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

Attorneys for CHEVREAUX AGGREGATES, INC.

SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF PLACER

MEADOW VISTA PROTECTION, Petitioners and Plaintiffs, v. CHEVREAUX AGGREGATES, INC.; COUNTY OF PLACER; COUNTY OF PLACER PLANNING DEPARTMENT; and DOES 1- 50, inclusive, Respondents and Defendants.	Case No. SCV 19614 **SUPPLEMENTAL BRIEF IN SUPPORT OF CHEVREAUX'S DEMURRER TO 2ND AND 3RD CAUSES OF ACTION FOR DECLARATORY RELIEF** DATE: October 10, 2006 [Oral Argument] TIME: 8:30 a.m. DEPT: 3 Date Action Filed: 7/12/06

INTRODUCTION

This supplemental brief is submitted with the permission of Judge Wachob to supplement issues raised in oral argument October 10, 2006. Defendant CHEVREAUX argued that the Court's tentative ruling as to CHEVREAUX on the 2nd and 3rd Causes of Action for Declaratory Relief improperly placed CHEVREAUX in the position of defending a facial attack on its permits [LD-1030 and LDA-786]issued in 1965 and 1972 respectively, not merely that CHEVREAUX violates the scope of the permits. Since MVP's complaint attacks the validity of the permits, not just current operations of the permits, these causes of actions should be barred by the statute of limitations. A review of the relevant permits is not possible without the participation of PLACER COUNTY ["COUNTY"], the agency which issued the permits,

because absent COUNTY, the trier of fact could act to modify the permits without the ability to require COUNTY to adopt said permit modifications, or enforce the permits as interpreted by the Court. CHEVREAUX presented the Pinnacle case[1] in support of its argument that where the defending party cannot grant the relief sought, that party's demurrer or motion to strike should be granted. CHEVREAUX's arguments sound in indispensable party analysis and separation of powers analysis, because a possible result would be that the Court may fashion relief which could not be enforced against COUNTY. The Court granted CHEVREAUX the opportunity to further brief these issues, and MVP the opportunity to submit any response it deemed necessary.

Chevreaux's demurrers attack the pleadings as drafted by MVP, not the actuality. The 2nd Cause of Action for Declaratory Relief [against the Quarry] incorporates by reference ¶¶ 1 through 41 and 46-63. Paragraph 1 states that the action is brought against Respondents and Defendants COUNTY to compel COUNTY to engage in a thorough factual and legal inquiry as to the validity and scope of entitlements held by Defendant CHEVREAUX, and to enforce the relevant permit conditions and county ordinances regarding the same. This same language is incorporated into the 3rd Cause of Action [against the Asphalt Plant]. Thus, MVP's complaint does not seek to attack only CHEVREAUX's ongoing operations under these historic permits, but to challenge the validity of the entitlements themselves. [VC, 1:21-25]. Thus, CHEVREAUX will first present its arguments regarding failure of necessary/indispensable parties, impermissible delegation, and statute of limitations as it applies to MVP's challenge to the validity of the permits stated in Para. 1; and next, failure of necessary/indispensable parties and impermissible delegation as it applies to MVP's challenges to the ongoing operations and whether these operations violate the permits. Pinnacle stands for the proposition, in the context of a declaratory relief cause of action, that parties without the ability to provide the relief demanded should not be compelled to defend themselves. Pinnacle, at p.1437. As the Court has determined that COUNTY is the entity with absolute discretion over the extent and nature of the permits, although CHEVREAUX has a clear property right and interest in these permits, only

[1] Pinnacle Holdings, Inc. v. Simon (1995) 31 Cal. App. 4th 1430.

COUNTY can determine the nature and scope of the permits, and only COUNTY can modify the permits.

1. MVP'S ATTACK ON THE VALIDITY OF THE PERMITS

MVP is clearly attacking the validity of the use permits when it states, "compel the County to engage in a thorough factual and legal inquiry as to the validity and scope of entitlements" (VC, 1:23-24), "[t]his conditional use permit was either never implemented or has lapsed" (VC, 2:19-20), "requesting a specific determination of whether the proposed asphalt plant was still a permissible use" (VC, 2:26), "a declaratory judgment that the conditional use permit issued in 1972 is no longer valid" (VC, 3:7-8), "a conditional use permit . . . expires and becomes void" (VC, 6:10-11), "causes the permit to lapse . . . use may not resume until a new CUP is obtained" (VC, 6:14-16), "the questionable validity of LDA-786" (VC 7:5), "Chevreaux does not have, and has not applied for, a CUP to move the Asphalt Plant" (VC 7:18-19), "'initiate public hearings to determine the validity and scope of Chevreaux's permit'" (VC, 7:21-22), "permit LDA-786 has lapsed" (VC, 9:20), and "requiring Chevreaux to apply for a new CUP" (VC, 9:22). Furthermore, MVP's Prayer states, "modify or revoke said use permit" (VC, 13:17) and, finally, "for declaratory judgment that: a. LDA-786 was never implemented . . . and is therefore void, or, in the alternative; b. LDA-786 has lapsed . . .; c. Chevreaux does not have any right under LDA-786 to operate . . .; and d. unless a new CUP application is filed and an new hearing held" (VC, 14: 6-15).

MVP is not merely questioning the ongoing operation of CHEVREAUX and whether there are violations and enforcement issues regarding its valid use permits. MVP is seeking the Court's determination on the actual validity of the use permits issued by COUNTY. In actions seeking judicial review of agency action, the agency MUST be named as a defendant, and the developer of a project or recipient of a permit named as the real property in interest. *1-11 California Environmental Law & Land Use Practice* 2004, Matthew Bender & Company, Inc., § *11.11* [see attached **Exhibit A**].

Because of their equitable nature, an action for declaratory relief under Code Civ. Proc. §1060 is within the superior court's jurisdiction, but is not appropriate to review an

administrative order. *See, e.g.,* State v. Superior Court of Orange County (1974) 12 Cal.3d 237, 251, 115 Cal.Rptr. 497, 524 P.2d 1281 (action for declaratory relief was not proper for purpose of challenging application of Act to complainants, who were denied permit and were in essence seeking review of validity of that administrative action. In State, the court determined that "insofar as the fourth cause of action seeks to challenge the application of the Act to Veta, the Commission is correct that Veta is essentially seeking to review the validity of an administrative action and, as discussed above, such review is properly brought under the provisions of section 1094.5 of the Code of Civil Procedure rather than by means of declaratory relief.; PMI Mortgage Ins. Co. v. City of Pacific Grove (1981) 128 Cal.App.3d 724, 732, 179 Cal.Rptr. 185 (court held that landowner's sole remedy for review of denial of zoning variance was administrative mandamus and that landowner therefore had no right to declaratory relief).

The procedure must be brought against COUNTY to test the application of its ordinances to the permit. This is necessarily so because a city or county issues its permit after examining the application and then deciding whether the applicant's request comports with the zoning ordinance. An unbroken line of cases support the proposition that actions which challenge subdivision approvals, variances, and conditional use permits are "adjudicatory" in nature. Conditional use permits involve the application of general standards to specific parcels of real property. Such governmental conduct, affecting the relatively few, is "determined by facts peculiar to the individual case" and is "adjudicatory" in nature. Horn v. County of Ventura (1979) 24 Cal.3d 605, 614. California's Supreme Court has held that such decisions are only reviewable under administrative mandamus, not declaratory relief, and certainly not against the permittee without the permitor present. Arnel Development Co. v. City of Costa Mesa (1980) 28 Cal.3d 511, 519, 169 Cal.Rptr. 904, 620 P.2d 565. If such a challenge by MVP must be reviewed by administrative mandamus, CCP §1094.5, then it must bring a writ of mandate against COUNTY. This Court has already decided that such a writ cannot be brought because of the nature of the preliminary proceedings, and the absolute discretionary authority of COUNTY.

A. How Can The Trier Of Fact Modify The Permits Or Abrogate The Permits Without The County Who Issued The Permits Being Subject To Its Jurisdiction?

In the case of both causes of action for declaratory relief, the issue of mandatory inclusion of COUNTY presents itself. Simply stated, where the plaintiff seeks some type of affirmative relief, which, if granted, would injure or affect the interests of a third person not joined, that third person is an indispensable party.[2] Code of Civil Procedure §389 is discussed at length in Bank of California v. Superior Court (1940) 16 Cal.2d 516, and serves as the basis for the court of appeals determination in Thomson v. Talbert Drainage District (1959) 168 Cal.App.2d 687, 689-690 that where the effect of a trial courts' judgment can be the constriction or termination of the rights of all parties to a permit, then all those parties are indispensable. See for the same position, Irwin v. Manhattan Beach (1964) 227 Cal.App.2d 634, 636-637. All "party" cases involving use permits involve the failure of plaintiffs to name the permittee, instead of the agency as permitor, which is the case at bar. Yet the logic stated in the cases is clear. As stated in Thomson at 690, where the effect of the judgment will be void for failure of the jurisdiction of the court over a party to the permit, all parties to the permit must be defendants in the case. It appears that the most applicable case in this regard is Beresford Neighborhood Association v. City of San Mateo (1989) 207 Cal.App.3d 1180, which sustained respondent city's demurrer without leave to amend because the neighborhood association plaintiff had failed to join indispensable parties and failed to comply with the applicable statute of limitations. In the relevant discussion of the case, a developer was mandated to be joined under CCP §389(a) because his absence could impair his ability to protect his interest in the action, and his right to collaterally attack an adverse judgment exposed the other defendants to inconsistent resolutions. Beresford, at 1188, discussing Sierra Club v. California Coastal Commission (1979) 95 Cal.App.3d 485. This is exactly the problem in this case.

"A judgment cannot be rendered against one who is not a party to an action (See, e.g. Samter v. Klopstock Realty Co. (1939) 31 Cal.App.2d 532, 536; Overell v. Overell (1937) 18 Cal.App.2d 499, 502; 4 Witkin, Cal. Procedure (2d ed. 1971) § 125, pp. 3198-3199.)" Environmental Coalition of Orange County, Inc. v. Local Agency Formation Commission of

[2] See Memorandum of Points and Authorities in Support of Chevreaux Aggregates, Inc.'s General Demurrer and Special Demurrer; II.A.B. Non-joinder of Parties—Failure to Join COUNTY as an Indispensable Party to Both Causes of Action [2d & 3d].

Orange County [LAFCO] (1980) 110 Cal.App.3d 164, 173. In Environmental Coalition, plaintiffs (three nonprofit environmental and homeowner organizations) sought a writ of mandate to require defendant LAFCO to annul its certification of an environmental impact report (EIR) and prepare a more comprehensive EIR on a proposal for annexation of property to the City of Anaheim. The petition named LAFCO as the only defendant. Plaintiff failed to designate the City of Anaheim as a defendant or enjoin the City (p. 172-173). The City of Anaheim proceeded with the annexation. Since the City of Anaheim was not made a party to the action, "calling the city to task in this action for its alleged failure to adhere to . . . conditional approvals of projects would be a denial of due process. (See, e.g., Lambert v. California (1957) 355 U.S. 225; Twining v. New Jersey (1908); 5 Witkin, Summary of Cal. Law (8th ed. 1974) §291, pp. 3581-3582.)" (p. 173.) "Jurisdiction over the parties is necessary for the validity of any judgment in personam." (p. 173.) Therefore, judgment could not be rendered in an action against a nonparty, and the appeal of the denial of the petition for a writ of mandate was thus moot.

A conditional use permit is between the permittor and the permittee. The applicant for the permit applies to the County for the permit. The County issues the permit. The permittee complies with the permit. The County enforces the permit, and when appropriate, the County modifies or revokes the permit. (Placer County Chapter 17: Planning and Zoning.)

Furthermore, MVP has admitted/acknowledged COUNTY's essential role in CHEVREAUX's permits in the VC, first, where it states that it brings the action against "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 Chevreaux Aggregates, Inc. (Chevreaux) and to enforce the relevant permit conditions and County ordinances regarding the same." (VC 1:22-25 incorporated into 2nd and 3rd Causes of Action.) Second, MVP states in the Prayer for the 2d Cause of Action against CHEVREAUX, "in the alternative to issuance of a writ of mandate" which would have to be issued against the COUNTY not CHEVREAUX. (VC, 13:23-24.) Thus, MVP's pleadings after the Court grants the demurrer as to COUNTY continue to include

inconsistent relief requirements, and implicit in the case, the sleeping elephant, as it were, is COUNTY.

B. How Can Chevreaux, Without County, Modify The Permits Or Abrogate Them?

Why is it that we can find no cases for declaratory relief where the permitting agency is not a party to the case? A Lexis search of California published cases, state and federal combined, based on "use permit and necessary or indispensable w/3 party" provided 16 results [see attached **Exhibit B**, printout of Lexis search results]. Each and every permit case involved a party who was a city, county, or state, with the only exceptions being Number 15—a contract case, and Number 16—a water rights case with the owner of a water system.

The unspoken presumption is that the agency who issued the permit is the entity who must afford the relief, if relief is determined to be necessary. At trial, CHEVREAUX can and will provide evidence that since 1946 it has operated a quarry and asphalt operation in Meadow Vista, and that since 1965 these operations were formally approved through the permit process. It will prove that its operations are physically located within the permit confines, etc. What CHEVREAUX cannot do is modify the permits as demanded by MVP. CHEVREAUX did not write the permits, or issue them. This is not the case of a private party suing another private party to enjoin the action. Before the action can be enjoined, the actions must be shown to be a violation of the permits issued by COUNTY. If COUNTY believes - as is stated by MVP in its complaint - that the permits are invalid [see section 1 above], the Court must order COUNTY to invalidate its permits. But COUNTY is not present in the 2nd and 3rd Causes of Action.

CCP §389(a) provides that a person must be joined where in his absence complete relief cannot be accorded among those already parties, or (a)(2) that persons interest is so situated that the disposition of the action in his absence may as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to substantial risk of incurring double, multiple, or otherwise inconsistent obligations [discussed in Beresford at 1188]. CHEVREAUX is absolutely subject to a duplication of procedures if this case is permitted to proceed, structured as a result of the rulings on the demurrers. If the Court finds that

the permits are invalid on any basis, CHEVREAUX must as a matter of survival seek Planning Commission and Board of Supervisors' review, with results which at a minimum are duplicative, and can conceivably be significantly inconsistent.

If this Court rules in favor of MVP that a defect exists in either permit which precludes CHEVREAUX's operations, how does CHEVREAUX protect its interests? The failure of COUNTY to respond [VC 2:26-28, VC 8:12-16] or agree with MVP's interpretation of lapse [VC 8:2-4] must be admitted as fact for the purposes of this demurrer. Thus, CHEVREAUX is subjected to two clearly inconsistent results if COUNTY is not a party: the Court's possible version of the permit, versus COUNTY's.

Additionally, there is the bigger problem. This Court has determined that COUNTY's demurrer should be sustained because the County Codes establish COUNTY's absolute discretion to interpret its own permit compliance conditions.[3] Thus, if COUNTY has absolute discretion, and it has voiced its discretion in favor of the validity of the permits [VC 6:23-24; 7:10, 11-12, and 23-24, 8:1-2.], and that the permit issuer has completed its review and finds no violation of the permits [8:2-4, 12-13], how does the Court tell CHEVREAUX that COUNTY's permits are wrong when it has no jurisdiction over COUNTY?

C. Constitutional Implications Of Judicial Determination Of Declaratory Relief Re: Permits Without County Named.

Even if this Court can find a way to permit MVP's assertions so that they can plead around CCP §1094.5, the Verified Complaint bumps up against the prejudicial effect such a ruling has on Defendant CHEVREAUX. As is stated above, where the prejudice to the remaining party is caused by the failure to have the essential defendant present, the courts mandate the essential party's participation or dismiss the suit. If 40+ years after the permits have been issued this Court finds a violation of said permits and orders the permits vacated or modified, CHEVREAUX must sue for a taking, as that ruling adversely affects it business operations and property rights. But COUNTY will not have considered or adjudicated the

[3] "Petitioner has failed to set forth a mandatory or ministerial duty of the Defendants. Section 17.60.020 described the general authority of the planning director, and no mandatory duties are set forth in that provision. Section 17.62.170 provides that the code enforcement officer 'may' initiate proceedings. This is clearly a discretionary duty." [Tentative Ruling, October 10, 2006, 15.27. S-CV-0019614, paragraph 2].

permits as requested by MVP, so how can poor CHEVREAUX unwrap itself from the first prong of the Williamson County axel? See Williamson County Reg'l Planning Comm'n v. Hamilton Bank (1985) 473 U.S. 172, 195, 199-200 (regulatory takings claims are not ripe for review in federal court until local agency has reached final decision as to how challenged regulation will be applied to property at issue. COUNTY is then exposed, as is CHEVREAUX, to obligations which it did not have a hand in determining. "As we have noted, resolution of that question depends, in significant part, upon an analysis of the effect the Commission's application of the zoning ordinance and subdivision regulations had on the value of respondent's property and investment-backed profit expectations. That effect cannot be measured until a final decision is made [by the Commission] as to how the regulations will be applied to respondent's property." Williamson County, 200. Such a twisted resolution of MVP's assertions cannot be allowed to proceed.

D. To The Extent That MVP Seeks To Challenge The Existence And Validity Of The Permits, The Statutes Of Limitation Have Run.

As is shown in 1.A. above, MVP actually challenges the validity of these permits, not just whether or not CHEVREAUX operates under the terms of the permits. CHEVREAUX's demurrer cited Pan Pacific Properties, Inc. v. County of Santa Cruz (1978) 81 Cal.App.3d 244, 252-253 for the proposition that the statutes of limitation applicable to declaratory relief causes of action reflect the dates of the underlying statutes or ordinances. [P&A, 5:8-21.] Except as otherwise provided under local ordinance, an action challenging a decision on a variance or a conditional use or other permit, the conditions attached to such a decision, or an appeal from such a decision, must be brought within 90 days of the decision. Govt. Code §§1094.5, 1094.6, and 65009(c)(1)(E); Hawkins v. County of Marin (1976) 54 Cal.App.3d 586, 592 (challenge to conditional use permit barred); Concerned Citizens of Palm Desert, Inc. v. Board of Supervisors (1974) 38 Cal.App.3d 257, 264-265 (challenge to conditional use permit and variance barred) In another case, the 90-day limitation period was held to apply to an action challenging a decision of a city planning department issuing a building permit. Govt. Code §65009 applied because the writ petition challenged a building permit issued in conjunction with a zoning variance, and the

gravamen of the petition was that the variance was improperly granted. Honig v. San Francisco Planning Dept. (2005) 127 Cal.App.4th 520, 528. Even in cases interpreting the challenge as "as-applied, to wit that the conditions to the ordinance were invalid, the 90 days ran from the time imposing the final conditions.

Travis v. County of Santa Cruz (2004) 33 Cal.4th 757, 767 is a perfect case in point. To the extent that the challenging owners' action rested on the allegations that the county exceeded its lawful authority by imposing the permit conditions and requested relief, the action came within Cal. Govt. Code §65009(c)(1)(E) [90 days of issuance of permits]. Because the action was brought almost 11 months after two owners' permit application was approved, the action was untimely as to their claim of invalid permit conditions. Because the action was brought within 90 days of the final administrative action on the other owner's permit, the action was timely as to this owner's claim that the conditions imposed on the permit were invalid. The remaining challenges to the ordinance were untimely under the applicable Cal. Code Civ. Proc. §338(a)[4]. MVP's claim of lapse as to the asphalt permit [3rd COA: "MVP contends that ...LDA-786 has lapsed." (VC, 9:19-20)] admits that asphalt production resumed in 2001, more than five years ago. [VC, 6:17-18.] CCP §338's three-year statute for a pollution violation may act to allow allegations against CHEVREAUX regarding public nuisance, but not under declaratory relief regarding the permits themselves. Under any scenario, MVP's actions to attack the validity or interpretation of the permits or their conditions must fail.

Thus, CHEVREAUX reiterates its points to the extent that the MVP complaint is read to attack the validity of the permits; and as stated above, the MVP complaint so attacks at VC ¶¶ 1, 6, 7, 9, 27, 28, 32, 35, 36, 47, and VC Prayer ¶¶ 1.a.vi. and 3.a., b., & d. All these claims must be precluded by Govt. Code §65009.

Independent of the statutes of limitations, the equitable defense of laches bars the causes of action for declaratory relief as untimely where there is obvious prejudice to the defendant. Challenges to both zoning enactments and the enforcement of zoning ordinances have been

[4] Even those cases which tolled the statute based on failure of notice to affected parties cannot relieve MVP of the time barred requirement. Chevreaux's permits were issued over 45 years prior to this action.

found to be barred by laches. See City and County of San Francisco v. Francesco Pacello (1978) 85 Cal.App.3d 637. In this case, the plaintiffs, city and county, sought review of a judgment in favor of defendant homeowners by the court, in a public nuisance abatement action that held plaintiffs' suit was barred by the doctrine of laches. Plaintiffs had filed suit to challenge a decision by the board of permit appeals that found defendant's two-unit property was entitled to a building permit when the property had been used by the property owners for the same purposes for over 30 years, and that bringing the action after such long established use was unfairly prejudicial to the owners.

2. MVP'S ATTACK ON THE SCOPE OF CHEVREAUX'S OPERATIONS [VIOLATIONS OF THE PERMITS]

MVP claims that CHEVREAUX violates the scope of the permits throughout the VC: compel the COUNTY to inquire into the scope of entitlements (¶ 1); enjoin CHEVREAUX from violations of its permits (¶ 2 and Prayer ¶ 1.a.vii); CHEVREAUX is conducting surface mining outside the boundaries authorized by the permit (¶¶ 4, 21, 40, 43, 47, 51, and Prayer ¶ 1.a.ii, 4.a.); output of the quarry exceeds the permit (¶¶ 4, 43); violation of conditions regarding blasting, water quality, and dust mitigation (¶¶ 4, 21, 43, 54, 58, 62, and Prayer ¶ 1.a.iv.); exceeds truck traffic (¶ 6, and Prayer ¶¶1.a.iii., 2.b.); and other general references to operations in violation or outside the scope of the permits (¶¶ 9, 36, 37, 40, 51, 55, and Prayer ¶¶ 1.a.v., 2.c., 4.a).

The 2nd and 3rd Causes of Action, paragraphs 42 through 45 and paragraphs 46 through 52, respectively, incorporate by reference all the other paragraphs in the VC (e.g. 2nd Cause of Action incorporates ¶¶ 1 through 41 and 46 through 63).

A. Modifications Of Chevreaux's Operations Expose Chevreaux To Risk Of Loss Without County's Participation.

As is described in sections 1.A and 1.B above, to the extent that the Court reads the MVP complaint as a violation of the terms of the permits, rather than the permits themselves, the cases of Thomson, Irwin, and Beresford, and CCP §389(a) sited above establish that COUNTY is an indispensable party to that determination, and therefore MVP must amend or allow the causes of action to be dismissed.

CCP §1094.5, not 1060, also applies to the quasi-judicatory review for the asphalt plant permits.

CONCLUSION

If this Court sustains CHEVREAUX's demurrer as to the 2nd and 3rd Causes of Action, MVP's real claim - that CHEVREAUX's operations injure the public [public nuisance] - goes forward on the merits. Therefore, MVP gets their day in court. For all these reasons, CHEVREAUX thanks the Court for the opportunity to submit this supplemental brief in support of its demurrer to the 2nd and 3rd Causes of Action for declaratory relief.

Dated: October 13, 2006

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

By: _____
BRIGIT S. BARNES, Attorney for
Defendant Chevreaux Aggregates, Inc.

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

PROOF OF SERVICE

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

SUPPLEMENTAL BRIEF IN SUPPORT OF CHEVREAUX'S DEMURRER TO 2ND AND 3RD CAUSES OF ACTION FOR DECLARATORY RELIEF

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

x **BY FACSIMILE [C.C.P. §1013(e)]** by sending a true copy via facsimile transmission by use of facsimile machine telephone number 916-660-9554) of the above described document(s) to the interested parties, at the facsimile numbers listed below. The facsimile machine I used complied with California Rules of Court, Rule 2004, and no error was reported by the machine.

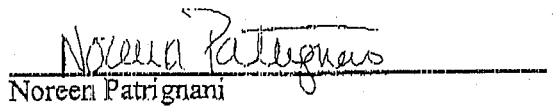
PARTY(S) SERVED:
Ronald A. Zumbrun, Esq.
Angela C. Thompson, Esq.
The Zumbrun Law Firm
3800 Watt Avenue, Suite 101
Sacramento, CA 95821
Facsimile: (916) 486-5959
[Attorney for MEADOW VISTA PROTECTION]

Richard L. Crabtree, Esq.
Law Office of Richard L. Crabtree
1395 Ridgewood Drive, Suite 300
Chico, CA 95973
Facsimile: 530-566-9203
[Attorney for COUNTY OF PLACER and COUNTY OF PLACER PLANNING DEPARTMENT]

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

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

Executed on October 13, 2006, at Loomis, California.



Noreen Patrignani

EXHIBIT A

Service: **Get by LEXSTAT®**
TOC: California Environmental Law & Land Use Practice > / . . . / > Chapter 11 PRELIMINARY LITIGATION ISSUES > **§ 11.11 The Complaint or Petition: Practical Considerations**
Citation: **1.11 California Environmental Law & Land Use Practice 11.11**

1-11 California Environmental Law & Land Use Practice § 11.11

California Environmental Law & Land Use Practice
Manaster, Selmi, Ostrove, Cannon

Copyright 2004, Matthew Bender & Company, Inc., a member of the LexisNexis Group.

Part II ADMINISTRATIVE LAW AND ENVIRONMENTAL LITIGATION
Chapter 11 PRELIMINARY LITIGATION ISSUES

1-11 California Environmental Law & Land Use Practice § 11.11

AUTHOR: ROGER BEERS Roger Beers graduated magna cum laude from Harvard Law School in 1968. From 1968 to 1973, he was associated respectively with Dewey, Ballantine, Bushby, Palmer & Wood, in New York, and Heller, Ehrman, While & McAuliffe in San Francisco. From 1973 to 1980, he was a staff attorney with the Natural Resources Defense Council in Palo Alto, and since then has been in private practice, now in Oakland, where he continues his emphasis on environmental and land use litigation.

§ 11.11 The Complaint or Petition: Practical Considerations

[1] Drafting the Complaint or Petition

Special care should be taken in drafting the complaint or petition in environmental cases. If grounds for challenging agency action are omitted from the complaint, the plaintiff may be foreclosed from arguing these matters on the merits. Thus, it may be useful to allege grounds more broadly than initially anticipated as the basis for challenge.

The complaint should allege not only the violations of law, but also (1) the plaintiffs' standing, (2) the court's jurisdiction, (3) the basis for venue, (4) the plaintiffs' exhaustion of administrative remedies, and (5) when necessary, the reasons for the plaintiffs' delayed discovery of the cause of action to avoid statutes of limitations defenses. Satisfaction of the various procedural prerequisites that are discussed in the preceding sections of this chapter should also be alleged. When notices are required to be given to agencies or private parties before or contemporaneously with the filing of the complaint, copies of those notices should be attached to the complaint and incorporated by reference.

[2] Joinder of Parties

[a] Determining Both Plaintiffs and Defendants to be Named

Particular care should be taken in determining both the plaintiffs and defendants to be named in the action. If there are plaintiffs who have standing problems, counsel should consider whether others could be named as plaintiffs who would defeat standing objections. As the courts have held, only one plaintiff need have standing for the action to proceed.[1] In addition, plaintiffs who are omitted from the initial complaint may face difficulties in being added later, if the typical short statutes of limitations have run in the meantime.

[b] Ascertaining "Indispensable" Parties

Counsel should determine whether there are any parties who are "indispensable" to the action's prosecution. For example, in one case, the failure to name the developer of a project in an action against the agency approving the project led to the dismissal of the entire action for failure to name an indispensable party.[2] In actions seeking judicial review of agency

EXH A

action, the agency should be named as a defendant, and the developer of a project or recipient of a permit named as the real property in interest.

[c] Determining How Agencies Should be Identified
It is important to determine how the agency should be identified in the complaint. For example, in suits against a city for actions taken by its City Council, the city council should itself be named as a defendant, together with the city. Care should be taken to ensure that the proper corporate entity has been named in instances in which there are related or affiliated corporations that are involved in the development. Usually, the appropriate entity will be the one identified in the application for the permit for approval as the project sponsor, or the permit's recipient. If there is doubt, counsel should err on the side of caution and name affiliated corporations as well.

[d] Allegations Against "Doe" Defendants
It is imperative to include in every petition or complaint allegations against "Doe" defendants. Such allegations allow for the later identification of additional defendants and their service as particular Doe defendants in the complaint. By this means, their addition to the action at a later date after the statute of limitations would ordinarily have run is a means of "relating back" their addition to the time of the complaint's original filing.
In drafting the Doe allegations, it may be appropriate to separate the Doe defendants into various categories. These categories should be broadly enough defined so that a party later identified will fit within the description of one or more of these categories. Otherwise, the "relation back" may not be successful.

[3] Filing and Serving Complaint
The local rules of court should be consulted before filing the complaint to determine whether there are informational forms that must be completed and filed or served with the complaint. A summons should also be prepared, with sufficient copies, for issuance by the clerk at the time of the complaint's filing, so that copies of the summons and complaint can be served on each of the defendants.
Service on governmental entities is usually effected by service on an official of that entity who has been designated for such service. For example, in the case of a city, that person may be the city clerk. If counsel is in doubt, a telephone call to the agency will usually elicit the identity of the person to be served. In the case of corporations, their agents for service of process can be determined by consulting the corporate records of the Secretary of State.
For detailed coverage of the preparation, filing, and service of complaints and related papers, such as a summons, see CALIFORNIA FORMS OF PLEADING AND PRACTICE, Chapters 123, *Complaints and Cross Complaints*, and 518, *Service of Summons and Papers* (Matthew Bender).

[4] Alternative Procedure for Petitions for Writs of Mandate
An alternative procedure for filing and serving petitions for writs of mandate consists of using an "alternative writ of mandate" in lieu of a summons. The petition, together with the alternative writ, is presented to a Judge ex parte, who issues the alternative writ specifying a return date for the response. The petition and alternative writ are then served on the defendants and real parties in interest. Because this is often a more cumbersome way of commencing an action, plaintiffs may simply want to proceed by obtaining a summons and serving it with the complaint or petition. Also, some courts may refuse to issue an alternative writ unless accompanied by a brief on the merits. This topic is covered in more detail in Chapter 12, *Judicial Review of Administrative Decisions*.

[5] Applicability of Fast Track Rules
Before filing a complaint or petition, counsel should determine whether the proceeding will be subject to the Fast Track Rules.[3] Petitions for writs of mandate are not subject to the Fast Track Rules, but complaints typically are. In instances when the pleading has been styled as both a Petition for Writ of Mandate and a complaint, counsel should ensure that the action

does not get classified as subject to the Fast Track Rules.
In general, the Fast Track Rules require that actions be set for trial within one year after their filing (Class I actions), unless they have been redesignated by the court for disposition in 18 months (Class II) or two years (Class III).[4] These rules require service of the complaint within a specified period of time, prohibit the granting of extensions of time for answers or other responses to the complaint, require the filing of joint at- issue memoranda within a specified period after the filing of the complaint, and anticipate periodic case management conferences for the court to monitor the progress of the action toward the trial date goal. Observance of these procedures is important because of the sanctions, including dismissal, which can follow from non-compliance.
For further coverage of the Fast Track Rules, see CALIFORNIA FORMS OF PLEADING AND PRACTICE, Chapter 552, *Trial Court Delay Reduction* (Matthew Bender).

[6] Certificates of Merit
Suits against some kinds of defendants may require filing a certificate of merit to the action at the time of filing the complaint. For example, Code Civ. Proc. § 411.35 requires that the plaintiffs' attorney in a malpractice action against an engineer, architect, or land surveyor file and serve a certificate of merit with the complaint. The certificate must show that the attorney has consulted with an expert of the same discipline and that the expert has rendered an opinion that the defendant was negligent in the performance of the services in question.[5]

FOOTNOTES:
Footnote 1.

See, e.g., Watt v. Energy Action Educational Foundation (1981) 454 U.S. 151, 160, 102 S. Ct. 205, 70 L. Ed. 2d 309 (declining to consider standing of other plaintiffs after finding co-plaintiff had standing).

Footnote 2.

Sierra Club, Inc. v. California Coastal Com. (1979) 95 Cal. App. 3d 495, 502, 157 Cal. Rptr. 190 . In Save Our Bay, Inc. v. San Diego Unified Port Dist. (1996) 42 Cal. App. 4th 686, 693, 49 Cal. Rptr. 2d 847 , the court dismissed a suit challenging the adequacy of an environmental impact report for a project proposed by a port district because the landowner whose land must be acquired to complete the project was an indispensible party that had not been named within the statute of limitations period.

Footnote 3.

The Trial Court Delay Reduction Act is set forth at Gov. Code § 68600 et seq. *See generally* Witkin, California Procedure, vol. 2, *Courts,* § 330A et seq. (3d ed. 1985).

Footnote 4.

See Cal. Rules of Ct., Rule 2105.

Footnote 5.

Code Civ. Proc. § 411.35(b)(1).

Service: **Get by LEXSTAT®**
TOC: California Environmental Law & Land Use Practice > / . . . / > Chapter 11 PRELIMINARY LITIGATION ISSUES > **§ 11.11 The Complaint or Petition: Practical Considerations**
Citation: **1.11 California Environmental Law & Land Use Practice 11.11**
View: Full
Date/Time: Friday, October 13, 2006 - 4:54 PM EDT

LexisNexis

About LexisNexis | Terms & Conditions
Copyright © 2006 LexisNexis, a division of Reed Elsevier Inc. All rights reserved.

EXHIBIT B

Source: Legal > States Legal - U.S. > California > Cases > **CA Published Cases, Combined**
Terms: **use permit and necessary or indespensable w/3 party** (Edit Search | Suggest Terms for My Search)

Select for FOCUS™ or Delivery

1. Hansen Brothers Enterprises, Inc. v. Board of Supervisors, No. S044011., SUPREME COURT OF CALIFORNIA, 12 Cal. 4th 533; 907 P.2d 1324; 48 Cal. Rptr. 2d 778; 1996 Cal. LEXIS 1; 96 Cal. Daily Op. Service 186; 96 Daily Journal DAR 300, January 8, 1996, Decided

OVERVIEW: In a case in which quarrying was but one component of an aggregate production and sale business, a 180-day discontinuance provision for nonconforming uses did not apply specifically to the quarrying but instead applied to the operation as a whole.

CORE TERMS: mining, nonconforming use, rock, quarrying, hillside, aggregate, quarry, gravel, riverbed, reclamation plan ...

... obtaining a conditional **use permit** to continue the mining operation that it was ...
... without a conditional **use permit.** n15 n14 The ...
... ruling that a conditional **use permit** was required for future ...
... obtain a conditional **use permit** for any renewed quarrying on the ...
... granted a conditional **use permit** by the county, the superior ...
... mining renewed only as **necessary** to replenish the stockpile. The **parties** have offered no evidence of ...
... obtaining a conditional **use permit.** Our conclusion that Hansen Brothers ...
... without a conditional **use permit** because the proposed volume of extraction would ...
... requires a conditional **use permit** before Hansen Brothers ...
... obtain a conditional **use permit.** Hansen Brothers filed ...
... Without a conditional **use permit,** plaintiffs may mine these ...
... obtained a conditional **use permit.** The planning commission determined that the ...
... obtaining a conditional **use permit.** n9 After an independent ...
... without a conditional **use permit,** plaintiff could not engage ...
... required a conditional **use permit** because plaintiff had abandoned the right to ...
... necessitated a conditional **use permit,** I do not address this ...

2. Fairfield v. Superior Court of Solano County, S.F. No. 23209, Supreme Court of California, 14 Cal. 3d 768; 537 P.2d 375; 122 Cal. Rptr. 543; 1975 Cal. LEXIS 319, July 16, 1975

OVERVIEW: Real party made no showing that its inquiries of city councilmen were reasonably calculated to lead to the discovery of evidence admissible under rules of procedure, and thus superior court erred in granting its motion to compel answers.

CORE TERMS: discovery, councilmen, administrative record, administrative mandamus, shopping center, planned, quasi-judicial, administrative hearing, deposition, voting ...

EX. B

... application for a **use permit,** E. P. and Jack ...
... record which should contain all evidence the **parties** consider **necessary** to the resolution of contested issues. ...

3. El Dorado Irrigation Dist. v. State Water Resources Control Bd., C046211 , COURT OF APPEAL OF CALIFORNIA, THIRD APPELLATE DISTRICT , 142 Cal. App. 4th 937; 2006 Cal. App. LEXIS 1358, September 8, 2006, Filed

OVERVIEW: California State Water Resources Control Board erred in requiring a senior appropriator to curtail diversion of water when stored water was released from public projects to meet water quality objectives; because the board did not impose the requirement on junior appropriators, it did not preserve priority under Wat. Code, §§ 1375, subd. (d), 10500.

CORE TERMS: water quality, appropriator, junior, appropriation, diversion, stored, watershed, state-filed, natural flow, divert ...

... Delta and to determine whether the water-**use permits** held by the ... Bureau and the [...
... III Standing to Challenge **Necessary Parties** Ruling In its cross- ...
... State Water Contractors were **necessary parties** to this litigation. Westlands contends ...
... cannot challenge the court's **necessary party** ruling in an appeal from that ...
... State Water Contractors were **necessary parties** and the court's order that El ...
... State Water Contractors were **necessary parties,** it could have sought writ review from this ...
... Water Contractors and the Bureau as **necessary parties.** The Department also appears as amicus ...

4. State Water Resources Control Bd. Cases, C044714 , COURT OF APPEAL OF CALIFORNIA, THIRD APPELLATE DISTRICT , 136 Cal. App. 4th 674; 39 Cal. Rptr. 3d 189; 2006 Cal. App. LEXIS 171; 2006 Cal. Daily Op. Service 1218; 2006 Daily Journal DAR 1735, February 9, 2006, Filed, Rehearing denied by State Water Resources Control Board Cases, 2006 Cal. App. LEXIS 361 (Cal. App. 3d Dist., Mar. 2, 2006) Rehearing denied by State Water Resources Control Board Cases, 2006 Cal. App. LEXIS 368 (Cal. App. 3d Dist., Mar. 2, 2006) Rehearing denied by State Water Resources Control Board Cases, 2006 Cal. App. LEXIS 362 (Cal. App. 3d Dist., Mar. 2, 2006) Rehearing denied by, Motion to modify denied by State Water Resources Control Board Cases, 2006 Cal. App. LEXIS 367 (Cal. App. 3d Dist., Mar. 2, 2006) Rehearing denied by State Water Resources Control Board Cases, 2006 Cal. App. LEXIS 366 (Cal. App. 3d Dist., Mar. 2, 2006) Rehearing denied by, Request denied by State Water Resources Control Board Cases, 2006 Cal. App. LEXIS 364 (Cal. App. 3d Dist., Mar. 2, 2006) Rehearing denied by State Water Resources Control Board Cases, 2006 Cal. App. LEXIS 363 (Cal. App. 3d Dist., Mar. 2, 2006) Later proceeding at State Water Resources Control Board Cases, 2006 Cal. LEXIS 5110 (Cal., Apr. 6, 2006) Review denied by State Water Resources Control Board

Cases, 2006 Cal. LEXIS 6010 (Cal., May 17, 2006) US Supreme Court certiorari denied by Westlands Water Dist. v. State Water Res. Control, 2006 U.S. LEXIS 7259 (U.S., Oct. 2, 2006)

OVERVIEW: Superior court properly held that State Water Resources Control Board erred when it failed to allocate responsibility for meeting all of the flow objectives in the plan. The Board was not entitled to implement alternate flow objectives agreed to by various interested parties in lieu of the flow objectives actually provided for in the plan.

CORE TERMS: water quality, user, salinity, diversion, map, fish, wildlife, service area, pulse, water right ...

... 11315 because the sole purpose of **use that permit** authorized was irrigation. The remainder of the ...
... Delta and Audubon Society **parties, it is necessary** to first examine more ...

5. Protect Our Water v. County of Merced, F044896 , COURT OF APPEAL OF CALIFORNIA, FIFTH APPELLATE DISTRICT , 130 Cal. App. 4th 488; 30 Cal. Rptr. 3d 202; 2005 Cal. App. LEXIS 987; 2005 Cal. Daily Op. Service 5422; 2005 Daily Journal DAR 7395, May 25, 2005, Filed, CERTIFIED FOR PARTIAL PUBLICATION* *Pursuant to California Rules of Court, rules 976(b) and 976.1, this opinion is certified for publication with the exception of part I., The Publication Status of this Document has been Changed by the Court from Unpublished to Partially Published June 21, 2005. Ordered published by, Corrected by Protect Our Water v. County of Merced, 2005 Cal. App. LEXIS 988 (Cal. App. 5th Dist., June 21, 2005)

OVERVIEW: Environmental groups that challenged a conditional use permit for surface mining were "successful" for purposes of attorney fee award under Cal. Code Civ. Proc. § 1021.5, even though the appellate decision in their favor was based on an inadequate record rather than the merits, in part because prompting complete recordkeeping was a public benefit.

CORE TERMS: prevailing party, certification, administrative record, public interest, vindicated, lawsuit, award of attorney, prepare, successful party, significant benefit ...

... a county's conditional **use permit** for a surface ...
... manner of its resolution. It is not **necessary** that a **party** have made the particular legal ...
... aside a conditional **use permit** issued by respondent ...
... manner of its resolution. It is "not **necessary** [that] a **party** have made the particular legal ...

6. Calbeach Advocates v. City of Solana Beach, No. D038885. , COURT OF APPEAL OF CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION ONE , 103 Cal. App. 4th 529; 127 Cal. Rptr. 2d 1; 2002 Cal. App. LEXIS 4932; 2002 Cal. Daily Op. Service 10976; 2002 Daily Journal DAR 12731, October 9, 2002, Decided, October 9, 2002, Filed, The Publication

Status of this Document has been Changed from Unpublished to Published November 6, 2002. Review Denied January 15, 2003, Reported at: 2003 Cal. LEXIS 224.

OVERVIEW: Statutory provision in California Environmental Quality Act defining "emergency" did not require that emergency be unexpected when project's purpose was to prevent the emergency; trial court did not err in affirming city's finding of an emergency.

CORE TERMS: bluff, emergency, collapse, exemption, occurrence, coastal, public hearing, sandstone, California Environmental Quality Act, sand ...

... approval of a special **use permit** to construct a seawall to ...
... city's determination that the special **use permit** to construct a seawall was ...
... determination that a special **use permit** to construct a seawall was ...
... approval of a special **use permit** to construct a seawall ...
... issued a director's **use permit** with conditions. In June ...
... requested a modification of the **use permit** to allow construction of a ...
... required a special **use permit** and scheduled a hearing ...
... visit . . ., I found it **necessary** to inform [Real **Parties**] that they need to take immediate ...
... approve a special **use permit.** At the public hearing on December ...
... exemption and granted the special **use permit.** On December 20, Solana ...
... provides that a special **use permit** for a sea ...
... Council's hearing on the special **use permit** was also an appeal of the director's grant of an ...
... public hearing on the special **use permit** required by Municipal ...

7. Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach, No. B138557., COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION THREE, 86 Cal. App. 4th 534; 103 Cal. Rptr. 2d 447; 2001 Cal. App. LEXIS 37; 2001 Cal. Daily Op. Service 722; 2001 Daily Journal DAR 913; 151 Oil & Gas Rep. 161, January 24, 2001, Decided, Rehearing Denied Febuary 23, 2001. Review Denied May 2, 2001, Reported at: 2001 Cal. LEXIS 3153.

OVERVIEW: Voter-adopted proposition applied to real party in interest's oil-drilling project, and application of proposition to the project was a valid exercise of city's police power that did not constitute an unconstitutional impairment of contract.

CORE TERMS: oil, drilling, lease, lease agreement, impairment, voter, contract clause, police power, regulation, ordinance ...

... only a conditional **use permit** (as to which many conditions remained ...
... including a conditional **use permit** (CUP) for the project from the ...
... only a conditional **use permit** (as to which many conditions remained

Placer County District Attorney

8. Hewlett v. Squaw Valley Ski Corp., No. C020539. , COURT OF APPEAL OF CALIFORNIA, THIRD APPELLATE DISTRICT , 54 Cal. App. 4th 499; 63 Cal. Rptr. 2d 118; 1997 Cal. App. LEXIS 310; 97 Cal. Daily Op. Service 2939; 97 Daily Journal DAR 5145, April 22, 1997, Decided

OVERVIEW: The egregious behavior of a ski resort in violating a permit, a restraining order, and the applicable statute by removal of the trees justified the trial court's imposition of fines, ordering of injunctions, and award of attorney fees to plaintiffs.

CORE TERMS: tree, cutting, timber, timber harvesting plan, unfair competition, lift, timberland, ski, conversion, injunctive relief ...

... provisions of a conditional **use permit,** and violating terms of a ...
... defendant's violations of the conditional **use permit** could properly form the basis ...
... law. First, conditional **use permits** are part of local zoning ...
... seq.), a conditional **use permit,** and a temporary restraining ...
... Competition--Violations of Conditional **Use Permit** as Unlawful Business Practices. -- ...
... violations of a conditional **use permit** could properly form the basis ...
... law. First, conditional **use permits** are part of local zoning ...
... provisions of a conditional **use permit** and violating terms of a ...
... asserts that violations of a **use permit** or a temporary restraining ...
... Ultimately, a conditional **use permit** (CUP-067) was issued ...
... for a conditional **use permit** and general plan amendment to ...
... a current Conditional **Use permit** (CUP-067) exists which ...
... conditions placed on the Conditional **Use Permit** of this lift will serve to ...
... sought a conditional **use permit** to cut down 1,858 ...
... zoning change, and the conditional **use permit** (CUP-974), and in ...
... granting of the necessary rezoning or **use permit** if rezoning or a **use permit** is required." The statute also requires that ...
... until the granting of such rezoning or **use permit** as may be required and until the ...
... violations of a conditional **use permit** did not constitute unlawful ...
... not all of the conditions in the **use permit** had been satisfied, and those that were not could have been easily ...
... refused to issue a **use permit** for that purpose, Squaw ...
... granting of any necessary rezoning or **use permits.** (§ 4622.) Timber ...
... until the necessary rezoning or **use permit** is obtained, and the permit is recorded. (...
... violations of a conditional **use permit** cannot be deemed unlawful ...
... require a conditional **use permit.** [Citation.] The reason for ...
... asserts a conditional **use permit** does not have the force of law. We ...
... reasons. First, conditional **use permits** are part of local zoning ...
... served by conditional **use permits** and notes those projects for which such ...

... requiring a conditional **use permit.** Inherent in the requirement that ...
... predicated on these violations of the conditional **use permit.** (See People v. McKale, supra, 25 Cal. 3d at pp. 632-633.) ...
... conditions in a **use permit** might properly be termed an " ...
... GPA-256 and conditional **use permit** 974, or taking any other ...
... refuses to grant a **Use Permit** and zoning change to allow the ...
... issued a new **use permit** for the area. No ...
... issue a new **use permit.** Placer County in ...
... EIR, and without an approved **use permit.** Any subsequent action by the ...
... land and issue a **use permit** cannot justify Squaw ...
... cases where the colitigating private **party** does render **necessary,** significant services of value and ...

9. Golden West Baseball Co. v. City of Anaheim, No. G007745., COURT OF APPEAL OF CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION THREE, 25 Cal. App. 4th 11; 31 Cal. Rptr. 2d 378; 1994 Cal. App. LEXIS 500; 94 Cal. Daily Op. Service 3720; 93 Daily Journal DAR 6955, May 24, 1994, Decided, Review Denied September 8, 1994, Reported at: 1994 Cal. LEXIS 4987.

OVERVIEW: Agreement between baseball team owner and city for the use of stadium and parking lot during game days was not a lease but a license irrevocable for the term because city retained possession and control on all occasions except home game days.

CORE TERMS: parking, lease, stadium, space, parking lot, easement, parking facilities, game, recital, ground-level ...

... issuance of a conditional **use permit** for the third party to ...
... issuing a conditional **use permit.** The court granted specific ...
... issuance of a conditional **use permit** for a third ...
... issuance of a conditional **use permit** for a third ...
... issuance of a conditional **use permit** for a third ...
... issuance of a conditional **use permit** for a third ...
... issuance of a conditional **use permit** for a third ...
... issuance of a conditional **use permit** for a third ...
... shortly before the conditional **use permit** issued. Further, reliance on the ...
... issuance of a conditional **use permit** for a third ...
... issuing a conditional **use permit** provided that the parties would negotiate ...
... issued. A conditional **use permit** differs from and is a precursor to ...
... issuance of a conditional **use permit** for a third ...
... issuance of a conditional **use permit** for a third ...
... issued a conditional **use permit** for Anaheim Stadium ...
... issuing a conditional **use permit** for the ASA development; and (...
... issuance of a conditional **use permit** for the project. The permit was ...
... issuing a conditional **use permit.** It granted specific performance, an ...

... design facilities acceptable to all **parties, it was necessary** to use the entire 146- ...
... approved a conditional **use permit** for the ASA development. At its ...
... approved the ASA conditional **use permit** for the Orangewood Block ...
... issued a conditional **use permit** and one week before the ...
... issuing a conditional **use permit**. But the paragraph provided the ...
... established that a conditional **use permit** is approved by the planning ...

10. Beresford Neighborhood Assn. v. City of San Mateo, No. A040595, Court of Appeal of California, First Appellate District, Division Four, 207 Cal. App. 3d 1180; 255 Cal. Rptr. 434; 1989 Cal. App. LEXIS 103, January 10, 1989

OVERVIEW: City's demurrer to claims by neighborhood association relating to zoning and planning approvals of a housing project was properly sustained because claims were time-barred, failed to state causes of action, and indispensable parties were not named.

CORE TERMS: zoning, developer, site, planning, demurrer, redevelopment agency, redevelopment project, statute of limitations, judicial review, general plan ...

... § 30 -- Conditional **Uses; Permits** and Certificates -- Judicial Review -- ...
... not exposed to "the prejudice **necessary** to make it an indispensable **party.**" (Id. at p. 545.) ...

11. City of Livermore v. Local Agency Formation Com., No. A029998, Court of Appeal of California, First Appellate District, Division Two, 184 Cal. App. 3d 531; 228 Cal. Rptr. 384; 230 Cal. Rptr. 867; 1986 Cal. App. LEXIS 1924, July 22, 1986, A petition for a rehearing was denied August 21, 1986.

OVERVIEW: Court held that agency that was created to reduce urban sprawl was not required to show compliance with the Knox-Nisblet Act in its environmental impact report because such a burden undermined the great deference given to agency's decisions.

CORE TERMS: guideline, revision, significant environmental impact, sphere of influence, prepare, substantial evidence, formation, California Environmental Quality Act, urban development, fair argument ...

... suffered the requisite prejudice **necessary** to make it such a **party,** since enjoining the revised ...
... variances, the issuance of conditional **use permits** and the approval of tentative subdivision ...
... not have suffered the prejudice **necessary** to make it an indispensable **party.** Enjoining the revised guidelines did ...

12. County of San Diego v. Miller, Civ. No. 16553, Court of Appeal of

California, Fourth Appellate District, Division One, 102 Cal. App. 3d 424; 162 Cal. Rptr. 480; 1980 Cal. App. LEXIS 1498, February 21, 1980, A petition for a rehearing was denied March 5, 1980, and appellant's petition for a hearing by the Supreme Court was denied April 30, 1980.

OVERVIEW: Judgment ordering optionee held no interest in condemned land and held no right to share in proceeds with landowner affirmed, where case was fairly and judiciously tried and evidence was substantial and convincing in support of trial court's ruling.

CORE TERMS: optionee, condemnation, summary judgment, acres, condemnation proceedings, jury trial, eminent domain, option to purchase, compensable, bifurcated ...

... for a conditional **use permit** to build a 93- ...
... record. The Provences, however, were named **parties, necessary parties** since they were owners of record. ...

13. Tiburon v. Northwestern P. R. Co., Civ. No. 25314, Court of Appeal of California, First Appellate District, Division One, 4 Cal. App. 3d 160; 84 Cal. Rptr. 469; 1970 Cal. App. LEXIS 1515, February 6, 1970, Respondents' petition for a hearing by the Supreme Court was denied April 1, 1970.

OVERVIEW: When a complaint was sufficient against general demurrer and any defects in the pleading could be cured by amendment, denial of leave to amend was improper because it resulted in disposition on technical grounds alone and was an abuse of discretion.

CORE TERMS: ordinance, parcel, railroad, lease, conveyance, Subdivision Map Act, declaratory relief, regulation, division of land, demurrer ...

... injury if it is not issued, or that it is **necessary** to preserve the estates of the **parties**, or that some need of hasty action ...
... for a conditional **use permit** to make improvements on two of the ...
... issue building permits or **use permits** for the property in ...
... applied for any building or **use permit** as to the Demaurex land, and in ...
... injury if it be not issued, or that it is **necessary** to preserve the estates of the **parties**, or some sufficient cause showing that ...

14. Regents of University of Cal. v. Morris, Civ. No. 30694, Court of Appeal of California, Second Appellate District, Division Two, 266 Cal. App. 2d 616; 72 Cal. Rptr. 406; 1968 Cal. App. LEXIS 1549, October 18, 1968, A Petition for a Rehearing was Denied November 13, 1968, and the Petition of the Defendants and Appellants for a Hearing by the Supreme Court was Denied December 11, 1968. Peters, J., was of the Opinion that the Petition Should be Granted.

OVERVIEW: Although the landowners were estopped from contesting the validity of the eminent domain proceedings after accepting payment for damages from the university, prohibition could have issued when the trial

court erroneously overruled a demurrer.

CORE TERMS: cross-examination, subject property, condemner, rent, appraiser, landowner, voluntariness, condemnation action, pretrial, zone ...

... under a conditional **use permit** equivalent to C-3 ...
... trial, pretrial disclosure is **necessary if the parties** are to fairly evaluate their respective ...

15. Triangle Ranch, Inc. v. Union Oil Co., Civ. No. 20966, Court of Appeal of California, Second Appellate District, Division One, 135 Cal. App. 2d 428; 287 P.2d 537; 1955 Cal. App. LEXIS 1377; 4 Oil & Gas Rep. 1889, September 13, 1955, Appellant's Petition for a Hearing by the Supreme Court was Denied November 9, 1955.

Contract case

OVERVIEW: Zoning regulations were not contracts made by a county and the regulations could therefore be modified by the county; action for declaratory relief was not appropriate for review of an administrative order.

CORE TERMS: oil, declaratory relief, zoning ordinance, planning commission, zoning, ordinance, oral agreement, regional, site, mandamus ...

... granting a conditional **use permit** thereunder. (6) Id.-- ...
... grant a conditional **use permit** adversely affecting the property of such ...
... producing operations as First **Party** may deem **necessary** or convenient, upon said controlling ...
... granting a conditional **use permit** thereunder. (6) The provisions of the ...
... grant a conditional **use permit** adversely affecting the property of ...

16. Cozzens v. North Fork Ditch Co., Civ. No. 85, COURT OF APPEAL OF CALIFORNIA, THIRD APPELLATE DISTRICT, 2 Cal. App. 404; 84 P. 342; 1905 Cal. App. LEXIS 238, December 9, 1905, Decided, A Petition to have the Cause Heard in the Supreme Court, after Judgment in the District Court of Appeal, was Denied by the Supreme Court on February 7, 1906.

OVERVIEW: A petition to a writ of mandate to compel a ditch company to furnish water for irrigation and domestic uses failed to state that the company had water in sufficient quantity, not only to supply the landowners, but to supply all water takers.

CORE TERMS: water, quantity, pipe, ditch, canal, lateral, furnish, water right, irrigate, particularly described ...

... part shall not **use or permit** the water furnished under this ...
... time as may be absolutely **necessary.** "Fifth--That the **parties** of the first part shall ...