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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF PLACER

MEADOW VISTA PROTECTION,

Petitioner and Plaintiff,

v.

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

Respondents and Defendants.

Case No: SCV 19614

Complaint Filed: 7/12/06

PLAINTIFF MEADOW VISTA
PROTECTION'S SUPPLEMENTAL
BRIEF IN SUPPORT OF MOTION FOR
SUMMARY ADJUDICATION
REGARDING LEGAL EFFECT OF
PLANNING DIRECTOR'S
DETERMINATION

Date: 5/22/07

Time: 8:30 a.m.

Dept.: 4

Judge: The Hon. Charles D. Wachob

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INTRODUCTION

Pursuant to the Court's request at the May 22, 2007 hearing on plaintiff Meadow Vista Protection's (MVP) Motion for Summary Adjudication, MVP submits its supplemental brief on the legal effect, if any, of the determination of nonlapse by the Placer County Director of Planning, Michael J. Johnson.

In short, the determination does *not* preclude this Court from issuing a ruling on the merits of the Motion for Summary Adjudication and has no precedential effect.

First, the calculated decision of Defendant and the County to preclude notice to MVP, MVP's counsel, and the public at large that the lapse issue was being considered obviates any requirement that MVP exhaust an administrative remedy. Second, both the County of Placer and the County of Placer Board of Supervisors previously *chose* to demur to the verified complaint on the ground that it had only a discretionary duty to hold a hearing on the lapse issue, and further *chose* not to intervene in this action. As a result, the County is precluded from asserting jurisdiction at this late date. Third, there is well-established precedent that the County cannot make a lapse determination which is contrary to the express terms of the Placer County Zoning Ordinance. Indeed, it is undisputed that Chevreux did not operate an asphalt plant from 1975 to 2001, nor from 2002 to the present. It is further undisputed that neither the conditional use permit for operation of an asphalt plant (LDA-786), nor related minutes, nor the Placer County Zoning Ordinance, nor Defendant's reclamation plan, make *any* reference to approval of an "intermittent" asphalt plant operation. Mr. Johnson's unsupportable contrary conclusion, which simply parrots defendant's position, has no precedential effect.

For the foregoing reasons, Mr. Johnson's determination letter does *not* preclude this Court from issuing an *independent* ruling on the merits of the Motion for Summary Adjudication. In light of the importance of the lapse issue to the community at large, defendant's calculated tactic of procuring a determination letter without notice should not be sanctioned.

ARGUMENT

I.

THE PLANNING DIRECTOR NO LONGER HAS JURISDICTION TO ISSUE A
DETERMINATION OF NON-LAPSE OF LDA-786 BECAUSE THIS COURT HAS PRIORITY
OF JURISDICTION AND BECAUSE THE COUNTY HAS PREVIOUSLY
WAIVED ANY RIGHT TO ASSERT JURISDICTION

A. The First Tribunal to Assume Jurisdiction Over Certain Subject Matter
Cannot Be Divested of its Jurisdiction Through the Subsequent
Intervention of Another Tribunal Having Concurrent Jurisdiction

The law is well-settled in California that a court which first assumes jurisdiction over certain subject matter does so to the exclusion of all other courts. "It is often said that where two courts have concurrent jurisdiction over a class of cases, the one which first assumes jurisdiction over the subject matter of a particular controversy takes it exclusively, and the other court's jurisdiction may no longer be asserted over that subject matter." (2 Witkin Cal. Proc. (4th ed. 1996) Jurisdiction § 413, p. 1022, Exhibit 1 attached hereto.)

General principles applicable to controversies in which the same parties and the same subject matter is involved are these: *When two or more tribunals in this state have concurrent jurisdiction, the tribunal first assuming jurisdiction retains it to the exclusion of all other tribunals in which the action might have been initiated. Thereafter another tribunal, although it might originally have taken jurisdiction, may be restrained by prohibition if it attempts to proceed.* [Citations.] One reason for the rule is to avoid unseemly conflict between courts that might arise if they were free to make contradictory decisions or awards at the same time or relating to the same controversy; another reason is to protect litigants from the expense and harassment of multiple litigation.

(*Scott v. Industrial Accident Commission* (1956) 46 Cal.2d 76, 81-82, emphasis added.)

Similarly, *Browne v. Superior Court* (1940) 16 Cal.2d 593 held: "[W]here several courts have concurrent jurisdiction over a certain type of proceeding, the first one to assume and exercise such jurisdiction in a particular case acquires an exclusive jurisdiction. Thereafter another court, though it might originally have taken jurisdiction, is *wholly without power to interfere . . .*" (*Id.* at p. 597, emphasis added.)

1 And finally, as stated in *Cutting v. Bryan* (1929) 206 Cal. 254, 257:

2 it must be held, in conformity with the general rule of comity established by a
3 long line of authority, that the court which first takes the subject matter of a
4 litigation into its control for the purpose of administering the rights and remedies
5 with relation to specific property obtains thereby jurisdiction so to do, to the
6 exclusion of the exercise of a like jurisdiction by other tribunals, the powers of
7 which are sought to be invoked by parties or their privies to the original action.

8 This rule of priority in time also applies when the competing venues are not both courts
9 of law; *i.e.*, where, as here, one venue is an administrative agency. In *Scott v. Industrial Accident*
10 *Commission, supra*, 46 Cal.2d at pp. 88-89, the court engaged in a lengthy discussion of the
11 "general rule" of priority in time and ultimately concluded that ***the rule applied equally to a***
12 ***dispute over jurisdiction between a superior court and an administrative agency.***

13 In *Scott*, the competing agency was the Industrial Accident Commission (IAC). Scott
14 filed a personal injury suit in superior court against Pacific Company. Pacific Company argued
15 in defense that the superior court had no jurisdiction of the case because Scott was an employee
16 and the IAC had exclusive jurisdiction. Pacific Company then initiated an application to the IAC
17 for adjustment of the claim. Scott demanded a stay in IAC proceedings, which the IAC denied.
18 On appeal, the court held that this refusal of a stay was improper because the superior court had
19 already exercised jurisdiction over the matter.

20 *Scott's* facts are similar to the facts here. This Court has already exercised its jurisdiction
21 over this litigation, including the issue of lapse of LDA-786. Defendant objected to the Court's
22 exercise of jurisdiction at the demurrer stage, and its objections were overruled. Fearing an
23 adverse determination on summary adjudication, defendant then sought both assumption of
24 jurisdiction and a determination of the lapse issue from the Placer County Planning Department.
25 However, unlike in *Scott*, ***defendant gave no notice of its request to this Court, to MVP, or to***
26 ***the general public, thereby foreclosing any opportunity for MVP to seek a writ of prohibition***
27 ***or to demand a stay of the proceedings at the Planning Department.*** This surreptitious,
28 calculated activity resulted in the determination of the Planning Director which is now at issue.

Scott's analysis is dispositive here. Because this Court first assumed subject matter
jurisdiction of the lapse issue, the County cannot attempt to assert jurisdiction now.

B. Even if Placer County First Assumed Subject Matter
Jurisdiction in this Case, it has Since Waived Jurisdiction
And May Not Attempt to Interfere at this Juncture

Even if Placer County had asserted jurisdiction over the lapse issue before the initiation of this lawsuit, any right of priority it may have had was waived: (1) by its refusal to respond to MVP's requests for action (Verified Complaint at ¶¶ 7, 37, Exhibit 2); (2) by demurring to the writ of mandate cause of action in the instant lawsuit; and (3) by choosing not to intervene.

Prior to initiating this lawsuit, counsel for MVP submitted a comprehensive legal analysis to Placer County Counsel Scott Finley, requesting a determination, or at least a public hearing, on the issue of lapse of LDA-786. As set forth in the verified complaint, no action was ever taken to officially respond to this letter or even to acknowledge MVP's concerns.¹ (Verified Complaint, ¶¶ 7, 37.)

Accordingly, the first cause of action in MVP's complaint petitioned for a writ of mandate to compel the County to hold a hearing on the issue of lapse, among other relief. The County successfully demurred on the argument that its decision whether or not to evaluate or revoke LDA-786 was a discretionary function which could not be compelled through writ of mandate. (See Notice of Demurrer and Demurrer to Petitioner's Petition/Complaint, filed August 23, 2006, Exhibit 3 attached hereto.) Upon the County's own ex parte application, the County was dismissed from the case. (Ex Parte Application for Dismissal, Exhibit 4 attached hereto.)

Sea World Corporation v. Superior Court of San Diego County (1973) 34 Cal.App.3d 494 held that even where an agency has prior jurisdiction, this jurisdiction may be waived. In that case, the two competing tribunals were the superior court and the Workers Compensation Appeals Board (WCAB). The WCAB assumed jurisdiction four days before the superior court assumed jurisdiction. Sea World thus contended that the superior court was without jurisdiction to award relief. However, the WCAB had voluntarily stayed its own proceedings, apparently

¹ It is curious that the County never so much as responded to MVP's request for a legal determination of the lapse issue, and yet issued a determination at defendant's request inside of three months.

1 deferring to the superior court's jurisdiction of the matter. On appeal, the court observed that a
2 tribunal with priority of jurisdiction may thereafter waive it, which is what the WCAB did. (*Id.*
3 at p. 503.)

4 Here, Placer County had every opportunity to determine the issue of lapse prior to MVP's
5 initiation of this lawsuit. It had a further opportunity to address the issue after being served with
6 the complaint. Instead, the County of Placer and the County of Placer Planning Department
7 (both of which were named as defendants in the complaint) chose to demur, averring that their
8 duty to make such a determination was discretionary and defending their refusal to do so.
9 Accordingly, the Court itself recognized at the demurrer hearing that the County had chosen to
10 "sit on the sidelines" and allow the parties to litigate the dispute. The County confirmed this
11 desire by subsequently moving to be dismissed from the action. This amounts to a waiver similar
12 to that in *Sea World*. The County may not now try to claim jurisdiction over the issue of lapse of
13 LDA-786.

14 II.

15 MVP HAS NO DUTY TO EXHAUST ANY ADMINISTRATIVE REMEDY BEFORE THIS
16 COURT MAY MAKE A SUBSTANTIVE RULING ON THE PENDING MOTION FOR
17 SUMMARY ADJUDICATION BECAUSE MVP WAS NOT A PARTY TO THE PLANNING
18 DIRECTOR'S DETERMINATION AND RECEIVED NO NOTICE OF SAME

19 A. There Is No Duty to Exhaust Administrative Remedies When
20 the Litigant Was Not a Party to the Administrative Decision
21 and Where the Lawsuit's Purpose Is To Protect a Public Interest

22 In *Environmental Law Fund v. Town of Corte Madera* (1975) 49 Cal.App.3d 105, the
23 appellant developers claimed that the respondents were barred from seeking judicial recourse by
24 their failure to satisfy a ten-day limitation ordinance almost identical to the Placer County Zoning
25 Ordinance applicable here. Placer County's ordinance reads: "An appeal may be filed by any
26 person affected by a planning department administrative action or interpretation An appeal
27 must be filed within ten days of the decision that is the subject of the appeal" (Placer County
28 Code, § 17.60.110(B)(1) and (C)(1).) The ordinance at issue in *Environmental Law Fund* read:
"Within ten days following the date of a decision of the planning commission . . . the decision

1 may be appealed . . . by the applicant or by any other interested party.” (Corte Madera Municipal
2 Code, § 18.46.070; *Environmental Law Fund v. Town of Corte Madera, supra*, 49 Cal.App. at p.
3 111.)

4 In that case, respondents were an environmental association and two individual residents
5 of the town. The decision being challenged was the grant of a conditional use permit for a
6 planned unit development. (*Id.* at p. 110.) No appeal of this decision was taken to the town
7 council within ten days of the decision, or indeed at any time thereafter. On this basis, the
8 appellant developers argued that the respondents were barred from judicial relief because they
9 did not exhaust their administrative remedies (*i.e.*, file an appeal) within the ten days provided by
10 the local ordinance. The court rejected this conclusion:

11 In the present case appellant developers, as the applicants, were the titular
12 “parties” to the administrative proceeding in which the permit was issued by the
13 planning commission. . . . The minutes of [the public] hearings . . . show that
14 numerous named persons appeared at the hearings and protested the proposed
15 permit or otherwise made their views known to the commission. It does not
16 appear that any of the respondents were among these persons, *nor that any of*
17 *them had notice of the proceeding.*

18 (*Id.* at p. 113, emphasis added.) Similarly, and as set forth more fully in the concurrently filed
19 Declarations of Jeffrey Evans and Angela Thompson, *MVP had no notice whatsoever that the*
20 *Placer County Planning Director was considering the issue of lapse of LDA-786 as a result of*
21 *the calculated decision of Chevreaux and the County to keep the determination “under*
22 *wraps.”* MVP had no opportunity to comment or otherwise acquaint the Planning Director with
23 the law applicable to his determination.

24 The *Environmental Law Fund* court further held:

25 [I]t would appear that the doctrine [of exhaustion of administrative remedies]
26 could and should be applied to bar [a] person from judicial relief so long as it
27 involves no more than private default in the exercise of privately held rights

28 Application of the doctrine against these respondents, however, would involve
substantially more. Because they have exercised a judicial remedy against
administrative action which they claimed to have been in violation of state law . . .
and because the administrative action affected the entire Town, respondents have
asserted rights which they hold as members of the public or which [individual]
respondents . . . , at least, hold as members of that substantial segment of the
public which includes residents and property owners of the Town.

1 *Respondents are thus pursuing more than privately held rights, and are*
2 *asserting more than privately held grievances; they are acting as members of*
3 *the public and in the public interest. Application of the exhaustion doctrine*
4 *against them, by reason of their “default” in the administrative proceeding to*
5 *which they were not “parties” at all, would mean in effect the imputation of*
6 *their “default” to the public in the absence of any factual basis for such*
7 *imputation. In general, the doctrine would thus operate to bar the public from*
8 *redressing a public wrong; specifically, it would burden the public of the Town,*
9 *in perpetuity*

10 . . . For these reasons, *we hold that the failure of a private person to exhaust*
11 *an administrative remedy, against government action taken in an*
12 *administrative proceeding to which he was not a party, does not bar him from*
13 *seeking judicial relief from such action by way of enforcing rights which he*
14 *holds as a member of the affected public.*

15 (*Id.* at pp. 113-114, emphases added.)

16 Thus MVP, having had no notice of the Planning Director’s determination and not being
17 a party to the determination, is under no duty to exhaust any administrative remedy. Moreover,
18 MVP is in the identical position as were the respondents in *Environmental Law Fund*, being
19 comprised of members of the affected public and seeking to redress a public wrong. The
20 determination of lapse of LDA-786 does not affect the private rights of only a few. It implicates
21 the air quality and health of the entire town of Meadow Vista and the nearby region. Based on
22 the holding of *Environmental Law Fund*, MVP is entitled to seek judicial relief from the
23 County’s illegal determination without first pursuing an appeal or any other administrative
24 remedy.

25 B. There Is No Duty to Exhaust Administrative Remedies When the
26 Local Agency Has Failed To Give the Notice Required By Law

27 Exhaustion of administrative remedies is not required where the public agency has failed
28 to give the notice required by law. (*Temecula Band of Luiseno Mission Indians v. Rancho*
29 *California Water District* (1996) 43 Cal.App.4th 425, 433.) An incomplete or misleading project
30 description is tantamount to a lack of notice. (*Id.* at pp. 433-434, citing *McQueen v. Board of*
31 *Directors* (1988) 202 Cal.App.3d 1136, 1150, overruled on another point in *Western States*
32 *Petroleum Association v. Superior Court* (1995) 9 Cal.4th 559, 570, fn 2.)

1 Here, MVP was never notified of the Planning Director's pending determination of this
2 issue. (Declaration of Jeffrey Evans in Support of Plaintiff Meadow Vista Protection's
3 Supplemental Brief in Support of Motion for Summary Adjudication Regarding Legal Effect of
4 Planning Director's Determination and Declaration of Angela C. Thompson in Support of
5 Plaintiff Meadow Vista Protection's Supplemental Brief in Support of Motion for Summary
6 Adjudication Regarding Legal Effect of Planning Director's Determination filed concurrently
7 herewith.) The first notice MVP received that the Planning Director was even considering the
8 issue was on May 18, 2007 when defendant filed a copy of the determination letter with this
9 Court. (*Ibid.*)

10 In the recent case of *Calvert v. County of Yuba* (2007) 145 Cal.App.4th 613 (upon which
11 defendant has relied extensively in its recent motion for judgment on the pleadings), it was held
12 that a county's determination of vested rights to surface mine triggered the due process rights of
13 nearby landowners. (*Id.* at p. 627.) ***The Calvert court ruled that the County's determination of***
14 ***vested rights was invalid because no notice or hearing was provided to the neighboring***
15 ***landowners before their property was effectively "taken" by the vested rights determination.***

16 In its pending motion for judgment on the pleadings, defendant relied on objectionable
17 opinion testimony and a misreading of *Calvert* in support of its contention that its asphalt
18 operations are part and parcel of its surface mining. However, *Calvert* has strict notice and
19 hearing rules which would apply to defendant's surreptitious, back-door procurement of a
20 "determination" that LDA-786 has not lapsed.

21 *Calvert* explained that "[t]here are three general types of actions that local government
22 agencies take in land use matters: legislative, adjudicative and ministerial." (*Id.* at p. 622, citing
23 Longtins Cal. Land Use (2d ed. 1987) § 11.10, p. 989, attached hereto as Exhibit 5.) Of these
24 three, adjudicative actions are the only ones which "implicate[] a significant or substantial
25 property deprivation [which] generally requires the procedural due process standards of
26 reasonable notice and opportunity to be heard." (*Ibid.*) It was into the adjudicative category that
27 the vested rights decision in *Calvert* fell. (*Id.* at p. 626.) Accordingly, the court observed that
28 ***"[a] public adjudicatory hearing that examines all the evidence regarding a claim of vested***

1 rights . . . will promote [the policies of the relevant statute] much more *than will a mining*
2 *owner's one-sided presentation that takes place behind an agency's closed doors.*" (*Id.* at p.
3 625, emphases added.) The court noted that the "property owners adjacent to the proposed
4 mining have significant property interests at stake" and held that the lack of notice or hearing
5 violated the owners' due process rights. (*Id.* at p. 626.)

6 Similarly, defendant has obtained a determination of non-lapse based on a "one-sided
7 presentation" which took place "behind an agency's closed doors," without notice to MVP or any
8 other affected party. Now, defendant seeks to invoke this "determination" as having binding
9 effect on this Court and this Court's decision on MVP's pending MSA. At the very least,
10 defendant will claim that MVP must exhaust its administrative remedy of appeal at the local
11 agency level before this Court can make any further determination on the issue of lapse. But
12 because the nature of the determination is akin to the vested rights determination in *Calvert*, and
13 because the notice required by *Calvert* was not given to MVP or to any other property owners,
14 MVP has no duty to exhaust any administrative remedy before seeking judicial recourse. (See
15 *Temecula Band of Luiseno Mission Indians v. Rancho California Water District, supra*, 43
16 Cal.App.4th at p. 433.)

17
18 III.

19 THE *MARKEY* DECISION INVALIDATES THE PLANNING
20 DIRECTOR'S DETERMINATION AS A MATTER OF LAW

21 Furthermore, the Planning Director's determination is not binding on this Court or
22 otherwise because it is facially invalid as a matter of law. As set forth in *Markey v. Danville*
23 *Warehouse and Lumber, Inc.* (1953) 119 Cal.App.2d 1, a county or municipality may not issue a
24 permit or make a determination which is contrary to the express terms of a county zoning

25 In *Markey*, the county issued a building permit for a concrete mixing plant on the basis of
26 "a favorable opinion of a Deputy District Attorney and approval of the County Planning
27 Commission." (*Id.* at p. 6.) However, the applicable county ordinance allowed land use permits
28 to be issued "for enumerated purposes only." (*Ibid.*) Those purposes did not include concrete

1 plants. Nevertheless, appellant argued that the county's subjective analysis and subsequent
2 issuance of the permit validated the use. In rejecting this argument, the court stated:

3 The Board [of Supervisors] has then no power to grant such permit [unless] the
4 ordinance is amended through proper legislative procedure. [Citation.] Even an
5 express permit granted by the board contrary to the terms of the ordinance would
6 be of no effect ***[Acts of the administrative and legal functionaries involved
can certainly no more influence the force of the ordinance or cause a vested
right in appellants or an estoppel than an invalid permit of the Board of
Supervisors itself.]***

7
8 (*Id.* at p. 6-7, emphases added.)

9 Apparently, the sole basis for the Planning Director's determination is a February 28,
10 2007 letter from defendant's counsel. The determination letter cites no independent legal
11 authority and does not purport to have solicited input from any other source. Moreover, the
12 determination relies on defendant's representation that the asphalt use is "intermittent," a
13 description that does not appear in the relevant permit, does not appear in any minutes of the
14 permit hearing, does not appear in the Placer County Code, and does not appear in the
15 defendant's Reclamation Plan. (See MVP's Reply Brief in Support of Motion for Summary
16 Adjudication filed on May 10, 2007.) Moreover, ***it is undisputed*** that defendant did not produce
17 asphalt from 1976 until 2001, or from 2002 through the present. One summer of asphalt
18 production in the space of 31 years and no use at all for 26 years is hardly "intermittent" or
19 seasonal use and is hardly a use based on "market" forces.

20 The Planning Director cannot unilaterally exempt an entire operation from the ***mandatory***
21 provisions of the County Code solely on the basis of the one-sided representations of the permit
22 holder. ***"Neither a city nor its staff should be able to nullify a zoning law by a non-legislative***
23 ***act, such as issuing a permit."*** (*Wilson v. City of Laguna Beach* (1992) 6 Cal.App.4th 543, 558,
24 emphasis added, citing *Magruder v. City of Redwood* (1928) 203 Cal. 665 and *Pettit v. City of*
25 *Fresno* (1973) 34 Cal.App.3d 813.)

26 According to *Markey* and *Wilson*, the mandatory provisions of a local ordinance cannot
27 be supplanted, even by "a favorable opinion of a Deputy District Attorney and approval of the
28 County Planning Commission." (*Markey v. Danville Warehouse and Lumber, supra*, 119

1 Cal.App.2d at p. 6.) Such an illegal determination by the Planning Director “can certainly no
2 more influence the force of the [lapse] ordinance or cause a vested right in [defendant] or an
3 estoppel” than a use permit which was invalid in the first instance. (*Id.* at pp. 6-7.) Under
4 *Markey*, the Planning Director ***has no power*** to decide that the lapse ordinance does not apply to
5 the defendant.

6
7 IV.

8 THE PLANNING DIRECTOR’S DETERMINATION IS INVALID
9 ON BOTH SUBSTANTIVE AND PROCEDURAL GROUNDS

10 A. Every Authority Cited By The Planning Director In His Determination
11 Letter Is An Authority Funneled To Him By Defendant’s
12 Counsel, Revealing The Lack Of Independent Analysis

13 Aside from the relevant use permits, the Planning Director cites only three authorities to
14 support his determination that the lapse ordinance does not apply to LDA-786: a May 25, 1972
15 memorandum from then-Planning Director Thomas McMahan, a July 31, 1987 letter also from
16 McMahan and a July 1, 2005 letter from Deputy County Counsel Scott Finley.

17 The first two of these three authorities were provided to the Planning Director as
18 attachments to defendant’s letter requesting the determination and predate the lapse ordinance.
19 The July 1, 2005 letter was not provided as an attachment, but was quoted by defendant’s counsel
20 in the requesting letter. That quote also appeared in the Planning Director’s determination, ***word-***
21 ***for-word the same*** as the quote in defendant’s letter. The Planning Director has thus parroted
22 back, in official format, the statements and arguments of the defendant in its requesting letter.
23 Though the Planning Director’s determination claims to have reviewed County records, he did
24 not cite to the September 18, 2005 letter from MVP’s counsel to Placer County Counsel
25 regarding the lapse issue, nor did he cite to the March 22, 2005 memorandum from County
26 Counsel to defendant’s counsel which stated that the issue of lapse had never been fully
27 addressed. These two documents alone should have alerted the Planning Director to the legal
28 ambiguities surrounding the lapse issue and the need for more thorough investigation on his part
than simply reciting the minimal “authorities” provided to him by defendant.

B. The Determination Is Not an “Interpretation” of the Code
Within the Meaning of Section 17.02.050(E); It Is a Unilateral
Exemption From a Mandatory Code Provision Awarded
To One Specially Singled Out Permit Holder--Defendant

Placer County Code section 17.02.050 authorizes the Planning Director to interpret the requirements of the Placer County Zoning Ordinance. In pertinent part, this section reads as follows:

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

A. Language.

1. Construction. When used in this chapter, *the word “shall” is always mandatory* and “may” is discretionary.

...

E. Record of Interpretations. Whenever the planning director determines that the applicability or meaning of any of the requirements of this chapter are *unclear* generally or as applied to a specific case, the planning director may issue an official interpretation.

(Emphases added.)

The Planning Director’s authority is limited to interpreting provisions of the zoning code which are *unclear*, in general or as to a specific case. In confirmation of this fact, section 17.02.050(E)(3) anticipates that Planning Director interpretations will eventually become amendments to the zoning ordinance, so that all ambiguities are resolved.

No one has contested that the lapse ordinance is unclear. It applies to all use permits in Placer County, which includes LDA-786. What the Planning Director has done is issue a categorical, unconditional exemption from the Code provision only as to defendant. The language of section 17.02.050 does not contemplate such categorical exemptions from the provisions of the Code. In fact, it expressly restricts the Planning Director from obfuscating the applicability of any Code provision by dictating that the word “shall” *always* denotes a mandatory rule. (*Id.*, subd. (A)(1).) As briefed in MVP’s motion for summary adjudication and reply brief in support of the same, the lapse ordinance contains the language “*shall* be deemed to

1 have lapsed.” (Placer County Code § 17.58.160(B)(2), emphasis added.) Section 17.02.050 does
2 not vest the Planning Director with authority to exempt individual private parties from the Placer
3 County Zoning Ordinance under the guise of an “interpretation.”

4 C. The Planning Director’s Determination Is Entitled To No Deference
5 Or Preferential Treatment Based On The Analyses In The *Agnew* And *Yamaha* Cases

6 In reviewing the validity of a formal regulation, such as a zoning ordinance, a court must
7 give due deference to the enacting body. However, an agency’s determination as to the
8 **construction** of a regulation or statute is not entitled to special deference by a reviewing court.
9 The agency’s interpretation is merely “one of several interpretive tools that may be helpful.”
10 (*Agnew v. State Board of Equalization* (1999) 21 Cal.4th 310, 322, emphasis added.)

11 . . . An agency interpretation of the meaning and legal effect of a statute is
12 entitled to consideration and respect by the courts; however, unlike quasi-
13 legislative regulations adopted by an agency to which the Legislature has confided
14 the power to “make law,” and which, if authorized by the enabling legislation,
15 bind this and other courts as firmly as statutes themselves, ***the binding power of
an agency’s interpretation of a statute or regulation is contextual: Its power to
persuade is both circumstantial and dependent on the presence or absence of
factors that support the merit of the interpretation.***

16 (*Yamaha Corp. of America v. State Board of Equalization* (1998) 19 Cal.4th 1, 7, emphasis
17 added.)

18 In *Agnew*, the issue was whether the Board of Equalization had correctly interpreted
19 certain provisions of the California Constitution and the Revenue & Taxation Code to require
20 payment of interest and taxes as a prerequisite to bringing either an administrative or judicial
21 action for a refund. The court held that the agency’s interpretation of the statute was not entitled
22 to the kind of deference afforded to a formal statute or regulation:

23 Because the policy at issue here is not a formally adopted regulation, and the
24 Board does not claim that its interest prepayment policy constitutes a long-
25 standing administrative construction of either article XIII, section 32 or section
26 6931, ***we need not defer to any administrative understanding of the meaning of
those provisions.***

27 (*Agnew v. State Board of Equalization, supra*, 21 Cal.4th at p. 322, emphasis added.)
28

1 Similarly, in *Yamaha*, the appellate court had ruled that the Board of Equalization's
2 published annotation interpreting a pertinent statute was controlling and dispositive of the case.
3 The Supreme Court overruled the appellate court, holding that an agency's interpretation of a
4 statute is not entitled to the kind of deference due to legislative or quasi-legislative actions. The
5 court exercises its independent judgment in reviewing such agency interpretations and upholds
6 them only insofar as the facts and circumstances of the case support the agency's conclusion.

7 Courts must, in short, ***independently judge the text of the statute***, taking into
8 account and respecting the agency's interpretation of its meaning, of course,
9 whether embodied in a formal rule or less formal representation. Where the
10 meaning and legal effect of a statute is the issue, an agency's interpretation is one
11 among several tools available to the court. Depending on the context, it may be
12 helpful, enlightening, even convincing. It may sometimes be of little worth.
13 [Citation.] ***Considered alone and apart from the context and circumstances that***
14 ***produce them, agency interpretations are not binding or necessarily even***
15 ***authoritative.***

16 (*Yamaha Corp. of America v. State Board of Equalization, supra*, 19 Cal.4th at pp. 7-8, emphases
17 added.)

18 Giving all due deference to the Planning Director's determination in this case, the facts
19 surrounding his "interpretation" of Placer County Code section 17.58.160(B)(2) are highly
20 suspect. The determination was made without MVP's knowledge or input, even though the
21 Placer Planning Department was an original party to the instant case. It was apparently based
22 solely on the one-sided representations of defendant's attorney, who did not even disclose to the
23 Planning Director that there was a motion for summary adjudication then pending on the
24 identical issue. The Planning Director does not say that he consulted with County Counsel prior
25 to making his determination and he did so without the benefit of the exhaustive legal briefing that
26 has been submitted to this Court. Thus, in this context, the Planning Director's interpretation is
27 neither helpful, enlightening nor convincing. It falls into the category of being "of little worth."
28 (*Ibid.*) It is the courts' role and responsibility to "independently judge the text of the statute" to
determine whether the agency's interpretation is correct. (*Ibid.*)

///

///

D. The Determination Fails To Satisfy the Basic Procedural Criteria of Placer County Code Section 17.02.050(E) Relative To Planning Director Interpretations

The Placer County Code provides: "Official interpretations [of the Planning Director] shall be: (1) In writing, and shall quote the provisions of this chapter being interpreted, together with an explanation of their meaning or applicability in the particular or general circumstances that caused the need for interpretation; and (2) Distributed to the board of supervisors, planning commission, development review committee, and members of the planning department staff."

The Planning Director's determination letter cites the section number, but does not quote the language of section 17.58.160(B)(2) which is being interpreted. Also, while the letter shows copies to the Board of Supervisors and the Planning Commission, it does not show that it was copied to the Development Review Committee or to any member of Planning staff.

This failure to comply with the basic requirements for Planning Director interpretations is further grounds for its invalidity and further reason to exclude it from having any bearing on this Court's ruling on the motion for summary adjudication or the motion for judgment on the pleadings.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the determination letter does not preclude this Court from issuing a substantive ruling on the merits of the Motion for Summary Adjudication, and that the determination letter has no precedential effect. Furthermore, MVP respectfully requests that the Court deny defendant's Motion for Judgment on the Pleadings.

DATED: May 29, 2007.

Respectfully submitted,

RONALD A. ZUMBRUN
TIMOTHY V. KASSOUNI
ANGELA C. THOMPSON
THE ZUMBRUN LAW FIRM

By 
ANGELA C. THOMPSON
Attorneys for Petitioner and Plaintiff

EXHIBIT 1

CALIFORNIA PROCEDURE

4th EDITION

WITKIN



Soc. v. Superior Court (1983) 33 C.3d 419, 449, 451, 189 C.R. 346, 658 P.2d 709, 4 *Summary* (9th), *Real Property*, §766.)

An action by an injured employee against his employer is in the exclusive jurisdiction of the Workers' Compensation Appeals Board or the superior court, depending on whether or not the Workers' Compensation Act applies, but jurisdiction to determine jurisdiction is concurrent. (*Jones v. Brown* (1970) 13 C.A.3d 513, 520, 89 C.R. 651; see *infra*, §424.)

B. Priority of First Court Taking Jurisdiction.

1. In General.

(a) [§413] Jurisdiction or Comity.

(1) *Jurisdictional Theory*. It is often said that where two courts have concurrent jurisdiction over a class of cases, the one which first assumes jurisdiction over the subject matter of a particular controversy takes it exclusively, and the other court's jurisdiction may no longer be asserted over that subject matter. (See *Myers v. Superior Court* (1946) 75 C.A.2d 925, 929, 172 P.2d 84; *Cade v. Superior Court* (1961) 191 C.A.2d 554, 556, 12 C.R. 847, citing the text; *Morrisette v. Superior Court* (1965) 236 C.A.2d 597, 600, 46 C.R. 153, citing the text; *Halpin v. Superior Court* (1971) 14 C.A.3d 530, 545, 92 C.R. 329, citing the text [prohibition granted]; *Plant Insulation Co. v. Fiberboard Corp.* (1990) 224 C.A.3d 781, 786, 787, 274 C.R. 147, *infra*, §415, citing the text; *People v. American Autoplan* (1993) 20 C.A.4th 760, 769, 770, 25 C.R.2d 192; 20 *Am.Jur.2d*, Courts §128; 73 *Harv. L. Rev.* 1013.)

This approach makes priority a *jurisdictional* matter, and the court violating the rule of priority is acting without or in excess of its jurisdiction.

(2) *Comity Theory*. Other cases treat the question as one of "comity" or "judicial discretion." (See *In re Marriage of Gray* (1988) 204 C.A.3d 1239, 1249, 251 C.R. 846, citing the text.) These differences may be partially resolved, and the scope of the doctrine ascertained, if consideration is given in each case to two factors: (a) the nature of the action or other proceeding, i.e., whether it is in rem or in personam; and (b) the nature of the courts, i.e., whether the conflict is between California courts, federal and state courts, or courts of different states. (See *infra*, §417 et seq.)

(3) *Distinction: First Action in Foreign Country.* Where the first action is in a *foreign country*, priority is apparently not recognized in its fullest sense, i.e., either as jurisdictional or as a matter of comity. There is no *right* to dismissal or a stay; the only protection offered is the discretionary power of the trial court to grant a *continuance* if it deems it advisable to do so. This was the holding in *Pesquera Del Pacifico v. Superior Court* (1949) 89 C.A.2d 738, 201 P.2d 553, where a California suit was brought despite the pendency of a prior action in Mexico. Although one reason for denial of a stay was that the issues did not appear to be the same, the court quoted Am.Jur. as follows: "The reason why the pendency of an action in the courts of one sovereignty will not abate an action in the courts of another sovereignty is twofold: First, because a foreign judgment depending on foreign law might be unjust, and could not be enforced beyond the jurisdiction of the foreign court without a new suit on it as only *prima facie* evidence; and second, and chiefly, because the remedy in the country where the last suit is brought may be more adaptable and safe, and means for effectuating a judgment may be found in the latter and not in the former country." (89 C.A.2d 740.) (See also *In re Stephanie M.* (1994) 7 C.4th 295, 314, 27 C.R.2d 595, 867 P.2d 706 [in dependency proceeding involving abused Mexican national child, court not required to give effect to letter informing it of guardianship order in Mexican court].)

(b) **Policy Theory.**

(1) [§414] **In General.**

In *Childs v. Eltinge* (1973) 29 C.A.3d 843, 105 C.R. 864, the court held that the rule of priority of jurisdiction is one of policy and should not control where countervailing policies apply.

C and others, lessors, made a long-term lease to E and others for a shopping center in Riverside County. The lease contained a rent adjustment provision operative every 5 years, and an appraisal procedure for ascertaining the increase, if any. An appraisal was had, a dispute arose over it, and the lessees brought a declaratory relief action in Los Angeles. The lessors answered; but, when the lessees failed to pay the additional rent claimed, the lessors gave them a 3-day notice to quit and brought an unlawful detainer proceeding in Riverside. The lessees, plaintiffs in the Los Angeles declaratory relief action, obtained a preliminary injunction from the Los Angeles court, restraining the lessors from prosecuting the

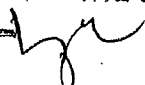
EXHIBIT 2

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FILED
PLACER COUNTY
SUPERIOR COURT OF CALIFORNIA

JUL 12 2006

JOHN MENDES
EXECUTIVE OFFICER & CLERK
By  Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF PLACER

MEADOW VISTA PROTECTION,

Petitioner and Plaintiff,

v.

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

Respondents and Defendants.

Case No.:

0 CV

19614

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

Petitioner and plaintiff Meadow Vista Protection hereby alleges as follows:

INTRODUCTION

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

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

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

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

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

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

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

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

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

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

13 PARTIES

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

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

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

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

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

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

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

8 JURISDICTION AND VENUE

9 16. Jurisdiction of this Court is invoked pursuant to Code of Civil Procedure section
10 1085. This complaint's request for injunctive relief is authorized by Code of Civil Procedure
11 section 526 and the request for declaratory relief by Code of Civil Procedure section 1060.

12 Venue in the County of Placer is appropriate, as it is the residence of all defendants.

13 STATEMENT OF FACTS

14 (Gravel Operation)

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

17 (Quarry Operation)

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

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

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

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

(Asphalt Operation)

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

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

(Concrete Operation)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FIRST CAUSE OF ACTION

(Mandate – Quarry Operation)

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

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

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

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

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

SECOND CAUSE OF ACTION

(Declaratory Relief – Quarry Operation)

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

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

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

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

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

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

14 THIRD CAUSE OF ACTION

15 (Declaratory Relief – Asphalt Operation)

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

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

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

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

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

3 FOURTH CAUSE OF ACTION

4 (Injunction)

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

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

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

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

20 FIFTH CAUSE OF ACTION

21 (Public Nuisance)

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

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

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

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

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

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

14 SIXTH CAUSE OF ACTION

15 (Private Nuisance)

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

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

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

SEVENTH CAUSE OF ACTION

(Trespass)

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

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

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

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

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

PRAYER

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

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

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

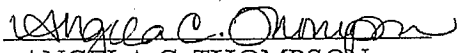
THE ZUMBRUN LAW FIRM
A Professional Corporation
3800 Watt Avenue, Suite 101
Sacramento, CA 95821

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

4 DATED: July 11, 2006.

5 Respectfully submitted,

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

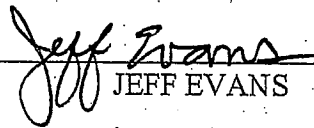
10 By 
11 ANGELA C. THOMPSON
12 Attorneys for Petitioner and Plaintiff

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

VERIFICATION

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

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


JEFF EVANS

Meadow Vista Protection v. Chevreaux Aggregates, Inc.

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

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

EXHIBIT 1

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

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

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

SPECIAL PERMIT FOR LAND DEVELOPMENT

Full Name of Applicant Edward P. Puss Telephone 878-1159
Address of Applicant P.O. Box 117 Town Meadow Vista
Name of Property Owner Edward & Beatrice G. Puss
Address of Property Owner P.O. Box 117 Town Meadow Vista
Property Zoned F-1B-43 Acreage 140
Proposed Development (Describe fully) Rock crushing, screening & washing plant for grading materials etc.
Method of Sewage Disposal Dry Hole
Assessor's Parcel No. 72-03014-00-00-8 General Location of Property: West Half of the N.W. Quarter of Section 31 T.14 N. - R.9 E. M.D.B. & M. 4
West Half of the S.W. Quarter of Section 30 T.14 N. - R.9 E. M.D.B. & M. 4
Located north of County Dump in Meadow Vista
PLEASE SUBMIT WELL-DETAILED PLOT PLAN

\$25.00 Filing Fee

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

Edward Puss
Signature of Applicant
Drivers License No. B651999

Date of Meeting April 22, 1965

☒ Approved ☐ Denied

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

Date: April 23, 1965

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

Richard M. Heikka
RICHARD M. HEIKKA, Zoning Administrator

I have read the above conditions and will comply.

(Please return 1 signed copy)

Edward Puss
Signature of Applicant

cc: Applicant

4-6-1965
Meadow Vista

Placer Co. Planning Dept.
Regrard Land Development Permit

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

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

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

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

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

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

EXHIBIT 2

Mr. Heikka advised, for the record, that this action can be appealed within five (5) working days from this date. An appeal should be filed with the Clerk of the Planning Commission whose office is located in the Placer County Planning Department, 219 Maple Street, Auburn, Calif.

Mr. Melee requested a written statement of Mr. Heikka's opinion and was advised that a written copy would be forwarded to him.

LAND DEVELOPMENT PERMIT - Edward Pruss - Meadow Vista area - Southern shot rock. A crushing, screening and washing plant for grading materials, etc. 140 acres, located north of County Dump in Meadow Vista. 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. Model, of the Public Works Department, asked Mr. Pruss if intended to use the County Road for access to his property? Mr. Pruss replied yes he did and asked why the Public Works Department required the posting of a bond for the use of property.

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

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

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

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

Mr. Heikka asked for any opposition to this application and were there any owners who consented. Mr. Pruss noted that there was none.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

See page 2 of 2

LD-1036

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

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

Mr. Chevreux asked if this proposed development might ask for a reclassification of zoning and Mr. Heikka replied that the opportunity does exist for rezoning but that it would have been a longer procedure for Mr. Pruss. Mr. Pruss stated that the County Ordinance was built within 100 feet of the property developed as a quarry and quarrying operation would run these people right out of their house and they are going to be very concerned about that because in the old days the ordinance protected the residences. Now residential developments are encroaching around the gentlemen in the industrial business. You could have home owners come in and ask for a different use of the land.

Mr. Chevreux queried what would happen with the sale of the land and Mr. Heikka replied that the use would continue as the permit runs with the land not the individual.

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

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

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

Mr. Pruss stated that the blasting will be with electric caps and will have a minimum affect. The 1600 type shot gives the least amount of noise and ground vibration.

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

- 1) Meet requirements of Public Works Department for the development.
- 2) Driveway be cleared for visibility.
- 3) All blasting be done in such a manner as not to be injurious to neighboring property.
- 4) Adequate control of dust.
- 5) All screening and washing operations subject to State Agencies.
- 6) Provision be made for return of soil cover to all re-growth of vegetation on 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, Zoning Administrator
PLACER COUNTY ZONING ADMINISTRATOR

EXHIBIT 3

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

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

NOTICE - ALL APPLICANTS

Conditional Use Permit is:

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

Permit No. LD1-786
Date Filed May 1, 1972
Hearing Date 5-25-72
Hearing Jurisdiction 229

CONDITIONAL USE PERMIT

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

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

PLEASE SUBMIT WELL-DETAILED PLOT PLAN
(See Reverse)

\$25.00 Filing Fee

Receipt No. 35667

Received by: [Signature]

Placer County Planning Department

Date of Action 5-25-72

XXXXX Approved. _____ Denied

Summary:

SUBJECT TO ATTACHED CONDITIONS.

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

I have read the above conditions and will comply.

(Please return 1 signed copy)

Signature of Applicant

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

LDA-786, CONDITIONAL USE PERMIT, JOE CHEVREUX

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

1. This is to be a permanent location for an asphalt batch plant.
 2. Provide adequate emission control to meet requirements of the Air Pollution Control District (APCD).
 - A) Emissions not to exceed 0.3 GM/FT³ or Ringelmann smoke density laws of county APCD and State Health and Safety Codes.
 3. All equipment that sends emissions into the atmosphere must register with the APCD.
 4. Submit plans of proposed plant, showing in detail all emission control equipment and its expected efficiency. Plans to be approved by APCD prior to operation.
 5. There shall be no direct discharge of wash water, scrubber water or other water from the proposed operation to the Bear River or its tributaries.
 6. Excavation for aggregate shall not cause an increase in the turbidity of the Bear River.
 7. Apply to the State Water Quality Control Board, Central Valley Region, for discharge requirements, should there be any.
 8. Confine all hauling operations to the following roads:
 - A) Combie Road
 - B) Placer Hills Road
 9. Applicant to cooperate in maintaining the surface of the hauling route during the period of hauling on Combie Road only and shall periodically repair damage caused to roads by hauling.
- NOTE: Placer Hills Road is designed and constructed for the appropriate traffic index to accommodate this type of hauling operation; however, Combie Road is not.
10. Dike shall be constructed around the liquid asphalt storage tank to the satisfaction of the Department of Public Works.
 11. Water and sewerage to comply with County Health Department requirements.
- ~~APCD 1972~~ There will be only one plant in operation. If the plant granted under LDA-691 is reopened, the second plant will be closed.

ADVISORY COMMENT:

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

EXHIBIT 4



PLACER COUNTY PLANNING DEPARTMENT

11414 "B" Avenue, Auburn, CA 95603

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

JUL 7 1994

ENVIRONMENTAL HEALTH

SUPPLEMENTAL ENTITLEMENT DETAIL
CONDITIONAL USE PERMIT

Required maps: (see instructions) Required applications: 4 Filing fee: \$1880.00
File # CUP-1772 Hearing Date 6-8-94 Receipt # 13660

TO BE COMPLETED BY THE APPLICANT

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

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

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

[Signature]
Signature of Applicant

BASIS FOR GRANTING CONDITIONAL USE PERMITS

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

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

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

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

[Signature]
Catherine Scallan, Clerk

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

FOR USE AFTER PUBLIC HEARING

I have read the above/attached conditions and will comply

PLEASE RETURN ONE SIGNED COPY

[Signature]
Signature of Applicant

PAGE TWO OF TWO

CONDITIONAL USE PERMIT FINDINGS - CONTINUED

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

NEGATIVE DECLARATION - FINDINGS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

JUNE, 1994

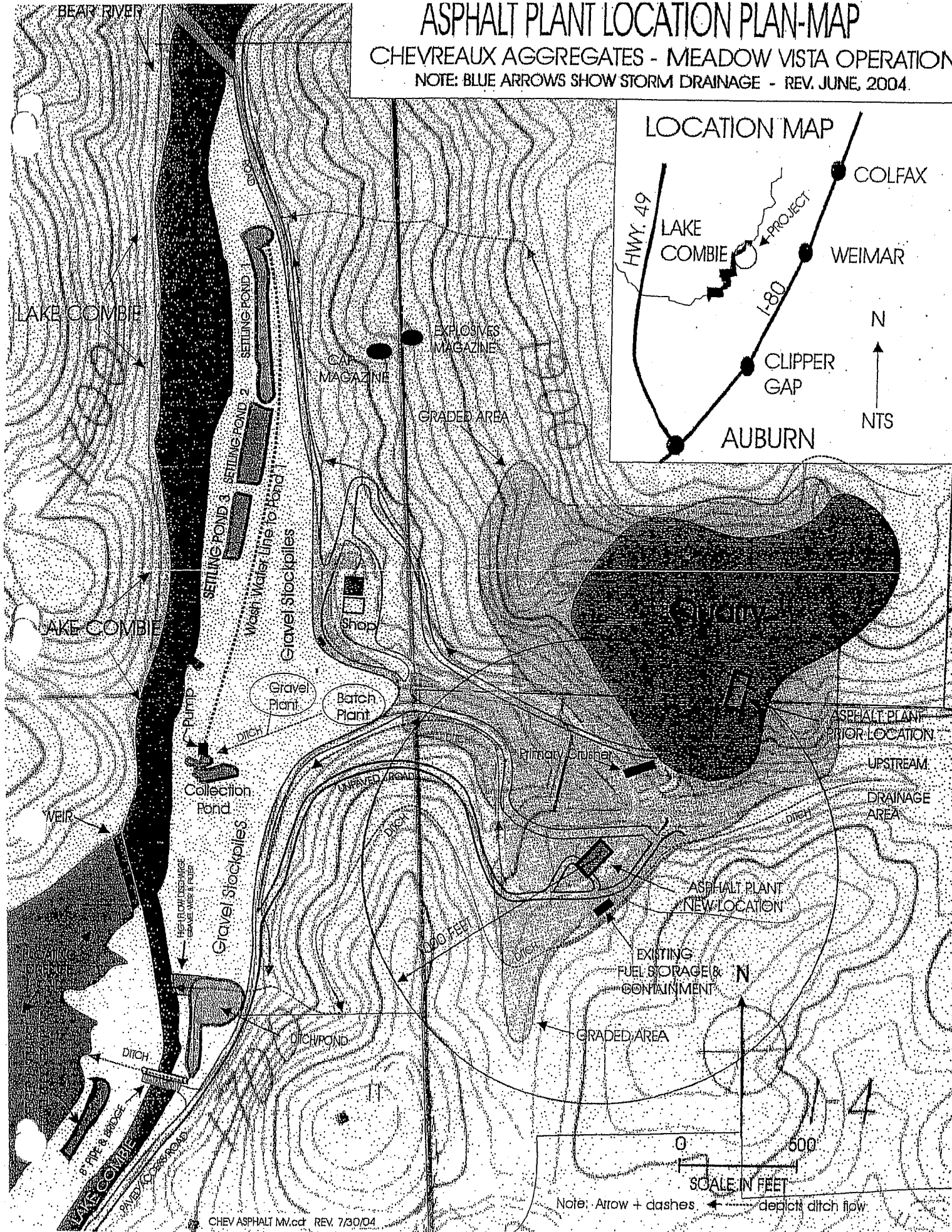
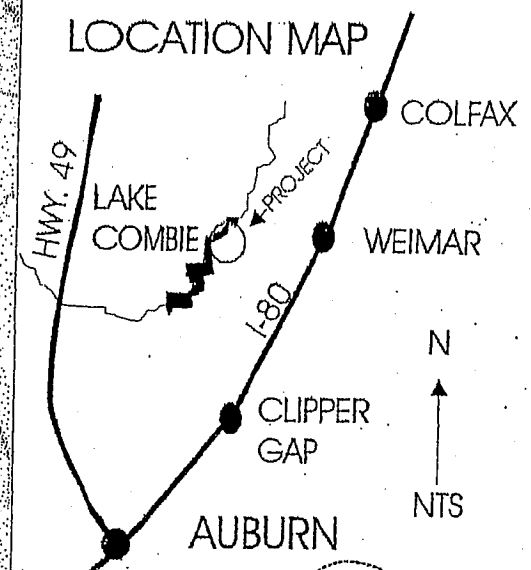
EXHIBIT 5





EXHIBIT 6

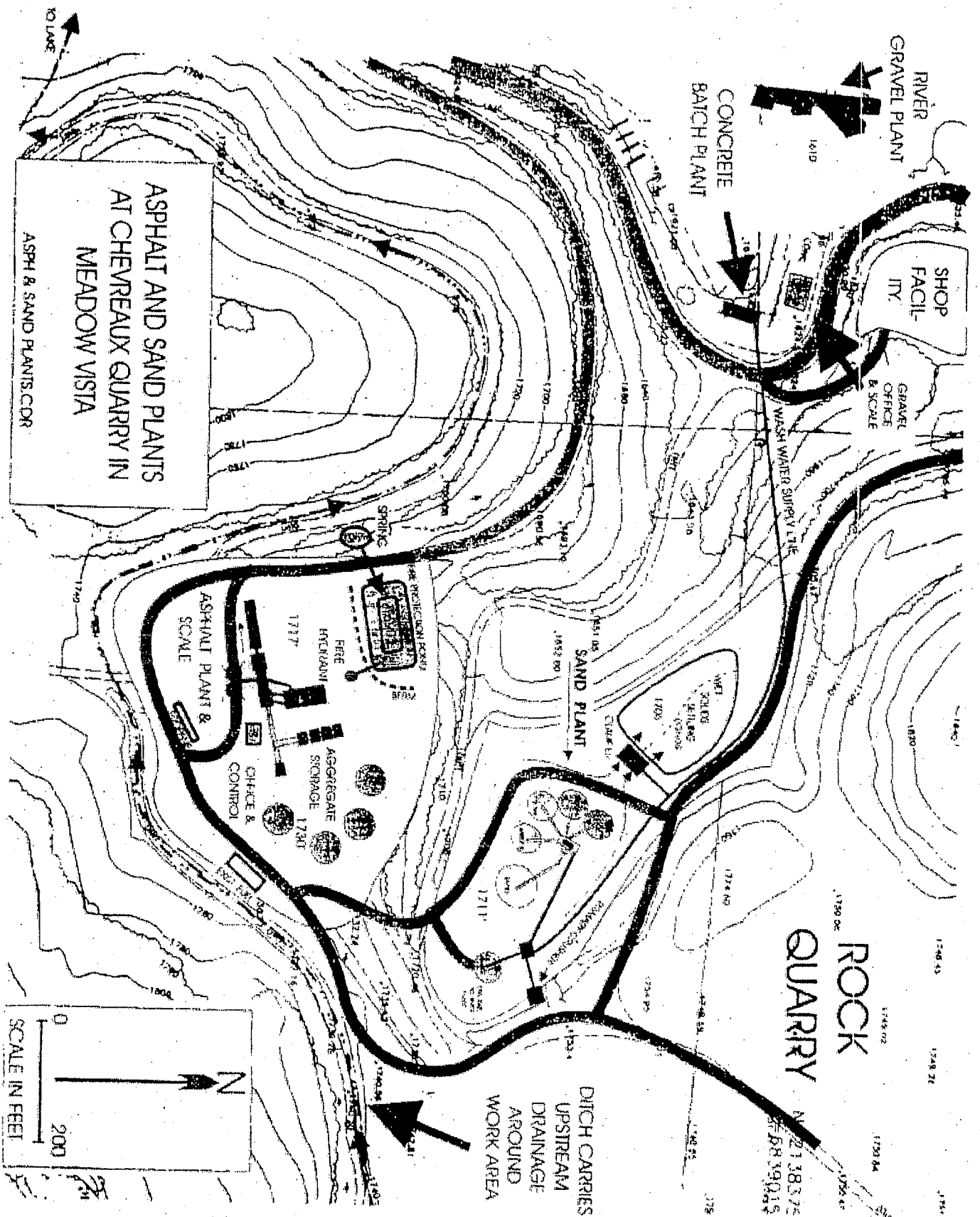
A detailed topographic map of the Bear River area. The map shows the Bear River flowing through the landscape. Key features include Lake Combie, several gravel stockpiles, and various infrastructure elements. Labels on the map include: BEAR RIVER, LAKE COMBIE, SETTLING POND 1, SETTLING POND 2, SETTLING POND 3, Wash Water Line to Pond 1, Gravel Stockpiles, Gravel Plant, Bar Plant, Collection Pond, Ditch, 8" Pipe & Bridge, and 10" Water Main. The map uses contour lines to indicate elevation and shading to represent different land features.





Site Figure
Teichert Portable Asphalt Operations
Chevreux Quarry
Meadow Vista, California

Date of aerial photography:
 April 2004, AeroMap, USA



Attorney or Party without Attorney: THE ZUMBRUN LAW FIRM 3800 WATT AVENUE SUITE 101 SACRAMENTO, CA 95821 Telephone No: 916-486-5900 FAX No: 916-486-5959				For Court Use Only 7/21/06 mailed on 7/20 court for filing	
Attorney for: Plaintiff					
Insert name of Court, and Judicial District and Branch Court: PLACER COUNTY SUPERIOR COURT					
Plaintiff: MEADOW VISTA PROTECTION Defendant: CHEVREAU AGGREGATES, INC.					
PROOF OF SERVICE SUMMONS		Hearing Date: Mon, Nov. 20, 2006	Time: 8:30AM	Dept/Div: 3	Case Number: SCV 19614

1. At the time of service I was at least 18 years of age and not a party to this action.

2. I served copies of the SUMMONS; PETITION FOR WRIT OF MANDATE AND COMPLAINT; NOTICE OF FIRST CASE MANAGEMENT CONFERENCE

3. a. Party served: COUNTY OF PLACER
 b. Person served: KATHY ZICK, CLERK, AUTHORIZED TO ACCEPT SERVICE, White Female
 55 Years Old, Black Hair, Brown Eyes, 5 Feet 6 Inches, 140 Pounds

4. Address where the party was served: CLERK OF THE BOARD
 175 FULWEILER AVENUE
 AUBURN, CA 95603

5. I served the party:
 a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on: Wed., Jul. 19, 2006 (2) at: 1:43PM

7. Person Who Served Papers:
 a. JASON LUND

Recoverable Cost Per CCP 1033.5(a)(4)(B)

d. The Fee for Service was: \$68.00

e. I am: (3) registered California process server

(i) Employee

(ii) Registration No.: 2002-23

(iii) County: Sacramento

(iv) Expiration Date: Sun, May. 04, 2008



2300 P Street
 Sacramento, CA 95816
 (916) 498-0808
 FAX (916) 498-0817

000 05 JUL

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

Date: Wed, Jul. 19, 2006

[Signature]
 (JASON LUND)

Attorney or Party without Attorney: THE ZUMBRUN LAW FIRM 3800 WATT AVENUE SUITE 101 SACRAMENTO, CA 95821 Telephone No: 916-486-5900 FAX No: 916-486-5959				For Court Use Only:	
Attorney for: Plaintiff				Ref. No. or File No.:	
Insert name of Court, and Judicial District and Branch Court: PLACER COUNTY SUPERIOR COURT					
Plaintiff: MEADOW VISTA PROTECTION Defendant: CHEVREAU AGGREGATES, INC.					
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1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the SUMMONS; PETITION FOR WRIT OF MANDATE AND COMPLAINT; NOTICE OF FIRST CASE MANAGEMENT CONFERENCE
3. a. Party served: COUNTY OF PLACER PLANNING DEPARTMENT
 b. Person served: LISA CARY, ADMINISTRATIVE SECRETARY, AUTHORIZED TO ACCEPT SERVICE. White Female 51 Years Old, Black Hair, Brown Eyes, 5 Feet 6 Inches, 150 Pounds
4. Address where the party was served: 11414 B AVENUE
 AUBURN, CA 95603
5. I served the party:
 - a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on: Wed., Jul. 19, 2006 (2) at: 1:23PM
7. Person Who Served Papers:

- a. JASON LUND

Recoverable Cost Per CCP 1033.5(a)(4)(B)

 - d. The Fee for Service was: \$68.00
 - e. I am: (3) registered California process server
 - (i) Employee
 - (ii) Registration No.: 2002-23
 - (iii) County: Sacramento
 - (iv) Expiration Date: Sun, May. 04, 2008



2300 P Street
 Sacramento, CA 95816
 (916) 498-0808
 FAX (916) 498-0817

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

Date: Wed, Jul. 19, 2006

(JASON LUND)

Attorney or Party without Attorney: THE ZUMBRUN LAW FIRM 3800 WATT AVENUE SUITE 101 SACRAMENTO, CA 95821 Telephone No: 916-486-5900 FAX No: 916-486-5959				For Court Use Only			
Attorney for: Plaintiff						Ref. No. or File No.:	
Insert name of Court, and Judicial District and Branch Court: PLACER COUNTY SUPERIOR COURT							
Plaintiff: MEADOW VISTA PROTECTION Defendant: CHEVREAUX AGGREGATES, INC.							
PROOF OF SERVICE SUMMONS		Hearing Date: Mon, Nov. 20, 2006	Time: 8:30AM	Dept/Div: 3	Case Number: SCV 19614.		

1. At the time of service I was at least 18 years of age and not a party to this action.

2. I served copies of the SUMMONS; PETITION FOR WRIT OF MANDATE AND COMPLAINT; NOTICE OF FIRST CASE MANAGEMENT CONFERENCE

3. a. Party served: CHEVREAUX AGGREGATES, INC.
 b. Person served: EVA BURGER, ACCOUNTS RECEIVABLE, AUTHORIZED TO ACCEPT SERVICE., White Female 59 Years Old, Brown Hair, Brown Eyes, 5 Feet 5 Inches, 140 Pounds

4. Address where the party was served: 890 GRASS VALLEY HIGHWAY
 AUBURN, CA 95603

5. I served the party:
 a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on: Wed., Jul. 19, 2006 (2) at: 1:10PM

7. Person Who Served Papers:

a. JASON LUND

Recoverable Cost Per CCP-1033.5(a)(4)(B)

d. The Fee for Service was: \$68.00

e. I am: (3) registered California process server



2300 P Street
 Sacramento, CA 95816
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(i) Employee
 (ii) Registration No.: 2002-23
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 (iv) Expiration Date: Sun, May. 04, 2008

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

Date: Wed, Jul. 19, 2006

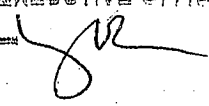
Jason Lund
 (JASON LUND)

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

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

FILED
PLACER COUNTY
SUPERIOR COURT OF CALIFORNIA

JUL 12 2006

JOHN MENDES
EXECUTIVE OFFICER & CLERK
By  Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF PLACER

MEADOW VISTA PROTECTION,

Petitioner and Plaintiff,

v.

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

Respondents and Defendants.

Case No.: **SCV 19814**

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

Petitioner and plaintiff Meadow Vista Protection hereby alleges as follows:

INTRODUCTION

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

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

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

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

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

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

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

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

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

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

13 PARTIES

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

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

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

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

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

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

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

8 JURISDICTION AND VENUE

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

13 STATEMENT OF FACTS

14 (Gravel Operation)

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

17 (Quarry Operation)

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

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

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

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

(Asphalt Operation)

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

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

(Concrete Operation)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 FIRST CAUSE OF ACTION

6 (Mandate – Quarry Operation)

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

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

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

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

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

23 SECOND CAUSE OF ACTION

24 (Declaratory Relief – Quarry Operation)

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

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

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

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

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

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

14 THIRD CAUSE OF ACTION

15 (Declaratory Relief – Asphalt Operation)

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

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

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

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

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

3 FOURTH CAUSE OF ACTION

4 (Injunction)

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

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

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

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

20 FIFTH CAUSE OF ACTION

21 (Public Nuisance)

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

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

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

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

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

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

14 SIXTH CAUSE OF ACTION

15 (Private Nuisance)

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

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

SEVENTH CAUSE OF ACTION

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

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

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

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

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

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

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

4 DATED: July 11, 2006.

5 Respectfully submitted,

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

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

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

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

THE ZUMBRUN LAW FIRM
A Professional Corporation
33800 Watt Avenue, Suite 101
Sacramento, CA 95821

Meadow Vista Protection v. Chevreux Aggregates, Inc.

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

Exhibit 1 LD-1030

Exhibit 2 Minutes from the 1965 hearing

Exhibit 3 LDA-786

Exhibit 4 CUP 1772

Exhibit 5 aerial photographs

Exhibit 6 maps attached to the three APCD applications

EXHIBIT 1

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

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

Permit No. 1224 (11)
Date Filed April 22, 1965
Hearing Date April 23, 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 spot rock crushing, screening & washing plant for grading materials, etc.

Method of Sewage Disposal Dry Hole
Assessor's Parcel No. 72-03014-M-010-08 General Location of Property: West Half of the N.W. Quarter of Section 31 T 14 N - R 9 E M D B 4 M 4
West Half of the S.W. Quarter of Section 30 T 14 N - R 9 E M D B 4 M 4
Located north of County Dump in Meadow Vista

\$25.00 Filing Fee

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

Edward Russ
Signature of Applicant
Drivers License No. B651999

Date of Meeting April 22, 1965

☒ Approved ☐ Denied

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

Date: April 23, 1965

PLACER COUNTY PLANNING COMMISSION
JUSTIN F. BARBER, JR., Planning Director
Richard M. Heikka
RICHARD M. HEIKKA, Zoning Administrator

I have read the above conditions and will comply.

(Please return 1 signed copy)

Edward Russ
Signature of Applicant

cc: Applicant

LD-1030

4-6-1965

Meadow Vista

Placer Co. Planning Dept
Regrad Land Development Permit

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

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

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

There are 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. W

EXHIBIT 2

Heikka. Mr. Heikka advised, for the record, that this action can be appealed within five (5) working days from this date. An appeal should be filed with the Clerk of the Planning Commission, whose office is located in the Placer County Planning Department, 219 Maple Street, Auburn, Calif. Mr. 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 of property. Recommendations of the Department of Public Works are as follows: 1) Commercial type access, drainage and adequate off street parking. 2) Post \$5000 maintenance bond for the Dump Road in favor of the Department of Public Works.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Joe Chevreux stated that he had no objections to this proposed land development permit but that he was concerned about the establishing this use in R1 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

File Day - Oct 1 1965

LD-103c

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

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

Mr. Chevreux asked if this proposed development might ask for a reclassification of zoning and Mr. Heikka replied that the opportunity does exist for rezoning but that it would have been a longer procedure for Mr. Pruss.

Mr. Chevreux asked what, if a single family residential house was built within 100 feet of the property developed as a quarry, a quarrying operation would run these people right out of their house. People are going to be very concerned about that because in the old days the ordinance protected the residences. Now residential developments are encroaching around the gentlemen in the industrial business. You could have home owners come in and ask for a different use of the land.

Mr. Chevreux queried what would happen with the sale of the land and Mr. Heikka replied that the use would continue, as the permit runs with the land not the individual.

Mr. Chevreux asked if the use permit is a permanent thing?

Mr. Heikka advised that it can be or it can be temporary.

Mr. Chevreux asked when the new zoning comes up and Mr. Heikka advised that it is anticipated that a Master Plan will probably be starting this summer at the staff level.

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

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

Mr. Pruss stated that the blasting will be with electric caps and will have a minimum affect. The 1600' type shot gives the least amount of noise and ground vibration.

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

- 1) Meet requirements of Public Works Department for the development.
- 2) Driveway be cleared for visibility.
- 3) All blasting be done in such a manner as not to be injurious to neighboring property.

4) Adequate control of dust.

5) All screening and washing operations subject to State Agencies.

6) Provision be made for return of soil cover to all re-growth of vegetation or 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, for the Auditor
PLACER COUNTY ZONING ADMINISTRATOR

EXHIBIT 3

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

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

NOTICE - ALL APPLICANTS

Conditional Use Permit is:

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

Permit No. LD4-786
Date Filed May 1, 1972
Hearing Date 5-25-72
Hearing Jurisdiction 279

CONDITIONAL USE PERMIT

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

Method of Sewage Disposal Portable toilets
Assessor's Parcel No. 72-030-01 & 72-020-08 (83-12)
General Location of Property present Chevreau 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. 35662
Received by: [Signature]

Placer County Planning Department

Date of Action 5-25-72

XXXXX Approved _____ Denied _____

Summary:

SUBJECT TO ATTACHED CONDITIONS.

JUNE 21, 1972 THOMAS D. MCMAHAN, ZONING ADMINISTRATOR, PLACER CO.
(FOR USE AFTER PUBLIC HEARING)

I have read the above conditions and will comply.

(Please return 1 signed copy)

Signature of Applicant

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

LDA-786, CONDITIONAL USE PERMIT, JOE 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.
- ~~ADVISORY COMMENT:~~ There will be only one plant in operation. If the plant granted under LDA-691 is reopened, the second plant will be closed.

ADVISORY COMMENT:

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

EXHIBIT 4



PLACER COUNTY PLANNING DEPARTMENT

11414 "B" Avenue, Auburn, CA 95603

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

JUL 7 1994

ENVIRONMENTAL HEALTH

SUPPLEMENTAL ENTITLEMENT DETAIL
CONDITIONAL USE PERMIT

Required maps: (see instructions) Required applications: 4 Filing fee: \$1880.00
File # CUP-1772 Hearing Date 6-18-94 Receipt # 13660

TO BE COMPLETED BY THE APPLICANT

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

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

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

Signature of Applicant

BASIS FOR GRANTING CONDITIONAL USE PERMITS

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

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

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

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

Signature of Clerk

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

FOR USE AFTER PUBLIC HEARING

I have read the above/attached conditions and will comply
PLEASE RETURN ONE SIGNED COPY

Signature of Applicant

PAGE TWO OF TWO

CONDITIONAL USE PERMIT FINDINGS - CONTINUED

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

NEGATIVE DECLARATION - FINDINGS

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

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

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

1. The project consists of adding a concrete batch plant to the existing gravel/quarry operation to allow a 2-plant (Auburn Hwy 49 site plus Meadow Vista gravel plant site) concrete delivery system owned by the same operator, and serving market areas "A" and "B", as depicted in the environmental review submittals. Concrete truck washing will be done on-site and the drainage from this activity will go to ponds provided for that purpose.
2. The following Standard Conditions #ip22 (pw7), mc12 (pw44), eh13 (eh21), and eh17 (eh26) apply to this project as printed in Volume 3, Number 1, dated May 24, 1994.
 - A) Provide the DPW with a letter from the appropriate fire protection district describing conditions under which service will be provided to this project. Said letter shall be provided prior to the approval of Improvement Plans, and a fire protection district representative's signature shall be provided on the plans.
 - B) This project is located within a "State Responsibility Area" and, as such, is subject to fire protection regulations established by the State Board of Forestry. Compliance with these regulations shall be evidenced by submittal of a letter from California Department of Forestry (CDF) to the Department of Public Works prior to Improvement Plan approval/Building Permit issuance.
 - C) Prior to Building Permit approval, the applicant shall submit to the Division of Environmental Health, a solid waste management plan. A plan form specifying required information can be obtained in the DEH office.
 - D) Construction noise emanating from any construction activities for which a Building Permit is required is prohibited on Sundays and Federal Holidays, and shall only occur:
 - A. Monday through Friday, 6:00 AM to 8:00 PM;
 - B. Saturdays, 8:00 AM to 6:00 PM

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

The Planning Director is authorized to waive the time frames based on special circumstances, such as adverse weather conditions.
3. The applicant shall prepare and submit improvement plans, specifications and cost estimates (per Section II of the Land Development Manual [LDM]) to the Department of Public Works (DPW) for review and approval. The plans shall show all conditions for the project as well as pertinent topographical features both on- and off-site. All existing and proposed utilities on-site and adjacent to the project shall be shown on the plans. The applicant shall pay plan check and inspection fees. "As built" plans shall be prepared and signed by a California Registered Civil Engineer at the applicant's expense and shall be submitted to the DPW prior to acceptance by the County of site improvements.
4. All proposed grading, drainage improvements, vegetation and tree removal shall be shown on the improvement plans and all work shall conform to provisions of the County Grading Ordinance (Chapter 29, Placer County Code). All cut/fill slopes shall be 2:1 (horizontal:vertical) unless otherwise approved by DPW.
 - A winterization plan shall be provided with project improvement plans. Provide for erosion control where roadside drainage is off of the pavement, to the satisfaction of the DPW.

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

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

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

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

JUNE, 1994

EXHIBIT 5



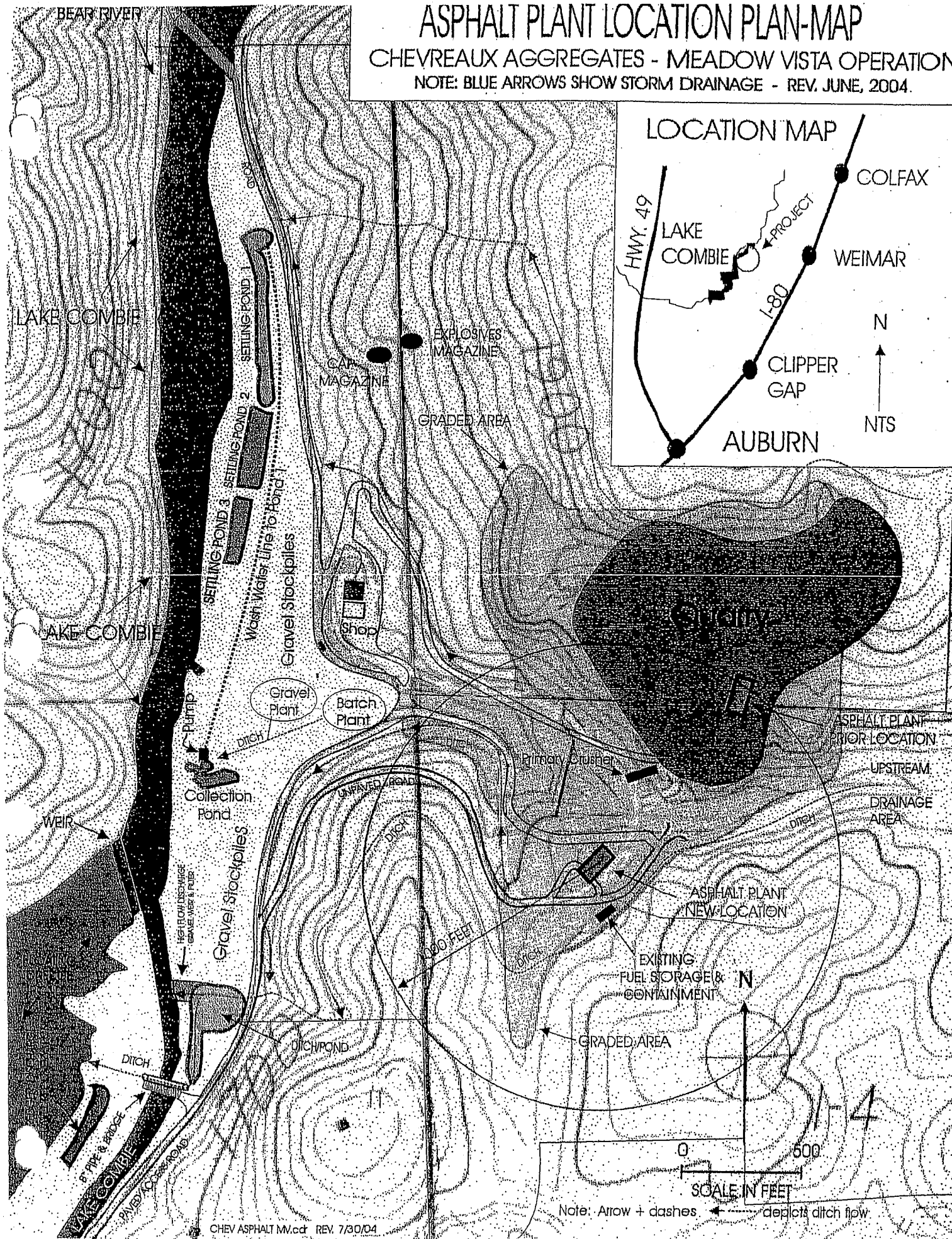


EXHIBIT 6

ASPHALT PLANT LOCATION PLAN-MAP

CHEVREAU AGGREGATES - MEADOW VISTA OPERATION

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

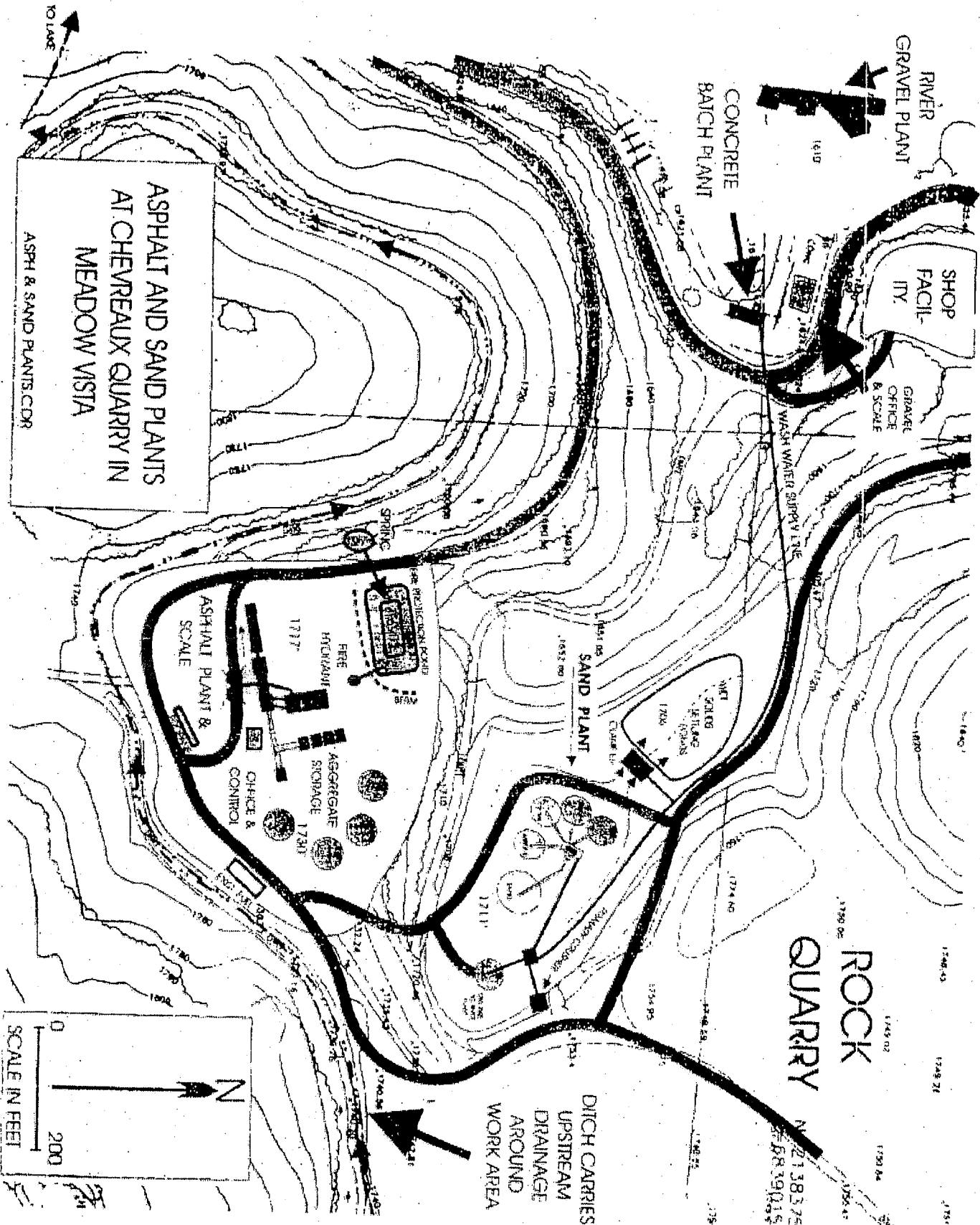




Site Figure
Teichert Portable Asphalt Operations
Chevreux Quarry
Meadow Vista, California

Date of aerial photography:
 April 2004, AerialView, USA

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ASPHALT AND SAND PLANTS
AT CHEVREUX QUARRY IN
MEADOW VISTA

ASPH & SAND PLANTS COR

ROCK
QUARRY

N 2138375
BR 19015

DITCH CARRIES
UPSTREAM
DRAINAGE
AROUND
WORK AREA

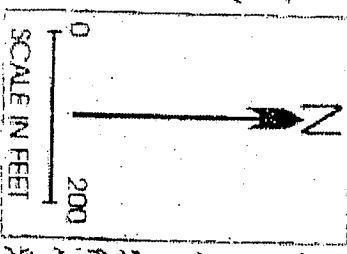


EXHIBIT 3

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EXEMPT FROM FILING FEES
PURSUANT TO GOVERNMENT
CODE SECTION 6103

SUPERIOR COURT OF CALIFORNIA

COUNTY OF PLACER

MEADOW VISTA PROTECTION,

Case No. SCV 19614

Petitioner/Plaintiff,

vs.

NOTICE OF DEMURRER AND DEMURRER
TO PETITIONER'S
PETITION/COMPLAINT

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

DATE: 10/3/06
TIME: 8:30 a.m.
DEPT.: 3

Respondents/Defendants.
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EXEMPT FROM FILING FEES
PURSUANT TO GOVERNMENT
CODE SECTION 6103

SUPERIOR COURT OF CALIFORNIA

COUNTY OF PLACER

MEADOW VISTA PROTECTION,

Case No. SCV 19614

Petitioner/Plaintiff,

vs.

**NOTICE OF DEMURRER AND DEMURRER
TO PETITIONER'S
PETITION/COMPLAINT**

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

**DATE: 10/3/06
TIME: 8:30 a.m.
DEPT.: 3**

Respondents/Defendants.

TO ALL PARTIES AND ATTORNEYS OF RECORD IN THIS ACTION:

PLEASE TAKE NOTICE that on October 3, 2006, at 8:30 a.m., in
Department 3 of the above Court, located at 101 Maple Street, Auburn,
California, Respondents COUNTY OF PLACER and COUNTY OF PLACER
PLANNING DEPARTMENT ("the COUNTY") will demur, and hereby do demur to
Petitioner MEADOW VISTA PROTECTION'S ("Petitioner")
Petition/Complaint ("Petition"). Said demurrer will be made on the
grounds that: an action cannot properly lie against the County for
alleged discretionary failure to enforce the law; the action is
barred by the applicable statute of limitations; and the action is
barred by failure to exhaust administrative remedies. Further, the

Notice of Demurrer and Demurrer to Petitioner's Petition/Complaint.

1 complaint does not state facts that constitute a cause of action.
2 This demurrer is made as to the First Cause of Action contained
3 in the Petition on file herein.

4 DEMURRER TO FIRST CAUSE OF ACTION

5 1. The First Cause of Action fails to state a cause of action
6 against the COUNTY.

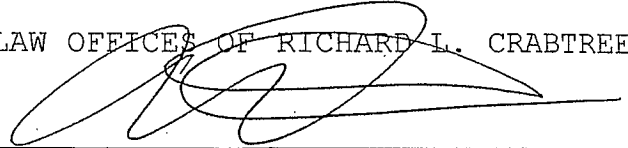
7 This demurrer is based on this notice of demurrer, all papers
8 filed in support of this demurrer, the demurrer and supporting
9 materials filed by Defendant Chevreux Aggregates, Inc.
10 ("Chevreux"), the records and court file herein, and on such other
11 oral and/or documentary evidence and argument as may be later
12 submitted in this matter.

13 Pursuant to Local Rule (20.3.3), on the afternoon of the court
14 day before each regularly scheduled law and motion calendar, the
15 court will cause to be recorded a tentative ruling on each matter on
16 the next day's calendar. The tentative rulings will be available
17 after 12:00 noon by telephoning a voice-mail message at (530) 886-
18 5288. The tentative ruling shall become the final ruling of the
19 court unless a party advises all other parties and the court of a
20 request for oral argument. Such request shall be made by calling
21 (530) 889-6529 and leaving a recorded message with the court no later
22 than 4:00 p.m. on the court day preceding the hearing.

23 DATED:

24 8-23-06

LAW OFFICES OF RICHARD L. CRABTREE

25 
26 Richard L. Crabtree,
27 Attorney for County of Placer and
28 County of Placer Planning Department

1 MEMORANDUM OF POINTS & AUTHORITIES

2 I

3 INTRODUCTION

4 Respondents COUNTY OF PLACER and COUNTY OF PLACER PLANNING
5 DEPARTMENT (together "the COUNTY") demur to Petitioner MEADOW VISTA
6 PROTECTION's Petition/Complaint filed herein ("Petition").
7 Specifically, the COUNTY demurs to Petitioner's first cause of
8 action, a mandamus claim. Only the Petition's first cause of action
9 runs against the COUNTY Respondents.

10 As discussed below, Petitioner is barred from bringing its first
11 cause of action because an action cannot lie against the COUNTY for
12 alleged discretionary failure to enforce the law. Further,
13 Petitioner is time barred from bringing this action and is barred by
14 its failure to exhaust administrative remedies. For these reasons,
15 the COUNTY's demurrer should be sustained without leave to amend.

16 The COUNTY also incorporates by reference the Memorandum of
17 Points & Authorities filed by Defendant Chevreux in support of its
18 demurrer, set to be heard with this demurrer.

19 II

20 STATEMENT OF FACTS

21 Petitioner seeks to ultimately have the Court order the COUNTY
22 to modify or revoke Defendant Chevreux Aggregates, Inc.'s
23 ("Chevreux") Conditional Use Permit ("CUP") LD-1030, originally
24 issued in 1965 to Chevreux's predecessor in interest for the purpose
25 of conducting a rock quarry. (Petition, p. 13:17-18.) Petitioner
26 attempts to lay blame on the COUNTY for "refusal to act" to
27 "investigate or to enforce Chevreux's compliance with the conditions
28 of LD-1030." (Petition, para. 40.) The COUNTY, however, has

1 discretion regarding enforcement actions. Exercise of that
2 discretion is not subject to a mandamus action.

3 Petitioner claims the COUNTY'S alleged failure to act is a
4 violation of Placer County Code 17.60.020.¹ (Petition, p. 8, para.
5 40.) Placer County Code Section 17.60.020 provides:

6 "The planning director shall have the responsibility and
7 authority to perform all the functions described by
8 California Government Code Section 65103 [which
9 enumerates functions of the planning agency to carry out
10 the general plan], and also to carry out any other
11 responsibilities as assigned by the agency director,
12 including but not limited to the administration and
13 enforcement of the provisions of this chapter, and the
14 review of projects pursuant to the California
15 Environmental Quality Act and Chapter 18 of this Code.
16 Except where otherwise provided by this chapter, the
17 responsibilities of the planning director may also be
18 carried out by planning department employees under the
19 supervision of the planning director."

20 Section 17.60.020 is a generic statement of authority given to
21 the planning director and planning department to carry out zoning
22 provisions of the Placer County Code. The planning director is not
23 named in this action.

24 Petitioner references another section of the County Code in the
25 prayer related to the first cause of action. Specifically,
26 Petitioner requests the court compel the COUNTY to "modify or revoke
27 [Chevreaux's] use permit in accordance with the provisions of Placer
28 County Code 17.62.170." (Petition, 13:17-18.) As set forth more
fully below, this Section provides the COUNTY with discretion to
determine (1) upon evaluation, whether to undertake modification
and/or revocation proceedings, and (2) upon a finding of grounds for
modification or revocation, how to implement any such conditions of
modification or revocation. Put simply, Petitioner seeks to have

28 ¹ Cited portions of the Placer County Code are attached to the
Request for Judicial Notice filed by the COUNTY herewith.

1 this Court compel the COUNTY'S exercise of discretion in proceeding
2 with modification or revocation of Chevreaux's CUP.

3 As a matter of law, an action cannot lie to compel the COUNTY'S
4 exercise of its enforcement discretion. Thus, the first cause of
5 action fails to state facts which constitute a cause of action (CCP
6 §430.10(e).) In addition, Petitioner's first cause of action is time
7 barred and is barred by failure to exhaust administrative remedies.
8 Finally, Petitioner has failed to plead the mandatory elements of
9 either a beneficial interest in the performance sought by the COUNTY
10 or a showing of irreparable harm by a failure of such performance.
11 For all of these reasons, the COUNTY's demurrer should be granted
12 without leave to amend.

13 III

14 ARGUMENT

15 A. Applicability of Demurrer to Writ Proceeding

16 A proceeding in mandamus is subject to the general rules of
17 pleading applicable to civil actions. (*Gong v. Fremont* (1967) 250
18 Cal.App.2d 568, 573; Code of Civil Procedure ("CCP") §1109.)

19 Further, CCP §1089 provides, in pertinent part, that "On the
20 date [set for return or reply to a writ] the party upon whom the writ
21 or notice has been served may make a return by demurrer, verified
22 answer or both."

23 B. Standard for Demurrer/Pleading Requirements

24 "When any ground for objection to a complaint, cross-
25 complaint, or answer appears on the face thereof, or from any manner
26 of which the court is required to or may take judicial notice, the
27 objection on that ground may be taken by a demurrer to the pleading."
28 (CCP §430.30(a).) "A demurrer to a complaint or cross-complaint may

1 be taken to the whole complaint or cross-complaint or to any of the
2 causes of action stated therein." (CCP §430.50(a).) Finally, a
3 demurrer may be made on a number of grounds, including that "the
4 pleading does not state facts sufficient to constitute a cause of
5 action." (CCP §430.10(e).)

6 "In reviewing the sufficiency of a complaint against a general
7 demurrer, we are guided by long-settled rules. We treat the demurrer
8 as a admitting all material facts properly pleaded, but not
9 contentions, deductions or conclusions of fact or law." (*Hood v.*
10 *Hacienda LaPuente Unified School District*, 65 Cal.App.4th 435, 438
11 (1998), emphasis added.) Because this action is based on statute,
12 "the general rule that statutory causes of action must be pleaded
13 with particularity is applicable. Thus, to state a cause of action
14 against a public entity [or public employee], every fact material to
15 the existence of its statutory liability must be pleaded with
16 particularity.'" (*Id.* at 439, emphasis added.)

17 Thus, while the Court must accept as true "all material facts
18 properly pleaded," the Court is not to accept as true "contentions,
19 deductions, or conclusions of fact or law." (*Id.* at 438.)
20 Furthermore, because this action is against a public entity and its
21 employees, every material fact "must be pleaded with particularity."
22 (*Id.* at 439.) In ruling on this motion, the Court must disregard
23 Plaintiff's conclusory allegations, and rely only on material facts
24 pled with particularity. (*Id.*)

25 **C. An Action Cannot Lie Against the COUNTY for Discretionary**
26 **Failure to Enforce the Law**

27 Petitioner seeks a writ of mandate to compel the COUNTY to
28 investigate and enforce two provisions of the Placer County Code
against Chevreaux. Specifically, Petitioner asks this Court to order

1 the COUNTY to enforce Placer County Code Section 17.60.020, a section
2 conferring general authority on the planning director to carry out
3 such zoning provisions, and Section 17.62.170, which sets forth the
4 process for permit revocation.

5 Petitioner alleges that "[i]n September, 2005, legal counsel for
6 MVP sent a letter to Deputy County Counsel Scott Finley outlining
7 MVP's concerns regarding Chevreaux's 1972 permit and requesting a
8 specific determination of whether the proposed asphalt plant was
9 still a permissible use." (Petition, p. 2, para. 7.) Petitioner
10 contends that "no action [was] taken on the letter." (Id.)
11 Petitioner fails to identify any authority which requires the COUNTY
12 to take specific actions upon the receipt of such a letter, and there
13 is none.

14 Petitioner also alleges that the "Meadow Vista Municipal
15 Advisory Council (MAC) sent a letter to the Board on April 12, 2005
16 formally requesting the Board to direct the Planning Department to
17 'initiate public hearings to determine the validity and scope of
18 Chevreaux's permit ...". (Petition, p. 7, para. 36.) Finally,
19 Petitioner alleges that it has "repeatedly requested that the
20 Planning Department evaluate Chevreaux's entitlements to the Asphalt
21 Plant and the Quarry and enforce the permit conditions and Placer
22 County Code provisions of which Chevreaux is in violation."
23 (Petition, p. 7, para. 37.)

24 In sum, the Petition alleges that the COUNTY has not enforced
25 or interpreted the subject CUP to the satisfaction of Petitioner.
26 Even if true, these facts do not constitute a cause of action for
27 mandamus. (CCP §430.10(e).)

28 It is well settled that mandamus is not available to compel the

1 exercise of discretion by a court, an administrative agency, or
2 officer thereof. Rather, "[a] writ of mandate may be issued by any
3 court to any inferior tribunal, corporation, board, or person, to
4 compel the performance of an act which the law specifically enjoins,
5 as a duty resulting from an office, trust, or station..." (CCP
6 §1085.) Mandamus will lie to compel action by a public body or
7 official only if there is a clear, present and ministerial obligation
8 to take the action. (*Sklar v. Franchise Tax Board* (1986) 185
9 Cal.App.3d 616, 622.)

10 "A ministerial decision involves only the use of fixed standards
11 or objective measurements, and the public official cannot use
12 personal, subjective judgment in deciding whether or how the project
13 should be carried out." (*Mt. Lion Found. v. Fish & Game Com*, 16 Cal.
14 4th 105, 117 (1997); see also, *Lazan v. County of Riverside*, 140
15 Cal.App.4th 453, 460 (2006).) While Petitioner has cited two Placer
16 County Code provisions under which the COUNTY has allegedly failed
17 to act, neither of these sections prescribe a clear and present
18 ministerial duty under which the COUNTY must perform. The cited
19 sections do not set forth fixed standards for determining violation
20 of the subject CUP. Thus, such a determination is discretionary, not
21 ministerial.

22 As noted above, Section 17.60.020 sets forth only a general
23 authority for the planning director (who is not named in this action)
24 to carry out the zoning provisions of the Placer County Code as
25 assigned to him by the agency director, including by delegating some
26 of those duties, as he sees fit, to others within the planning
27 department. Petitioner has failed to properly plead any facts which
28 indicate the COUNTY has failed to perform any mandatory or

1 ministerial duties.

2 Similarly Section 17.62.170 provides, in pertinent part:

3 "The code enforcement officer may initiate proceedings as
4 provided by this section to revoke the approval of any
5 land use permit issued pursuant to Articles 17.58 or 17.60
6 of this Chapter or Chapters 5, 8, 12, 15, 16, 17 or 18 of
7 this code, in any case where it is determined that the
8 permit was obtained through misrepresentation, or where a
9 use of land has been established or is conducted in a
manner that violates or fails to comply with the
provisions of this code or a condition of approval, or
where the use of land is undertaken in violation of any
local, state or federal law which affects the health,
safety, peace, morals or general welfare of the public."
(Emphasis added.)²

10 By its very terms, the duty which Petitioner seeks to compel
11 this Court to enforce upon the COUNTY under Code Section 17.62.170
12 is discretionary: prior to *choosing* to initiate modification or
13 revocation proceedings, the COUNTY must first determine if the permit
14 was obtained through misrepresentation, or, in the alternative, if
15 the permittee's use of the land is in violation of the various
16 provisions of the Placer County Code. Thus, there are two levels of
17 discretion: (1) the discretionary determination of a violation; and
18 (2) the discretionary decision to initiate enforcement proceedings.

19 Thus, while Petitioner seeks a court order compelling the COUNTY
20 to modify or revoke Chevreux's Conditional Use Permit, "mandamus
21 cannot be applied to control discretion as to a matter lawfully
22 entrusted to a governmental agency." (*Painting & Drywall Work*
23 *Preservation Fund, Inc. v. Aubry* (1988) 206 Cal.App.3d 682, 687; see
24 also, *State of California v. Superior Court* (1974) 12 Cal.3d 237,

25
26 2

27 Section 17.62.170 enumerates the necessary steps to revoking a land permit,
28 including notifying a permittee of the pending revocation hearing (Placer
County Code Section 17.62.170(A), holding said revocation hearing (Placer
County Code Section 17.62.170(B) and considering actions to take upon a
finding of grounds for revocation (Placer County Code Section 17.62.170(C).

1 247.)

2 Furthermore, Chevreaux has property rights related to its long
3 established use of its quarry operation. (See, e.g., *Hansen*
4 *Brothers Enterprises, Inc. v. Board of Supervisors of Nevada County,*
5 12 Cal.App.4th 533 (1996).) Those property rights cannot be
6 disturbed without providing adequate due process to Chevreaux. (*Id.*;
7 Placer Code section 17.62.170.)

8 For these reasons, Petitioner's first cause of action cannot lie
9 against the COUNTY and the COUNTY's demurrer should be granted
10 without leave to amend.

11 **D. The Action is Time Barred**

12 To the extent the Petition reflects Petitioner's complaints
13 about the CUP itself, Petitioner's window of opportunity to appeal
14 the issuance of CUP LD-1030 has long since passed. Under both the
15 Placer County Code and the Government Code, Petitioner's time for
16 filing an appeal of CUP LD-1030, or a challenge thereto, expired
17 years ago. Petitioner makes no attempt to plead conformance with
18 either of these Code sections because it knows full well that in so
19 doing it will plead itself out of this case.

20 Placer County Code Section 17.60.110 sets forth the appeal
21 process and requisite time lines for filing an appeal of a CUP. It
22 states, "[a]n appeal must be filed within ten days of the decision
23 which is the subject of the appeal." (Placer County Code
24 §17.60.110.C.1.)

25 Government Code Section 65009(c) sets forth the time limitation
26 for filing an action challenging a local government decision. It
27 provides, "...no action or proceeding shall be maintained...by any
28 person unless the action or proceeding is commenced and service is

1 made on the legislative body within 90 days of the legislative body's
2 decision." (Govt Code §65009(c)(1)(E).)

3 Petitioner acknowledges that the CUP was issued in 1965 and was
4 transferred to Defendant Chevreux, with all "rights and obligations"
5 thereunder, "sometime between 1965 and 1971." (Petition, p. 4, para.
6 18 and p. 5, para. 20.)

7 Thus, no action can be brought at this late date to challenge
8 a CUP which was issued in 1965. The Court must not permit this
9 action to proceed as a time barred, "back-door" attempt to challenge
10 a 1965 CUP.

11 **E. The Action is Barred by Petitioner's Failure to Exhaust**
12 **Administrative Remedies.**

13 Petitioner has failed to exhaust the administrative remedies
14 which are required to be initiated and completed as a prerequisite
15 to filing this Complaint.

16 "[T]he rule is that where an administrative remedy is provided
17 by statute, relief must be sought from the administrative body and
18 this remedy exhausted before the courts will act." (*Abelleira v.*
19 *District Court of Appeal* (1941) 17 Cal.2d 280, 292.) The rule itself
20 is settled with scarcely any conflict. It is not a matter of
21 judicial discretion, but is a fundamental rule of procedure laid down
22 by courts of last resort, followed under the doctrine of *stare*
23 *decisis*, and binding upon all courts. (*Id.* at p. 293.) In other
24 words, Petitioner's failure to exhaust administrative remedies
25 enumerated in the Placer County Code renders the first cause of
26 action moot.

27 Placer County Code Section 17.60.110 provides the appeal process
28 for appealing the issuance of a CUP. It states, "[a]n appeal may be
filed by any person affected by a planning department administrative

1 action or interpretation as described in subsection (A) (1)." (Placer
2 County Code Section 17.60.110(B) (1).) Thus, if Petitioner believes
3 it is, in fact, adversely affected by the issuance of CUP LD-1030,
4 this Code section provides the proper vehicle for Petitioner to voice
5 its concerns in an administrative arena. Petitioner did not appeal
6 the issuance of the CUP and cannot take its claims directly to the
7 Court now.

8 **F. The Action is Barred by Petitioner's Failure to Plead a**
9 **Beneficial Interest in the COUNTY's Acts or Omissions**

10 In addition to its untimeliness, procedural defects, and failure
11 to state a cause of action against the COUNTY, the Petitioner's
12 Petition fails because it is devoid of the basic elements of a proper
13 petition for writ of mandate.

14 A "writ [of mandate] must be issued, in all cases where there
15 is not a plain, speedy, and adequate remedy, in the ordinary course
16 of law. It must be issued upon the verified petition of the party
17 beneficially interested." (CCP §1086.)

18 Standing to seek a writ of mandate ordinarily requires that a
19 party be "beneficially interested"..., i.e., have "some special
20 interest to be served or some particular right to be preserved or
21 protected over and above the interest held in common with the public
22 at large." (*People ex rel. Department of Conservation v. El Dorado*
23 *County* (2005) 36 Cal.4th 971, 986 (citing *Carston v. Psychology*
24 *Examining Com.* (1980) 27 Cal.3d 793, 796).) The general rule [is]
25 that the party who asks relief from a court must be one who is in
26 some way aggrieved by the act complained of... . It has been
27 uniformly held that in order to invoke the aid of a writ of mandate
28 the party complaining must show some character of actual or potential
interference with his rights of person or property. (*Silva v. City*

1 || of Cypress (1962) 204 Cal.App.2d 374, 377.)

2 Petitioner has failed to plead any "beneficial interest"
3 whatsoever, either directly or indirectly, in its petition for writ
4 of mandate against the County. Petitioner also concedes it
5 represents a class of persons not directly affected by the COUNTY's
6 actions. It describes itself as a "local grass roots organization
7 comprised of residents of the unincorporated Placer County community
8 of Meadow Vista, California, and the surrounding area, as well as
9 nonresident supporters." (Petition, p. 2, para. 3 (Emphasis added).)
10 As stated in *Parker v. Bowron* (1953) 40 Cal.2d 344, 351, a writ "will
11 not lie 'where it is apparent that the relator has no direct interest
12 in the action sought to be coerced, and that no benefit can accrue
13 to him from its performance.'" (*Id.*, citing *Ellis v. Workman* (1904)
14 144 Cal. 113, 115.)

15 Petitioner's failure to allege an inadequate remedy at law, or
16 an interest over and above that held by the general public, is fatal
17 to its mandamus action.

IV

CONCLUSION

20 Petitioner comes to the Court some 40 years after the issuance
21 of the subject CUP was approved and issued.. Petitioner asks the
22 Court to substitute its discretion and judgment for the COUNTY
23 Respondents. Specifically, Petition wants the Court to impose
24 Petitioner's interpretation of the CUP and its enforcement
25 requirements.

27 This belated and flawed effort by Petitioner must be rejected.
28 The COUNTY'S demurrer should be sustained without leave to amend.

1 DATED:

LAW OFFICES OF RICHARD L. CRABTREE

2
3 23-06

4 
5 Richard L. Crabtree,
6 Attorney for County of Placer and
7 County of Placer Planning Department
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June M. McLaughlin

EXHIBIT 4

1 Richard L. Crabtree (SBN#148759)
2 Law Offices of Richard L. Crabtree
3 1395 Ridgewood Drive #300
4 Chico, CA 95973
5 (530) 566-1111
6 Fax: (530) 566-9203
7 Attorney for County of Placer and
8 County of Placer Planning Department
9
10

EXEMPT FROM FILING FEES
PURSUANT TO GOVERNMENT
CODE SECTION 6103

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF PLACER

11 MEADOW VISTA PROTECTION,

Case No. SCV 19614

12 Petitioner/Plaintiff,

EX PARTE APPLICATION FOR
DISMISSAL AND FOR ENTRY OF
JUDGMENT; DECLARATION OF
RICHARD L. CRABTREE IN SUPPORT
THEREOF (CRC 325(f))

13 vs.

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

DATE: 11/9/06
TIME: 7:45 a.m.
DEPT: TBA

17 Respondents/Defendants.
18 _____/

18 Respondents/Defendants COUNTY OF PLACER and the COUNTY OF PLACER
19 PLANNING DEPARTMENT ("COUNTY DEFENDANTS"), on or about August 24,
20 2006, filed a general demurrer to the Petition/Complaint. Only the
21 first cause of action, seeking a writ of mandate, named the COUNTY
22 DEFENDANTS.

23 In an order filed herein on October 16, 2006, the Court
24 sustained the demurrer as to the COUNTY DEFENDANTS with leave to
25 amend. (See, Court Order dated October 16, 2006, 2:6-16.) The Court
26 further ordered that "any amended petition shall be served and filed
27 by October 26, 2006." (Id. at p. 15-16.)

28 Petitioner/Plaintiff MEADOW VISTA PROTECTION ("MVP") did not

Ex Parte Application for Dismissal and for Entry of Judgment

1 timely file an Amended Petition/Complaint. In addition, counsel for
2 Petitioner/Plaintiff has contacted the COUNTY's counsel and has
3 indicated that Petitioner does not intend to file an Amended
4 Petition/Complaint. (Decl. of Richard L. Crabtree, para. 4.)

5 Pursuant to the California Rules of Court, "a motion to dismiss
6 the entire action and for entry of judgment after expiration of the
7 time to amend following the sustaining of a demurrer may be made by
8 ex parte application to the court under section 581(f)(2) of the Code
9 of Civil Procedure." (Cal. Rules of Ct. ("CRC"), Rule 325(f).)

10 The Code of Civil Procedure ("CCP") provides that "the court may
11 dismiss the complaint as to that defendant when [] after a demurrer
12 to the complaint is sustained with leave to amend, the plaintiff
13 fails to amend it within the time allowed by the court and either
14 party moves for dismissal." (CCP §581(f)(2).) "No formal notice or
15 hearing is required where plaintiff fails to amend within the time
16 allowed. Defense counsel can move ex parte for dismissal." (Weil
17 & Brown, CAL. PRAC. GUIDE: CIV. PRO. BEFORE TRIAL (The Rutter Group
18 2006), Sec. 11:277.3, pg. 11-85; CRC, Rule 325(f).)

19 Here, Petitioners/Plaintiffs have chosen not to amend their
20 Petition/Complaint after the sustaining of the COUNTY DEFENDANTS'
21 demurrer with leave to amend. "Plaintiff's refusal to amend is
22 deemed an admission that they have stated the case as strongly as
23 they can and there are no more facts that could be alleged to cure
24 the defect." (Weil & Brown, supra, § 7:149, p. 7-55 - 7-56 Reynolds
25 v. Bement, 36 Cal.4th 1075, 1091 (2005).) Accordingly, the COUNTY
26 DEFENDANTS request that the Court enter an order dismissing the
27 action with prejudice, as well as a judgment in favor of the COUNTY
28 DEFENDANTS.

Ex Parte Application for Dismissal and for Entry of Judgment

1 A proposed form of order dismissing the action as to the COUNTY
2 DEFENDANTS with prejudice is submitted herewith, as well as a
3 proposed judgment in favor of the COUNTY DEFENDANTS.

4 Respectfully submitted,

5 DATED: 11-7-06

LAW OFFICES OF RICHARD L. CRABTREE

6
7 Richard L. Crabtree
8 Attorney for County of Placer and
County of Placer Planning Department

9
10 DECLARATION OF RICHARD L. CRABTREE

11 I, Richard L. Crabtree, declare:

12 1. I am attorney of record for Respondents/Defendants COUNTY
13 OF PLACER and COUNTY OF PLACER PLANNING DEPARTMENT ("COUNTY
14 DEFENDANTS") in the above entitled matter. The facts stated in this
15 Declaration are based upon my own personal knowledge. If called as
16 a witness I could and would competently testify thereto.

17 2. On or about August 24, 2006, COUNTY DEFENDANTS filed a
18 general demurrer in this action. Only the first cause of action in
19 the Petition/Complaint named the COUNTY DEFENDANTS.

20 3. In an order filed herein on or about August 16, 2006, the
21 Court sustained the COUNTY DEFENDANTS' demurrer with leave to amend.
22 The Court ordered that "any amended petition shall be served and
23 filed by October 26, 2006." (Order, 10/16/06, 2:15-16.)

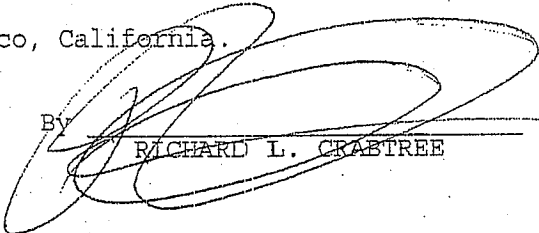
24 4. The October 26, 2006 deadline for filing an amended
25 petition/complaint passed without any such amended petition/complaint
26 being served or filed. On October 31, 2006, I received a telephone
27 message from attorney Timothy Kassouni, representing
28 Petitioners/Plaintiffs, indicating that Petitioners/Plaintiffs had

Ex Parte Application for Dismissal and for Entry of Judgment

1 decided not to file an amended petition/complaint following the
2 Court's order on the demurrers filed by the COUNTY DEFENDANTS and by
3 Defendant CHEVREAUX AGGREGATES, INC.

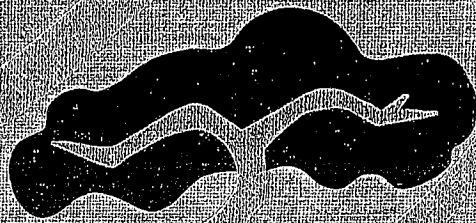
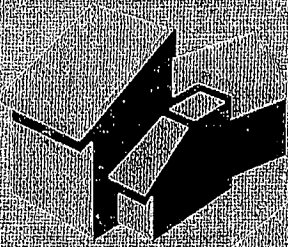
4 5. On November 6, 2006 at approximately 3:20 p.m. I telephoned
5 attorney Timothy Kassouni, one of the attorneys of record for
6 Plaintiff/Petitioner Meadow Vista Protection, and informed him of
7 this planned ex parte application as well as the date, time and
8 department. On November 6, 2006 at approximately 3:25 p.m. I
9 telephoned attorney Brigit Barnes, the attorney of record for
10 defendant ChevreauX, and informed her of this planned ex parte
11 application as well as the date, time and department. On November
12 7, 2006 I faxed the moving papers to Mr. Kassouni and to counsel for
13 defendant ChevreauX, Ms. Bridget Barnes.

14 I declare under penalty of perjury under the laws of the State
15 of California that the foregoing is true and correct. Executed this
16 7th day of November, 2006, in Chico, California.

17
18 By 
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RICHARD L. CRABTREE

EXHIBIT 5



Longtin's
california
land use

2nd edition

the fee and that the expenses involved were reasonably related to the regulatory goal involved and covered a procedure of inspection, inventory, administration and enforcement. *United Business Com. v. City of San Diego* (1979) 91 CA3d 156, 166, 154 CR 263.

The following fees for the following processing activities are specifically authorized by statute:

Fee Authorized	Authority
Preparation of specific plan with cost to be prorated in accord with applicant's benefit.	<i>GovC 65456.</i>
Processing of use permits, zone variances, or zone changes.	<i>GovC 65909.5.</i>
Processing of tentative, final and parcel maps and other procedures pursuant to Subdivision Map Act.	<i>GovC 66451.2 (general), 66452.3 (staff report) and 66452.5(e) (appeals).</i>
Preparation of EIR's or negative declarations pursuant to CEQA.	<i>Pub Res Code 21089 and 14 Cal. Admin. Code 15045(a).</i>
Applications for development permits.	<i>GovC 65941.5.</i>
Cost for transcript record of zoning hearing.	<i>GovC 65804(b).</i>

PART B – TYPES OF LAND USE ACTION. LEGISLATIVE, ADJUDICATIVE AND MINISTERIAL

11.10 IMPORTANCE OF DISTINGUISHING BETWEEN TYPES OF ACTION

There are three major types or categories of action taken by local government agencies in land use matters, to wit: legislative, adjudicative and ministerial. Legislative actions are enactments by a legislative body which establish laws, standards and policies which will in turn govern and control each individual development permit process. Primary examples of legislative actions include general and specific plans, zoning ordinance

amendments, and rezonings. Adjudicative actions, which are sometimes call quasi-judicial or administrative actions, are those discretionary permit activities whereby individual development projects are considered for approval and imposition of conditions, all in accordance with the legislatively approved laws, standards, policies and plans. Primary examples of adjudicative actions include zoning permit approvals and subdivision tentative map approvals. Ministerial actions are those mandatory, non-discretionary activities which must be approved if certain standards and conditions have been met. Examples of ministerial actions include approval of final subdivision maps and issuance of building and occupancy permits. In addition to the three above mentioned types of actions, local agencies also become involved in environmental protection review and action under the California Environmental Quality Act (CEQA). CEQA action cannot normally be classified as legislative, adjudicative, or ministerial. The nature of CEQA action, for purposes of judicial review, will normally follow the classification of the underlying action (project) to which CEQA applies.

It can become quite important to distinguish between the various types of action and properly categorize the action as being either legislative, adjudicatory, or ministerial for the following reasons.

Procedural due process requirements are applicable to adjudicative actions but not legislative, nor ministerial, actions. *Horn v. County of Ventura* (1979) 24 C3d 605, 612-616, 156 CR 718. Although statutory notice and hearing requirements apply to general law cities and counties for enactment and amendment of general and specific plans and zoning ordinances, the notice and hearing requirements of constitutional procedural due process can be more rigorous. See §11.30 et seq.

Findings are required of all local agencies when acting in an adjudicative capacity. *Topanga Assn. For A Scenic Community v. County of Los Angeles* (1974) 11 C3d 506, 514, 113 CR 836. This judicially imposed findings requirement is not applicable to legislative and ministerial actions. However, certain state statutes require findings in certain legislative actions. See §11.51[4]

Initiative and referendum apply to legislative acts and not to adjudicative or ministerial actions. *Yost v. Thomas* (1984) 36 C3d 561, 205 CR 801. For a discussion of the initiative and referendum process, see §11.70 et seq.

Judicial standard of review will vary depending upon the types of action. Adjudicative actions are reviewable under CCP 1094.5 (administrative mandate). Legislative and ministerial acts are reviewable under CCP 1085 (traditional mandate), although the role of the court is different in reviewing legislative as opposed to ministerial acts. See *Arnel Dev. Co. v. City of Costa Mesa* (1980) 28 C3d 511, 518, 169 CR 904. For a discussion of the judicial standards of review, and the court's role therein, see §12.01 et seq.

Public Agency Liability exists for nonperformance of a mandatory duty (GovC 815.6), but not for a discretionary duty. *Ibarra v. California Coastal Com.* (1986) 182 CA3d 687, 227 CR 371.

11.11 LEGISLATIVE ACTIONS

A legislative act is the formulation of a rule which is to be applied to all future cases, while an adjudicatory act involves the actual application of such a rule to a specific set of existing facts. *Pacifica Corp. v. City of Camarillo* (1983) 149 CA3d 168, 196 CR 670. The adoption or amendment of a general plan or any part or element thereof is a legislative act which is reviewable pursuant to CCP 1085. GovC 65301.5. Likewise, the adoption and amendment of a specific plan is also a legislative act. *Yost v. Thomas* (1984) 36 C3d 561, 205 CR 801. Rezoning is also a legislative act reviewable by traditional mandamus (CCP 1085) even though the rezoning is of a relatively small parcel of land in a single ownership. *Arnel Dev. Co. v. City of Costa Mesa* (1980) 28 C3d 511, 522, 169 CR 904. Legislative action is not governed by the procedural due process requirements requiring reasonable notice and opportunity to be heard before governmental deprivation of a significant property interest. *Horn v. County of Ventura* (1979) 24 C3d 605, 612, 156 CR 718. Nor are findings required on decisions on legislative acts, such as adoption of zoning ordinance amendments. *Orinda Homeowners Committee v. Board of Supervisors* (1970) 11 CA3d 768, 774, 90 CR 88. However, statutory provisions require a limited form of notice

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

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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF PLACER

MEADOW VISTA PROTECTION,

Petitioner and Plaintiff,

v.

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

Respondents and Defendants.

Case No: SCV 19614

Complaint Filed: 7/12/06

DECLARATION OF JEFFREY EVANS
IN SUPPORT OF PLAINTIFF MEADOW
VISTA PROTECTION'S
SUPPLEMENTAL BRIEF IN SUPPORT
OF MOTION FOR SUMMARY
ADJUDICATION REGARDING LEGAL
EFFECT OF PLANNING DIRECTOR'S
DETERMINATION

Date: 5/22/07

Time: 8:30 a.m.

Dept.: 4

Judge: The Hon. Charles D. Wachob

I, Jeffrey Evans, hereby declare as follows:

1. I am the Chairman of the plaintiff nonprofit corporation, Meadow Vista Protection (MVP). I have served in my position as Chairman since March, 2006.
2. I review all mail delivered to MVP's Post Office Box in Meadow Vista, California and all electronic mail delivered to MVP's electronic mail address.

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I declare under penalty of perjury under the laws of the State of California that the facts stated in this declaration are within my own personal knowledge and are true and correct, and if called upon to do so, I could competently testify to all matters stated herein. This declaration was executed this 25th day of May, 2007, at Sacramento, California.

-2-

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

10
11 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
12 COUNTY OF PLACER

13 MEADOW VISTA PROTECTION,

14 Petitioner and Plaintiff,

15 v.

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

20 Respondents and Defendants.

Case No: SCV 19614

Complaint Filed: 7/12/06

DECLARATION OF ANGELA C.
THOMPSON IN SUPPORT OF
PLAINTIFF MEADOW VISTA
PROTECTION'S SUPPLEMENTAL
BRIEF IN SUPPORT OF MOTION FOR
SUMMARY ADJUDICATION
REGARDING LEGAL EFFECT OF
PLANNING DIRECTOR'S
DETERMINATION

Date: 5/22/07

Time: 8:30 a.m.

Dept.: 4

Judge: The Hon. Charles D. Wachob

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23
24 I, Angela C. Thompson, hereby declare as follows:

25 1. I am one of the attorneys for plaintiff Meadow Vista Protection (MVP) in the above-
26 entitled matter. I make this declaration in support of Plaintiff Meadow Vista Protection's
27 Supplemental Brief in Support of Motion for Summary Adjudication Regarding Legal Effect of
28 Planning Director's Determination.

2. I receive and review copies of all incoming mail delivered to The Zumbrun Law Firm and all electronic mail delivered to The Zumbrun Law Firm's electronic mail address pertaining to this case.

3. The Zumbrun Law Firm never received a copy or any other notice of Brigit Barnes' letter to Michael Johnson, Placer County Planning Director, dated February 28, 2007, nor was The Zumbrun Law Firm ever verbally informed that the Planning Director was responding to the issue raised in the letter at any time prior to May 18, 2007.

I declare under penalty of perjury under the laws of the State of California that the facts stated in this declaration are within my own personal knowledge and are true and correct and, if called upon to do so, I could competently testify to all matters stated herein. This declaration was executed this 29th day of May, 2007, at Sacramento, California.


ANGELA C. THOMPSON

1 RONALD A. ZUMBRUN, SBN 32684
2 TIMOTHY V. KASSOUNI, SBN 142907
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9 Attorneys for Petitioner and Plaintiff

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF PLACER

MEADOW VISTA PROTECTION,

Petitioner and Plaintiff,

v.

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

Respondents and Defendants.

Case No.: SCV 19614

Complaint filed: 7/12/06

DECLARATION OF SERVICE
BY OVERNIGHT DELIVERY

1 I, Concha Leon, declare:

2 I am a citizen of the United States, and am employed in the County of Sacramento, State
3 of California; that I am over the age of 18 years and not a party to the within-entitled action; that
4 my business address is The Zumbrun Law Firm, 3800 Watt Avenue, Suite 101, Sacramento,
5 California.

6 On May 29, 2007, a true copy of (1) Plaintiff Meadow Vista Protection's Supplemental
7 Brief in Support of Motion for Summary Adjudication Regarding Legal Effect of Planning
8 Director's Determination, (2) Declaration of Jeffrey Evans in Support of Plaintiff Meadow Vista
9 Protection's Supplemental Brief in Support of Motion for Summary Adjudication Regarding
10 Legal Effect of Planning Director's Determination, and (3) Declaration Of Angela C. Thompson
11 In Support Of Plaintiff Meadow Vista Protection's Supplemental Brief in Support of Motion for
12 Summary Adjudication Regarding Legal Effect of Planning Director's Determination was placed
13 in an envelope, for overnight delivery, addressed as follows:

14 Ms. Brigit S. Barnes
15 Brigit S. Barnes & Associates, Inc.
16 3262 Penryn Road, Suite 200
Loomis, CA 95650 ,

Attorney for defendant Chevreaux
Aggregates, Inc.

17 Said envelope was then sealed and deposited for overnight delivery in Sacramento, California.

18 I declare under penalty of perjury, under the laws of the State of California, that the
19 foregoing is true and correct and that this declaration was executed on this 29th day of May, 2007,
20 at Sacramento, California.

21
22 

23 CONCHA LEON
24
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28