DEPT.: 3

Date Action Filed: 7/12/06

16 Respondents and Defendants.
17 _____/

1 Matter: MEADOW VISTA PROTECTION v. CHEVREAU AGGREGATES, INC.
2 Placer County Superior Court Case No. SCV 19614

3 PROOF OF SERVICE

4 I am a citizen of the United States, over the age of eighteen years, and not a party to or
5 interested in the within entitled cause. I am an employee of Brigit S. Barnes & Associates, Inc.,
A Law Corporation, located at 3262 Penryn Road, Suite 200, Loomis, California, 95650. On this
date, I served the following document:

- 6 1. **NOTICE OF HEARING OF CHEVREAU AGGREGATES, INC.'S**
7 **GENERAL DEMURRER TO ENTIRE COMPLAINT AND SPECIAL**
8 **DEMURRER TO SECOND AND THIRD CAUSES OF ACTION;**
- 9 2. **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**
10 **CHEVREAU AGGREGATES, INC.'S GENERAL DEMURRER AND**
11 **SPECIAL DEMURRER;**
- 12 3. **DECLARATION OF KARIN E. SCHWAB IN SUPPORT OF**
13 **CHEVREAU AGGREGATES, INC.'S GENERAL DEMURRER AND**
14 **SPECIAL DEMURRER;**
- 15 4. **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF CHEVREAU**
16 **AGGREGATES, INC.'S GENERAL DEMURRER AND SPECIAL**
17 **DEMURRER; and**
- 18 5. **NOTICE OF NON-STIPULATION TO COMMISSIONER WELLS.**

19 X

20 **BY U.S. MAIL [C.C.P. §1013(a)]** by enclosing one copy thereof in a sealed
21 envelope, with postage thereon fully prepaid. I am readily familiar with this firm's
22 practice for the collection and processing of correspondence for mailing with the
23 United States Postal Service, and that said correspondence is deposited with the
United States Postal Service at Sacramento, California, on the same day in the
ordinary course of business. Said correspondence was addressed as set forth
below.

24 **PARTY(S) SERVED:**

25 Ronald A. Zumbrun, Esq.
26 Angela C. Thompson, Esq.
27 The Zumbrun Law Firm
3800 Watt Avenue, Suite 101
28 Sacramento, CA 95821
Facsimile: (916) 486-5959

[Attorney for MEADOW VISTA PROTECTION]

Richard L. Crabtree, Esq.
Law Office of Richard L. Crabtree
1395 Ridgewood Drive, Suite 300
Chico, CA 95973
Facsimile: 530-566-9203

[Attorney for COUNTY OF PLACER and COUNTY OF PLACER PLANNING
DEPARTMENT]

1 Courtesy Copy to:
2 Scott Finley, Esq.
3 Placer County Counsel's Office
4 175 Fulweiler Avenue
5 Auburn, CA 95603
6 Facsimile: (530)889-4069

7 I declare, under penalty of perjury under the laws of the State of California, that the
8 foregoing is true and correct.

9 Executed on August 22, 2006, at Loomis, California.

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JENNA PORTER