



**COUNTY OF PLACER**  
**Community Development Resource Agency**

John Marin, Agency Director

**PLANNING**

Michael J. Johnson, AICP  
Director of Planning

May 18, 2007

Brigit S. Barnes, Esq.  
Brigit S. Barnes & Associates, Incorporated  
3262 Penryn Road  
Suite 200  
Loomis, CA 95650

**SUBJECT: Planning Director's Determination Regarding Status of LDA-786**

Dear Ms. Barnes:

The County is in receipt of your letter, dated February 28, 2007, requesting a Planning Director's determination regarding the legal status of LDA-786 and the ability for the Chevreux Aggregates, Inc., asphalt facility to be considered a permanent, intermittent use. I have researched your inquiry, and my findings and analysis as Planning Director are presented below.

**Background**

Based upon County records, asphalt operations at the Chevreux Meadow Vista site commenced in and around 1946/1947, and the site was one of the primary sources of asphalt for roadway projects in the region. As stated in your letter, these regional roadway projects included providing asphalt for Placer Hills Road and Old County Road 40 from Clipper Gap to Colfax. Additionally, the facility was used to provide asphalt for the construction of roadway improvements on Interstate 80 and State Route 49.

In 1963, the County established comprehensive zoning for the Meadow Vista, Eden Valley and Midway Heights area. The zoning established for the subject property where the Chevreux plant is located was Industrial. The zoning designation for the area around Lake Combie and north of the plant along the river was Recreation-Forestry, while the zoning designation for the area north of Meadow Vista was Farm. Each of these zoning designations allows for excavating, quarrying, and related uses and facilities, subject to the approval of a Conditional Use Permit.

In 1965, Edward Pruss was granted a Conditional Use Permit (LD-1030) for the operation of a shot quarry, including crushing, screening and washing for grading materials. Joseph Chevreux subsequently purchased the quarry operation.

On May 27, 1971, the Zoning Administrator approved LDA-691, a Conditional Use Permit to establish an asphalt batch plant at the project site. The approval was subject to the implementation of 11 conditions of approval, and County staff in 1971/1972 concluded all conditions of approval had been complied with.

**EXHIBIT A**

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On May 25, 1972, the Zoning Administrator approved LDA-786, a Conditional Use Permit that allowed the asphalt operation approved under LDA-691 to be moved to an adjacent property approximately 600 feet northeast of the previously approved location. The location of the facility approved with LDA-786 was on a portion of the property covered by LD-1030 (discussed above).

In 1987, after concerns were raised regarding the status of LDA-786, a letter was sent from Thomas D. McMahan, then-Planning Director for Placer County, to Joe Chevreaux, owner of the asphalt concrete facility. As stated in the letter, dated July 31, 1987, based upon consultation with County Counsel, all conditions of approval associated with LDA-786 had been implemented/complied with, and the permit was deemed exercised. In his letter, Mr. McMahan recommended ongoing consultation with the Placer County Air Pollution Control District to assure continued compliance with air quality regulations.

#### **Legal Support of Intermittent Use**

As noted in your letter, various courts, including California courts, have concluded that permanent intermittent uses can be legal uses and that cessation of use alone does not constitute abandonment of that use.

In a correspondence, dated July 1, 2005, Deputy County Counsel Scott Finley opined that, "The law is clear that once a vested right has been obtained by exercise of the entitlements allowed under the terms of the permit, that permit becomes the property right that cannot be revoked or limited without providing the property owner the safeguards required by due process." The correspondence also states, "Unless a permit is explicitly limited in time, once it has been approved and exercised and is being utilized in compliance with its conditions of approval, the County has no jurisdiction to simply order the permit be brought before it again for review without complying with the County's ordinance procedures."

#### **Current Status of the Chevreaux Operation**

It is the County's understanding that the property owner (Chevreaux Aggregates, Inc.) desires recognition of its Meadow Vista/Combie site as for an asphalt operations as a permanent, intermittent use that has not lapsed. To this end, the property owner requested and has recently been issued a permit from the Placer County Air Pollution Control District authorizing the use of the property as an asphalt facility. This issuance of this permit from the Air Pollution Control District is consistent with the conditions of approval for LDA-786, and implements the directive from then-Planning Director Thomas McMahan in his letter to Joe Chevreaux, dated July 31, 1987, where it was stated, "I would recommend, however, that you confer with Noel Bonderson, Air Pollution Control Officer, to determine if more specific air pollution requirements, particularly mandated by the State, need to be met." The recent issuance of the permit from the Air Pollution Control District is in compliance with the conditions of approval for the project.

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**Determination of the Planning Director**

As detailed above, asphalt activities have been occurring at the subject site at various times since 1946. The intermittent nature of the operation was repeatedly referenced in a May 25, 1972 memorandum from then-Planning Director Thomas McMahan to former District 3 Supervisor Ray Thompson. The identification of the activities of the uses at the subject site, just prior to the approval of LDA-786, reiterates that the asphalt facility was an intermittent use. As detailed in your letter to me, these uses, while generally consistent in nature, have been intermittent in duration, depending upon the need and demand for materials.

Under Section 17.58.160(B)(2) of the County Zoning Ordinance, a properly exercised use may lapse and the use must be discontinued until re-established in accordance with the applicable requirements. Lapse generally occurs when a use is discontinued for more than twelve (12) continuous months. The County has on several occasions since the approval of LDA-786 acknowledged that this use of the site would be intermittent and Chevreaux's use of the site has been consistent with the County's understanding of the use as it was originally permitted. Based upon my review of the public record, it is my determination that a use such as this which is approved as intermittent in nature cannot lapse under Section 17.58.160(B)(2) simply due to discontinuance for a twelve (12) month period. Further, it is my determination that asphalt operations at the current Meadow Vista/Combie Chevreaux Aggregates, Inc., facility are a currently legally permitted use.

Please be advised that these determinations do not provide an opportunity for the facility to be operated in a manner inconsistent with the conditions of approval set forth in LDA-786. As this continues to be an intermittent use, in the future the facility will need to be operated in a manner consistent with its previous operations. Accordingly, the analysis in this letter is based upon past use of the site and does not presuppose future activities nor preclude the County from reviewing future activities to determine their consistency with LDA-786.

**Appeal Rights**

This letter constitutes determinations by the Planning Director under Section 17.02.050(E) of the County Zoning Ordinance. These determinations may be appealed as provided by Section 17.60.110 of the Zoning Ordinance.

Sincerely,



MICHAEL J. JOHNSON, AICP  
Director of Planning

Cc: Tom Miller, County Executive Officer  
Anthony LaBouff, County Counsel  
Scott Finley, Deputy County Counsel  
Board of Supervisors  
Planning Commission  
Meadow Vista MAC