

Ray Thompson, Supervisor, District 3

May 25, 1972

Thomas D. McMahan, Planning Director

JOE CHEVREAUX'S PERMITS

In reviewing our files and knowledge of past history on Joe Chevreaux's operation, the following actions have taken place (in chronological order):

1. 1946 - our records are not complete here, but it is my understanding that in approximately this year the basic operation was first started. It is also my understanding that starting in 1947 an asphalt concrete plant began operation on an intermittent basis.
2. In 1963 comprehensive zoning was established for the Meadow Vista, Eden Valley, and Midway Heights area. This zoning established Industrial zoning for the Chevreaux plant and Recreation-Forestry (RF) zoning around Lake Combie and north above the plant along the river for several miles, and Farm zoning north of the Meadow Vista area to Milk Ranch Road. All of these zones permit excavating, quarrying, and related uses and facilities subject to the approval of a Conditional Use Permit.
3. Under our File #LD-1030, Edward Pruss was granted a Use Permit for a shot rock quarry including crushing, screening and washing plant for grading materials, on approximately 140 acres located north of the County Dump in Meadow Vista. This was approved by the Zoning Administrator on April 22, 1965. This operation has had limited but continued use since it was approved approximately seven years ago, and it is my understanding that Mr. Chevreaux is now the owner of the operation. The Use Permit, of course, is still valid, as Use Permits run with the land and not with the individual owner.
4. On May 27, 1971, under LDA-691, the Zoning Administrator approved a Use Permit to establish an asphalt concrete plant at the present Chevreaux gravel plant site in the Meadow Vista area. This was approved subject to some 11 conditions which, in the opinion of County staff, have been complied with. The location for this plant was in the Industrial zone near the original plant and adjacent to the existing access road which runs along the flat area near the river.
5. LDA-786 is to be heard by the Zoning Administrator on May 25, 1972. This is a request by Mr. Chevreaux to move his asphalt concrete plant, originally approved under LDA-691, from its present site near the river to an adjacent property approximately 600' northeast of

Ray Thompson, Supervisor, District 3
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May 25, 1972

the previously approved location. This new operation, if approved, would be on a portion of the property covered under LD-1030 (Pruss) and would obviously be much further from the river than the present operation, and according to the applicant and County Staff members, would substantially reduce the risk of a water pollution hazard stemming from an oil spill, should it occur.

If you should have any further questions or comments regarding these matters, please feel free to contact me.

THOMAS D. McMAHAN
Planning Director

TDM:jo

(17) 20402

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

NOTICE - ALL APPLICANTS

Land Development Permit is:

- Subject to designated conditions
- Granted for specific purpose

Permit No. 1224 (11)

Date Filed April 8, 1965

Hearing Date April 22, 1965

SPECIAL PERMIT FOR LAND DEVELOPMENT

Full Name of Applicant Edward Russ Telephone 878-1159
Address of Applicant P.O. Box 117 Town Meadow Vista
Name of Property Owner Edward & Beatrice G. Russ
Address of Property Owner P.O. Box 117 Town Meadow Vista
Property Zoned F-13-43 Acreage 140
Proposed Development (Describe fully) Quarry for Sp. & Wash. & Grading Materials
Method of Sewage Disposal Dry Hole
Assessor's Parcel No. 72-030-019-00-00 General Location of Property: West Half of the N.W. Quarter of Section 31 T14N-R9E M.D.B. & M. & West Half of the S.W. Quarter of Section 30 T14N-R9E M.D.B. & M. Located North of County Dump in Meadow Vista.
PLEASE SUBMIT WELL-DETAILED PLOT PLAN

\$25.00 Filing Fee

#7316
Received by Don Miller
Placer County Planning Department

Edward Russ
Signature of Applicant
Drivers License No. BC51999

Date of Meeting April 22, 1965

☒ Approved ☐ Denied

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

Date: April 23, 1965

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

Richard M. Heikka
RICHARD M. HEIKKA, Zoning Administrator

I have read the above conditions and will comply.

(Please return 1 signed copy)

Edward Russ
Signature of Applicant

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 31 & 30 T14N-R9E

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

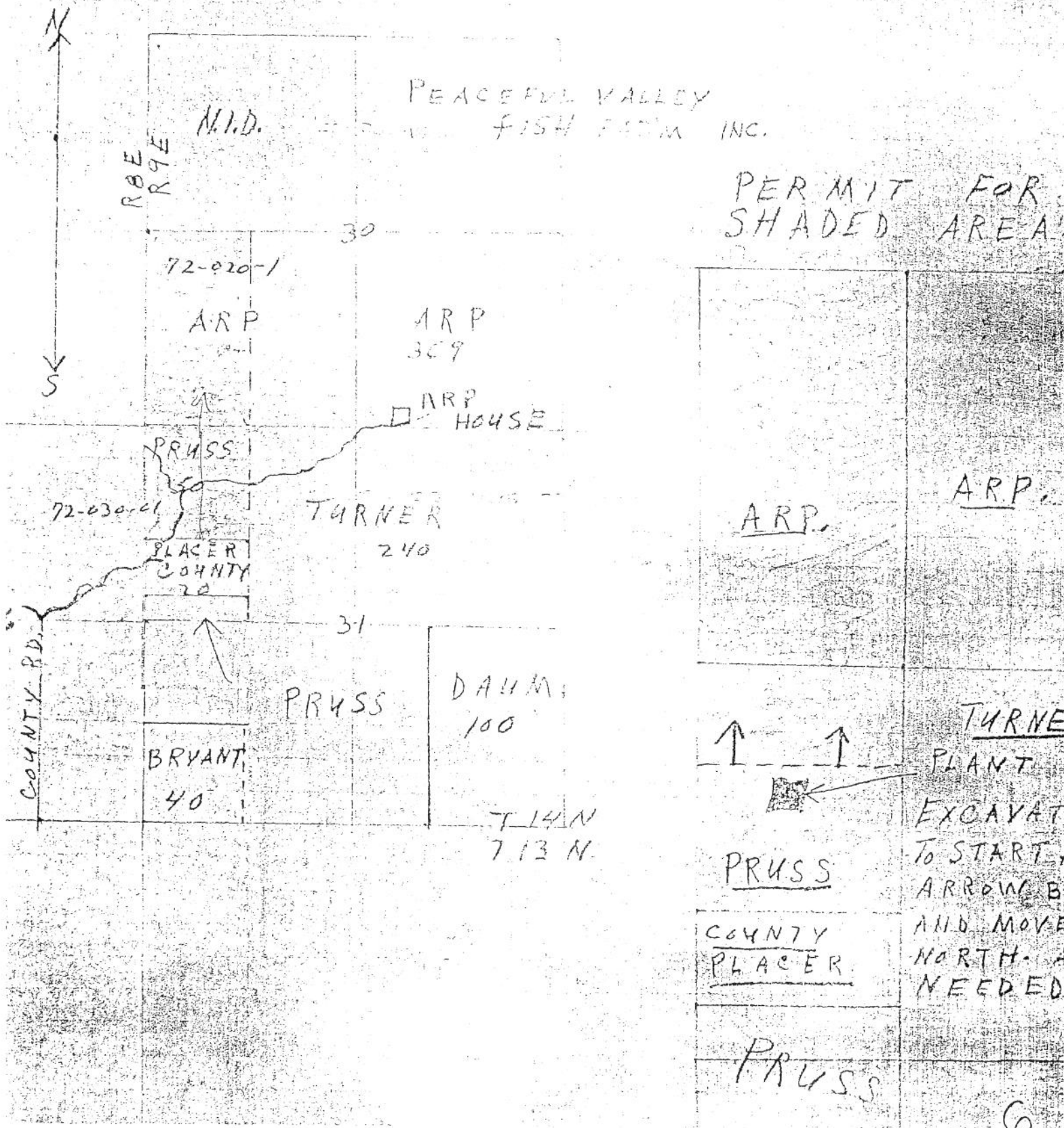
An estimated 40 million⁴⁰⁰ yds of rock
will be involved. This operation will
be year round.

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

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

Edward Pruss
P.O. Box 117
Meadow Vista, Calif. - 11

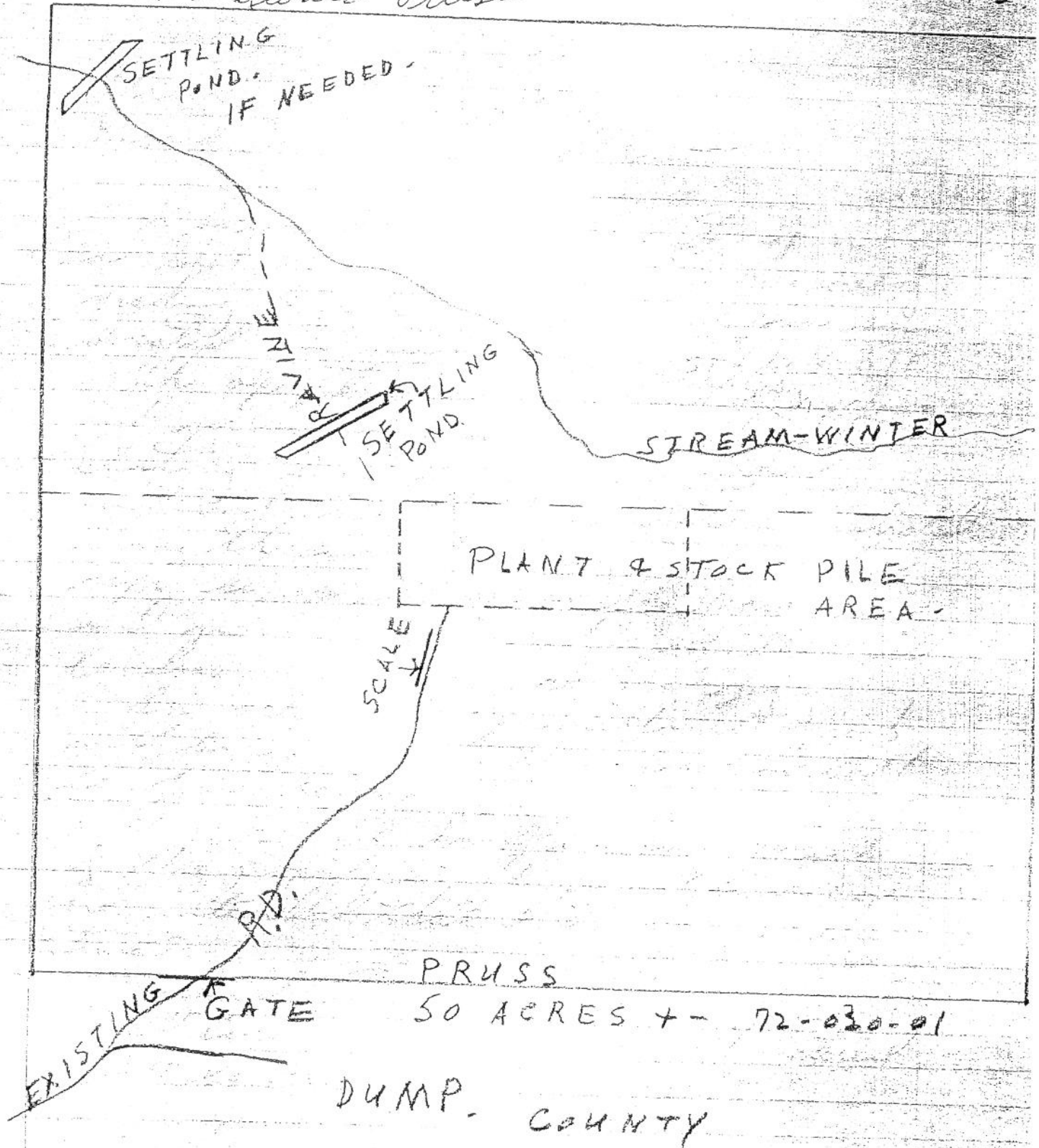
Ed PRUSS



LD-1030

4-6-1965

Edward Pruss



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

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

Mr. Edward Pruss was present.

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

Mr. Heikka stated that Mr. Pruss was the present owner of part of the property and has use or control of use of property to the north. Recommendations of the Department of Public Works are as follows: 1) Commercial type access, drainage and adequate off street parking. 2) Post \$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 noted that there was none.

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

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

Mr. Heikka asked if there would be any problems in regard to eroding 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 this is higher than that. He said that they will be taking all of that down and leaving one area, on the eastern slope, a 100 foot cut. All the rest for the present time will be an open day-light situation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Heikka - Placer County

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. Chevreaux's comments were well taken and advised that the County anticipates, in the near future, working with the Meadow Vista Group for a Master Plan in that area. It would be well to relate to any study that there could be a real potential conflict under what the ordinance now established as the RF District. It is something the County should well take under consideration.

Mr. Chevreaux 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. Chevreaux asked what if a single family residential house was built within 100 feet of the property developed as a quarry? A quarrying operation would run these people right out of their 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. Chevreaux queried what would happen with the sale of the land and Mr. Heikka replied that the use would continue, as the permit runs with the land not the individual.

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

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

Mr. Heikka asked where Mr. Mapa's property was in relation to 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 affect. The '600' type shot gives the least amount of noise and ground vibration.

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

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

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

RICHARD M. HEIKKA, Placer County Zoning Administrator



COUNTY OF PLACER

OFFICE OF THE PLANNING COMMISSION

RICHARD M. HEIKKA Planning Director

COUNTY ADMINISTRATIVE CENTER

AUBURN, CALIFORNIA 9

TELEPHONE (916) 885-7711-EXT. 221

April 14, 1971

Mr. Joe Chevreaux
890 Grass Valley Highway
Auburn, California 95603

Dear Joe:

Sorry for not getting an answer to your letter of March 25th sooner, but there are some hang-ups as it relates to the asphaltic concrete plant you intend to reinstall on the site. We are checking further with County Counsel on this point and suggest that any substantiating data regarding the past use of the site for this nature be transmitted to us for clarification.

The balance of the operation, including the use of the Edward Pruss property, is certainly in order and, per your request, we are sending a copy of the original permit granted to Mr. Pruss.

I am still of the opinion, as I indicated to you earlier, that the asphaltic concrete plant is permissible and I hope to verify this to you as soon as I can discuss it in detail with the County Counsel.

Sincerely,


RICHARD M. HEIKKA
PLANNING DIRECTOR

RMH:lc

Enclosure (1)

April 21, 1971

Mr. Richard Heika
Placer County Planning Director
Courthouse
Auburn, California

Dear Mr. Heika:

Regarding your letter dated April 14, 1971 as to dates of previous Asphalt Concrete plant operations at my gravel plant on Bear River, Meadow Vista. Listed below are the dates as well as names of jobs and contractors of major construction jobs served from my plant;

1947 - 1948 Placer Hills Road, Clipper Gap to Colfax, Placer County project, also other county and private jobs. Syar Construction Co., Vallejo California

1949 - 1952 Highway 40 (Interstate 80) Auburn to Clipper Gap State of California project also several other County and private jobs. Westbrook & Pope, Sacramento, California and Federickson and Watson, Oakland, California

1956 - 1960 Auburn to Newcastle, Interstate 80, Colfax to Grass Valley Highway, Placer Hills Road, Clipper Gap to Meadow Vista, Combie Road, Meadow Vista to Lake Van Giesen, Highway 49, Bear River to Lime Kilm Road (7 miles), State Stockpiles and several other County and private jobs. Baldwin Contracting Co., Marysville, California and Isabell Construction Co., Reno, Nevada.

I hope the above information is sufficient, however if you should need further details, please let me know.

Sincerely

JOE CHEVREAU



COUNTY OF PLACER

OFFICE OF THE PLANNING COMMISSION

RICHARD M. HEIKKA Planning Director

COUNTY ADMINISTRATIVE CENTER AUBURN, CALIFORNIA 95603
TELEPHONE (916) 885-7711-EXT. 221

30 April 1971

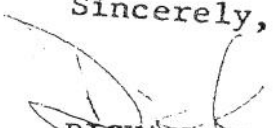
Mr. Joe Chevereaux
890 Grass Valley Highway
Auburn, California 95603

Dear Joe:

In following up my previous letter, I have discussed as I indicated to you, the question of an asphaltic concrete batch plant on the Bear River. The County Counsels office has reviewed this at length and are of the opinion that the matter should go to public hearing.

In view of the recent action of Gibbons and Reed on the Miles property at Colfax, they further feel that the ordinance is unclear in the matter of rights under a non-conforming status which further supports their contention that to remove any question of legal difficulty in the future, a public hearing should be held.

Sincerely,


RICHARD M. HEIKKA
Planning Director

RMH/jv

NOTICE - ALL APPLICANTS

Conditional Use Permit is:

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

Permit No. LDA-786
Date Filed May 1, 1972
Hearing Date 5-25-72
Hearing Jurisdiction 2A

CONDITIONAL USE PERMIT

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

Method of Sewage Disposal Portable toilets
Assessor's Parcel No. 72-030-01 & 72-020-03 (83-12)
General Location of Property present Chevreux Gravel Plant & Quarry Plant and Placer County Dump, Meadow Vista, Cal.

PLEASE SUBMIT WELL-DETAILED PLOT PLAN
(See Reverse)

\$25.00 Filing Fee
Receipt No. 35667
Received by: [Signature]

Placer County Planning Department

Date of Action 5-25-72

Signature of Applicant [Signature]

XXXXX Approved _____ Denied _____

Summary:

SUBJECT TO ATTACHED CONDITIONS.

LDA-786, CONDITIONAL USE PERMIT, JOE CHEVREAU

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

1. This is to be a permanent location for an asphalt batch plant.
2. Provide adequate emission control to meet requirements of the Air Pollution Control District (APCD).
 - A) Emissions not to exceed 0.3 GM/FT^3 or Ringelmann smoke density laws of county APCD and State Health and Safety Codes.
3. All equipment that sends emissions into the atmosphere must register with the APCD.
4. Submit plans of proposed plant, showing in detail all emission control equipment and its expected efficiency. Plans to be approved by APCD prior to operation.
5. There shall be no direct discharge of wash water, scrubber water or other water from the proposed operation to the Bear River or its tributaries.
6. Excavation for aggregate shall not cause an increase in the turbidity of the Bear River.
7. Apply to the State Water Quality Control Board, Central Valley Region, for discharge requirements, should there be any.
8. Confine all hauling operations to the following roads:
 - A) Combie Road
 - B) Placer Hills Road
9. Applicant to cooperate in maintaining the surface of the hauling route during the period of hauling on Combie Road only and shall periodically repair damage caused to roads by hauling.

NOTE: Placer Hills Road is designed and constructed for the appropriate traffic index to accommodate this type of hauling operation; however, Combie Road is not.

10. Dike shall be constructed around the liquid asphalt storage tank to the satisfaction of the Department of Public Works.
11. Water and sewerage to comply with County Health Department requirements.
12. There will be only one plant in operation. If the plant granted under LDA-691 is reopened, the second plant will be closed.

ADVISORY COMMENT:

The Department of Public Works recognizes that it would be desirable to widen the shoulder on Combie Road at certain locations because of the pedestrian and equestrian traffic, with the increased hauling.



Assessor's Parcel
No. 72-030-03 (part of)
80 acres

W 1/2 of SW 1/4 SEC 30

25 30
30 31

North line Section 31

X ← Approx. Location

Assessor's Parcel
No. 72-030-01
52 acres

1/4 NW 1/4 M.D.M.
1/4 NW 1/4 M.D.M.

W 1/2 of NW 1/4 of SEC 31

West line Section 31

972'
PLACER County Dump
COUNTY OF PLACER
VOL 527 PG 176
O.R.P.G.
PLACER County Dog Pound
COUNTY OF PLACER
VOL 570 PG 231
O.R.P.G.

1/4 NW 1/4 M.D.M.
Road



COUNTY OF PLACER

OFFICE OF THE PLANNING COMMISSION

11414 B AVENUE

TELEPHONE (916) 823-4721

AUBURN, CA 95603

THOMAS D. MCMAHAN, PLANNING DIRECTOR

February 3, 1984

Joe Chevreaux
890 Grass Valley Hwy.
Auburn, CA 95603

Subject: Condition No. 6, LD-1030

Dear Joe:

This letter is in response to yours of January 25, 1984 written to Tom Kubik regarding the above listed subject.

Condition No. 6 states that "Provision be made for return of soil cover to allow re-growth of vegetation or show some future design solution."

It is the position of this department, based on a field review by Tom Kubik, and staff discussion between Tom, Fred Yeager and myself, that within the comparatively narrow context of condition No. 6, you have complied with the spirit and intent of that condition. This is amplified by our knowledge of the County's interest in eventually converting the quarry into a sanitary landfill when mining is completed.

In a somewhat related issue, although not specifically addressed in your letter, it is this department's opinion that a broader issue should be spoken to in this letter; that being the applicability of preparing a Reclamation Plan as provided for in the State Surface Mining and Reclamation Act (SMARA), as adopted by Placer County.

It is the position of this department that a Reclamation Plan must be prepared for the subject operation for the following reasons:

1. The wording of Condition No. 6 is not detailed enough to constitute or require the functional equivalent of a "Reclamation Plan" as required in Section 2600 et. seq. of the County's SMARA. In fact, LD-1030 was approved in 1965, approximately eleven (11) years prior to the adoption of SMARA.

Joe Chevreaux
February 3, 1984
Page 2

2. Paragraph No. 2 of Sec. 2640 reads as follows:

"A person who has obtained a vested right to conduct surface mining operations prior to January 1, 1976 shall submit to the granting authority and receive, within a reasonable period of time, approval of a reclamation plan for operations to be conducted after January 1, 1976, unless a reclamation plan was approved by the County of Placer prior to January 1, 1976, and the person submitting the plan has accepted responsibility for reclaiming the mined lands in accordance with the reclamation plan."

3. Referring to No. 1 and No. 2 above, it is this department's opinion that a reclamation plan was not approved by the County prior to January 1, 1976.

In conclusion, it is hoped that this letter clarifies this department's position with regard to condition no. 6 and the broader issue dealing with the future filing of a reclamation plan. We look forward to working further with you in the future, particularly in light of your cooperative statements made at the January 26, 1984 Planning Commission meeting regarding your willingness to submit required reclamation plans.

Please contact me should you wish to discuss this matter in further detail.

Sincerely,



THOMAS D. McMAHAN
Planning Director

cc: LD-1030

TDM:wk

MEMORANDUM

OFFICE OF COUNTY COUNSEL County of Placer

OPINION NO. 85-07

To: Fred Yeager, Zoning, Administrator

Date: June 14, 1985

From: Lyle D. Rose, Senior Deputy County Counsel *LR*

Subject: Vested Rights Under the Surface Mining and
Reclamation Act. (SMARA)

We have been asked to provide a written opinion as to the requirements for establishing a vested right to operate a surface mining operation without obtaining a conditional use permit; the extent of any such vested right; and specifically how our decision affects the mineral extraction operation of the Joe Chevreux Company in Lake Combie and adjacent to the Bear River.

We have also been asked to discuss the extent of permissible regulation of mining operations through reclamation plan approval, and again how this affects the Chevreux operations. We will discuss them in the order stated above.

VESTED RIGHTS

The concept of a "vested right" ordinarily contemplates reliance upon government approval of a project to the detriment of the holder of the right. The usual example given is substantial construction based upon a valid building permit. In the case of SMARA, however, the vested right may also occur if no permit was required when mining began, and the person claiming the right has "diligently commenced surface mining operations and incurred substantial liabilities for work and materials necessary therefore". (Public Resources Code Section 2776 ¹/_; Ames v. Empire Star Mines Co., Ltd. (1941) 17C.2d 213, 218-221)

What is "substantial" is a question of fact to be determined in individual cases. This question was extensively discussed in the case of Cooper v. County of Los Angeles, (1975) 49 C.A. 3d 34, wherein the court stated:

"Thus 'substantial' has connotations of both quantity and comparison and we are of the opinion that the Legislature intended that either be appropriately applied. In the case of a relatively small project comparing the amount of"

¹/ Unless otherwise noted, all references to code sections contained herein are to the Public Resources Code.

"construction and liability to the total would be an appropriate test of substantiality. In other words, if a large or important part of the project had already been completed or a large percentage of the liability incurred, the project would be validated. On the other hand, construction or liability which was quantitatively substantial would meet the statutory requirement regardless of the fact that in terms of a large project it might not constitute a substantial percentage by comparison."

"In other words, for example, \$100,000 in construction or liability is substantial by any standard yet on a \$1 million project it would constitute only 10 percent while on a \$200,000 project it would constitute 50 percent. A comparison test under such circumstances would be inappropriate in achieving the intent of the statute."

With respect to the Chevreux operation it is clear that it has operated for many years with large expenditures of money in support of the operation. Thus, even though it is in its infancy in terms of total proposed project, it nevertheless must be deemed to have incurred substantial liabilities. We therefore conclude that the Chevreux operation has a vested right to extract minerals based upon its mining activities undertaken prior to January 1, 1976, the date referred to in SMARA. (Section 2776)

A more difficult question regarding the Chevreux operation is whether, and to what extent, it may conduct future surface mining without a CUP on lands which are owned or leased by Chevreux but upon which there has not been any past mineral extraction activity. The general principle is that a mining operator is entitled to remove the minerals from an entire parcel of land.

This conclusion was reached in the case of McCaslin v. City of Monterey Park (1958) 163 C.A. 2d 339. In that case the city adopted a zoning ordinance that made an existing quarry a non-conforming use. They then sought to restrict the quarry operation to the location that was actually being mined at the time of adoption of the zoning which made the use non-conforming. This approach would have shortened the life of the operation by preventing any future expansion of the quarry. The court found that the operator could continue his operation over his entire parcel of land without the benefit of permission by the city. Discussing the characteristics that distinguish mining from other land uses the court stated:

"The very nature and use of an extractive business contemplates the continuance of such use of the entire parcel of land as a whole, without limitation or restriction to the immediate area excavated at the time the ordinance was passed. A mineral extractive operation is susceptible of use and has value only in the place where the resources are found, and once the minerals are extracted it cannot again be used for that purpose. 'Quarry property is generally a one-use property. The rock must be quarried at the site where it exists, or not at all. An absolute prohibition, therefore, practically amounts to a taking of the property since it denies the owner the right to engage in the only business for which the land is fitted' (Citations Omitted). An entire tract is generally regarded as within the exemption of an existing nonconforming use, although the entire tract is not so used at the time of the passage or effective date of the zoning law."

It is our opinion that this rule is applicable to vested rights under SMARA and thus any surface mining operations which establish the existence of a vested right under SMARA may expand into areas set aside for mining even though these areas were not being mined at the time of adoption of SMARA or local ordinances which implement that act.

In considering whether a vested right to expand a surface mining operation exists, the California Attorney General has opined that the area for which a vested right is claimed must have specified boundaries. Unlike the McCaslin case in which the operation was on a single large parcel of land the Chevreaux operation has mineral rights on land which is partly owned in fee, and partly held by lease. The portions held by lease are clearly definable. We have reviewed the lease to Chevreaux from NID, and have found that the express purpose of the lease is the removal of minerals. We have now seen other leases, and they too are for mineral extraction purposes.

It is therefore our opinion that for purposes of establishing vested rights under SMARA the entire holdings of Chevreaux, whether by ownership or lease, constitute a "tract of land", and the mining operation may be expanded to those areas without obtaining a use permit.

RECLAMATION PLAN

From the foregoing it can be seen that it is possible to establish a vested right to continue and expand an existing surface mining operation without obtaining a conditional use permit. That is not the case with reclamation plans. The only surface mining operations which do not require a reclamation plan are those which were completed or abandoned prior to January 1, 1976. Operations which existed before that date and continue after that date may not need a CUP, but must obtain approval of a reclamation plan within a reasonable time. (Section 2776) Placer County has set the final date for reclamation plan approval for continued operation.

It is our opinion that in order to preserve his vested right, Chevreaux must include all lands for which such right is claimed in a reclamation plan to be approved before October 11, 1985.

Regarding the plan itself, state law sets forth a list of items which must be included in any plan. (Section 2772) We believe that the legislative intent to prevent adverse environmental effects of mining and to reclaim mined lands to a useable condition that is readily adaptable for alternative land uses contemplates the exercise of broad discretion in approval of reclamation plans by local government agencies.

While we think it inappropriate for this office to enter this decision making area, we would add a caveat. The proposed benching of the walls of the quarry seem directed to a future use as a landfill. This is probably inadequate for two reasons. The first is that the area of potential hardrock removal is much larger than the area required for a landfill site. The second is that there is no way to determine at this time that a landfill will be the next use, although that appears to be a logical use.

Nevertheless, we think the reclamation plan should primarily concern itself with describing alternate uses which can be accomplished by private parties. We note that more gentle sloping might affect the total amount of minerals to be extracted, but we believe that this may well be a necessary result in order to achieve the objective of providing for future use of the land.

A final comment on concerns which have been expressed over the lack of regulatory control over mining operations which would be available through the use permit process. SMARA itself provides that nothing contained in the act limits the power of a county to declare, prohibit, or abate a public nuisance. (Section 2715) This power provides an effective control over activities that are harmful to the public health, safety, or welfare and should alleviate most concerns over the lack of local regulation of mining activities where vested rights under SMARA have been established.

I hope this will be of assistance to you in your review of reclamation plans and claims of vested rights under SMARA.

**INFORMATION REPORT
FOR
PART B**

**RECLAMATION PLAN
CHEVREAUX QUARRY
AT
MEADOW VISTA**

County/City Placer County

INFORMATION REPORT

OWNER, OPERATOR, AND AGENT:

1. Applicant:

Name WESTERN PLANNING AND ENGINEERING
Address 11712 Quartz Dr.
Auburn, CA 95603

Telephone (916)823-6916

2. Name of Mineral Property: CHEVREAU QUARRY

3. Property Owner, or owners of surface rights:

- | | |
|--|--|
| 1) Joe Chevreau
890 Grass Valley Highway
Auburn, CA 95603
(916)885-3716 | 3) Nevada Irrigation District
P.O. Box 1019
Grass Valley, CA 95945 |
| 2) Arp Ranch Inc.
19575 Placer Hills Rd.
Auburn, CA 95603 | |

4. Owners of Mineral rights: Same as set out in No.3 above

5. Lessee: (of Arp Property and N.I.D. Property)

Name Joe Chevreau
Address 890 Grass Valley Highway
Auburn, CA 95603

Telephone (916)885-3716

6. Operator: Same as Lessee see No. 5 above.

7. Agent of Process: Same as Operator see No. 6 above.

CALIFORNIA DIVISION OF MINES AND GEOLOGY

LOCATION

8. Description:

- a) Assessors Parcels: See exhibit A page 3 herein
The foregoing parcels are in the following Sections,

Section 25, Township 14 N, Range 8 E

Section 17, 19, 30, 31,, Township 14 N, Range 9 E

Mount Diablo Base and Meridian.

9. Access routes to the operation site (see exhibit map):

- a) From the Southwest: I-80, Placer Hills Rd., Volley Rd., Combie Rd.
- b) From the North: Magnolia Rd., Private Rd.

10. Location Map: See map on page 4.

DESCRIPTION:

11. Mineral commodity mined:

- a) Andesite and other minerals classified as MRZ-2 a&b pursuant to the Surface Mining and Reclamation Act (see map in Appendix).
- b) The Present and Reserve Mining Areas are shown on Exhibit Maps in the pocket at the end of this report.

EXHIBIT A
DESCRIPTION

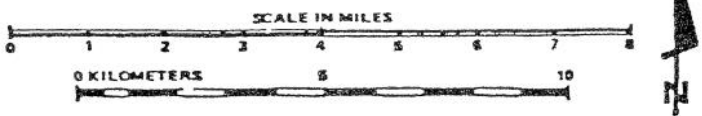
PART B MEADOW VISTA QUARRY

<u>ASSESSOR'S PARCEL NUMBERS</u>	<u>OWNER</u>
71-020-01	N.I.D.
72-010-39	N.I.D.
72-020-05	ARP Ranch, Inc.
72-030-01,08	Joe Chevreaux
74-250-01,02,10	Joe Chevreaux
74-260-02	N.I.D.
74-260-03	Joe Chevreaux

Acreage: 478 acres



LOCATION MAP



CALIFORNIA DIVISION OF MINES AND GEOLOGY

12. Geologic description:

The area in general is located within a belt of metamorphic rocks that underlie the Sierra Nevada foothill region of California. In the Lake Combie area, these rocks consist of a thick sequence of mafic and adesitic submarine flows and flow breccias of Late Jurassic age which have been highly deformed and have undergone greenschist metamorphism.

These basement rocks have been well exposed by the down-cutting of the Bear River, which flows into Lake Combie at the southern end of the area. Holocene fluvial deposits line the river channel and are concentrated in the lake.

13. ENVIRONMENTAL SETTING: The setting is best described by the following quote from the Meadow Vista General Plan.

"Meadow Vista is a rural community centrally located in the foothills of the Sierra Nevada Mountains, off of Interstate 80, approximately seven miles northeast of the City of Auburn. Physical features include meadow areas, rolling hills, as well as pine and oak tree areas. With Sacramento and the San Francisco Bay area to the west and Lake Tahoe to the east, all within easy driving distance, citizens of this community are afforded the luxury of a rural atmosphere with the option of major recreation areas or population centers within a relatively short distance.

The Meadow Vista -- West Applegate General Plan Area includes approximately 5,800 acres encompassing the commercial center. The Bear River rock quarry serves as the northern boundary with the area extending southward to approximately one-half mile north of Halsey Forebay and Christian Valley Road. The western boundary includes the old Marty Ranch and immediate properties while the eastern boundary extends down the Bowman Canal Drainage area that is between and parallels the Bear River Canal and Interstate 80."

EXISTING SURFACE MINING OPERATION:

14. Starting date of operations: 1946

Estimated Life of Operation: 50 + Years

Phasing: None

CALIFORNIA DIVISION OF MINES AND GEOLOGY

15. Operation is Continuous X , Seasonal X ,
Intermittent X , depending on the market for the
material.
-

16. Operation Averages 50,000 to 500,000 tons/year depending
on the market.
-

17. Total anticipated production:

Mineral commodities to be removed: 300 million tons

overburden retained on the site -: 10 million tons

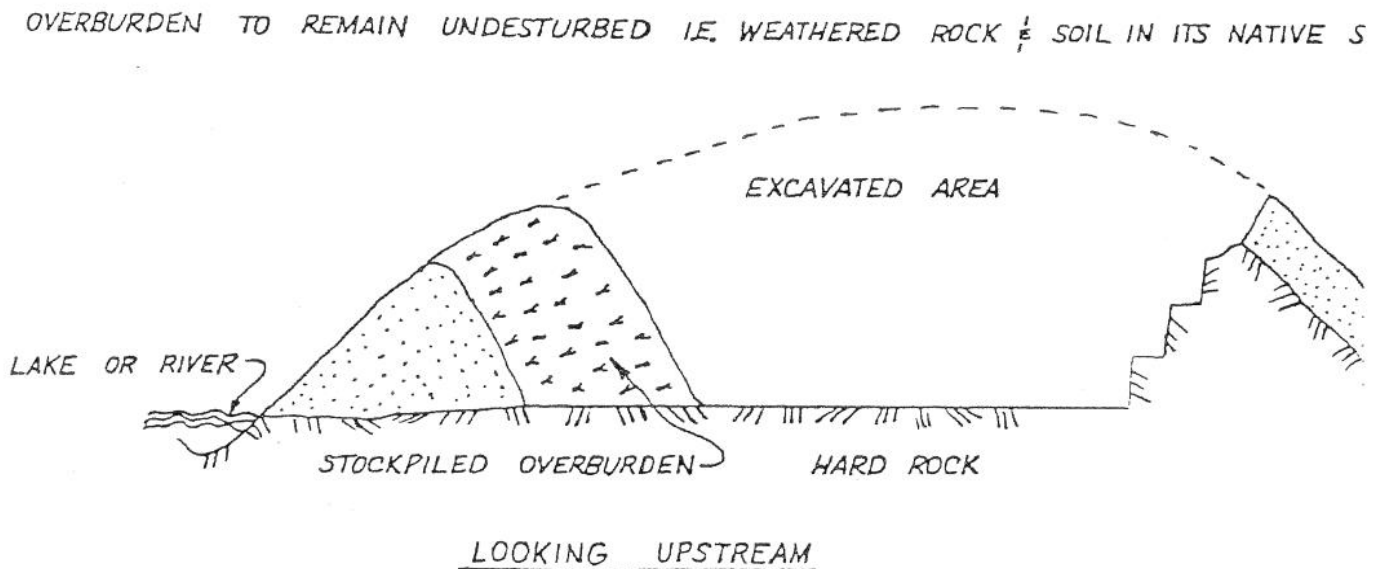
Waste disposed off site -: None

Maximum anticipated depth: 300 feet

18. Mining Method:

Drilling and blasting on a multi bench quarry. Overburden
is stripped and stockpiled for respreading over the mined
area.

The hardrock will be excavated to an elevation which
is six feet above high water (100 year storm) in Lake
Combie and the Bear River. Overburden which is
removed will be stockpiled adjacent to undisturbed
overburden next to Lake Combie and the Bear River as
shown in the cross section below:



CALIFORNIA DIVISION OF MINES AND GEOLOGY

- 19a. Processing: After blasting the rock fragments are hauled a primary crusher. From there they are hauled to secondary crushers, classified and stockpiled.
- 19b. Water use: Water is used for washing the rock and for dust control. It is recycled from settling ponds totalling three in size with average depths four feet.
-

20. If the nature of the deposit and the mining method used will permit, describe and show the steps or phases of the mining operation that allow concurrent reclamation:

Concurrent reclamation is not practical until final use or uses are determined for the mined area. If the area is ultimately to be used for a landfill operation then the stockpiled overburden should be retained in the location shown in the diagram in Item 13 herein until it is needed for cover. This will avoid double handling.

21. In the pocket at the end of this report is a map of the mined lands showing:

- a) Boundaries and topographic details of the site;
- b) Location of all streams, roads, within 500 feet of the site;
- c) Location of access roads used in conducting the surface mining operation;
- d) Location of areas mined, and to be mined;

See map entitled: Exhibit Map for Reclamation Plan.

22. Show location of equipment, storage area, settling ponds and drainage:

See map entitled: Current Operation in the pocket at the end of this Report).

RECLAMATION PLAN:

23. Indicate areas to be covered by the reclamation plan:

This Reclamation Plan covers 473 Acres shown as: Present Quarry location and Quarry Reserve on the Exhibit Map.

24. Describe the ultimate physical condition of the site and specify proposed use(s), or potential uses, of the mined lands as reclaimed.

If used as a landfill the physical condition before the landfill would be as shown in the cross section in item 18 herein.

If used for Residential, Quasi Public or Recreational purposes the physical condition would be similar to said cross section except that the topsoil would be respread 18 inches deep over the quarry floor and on the rock benches and replanted for erosion control.

25. Describe relationship of the present uses to:

- a) Zoning regulations: Mining is a conforming use and the area has been designated "Mineral Reserve" pursuant to State Law (see Appendix).

A map showing zoning in the area is included in the pocket at the end of this Report.

- b) General Plan: The General Plan indicates the following:

"Mineral extraction has proven to be a major contributor to the economy of the County. Locations of mineral deposits are decreasing, and thus, care should be taken to protect the existing areas that produce mineral resources.

"Recommendation - Meadow Vista is one of the few areas in the State the has the appropriate types of sand, gravel and stone that are used in construction and various specialized architectural and filtration uses today. Urbanization should not be allowed to cover up the potential mineral resources in this area until these resources are removed. Future purchasers of property within close proximity to any mineral extraction operation should be notified of future lot split applications occurring in Placer County."

26. Describe soil conditions and proposed soil salvage plan: Information on soil types in the overburden are found in the Appendix of this Report.

The Soil Salvage Plan was discussed in the Mine Plan Item 18 herein.

27. Methods, Sequence And Timing of Reclamation:

A decision must first be made concerning future use of the property as a landfill. This decision could be made in approximately 25 to 50 years when an estimated 80 acres would be at finished grade in the vicinity of the present quarry operation.

If at that time it was decided that the site was suitable for a landfill the operation would go as follows:

- 1) Seal joints in rock to make an impermeable base for the landfill.
- 2) Culvert the main drain thru the area.
- 3) Provide a sump for collection and land disposal of leachate.
- 4) Provide retention ponds and a land disposal system for surface runoff from the active work area at the landfill.
- 5) Use stockpiled overburden to cover the solid waste as required by law.
- 6) Stabilize slopes by compaction and hydroseeding.
- 7) Fence the residual quarry benches to prevent access to them, cover the benches with 18 inches of top soil and replant with annual vegetation.
- 8) Remove all buildings and equipment from the + 80 acre site which is not needed in the landfill operation.

If on the other hand a decision is made against the landfill then suitable uses for the 80 acres would be those which do not attract people to the site. This would mean no housing or recreational facilities should be allowed because:

- a) Blasting would be hazardous to either use
- b) Permitting people in close proximity could lead to objections concerning the quarry.

Suitable uses might include:

Christmas tree farming, indoor and outdoor storage, farming, grazing, and raising of poultry, timber production.

In this event the reclamation plan would take the following form:

- ✓ 1) Respread topsoil 18 inches deep on the quarry floor.
- ✓ 2) Dress up stockpiled overburden, by sloping it at 2:1.
- 3) Riprap the main drain thru the site to Lake Combie.
- ✓ 4) Fence the quarry bench area to prevent trespass and place three feet of soil on each bench. Plant these benches with annual grasses.
- ✓ 5) Stabilize exposed fill slopes by hydroseeding.

-
28. Describe how reclamation of this site may affect future mining at this site and in the surrounding area.

Further mining would have to be done below lake level which would require a change in the mining method.

BUILDING MATERIALS
SAND AND GRAVEL
LANDSCAPE AGGREGATE



890 GRASS VALLEY HIGHWAY
AUBURN, CALIFORNIA 95603
TELEPHONE (916) 885-3716

TRANSIT MIX CONCRETE
CRUSHED QUARRY ROCK
INDUSTRIAL MINERALS

July 28, 1987

PLACER COUNTY
DATE
RECEIVED

JUL 29 1987

PLANNING DEPARTMENT

Mr. Tom McMahan
Placer County Planning Director
11414 "B" Avenue
Auburn, Ca. 95603

Dear Sir:

I have operated or joint venture operated portable asphalt plants at my Gravel Plant-Quarry location near Meadow Vista on an intermitent, as needed basis since 1947 (see attached letter to Planning Director Richard Heika dated 4/21/71).

However in 1971 County Council and Planning Director recommended that I apply for a permit for a permanent location for a asphalt plant as this would insure our right to move portable asphalt plants in and out as needed, even though there was legitimate questions whether it was needed.

I applied for and received permit No. LDA-691-5-27-71 and operated at that location approximately 1 year.

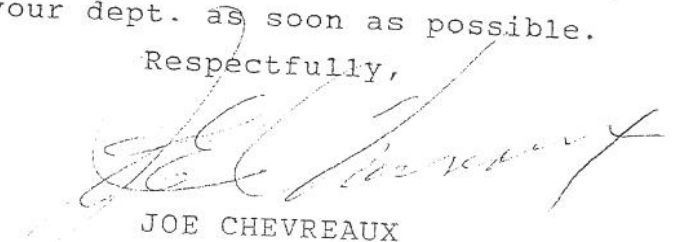
We then decided to move the asphalt plant approximately 600' N.E. of the Lake into a canyon where it would not be seen and more efficient. (Permit No. LDA-786-5-25-72)

From this new location we supplied asphalt material to Cal Trans I-80 project from Auburn to Applegate and various other State and County jobs to about 1976.

Since 1976 I have not needed a portable asphalt plant as most Highway work has been slow but now Cal Trans is bidding a major project in our area (I-80 Auburn) and Highway 49 is to be bid in 1988, both will need asphalt concrete.

I believe that my existing permits are still in effect, however, I would appreciate verification from your dept. as soon as possible.

Respectfully,



JOE CHEVREUX



COUNTY OF PLACER

OFFICE OF THE PLANNING COMMISSION

11414 B AVENUE

TELEPHONE (916) 823-4721

AUBURN, CA 95603

THOMAS D. MCMAHAN, PLANNING DIRECTOR

July 31, 1987

Mr. Joe Chevreaux
890 Grass Valley Highway
Auburn, California 95603

Dear Joe:

This is in response to your letter of July 28th wherein you requested an opinion as to the validity of your Conditional Use Permit for asphalt plants on the Bear River. By way of our telephone conversation and your letter, it is my understanding you are most specifically interested in the validity of LDA-786 issued on May 25, 1972.

I have reviewed this matter personally and also discussed the issue with County Counsel. Based on the information I have, you have complied with all of the conditions and exercised LDA-786. In the mean time, this Use Permit has not been revoked, nor has the basic zone district changed (the property was zoned R-F in 1972 and is now zoned R-F-MR-BX-SP). The basic zone district still permits paving and concrete batch plants subject to a Conditional Use Permit.

In conclusion, based on the information received to date, it is my opinion that LDA-786 remains valid, subject to your continuing to meet all twelve (12) conditions attached to its issuance. I would recommend, however, that you confer with Noel Bonderson, Air Pollution Control Officer, to determine if more specific air pollution requirements, particularly those mandated by the State, need to be met.

If you should have further questions or comments, please feel free to contact me. Attached is a copy of LDA-786 and its conditions.

Sincerely,

Thomas D. McMahan
Planning Director

TDM/lo'b
Enclosure

cc: Noel Bonderson, Air Pollution Control Dist.
LDA-786 File

EXHIBIT "B"
(MAY 3, 1989)

INFORMATION SUBMITTED WITH
E. I. A. Q. FOR JOE CHEVREUX
BATCH PLANT NEXT TO GRAVEL
PLANT AT QUARRY ADJOINING COMBIE RESERVOIR

The following information is supplemental to the items in the preceding Questionnaire.

3. Exhibit "A" shows the new location of the Portable Batch Plant. The plant is actually composed of several separate pieces of equipment as follows:
- A) Loader - The loader that now ranges around the same yard area to load gravel trucks for the haul to the Batch Plant on Hwy. 49 will feed this plant. It does so by filling a hopper 150 feet away from the concrete silo under which the concrete trucks are filled.
 - B) A conveyer belt takes sand and gravel from the first hopper to separate bins where they are stored for weighing and delivery to the truck.
 - C) A second conveyer takes the weighed sand and gravel and deposits it in a funnel shaped device where it slides into the concrete truck.
 - D) A concrete Silo (above the funnel shaped device) drops a measured amount of cement into each truck while the gravel is being loaded.
 - E) Inside the truck the mix is watered to eliminate dust. Dust is also controlled in the concrete silo by means of bag filters.

Asphalt Plant Traffic

Mr. Chevreaux has a Use Permit (LDA 786) to place an asphalt plant at the Quarry.

What follows is an estimate of the maximum number of trucks that might be associated with an asphalt plant if one were located at the Quarry in Meadow Vista. It is included to supply the Public Works Department with part of the information they say is needed to evaluate the concrete batch plant proposal.

To begin with, an estimate must be made as to the size of the demand for asphalt in the Chevreaux market area: Colfax to Newcastle and Auburn to Lake of the Pines.

The table below contains our estimates of the annual amount of asphalt needed for various activities in the market area. The residential figures are based on an estimated annual growth of 5% or 3,200 new residents in the trade area. Commercial/industrial (C/I) estimations come from expanding the existing C/I building area by 2% and assuming it will be accompanied by a 2.5:1 need for blacktop. City/County figures come from interviews and the institutional figure in the table is just a guess.

Summarizing for an unlikely peak-peak truck traffic situation from the Meadow Vista Plant with an asphalt plant in operation we would find: 280 trips per day (including trucks involved in the concrete circuit) plus 68 asphalt truck trips for a total of 348 total truck trips per day. With a batch plant at the quarry this figure would be about 8 truck trips less.

ACTIVITY	TONS PER YEAR
New Subdivisions For 500 Single Family Dwellings	6,900
Lot Splits For 300 Parcels	6,700
680 Duplex, Apartment Units	6,000
Commercial, Industrial Development	2,800
Local Institutions (Schools, etc.)	1,000
County Roads	9,000
City Streets	<u>3,000</u>
TOTAL	35,400

Signed and approved by me after its passage this
6th day of August, 1963.

WILLIAM S. BRINER, CHAIRMAN
PLACER COUNTY BOARD OF SUPERVISORS

ATTEST:

MAURINE I. DOBBAS, County Clerk
and Ex-officio Clerk
of the Board of Supervisors

By: ELYNOR O'MALLEY, Deputy

LD 1024
PLACER COUNTY
DATE

DECLARATION OF THOMAS D McMAHAN

JUL 15 1983

I, THOMAS D. McMAHAN, declare:

1. I am the Planning Director for the County of Placer, California, and I have held this position since December, 1971.

2. My duties as the Planning Director include the organization, operation and supervision of Planning Department activities and staff; the preparation of technical studies, reports and recommendations with respect to the use of land and project planning with respect to subdivisions and zoning; and representation of the Planning Department at meetings of the Planning Commission and at meetings of other public and lay groups.

3. Assessor's Parcel Number 72-03-01 is zoned RF-MR-B-X. The MR designation indicates that this parcel is classified as a mineral reserve. The RF and B-X designates that this land is zoned for recreational purposes with a 20 acre minimum on building sites.

4. Assessor's Parcel Number 74-250-02 is zoned M-MR. The M-MR designation indicates that the parcel is zoned for industrial purposes and is classified as a mineral reserve.

5. Mineral extraction may be conducted on any parcel with an MR designation provided that an approved conditional use permit has been issued by the county with respect to that parcel.

6. Mineral extraction is being conducted on the

aforementioned parcels pursuant to a permit issued to Edward Pruss in 1965 and assumed by Joe Chevreaux in 1971.

7. There is no existing parcel at this time in Placer County with a particular description of Assessor's Parcel Number 72-020-07.

Executed this 15th day of July, 1983, at Auburn,
California.

I declare under penalty of perjury under the laws of the State of California that each of the facts stated above is true and correct.

THOMAS D. MCMAHAN



6-62

NEV2-25



FILED

NOV - 8 2001

SHERRIL PEDERSEN
CLERK OF THE SUPERIOR COURT
Sherril Pedersen DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MONTEREY

CASE NAME: Clark v County of Monterey

CASE NUMBER: M46377

Intended Decision

This matter came on for court trial on July 30, 2002 and concluded with closing briefs and argument on August 30, 2002. The matter was then taken under submission. The court now issues its intended decision. This intended decision shall suffice as a statement of decision as to all issues of fact and law resolved herein. Requests for further statement of decision shall be timely and in accordance with California Rules of Court.

In this action CLARK seeks a declaration concerning the scope and/or limitations of a use permit issued to him by COUNTY in 1991 for mining in the Arroyo Seco River area. Specifically CLARK seeks a determination as to whether the use permit limits the annual volume of production, covers Section 19 and Section 20, he is obligated to pay road fees, and whether he legally removed material from Section 24. COUNTY cross-complained for injunction and nuisance contended that CLARK exceeded the conditions of his permit and caused significant erosion. Although the matter was filed in 1999 it was stayed for a substantial time while the parties attempted to negotiate a resolution. After settlement discussions failed CLARK filed a first amended complaint adding a cause of action pursuant to 42 U.S.C. 1983 as it related to the issue of road fees and COUNTY amended it's cross complaint to add other defendants and to seek civil penalties.

CLARK had been conducting surface mining operations on property that was located in Section 19 and that was leased from the Gould Ranch under authority of a use permit issued in

1982 and which expired in 1987. Although CLARK had not renewed the permit he continued operations. He testified that his father had been ill and he simply forgot. After receiving notice from COUNTY he applied for a new use permit to continue his operations and, at the same time, submitted a reclamation plan as required by county ordinance and SMARA. COUNTY conducted a single environmental investigation as to the application for the permit and reclamation plan. After the initial study was completed COUNTY issued a negative declaration and, in 1991, approved the permit and reclamation plan. In 1995 Granite Construction applied for and was granted a use permit from COUNTY to site a new asphalt plant adjacent to CLARK.

Subsequent to the storms in 1998 CLARK entered into an agreement with the owners of the McKinsey Ranch, located in Section 24, to mine rock in that area. Although CLARK did not have a permit or reclamation plan to mine in this area he proceeded to conduct operations in that area asserting that he was permitted to do so under executive order 98-168 as issued by Governor Wilson.

In 1997 residents in the area complained about CLARK and contended that he was mining outside the area of his permit and exceeding the volume limits of his permit. In 1999 COUNTY issued a stop work order. After the action was filed the parties negotiated an agreement to allow CLARK to operate under certain conditions pending determination of the issues herein.

Was the 1991 use permit issued based on a volumetric limit? COUNTY argues that the use permit is limited to "approximately 30,000 tons per year", the tonnage which was requested and represented by CLARK to be his approximate annual production and on which the negative declaration was premised. CLARK asserts that the use permit contains no limitation whatsoever and he is free to extract as much as he wants so long as he complies with the approved reclamation plan at the completion of mining operations.

The use permit as issued does not contain an express limitation on tonnage. CLARK and Wruck, the planner who handled the application in 1991, both testified that there was no limitation on tonnage intended in the permit. Wruck no longer works for the COUNTY and her private employment indicates a potential for bias. Her demeanor on the witness stand was questionable. COUNTY argues that the "project" was composed of both the use permit and reclamation plan and both must be defined by the information and representations made by

CLARK at the time of the application and upon which the environmental review was based.

The application for use permit was signed by CLARK on 7/20/90 and received by the planning department the next day. It described the project as "removal of natural materials from riverbed." It also represented that there would be "grading" of "15,000 cubic yards" (according to the testimony 20,000 cubic yards = 30,000 tons) and that some grasses would be removed but no trees. A reclamation plan was also prepared and submitted. Both the application for use permit and reclamation plan was considered as a single project. The reclamation plan provided an "estimate" of annual production of "30,000 tons" (20,000 cubic yards), consistent with the "grading" on the use permit application. The "Environmental Setting" section described the mining area, consistent with the application, as "in the channel". In the "Description of Proposed Mining Operation" section it indicated "estimated annual production would be 30,000 tons." The proposed reclamation indicated it would be completed within one year of termination of mining but "(D)eposition is expected to occur and replace material that has been removed by mining" and that "future mining will be limited to the amount of deposition of material, which will fluctuate according to flooding or any fire that would remove vegetation and cause erosion of soils upstream of the site." This is consistent with the representations made by CLARK and Wruck at the hearing before the planning commission. The reclamation as to the mining in the riverbed would be an ongoing natural process "depending on the annual flooding of the river to bring material into the mining section" (CLARK, Ex 8, p5). If no material were brought in "to the mining area" then there would be no mining. It is also significant to note that Wruck described the mining operation, not the reclamation plan: "The operation consists of the removal of sand and gravel from a portion of the Arroyo Seco River. It is then sorted, crushed, and screened for commercial resale. Arroyo Seco Rock proposes to remove approximately 30,000 – 30,000 tons of material per year. This amount will be monitored annually." (Wruck, Ex 8 p. 2). There was no objection by CLARK.

The initial study, negative declaration, and approval were based on the above representations. The "Notice of Completion", "Project Description", refers to an attachment. The attachment describes the permit project not the reclamation plan. "The Clark Company proposes to remove 30,000 tons of material. This is not an expansion of the existing

operation and no expansion is planned at this time.” Clearly “expansion” refers to the tonnage, not the area. This is the approximate tonnage that was being removed under the prior permit. The very same language was used in the report to the Planning Commission and, as indicated above, at the hearing before the Planning Commission. CLARK argues that the Initial Study refers to 60 truck trips/day at peak levels which when extrapolated to the estimated 260 days of mining per year is obviously more than 30,000 tons per year. The evidence does not support their conclusion that this was intended to reflect a permit to allow this amount of tonnage. It only reflected that given the variable nature of mining operations that one could anticipate 60 trucks/day at peak operations, not that peak operations were expected nor intended to continue for the full mining year.

All of the above is consistent with CLARK’s representations to other governmental agencies made at or about the same time. In the 1990 “Notification” for Fish and Game CLARK describes the project as removal of “20,000 yds/Yr” and “replaced by annual flooding”. In the resulting “Agreement” CLARK states “This project shall be limited to the excavation of soil, sand, and gravel for a one mile length of the Arroyo Seco River on the property of the Ben Gould Ranch about 1 ½ miles east of Sycamore Flats, and the crushing and screening plant associated with the operation. This will be for the removal of about 20,000 tons of material over a one year period”.

Although the permit and reclamation are separate projects under SMARA and estimates contained in a reclamation plan, in and of themselves, may be insufficient to limit a permit (see Hansen Bros. Enterprises v Board of Supervisors 12 Cal. 4th 533 (1996), the evidence in this case establishes that the project itself and the mining use permit application were consistently described and represented as a mining operation to remove 30,000 tons per year, that the environmental review and negative declaration were premised on this project description with respect to both the permit and plan, that all of the reports to the Planning Commission and representations made to them by CLARK and Wruck at the Hearing were consistent therewith, and that the final approval was based on this description and concurrent representations. The issue is not one of CEQA violations but of defining the scope of the use permit based on the consistent project description and representations.

Does the area to be mined include both Section 19 and 20? An ambiguity is created in that the maps attached to the application depict both Section 19 and Section 20. However the weight of the evidence establishes that the permit was only intended to apply to Section 19.

1. CLARK had no right to mine in Section 20 at the time the application was presented and Gould had specifically refused to lease him this area. No authority has been presented, nor does it make sense, that a mining permit could be issued to someone for an area that they have no legal right in which to mine.

2. Although there was confusion over what APN numbers were to be used all of the documents specifically referred to Section 19. The resolution approving the permit specifically stated "located on a portion of Section 19". The Notice of Completion denotes "Section 19" on the face page and described only "Section 19" in the project description. The Negative Declaration referred only to "Section 19". The Initial Study location showed only "Section 19". The Public Notices only described "Section 19". The discussion in the report to the Planning Commission referred only to "Section 19". The Reclamation Plan described only "Section 19". It wasn't to be an "expansion" of the prior permit. Only "Section 19" was described in the prior permit. The "Agreement" with Fish and Game described the project as being on a "one mile stretch" of the River. From the center of the site, one-mile stretch of river is encompassed only in Section 19.

3. Other maps accompanying the application and reclamation plan label the "mining area" as being in Section 19.

Did CLARK legally operate in Section 24? He had no legal right to operate in Section 24, but his work in the area was based on a good faith belief, based on information given him by other governmental agencies, that it was appropriate to do so.

Is CLARK obligated to pay road fees? Condition 7 of the Permit requires "(t)hat payment be made to the County of Monterey for the cost of repairs of Arroyo Seco road made necessary by activities pursuant to this Use Permit. Payment to be made on the basis and rate which may be imposed by the County of Monterey upon applicants for similar Use Permits, and to become effective when imposed upon such other applicants." When Granite Construction was granted it's permit to locate an asphalt plant adjacent to CLARK it was required to pay a per truck load

assessment for road repair. Granite's permit is not "similar" in the sense that it is not a "mining" permit; it is "similar" in that it is an operation that uses Arroyo Seco Rd. Apparently no other mining operation has been assessed. COUNTY argues that it is because they have caused no damage and there has been no need for repairs. The evidence on this issue was questionable and hearsay. The logic is somewhat flawed since the charge is "per truck load". If it is presumed that a "truck load" causes a certain amount of damage then logically it should be assessed on all mining operations and held in a discreet fund for repair of the affected roads when the damage becomes sufficient to require repair. Nonetheless, the court will allow further evidence to be presented on this issue to specifically detail the nature and location of other "similar" permits, any maintenance done on roads serving these operations, the cost thereto if any, and why they are not assessed a "per truck" fee as has been demanded of CLARK.

Disposition. It is clear from the evidence and admitted by County staff that they negligently failed to monitor the activities of CLARK until people living in the area made complaints. The conduct of the County certainly could have led CLARK to believe that his operation was appropriate. This is especially true since they approved the Granite permit knowing that CLARK was intended to be the primary if not sole supplier. The Granite permit contemplated 50,000 tons per year and found that no significant environmental impact would result. In addition the nature of mining operations may not be subject to precise volumetric calculations. It does seem reasonable that no one truly anticipated a hard limit of 30,000 tons/year such that 30,001 would be a violation. It was on occasion described as "approximates". Given all of the above a declaratory judgment and injunction shall issue establishing the limits of the permit to be:

1. Mining operations located only in Section 19;
2. Limited to removal within the river channel and prohibiting the removal or destruction of any trees;
3. Limited to the amount of sand, rock, or gravel annually replenished by natural deposition; and,
4. Limited to an annual production of "approximately 30,000 tons/year" which shall not exceed 50,000 tons/year.

In addition CLARK shall be required to immediately restore areas in Section 24 and the other two sections that have been damaged by his operations.

The court will decline to allow amendment as requested by COUNTY. The causes of action to be added substantially change the legal theories and potential consequences upon which this action was premised and are not timely.

Given the manner in which County monitored CLARK throughout the years the Court will also decline to impose any penalties.

The issue of road fees will be calendared for further trial at a time convenient to court and the parties.

DATE: November 8, 2001

A handwritten signature in dark ink, appearing to read 'R. Silver', written over a horizontal line.

Richard M Silver
Judge of the Superior Court

b. Land Development Permits: Land Development Permits which are revocable, conditional, or valid for a term period, may be issued for any of the uses or purposes for which such permits are required or permitted by the terms of this Division. Land Development Permits may be granted only if it is found that the establishment, maintenance or operation of the use or building applied for will not under the circumstances of the particular case, be detrimental to health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the County.

11.30 Conditions: Land Development Permits and Variances shall, in appropriate cases, be granted upon such conditions as the granting authority deems necessary to protect the health, safety and welfare of the residents in the area in which the subject property is situated or the residents of the County, preserve the integrity of existing use patterns in the area in which the subject property is situated, and/or promote the purposes of this Division.

a. Examples: Such conditions may consist of, but are not limited to, required dedication of road rights-of-way, required improvement of vehicle accesses to subject property to County standards, regulation of placement of the uses on the subject property, regulation of height, regulation of the nature and extent of the use, regulation of landscaping for the purpose of protecting adjoining owners and passers-by from disturbance by noxious or distasteful uses or for the purpose of separating zones or patterns of different uses.

b. Security: The granting authority may, in appropriate cases, require guarantees in the form of bonds or cash deposits and/or evidences of compliance in order to secure compliance with conditions imposed.

11.40 Procedure: The following procedures shall regulate the dispositions of applications for Land Development Permits and Variances:

a. Application: Applications for Variances and Land Development Permits shall be made in writing on a form prescribed by the Planning Commission and shall be accompanied by a fee of twenty-five (25) dollars, no part of which shall be returnable to the applicant. Applicants shall also be required to file such other maps, plot plans, photographs and other documents as, in the reasonable opinion of the Planning Commission, will enable the granting authority to determine whether the criteria for the issuance of Land Development Permits and Variances are fulfilled.

b. Notice - Public Hearing: A public hearing shall be held within sixty (60) days after the filing of the application and not less than ten (10) days prior thereto. The granting authority shall give notice of hearing by mailing postage prepaid, a notice of the time and place of such hearing to all persons whose names and addresses appear on the latest adopted County Tax Roll as owning property adjacent to the exterior boundaries of the area occupied or to be occupied by the use for which the variance or land development permit is sought. Notice of such hearing may also be given by one publication in a newspaper of general circulation in the area and by posting notice thereof in conspicuous places close to the property involved at least ten (10) days prior to such hearing. Any failure to mail notices as aforesaid, if notice was given by posting and publication, or any failure to post notices and publish the same, if notice was given by mail, shall not invalidate the proceedings concerning same.

c. Action by Granting Authority: After conclusion of the public hearing, the Granting Authority shall make its decision in writing, which decision shall include findings of fact as to whether the criteria established for the issuance of a Land Development Permit or Variance are satisfied.

11.50 Appeals: Appeals of Decisions granting or denying applications for Land Development Permits and Variances may be taken as follows:

a. Right to Appeal: Any applicant or other interested person who personally or through his authorized representative has appeared at the hearing at which the application was considered and has made oral statement to the Granting Authority explaining his position on the issues and the reasons therefor, may appeal the grant or denial of a Land Development Permit or Variance to the next higher authority.

b. Appellate Bodies: All decisions of the Planning Commission granting or denying Land Development Permits and Variances shall be appealable to the Board of Supervisors. All decisions of the Zoning Administrator granting or denying Land Development Permits and Variances shall be appealable to the Board of Zoning Adjustment. All decisions of the Board of Zoning Adjustment which affirm or reverse decisions of the Zoning Administrator with regard to the issuance of Land Development Permits and Variances shall be appealable to the Board of Supervisors.

c. Procedures: The following procedure shall be applicable to all appeals from the decisions of the Zoning Administrator to the Board of Zoning Adjustment, from the decisions of the Board of Zoning Adjustment to the Board of Supervisors.

and from the Secretary of the Planning Commission to the Board of Supervisors.

1) Notice of Appeal: An appeal shall be taken by filing a written notice of appeal with the Clerk of the Board of Supervisors, if the appeal is to the Board of Supervisors, or to the Clerk of the Planning Commission, if the appeal is to the Board of Zoning Adjustments. The notice of appeal shall be filed within five (5) days, excluding Saturdays, Sundays and holidays, after the decision of the body from which the appeal is taken, and shall be accompanied by a fee of twenty-five (25) dollars, no part of which shall be returnable to the applicant. The body from which the appeal is taken shall forthwith transmit to the appellate body all of the papers constituting the record upon which its decision was based.

2) Hearing: Upon receipt of a notice of appeal by the appellate body a date for public hearing shall be set and notice of said hearing shall be given pursuant to Section 11.60 (b). The appellate body shall render its decision within sixty (60) days after the date of the filing of the notice of appeal, and may affirm, modify, or reverse the decision of the body from which the appeal was taken.

d. Special Appeals: Notwithstanding any other provision of this Section, any decision of the Planning Administrator granting a use on an application for a Land Development Permit which is inconsistent with, or in violation of, a duly enacted master or general plan which covers the area in which the subject property is situated, shall be deemed automatically appealed to the Board of Zoning Adjustment. The Board of Zoning Adjustment shall hold a public hearing pursuant to subparagraph (2) of subsection "c" of this Section. Appeals of the decision of the Board of Zoning Adjustment may be taken pursuant to subsections a, b, and c of this Section.

11.60 Revocation and Modification of Land Development Permits and Variances

Land development permits and variances are revocable, and may be revoked or modified for the following reasons and pursuant to the following procedures.

(a) By operation of law.

(1) Lapse of Time: Unless otherwise specifically provided by the granting authority at the time of issuance of the permit or variance, all permits and variances granted for an indefinite term which have not been utilized by engaging in the activity or use authorized thereby within one (1) year after the date of issuance shall expire by operation of law. The date of issuance shall be the date that the permit or variance becomes effective.

(3) Expiration: All permits and variances issued for a definite term shall automatically expire at the end of the term.

(4) Expiring: Notwithstanding subparagraphs (1) and (2) above, all permits and variances which have not been utilized by engaging in the authorized use on the site by the date any zoning ordinance becomes effective which requires the property to provide for use regulations inconsistent with that authorized by the permit or variance shall automatically expire on that date by operation of law.

(5) The provisions of Subparagraphs (1), (2), and (3) above shall apply to all permits and variances heretofore and hereafter granted under this or any previous ordinance.

(6) For purposes of subparagraph (1) above, a permittee shall not be considered as engaging in the authorized use on the site until the following conditions are satisfied:

(a) Buildings proposed for construction in connection with the proposed use are in the process of actual construction on the site, or

(b) if remodeling proposed for existing buildings in connection with the proposed use has actually been commenced on the site, or

(c) if no construction or remodeling is contemplated, then the permittee is regularly engaged on the site in performing the services or in selling the goods, materials, or stocks in trade of the use, and has secured all necessary federal, state and local permits and licenses.

(b) Upon notice and hearing.

Permits and variances may be revoked or modified by the person(s) having current jurisdiction:

(1) If there has been:

(a) a substantial change of conditions from those at the time the permit or variance was granted,

(b) revocation or modification is necessary to protect the health, safety, and welfare of the residents of the area in which the subject property is situated or the residents of the county, to preserve the integrity of existing use patterns in the area in which the subject property is situated, and

(c) the person holding the permit or variance has not materially changed his position by detrimentally relying on said permit or variance, or

(c) If the person holding the permit or variance has not complied with the conditions upon which it was issued, modification or revocation may only be made after following the same formal procedure for notice and hearing required for the granting of the permit or variance in the first instance. Appeals from modification or revocation shall be governed by same formal rules required for appealing from the granting or denial of the permit or variance in the first instance.

(Ref. Ord. 813-4, June 28, 1966)

(1.70 Building Permits: No building permit shall be issued otherwise than in accordance with the conditions and terms of the Land Development Permit or Variance granted. No building permit shall be issued until five (5) days, excluding Saturdays, Sundays, and holidays, after the granting of the Land Development Permit or Variance. In the event of appeal, no building permit shall be issued until the final determination thereof.

Sec. 11.10: EXTENSIONS OF VARIANCES AND LAND DEVELOPMENT PERMITS

(a) Not later than thirty (30) days prior to the expiration of a variance or land development permit, the holder thereof may file written application with the granting authority requesting an extension of time thereon and setting forth the reasons for such request. Such application shall be accompanied by a non-refundable fee of \$25.00.

(b) Within five (5) days from receipt of such application for extension, the granting authority shall send a notice of such application by mail to persons, or their successors in interest of record in the County Assessor's Office, who received mailed notice of the original application, to the Department of Public Works, Planning, and Health Departments. Attached to such application shall be a notice that any person objecting to such extension shall, within fifteen (15) calendar days from the date of posting, notify the granting authority of such objection.

(c) If any objection is received from those notified, the same formal procedures shall be followed as if the application for extension were an original application for a variance or land development permit upon which no permit or variance had been granted.

(d) If no objection is received, the granting authority may extend the permit or variance for a period of time equivalent to the original period for which granted, or for one year, whichever is shorter.

(e) An extension may only be granted upon a finding of fact by the granting authority that no change of character or circumstances has occurred which, based on the original application, would have been grounds for denial of the original permit.



