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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF PLACER

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JOHN MENDES
EXECUTIVE OFFICER & CLERK
By L. Perry, Deputy

7 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 IN AND FOR THE COUNTY OF PLACER

SCV - - 22244 - -

9 MEADOW VISTA PROTECTION , a non-profit)
10 corporation,)

11 Petitioner and Plaintiff,)

12 vs.)

13 COUNTY OF PLACER, PLACER COUNTY)
14 BOARD OF SUPERVISORS and DOES 1)
15 through 10,)

16 Respondents and Defendants)
17 _____)

18 CHEVREAUX AGGREGATES, INC.; and)
19 DOES 11 through 100,)

20 Real Party in Interest and Defendant)
21 _____)
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Case No. _____

PETITIONER'S VERIFIED
PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY RELIEF

Petitioner and Plaintiff Meadow Vista Protection respectfully alleges:

I. INTRODUCTION

1. Petitioner and Plaintiff Meadow Vista Protection (hereafter "Petitioner") challenges Respondents Placer County's and the Placer County Board of Supervisors' (the "County") failure to comply with County code in regulating the asphalt plant and activities currently being proposed at the Chevreux Aggregates, Inc. ("Chevreux") quarrying facility located in Meadow Vista California. Petitioner challenges the County's determination made on November 7, 2007 that Chevreux's asphalt permit issued in 1972 has not lapsed due to non-use pursuant to County Code § 17.58.160(B)(2)(b). Petitioner also challenges the County's failure to prohibit Chevreux's installation and use of an asphalt facility at the Meadow Vista quarry because such use is non-conforming under the County zoning code and did not exist at the time of enactment of new zoning applicable to the Meadow Vista quarry in 1995 or has since been abandoned. In the alternative, Petitioner challenges the County's failure to prohibit the expansion and/or change of location of the non-conforming asphalt facilities and processing operations. In the alternative, to the extent that asphalt operations are considered to be part of the overall surface mining operation at the Meadow Vista quarry, Petitioner challenges the County's failure to regulate the substantial changes in such operation due to the proposed installation of permanent and ongoing asphalt processing at the Meadow Vista quarry. *See* County Code § 17.56.270(D). In addition, Petitioner also requests declaratory relief that the County's November 7, 2007 determination was unlawful, that the operation of an asphalt facility at the Meadow Vista quarry is a non-conforming under the County zoning code, that such non-conforming use was not grandfathered at the time of passage of the 1995 zoning change or has since been abandoned, that the changes in use and location of the asphalt facility constitute an unlawful expansion of a non-conforming use and/or a substantial change in surface mining operations pursuant to County code.

2. Petitioner brings this legal challenge because the County has demonstrated through its actions and inaction that it does not intend to regulate Chevreux's installation and use of an asphalt facility at the Meadow Vista quarry according to the mandatory requirements of common law and

1 County zoning code. Petitioner brings this mandamus action pursuant to Code of Civil Procedure
2 §§ 1085 & 1094.5. Petitioner brings its declaratory relief challenge pursuant to Code of Civil
3 Procedure § 1060.

4 II. PARTIES AND JURISDICTION

5 3. Petitioner and Plaintiff Meadow Vista Protection is a local grassroots organization
6 comprised of residents of the unincorporated Placer County community of Meadow Vista, California,
7 and the surrounding area as well as nonresident supporters. Petitioner was organized in 2005 for the
8 purpose of protecting the interests of its members from activities proposed or conducted in the area
9 that would pose and adverse risk to the health, safety and welfare of Meadow Vista residents.
10 Petitioner's membership includes Richard Goodwin who became a member of Petitioner on or before
11 November 7, 2007. Petitioner and its members will be harmed by the ongoing, unregulated asphalt
12 processing operations proposed for the Meadow Vista Quarry.

13 4. Respondent Placer County is and was at all times relevant to this action the governmental
14 entity responsible for regulating land use activities in the County, including the activities challenged
15 in this action. Respondent Placer County Board of Supervisors is and was at all times relevant to this
16 action the legislative and adjudicatory body of Placer County with responsibility for the actions and
17 inaction giving rise to this Petition and Complaint.

18 5. The true names and capacities of Respondent Does 1-10 are not presently known to
19 Petitioner. Petitioner may amend this Petition to add the true names and capacities of said Does at
20 such time as they are discovered.

21 6. Real Party in Interest Chevreux Aggregates, Inc. is a California nonprofit corporation,
22 organized and existing by virtue of the laws of the State of California, with its principal place of
23 business in Placer County, California. Petitioner is informed and thereon alleges that Chevreux
24 owns and operates the quarry located in Meadow Vista California.

25 7. The true names and capacities of Real Party Does 11-100 are not presently known to
26 Petitioner. Petitioner may amend this Petition to add the true names and capacities of said Does at
27 such time as they are discovered.

28 8. Jurisdiction of this Court is invoked pursuant to California Code of Civil Procedure §§
1060 and 1084 *et. seq.*

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3 **III. FACTUAL BACKGROUND**

4 **A. Chevreux's Asphalt Permit and Operations at the Quarry**

5 9. The County issued an asphalt permit (LDA-691) to Chevreux in 1971 based on the
6 County's determination that a CUP was necessary. In 1972, Chevreux obtained a new CUP (LDA-
7 786) that authorized the relocation of the asphalt plant from the gravel operation along the river to
8 the quarry area. After 1976, any asphalt operations that may have occurred pursuant to the permit
9 were abandoned and structures removed. Asphalt operations did not occur in the 1980s and 1990s.

10 10. In 1995, the County adopted an ordinance, codified at Placer County Code §
11 17.58.160(B)(2)(b), which required permits to be actively utilized or they would lapse and be then
12 subject to a new permit requirement. In 1995, the County also rezoned the Meadow Vista quarry site
13 to Residential/Forestry, which limits "Manufacturing and Processing Uses" to "electric generating
14 plants" and "recycling collection stations" and does not include asphalt processing. *See* County Code
15 § 17.46.010. At the time these code changes were enacted, no asphalt operations were occurring nor
16 was any asphalt facility structure located at the Meadow Vista quarry.

17 11. In 2001, a third party contractor, Kiewitt Pacific Co, filed an application for an air
18 permit to operate a temporary asphalt facility. The application stated:

19 The applicant proposes to install and operate a portable drum mix asphalt plant in Meadow
20 Vista. The plant will produce hot mix asphalt for a Caltrans project that is anticipated to be
completed within two years.

21 Kiewitt subsequently ceased its temporary asphalt processing at the Meadow Vista quarry on or about
22 October 2001.

23 12. In 2005, Teichert Construction applied to install a new asphalt plant at the Meadow
24 Vista quarry with the County. Teichert subsequently withdrew this request in March 2005. In 2006,
25 Chevreux applied for a new air permit to construct and operate an asphalt facility at the quarry.

26 **B. PETITIONER'S LAWSUIT AGAINST CHEVREUX**

27 13. On July 12, 2006 Petitioner filed a Petition for Writ of Mandate and Complaint for
28

1 Declaratory Relief against Chevreux and the County of Placer. (Placer County Superior Court Case
2 No. SCV 19614). On October 10, 2006, the Court granted the County's demurrer to Petitioner's first
3 cause of action against the County for failing to enforce the terms of Chevreux's quarry permit
4 under County Code § 17.62.170. The Court ruled that the County's specific enforcement authority
5 under County Code § 17.62.170 was discretionary and thus not enforceable through a mandamus
6 action. The Court also granted Chevreux's demurrer to MVP's 6th and 7th Causes of action for private
7 nuisance and trespass. Petitioner subsequently dismissed its 5th Cause of Action for public nuisance
8 without prejudice.

9 14. On or about February 22, 2007, Petitioner moved for Summary Adjudication on its
10 3rd Cause of Action for declaratory relief that Chevreux's use permit authorizing an asphalt plant had
11 lapsed and thus asphalt production could not occur at the subject site unless Chevreux applied for
12 and obtained a new use permit. Chevreux moved for judgment on the pleadings on Petitioner's 2nd
13 Cause of Action alleging that Chevreux's activities exceeded the scope of their conditional use
14 permit LD-1030. Chevreux also moved for judgment on the pleadings on Petitioner's 3rd Cause of
15 Action, and 4th Cause of Action for injunctive relief. On June 19, 2007, the Court issued a ruling
16 denying Petitioner's motion for summary adjudication on its 3rd Cause of Action and denying
17 Chevreux's Motion for Judgment on the Pleadings on Petitioner's 2nd, 3rd and 4th Causes of Action.

18 15. On or about November 27, 2007, the counsel for Petitioner and Chevreux appeared
19 by telephone at a status conference in Case No. SCV 19614 before the Honorable Charles D. Wachob.
20 At the status conference, counsel stipulated to continue the trial in their action until such time as the
21 County's proceedings relating to Chevreux's asphalt permit were concluded, including any judicial
22 review. The Court set a followup status conference date of February 26 at 8:30 a.m. in that action.

23 **C. County's Actions with Respect to Chevreux's Quarry and Asphalt Activities**

24 16. On February 25, 2005, in response to attempts by Teichert and Chevreux to conduct
25 asphalt processing operations on a sustained and 24 hour basis at the quarry, County Counsel wrote
26 that consistent nighttime truck travel through the Meadow Vista community is new and
27 unprecedented and raises significant issues.

28 17. On September 16, 2005, the law firm of Soluri & Emrick sent a letter on behalf of
Petitioner to the County requesting that the County take action with respect to Chevreux's quarry and

1 proposed asphalt operations at the Meadow Vista quarry. The County did not respond to this letter.

2 18. In February 28, 2007, Chevreux's attorney requested the County Planning Director
3 to make a determination that Chevreux's asphalt permit (LDA-786) had not lapsed under County
4 Code § 17.58.160(B)(2)(b). On May 18, 2007, the Planning Director provided a determination that
5 Chevreux's asphalt permit (LDA-786) was a permanent, intermittent use that had not lapsed under
6 County Code. The Director's determination was appealed by a local Meadow Vista resident named
7 Richard Goodwin. The Board of Supervisors scheduled the appeal for November 7, 2007.

8 19. On November 6, 2007, Petitioner submitted comments on behalf of itself and Mr.
9 Goodwin in support of Mr. Goodwin's appeal on the issue before the Board of whether Chevreux's
10 asphalt permit (LDA-786) had lapsed under County Code § 17.58.160(B)(2)(b).

11 20. On November 7, 2007 the Board held a hearing and upheld the Planning Director's
12 determination. Petitioner's members testified at the hearing. In addition, the appellant Mr. Goodwin
13 provided testimony and notified the Board that he had joined Petitioner as a concerned local resident
14 of Meadow Vista.

15 21. Following the Board's hearing, Petitioner sent a letter on November 29, 2007 to the
16 County requesting that the County provide a response to Petitioner's September 16, 2005 letter dated
17 regarding the legality of Chevreux's quarry and asphalt operations at the Meadow Vista quarry, and
18 raising further issues not addressed by the Planning Director's determination whether Chevreux had
19 vested rights to conduct and/or expand its asphalt operations in light of the zoning for the quarry area.

20 22. Petitioner has performed all conditions precedent to the filing of this Petition and
21 Complaint by raising each and every issue known to it regarding the issues set forth in this Petition
22 before the County. The County has provided no response to Petitioner's requests to take action.
23 Thus, Petitioner seeks judicial review of the issues raised.

24 **IV. FIRST CAUSE OF ACTION**

(Mandamus Relief: Determination re Lapse of Asphalt Permit; Code Civil Procedure § 1094.5)

25 23. Petitioner incorporates by reference the allegations in the paragraphs set forth above.

26 24. Petitioner challenges the Board of Supervisors' approval of the Planning Director's
27 determination that Chevreux's asphalt permit (LDA-786) was a permanent, intermittent use that had
28 not lapsed under County Code § 17.58.160(B)(2)(b).

1 25. The Planning Director's determination is contrary to the facts that, following the
2 enactment of the lapse ordinance in 1995, asphalt production did not occur at the quarry until May
3 2001 and then again did not occur from October 2001 to 2006. Such absence of use constitutes a
4 lapse under the County code language. Further, the Director's determination is contrary to the code
5 language that a permit "shall be deemed to have lapsed at the time the structure is removed from the
6 site for more than twelve consecutive months." Any asphalt batch plant that may at some point have
7 been located at the quarry was removed in the 1970s, and that Chevreux's current proposal includes
8 a plan to construct a new asphalt batch plant at the Meadow Vista quarry.

9 26. The Planning Director's determination is also contrary to the permit language of
10 (LDA-786) which refers to a permanent, not intermittent, location for the asphalt processing facility.
11 The language of the permit is not susceptible to an interpretation that the location and operation of
12 an asphalt batch plant would be temporary and occasional.

13 27. The County's determination that Chevreux's asphalt permit (LDA-786) was a
14 permanent, intermittent use that had not lapsed under County Code § 17.58.160(B)(2)(b) constitutes
15 a failure to proceed according to law and thus an abuse of discretion under Code of Civil Procedure
16 § 1094.5.

17 **V. SECOND CAUSE OF ACTION**
18 (Mandamus Relief: Failure to Regulate as Non-Conforming Use; Code of Civil Procedure § 1085)

19 28. Petitioner incorporates by reference the allegations in the paragraphs set forth above.

20 29. Chevreux's proposed asphalt processing operations are no longer consistent with
21 current zoning for the Meadow Vista quarry, which was rezoned in 1995 to Residential/Forestry. This
22 zoning designation does not allow for asphalt processing. *See* County Code § 17.46.010. Thus,
23 asphalt processing is a non-conforming use on the property.

24 30. A nonconforming use is limited to that use existing at the time of the adoption of the
25 zoning ordinance. In addition, under County Code § 17.60.120.A, a nonconforming use of land may
26 not be "enlarged, extended expanded nor increased to occupy a larger area, nor a more intensive use
27 than that which it was characterized by in the prior twelve months." There were no asphalt processing
28 facility or activities at the Meadow Vista quarry in the 12 months prior to the adoption of the 1995
zoning ordinance. Thus, Chevreux has no vested right to conduct asphalt operations as a non-

1 conforming use under applicable zoning.

2 31. "The ultimate purpose of zoning is . . . to reduce all nonconforming uses within the
3 zone to conformity as speedily as is consistent with proper safeguards for the interests of those
4 affected." *Dienelt v. County of Monterey* (1952) 113 Cal. App. 2d 128, 131. For that reason,
5 California law follows a strict policy against extension of nonconforming uses which have ceased
6 operation. See *County of San Diego v. McClurken* (1951) 37 Cal. 2d 683, 687.

7 32. Under County Code § 17.60.120.G, a nonconforming use of land "shall be presumed"
8 to be abandoned if the nonconforming use "is discontinued for a continuous period of one year."

9 33. There was no asphalt facility, activity or appurtenant structure at the Meadow Vista
10 quarry between the years 1995 to 2001, nor was there any activity between approximately October
11 2001 and 2007. Thus under both common law and County Code, Chevreaux's non-conforming
12 asphalt production at the Meadow Vista quarry has been abandoned and may no longer be allowed.

13 34. Given the objective of zoning to eliminate nonconforming uses, "courts throughout
14 the country generally follow a strict policy against their extension or enlargement." See *Paramount*
15 *Rock Company, Inc. v. County of San Diego* (1960) 180 Cal. App. 2d 217, 229. In addition, under
16 County Code § 17.60.120.A, a nonconforming use of land may not be "enlarged or increased, nor be
17 extended to occupy a greater area than that which it lawfully occupied before becoming a
18 nonconforming use."

19 35. Chevreaux's new proposal for asphalt operations at the Meadow Vista quarry includes
20 ongoing, steady asphalt processing utilizing a permanent facility and requiring consistent and heavy
21 truck traffic between the hours of 7 p.m. and 8 a.m. through the residential streets of Meadow Vista.
22 This proposed operation is a substantial, unprecedented and thus unlawful expansion of a non-
23 conforming use and is thus contrary to law.

24 36. The proposed facility is in a different location, approximately 1,000 feet from the
25 permitted location. The moving of the originally permitted facility that is now non-conforming is
26 contrary to law. See *County of San Diego v. McClurken* (1951) 37 Cal. 2d 683, 687.

27 37. Petitioner may through traditional mandamus compel the performance of an action
28 legally required. See e.g., *Conlan v. Bonta* (2002) Cal. App. 4th 745, 752 ; *Morris v. Harper* (2001)

1 94 Cal. App.4th 52, 58 *Rogers v. Detrich* (1976) 58 Cal. App. 3d 90, 104. The County has an
2 affirmative obligation to regulate Chevreux's proposed asphalt operations as a non-conforming use
3 under common law and County code. The County's failure to do so, as set forth above, is contrary
4 to law and thus the proper subject of a mandamus action under Code of Civil Procedure § 1085.

5 **VI. THIRD CAUSE OF ACTION**
6 (Mandamus Relief: Failure to Regulate Substantial Change
in Surface Mining Operation; Code of Civil Procedure § 1085)

7 38. Petitioner incorporates by reference the allegations in the paragraphs set forth above.

8 39. In the alternative, if Chevreux's asphalt processing plant and operations are
9 considered to be "conforming" as part of the allowable surface mining operation, the expansion in
10 use for the asphalt facility triggers the need for a new permit. Placer County Code § 17.56.270(D).
11 Here, the construction of a permanent asphalt facility proposing to produce and deliver asphalt in up
12 to 260 truck loads along residential streets throughout the night constitutes a substantial change in
13 whatever activity may have been initially permitted or which occurred in the past.

14 40. Petitioner may through traditional mandamus compel the performance of an action
15 legally required. *See e.g., Conlan v. Bonta* (2002) Cal. App. 4th 745, 752 ; *Morris v. Harper* (2001)
16 94 Cal. App.4th 52, 58 *Rogers v. Detrich* (1976) 58 Cal. App. 3d 90, 104. If Chevreux's asphalt
17 processing plant and operations are considered to be in conformance with applicable zoning as part
18 of the allowable surface mining operation, the expansion in use for the asphalt facility triggers the
19 need for a new permit under County Code. The County's failure to require a new surface mining
20 permit, as set forth above, is contrary to law and thus the proper subject of a mandamus action under
21 Code of Civil Procedure § 1085.

22 **VII. FOURTH CAUSE OF ACTION**
(Declaratory Relief: Code Civ. Proc. § 1060)

23 41. Petitioner incorporates by reference the allegations in the paragraphs set forth above.

24 42. An actual case or controversy has arisen between Petitioner and the County regarding
25 the following questions of law (also discussed above) thereby requiring declaratory relief under Code
26 of Civil Procedure § 1060:

27 • whether Chevreux's asphalt permit has lapsed due to non-use pursuant to County
28 Code § 17.58.160(B)(2)(b);

1 • whether the construction of an asphalt plant and processing activities is a non-
2 conforming use under County Code § 17.46.010;

3 • whether the asphalt plant and processing activity at the Meadow Vista quarry is
4 a valid non-conforming use where there were no asphalt processing facilities or activities at the
5 Meadow Vista quarry occurring in the 12 months prior to the adoption of the 1995 ordinance that
6 changed the zoning on the parcel;

7 • whether the asphalt plant and processing activity at the Meadow Vista quarry is
8 a valid non-conforming use under common law where such activities ceased operation between
9 approximately 1976 and 2001 and between 2001 and 2006;

10 • whether the asphalt plant and processing activity at the Meadow Vista quarry is a
11 valid non-conforming use under County Code § 17.60.120.G where such activities were discontinued
12 for a continuous period of one year, between approximately 1976 and 2001 and between 2001 and
13 2006, and thus presumed to be abandoned;

14 • whether Chevreux's new proposal for asphalt operations at the Meadow Vista
15 quarry including ongoing, steady asphalt processing utilizing a permanent facility and requiring
16 consistent and heavy truck traffic between the hours of 7 p.m. and 8 a.m. through the residential
17 streets of Meadow Vista constitutes an unlawful expansion of a non-conforming use;

18 • whether Chevreux's proposal to move the location of its non-conforming asphalt
19 processing activities is contrary to law;

20 • whether, if Chevreux's asphalt processing plant and operations are considered to
21 be "conforming" as part of the allowable surface mining operation, the proposed expansion of asphalt
22 operations constitutes a substantial change in the surface mining operation, thereby requiring a new
23 surface mining permit under County Code § 17.56.270(D).

24 **VIII. PRAYER FOR RELIEF**

25 WHEREFORE, Petitioner prays for judgment as follows:

26 1. For a Peremptory Writ of Mandate ordering the County (1) to set aside its
27 determination that Chevreux's asphalt permit has not lapsed due to non-use pursuant to County Code
28 § 17.58.160(B)(2)(b) and to take necessary action in conformance with the Court's order and

1 judgment; 2) to prohibit Chevreux's asphalt plant and processing activities as a non-conforming use
2 that has not vested or has been abandoned due to non-use, as described above; 3) to prohibit the
3 unlawful expansion of Chevreux's non-conforming asphalt plant and processing activities; or 4) in
4 the alternative, to require Chevreux to apply for and obtain a new surface mining permit due to the
5 substantial change in surface mining operations as a result of the proposed expansion of asphalt
6 processing activities.

7 2. For declaratory relief regarding the legal issues posed in Paragraph 42.

8 3. For injunctive relief enjoining Chevreux from conducting asphalt operations at the
9 Meadow Vista quarry until such time as the County has complied with the Writ of Mandate in
10 conformance with the Court's order and judgment.

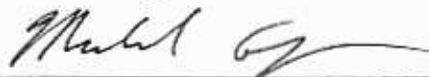
11 4. For reasonable attorney's fees under Code of Civil Procedure § 1021.5.

12 5. For costs of suit.

13 6. For such other and further relief as the court deems proper.

14 DATED: January 7, 2008

15 By:



16 Michael W. Graf
17 Attorney for Petitioner

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VERIFICATION

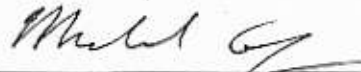
Meadow Vista Protection v. County of Placer et. al., Placer County Superior Court, Case No. _____

I, Michael W. Graf, declare that:

1. I am an attorney at law duly admitted and licensed to practice before all courts of this State. I have my professional office at 227 Behrens Street, El Cerrito California, 94530.
2. I am the attorney of record for Petitioner *Meadow Vista Protection*, which has its principal place of business in Meadow Vista, California, in Placer County. Petitioner is thus absent from Contra Costa County in which I have my office. For that reason, I make this verification on its behalf.
3. I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory Relief and know the contents thereof; the factual allegations therein are true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe them to be true.

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

Executed on the 7th day of January 2008 at El Cerrito, California.



Michael W. Graf