



**COUNTY OF PLACER**  
Community Development Resource Agency

John Marin, Agency Director

**PLANNING**

Michael J. Johnson, AICP  
Director of Planning

May 18, 2007

RECEIVED

MAY 25 2007

CDRA

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.

Brigit S. Barnes, Esq.  
May 18, 2007  
Page Two

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 Chevreux, 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 Chevreux Operation**

It is the County's understanding that the property owner (Chevreux 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 Chevreux, 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.

Brigit S. Barnes, Esq.  
May 18, 2007  
Page Three

**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

RECEIVED

JUL 20 2007

CDRA

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 Plaintiff Meadow Vista Protection

8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
 9 COUNTY OF PLACER

11 MEADOW VISTA PROTECTION,

12 Petitioner and Plaintiff,

13 v.

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

18 Respondents and Defendants.

Case No.: SCV 19614

Complaint Filed: 7/12/06

PLAINTIFF'S NOTICE OF MOTION  
 AND MOTION FOR SUMMARY  
 ADJUDICATION OF THIRD CAUSE OF  
ACTION FOR DECLARATORY RELIEF

Date: 5/8/07

Time: 8:30 a.m.

Dept.: 4

Trial Date: 6/11/07

The Hon. Charles D. Wachob

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

28

ZD

1 TO DEFENDANT AND ITS ATTORNEY OF RECORD:

2 PLEASE TAKE NOTICE that on May 8, 2007 at 8:30 a.m. in Department 4 of the above  
3 Court, plaintiff Meadow Vista Protection (MVP) will move this Court for summary adjudication  
4 of the third cause of action for declaratory relief.

5 The motion is made on the grounds that there are no issues of material fact respecting the  
6 third cause of action and that plaintiff is entitled to a declaratory judgment in its favor as a matter  
7 of law. The governing County Code provides that a conditional use permit lapses if certain  
8 criteria for its use are not met. Defendant's permit LDA-786 has not been used in accordance  
9 with the provisions of the County Code. Therefore, the permit to produce asphalt at defendant's  
10 quarry site has lapsed. Plaintiff is entitled to a declaratory judgment that the use permit has  
11 lapsed and that the defendant must obtain a new permit prior to producing asphalt on its property.

12 Plaintiff's motion for summary adjudication is brought pursuant to Code of Civil  
13 Procedure section 437c and is based on the separate statement of undisputed material facts, the  
14 declarations of Patrick M. Soluri, Fred Blomquist and Angela C. Thompson, the memorandum of  
15 points and authorities, plaintiff's documentary evidence submitted herewith, and other  
16 documents previously filed in this action.

17 Pursuant to Local Rule 20.2.3, on the afternoon of the court day before each regularly  
18 scheduled law and motion calendar, the court will cause to be recorded a tentative ruling on each  
19 matter on the next day's calendar. The tentative rulings will be available after 12:00 noon by  
20 telephoning a voice-mail message at (530) 886-5288. The tentative ruling shall become the final  
21 ruling of the court unless a party advises all other parties and the court of a request for oral

22 ///  
23 ///  
24 ///

25 At the time plaintiff scheduled the hearing on its motion for summary adjudication, plaintiff expected defendant to  
26 make its own motion for summary adjudication on the same cause of action (the Third). Therefore, plaintiff  
27 represented to this Court that the motions should both be heard on May 8, 2007 because they were, in effect, cross  
28 motions for summary adjudication. However, based on a meet and confer letter received from defendant's counsel  
on February 20, 2007, plaintiff is now advised that defendant's motion for summary adjudication will be limited to  
the second cause of action for declaratory relief.

1 argument. Such request shall be made by calling (530) 889-6529 and leaving a recorded  
2 message with the court no later than 4:00 p.m. on the court day preceding the hearing.

3 DATED: February 22, 2007.

4 Respectfully submitted,

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

9 By Angela C. Thompson  
10 ANGELA C. THOMPSON  
11 Attorneys for Plaintiff Meadow Vista Protection

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
THE ZUMBRUN LAW FIRM  
A Professional Corporation  
3800 Watt Avenue, Suite 101  
Sacramento, CA 95821

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 Plaintiff Meadow Vista Protection

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

SUPERIOR COURT FOR 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.: SCV 19614

Complaint Filed: 7/12/06

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PLAINTIFF'S MOTION FOR SUMMARY  
ADJUDICATION OF THIRD CAUSE OF  
ACTION FOR DECLARATORY RELIEF

Date: 5/8/07

Time: 8:30 a.m.

Dept.: 4

Trial Date: 6/11/07

The Hon. Charles D. Wachob

TABLE OF CONTENTS

1		
2		<u>Page</u>
3		
4	TABLE OF AUTHORITIES .....	ii
5	INTRODUCTION .....	1
6	STATEMENT OF FACTS .....	1
7	ARGUMENT .....	1
8	I. THE PLACER COUNTY ZONING ORDINANCE CONTAINS A	
9	MANDATORY LAPSE PROVISION.....	5
10	II. CHEVREAU'S DISCOVERY RESPONSES ADMIT A LAPSE FROM	
11	1976 THROUGH 2001 AND A LAPSE FROM 2001/2002 THROUGH	
12	2006 .....	5
13	III. CHEVREAU'S CUP IS PROPERLY SUBJECT TO THE LAPSE	
14	ORDINANCE .....	7
15	A. The Asphalt Plant Is An Appurtenant Structure Within The	
16	Meaning Of The Lapse Ordinance.....	8
17	B. The Lapse Ordinance Is A Valid Exercise Of The Police Power .....	8
18	C. The Lapse Ordinance Applies Prospectively To Invalidate	
19	Chevreaux's CUP.....	9
20	1. Application Of The Lapse Ordinance To Chevreaux's CUP	
21	Is Not Retroactive .....	10
22	IV. INTENT TO ABANDON IS IRRELEVANT TO THE APPLICATION	
23	OF THE LAPSE STATUTE.....	11
24	V. VESTED RIGHTS HAVE NO EFFECT ON THE APPLICATION OF	
25	THE LAPSE STATUTE.....	13
26	CONCLUSION.....	15
27		
28		

THE ZUMBRUN LAW FIRM  
 A Professional Corporation  
 2000 West Avenue, Suite 101

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

TABLE OF AUTHORITIES

Page

Cases

*Avco Community Developers, Inc. v. South Coast Regional Commission*  
 (1976) 17 Cal.3d 785 ..... 14

*City of Los Angeles v. Gage* (1954) 127 Cal.App.2d 442 ..... 7, 8, 9, 12

*County of Orange v. Goldring* (1953) 121 Cal.App.2d 442 ..... 8, 9

*Davidson v. County of San Diego* (1996) 49 Cal.App.4th 639 ..... 8, 9

*Fernandez-Vargas v. Gonzales* (2006) 126 S.Ct. 2422 ..... 10, 11

*Gerhard v. Stephens* (1968) 68 Cal.2d 864 ..... 11, 12

*Hansen Brothers Enterprises, Inc. v. Board of Supervisors of Nevada County* (1996) 12 Cal.4th 533 ..... 12

*Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach*  
 (2001) 86 Cal.App.4th 534 ..... 14

*HFH, Ltd. v. Superior Court* (1975) 15 Cal.3d 508 ..... 9

*Lakeview Development Corp. v. City of South Lake Tahoe*  
 (9th Cir. 1990) 915 F.2d 1290 ..... 13

*Landgraf v. USI Film Products* (1994) 511 U.S. 244 ..... 10

*Smith v. Worn* (1892) 93 Cal. 206 ..... 12

*Stokes v. Board of Permit Appeals* (1997) 52 Cal.App.4th 1348 ..... 13, 14, 15

*Tahoe Keys Property Owners' Association v. State Water Resources Control Board* (1994) 23 Cal.App.4th 1459 ..... 8, 9

25

THE ZUMBRUN LAW FIRM  
A Professional Corporation  
2900 Walnut Avenue, Suite 101

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Statutes

Code of Civil Procedure § 437c..... 4

Placer County Code § 17.02.010 ..... 9, 15

Placer County Code § 17.04.020(C)..... 3, 5

Placer County Code § 17.04.030 ..... 8

Placer County Code § 17.58.140(E)..... 5

Placer County Code § 17.58.160 B..... 7, 13

Placer County Code § 17.58.160 B.2..... 2, 15

Placer County Code § 17.58.160 B.2.b..... 8

Placer County Code § 17.58.160 B.2.b.- B.3..... 5

Placer County Code § 17.58.160 B.3..... 7

1 Plaintiff Meadow Vista Protection (MVP) hereby moves this Court for summary  
2 adjudication of the third cause of action for declaratory relief in its Petition for Writ of Mandate  
3 and Complaint for Declaratory and Injunctive Relief, Public Nuisance, Private Nuisance and  
4 Trespass. The third cause of action seeks a judgment that defendant Chevreux Aggregates, Inc.  
5 (Chevreux) cannot continue to maintain and operate an asphalt plant at its quarry site in  
6 Meadow Vista, California, without obtaining a new use permit. As the undisputed facts show,  
7 Chevreux's use permit authorizing the asphalt plant has long since lapsed. Therefore, under the  
8 provisions of the Placer County Zoning Code, the production of asphalt may not commence at  
9 the subject site unless Chevreux applies for and obtains a new use permit.

#### 10 INTRODUCTION

11 In 1972, defendant Chevreux applied for and obtained LDA-786, the conditional use  
12 permit (CUP) upon which it purports to base its current entitlement to produce asphalt on its  
13 property. However, undisputed facts show that this permit has undergone extensive periods of  
14 nonuse when no asphalt plant was even present on the property. According to the Placer County  
15 Zoning Code, the periods of nonuse mandate a determination of lapse of the CUP.

#### 16 STATEMENT OF FACTS

17 Plaintiff MVP is a California nonprofit corporation. (Undisputed Material Fact (UMF)  
18 No. 1.) MVP is a local grass roots organization comprised of residents of the unincorporated  
19 Placer County community of Meadow Vista, California, and the surrounding area, as well as  
20 nonresident supporters. (UMF No. 2.) MVP was formed in 2005 for the purpose of protecting  
21 the interests of its members from activities proposed or conducted in the area that would pose an  
22 adverse risk to the health, safety and/or welfare of the greater Meadow Vista area. (UMF No. 3.)

23 Defendant Chevreux Aggregates, Inc. is a California for-profit corporation. (UMF  
24 No. 4.) Chevreux commenced an in-stream sand and gravel dredging and processing operation  
25 in the Bear River near Lake Combie in approximately 1946 or 1947. (UMF No. 5.) In 1965, an  
26 Edward Pruss applied for and obtained conditional use permit (CUP) LD-1030 to commence a  
27 "shot rock quarry" operation on APNs 72-020-03 and 72-030-01 in Placer County near Meadow  
28

1 Vista, California. (UMF No. 6.) Chevreaux acquired Pruss' quarry operation in 1970. (UMF  
2 No. 7.) Between 1947 and 1971, Chevreaux operated an asphalt plant at the Meadow Vista site  
3 on an intermittent basis. Based on these nonconforming operations, Chevreaux believed it did  
4 not need a CUP to produce asphalt. (UMF No. 8.) Nevertheless, in 1971, Placer County  
5 Planning Department determined that a CUP was necessary for the asphalt operation. Chevreaux  
6 then sought and obtained CUP LDA-691 to "reinstall" an asphalt batch plant at the quarry.  
7 (UMF No. 9.)

8 In 1972, Chevreaux was required to obtain a different CUP, LDA-786, to authorize the  
9 relocation of the asphalt plant to a neighboring parcel, APN 72-030-01. This new location was  
10 approximately 600 feet northeast of the LDA-691 location. (UMF No. 10.) LDA-786 identified  
11 two parcels: APNs 72-030-01 and 72-020-03. APN 72-030-01 has subsequently been  
12 renumbered as APN 72-030-61, and APN 72-020-03 has subsequently been divided and  
13 renumbered as APNs 72-020-13 and 72-020-14. (UMF No. 11.) LDA-786 was subject to  
14 12 conditions of approval. Its continued validity depends in part upon Chevreaux's observance  
15 of these conditions. (UMF No. 12.)

16 The current Placer County Code § 17.58.160 B.2. provides: "Once a project has been  
17 implemented . . . the permit that authorized the use shall remain valid . . . unless one of the  
18 following occurs: (b) . . . the use (if no appurtenant structure is required for its operation) is  
19 discontinued for more than twelve consecutive months, or (if an appurtenant structure is required  
20 for the conditionally-permitted use) the structure is removed from the site for more than twelve  
21 consecutive months." (UMF No. 13, Exhibit 35<sup>1</sup>.)

22 Placer County Code § 17.58.160 B.2. further provides: "If one of the foregoing events  
23 occurs, the permit shall be deemed to have lapsed. No use of land, building or structure for  
24 which a permit has lapsed shall be reactivated, re-established or used unless a new permit is first  
25 obtained as provided by this subchapter." (UMF No. 14, Exhibit 35.) According to Placer  
26

27 <sup>1</sup> All exhibit references are to Plaintiff's Documentary Evidence in Support of Motion for Summary Adjudication of  
28 Third Cause of Action filed concurrently herewith.

1 County Code § 17.04.020(C): "The following general rules of construction shall apply to the  
2 interpretation and application of the terms and phrases used in this chapter: . . . (3) 'Shall' is  
3 mandatory; 'may' is discretionary." (UMF No. 15, Exhibit 32.)

4 Fresno Paving, Inc. operated an asphalt plant at Chevreaux's LDA-786 site from about  
5 1972 until about 1976. (UMF No. 16.) No further asphalt operations were conducted on the site  
6 until 2001. (UMF No. 17.) Kiewit Pacific Company received a permit from Placer County Air  
7 Pollution Control District (APCD) to operate an asphalt plant on Chevreaux's property from  
8 May 2001 through May 2002. (UMF No. 18.) Kiewit Pacific's asphalt plant was completely  
9 shutdown in September 2001. The plant was removed from Chevreaux's site in late 2001.

10 (UMF No. 19.) An aerial photograph taken in 1998 reveals that no asphalt plant was present on  
11 the site on that date. The area where Kiewit eventually operated is not even cleared of trees in  
12 this photograph. (UMF No. 20.) An aerial photograph taken on July 1, 1999 reveals that no  
13 asphalt plant was present on the site on that date. (UMF No. 21.) An aerial photograph taken on  
14 November 1, 2002 reveals that no asphalt plant was present on the site on that date. The area  
15 where Kiewit operated has been cleared of trees and graded in this photograph. (UMF No. 22.)  
16 An aerial photograph taken on April 1, 2004 reveals that no asphalt plant was present on the site  
17 on that date. (UMF No. 23.)

18 In early 2005, Teichert Aggregates, Inc. (Teichert) located an asphalt plant at  
19 Chevreaux's quarry site, but the plant was never fully assembled and never operated due to  
20 County concerns regarding the validity of LDA-786. Teichert withdrew its plans to site its plant  
21 in Meadow Vista in March 2005. (UMF No. 24.) An aerial photograph taken on August 1, 2005  
22 reveals the presence of an asphalt plant (presumably Teichert's) on the site on that date. (UMF  
23 No. 25.) An aerial photograph taken on May 1, 2006 reveals that no asphalt plant was present on  
24 the site on that date. (UMF No. 26.)

25 On February 25, 2005, in a memorandum to then Planning Director Fred Yeager, county  
26 counsel noted that the County lapse statute might apply to Chevreaux's asphalt permit, and  
27  
28

1 recommended that more information be sought from Chevreux regarding its activities. (UMF  
2 No. 27.)

3 On March 9, 2005, counsel for Chevreux responded with a lengthy memorandum, but  
4 was not able to provide conclusive evidence that the asphalt plant had operated between 1976  
5 through 2001 or after 2002. (UMF No. 28.) Accordingly, on March 22, 2005, in a reply to  
6 counsel for Chevreux, county counsel stated:

7 [T]he issue of lapse [of LDA-786] has never been fully addressed. The fact that  
8 the County determined, in 1987, that the permit was valid at that time does not  
9 conclusively establish its status almost 20 years later, especially in light of the  
10 amendment to the County ordinances in the interim to include new standards  
11 concerning lapse. The County is not estopped from looking into the use of the  
12 site over time and reviewing that issue should the validity of the permit be  
13 otherwise called into question.

14 (UMF No. 29, Exhibit 29.)

15 In a ruling on the demurrer filed by Chevreux in this matter, this Court held that "[w]ith  
16 respect to the ... third cause[ ] of action for declaratory relief, an actual, justiciable controversy  
17 has been alleged as between the parties." (UMF No. 30.)

#### 18 ARGUMENT

19 Code of Civil Procedure section 437c permits a party to move for summary adjudication  
20 of an issue where there are no material facts in dispute and the moving party shows that it is  
21 entitled to judgment as a matter of law.

22 This motion for summary adjudication is limited to a very narrow issue; namely, whether  
23 the Placer County Zoning Ordinance's lapse provision applies to LDA-786, issued in 1972 to  
24 authorize the production of asphalt at Chevreux's quarry site in Meadow Vista. If so, MVP  
25 seeks a declaratory judgment that the permit has lapsed due to nonuse, and that Chevreux must  
26 obtain a new permit, subject to the conditions and limitations of the current Placer County Code,  
27 in order to produce asphalt on its property in the future.  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

I.

THE PLACER COUNTY ZONING ORDINANCE  
CONTAINS A MANDATORY LAPSE PROVISION

The current Placer County Code was adopted in 1995. Section 17.58.140(E) of the Code requires that, upon issuance of a conditional use permit, "the applicant shall diligently proceed to carry out the conditions of approval and implement the permit by establishing the approved use within [24 months]." (Exhibit 34.) However, after the permittee has implemented the CUP and established the approved use(s), "if an appurtenant structure is required for the conditionally-permitted use [and] the structure is removed from the site for more than twelve consecutive months ... the permit *shall* be deemed to have lapsed." (Placer County Code § 17.58.160 B.2.b.– B.3., emphasis added, Exhibit 35.)

The Code's rules of construction indicate that this determination of lapse is mandatory: "The following general rules of construction shall apply to the interpretation and application of the terms and phrases used in this chapter: ... '*Shall*' is mandatory; 'may' is discretionary. (Placer County Code § 17.04.020(C), emphasis added, Exhibit 32.)

Thus, if the factual elements of the lapse ordinance are present; *i.e.*, if a structure appurtenant to a conditionally permitted use is removed from the subject property for more than 12 consecutive months, the permit lapses. Under the express language of the Code, there is no flexibility that would allow a different result.

II.

CHEVREAU'S DISCOVERY RESPONSES ADMIT A LAPSE FROM  
1976 THROUGH 2001 AND A LAPSE FROM 2001/2002 THROUGH 2006

Since at least 2005, the continued validity of LDA-786 has been the subject of suspicion and inquiry, not only by Meadow Vista and local residents, but also by Placer County Planning staff and Placer County Counsel.

1 It is undisputed that there have been several periods of time greater than one year where  
2 no asphalt was produced at the Chevreaux site and where no asphalt plant was present at the site.  
3 The longest of these periods was 25 years, from 1976 through 2001. (UMF Nos. 16, 17.)  
4 Chevreaux has admitted in discovery responses that the most recent asphalt production project  
5 ended in 2002.<sup>2</sup> (UMF No. 18.) And though Teichert temporarily sited an asphalt plant at  
6 Chevreaux's quarry in early 2005, the plant was never fully assembled and never operated.  
7 Teichert withdrew its plans to site the plant at Chevreaux's quarry in March of 2005. (UMF No.  
8 24.) Thus, no asphalt plant was fully present at Chevreaux's quarry site from 2001 until its  
9 current plant was placed there, a lapse of nearly five years.

10 Though Chevreaux and its counsel have been given several opportunities to explain or  
11 justify these lapses in asphalt production, they are consistently unable to do so. In February of  
12 2005, Placer County Counsel asked Chevreaux's counsel to provide a chronology of  
13 Chevreaux's historical asphalt production. She did so, in a memorandum dated March 9, 2005.  
14 (UMF No. 28.) However, much of the so-called "evidence" of production was anecdotal at best,  
15 and County Counsel was not convinced. In a reply memorandum dated March 22, 2005, County  
16 Counsel stated:

17 [T]he issue of lapse has never been fully addressed. The fact that the County  
18 determined, in 1987, that the permit was valid at that time does not conclusively  
19 establish its status almost 20 years later, *especially in light of the amendment to*  
20 *the County ordinances in the interim to include new standards concerning*  
21 *lapse*. The County is not estopped from looking into the use of the site over time  
22 and reviewing that issue should the validity of the permit be otherwise called into  
23 question.

24 (UMF No. 29, emphasis added.)

25 Similarly, in its responses to MVP's discovery requests, Chevreaux is able to identify  
26 *only two* periods of operation between 1972 and the present. (UMF Nos. 16-18.) These two time  
27 periods account for only *six* of the intervening 35 years since the permit was issued.

28 <sup>2</sup> Undisputed facts show that this project actually ceased production and was removed from the site in 2001, but its  
APCD Temporary Permit to Operate was effective through May of 2002. MVP assumes this is the basis for that  
date in Chevreaux's discovery responses.



1 A. The Asphalt Plant Is An Appurtenant Structure  
2 Within The Meaning Of The Lapse Ordinance

3 A CUP will lapse if "an appurtenant structure ... required for the conditionally-permitted  
4 use ... is removed from the site for more than twelve consecutive months." (Placer County Code  
5 § 17.58.160 B.2.b.) Placer County Code § 17.04.030 defines "structure" to mean "any artifact  
6 constructed or erected, the use of which requires attachment to the ground, or over one hundred  
7 twenty (120) square feet in area or over six feet in height." (Exhibit 33.)

8 Chevreaux's mining operations facilitate the use of an asphalt plant onsite. The asphalt  
9 plant is portable and may be removed from the site. When it is present and operating onsite, it is  
10 affixed to a concrete foundation. The asphalt plant is necessary to the production of asphalt  
11 permitted in Chevreaux's CUP. In other words, the asphalt plant is required for Chevreaux to  
12 perform the conditionally permitted use. (Placer County Code § 17.58.160 B.2.b.) It is thus an  
13 "appurtenant structure" within the meaning of the County Code.

14 Because the asphalt plant—i.e., the "appurtenant structure"—has been removed from the  
15 site far in excess of the twelve consecutive month period, for two separate time periods, the CUP  
16 issued to Chevreaux permitting the use has lapsed, according to the express language of the  
17 statute.

18 B. The Lapse Ordinance Is A Valid Exercise Of The Police Power

19 "[I]t is the purpose of zoning to crystallize present uses and conditions and eliminate  
20 nonconforming uses as rapidly as is consistent with proper safeguards for those affected."  
21 (*County of Orange v. Goldring* (1953) 121 Cal.App.2d 442, 446.) Consistent with this purpose  
22 is the rule that "landowners have no vested right in existing or anticipated zoning regulations."  
23 (*Tahoe Keys Property Owners' Association v. State Water Resources Control Board* (1994)  
24 23 Cal.App.4th 1459, 1484 (*Tahoe Keys*).

25 As such, it is well settled in this state that a municipality acts well within its police  
26 powers when it enacts zoning regulations aimed at phasing out nonconforming uses. (*Gage*,  
27 *supra*, 127 Cal.App.2d at p. 459; see *Davidson v. County of San Diego* (1996) 49 Cal.App.4th  
28

1 639, 648 [finding that “[i]t is well settled in California that public entities may impair vested  
2 rights where necessary to protect the health and safety of the public”]; Placer County Code  
3 § 17.02.010 (declaring the purpose of the zoning regulations to support a growing population and  
4 manage land use to accommodate the county's future growth and further “to protect and promote  
5 the public health, safety, peace, comfort, convenience and general welfare”). It is equally settled  
6 that abrogation of nonconforming uses must comply with certain constitutional safeguards.  
7 (*Goldring, supra*, 121 Cal.App.2d at p. 446.)

8         However, inherent in the constitutional protections afforded nonconforming uses is the  
9 requirement that there be *some continuing use* in which a landowner can claim rights. (*HFH,*  
10 *Ltd. v. Superior Court* (1975) 15 Cal.3d 508, 516 [noting that “[a] purchaser of land merely  
11 acquires a right to continue a *use* instituted before the enactment of a more restrictive zoning”],  
12 emphasis in original.)

13         In this case, Chevreaux has simply failed to *use* its property for the operations permitted  
14 under its 1972 CUP. Because Chevreaux has failed to use the site for the conditionally permitted  
15 use, and has removed the necessary asphalt plant from the site for exceedingly long periods of  
16 time, Chevreaux may not avoid operation of the Lapse Ordinance as validly enacted by the  
17 County. (See *Gage, supra*, 127 Cal.App.2d at p.459.)

18 C.     The Lapse Ordinance Applies Prospectively to Invalidate Chevreaux's CUP

19         “As a general rule, land use regulation must be prospective in nature because the state is  
20 constitutionally limited in the extent to which it may, through land use regulation, affect prior  
21 existing uses.” (*Tahoe Keys, supra*, 23 Cal.App.4th at pp. 1483-1484.)

22         The asphalt plant required for Chevreaux's permitted use of the site has been removed  
23 from the site in excess of twelve consecutive months, on two separate occasions, since the  
24 enactment of the county's Lapse Ordinance in 1995. Thus, the Ordinance properly applies to  
25 those relevant time periods, i.e., from 1995 through 2001 and from 2001 through 2005 or 2006.  
26 The date on which the CUP issued is irrelevant to this determination.

1           1.    Application Of The Lapse Ordinance To Chevreaux's CUP Is Not Retroactive

2           A statute is said to operate retroactively when it "takes away or impairs vested rights  
3 acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new  
4 disability, in respect to transactions or considerations already past..." (*Landgraf v. USI Film*  
5 *Products* (1994) 511 U.S. 244, 269; *Fernandez-Vargas v. Gonzales* (2006) 126 S.Ct. 2422,  
6 2428.) Thus, "[s]tatutes are disfavored as retroactive when their application 'would impair rights  
7 a party possessed when he acted, increase a party's liability for *past conduct*, or impose new  
8 duties with respect to *transactions already completed*.'" (*Id.* at pp. 2427-2428, quoting  
9 *Landgraf, supra*, 511 U.S. at p. 280, emphases added.)

10           Here, the Lapse Ordinance properly applies to Chevreaux's discontinued use and removal  
11 of the asphalt plant for periods *after* 1995, when the Ordinance was enacted. The Lapse  
12 Ordinance concerns itself only with Chevreaux's actions, or failure to act, from that time  
13 forward. Therefore, Chevreaux is not being punished or subjected to new liabilities on the basis  
14 of pre-1995 activities, but rather, it is Chevreaux's continuing conduct that is within the scope of  
15 the Lapse Ordinance. As such, retroactivity is not a concern.

16           In *Fernandez-Vargas, supra*, 126 S.Ct. 2422, an illegal alien challenged his deportation  
17 under immigration laws enacted after he had entered the country. Under prior laws, an alien in  
18 *Fernandez-Vargas'* position would be entitled to apply for relief from deportation, whereas under  
19 the newly enacted laws no such relief was obtainable. *Fernandez-Vargas* asserted that  
20 application of the new laws to him was retroactive because it imposed new hardships not  
21 previously imposed on persons similarly situated. (*Id.* at p. 2427.) The Court disagreed.

22           The Court in *Fernandez-Vargas* engaged in a lengthy discussion regarding the disfavored  
23 status of retroactive laws. (*Fernandez-Vargas, supra*, 126 S.Ct. at pp. 2427-2428.) However,  
24 the Court concluded that application of the new laws to *Fernandez-Vargas* was not retroactive  
25 because the new laws did not address *past conduct*, but rather *Fernandez-Vargas'* *continued*  
26 *conduct* in remaining in the country and thereby committing a continuing violation. (*Id.* at pp.  
27 2431-2432.)

1 Similarly in the present case, we are not concerned with Chevreaux's conduct before the  
2 enactment of the Lapse Ordinance in 1995, but rather we must focus upon Chevreaux's decision  
3 to continue such conduct after 1995. The continuous absence of the asphalt plant from the site  
4 after 1995 is thus within the scope of the Lapse Ordinance, and retroactivity is not a concern to  
5 such application. In other words, the Ordinance is not reaching back to impose liabilities on  
6 Chevreaux's pre-1995 conduct. It is Chevreaux's continuing failure to reinstate the asphalt plant  
7 after 1995 that is subject to the Lapse Ordinance.

8 In *Fernandez-Vargas*, the Court recognized that, not only was it the alien's current and  
9 continuing conduct that was subject to the new laws, but that the alien also had ample warning to  
10 avoid the new laws by applying for relief before the new laws took effect. (*Fernandez-Vargas*,  
11 *supra*, 126 S.Ct. at p. 2432.) In the present case, Chevreaux, too, had ample time to correct its  
12 situation by resuming operations on the site by reintroducing the asphalt plant. However,  
13 Chevreaux's failure to reinstate the asphalt plant within 12 months from the time the Lapse  
14 Ordinance took effect properly subjects Chevreaux to operation of the Ordinance.

15 Accordingly, Chevreaux's post-1995 failure to reinstate the asphalt plant, and the  
16 continuous absence of the plant after that time, caused Chevreaux's CUP to lapse pursuant to the  
17 Ordinance.

18 IV.

19 INTENT TO ABANDON IS IRRELEVANT  
20 TO THE APPLICATION OF THE LAPSE STATUTE

21 The legal principle of abandonment requires a subjective intent on the part of the property  
22 owner to abandon his interest: "[A]bandonment hinges upon the intent of the owner to forego all  
23 future conforming uses of his property, and the trier of fact must find the conduct demonstrating  
24 the intent 'so decisive and conclusive as to indicate a clear intent to abandon ....' ... ¶ [T]he  
25 trier of fact, before decreeing an abandonment, must find that the owner's conduct clearly and  
26 convincingly demonstrates the necessary intent." (*Gerhard v. Stephens* (1968) 68 Cal.2d 864,  
27  
28

1 889-890, quoting *Smith v. Worn* (1892) 93 Cal. 206, 213.) However, in *Gerhard* and other cases  
2 applying its rule, the property interest at issue was a fee estate.

3         The case of *Hansen Brothers Enterprises, Inc. v. Board of Supervisors of Nevada County*  
4 (1996) 12 Cal.4<sup>th</sup> 533 also discussed abandonment, but is distinguishable from *Gerhard* in that it  
5 involved a nonconforming use. A nonconforming use is "a lawful use existing on the effective  
6 date of the zoning restriction and continuing since that time in nonconformance to the  
7 ordinance." (*City of Los Angeles v. Gage, supra*, 127 Cal.App.2d at p. 453.) The *Hansen* court  
8 discussed the relation of discontinuance of a use to abandonment, but ultimately did not make a  
9 ruling on that basis because the court concluded there had been no discontinuance of the  
10 nonconforming use.

11         Nonetheless, even if *Hansen* is construed to require subjective intent to abandon before  
12 discontinuance of activity deprives a landowner of a particular use, *Hansen's* express language  
13 limits its holding to nonconforming uses: "[A]bandonment of a nonconforming use ordinarily  
14 depends upon a concurrence of two factors: (1) An intention to abandon; and (2) an overt act, or  
15 failure to act, which carries the implication the owner does not claim or retain any interest in the  
16 right to the nonconforming use." (*Hansen Brothers, supra*, 12 Cal. 4<sup>th</sup> at p. 569.) There is a  
17 stronger public policy to allow prior lawful uses to continue, thus it is understandable that the  
18 courts have added an intent requirement to abandon a nonconforming use.

19         In this case, we are not dealing with a fee estate or a nonconforming use. Chevreaux's  
20 asphalt operation is based on a conditional use permit to conduct an asphalt operation on its  
21 property. Prior to obtaining its permit, Chevreaux attempted to convince the County that no such  
22 permit was needed, based on a nonconforming use theory. (UMF No. 8.) Nevertheless, the  
23 County required Chevreaux to obtain a conditional use permit. (UMF No. 9.) This permit is  
24 thus subject to the lapse statute, and Chevreaux's subjective intent regarding abandonment of the  
25 asphalt operation is irrelevant.

26         Moreover, the very terms of the Placer County lapse statute indicate that its application is  
27 not affected by the subjective intent of the permit holder. When Chevreaux discontinued the  
28

1 specific use for 12 consecutive months it forfeited the permission it had previously received to  
2 conduct its asphalt operations. Placer County Code § 17.58.160 B, specifically provides: "[i]t  
3 shall be the responsibility of the applicant *alone* to monitor the time limits and make diligent  
4 progress on the approved project, so as to avoid permit expiration." (Exhibit 35, emphasis  
5 added.) Because Chevreux's authorization to conduct its activity is conditioned upon its due  
6 diligence and its use of the specific activity, its intent is irrelevant. Chevreux had constructive,  
7 if not actual, notice that it had to be diligent. Since Chevreux's due diligence was a condition of  
8 the permit, there is no reason for this Court to read into the statute a requirement of subjective  
9 intent to abandon the use.

10 V.

11 VESTED RIGHTS HAVE NO EFFECT ON  
12 THE APPLICATION OF THE LAPSE STATUTE

13 Even if a permittee's rights in a permit may be vested, lapse statutes nevertheless apply.  
14 For example, in *Lakeview Development Corp. v. City of South Lake Tahoe* (9<sup>th</sup> Cir. 1990)  
15 915 F.2d 1290, the developer of a two-phase project lost a vested right to complete the project by  
16 not timely processing the second phase of the development. As in the case at bar, a new land use  
17 regulation was adopted which applied prospectively to the project. The developer did virtually  
18 nothing to proceed with the development of phase two for almost 10 years after completing  
19 phase one. When the developer objected to the application of the new regulation to its project,  
20 the court was unsympathetic. The court rejected the developer's argument that the right to  
21 develop phase two had vested with phase one. "Lakeview chose not to develop ... Unit Two ...  
22 on schedule ...." (*Id.* at p. 1298.) To hold otherwise would suggest that Lakeview's right to  
23 complete phase two "[was] vested forever." (*Ibid.*)

24 In *Stokes v. Board of Permit Appeals* (1997) 52 Cal.App.4th 1348, the court concluded  
25 that the discontinued use of a bathhouse for seven years defeated any claim of vested rights the  
26 landowner could claim in the prior use. The court in *Stokes* discussed the effect of the  
27 discontinued use in light of a zoning ordinance similar to the one enacted in Placer County. The  
28

1 ordinance at issue in *Stokes* provided that any vested rights in a nonconforming use of property  
2 will lapse if the use has been discontinued for a period of three years or if there is evidence of a  
3 clear intent to abandon the use. (*Id.* at p. 1354.)

4 The court in *Stokes* determined that the fact that the bathhouse had remained vacant and  
5 inactive for at least seven continuous years “establish[ed] more than a temporary vacancy, but  
6 rather an intentional decision to abandon the premises.” (*Stokes, supra*, 52 Cal.App.4th at p.  
7 1354.) In so doing, the court disregarded the petitioner’s assertions that no clear evidence of any  
8 intent to abandon the property existed.<sup>3</sup> (*Ibid.*)

9 The present case involves discontinuance of a conditionally-permitted use for two  
10 separate and distinct periods. The first involved a continuous 25 year period in which the asphalt  
11 plant remained absent from the site between 1976 and 2001. Although the exceedingly long  
12 period of nonuse prior to 1995 is outside the scope of the Lapse Ordinance, which was enacted in  
13 1995, the six-year period from 1995 to 2001 is properly subject to the Lapse Ordinance. The  
14 second involved a four- to five-year period of continuous nonuse from 2001 to 2005 or 2006.

15  
16  
17 <sup>3</sup> Petitioner in *Stokes* claimed vested rights in the continuance of a nonconforming use as it existed prior to  
18 changes in zoning regulations, as well as under the well-established principle that a landowner will acquire vested  
19 rights if he has incurred substantial liabilities to his detriment after relying in good faith on an issued permit.  
20 (*Stokes, supra*, 52 Cal.App.4th at p. 1353; *Avco Community Developers, Inc. v. South Coast Regional Commission*  
21 (1976) 17 Cal.3d 785, 791 (*Avco*);) Without elaboration on these principles, the court in *Stokes* proceeded to apply  
22 the provisions of relevant lapse ordinance, ultimately determining any such rights as petitioner could claim lapsed as  
23 a result of discontinued use.

24 It should be noted that the issue of vested rights under a theory as announced in *Avco* is irrelevant to the present  
25 case. Under *Avco* and its progeny, a municipality is essentially estopped from revoking a permit lawfully issued  
26 once a permittee has in good faith detrimentally relied upon it. (*Avco, supra*, 17 Cal.3d at p. 791; *Hermosa Beach*  
27 *Stop Oil Coalition v. City of Hermosa Beach* (2001) 86 Cal.App.4th 534, 551-552.) In other words, the issue of  
28 vested rights under an *Avco* theory pertains to whether or not the permittee may complete implementation of the  
permit without governmental interference. (*Hermosa Beach Stop Oil Coalition, supra*, 86 Cal.App.4th at p. 552  
[recognizing that the vested rights doctrine established under *Avco* relates to a “developer’s right to complete a  
project as proposed”].) That is not the case here.

Chevreaux obtained its CUP in 1972. Chevreaux implemented the permit at that time. The County of Placer  
made no attempts to revoke or withdraw the permit issued Chevreaux and in no way interfered with Chevreaux’s  
implementation of its CUP. Rather, the present case involves the lapsing of vested rights when the permittee has  
simply failed to continue the permitted use *after implementation*. As discussed above, such lapsing ordinances are  
valid exercises of the police power. (Section II.B., *supra*.)



THE ZUMBRUN LAW FIRM  
A Professional Corporation  
3900 West Avenue, Suite 101

1 the County Zoning Code, which require issuance of a new permit in light of the lapse of LDA-  
2 786.

3 Since undisputed facts establish that LDA-786 has lapsed, MVP respectfully requests this  
4 Court to grant its motion for summary adjudication and issue a declaratory judgment in MVP's  
5 favor as to the Third Cause of Action.

6 DATED: February 22, 2007.

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Respectfully submitted,

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

By Angela C. Thompson  
ANGELA C. THOMPSON  
Attorneys for Plaintiff Meadow Vista Protection

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

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 Plaintiff

10 SUPERIOR COURT FOR THE STATE OF CALIFORNIA

11 COUNTY OF PLACER

12 MEADOW VISTA PROTECTION,

13 Petitioner and Plaintiff,

14 v.

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

19 Respondents and Defendants.

RECEIVED

JUL 26 2007

CDRA

Case No: SCV 19614

Complaint Filed: 7/12/06

PLAINTIFF MEADOW VISTA  
PROTECTION'S REPLY BRIEF IN  
SUPPORT OF MOTION FOR SUMMARY  
ADJUDICATION OF THIRD CAUSE OF  
ACTION FOR DECLARATORY RELIEF

Date: 5/15/07

Time: 8:30 a.m.

Dept.: 4

Trial: 11/13/07

Judge: The Hon. Charles D. Wachob

TABLE OF CONTENTS

	<u>Page</u>
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	
TABLE OF AUTHORITIES .....	iii
INTRODUCTION.....	1
ARGUMENT.....	2
I. NONE OF THE EVIDENCE PROFFERED BY DEFENDANT ESTABLISHES OPERATION OF AN ASPHALT PLANT BETWEEN 1995 AND 2001 OR BETWEEN 2002 AND THE PRESENT; THEREFORE, THIS EVIDENCE FAILS TO CREATE A TRIABLE ISSUE OF MATERIAL FACT.....	2
II. THIS COURT'S ROLE IS TO APPLY THE PLACER COUNTY LAPSE ORDINANCE TO THE UNDISPUTED FACTS, NOT REDRAFT THE ORDINANCE TO SATISFY DEFENDANT'S PUBLIC POLICY CONCERNS.....	2
III. THE COUNTY HAS NEVER DETERMINED THAT LDA-786 HAS NOT LAPSED, AND EVEN IF THE COUNTY MADE SUCH A DETERMINATION, IT WOULD NOT BE VALID OR BINDING.....	4
A. Defendant Mischaracterizes Communications From The County As Final Determinations That LDA-786 Has Not Lapsed, When Subsequent Documents Clearly State That No Final Determination Has Been Made.....	4
B. Even If The February 25, 2005 Memorandum Is An Official Determination Of Nonlapse, The Determination Is Not Valid Or Binding Because It Would Contravene The County Zoning Code, As A Matter Of Law, In Violation Of <i>Markey</i> .....	5
IV. THE DEFINITION OF "SURFACE MINING OPERATIONS" IN SMARA DOES NOT INCLUDE THE OPERATION OF AN ASPHALT PLANT; ON THE CONTRARY, IT IS LIMITED TO THE "MINING OF MINERALS ON MINED LANDS".....	6
V. OTHER THAN LDA-786, DEFENDANT ADMITS THAT NONE OF ITS CONDITIONAL USE PERMITS REFERENCE OPERATION OF AN ASPHALT PLANT.....	8
VI. EVEN IF IT IS ASSUMED, ARGUENDO, THAT SMARA ENCOMPASSES ASPHALT OPERATIONS, PLACER COUNTY'S LAPSE ORDINANCE MUST NEVERTHELESS BE ENFORCED.....	9

1 A. SMARA Does Not Supersede Local Land Use Zoning Ordinances.....9  
 2 B. A Determination Of Vested Rights Under Smara Requires "Continuous"  
 3 Use, And It Is Undisputed And Admitted That There Has Been No  
 4 "Continuous" Use Of An Asphalt Plant.....9  
 5 C. The California Supreme Court Has Rightly Recognized That Vested  
 6 Rights Can Lapse .....11  
 7 VII. DEFENDANT'S ASPHALT PERMIT DOES NOT AUTHORIZE  
 8 "INTERMITTENT" OPERATION, NOR DOES IT DESCRIBE AN  
 9 ASPHALT PLANT AS AN "ACCESSORY USE" .....12  
 10 VIII. DEFENDANT'S UNDISPUTED NONOPERATION OF AN ASPHALT  
 11 PLANT FROM 1995 THROUGH 2001 AND FROM 2002 THROUGH  
 12 THE PRESENT PRECLUDES A FINDING OF NONCONFORMING  
 13 USE AS A MATTER OF LAW ..... 14  
 14 A. Defendant Misquotes And Misrepresents The Placer County  
 15 Ordinance Provision Regarding Continuation Of An Existing Use ..... 14  
 16 B. The Placer County Ordinance Expressly Provides That The Asphalt  
 17 Plant Is Presumed Abandoned Due To Non-Use ..... 14  
 18 IX. THIS COURT HAS ALREADY REJECTED DEFENDANT'S  
 19 STATUTE OF LIMITATIONS ARGUMENT.....15  
 20 X. THE MOTION IS PROCEDURALLY PROPER .....15  
 21 CONCLUSION.....15  
 22  
 23  
 24  
 25  
 26  
 27  
 28

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

TABLE OF AUTHORITIES

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Page

Cases

*Avco Community Developers, Inc. v. South Coast Regional Commission* (1976)  
 17 Cal.3d 785 ..... 1, 11, 12

*Billmeyer v. Plaza Bank of Commerce* (1995) 42 Cal.App.4<sup>th</sup> 1086 ..... 2

*City of West Hollywood* (2003) 105 Cal.App.4<sup>th</sup> 1134 ..... 12

*Consumer Cause, Inc. v. SmileCare* (2001) 91 Cal.App.4<sup>th</sup> 454 ..... 6

*Dean W. Knight & Sons, Inc. v. State of California ex. rel. Department  
 of Transportation* (1984) 155 Cal.App.3d 300 ..... 2

*Faulder v. Mendocino County Board of Supervisors* (2006) 144 Cal.App.4<sup>th</sup> 1362 ..... 3, 7

*Hansen Brothers Enterprises, Inc. v. Board of Supervisors of Nevada County*  
 (1996) 12 Cal.4th 533 ..... 11

*Hill v. City of Manhattan Beach* (1971) 6 Cal.3d 279 ..... 11

*Lilienthal & Fowler v. Superior Court* (1993) 12 Cal.App.4<sup>th</sup> 1848 ..... 15

*Markey v. Danville Warehouse and Lumber, Inc.* (1953) 119 Cal.App.2d 1 ..... 5, 6

*Oceanic California, Inc. v. North Central Coast Regional Commission*  
 (1976) 63 Cal.App.3d 57 ..... 12

Statutes

Code of Civil Procedure section 437c(d) ..... 12

Placer County Code, § 17.02.030(C) ..... 14

Placer County Code, § 17.06.050(D) ..... 13

Placer County Code, § 17.58.160(B)(3) ..... 13

Placer County Code, § 17.60.120(G) ..... 14

Public Resources Code, § 2715 ..... 9

Public Resources Code, § 2735 ..... 6

Pub. Resources Code, § 2776 ..... 9, 10, 11

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## INTRODUCTION

Defendant Chevreaux Aggregates, Inc.'s Opposition to Meadow Vista Protection's Motion for Summary Adjudication (Opposition) is a classic example of obfuscation: burden the Court with so many documents detailing the history of mining operations since 1947, whether material or not, that it would at least *appear* that a trial is necessary to "sort it all out."<sup>1</sup> However, Defendant cannot obfuscate several significant admissions which are germane to the *narrow*, material issue raised in the Motion for Summary Adjudication: lapse of asphalt plant operations.

First, Defendant admits that it did not operate an asphalt plant from 1975 to 2001, or from 2002 to the present, which is well beyond the 12-month time period referenced in the lapse ordinance.

Second, even if it is assumed that the Surface Mining and Reclamation Act (SMARA) encompasses asphalt operations (which it does not), it is undisputed and admitted that Defendant has *never* "continuously" operated an asphalt plant. As such, it cannot have obtained a vested right to operate an asphalt plant under SMARA's vested rights provision.

Third, even if it is further assumed that Defendant has a vested right to operate an asphalt plant (which it does not), the lapse ordinance would nevertheless apply. There is established case law, including the seminal California Supreme Court vested rights opinion in *Avco Community Developers, Inc. v. South Coast Regional Commission* (1976) 17 Cal 3d 785, that a vested right can nevertheless lapse from nonuse.

Finally, it is undisputed that neither CUP-853 (the reclamation permit), Defendant's Reclamation Plan - Part B, nor Defendant's quarry permit (LDA-1030) contain *any* reference to the operation of an asphalt plant. Related thereto, LDA-786 (the asphalt plant CUP) does not authorize "intermittent" operation, nor does it describe an asphalt plant as an "accessory use."

For the foregoing reasons, this Court should grant the Motion for Summary Adjudication, as there are no disputed issues of *material* fact.

<sup>1</sup> All of Defendant's own "undisputed facts" are immaterial as set forth in MVP's separately filed Response to Defendant's Statement of Undisputed Facts, incorporated herein by reference.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

ARGUMENT

I.  
NONE OF THE EVIDENCE PROFFERED BY DEFENDANT ESTABLISHES  
OPERATION OF AN ASPHALT PLANT BETWEEN 1995 AND 2001 OR  
BETWEEN 2002 AND THE PRESENT; THEREFORE, THIS EVIDENCE  
FAILS TO CREATE A TRIABLE ISSUE OF MATERIAL FACT

It is *undisputed* that Defendant's asphalt plant did not operate between 1995 and 2001. (UMF No. 17; Defendant's Response to UMF No. 17; see also Opp. at p. 18:24-27.) Defendant also has failed to introduce any evidence of asphalt operations from 2002 through the present, conceding two separate five year lapses. Either timeframe is sufficient to trigger the Placer County lapse ordinance. Moreover, in recent discovery responses served after the filing of the instant motion, Defendant admitted that no asphalt plant or appurtenant structure has even been *present* at its site during these time periods. (See Responses to Requests for Admission Nos. 1-9, Exhibit 1 to Declaration of Timothy V. Kassouni (Kassouni Declaration) filed herewith.)

The application of the lapse ordinance to defendant's asphalt operation is a question of law, not fact.<sup>2</sup> Therefore, the primary issue of material fact is the date of nonoperation. (See *Billmeyer v. Plaza Bank of Commerce* (1995) 42 Cal.App.4<sup>th</sup> 1086, 1099 ["materiality depends on the *issues in the case*; evidence which does not relate to a matter in issue is *immaterial*"], emphasizes in original.) Since defendant has admitted significant lapses well in excess of the lapse ordinance, there are no triable issues of material fact and this Court can and should grant the motion as a matter of law.

II.  
THIS COURT'S ROLE IS TO APPLY THE PLACER COUNTY LAPSE ORDINANCE  
TO THE UNDISPUTED FACTS, NOT REDRAFT THE ORDINANCE TO SATISFY  
DEFENDANT'S PUBLIC POLICY CONCERNS

Relying in great measure on the Declaration of Louis H. Merzario, Jr. -- a procedurally defective declaration replete with objectionable legal conclusions<sup>3</sup> -- Defendant devotes a

<sup>2</sup> Defendant states several times that the application of the lapse ordinance to its asphalt activities is a question of fact. (See, e.g., Opp. at pp. 2:7-9; 25:24-26.) This is not so: "It is elementary that the construction of a statute and the question of whether it is applicable present *solely questions of law*." (*Dean W Knight & Sons, Inc. v. State of California ex. rel. Department of Transportation* (1984) 155 Cal.App 3d 300, 305, emphasis added.)

<sup>3</sup> See Plaintiff Meadow Vista Protection's Objections to Evidence filed herewith.

1 substantial portion of its Opposition to a recitation of public policy arguments which may be  
2 proper for a governmental entity with legislative powers, but not a neutral court of law. These  
3 public policy arguments express Defendant's *desire* that the Placer County lapse ordinance be  
4 amended to carve out an exception for asphalt plant operations. Examples include the following:

- 5 • Defendant's operations are purportedly "seasonal and intermittent, depending on  
6 the market for the material" (Opp. at 18:7-9);
- 7 • "By its very nature, production at an asphalt plant is directly dependent upon the  
8 local markets" (Opp. at 19:3-4);
- 9 • Asphalt plants are "portable" (Opp. at 19:12);
- 10 • Travel time and ambient temperatures are "limiting factors" (Opp. at 19:14);
- 11 • Defendant's asphalt operations are "highly dependent upon governmental  
12 contracts . . ." (Opp. at 19:15-16); and
- 13 • Asphalt plants and their production are "directly related to local demand for  
14 product" (Opp. at 20:2).

15 Without citation to legal authority, Defendant asserts that the foregoing facts establish  
16 that the underlying land use has "not been abandoned." (Opp. at 20:4.) However, there is nothing  
17 in the Placer County Zoning Ordinance that carves out a "lapse" exception under such  
18 circumstances. Thus, even if it is assumed, *arguendo*, that the above facts are true, they are  
19 immaterial to the lapse issue and do not create triable issues of fact.<sup>4</sup> These facts may be relevant  
20 if presented to the County of Placer as a public policy argument to amend the zoning ordinance  
21 to carve out an exception for asphalt plants. However, it is not this Court's role to make public  
22 policy decisions and rewrite the zoning ordinance to accommodate Defendant's desire. This  
23 Court must follow the plain meaning of the actual words of the zoning ordinance:

24 These appeals to policy considerations are, at bottom, entreaties to take  
25 action that would take us outside judicial function. 'Respect for the  
26 political branches of our government requires us to interpret the laws in  
27 accordance with the expressed intention of the Legislature, and we have  
28 'no power to rewrite the statute . . . to make is conform to a presumed  
intention [that] is not expressed.' [Citation omitted.]

(*Faulder v. Mendocino County Board of Supervisors* (2006) 144 Cal.App.4<sup>th</sup> 1362, 1379.)

<sup>4</sup> It is apparent that Defendant is attempting to convert the Motion for Summary Adjudication into a motion based solely on an abandonment argument. However, it is principally based on the Placer County "lapse" ordinance.

1 The undisputed fact is that a separate CUP (LDA-786) was issued for operation of an  
2 asphalt plant, and the lapse provision of the Placer County Zoning Ordinance does not contain an  
3 exclusion for asphalt plant operations.

4  
5 III.  
6 THE COUNTY HAS NEVER DETERMINED THAT LDA-786 HAS NOT  
7 LAPSED, AND EVEN IF THE COUNTY MADE SUCH A  
8 DETERMINATION, IT WOULD NOT BE VALID OR BINDING

9 A. Defendant Mischaracterizes Communications from the County as Final Determinations  
10 that LDA-786 Has Not Lapsed, when Subsequent Documents Clearly State that No  
11 Final Determination Has Been Made

12 The County has never formally determined that LDA-786 has not lapsed. At page 8 of its  
13 Opposition, defendant quotes from a series of e-mails from Bill Combs of the Planning  
14 Department to various agencies. The latest of these e-mails is dated February 16, 2005.  
15 However, defendant selectively ignores Mr. Combs' letter of February 22, 2005 to Daniel Palmer  
16 of Teichert Construction wherein Mr. Combs stated:

17 I did give you a call to advise you that Tony LaBouff, County Counsel, and Fred  
18 Yeager, Planning Director, had reviewed the files and had made a preliminary  
19 determination that LDA-786 appeared to have established rights for the Teichert  
20 project to proceed. *I later advised you that Mr. LaBouff had decided to*  
21 *investigate the case further, which has been on going. At no time did I advise*  
22 *you to begin moving equipment and starting operation at the Chevreaux site.*

23 (Exhibit 25 of MVP's Documentary Evidence, emphasis added.)

24 Similarly, defendant quotes from the February 25, 2005 memorandum of County Counsel  
25 Anthony LaBouff: "The County . . . has acted as if there has not been a lapse. It could be argued  
26 that the permit holder could reasonably rely upon such actions of the County in exercising its  
27 business judgments." (February 25, 2005 Memorandum, UMF No. 27, Exhibit 27 of MVP's  
28 Documentary Evidence.) Notably, Defendant omits the very next sentence, which states,

29 In order to make any *ultimate determination* as to whether the permit has lapsed  
30 and whether the activity proposed by Teichert Construction requires a new  
31 conditional use permit, the following type of additional information is necessary:  
32 . . . 3) How frequently, and for what lengths of time was an asphalt batch plant in  
33 operation on the site from 1987 through 2001? 4) Has each plant been placed on  
34 the site as needed and then removed after the production is over or are there any  
35 appurtenant structures that are associated with the operation of an asphalt batch

1 plant on the site?

2 (*Id.*, emphasis added.) Far from making a determination of nonlapse in this memorandum,  
3 County Counsel was actually seeking additional information from the permit holder and  
4 incorporating the language of the lapse ordinance in his inquiry.

5 Moreover, County Counsel wrote to Defendant's counsel on March 22, 2005, stating:

6 [T]his office continues to question whether the Teichert proposal falls within the  
7 bounds of the permit that was granted to Joe Chevreux in 1972. ... [T]he issue  
8 of lapse has never been fully addressed. The fact that the County determined, in  
9 1987, that the permit was valid at that time *does not conclusively establish its*  
status almost 20 years later, especially in light of the amendment to the County  
ordinances in the interim to include new standards concerning lapse.

10 (March 22, 2005 letter to Brigit Barnes, Exhibit 29 of MVP's Documentary Evidence, emphases  
11 added; UMF No. 29.) This letter post-dates the prior memorandum by nearly a month.

12 Obviously, Mr. LaBouff had made no conclusive determination of nonlapse in his prior  
13 memorandum.

14 B. Even if the February 25, 2005 Memorandum Is an Official Determination of Nonlapse,  
15 the Determination Is Not Valid or Binding Because It Would Contravene the County  
Zoning Code, As a Matter of Law, in Violation of *Markey*

16 Even assuming, arguendo, that the County had at some point after 1995 determined that  
17 LDA-786 has not lapsed, this determination would not be binding. As set forth in *Markey v.*  
18 *Danville Warehouse and Lumber, Inc.* (1953) 119 Cal.App.2d 1,<sup>5</sup> a county or municipality may  
19 not issue a permit or make a determination which is contrary to the express terms of a county  
20 zoning ordinance.

21 In *Markey*, the county issued a building permit for a concrete mixing plant on the basis of  
22 "a favorable opinion of a Deputy District Attorney and approval of the County Planning  
23 Commission." (*Id.* at p. 6.) However, the applicable county ordinance allowed land use permits  
24 to be issued "for enumerated purposes only." (*Ibid.*) Those purposes did not include concrete  
25 plants. Nevertheless, appellant argued that the county's subjective analysis and subsequent  
26 issuance of the permit validated the use. In rejecting this argument, the court stated:

27 The Board [of Supervisors] has then no power to grant such permit [unless] the  
28

<sup>5</sup> A copy of the *Markey* case is attached hereto as Exhibit 1 for the Court's ease of reference.

1 ordinance is amended through proper legislative procedure. [Citation.] Even an  
2 express permit granted by the board contrary to the terms of the ordinance would  
3 be of no effect . . . . *[Acts of the administrative and legal functionaries involved*  
4 *can certainly no more influence the force of the ordinance or cause a vested*  
5 *right in appellants or an estoppel than an invalid permit of the Board of*  
6 *Supervisors itself.*" (*Id.* at p. 6-7, emphases added.)

7 Thus, even if Placer County had publicly and officially determined that LDA-786 has not  
8 lapsed (which it has not), such a determination would be ineffective. In light of *the undisputed*  
9 *fact* that there has been no use of LDA-786 for periods of time well in excess of the lapse  
10 ordinance's terms, the County *has no power* to decide that the lapse ordinance does not apply.

11 IV.  
12 THE DEFINITION OF "SURFACE MINING OPERATIONS" IN SMARA DOES NOT  
13 INCLUDE THE OPERATION OF AN ASPHALT PLANT; ON THE CONTRARY, IT IS  
14 LIMITED TO THE "MINING OF MINERALS ON MINED LANDS"

15 Defendant contends that there are five "vesting defenses," all of which have been  
16 "necessarily" ignored.<sup>6</sup> (Opp. at 13:24-26; 13:21-22.) One of these "vesting defenses" -- the  
17 contention that Defendant's right to manufacture asphalt is deemed vested under SMARA  
18 beginning in 1976 (Opp. at 14:2-5) -- can be disposed of as a matter of law. First, Public  
19 Resources Code section 2735 defines "surface mining operations" for purposes of SMARA:

20 Surface mining operations means all, or any part of, the process  
21 involved in the mining of minerals on mined lands by removing  
22 overburden and mining directly from the mineral deposits, open-pit mining  
23 of minerals naturally exposed, mining by the auger method, dredging and  
24 quarrying, or surface work incident to an underground mine. Surface  
25 mining operations shall include, but are not limited to:

- 26 (a) Inplace distillation or retorting or leaching.
- 27 (b) The production and disposal of mining waste.
- 28 (c) Prospecting and exploratory activities.

29 This definition does not even remotely suggest that an asphalt plant can be encompassed  
30 within the definition of "surface mining operations." As such, Defendant's repeated attempt to  
31 manufacture its own definition of "surface mining operations" to include asphalt plant operations

32 <sup>6</sup> MVP does not have the initial burden of disproving affirmative defenses in its moving points and authorities,  
contrary to defendant's implication. (*Consumer Cause, Inc. v. SmileCare* (2001) 91 Cal.App.4<sup>th</sup> 454, 468.)

1 conflicts with the above statutory definition and should therefore be rejected as a matter of law.

2 Defendant has proffered no triable issue of material fact that would supplant this Court's  
3 role in applying the plain meaning of the statutory definition of "surface mining operations."  
4 Defendant admits as much when it contends that "SMARA Section 2713 confirms all *rights to*  
5 *mine* are protected as valuable property rights which cannot be 'taken' without just  
6 compensation, thus confirming the constitutional protection of Chevreaux's mining rights."  
7 (Opp. at 23:6-8, emphasis added.) However, a "right to mine" does not include the right to  
8 operate an asphalt plant, as noted in the statutory definition of "surface mining operations." It is  
9 therefore not surprising that *Defendant has proffered no evidence that its SMARA permit CUP-*  
10 *853 confirmed a vested right to operate an asphalt plant.* Even if CUP-853 did confer upon  
11 Defendant the vested right to operate an asphalt plant, SMARA would not preempt a local lapse  
12 ordinance, as noted below. Furthermore, this Court cannot "create" a definition of surface  
13 mining operations in conflict with statutory definition. (*Faulder v. Mendocino County Board of*  
14 *Supervisors, supra*, 144 Cal.App.4<sup>th</sup> at p. 1379.)

15 Defendant's contention that a 1985 Placer County Counsel opinion establishes the vested  
16 right to operate an asphalt plant pursuant to SMARA is likewise meritless and fails to create a  
17 triable issue of material fact. Defendant cites what it believes to be the relevant portion of the  
18 opinion at 6:25:

19 It is our opinion that . . . any surface mining operations which  
20 establish the existence of a vested right under SMARA may extend into  
21 areas set aside for mining even though these areas were not being mined at  
22 the time of adoption of SMARA or local ordinances which implement that  
23 act.

24 This language does not state that Defendant was the recipient of a vested right to operate  
25 an asphalt plant pursuant to SMARA. On the contrary, the opinion restricts itself to "surface  
26 mining operations," which is consistent with the limited scope of SMARA. As noted above, the  
27 definition of "surface mining operations" does not include operation of an asphalt plant.  
28 Certainly, the Legislature could have expanded the definition of "surface mining operations" to  
include asphalt operations, but it did not do so.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

V.  
OTHER THAN LDA-786, DEFENDANT ADMITS THAT NONE OF ITS  
CONDITIONAL USE PERMITS REFERENCE OPERATION OF AN ASPHALT PLANT

In addition to the foregoing, neither Defendant's Reclamation Plan, its SMARA use permit (CUP-853), nor its quarry permit (LD-1030) references the operation of an asphalt plant.<sup>7</sup> Indeed, the very title sheet for Defendant's Reclamation Plan - Part B,<sup>8</sup> indicates that it is directed toward the "Chevreaux quarry at Meadow Vista." Conspicuously absent is a reference to an asphalt plant. Page 2 of the Reclamation Plan - Part B describes the mineral commodity mined: "a) andecite and other minerals classified as MRZ-2 pursuant to the Surface Mining and Reclamation Act . . ." Page 6 of the Reclamation Plan - Part B defines mining method: "Drilling and blasting on a multibench quarry. Overburden is stripped and stockpiled for respreading over the mined area. The hardwalk will be excavated to an elevation which is six feet above high water . . . Overburden which is removed will be stockpiled adjacent to undisturbed overburden next to Lake Combie and the Bear River . . ." Page 7 of the Reclamation Plan - Part B defines processing: "After blasting the rock fragments are hauled to a primary crusher. From there they are hauled to secontary [sic] crushers, classified and stockpiled." Further, LDA-1030, Defendant's quarry permit, identifies the proposed development as follows: "Rock crushing, screening and washing plant for grading materials, etc." (Exhibit 3 attached hereto.) Conspicuously absent is any reference to an asphalt plant, which is precisely why a separate permit was issued for such an operation (LDA-786).

In sum, *nothing in the Reclamation Plan - Part B, CUP-853 or LDA-1030 reference the operation of an asphalt plant, nor could they, as SMARA only addresses surface mining operations.* Therefore, there is no triable issue of material fact regarding application of SMARA to the Placer County lapse and abandonment provisions. This Court should therefore rule as a matter of law that Defendant has no vested right to operate an asphalt plant as a result of

<sup>7</sup> For ease of reference, MVP has attached CUP 853 and Reclamation Plan -Part B as Exhibit 2 herein. The documents are also contained in Exhibit 63 to Defendant's Documentary Evidence. LDA-1030 is attached hereto as Exhibit 3.

<sup>8</sup> Part A of Defendant's Reclamation Plan pertains to its dredging operation in the Bear River and is not relevant to this motion.

1 Reclamation Plan – Part B, CUP-853 or LDA-1030.<sup>9</sup>

2 VI.

3 EVEN IF IT IS ASSUMED, ARGUENDO, THAT SMARA ENCOMPASSES  
4 ASPHALT OPERATIONS, PLACER COUNTY'S LAPSE  
5 ORDINANCE MUST NEVERTHELESS BE ENFORCED

6 A. SMARA Does Not Supersede Local Land Use Zoning Ordinances

7 Defendant contends that the 1995 Placer County Zoning Code "lapse ordinance" does not  
8 apply to LDA-786 in light of Defendant's purported "vested uses." (Opp. at 25:24-25.)

9 However, nothing in SMARA prohibits local governmental entities from adopting ordinances  
10 which establish a lapse of previously permitted operations, or operations vested under SMARA.

11 Public Resources Code section 2715 provides in part:

12 No provision of this chapter or any ruling, requirement, or policy of  
13 the board is a limitation on any of the following: . . . (f) on the power of  
14 any city or county to regulate the use of buildings, structures, and land as  
15 between industry, business, residences, open space (including agriculture,  
16 recreation, the enjoyment of scenic beauty, and the use of natural  
17 resources), and other purposes.

18 Moreover, defendant's Reclamation Plan Permit, CUP 853, expressly provides: "All  
19 operations and reclamation activities shall be in compliance with local state and federal  
20 regulations and permits" (Exhibit 2 hereto at p. iii; Exhibit 63 of Defendant's Documentary  
21 Evidence.)

22 B. A Determination of Vested Rights Under SMARA Requires "Continuous"  
23 Use, and It Is Undisputed and Admitted That There Has Been No  
24 "Continuous" Use of an Asphalt Plant

25 Even if it is assumed, arguendo, that SMARA encompasses the operation of an asphalt  
26 plant, it is undisputed that Defendant has not "continuously" operated an asphalt plant, which is a  
27 necessary component of SMARA's vested rights provision. (Pub. Resources Code, § 2776.)

28 That section provides in part:

(a) No person who has obtained a vested right to conduct surface

<sup>9</sup> Defendant's contention that MVP seeks invalidation of CUP-853 and the Reclamation Plan issued in 1987 is a gross misrepresentation of the issues presented in the instant motion. (Opposition at 23:1921.) MVP does not challenge the "validity" of CUP-853, or the Reclamation Plan, both of which are irrelevant and immaterial to the question of whether operation of an asphalt plant at Defendant's site has lapsed

1 mining operations prior to January 1, 1976, shall be required to secure a  
2 permit pursuant to this chapter *as long as the vested right continues* and  
3 as long as no substantial changes are made in the operation except in  
accordance with this chapter. ...

4 (Emphasis added.)

5 Defendant has not created a triable issue of material fact regarding application of  
6 SMARA to the lapse ordinance, because *Defendant has failed to proffer any evidence that it*  
7 *has "continuously" operated an asphalt plant. Indeed, Defendant has admitted that there has*  
8 *been no such continuous operation.* Defendant only contends that its *surface mining operations*  
9 have been continuous, whereas the asphalt operations have been only "intermittent." The Court  
10 is requested to consider the following admissions in the Opposition:

- 11 • "Since 1946 to the present, CHEVREAUX has continuously conducted  
12 surface mining operations on the Property." (Opp. at 3:4-5);
- 13 • "CHEVREAUX'S surface mining operations are continuous and seasonal."  
14 (Opp. at 17:14.);
- 15 • "CHEVREAUX'S surface mining operations are continuous and seasonal;  
16 and its asphalt operations are seasonal and intermittent in nature due to  
17 market forces." (Opp. at 17:12-13.)

18 The foregoing descriptions of Defendant's alleged continuous surface mining operations  
19 must be contrasted with its admission that its asphalt plant operations have not been continuous,  
20 but have rather been "intermittent" in nature:

- 21 • Defendant's "asphalt operations are seasonal and intermittent ..." (Opp. at  
22 17:13.);
- 23 • "Chevreaux's surface mining operations included the production of asphalt  
24 on an intermittent basis." (Opp. at 17:24-25, based on submitted declaration  
25 of Chief Financial Officer and Treasurer Judy Simpson.);
- 26 • Reference to the "periodic, intermittent processing of asphalt." (Opp. at  
27 18:5-6, citing memorandum from County Counsel Anthony J. La Bouff  
28 dated February 25, 2005.);
- Reference to the "intermittent nature of asphalt production." (Opp. at 19:2-  
3);
- "The asphalt plant operations took place on an intermittent basis, and have  
been permitted as an intermittent use under two land use permits approved  
by Placer County ..." (Opp. at 19:5-7).

Defendant itself thus clarifies the crucial factual distinction between surface mining

56

1 operations (continuous) and asphalt plant operations (intermittent). This is not a distinction  
2 without a difference. As noted above, SMARA's vested rights provision (Pub. Resources Code,  
3 § 2776) requires continuous operation. Thus, even if it is assumed, *arguendo*, that an asphalt  
4 plant is encompassed within the provisions of SMARA, Defendant's own admission that the  
5 asphalt plant was only operated intermittently allows this Court to rule as a matter of law that  
6 SMARA has no application to the lapse ordinance, and that Defendant has not established a  
7 vested right under SMARA to conduct asphalt operations.<sup>10</sup>

8 To illustrate the difference between a "continuous" use and an "intermittent" use,  
9 consider the definition of "continuous" in Black's Law Dictionary: "**C**ontinuous.  
10 Uninterrupted; unbroken; not intermittent or occasional; so persistently repeated at short intervals  
11 as to constitute virtually an unbroken series." (Black's Law Dictionary, 5<sup>th</sup> Ed. (1979), Exhibit 4  
12 herein.)<sup>11</sup>

13 Furthermore, nothing in the language of LDA-786, the conditional use permit authorizing  
14 operation of an asphalt plant, contains any allowance for "intermittent" use. As such,  
15 Defendant's contention that asphalt plant operations were "permitted as an intermittent use"  
16 (Opp. at 19:6) has no factual support and fails to create a triable issue of material fact.

17 C. The California Supreme Court Has Rightly Recognized that Vested Rights Can Lapse

18 Just as rights may vest in a permit to develop land, so too may those rights lapse  
19 following a period of nonuse. (*Avco Community Developers, Inc. v. South Coast Regional*  
20 *Commission, supra*, 17 Cal.3d 785, 797-798; *Hansen Brothers Enterprises, Inc. v. Board of*  
21 *Supervisors of Nevada County* (1996) 12 Cal.4th 533, 552; *Hill v. City of Manhattan Beach*  
22 (1971) 6 Cal.3d 279, 285-286.

23 Although a party may obtain vested rights in a nonconforming use (see *Hill, supra*,  
24 6 Cal.3d at p. 285), it is established that "[n]onuse is *not* a nonconforming use." (*Id.* at p. 286,  
25 emphasis added.) To allow a party to simply reestablish a lapsed use without a new permit  
26

27 <sup>10</sup> Defendant pushes the envelope in describing its asphalt plant operations as "intermittent." One operation in  
32 years and no operation at all in 26 years, from 1975 to 2001, can hardly be called "intermittent." (Opposition  
at 18.12-22.) MVP knows of no "seasonal" use that comes around only once every 32 years.

28 <sup>11</sup> It should be noted that Defendant's quotation of Public Resources Code section 2776 is truncated, conveniently

1 would cause a "serious impairment of the government's right to control land use policy." (*Avco*  
2 *Community Developers, Inc., supra*, 17 Cal.3d at p. 797.) The inevitable consequence would be  
3 to impress upon such development "an exemption of indeterminate duration from the  
4 requirements of any future zoning laws." (*Id.* at p. 798.)

5 Moreover, if the basis on which a party claims vested rights has, itself lapsed "any vested  
6 right has likewise lapsed or been abandoned." (*City of West Hollywood* (2003) 105 Cal.App.4<sup>th</sup>  
7 1134, 1148; *Oceanic California, Inc. v. North Central Coast Regional Commission* (1976)  
8 63 Cal.App.3d 57, 75 [finding that any vested rights which developer could claim either lapsed  
9 or had been abandoned after developer allowed permit to expire].)

10 Therefore, even if Defendant could claim vested rights in the permit originally issued in  
11 1972, such rights have lapsed as a result of the years of inactivity following Placer County's  
12 adoption of the lapse ordinance in 1995.

13  
14 VII.  
15 DEFENDANT'S ASPHALT PERMIT DOES NOT AUTHORIZE  
16 "INTERMITTENT" OPERATION, NOR DOES IT DESCRIBE AN  
17 ASPHALT PLANT AS AN "ACCESSORY USE"

18 The bulk of Defendant's Opposition is based on the theory that an asphalt plant is an  
19 intermittent, "accessory use" to surface mining operations. However, neither the word  
20 "intermittent" nor the word "accessory" appears on the face of LDA-786 or even in the minutes  
21 from the public hearing on that permit. Moreover, this theory of intermittent, accessory use has  
22 no basis in case law, SMARA or the Placer County Code. The only evidence Defendant provides  
23 to support this argument is a declaration from its "expert," Louis Merzario, which purports to  
24 make legal conclusions disguised as factual declarations.<sup>12</sup> For example, Mr. Merzario states the  
25 following objectionable legal conclusion: "It is my declaration that the permitting of an asphalt  
26 plant at the [Defendant] mine site in Placer County was appropriate as an accessory use to the  
27 surface mining operation permitted under LD-1030, and is still a permitted use today."

28 leaving out the crucial "continues" language. (See, e.g., *Opp.* at 4:10-15.)

<sup>12</sup> MVP has filed separate objections to defendant's proffered documentary evidence, including the declaration of Mr. Merzario. Among other objections, all of the declarations fail to comply with the procedural requirements of Code of Civil Procedure section 437c(d) and should be disregarded.

1 (Declaration of Louis Merzario, Exhibit B to Defendant's Documentary Evidence, at p. 3:5-7.)  
2 In turn, the only *statutory* bases for Mr. Merzario's conclusion are irrelevant and immaterial  
3 zoning ordinances from Ventura, Shasta and Alameda Counties—not Placer County.

4 The Placer County Code specifically treats asphalt (paving) operations as distinctly  
5 separate from surface mining operations, permitting asphalt plants in only two zoning districts  
6 (C3 and IN) while allowing surface mining in 11 zoning districts (RA, RF, RES, IN, INP, AE, F,  
7 FOR, O, TPZ and W). (See Placer County Code, § 17.06.050(D) attached as Exhibit 5.) This  
8 evidences the County's intent *not* to treat asphalt as a related, accessory use to surface mining;  
9 otherwise it would be permitted in all of the zones where surface mining is permitted. Defendant  
10 notes that local jurisdictions "routinely consolidate ... various land uses into a single permit."  
11 (Opp. at p. 16:27-28.) If that is so, Placer County's failure to consolidate defendant's surface  
12 mining and asphalt operations indicates intent to treat them as separate uses.

13 Even assuming, arguendo, that the asphalt plant is an accessory use to the surface mining  
14 operation, defendant has not produced a single authority which indicates that an accessory use  
15 cannot lapse as long as the principal use continues, or that an accessory use vests along with a  
16 principal use. Indeed, the lapse ordinance appears in the section of the code titled "Permit time  
17 limits, exercising of permits, and extensions" and speaks *only* to permits: "the *permit* shall be  
18 deemed to have lapsed. No use of land, building or structure for which a *permit* has lapsed shall  
19 be reactivated, re-established or used unless a new *permit* is first obtained as provided by this  
20 subchapter. The site of a lapsed *permit* shall be used only for uses allowed in the applicable zone  
21 district." (Placer County Code, § 17.58.160(B)(3), emphases added, Exhibit 6 hereto.) Thus, the  
22 underlying *use permit* lapses independent of other permitted uses which may be occurring on the  
23 same property.<sup>13</sup>

24  
25  
26  
27 <sup>13</sup> Defendant also grossly misstates the deposition testimony of Placer County Air Pollution Control District  
28 employees, as set forth in MVP's separately filed Response to Defendant's Separate Statement of Undisputed Facts,  
No. 31. Moreover, the opinions and determinations of APCD staff are not material, as the APCD has no jurisdiction  
over the issue of lapse of I.DA-786.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

VIII.

DEFENDANT'S UNDISPUTED NONOPERATION OF AN ASPHALT PLANT FROM 1995 THROUGH 2001 AND FROM 2002 THROUGH THE PRESENT PRECLUDES A FINDING OF NONCONFORMING USE AS A MATTER OF LAW

A. Defendant Misquotes and Misrepresents the Placer County Ordinance Provision Regarding Continuation of an Existing Use

Defendant asserts, without authority, that the lapse ordinance "only applies to those uses established after 1995." (Opp. at p. 26:8, emphasis added.) Defendant then egregiously misquotes the code within its opposition:

Continuation of an existing use. . . . the requirements of this Chapter are not retroactive in their effect on a use of land that was lawfully established before this Chapter or any applicable amendment became effective, except where an alteration, expansion, or modification to an existing use is proposed and as provided by Sections 17.60.120, et seq. (Nonconforming Uses).

(Opp. at p. 26:10-13.) Defendant omits the word "except" in the final phrase, thereby failing to accurately represent to the Court the application of this statute. The statute correctly reads as follows: "and *except* as provided by Sections 17.60.120, et seq." (Placer County Code, § 17.02.030(C), Exhibit 7 hereto, emphasis added.)

B. The Placer County Ordinance Expressly Provides that the Asphalt Plant Is Presumed Abandoned Due to Non-Use

Placer County Code section 17.60.120 (Exhibit 8 hereto) in turn addresses nonconforming uses. At section 17.60.120(G), the code explains how nonconforming status may be lost:

*If a nonconforming use of land or a nonconforming use of a nonconforming building is discontinued for a continuous period of one year, it shall be presumed that the use has been abandoned.* Without further action by the county, further use of the site or building shall comply with all the regulations of the zone district in which the building is located, and all other applicable provisions of this chapter. (Emphases added.)

Thus, even assuming arguendo that defendant's asphalt operation is a nonconforming use, cessation of use for one year or more creates a *presumption* of abandonment "without further action by the county." In addition, further use of the site "shall" comply with "all" provisions of the chapter, including the lapse ordinance. This language effectively mirrors the provisions of the lapse ordinance and has the same legal effect on defendant's asphalt operation.

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IX.  
THIS COURT HAS ALREADY REJECTED DEFENDANT'S  
STATUTE OF LIMITATIONS ARGUMENT

Defendant previously raised the identical statute of limitations argument in its general and special demurrer, filed in August of 2006. The statute of limitations argument was fully briefed and argued by Defendant's counsel at the hearing on the demurrer in October of 2006, and this Court specifically rejected the argument on the record. In the interest of brevity, MVP incorporates by reference its opposition defendant's demurrer, a copy of which is attached to the Kassouni Declaration as Exhibit 5.

In short, MVP does not challenge LDA-786's validity at issuance. MVP merely seeks to invalidate the permit via the controlling 1995 lapse ordinance. The statute of limitations argument is unavailing.

X.  
THE MOTION IS PROCEDURALLY PROPER

Defendant's contention that the MSA does not completely dispose of the third cause of action is meritless. It is established that for summary adjudication purposes, separate wrongful acts give rise to separate causes of action. Whether they are pleaded in the same or single counts is not determinative. (*Lilienthal & Fowler v. Superior Court* (1993) 12 Cal.App.4<sup>th</sup> 1848, 1854 [one of two unrelated acts of legal malpractice that were alleged in a single cause of action could be summarily adjudicated].)

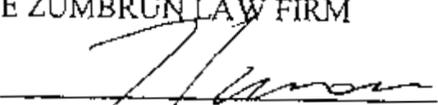
CONCLUSION

For the foregoing reasons, MVP respectfully requests that the Court grant the motion for summary adjudication.

DATED: May 10, 2007.

Respectfully submitted,

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

By   
TIMOTHY V. KASSOUNI  
Attorneys for Plaintiff

LIST OF EXHIBITS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- Exhibit 1: *Markey v. Danville Warehouse and Lumber, Inc.* (1953) 119 Cal.App.2d 1
- Exhibit 2: CUP 853 and Reclamation Plan --Part B
- Exhibit 3: LDA-1030
- Exhibit 4: Black's Law Dictionary, 5<sup>th</sup> Ed. (1979)
- Exhibit 5: Placer County Code, § 17.06.050(D)
- Exhibit 6: Placer County Code, § 17.58.160(B)(3)
- Exhibit 7: Placer County Code, § 17.02.030(C)
- Exhibit 8: Placer County Code, § 17.60.120

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

# **EXHIBIT 1**

Westlaw

259 P.2d 19

Page 1

119 Cal.App.2d 1, 259 P.2d 19

(Cite as: 119 Cal.App.2d 1, 259 P.2d 19)

▷

District Court of Appeal, First District, Division 2,  
California.  
MARKEY  
v.  
DANVILLE WAREHOUSE & LUMBER, Inc., et  
al.  
Civ. 15437.  
July 3, 1953.

Proceeding to permanently enjoin defendants from operating a cement mixing plant in violation of zoning ordinance. From judgment rendered by Superior Court, Contra Costa County, Benjamin C. Jones, J., granting the injunction, the defendants appealed. The District Court of Appeal, Nourse, P. J., held that evidence supported finding that concrete mixing plant was heavy industrial use of property prohibited by zoning ordinance.

Affirmed.

## West Headnotes

[1] Zoning and Planning ⇨231.  
414k231 Most Cited Cases  
(Formerly 268k601(18))

In construing zoning ordinances, same rules are normally applicable as in construing statutes in general, and accordingly a zoning ordinance must be construed reasonably, considering objects sought to be attained and general structure of ordinance as a whole.

[2] Zoning and Planning ⇨286  
414k286 Most Cited Cases  
(Formerly 268k601(20))

The making of ready mixed or transit mixed concrete in its plastic state is "manufacture", involving transformation, that is, the fashioning of

raw materials into a change of form for use, and as such is distinct from "commerce", but is included in "industrial" in zoning ordinances.

[3] Zoning and Planning ⇨276  
414k276 Most Cited Cases  
(Formerly 104k211/2)

[3] Zoning and Planning ⇨283  
414k283 Most Cited Cases

Ready mixed or transit mixed concrete plant was an industrial plant which could not be maintained in general commercial district created by county zoning ordinance which permitted manufacture or processing of concrete in heavy industrial districts, notwithstanding that part of mixing may have taken place when trucks were in transit.

[4] Zoning and Planning ⇨328  
414k328 Most Cited Cases  
(Formerly 104k211/2)

Premises which had been used for small scale storage of sand and gravel and cement prior to enactment of county zoning ordinance classifying premises as general commercial district and permitting manufacture or processing of cement in heavy industrial districts and continuance of established nonconforming uses could not be industrially used after enactment of ordinance for making ready mixed or transit mixed cement on any theory that prior use was an industrial use which could be continued as a prior nonconforming use.

[5] Zoning and Planning ⇨464(1)  
414k464(1) Most Cited Cases  
(Formerly 414k464, 104k211/2)

[5] Zoning and Planning ⇨466  
414k466 Most Cited Cases

Issuance of county building inspector's permit for building of concrete mixing plant after inspector obtained favorable opinion of deputy district attorney and approval of county planning

259 P.2d 19

Page 2

119 Cal.App.2d 1, 259 P.2d 19

(Cite as: 119 Cal.App.2d 1, 259 P.2d 19)

commission did not result in creation of any rights to use premises in general commercial district for concrete mixing plant in violation of county zoning ordinance.

[6] Nuisance ⇨3(1)  
279k3(1) Most Cited Cases

[6] Nuisance ⇨61  
279k61 Most Cited Cases

Where cement mixing plant was being operated in general commercial district where such use was not permitted, it was not error to hold concrete mixing plant to be a public and private nuisance without evidence of employment of unnecessary and injurious methods of operation since codal provision prohibiting injunctions was only applicable where business was operated in its appropriate zoning district. Code Civ.Proc. § 731a.

[7] Nuisance ⇨33  
279k33 Most Cited Cases

[7] Nuisance ⇨84  
279k84 Most Cited Cases

In action to enjoin operation of cement mixing plant, evidence that dirt and grit from cement mixing plant pervaded homes of residents of unincorporated town and that residents were disturbed by loud noises of motors, trucks, falling gravel, pounding with hammers and late operations sustained findings that plant was nuisance to public in general and was nuisance privately to owner of and resident on property contiguous to plant.

\*\*20 \*3 Carlson, Collins, Gordon & Bold, Robert Collins, Steven H. Welch, Jr., Richmond, for appellants.

Roscoe D. Jones, John D. Martin, Roscoe D. Jones, Jr., Oakland, for respondent.

NOURSE, Presiding Justice.

This is an appeal from a judgment permanently enjoining defendants from the processing of cement or the preparation, processing, compounding, manufacturing et cetera of ready mix concrete or of

any paving or building material or any other product or the erection, operation or maintenance of any building, structure, machinery or equipment for the use in any such activity on certain premises in the unincorporated town of Danville, County of Contra Costa, as violative of the Zoning Ordinance of the County of Contra Costa, as amended, and as a public nuisance and a private nuisance as to the plaintiff and ordering certain defendants, who now appeal, to permanently remove from said premises any such building, structure, machinery or equipment, stated in the injunction in more detail.

The injunction relates to a ready-mix or transit mix concrete plant. The erection of the plant was commenced in the summer of 1948 and the first delivery from it was made in September, 1948. Ownership and operation of the plant have presented some changes and complications but as all persons and companies involved were joined as defendants by stipulation and their distinction is of no importance for this appeal we need not state names and qualities in detail.

The operation of the plant involves the use of nearly four acres of land, bunkers, hoppers, chutes, elevator or conveyor systems with electro motors, a fleet of transit mixing trucks and semi-tractor trucks, and a truck repair shop, all of which is now owned and operated by appellants, the Humphreys, husband and wife, and/or their corporation. Large quantities of sand, aggregates and cement are brought to the plant by truck or railway car and dumped in an underground hopper, from which they are transported to elevated bunkers, the sand and gravel by a conveyor system of endless belts, the cement by an enclosed bucket operation. But means of weighing hoppers the materials are weighed in the proportions required for the manufacture of the concrete to be delivered and through spouts dropped into mixing trucks. With the addition of water the actual-mixing takes place in the revolving drum of the mixing truck when this truck has been or is being loaded. The mixing process requires only some \*4 minutes of revolving although further agitation may be required to keep the concrete plastic. Part of the mixing takes place during the driving on the \*\*21 premises. The mixing trucks are

259 P.2d 19

Page 3

119 Cal.App.2d 1, 259 P.2d 19

(Cite as: 119 Cal.App.2d 1, 259 P.2d 19)

parked, cleaned and repaired on the premises.

On February 17, 1947, the Board of Supervisors of the County of Contra Costa adopted a Zoning Ordinance for the unincorporated area of said county, which ordinance took effect 30 days thereafter and thus was in effect when the concrete plant was erected. Under this ordinance and its later amendments the premises here involved are classified as 'General Commercial'. Section 4, subdivision D of the ordinance permits the following uses of property so classified: 'Subsection 1. All of the uses permitted in single family residential districts, multiple family residential districts, retail business districts, transition residential agricultural districts, forestry recreation districts, together with such uses as are permitted by the provisions of this ordinance after the granting of land use permits for the special uses authorized to be granted in any of the said districts.

'Subsection 2. All types of wholesale business, warehouses, railroads, railroad terminals and stations and freight houses, and automobile and air freight terminals.

\* \* \*

'Land use permits for the special uses enumerated in subsection 1 of this subdivision \* \* \* may be granted after application therefor in accordance with the provisions of this ordinance.'

None of the uses permitted in the districts enumerated in subsection 1, either with or without a land use permit includes the manufacturer or processing of concrete. The manufacture or processing of cement, one of the component materials of concrete, is mentioned in section 4, subdivision J, subsection 2 of the ordinance as an example of a use permitted in a Heavy Industrial District. The trial court found that the operation of the concrete mixing plant was a heavy industrial use of the property, prohibited by the Zoning Ordinance.

Section 5 provides in part that any use of any land, building or structure contrary to the provisions of the ordinance is a public nuisance, to be abated in an action instituted on order of the Board of

Supervisors, in addition to other available remedies.

Section 8 of the ordinance permits the continuation of a lawful use existing at the time the ordinance becomes effective though not conforming to the provisions of the ordinance. \*5 At the time the ordinance became effective the business conducted on the premises was a wholesale business in hay, grain, feed, lumber and other building materials. Sand, gravel and cement were kept and stored at ground level in small quantities. No mixing of concrete for delivery took place on the premises. If mixing was required a hand mixer was sent to the site of the job. The trial court found that the cement mixing operations complained of were completely different from the small scale storage of materials carried on when the Zoning Ordinance went into effect and that prior to that time the property had never been subjected to any light or heavy industrial use.

(1)[2][3][4] The main contention of appellants, who do not attack the validity of any provision of the ordinance, is that the above findings are not supported by the evidence because no manufacture of concrete takes place at the new plant, but only the warehousing and selling of cement, aggregate and sand, permitted in Section 4, subd. D, subs. 2, supra, whereas the mixing, which constitutes the manufacture of concrete takes place in the trucks in transit. The contention is without merit.

In construing a zoning ordinance the same rules are normally applicable as in construing statutes in general, *City of Yuba City v. Cherniavsky*, 117 Cal.App. 568, 571, 4 P.2d 299, and accordingly a zoning ordinance must be construed reasonably considering the objects sought to be attained and the general structure of the ordinance as a whole, *Yokley Zoning Law and Practice*, p. 318; *Petros v. Superintendent and Inspector of Buildings*, 306 Mass. 368, 28 N.E.2d 233, 235, 128 A.L.R. 1210. The Contra Costa ordinance distinguishes light and heavy industrial use from general commercial use. It does not permit industrial use in a general commercial district, except that land use permits may be granted for lumber yards, cabinet shops and sheet metal shups (Section 4, subd. D, subs. 1

259 P.2d 19

Page 4

119 Cal.App.2d 1, 259 P.2d 19

(Cite as: 119 Cal.App.2d 1, 259 P.2d 19)

together with subd. C, subs. 2). The making of \*\*22 ready mixed or transit mixed concrete in its plastic state is manufacture, *Commonwealth v. McCrady-Rodgers Co.*, 316 Pa. 155, 174 A. 395, 396, involving transformation--the fashioning of raw materials into a change of form for use-- and as such is distinct from commerce, *Kidd v. Pearson*, 128 U.S. 1, 20, 9 S.Ct. 6, 32 L.Ed. 346, but included in 'industrial' in zoning ordinances. *Murdock v. City of Norwood*, Ohio Com.Pl., 67 N.E.2d 867, 869. There was in this case expert evidence that in the general \*6 vicinity here involved concrete mixing plants are normally classified in zoning ordinances as belonging in light or heavy industrial areas and that also when the component materials of the concrete are delivered into mixing trucks the plant should be classified as an industrial concrete mixing plant because it makes dust and noise like any other concrete mixing plant. In construing the ordinance in a reasonable and purposeful manner the trial court could hold that the whole process of elevating the materials, weighing and combining them in mixing trucks in the correct proportions and mixing them by means of said trucks constituted one integrated industrial manufacturing process and gave the plant an industrial character not permitted by the ordinance in a general commercial district although part of the mixing may have taken place when the trucks were in transit. The court was fully informed as to the factual character of the particular plant not only by the testimony of several witnesses but also by personal examination made and used as evidence by stipulation of the parties. His decision as to the character of the plant and its position under the ordinance will not be disturbed by us.

[5] As against the trial court's decision appellants urge the following facts: In November, 1947, their predecessor applied for a land use permit for the sand and cement bunkers used in the present plant together with a land use permit for a lumber storage building on adjacent land zoned for retail business use; because the County Planning Commission felt that for storage buildings and bunkers in a commercial district a permit was not required this part was eliminated from the application and a land use permit granted by the Board of Supervisors as

to the lumber storage building in the retail business district only. Thereafter building permits were granted by the County Building Inspector for the building of the concrete mixing plant after he had obtained a favorable opinion of a Deputy District Attorney and approval of the County Planning Commission.

Appellants fail to show how the above facts can avail them. The ordinance gives the Board of Supervisors power to grant land use permits for enumerated purposes only among which a concrete mixing plant in a general commercial district is not included. The Board has then no power to grant such permit until the ordinance is amended through proper legislative procedure. *Johnston v. Board of Supervisors*, 31 Cal.2d 66, 74, 187 P.2d 686. Even an express permit granted by the Board contrary to the terms of the \*7 ordinance would be of no effect. *Johnston v. Board of Supervisors*, supra; *Magruder v. City of Redwood*, 203 Cal. 665, 674-675, 265 P. 806. Not only was there no amendment of the ordinance but the application is without any importance for the matter before us because neither its terms nor the plan accompanying it show in any way the different industrial use intended to be made of the premises. This new use was known when the building permit was granted, but the 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. *Lima v. Woodruff*, 107 Cal.App. 285, 287, 290 P. 480; *In re Application of Ruppe*, 80 Cal.App. 629, 637, 252 P. 746; *Maguire v. Reardon*, 41 Cal.App. 596, 601-602, 183 P. 303; *Annotations* 119 A.L.R. 1509; 6 A.L.R.2d 960.

[6][7] Appellants contend that it was error to hold the concrete mixing plant to be a public and a private nuisance without evidence of the employment of unnecessary and injurious methods of operation, relying on section 731a of the Code of Civil Procedure. Section 731a applies only to \*\*23 eliminate injunctive relief where a business is operated in its appropriate zoning district (in which the use is 'expressly permitted') and causes injury and nuisance although operated in a careful and

© 2007 Thomson/West. No Claim to Orig. U.S. Govt. Works.

259 P.2d 19

Page 5

119 Cal.App.2d 1, 259 P.2d 19

(Cite as: 119 Cal.App.2d 1, 259 P.2d 19)

efficient manner. *Gelfand v. O'Haver*, 33 Cal.2d 218, 220, 200 P.2d 790. As here the appellants are operating an industrial plant in a general commercial district where such use is not permitted, the section has no application. The transcript is replete with evidence as to dust and grit from the plant pervading the homes of the residents of Danville and of loud noises of motors, trucks, falling gravel, pounding with hammers and late operation disturbing them, which fully support, apart from section 5 of the Zoning Ordinance, supra, the findings of a nuisance as to the public in general and as to plaintiff, an owner of and resident on property contiguous to the plant, privately.

The final contention that the operation of the plant is as a matter of law a non-conforming use permitted by section 8 of the ordinance is evidently without merit as an industrial use has taken the place of the mere storage use in existence when the ordinance took effect.

Judgment affirmed.

GOODELL and DOOLING, JJ., concur.

119 Cal.App.2d 1, 259 P.2d 19

END OF DOCUMENT

## **EXHIBIT 2**

CONDITIONAL USE PERMIT APPLICATION

Required maps: See instructions on reverse for required number of maps  
Required applications: 3  
Filing fee: \$

PURSUANT TO THE POLICY OF THE BOARD OF SUPERVISORS, THE PLANNING DEPARTMENT  
CANNOT ACCEPT APPLICATIONS ON TAX DELINQUENT PROPERTY

For Planning Department office use only:

Receipt # 491157 FILE #CUP- 853  
Accepted by: [Signature] Date filed 5-1-85  
Environmental review status: Hearing date 6-6-85  
Categorically Exempt  Hearing body EA  
Negative Declaration  Current zoning SAR 2000  
Env. Impact Report  Applicable G.P. Meadow Vista  
(Name of E.I.R.) [Signature] G.P. designation 2000  
State Clearinghouse # SCH-

- Property Owner: 1) Nevada Irrigation District Telephone: 1) 916-878-1857  
2) Joe Chevreux Telephone: 2) 916-885-3716  
Address: 1) P.O. Box 1039 Grass Valley, CA 95945  
2) 890 Grass Valley Hwy, Auburn, CA 95603 State Zip Code
- Applicant: Western Planning & Engineering Telephone 916-823-6917  
Address: 11712 Quartz Dr. Auburn CA 95603  
City State Zip Code
- Engineer or Architect: Western Planning & Engineering Telephone 916-823-6917  
Address: 11712 Quartz Dr. Auburn CA 95603  
City State Zip Code
- Assessor's parcel number(s): See Attached Sheets
- Size of property (acreage or square feet): See Attached Sheets
- Describe project location in detail and attach vicinity map  
Vicinity Map is Attached. Note precise location maps are found in the Lake (A)  
and Quarry (B) Reports.
- Description of project: The project is a Reclamation Plan in two parts. A- Lake Comble  
and B- Meadow Vista Quarry.

(attach additional pages, if necessary)

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

[Signature]  
Signature of applicant

DATE OF HEARING BODY'S ACTION: 1/20/86

Approved  Denied  Summary/Conditions of approval:

Approved appeal to Board of Supervisors. Clarified several conditions as imposed by the Board of Zoning Appeals on the Reclamation Plans for Lake Comble and Meadow Vista Quarry. Approval to include Part A & B in Reclamation Plan. (See copy of minutes attached)

(See pages 30,31 in Information Report)

BOARD OF SUPERVISORS

[Signature]  
Carole Ferrante, Secretary

FOR USE AFTER PUBLIC HEARING

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

WESTERN PLANNING & ENGINEERING

[Signature]  
Signature of applicant

RECLAMATION PLAN PART B

CHEVREAU QUARRY AT MEADOW VISTA

CONDITIONS OF APPROVAL:

As modified by the Board of Supervisors on January 20, 1986; as modified by the Board of Zoning Appeals on September 18, 1985; and as imposed by the Zoning Administrator on August 20, 1985

1. The purpose of the Reclamation Plan is to assure that:
  - (a) Adverse environmental effects are prevented or minimized and that mined lands are reclaimed to a useable condition which is readily adaptable for alternative land uses.
  - (b) The production and conservation of minerals are encouraged, while giving consideration to values relating to recreation, watershed, wildlife, range and forage, and aesthetic enjoyment.
  - (c) Residual hazards to the public health and safety are eliminated.

2. Quarry phasing shall be as follows:

Phase I - includes 95% of the material to be removed. Phase I excludes removal of material in the north finger of the property and retains the berm (10' minimum) along the Bear River. As a part of Phase I, a portal may be cut into the north berm in order to provide an alternate access to the quarry (Phase I - The portal should be shown schematically on the plan for clarification.)

Phase II - includes the removal of the berm along the north and west boundaries of the project, and replacement with an overburden berm of the same size (dependent upon the future use of the Quarry).

The material in Phase I may be quarried and finished stockpiled and reclaimed in compliance with these conditions.

---

The material in Phase I shall be removed first.

The Reclamation Plan is intended to return the land to a useable condition which is readily adaptable for alternative uses. Phase II material removal is very long term and is therefore impossible to properly address this aspect of the project without knowing how the land will be used.

Removal of Phase II material could proceed after Phase I material is removed without returning to the D.R.C. or the Board. The overburden berm constructed to replace the natural berm will be subject to normal review as outlined in Condition #3. Replacement of the berm will only be required if the future use

the quarry dictates that the berm is necessary in order to protect the public health, safety and welfare. There is a possibility that Phase I overburden will need to be stockpiled on top of the berm along the Bear River. These conditions are not intended to exclude this practice.

3. When a finish slope is to be established, a plan shall be submitted and approved by DRC which provides for:

- (a) typical cross section, benches, etc.
- (b) drainage
- (c) fence and signing for safety
- (d) average finished slopes shall not exceed 1½:1 for the overall project\*
- (e) revegetation of slopes with trees, grass/wildflower mix and irrigation (irrigation shall only be required to establish the plants.)
- (f) all finish slopes shall include rounded edges, ridges and transitions in order to soften and blend view to minimize visual aesthetic impact.\*
- (g) If a lake is proposed, show details.

4. The slope which faces the river/lake shall remain in its natural state (except for portal) to an elevation of 100' above the high water level of the lake/river during Phase I operations. Phase I shall result in a bowl-shaped land form with the rim of the bowl transitioning from elevation 1720+/- to a point located at elevation 2040 on the east property line. (See Exhibit A). (The slope which faces the river shall remain in a natural state until it is used as a stockpile area or removed under Phase II.)

5. The final elevation of the floor of the quarry shall be above the 100-year flood plain unless a lake is created.

6. All operations and reclamation activities shall be in compliance with local state and federal regulations and permits.

7. If rock is to be quarried as shown in the rock cut detail, the reclaimed slope shall be constructed at a slope not exceed an average of 1½:1 by backfilling with overburden as shown in the overburden/fill detail.\*

8. All soil slopes (not open faces where rock is active being removed) shall be revegetated with a grass mix prior winter. This shall include stored piles of overburden and other disturbed areas.

\* Clarification - One idea for the treatment of the finish slopes is a combination of vertical rock faces and revegetated slopes. This is consistent with the intent of the conditions. The details of this treatment would be revised under Condition #3 at the time the finished slopes are constructed.

9. The finish slopes shall be established and reclaimed in logical manner. They shall be constructed with the ongoing operation and not left until the end.
10. Reclamation shall commence as soon as excavation is completed any area to be affected by finish slopes as shown on Exhibit E
11. The Reclamation Plan should be revised to meet the format Placer County requirements. The intent of this condition is insure that all updated material and exhibits are incorporated into one complete document.
12. More detailed and specific information is needed within the Reclamation Plan in the following areas:
  - (a) Parcels directly affected by this Reclamation Plan: limited to those as listed in the most recent submitted from the applicant (August 7, 1985), and are depicted the colored "zoning map" exhibit submitted the same date
  - (b) This is a condition which will require updating as new areas are opened for quarrying. The intent here is study the current storm drainage situation, then as changes occur the plan will be modified.

The study itself will consist of an analysis of:

- a) The drainage basins and flow calculations
- b) Method of transporting flows, capacities
- c) Drainage facilities, location, size, capacity
- d) Drainage Map
- e) Identification of changes to the plan which will occur in the near future.
- f) Design calculation for the sediment ponds.\*

The study shall be based upon a ten (10) year design storm; however individual facilities may be designed with a lesser capacity appropriate.

\* This condition will be satisfied by the submittal of information prepared for the State Regional Water Quality Control Board.

- (c) (1) Before beginning Phase II, the applicant shall supply detailed and expanded discussion regarding handling of mining waste since the most recent proposal shows removal of all material along the river frontage. Special emphasis is necessary with regard to erosion control and winterization.
- (2) Since excavation is proposed to the edge of the river frontage, applicant shall provide, before beginning Phase II, a detailed discussion regarding methodology for preventing water quality degradation both during and after mining activities occur.
- (d) Erosion potential of soils should be stated as required (see page x-22 herein).
- (e) Revise statement to include required information (see response to item n page viii herein).
- (f) With regard to Phase I, applicant shall provide proposed solutions for final drainage patterns upon completion of excavation. Provide same for the three alternative subsequent use (residential, recreational, and industrial), including detail on sediment removal prior to reaching the Bear River. (This will shall not be required until five years before completion of excavation).

PLACER COUNTY CONTENT REQUIREMENTS

RECLAMATION PLAN (PART B) FOR CHEVREAU QUARRY AT MEADOW VISTA

The items listed below are subsections of Section 2625 of the County Zoning Ordinance (listing Reclamation Plan Content Requirements).

- |     |  |  |
|-----|--|--|
| (a) | Name and address of operator.  | Joe Chevreau<br>890 Grass Valley Highway<br>Auburn, CA 95603   |
| (b) | Quantity and type of minerals to be mined.   | 300 million tons See Item page 6 of Information Rep  |
| (c) | Proposed dates for beginning and ending operations.  | Operations began in 1946 will continue for a minimum 50 years more.  |
| (d) | Maximum anticipated depth of the mine.   | 300 feet See 17 and 18 page 6 of Information Report.   |
| (e) | Description of lands that will be affected by the operation including:                                       |  |
|     | 1) Size and legal description of the lands that will be affected   | 478 Acres in Placer Co and 679.3 Acres in Nevada See page 3 of Information Report for Assessor's Parcel Numbers. |
|     | 2) A map that includes the boundaries and topographic details of such lands.                                 | See map in pocket of Information Report.   |
|     | 3) A description of the general geology of the area.   | See Item 12 of Information Report.   |
|     | 4) A detailed description of the geology of the area in which surface mining is to be conducted.             | See Item 12 of Information Report.   |
|     | 5) The location of all streams, roads, railroads, and utility facilities within, or adjacent to, such lands. | See Exhibit Map in pocket of Information Report  |
|     | 6) The location of all proposed access roads to be constructed in conducting such operation.                 | See Exhibit Map in pocket of Information Report  |
|     | 7) The names and addresses of the owners of all surface and mineral interests of such lands.                 | See Item 3, Page 1 of Information Report.  |

RECLAMATION PLAN (PART B) FOR CHEVREAU QUARRY AT MEADOW VISTA

(Continued)

- B) Locations, equipment, storage area, settling ponds, and drainage solutions. See map entitled: "Existing Chevreau Gravel Plant and Quarry-February 1984" in Pocket at end of Information Report.
- 9) The maximum finish grade slope shall be 2.0 horizontal to 1.0 vertical or greater, depending on the existing terrain, types of materials to be removed and the ultimate use of the reclaimed property. Finished Quarry slope will be steeper than 2:1 See diagram on page 6 of Information Report.
- (f) A description and plan for the type of mining to be done together with a time schedule for staging reclamation activities. See Item 18 Page 6 of Information Report.
- (g) A description of the proposed or potential subsequent land uses, with notification to owners. Too early to decide on final uses (see discussion in Items 24 & 27, Pages 8 & 9 of Information Report.
- 1) A description of the manner in which contaminants will be controlled, and mining waste will be disposed; and There will be no mining waste. The only potential contaminant is erosion from stockpile overburden. Runoff from overburden is directed to settling ponds, see Existing Gravel Plant and Quarry Map. Pages 9 & 10 of the Information Report cover Erosion Control of stock piled overburden.
- 2) A description of the manner in which rehabilitation of affected streambanks to a condition minimizing erosion and sedimentation will occur. Streambanks will not be affected by the Quarry operation.
- (i) An assessment of the effect of implementation of the Reclamation Plan on future mining in the area. See Item 28 of Information Report.
- (j) A statement that the operator submitting the plan accepts responsibility for reclaiming the mined lands in accordance with the Reclamation Plan. The operator accepts responsibility for reclaiming the mined lands.

RECLAMATION PLAN (PART B) FOR CHEVREAU QUARRY AT MEADOW VISTA

(Continued)

(k) Geologic, soil and water data:

- 1) Soil types and erosion potential of same on subject property. For soils types and erosion potential for each type see Appendix of Information Report
- 2) Existing drainage patterns. See Exhibit Map in Informatic Report.
- 3) Existing Water Quality.

The nearest sampling of Water Quality in the Bear River was taken at Highway 49 from 1965 to 1975. This sampling indicated the following:

Coloform :	low- 13;	high-2300;	median-62;	mode 230 ppm
Cl	; low-3.0;	high-6.5 ;	median-4.5	mode 4 ppm
P	; low-.05;	high-0.5 ;	median-.15	mode .1 ppm
N	; low-0.1;	high-0.5 ;	median-.25	mode .2 ppm
Turbidity;	low- 1;	high- 150;	median-13	mode 5 ppm

- 4) Anticipated water demand. No information on Quantity. The water used is recycled (Item 19, Page 7 of Information Report.
- 5) Location of any sewage facilities on subject property and/or within 300 feet adjacent to project site. N/A Portable toilets will be used.
- 6) Source and volume type of fill to be used, if any. N/A

- (l) Setbacks shall be a minimum 25 feet from the public road right-of-way and 10 feet from the side and rear property lines in which no disturbance of existing terrain shall occur. N/A

- ~~(m) Traffic haul routes shall be designated on a plot map along with the frequency of trips anticipated.~~ See Exhibit map. It shows haul roads. No estimate is made on the number of truck hauling Quarry material.

- (n) The operation shall comply with all rules and regulations of the Placer County Air Pollution Control District. The operation shall comply all rules and regulations of Placer County Air Pollution Control District.

RECLAMATION PLAN (PART B) FOR CHEVREAUX QUARRY AT MEADOW VISTA

(Continued)

(o) A Plot showing noise contours around the property which will result with project implementation may be required depending upon the type and location of the operation.

See map entitled: "Noise Level Readings at Chevreaux Gravel Plant and Quarry" in pocket at end of Information Report.

This and a report by Mr. Bender (previously submitted) is the only information available on noise. Applicant points out that his quarry is a previously approved ongoing operation. The noise during the reclamation process will be less than current operating levels.

(p) Applicant shall submit a plan for waste disposal, both solid and liquid, that is generated on site.

No solid or liquid wastes are disposed of on the site.\*

(q) Applicant shall submit a plan for review and approval detailing proposed solutions for final drainage patterns upon completion of excavation.

Determination of final Drainage Plan cannot be submitted until final uses are determined. A Drainage Plan will be submitted at that time (Item 27 of the Information Report).

~~Liquid waste is hauled off the site by a carrier licensed by E.P.A.~~  
Solid waste is hauled to the Meadow Vista Transfer Station.

INFORMATION REPORT  
FOR  
PART B

RECLAMATION PLAN  
CHEVREAU QUARRY  
AT  
MEADOW VISTA

CALIFORNIA DIVISION OF MINES AND GEOLOGY

County/City Placer County

INFORMATION REPORT

OWNER, OPERATOR, AND AGENT:

1. Applicant:

Name WESTERN PLANNING AND ENGINEERING  
Address 11712 Quartz Dr.  
Auburn, CA 95603  
Telephone (916) 823-6916

---

2. Name of Mineral Property: CHEVREAU QUARRY

---

3. Property Owner, or owners of surface rights:

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

---

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

---

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

Name Joe Chevreau  
Address 890 Grass Valley Highway  
Auburn, CA 95603  
Telephone (916) 885-3716

---

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

---

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

CALIFORNIA DIVISION OF MINES AND GEOLOGY

---

LOCATION

8. Description:

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

Section 25, Township 14 N, Range 8 E

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

Mount Diablo Base and Meridian.

---

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

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

- b) From the North: Magnolia Rd., Private Rd.
- 

10. Location Map: See map on page 4.

---

DESCRIPTION:

11. Mineral commodity mined:

- a) Andesite and other minerals classified as MRZ-2 a&b pursuant to the Surface Mining and Reclamation Act (map in Appendix).

- b) The Present and Reserve Mining Areas are shown on Exhibit Maps in the pocket at the end of this report

## EXHIBIT A

## DESCRIPTION

PART B MEADOW VISTA QUARRYASSESSOR'S PARCEL NUMBERSOWNER

71-020-01

N.I.D.

72-010-39

N.I.D.

72-020-05

ARP Ranch, Inc.

72-030-01,08

Joe Chevreaux

74-250-01,02,10

Joe Chevreaux

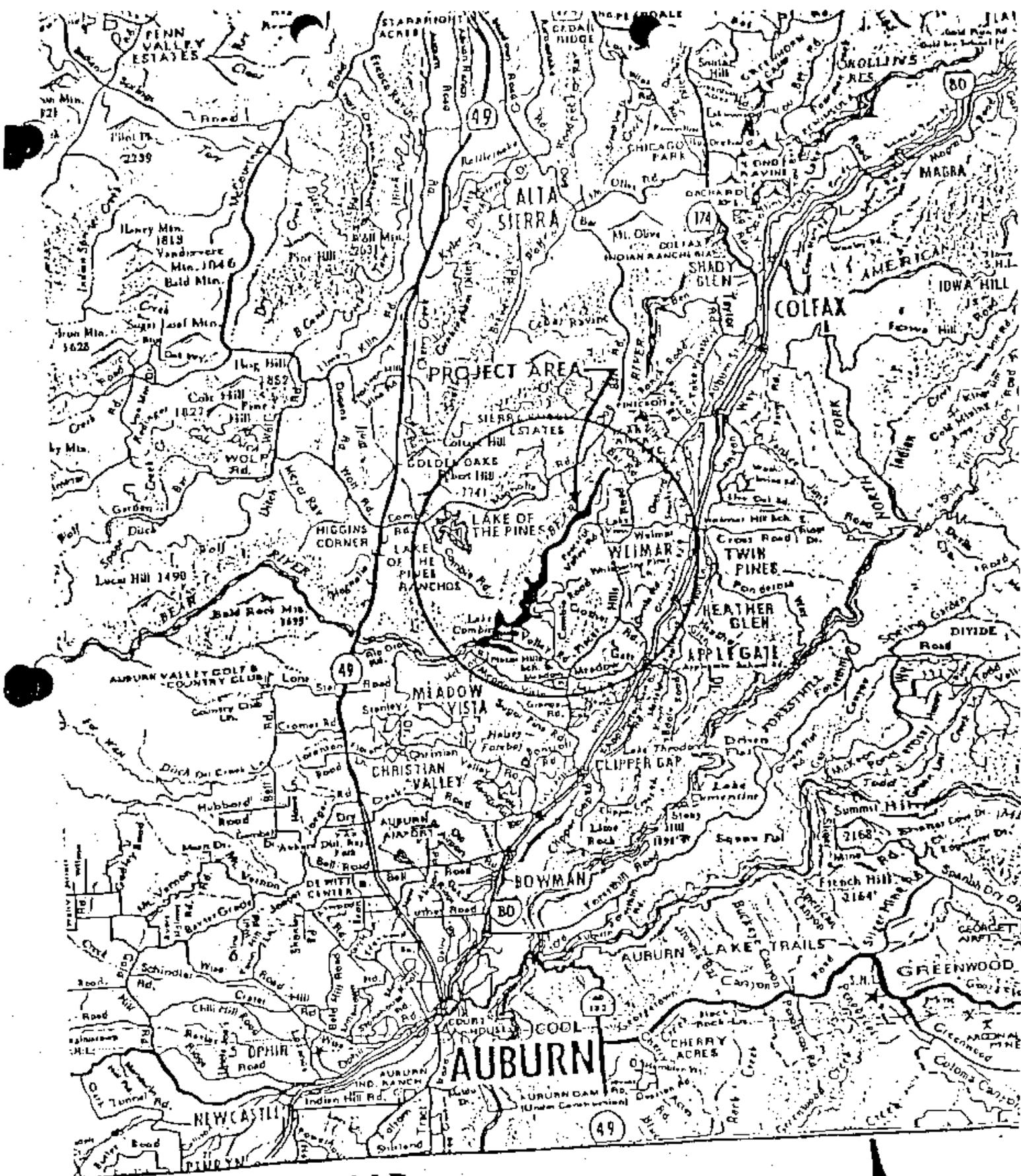
74-260-02

N.I.D.

74-260-03

Joe Chevreaux

Acreage: 478 acres



**LOCATION MAP**



CALIFORNIA DIVISION OF MINES AND GEOLOGY

12. Geologic description:

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

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

---

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

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

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

---

EXISTING SURFACE MINING OPERATION:

14. Starting date of operations: 1946  
Estimated Life of Operation: 50+ Years  
Phasing: None
-

CALIFORNIA DIVISION OF MINES AND GEOLOGY

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

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

17. Total anticipated production:

Mineral commodities to be removed: 300 million tons

overburden retained on the site -: 10 million tons

Waste disposed off site -: None

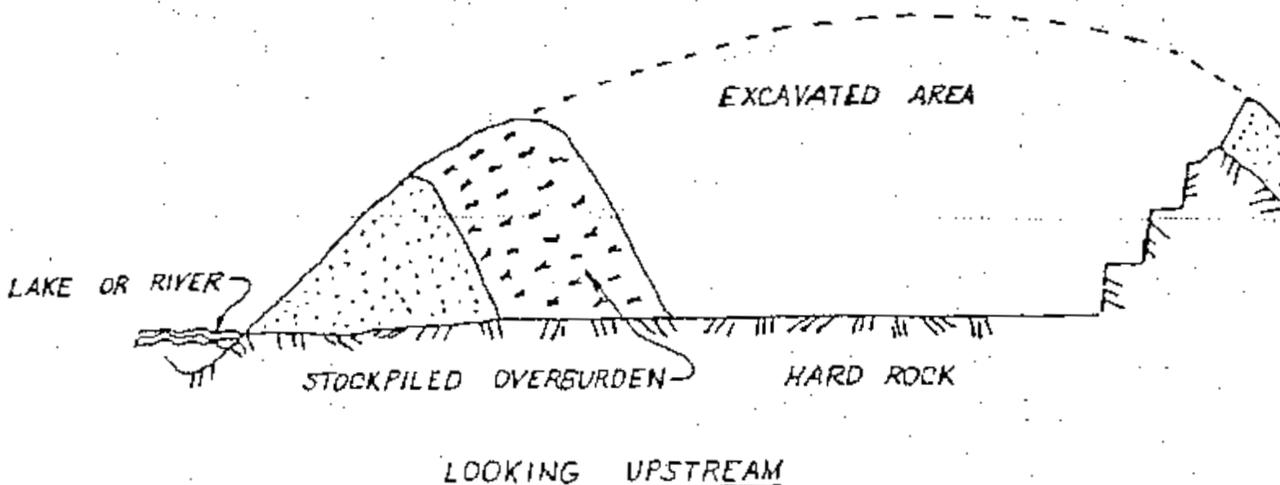
Maximum anticipated depth: 300 feet

18. Mining Method:

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

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

OVERBURDEN TO REMAIN UNDESTRUCTURED I.E. WEATHERED ROCK & SOIL IN ITS NATIV



CALIFORNIA DIVISION OF MINES AND GEOLOGY

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

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

Concurrent reclamation is not practical until final use of the area is determined for the mined area. If the area is ultimately to be used for a landfill operation then the stockpiled overburden should be retained in the location shown in the diagram in Item 18 herein until it is needed for cover. This will avoid double handling.

---

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

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

See map entitled: Exhibit Map for Reclamation Plan.

---

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

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

RECLAMATION PLAN:

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

This Reclamation Plan covers 478 Acres shown as: Present Quarry location and Quarry Reserve on the Exhibit Map.

---

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

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

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

---

25. Describe relationship of the present uses to:

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

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

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

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

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

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

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

- 
27. Methods, Sequence And Timing of Reclamation:

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

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

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

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

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

Suitable uses might include:

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

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

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

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

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

APPENDIX

	<u>PAGE NO.</u>
MINERAL LAND CLASSIFICATION MAP . . . . .	12
SOIL TYPES OVERLYING THE AREA TO BE QUARRIED . . . . .	13
EROSION POTENTIALS OF OVERBURDEN SOILS . . . . .	22
RETENTION POND CERTIFICATION . . . . .	23
BOARD OF SUPERVISOR'S MINUTES . . . . .	24
LETTERS PERTAINING TO CONDITIONS . . . . .	26

MINERAL LAND CLASSIFICATION  
 OF THE  
 LAKE COMBIE - BEAR RIVER AREA  
 FOR  
 PORTLAND CEMENT CONCRETE AGGREGATE  
 - as petitioned by the Joe Chevroux Company -

EXPLANATION

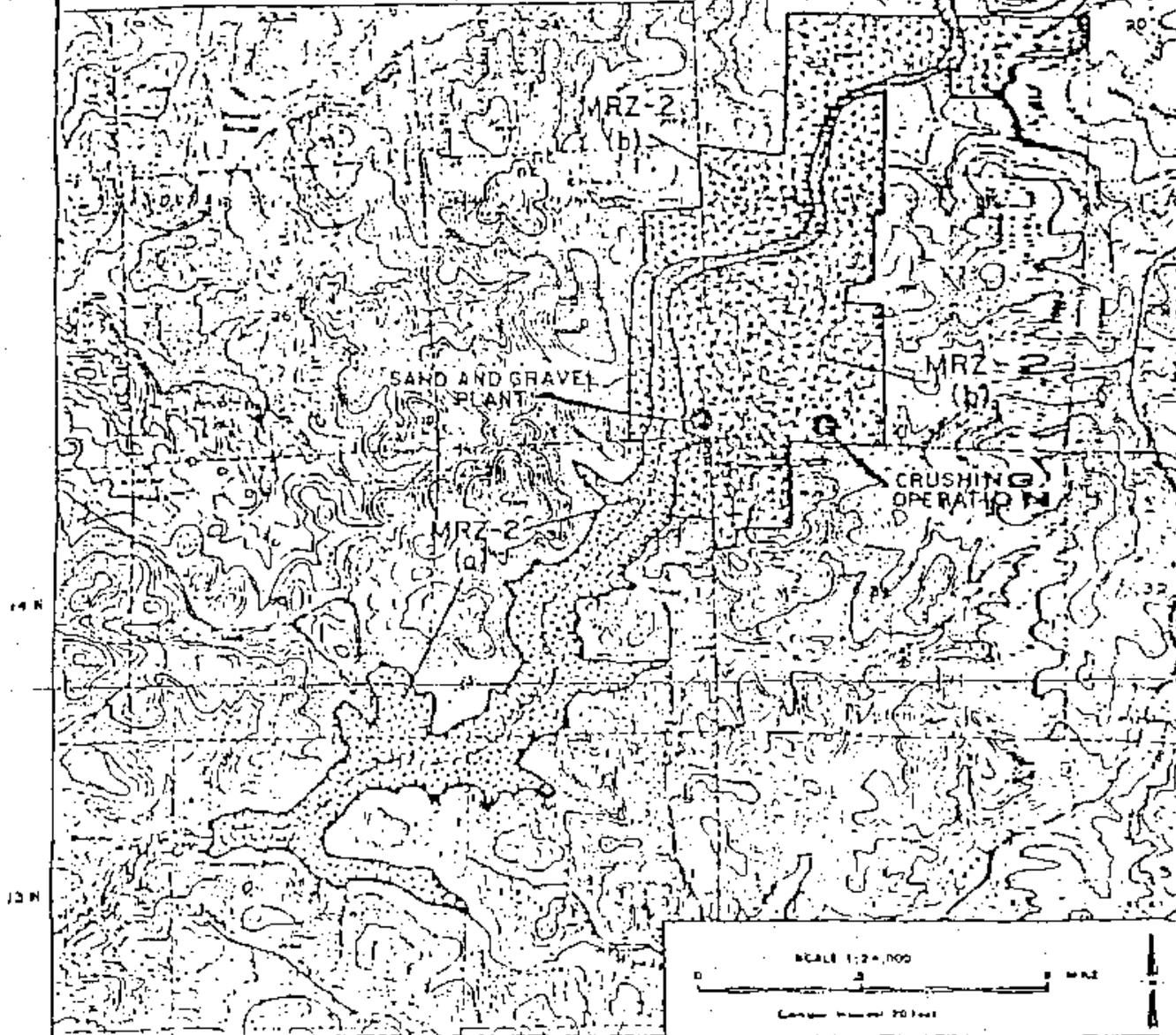
Dotted MRZ line defines petitioner's property boundary

MRZ-7(a) — Area where data indicates that significant deposits of alluvial Portland cement concrete grade aggregate exists or where it is judged there is a high likelihood of its presence.

MRZ-7(b) — Areas where data indicates that significant deposits for crushed Portland cement concrete grade aggregate exists or where it is judged there is a high likelihood of its presence.

PREPARED IN COMPLIANCE WITH THE SURFACE MINING AND RECLAMATION ACT OF 1975, ARTICLE 4, SECTION 2761

State Geologist 5725785



BEAR RIVER

RANGE 8 E      RANGE 9 E

SOILS  
ZONES

SEC 24

SEC 19

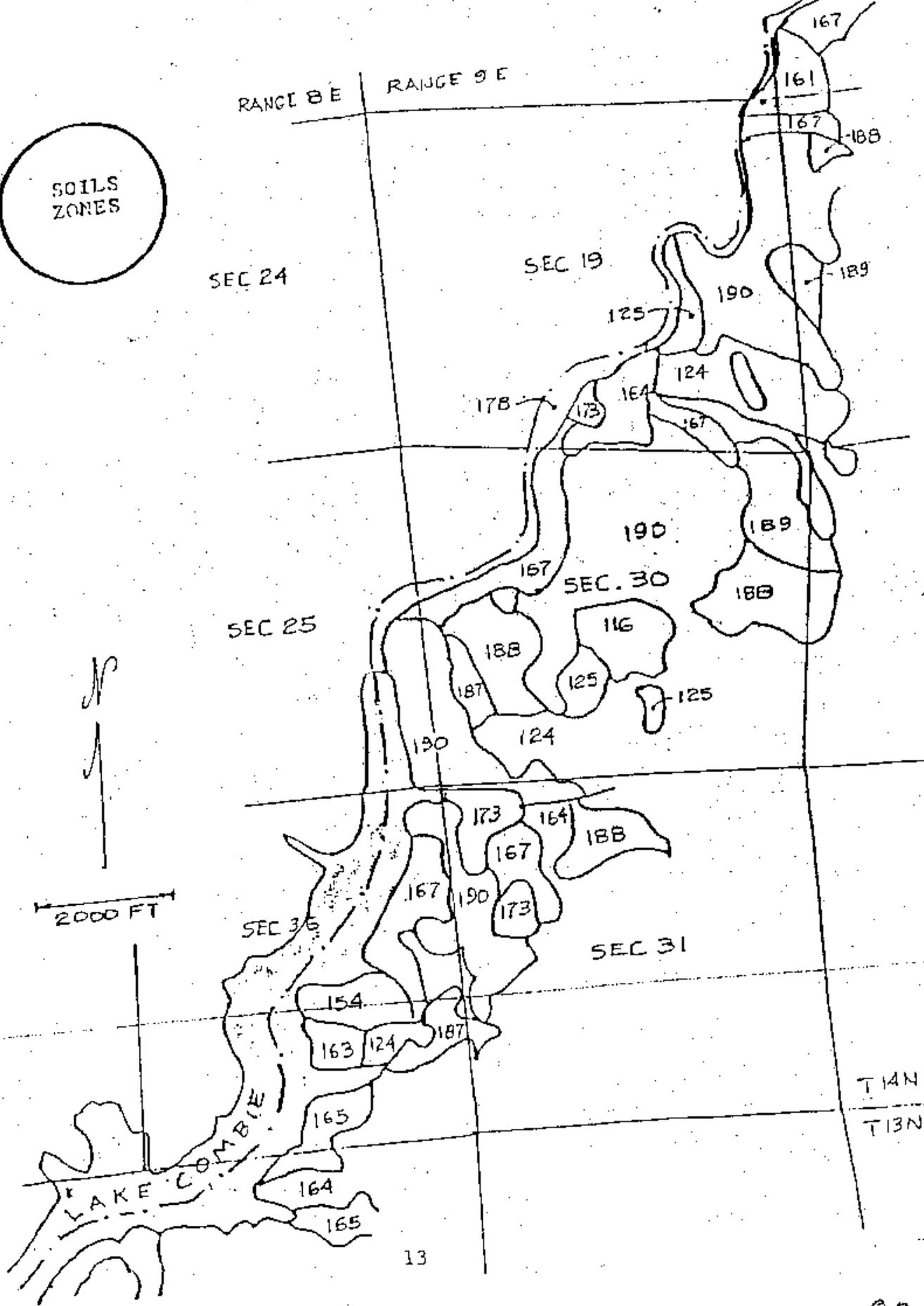
SEC 25

SEC. 30

SEC 35

SEC 31

2000 FT



T14N  
T13N

EXCERPTS FROM:

Soil Survey of  
Placer County, California  
Western Part

---

United States Department of Agriculture

~~Soil Conservation Service~~

in cooperation with

University of California Agricultural Experiment Station

TABLE 11.--ENGINEERING PROPERTIES AND CLASSIFICATIONS--Continued

Soil name and map symbol	Depth, ft	USDA texture	Unified	ASTM	Fracture, %	Percentage passing sieve number				Liquid limit, %	Plasticity limit, %
						#10	#20	#40	#60		
516 <sup>a</sup> Auburn	0-20 20	Silt loam Unweathered bedrock.	ML	A-4	0-15	95-100	75-95	70-85	50-80	20-40	MF-10
Argonne	0-9 9-25 25	Loam Clay Weathered bedrock.	ML CH	A-4 A-7	0-4 0-5	85-100 80-100	75-95 75-90	70-80 65-85	50-80 60-70	20-40 50-65	MF-10 75-35
Both outcrop.											
517 <sup>a</sup> Auburn	0-20 20	Silt loam Unweathered bedrock.	ML	A-4	0-15	95-100	75-95	70-85	50-80	20-40	MF-10
Both outcrop.											
512 <sup>a</sup> Auburn	0-20 20	Silt loam Weathered bedrock.	ML	A-4	0-15	95-100	75-95	70-85	50-80	20-40	MF-10
Sobrante	0-16 16-23 23-35 35-40 40	Silt loam Loam, silt loam Weathered bedrock. Weathered bedrock. Unweathered bedrock.	ML CL, CL-ML	A-4, A-6	0 0-5	95-100 95-100	75-90 75-90	70-85 70-85	50-70 50-70	20-40 20-40	MF-10 MF-20
519 <sup>a</sup> , 520 <sup>a</sup> , 521 <sup>a</sup> Auburn	0-20 20	Silt loam Unweathered bedrock.	ML	A-4	0-15	95-100	75-95	70-85	50-80	20-40	MF-10
Sobrante	0-16 16-33 33-40 40	Silt loam Loam, silt loam Weathered bedrock. Unweathered bedrock.	ML CL, CL-ML	A-4, A-6	0 0-5	95-100 95-100	75-90 75-90	70-85 70-85	50-70 50-70	20-40 20-40	MF-10 MF-20
Both outcrop.											
522 <sup>a</sup> , 523 <sup>a</sup> Bonner	0-10 10-50 50	Loam Gravelly clay loam. Weathered bedrock.	CL, CL-ML CL, SC	A-4, A-6 A-4, A-7	0 0-5	85-95 75-85	75-95 50-75	70-80 65-70	50-70 35-60	25-40 15-50	5-15 10-25
524 <sup>a</sup> Bonner	0-10 10-50 50	Loam Gravelly clay loam. Weathered bedrock.	CL, CL-ML CL, SC	A-4, A-6 A-4, A-7	0 0-5	85-95 75-85	75-95 50-75	70-80 65-70	50-70 35-60	25-40 30-50	5-15 10-25
Both outcrop.											
525 <sup>a</sup> , 526 <sup>a</sup> Bonner	0-10 10-50 50	Gravelly loam Gravelly clay loam. Weathered bedrock.	SC, SM-SC CL, SC	A-4, A-6 A-4, A-7	0-5 0-5	75-85 75-85	50-75 50-75	40-60 45-70	35-50 35-60	25-40 30-50	5-15 10-25
Both outcrop.											

See footnote at end of table.

TABLE 11.—ENGINEERING PROPERTIES AND CLASSIFICATIONS—Continued

Soil name and map symbol	Depth	USDA texture	Unified	ASHMID	Flow-value 2.3 inches 100	Liquid limit (LL) (%)				Plasticity index (PI)	Classification
						4	10	20	70		
161 <sup>1</sup> Rock outcrop.											
167 Allaga	0-18 19-30 30-56 56-83	Loam Clay loam Clay, sandy clay, clay loam Sandy clay loam	ML, CL-ML CL CL, CH SC, SH-St, CL, CL-ML	3-3 3-3 3-8, 3-7 3-8, 3-3	0 0 0 0	100 100 100 95-100	95-100 85-95 85-95 85-100	85-95 85-95 85-95 80-90	80-75 85-88 85-88 85-85	15-30 30-40 35-35 25-35	MF-10 MF-20 MF-30 S-15
171 Marilyn	0-6 6-28 28	Gravelly loam Gravelly loam, gravelly silt loam, gravelly clay loam Weathered bedrock.	SH, CH SH-St, CL, CL, CL-ML	3-2, 3-3 3-2 3-4 3-4	0-5 0-5 ---	75-85 85-85 ---	80-75 85-75 ---	80-80 80-80 ---	80-85 85-85 ---	20-40 20-40 ---	MF-10 S-15
173 <sup>1</sup> , 173 <sup>2</sup> Marilyn	0-6 6-21 21	Gravelly loam Gravelly loam, gravelly silt loam, gravelly clay loam Weathered bedrock.	SH, CH SH-St, CL, CL, CL-ML	3-2, 3-4 3-2 3-4 3-4	0-5 0-5 ---	75-85 85-85 ---	80-75 85-75 ---	80-80 80-80 ---	80-85 85-85 ---	20-40 20-40 ---	MF-10 S-15
Josephine	0-11 11-31 31-57 57	Loam Clay loam, silty clay loam Silty clay loam Weathered bedrock.	ML ML SH, CL ---	3-3 3-3, 3-7 3-3, 3-7 ---	0 0 0-10 ---	80-95 70-95 85-95 ---	75-90 75-90 80-85 ---	85-85 70-90 80-80 ---	85-70 70-80 85-80 ---	25-40 35-50 25-50 ---	MF-10 MF-20 MF-20 ---
175 <sup>1</sup> , 175 <sup>2</sup> Marilyn	0-6 6-21 21	Gravelly loam Gravelly loam, gravelly silt loam, gravelly clay loam Weathered bedrock.	SH, CH SH-St, CL, CL, CL-ML	3-2, 3-3 3-2 3-4 3-4	0-5 0-5 ---	75-85 85-85 ---	80-75 85-75 ---	80-80 80-80 ---	80-85 85-85 ---	20-40 20-40 ---	MF-10 S-15
Rock outcrop.											
179 <sup>1</sup> , 179 <sup>2</sup> Marilyn	0-17 17	Gravelly loam Weathered bedrock.	SH, CH ---	3-2, 3-3 ---	0-5 ---	80-80 ---	50-75 ---	80-80 ---	75-80 ---	75-30 ---	MF-5 ---
Rock outcrop.											
171, 172 McLain	0-13 13-39 39	Coarsely sandy loam Very poorly sandy loam Weathered bedrock.	CH, SH CH ---	3-2, 3-3 3-2, 3-3 ---	25-40 25-40 ---	85-75 80-70 ---	80-75 80-70 ---	35-55 75-80 ---	30-45 15-35 ---	25-35 25-35 ---	MF-5 MF-5 ---
173 <sup>1</sup> Pike and Swope											

See footnote at end of table.

PLACER COUNTY, CALIFORNIA, WESTERN PART  
 TABLE 15. ENGINEERING PROPERTIES AND CLASSIFICATIONS--Continued

Well name and map symbol	Depth ft	USDA texture	Unified	ASTM	Liquid limit %	Percentage passing sieve number			Liquid limit	Plasticity index
						4	10	200		
174, 175 Arroyo	0-6	Sandy loam	SM	1-2, A-4	0	95-100	75-85	50-60	10-20	MF-5
	6-18	Clay loam	ML	CL-ML	0	95-100	75-85	50-60	10-20	MF-10
	18-55	Sandy clay loam, sandy loam	SM, SC	1-2, A-4	0	95-100	75-85	50-60	10-20	MF-10
	55-73	Sandy clay loam, sandy loam	SM, SC	1-2, A-4	0	95-100	75-85	50-60	10-20	MF-10
174, 175 Arroyo	73-88	Clay loam	ML	1-2, A-4	0	95-100	75-85	50-60	10-20	MF-10
	88-100	Clay loam	ML	1-2, A-4	0	95-100	75-85	50-60	10-20	MF-10
176 Arroyo	0-27	Clay loam	ML	1-2, A-4	0	95-100	75-85	50-60	10-20	MF-10
	27-36	Clay loam	ML	1-2, A-4	0	95-100	75-85	50-60	10-20	MF-10
	36-50	Clay loam	ML	1-2, A-4	0	95-100	75-85	50-60	10-20	MF-10
	50-58	Clay loam	ML	1-2, A-4	0	95-100	75-85	50-60	10-20	MF-10
177 Arroyo	0-15	Sandy loam	SM	1-2, A-4	0	95-100	75-85	50-60	10-20	MF-5
	15-25	Clay loam	ML	1-2, A-4	0	95-100	75-85	50-60	10-20	MF-10
178 Arroyo	0-15	Sandy loam	SM	1-2, A-4	0	95-100	75-85	50-60	10-20	MF-5
	15-25	Clay loam	ML	1-2, A-4	0	95-100	75-85	50-60	10-20	MF-10
179 Arroyo	0-15	Sandy loam	SM	1-2, A-4	0	95-100	75-85	50-60	10-20	MF-5
	15-25	Clay loam	ML	1-2, A-4	0	95-100	75-85	50-60	10-20	MF-10
180 Arroyo	0-15	Sandy loam	SM	1-2, A-4	0	95-100	75-85	50-60	10-20	MF-5
	15-25	Clay loam	ML	1-2, A-4	0	95-100	75-85	50-60	10-20	MF-10
181 Arroyo	0-15	Sandy loam	SM	1-2, A-4	0	95-100	75-85	50-60	10-20	MF-5
	15-25	Clay loam	ML	1-2, A-4	0	95-100	75-85	50-60	10-20	MF-10
182 Arroyo	0-15	Sandy loam	SM	1-2, A-4	0	95-100	75-85	50-60	10-20	MF-5
	15-25	Clay loam	ML	1-2, A-4	0	95-100	75-85	50-60	10-20	MF-10
183 Arroyo	0-15	Sandy loam	SM	1-2, A-4	0	95-100	75-85	50-60	10-20	MF-5
	15-25	Clay loam	ML	1-2, A-4	0	95-100	75-85	50-60	10-20	MF-10
184 Arroyo	0-15	Sandy loam	SM	1-2, A-4	0	95-100	75-85	50-60	10-20	MF-5
	15-25	Clay loam	ML	1-2, A-4	0	95-100	75-85	50-60	10-20	MF-10
185 Arroyo	0-15	Sandy loam	SM	1-2, A-4	0	95-100	75-85	50-60	10-20	MF-5
	15-25	Clay loam	ML	1-2, A-4	0	95-100	75-85	50-60	10-20	MF-10
186 Arroyo	0-15	Sandy loam	SM	1-2, A-4	0	95-100	75-85	50-60	10-20	MF-5
	15-25	Clay loam	ML	1-2, A-4	0	95-100	75-85	50-60	10-20	MF-10
187 Arroyo	0-15	Sandy loam	SM	1-2, A-4	0	95-100	75-85	50-60	10-20	MF-5
	15-25	Clay loam	ML	1-2, A-4	0	95-100	75-85	50-60	10-20	MF-10
188 Arroyo	0-15	Sandy loam	SM	1-2, A-4	0	95-100	75-85	50-60	10-20	MF-5
	15-25	Clay loam	ML	1-2, A-4	0	95-100	75-85	50-60	10-20	MF-10
189 Arroyo	0-15	Sandy loam	SM	1-2, A-4	0	95-100	75-85	50-60	10-20	MF-5
	15-25	Clay loam	ML	1-2, A-4	0	95-100	75-85	50-60	10-20	MF-10

See footnote at end of table.

TABLE 13. ENGINEERING PROPERTIES AND CLASSIFICATIONS—CONTINUED

Soil name and map symbol	Depth	USDA texture	Unified	LACND	Liquid limit (%)	Percentage passing No. 200 sieve				Liquid limit (%)	Plasticity index
						4	10	40	200		
190 <sup>1</sup> Silt	0-16	loam	ML	1-4	0.5	80-100	80-95	80-75	50-85	20-40	WF-30
	16-24	clay loam	CL	1-4	0.5	90-100	85-95	65-75	55-90	30-40	UC-20
	24-85	clay, clay loam	ML, CL	1-7	0	90-100	85-95	75-90	70-85	45-60	WF-25
	85	weathered fracture									
Free cuttings											
191 <sup>1</sup> Sbrante	0-15	fine sand	ML	1-4	0	95-100	75-80	70-85	15-20	25-40	WF-30
	15-35	lean, clay loam	CL, CL-ML	1-4, 1-4	0.5	95-100	75-80	70-85	15-20	25-40	WF-30
	35-40	lean, clay loam									
	40	weathered fracture									
192 <sup>1</sup> Sbrante	0-15	fine sand	ML	1-4	0	95-100	75-80	70-85	15-20	25-40	WF-30
	15-35	lean, clay loam	CL, CL-ML	1-4, 1-4	0.5	95-100	75-80	70-85	15-20	25-40	WF-30
193 <sup>1</sup> Sbrante	0-15	fine sand	ML	1-4	0	95-100	75-80	70-85	15-20	25-40	WF-30
	15-35	lean, clay loam	CL, CL-ML	1-4, 1-4	0.5	95-100	75-80	70-85	15-20	25-40	WF-30
194 <sup>1</sup> Sbrante	0-15	fine sand	ML	1-4	0	95-100	75-80	70-85	15-20	25-40	WF-30
	15-35	lean, clay loam	CL, CL-ML	1-4, 1-4	0.5	95-100	75-80	70-85	15-20	25-40	WF-30

<sup>1</sup> See map unit description for the nomenclature and behavior of the map unit.

TABLE 17. PHYSICAL AND CHEMICAL PROPERTIES OF SOILS--Continued

Soil name and map symbol	Depth in	Permeability in/hr	Available water capacity %/in	Soil reaction pH	Shrink-swell potential	Excision factors	
						K	T
1177: Auburn	0-20 20	0.6-2.0	0.18-0.17	5.6-6.5	Low	0.32	1
Area outcrop.						0.32	
1187: Auburn	0-20 20	0.6-2.0	0.18-0.17	5.6-6.5	Low	0.32	2
Area outcrop.						0.32	
1207: Auburn	0-16 16-23 23-30 30-40 40	0.6-2.0 0.6-2.0 0.6-2.0 0.6-2.0 0.6-2.0	0.12-0.17 0.12-0.17 0.12-0.17 0.12-0.17 0.12-0.17	5.6-6.5 5.6-6.5 5.6-6.5 5.6-6.5 5.6-6.5	Low Low Low Low Low	0.32 0.32 0.32 0.32 0.32	1 1 1 1 1
Area outcrop.						0.32	
1157, 1227, 1277: Auburn	0-20 20	0.6-2.0	0.18-0.17	5.6-6.5	Low	0.32	2
Area outcrop.						0.32	
1217: Auburn	0-16 16-23 23-30 30-40 40	0.6-2.0 0.6-2.0 0.6-2.0 0.6-2.0 0.6-2.0	0.12-0.17 0.12-0.17 0.12-0.17 0.12-0.17 0.12-0.17	5.6-6.5 5.6-6.5 5.6-6.5 5.6-6.5 5.6-6.5	Low Low Low Low Low	0.32 0.32 0.32 0.32 0.32	1 1 1 1 1
Area outcrop.						0.32	
1227, 1237: Boomer	0-10 10-11 11	0.6-2.0 0.6-2.0 0.6-2.0	0.12-0.16 0.12-0.15	5.6-6.5 5.6-6.5	Low Low	0.32 0.28	3
Area outcrop.						0.32	
1287: Boomer	0-10 10-11 11	0.6-2.0 0.6-2.0 0.6-2.0	0.12-0.16 0.12-0.15	5.6-6.5 5.6-6.5	Low Low	0.32 0.28	3
Area outcrop.						0.32	
1257, 1217: Boomer	0-10 10-11 11	0.6-2.0 0.6-2.0 0.6-2.0	0.12-0.15 0.12-0.15	5.6-6.5 5.6-6.5	Low Low	0.28 0.28	1
Area outcrop.						0.28	
1277: Boomer variant	0-11 11-36 36-60 60	0.6-2.0 0.2-0.8 0.04-0.2	0.12-0.15 0.16-0.18 0.12-0.15	5.6-6.5 5.1-6.0 5.1-6.0	Low Moderate Moderate	0.28 0.28 0.28	3
Area outcrop.						0.28	
1287: Boomer variant	0-14 14-36 36-60 60	0.6-2.0 0.2-0.8 0.04-0.2	0.03-0.12 0.16-0.18 0.12-0.15	5.6-6.5 5.1-6.0 5.1-6.0	Low Moderate Moderate	0.28 0.28 0.28	3
Area outcrop.						0.28	
1297: Caperton	0-18 18	2.0-6.0	0.08-0.11	5.6-6.5	Low	0.20	1
Area outcrop.						0.20	
1307, 1317: Caperton	0-18 18	2.0-6.0	0.10-0.12	5.6-6.5	Low	0.20	2
Area outcrop.						0.20	
1327: Caperton	0-29 29	2.0-6.0	0.10-0.13	5.6-6.5	Low	0.20	1
Area outcrop.						0.20	
1377, 1337: Caperton	0-18 18	2.0-6.0	0.08-0.11	5.6-6.5	Low	0.20	1
Area outcrop.						0.20	

See footnotes at end of table.

PLACER COUNTY, CALIFORNIA, WESTERN PART

107

TABLE 12.--PHYSICAL AND CHEMICAL PROPERTIES OF SOILS--Cont. contd.

Soil name and soil symbol	Depth in	Permeability in/hr	Available water capacity in/in	Soil reaction pH	Soil lab. soil potential	Exchange capacity	
						C	T
1677, 1687 Mar Shasta	0-6	0.6-2.0	0.05-0.14	5.6-6.5	Low	0.32	2
	6-28 28	0.6-2.0	0.30-0.14	6.5-6.8	Low	0.32	
Park outcrop.							
1697, 1707 Payson	0-12	0.6-2.0	0.05-0.14	5.6-6.0	Low	0.28	1
	12						
Park outcrop.							
1717, 1727 Payson	0-33	2.0-2.0	0.25-0.30	5.6-6.0	Low	0.32	2
	33-37 37	2.0-2.0	0.10-0.11	5.6-6.0			
Park and creek							
1737, 1747 Payson	0-3	0.6-2.0	0.10-0.11	5.6-6.0	Low	0.32	1
	3-7 7-24 24-28 28-33 33-37	0.6-2.0	0.10-0.11	5.6-6.0	Low	0.32	
1757, 1767 Payson	0-34	0.6-2.0	0.10-0.11	5.6-6.0	Low	0.32	2
	34-38 38-42 42-46 46-50	0.6-2.0	0.10-0.11	5.6-6.0	Low	0.32	
1777, 1787 Payson	0-22	2.0-2.0	0.10-0.11	5.6-6.0	Low	0.32	2
	22-26 26-30 30-34 34-38	2.0-2.0	0.10-0.11	5.6-6.0	Low	0.32	
Payson							
Payson							
Payson outcrop							
1797, 1807 Payson	0-15	0.06-2.0	0.10-0.13	5.6-6.5	Low	0.32	2
	15-35 35-50 50-60	0.06	0.04-0.06	5.6-7.8	High	0.24	
San Joaquin							
1817, 1827 San Joaquin	0-15	0.06-0.7	0.10-0.12	6.7-7.8	Low	0.32	2
	15-35 35-50 50-60	0.06-0.7	0.10-0.12	6.7-7.8	Low	0.32	
San Joaquin							
1837, 1847, 1857 San Joaquin	0-15	0.6-2.0	0.10-0.13	5.6-6.5	Low	0.32	2
	15-35 35-50 50-60	0.6-2.0	0.04-0.06	5.6-7.8	High	0.24	
San Joaquin							
1867, 1877 San Joaquin	0-15	0.6-2.0	0.10-0.13	5.6-6.5	Low	0.32	2
	15-35 35-50 50-60	0.6-2.0	0.04-0.06	5.6-7.8	High	0.24	
San Joaquin							
1887, 1897 San Joaquin	0-23	0.6-2.0	0.10-0.12	5.6-7.3	Low	0.28	3
	23-41 41	0.7-0.6	0.15-0.18	5.6-6.5	Medium	0.37	

See footnote at end of table.

TABLE 17. PHYSICAL AND CHEMICAL PROPERTIES OF SOILS - Continued

Soil name and map symbol	Depth	Permeability	Available water capacity (%)	Soil texture (%)	Shrink-swell potential	Shrinkage factor	
						S	I
188, 187, 188, 189 - Silt	0-16	0.6-2.0	0.14-0.17	5.4-6.5	Low	0.78	5
	16-28	0.4-0.8	0.14-0.18	4.5-6.0	Moderate	0.78	
	28-45	0.2-0.6	0.13-0.16	4.2-6.0	Moderate	0.78	
	45	---	---	---	---	---	
190 - Silt	0-14	0.6-2.0	0.14-0.17	4.1-6.5	Low	0.74	5
	14-28	0.4-0.8	0.14-0.18	4.5-6.0	Moderate	0.78	
	28-45	0.2-0.6	0.13-0.16	4.5-6.0	Moderate	0.78	
	45	---	---	---	---	---	
Arch outcrop	0-14	---	---	---	---	---	5
	14-28	---	---	---	---	---	
Siltstone	0-14	---	---	---	---	---	5
	14-28	---	---	---	---	---	
Siltstone	0-14	---	---	---	---	---	5
	14-28	---	---	---	---	---	
Siltstone	0-14	---	---	---	---	---	5
	14-28	---	---	---	---	---	
Siltstone	0-14	---	---	---	---	---	5
	14-28	---	---	---	---	---	
Siltstone	0-14	---	---	---	---	---	5
	14-28	---	---	---	---	---	

\* See map unit description for the composition and behavior of the map units.

EROSION POTENTIAL OF SOILS OVERLYING THE  
AREA OF CHEVREAUX QUARRY\*

<u>SOIL TYPE</u>	<u>EROSION HAZARD</u>
125 Boomer Rock Outcrop	High
167 Mariposa	High
173 Pits & Dumps	Variable
178 River Wash	Very High
187,188 Sites	Moderate to High
190 Sites Rock Outcrop	Moderate to High

\* Source: Soil Conservation Service Report

**WESTERN PLANNING**

**AND ENGINEERING**

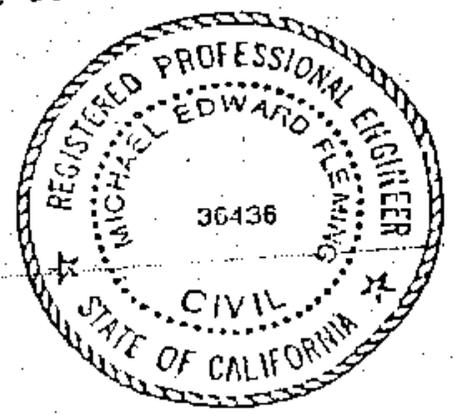
11712 QUARTZ DRIVE  
AUBURN, CALIFORNIA 95603  
PH. (916) 823-6917

**RETENTION FOND CERTIFICATION**

I hereby certify to the Water Quality Control Board for the State of California that the silt settling ponds located at the Chevreaux Gravel Quarry on Lake Combie (in the N.E. 1/4 of Section 36, Township 14 North, Range 8 East, M.D.B. & M.) are adequate to handle plant discharge for up to 60 operating hours per 7 calendar days with the plant configuration and that the physical configuration of the pond dikes (totaling 5.8 acres as of September 13, 1985) is adequate to prevent accidental breaching/spillage. This certification is subject to diversion of all surface runoff, etc. as required to hold total inflow into ponds to plant discharge only. This certification is also subject to adequate routine maintenance and inspection of the pond perimeter to prevent, discover or correct as necessary any conditions of seepage, movement, etc. that may diminish or endanger the structural integrity of the dikes.

  
MICHAEL E. FLEMING  
CALIF. R.C.E. 36436

19 SEPT. 85  
DATE



APPEAL/JOE CHEVREAU/RECLAMATION PLAN (CUP-253) - Approved appeal and clarified several conditions as imposed by the Board of Mining Appeals on the Reclamation Plans for Lake Cobble and Meadow Vista Quarry. Approval to include Part A & B in Reclamation Plan.

Tom Rubin, Planning Department, stated that on June 6, 1985, the applicant, Western Planning and Engineering, representing Joe Chevreaux presented a reclamation plan through the use permit application process. The plan, which applies to the Sand and Gravel Recovery at Lake Cobble (Part A) and the Chevreaux Quarry at Meadow Vista (Part B), was approved by the Mining Administrator in a written decision issued August 27, 1985. "Part A" subject to four (4) conditions and "Part B" subject to twelve (12) conditions. The applicant is now appealing to the Board of Supervisors to eliminate Condition 3a, and clarification of 3b, 3c, and 4 of Part A; and clarification of Conditions 7, 3d, 3e, 3f, 4, 7, 10a, 10b, 12b(1) and 12f of Part B. The applicant has also proposed an addendum to CUP-253, in order to clarify some of the approved conditions.

Staff agreed with all the modifications being appealed except Part A (3a) which is a request that when the final lake or river bottom is established then a plan submitted; and (3b) which requests a time schedule for the completion of the surface mining.

Joe Chevreaux, applicant, stated he has been in the gravel-concrete business since 1966. He is in the process of taking out everything in the lake, but until sand and gravel stops coming down the Bear River it will keep filling up the lake. He cannot tell at this time what the bottom of the lake will look like. Says law says as time evolves these Reclamation Plans can be brought back to the County for amendment.

Nick Dundro, Department of Public Works, stated the gravel operation will take the lake down to bedrock. They are asking for a time when the excavation is completed, and from an engineering viewpoint, want to know what the lake will look like when the gravel operation is finished.

Jim Chetney, District Manager for Nevada Irrigation District, stated that they own Lake Cobble. They have a contract with Chevreaux to remove sand and gravel from the lake to make more water storage. This may take 75-100 years to remove all the debris.

John Dansen, area resident, presented aerial photos by the Division of Forestry. He stated the mining operation in 1936 made alot of the silt in the lake until it was shut down. He is not against the quarry operation only the massive silt bar that has happened from disturbing the gravel.

Supervisor Farrell stated that without Chevreaux removing the sand and gravel in the lake it would become a gravel bar.

Fred Barber, Western Planning and Engineering, representing the applicant, submitted a study showing that the quarry operation only generates 1/101 of the silt in the lake.

Chetney stated he has been working with the landowners in order for them to remove the silt bar. This can only be done in the summer when the lake is low.

Supervisor Mahan felt some of the homeowners in the area would be opposed to this plan as it would increase trucks and trailers on their roads.

Both Jack Mitchell and William F. Johnson, area property owners, voiced their concerns on how the operation is being handled. They felt that after the gravel is taken out of the lake the silt should be removed. They wanted the lake cleaned up after the quarry operation is finished, and a timetable as to how long it will take.

Staff felt to eliminate Condition 3a would not be a problem regarding the plan.

NOTION Mahan/Menckson/Unanimous to eliminate Condition 3a from the Reclamation Plan.

NOTION Mahan/Cook/Unanimous approved substituting existing 3b as follows: "because of the unique type of operation concerning this quarry activity, and the fact that the applicant-operator has a certain minimum amount of yards that has to be removed under his contract with Nevada Irrigation District on a yearly basis, we can only assume that the yearly minimum will continue until the operation is no longer in effect, the lease terminated, or the lake is restored to its original condition".



# **EXHIBIT 3**

LD-1030

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 2, 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-13-43 Acreage 1.40  
Proposed Development (Describe fully) Quarry for shot rock  
disposal screening & washing plant  
for grading materials

Method of Sewage Disposal Dry Hole  
Assessor's Parcel No. 72-630-01-00-00 General Location of Property: W  
West Half of the NW Quarter of Section 31 T14N-R9E MDD9M4  
West Half of the SW Quarter of Section 30 T14N-R9E MDD9M4  
located north of County Dump in Meadow Vista  
PLEASE SUBMIT WELL-DETAILED PLOT PLAN

\$25.00 Filing Fee  
#7316  
Received by [Signature] Signature of Applicant Edward Puss  
Placer County Planning Department 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  
[Signature]  
RICHARD M. HEIKKA, Zoning Administrator

I have read the above conditions and will comply.  
(Please return 1 signed copy) [Signature]  
Signature of Applicant

cc: Applicant  
106

# **EXHIBIT 4**

**BLACK'S  
LAW  
DICTIONARY**

*With Pronunciations*

**Fifth Edition**



of his death is not transmissible to his representatives.

**Contingent liability.** One which is not now fixed and absolute, but which will become so in case of the occurrence of some future and uncertain event. *Warren Co. v. C. I. R.*, C.C.A.Ga., 135 F.2d 679, 684, 685. A potential liability; e.g. pending lawsuit. See also **Contingent claim**; **Contingent debt**.

**Contingent remainder.** See **Remainder**.

**Continual claim.** In old English law, a formal claim made by a party entitled to enter upon any lands or tenements, but deterred from such entry by menaces, or bodily fear, for the purpose of preserving or keeping alive his right. It was called "continual", because it was required to be repeated once in the space of every year and day. It had to be made as near to the land as the party could approach with safety, and, when made in due form, had the same effect with, and in all respects amounted to, a legal entry. 3 Bl Comm. 175.

**Continuance.** The adjournment or postponement of a session, hearing, trial, or other proceeding to a subsequent day or time. Also the entry of a continuance made upon the record of the court, for the purpose of formally evidencing the postponement, or of connecting the parts of the record so as to make one continuous whole.

**Continuance nisi** /kontinyuwan(t)s naysay/. A postponement on a condition or for a specific period of time.

**Continuando** /kontinyuwāndow/. In old pleading, a form of allegation in which the trespass, criminal offense, or other wrongful act complained of is charged to have been committed on a specified day and to have "continued" to the present time, or is averred to have been committed at divers days and times within a given period or on a specified day and on divers other days and times between that day and another. This is called "laying the time with a continuando."

**Continuing.** Enduring; not terminated by a single act or fact; subsisting for a definite period or intended to cover or apply to successive similar obligations or occurrences.

As to continuing Breach; Consideration; Conspiracy; Covenant; Damages; Guaranty, and Nuisance, see those titles. See also **Perpetuity**.

**Continuing contract.** A contract calling for periodic performances over a space of time.

**Continuing jurisdiction.** A doctrine invoked commonly in child custody or support cases by which a court which has once acquired jurisdiction continues to possess it for purposes of amending and modifying its orders therein. *Curtis v. Gibbs*, Tex., 511 S.W.2d 263.

**Continuing offense.** Type of crime which is committed over a span of time as, for example, a conspiracy. As to period of statute of limitation, the last act of the offense controls for commencement of the period. A "continuing offense," such that only the last act thereof within the period of the statute of limitations

need be alleged in the indictment or information, is one which may consist of separate acts or a course of conduct but which arises from that singleness of thought, purpose or action which may be deemed a single impulse. *U. S. v. Benton & Co., Inc.*, D.C.Fla., 345 F.Supp. 1101, 1103. See also **Crime**; **Offense**.

**Continuous.** Uninterrupted; unbroken; not intermittent or occasional; so persistently repeated at short intervals as to constitute virtually an unbroken series. Connected, extended, or prolonged without cessation or interruption of sequence. *Sullivan v. John Hancock Mut. Life Ins. Co. of Boston*, Mo.App., 110 S.W.2d 870, 877. As to continuous "Crime" and "Easement", see those titles.

**Continuous adverse use.** Term is interchangeable with the term "uninterrupted adverse use".

**Continuous injury.** One recurring at repeated intervals, so as to be of repeated occurrence; not necessarily an injury that never ceases.

**Continuously.** Uninterruptedly; in unbroken sequence; without intermission or cessation; without intervening time; with continuity or continuation.

**Contra.** Against, confronting, opposite to; on the other hand; on the contrary.

**Contra accounts.** In accounting, those accounts which are related to and should be shown with their cognate accounts, e.g. reserve for depreciation should be shown with the asset which is being depreciated.

**Contra-balance.** Balance in accounts which is the opposite of the normal balance of the account, e.g. account receivable with credit balance.

**Contraband.** In general, any property which is unlawful to produce or possess. Goods exported from or imported into a country against its laws. Articles, the importation or exportation of which is prohibited by law. Smuggled goods. See also **Derivative contraband**.

**Contraband of war.** Certain classes of merchandise, such as arms and ammunition, which, by the rules of international law, cannot lawfully be furnished or carried by a neutral nation to either of two belligerents. If found in transit in neutral vessels, such goods may be seized and condemned for violation of neutrality.

**Contra bonos mores** /kontra bōwnaws mōryz/. Against good morals. Contracts *contra bonos mores* are void.

**Contra-causator** /kontrakazeydar/. A criminal, one prosecuted for a crime.

**Contraceptive.** Any device or substance which prevents fertilization of the female ovum.

**Contraceptivism.** The offense of distributing or prescribing contraceptives; the offense has little or no vitality today with respect to both married and unmarried persons. *Baird v. Eisenstadt*, 405 U.S. 438, 92 S.Ct. 1029, 31 L.Ed.2d 349.

**Contract.** An agreement between two or more persons which creates an obligation to do, or not to do a

# **EXHIBIT 5**

Chapter 17 ZONING\*Article 17.06 ZONING DISTRICTS ESTABLISHED**17.06.050 Land use and permit tables.**

A. Types of Land Uses Allowed. The uses of land allowed by this chapter in each zone and combining district established by Section 17.06.010 are identified in the following tables (subsection (D) of this section), and in Sections 17.06.060 et seq., (Zone district regulations). Land uses that are not listed on the tables in subsection (D) of this section, or are not shown in a particular zone district are not allowed, except where otherwise provided by Sections 17.06.030(B) (Exemptions from land use permit requirements), 17.56.030 (Temporary uses), or 17.02.050 (Allowable uses of land).

B. Type of Permit Required. When the tables in subsection (D) of this section and the zone and combining district requirements of Sections 17.06.060 et seq., show a particular land use as being allowable in a zone, the use is identified as being subject to one of the following land use permit requirements.

1. Zoning Compliance. These uses are allowed without land use permit approval subject to compliance with all applicable provisions of this chapter ("A" uses on the tables). No land use permit is required for "A" uses because they typically involve no or minimal construction activities, are accessory to some other land use that will be the primary use of a site (which will require a land use permit), or are otherwise entirely consistent with the purposes of the particular zone.

2. Zoning Clearance. These uses are allowable subject to zoning clearance ("C" uses on the tables) (see Section 17.06.040). Zoning clearance is a routine land use approval that involves planning department staff checking a proposed development to ensure that all applicable zoning requirements will be satisfied (e.g., setbacks, height limits, parking requirements, etc.). Zoning clearance is required by this ordinance for land uses that are consistent with the basic purposes of the particular zone (e.g., houses in residential zones), and are unlikely to create any problems that will not be adequately handled by the development standards of Article 17.54 of this ordinance (General Development Standards) and this subchapter.

3. Administrative Review Permit (ARP). These uses are allowable subject to approval of an administrative review permit (see Section 17.58.100). Administrative review permit approval is required for certain land uses that are generally consistent with the purposes of the zone, but could create minor problems for adjoining properties if they are not designed with sensitivity to surrounding land uses. The purposes of an administrative review permit are to allow planning department staff and the zoning administrator to evaluate a proposed use to determine if problems may occur, to work with the project applicant to adjust the project through conditions of approval to solve any potential problems that are identified, or to disapprove a project if identified problems cannot be acceptably corrected.

4. Minor Use Permit (MUP). These uses are allowable subject to approval of a minor use permit ("MUP") (Section 17.58.120). Minor use permit approval is required for certain land uses that are generally consistent with the purposes of the zone, but could create problems for adjoining properties, the surrounding area, and their populations if such uses are not designed to be compatible with surrounding land uses. The purpose of a minor use permit is to allow planning department staff and the zoning administrator to evaluate a proposed use to determine if problems may occur, to provide the public with an opportunity to review the proposed project and express their concerns in a public hearing, to work with the project applicant to adjust the project through conditions of approval to solve any potential problems that are identified, or to disapprove a project if identified problems cannot be acceptably corrected.

5. Conditional Use Permit (CUP). These uses are allowable subject to approval of a conditional use permit ("CUP") (Section 17.58.130). Conditional use permit approval is required for certain land uses that may be appropriate in a zone, depending on the

112

design of the individual project, and the characteristics of the proposed site and surroundings. Such uses can either raise major land use policy issues or could create serious problems for adjoining properties, the surrounding area, and their populations if such uses are not appropriately located and designed. The purpose of a conditional use permit is to allow planning department staff and the Placer County planning commission to evaluate a proposed use to determine if problems may occur, to provide the public with an opportunity to review the proposed project and express their concerns in a public hearing, to work with the project applicant to adjust the project through conditions of approval to solve any potential problems that are identified, or to disapprove a project if identified problems cannot be acceptably corrected.

All allowable land uses shall obtain any building permit or other permit required by this code (see Section 17.06.030(D)), in addition to the land use permit required by this section or Sections 17.06.060 et seq.

C. Land Use Definitions. Definitions of the titles of the land uses listed in the land use tables (subsection D of this section) are in Article 17.04 (Definitions).

D. Tables. The following tables, and the lists of allowable uses in Sections 17.06.060 et seq., contain the same requirements for allowable uses and land use permit requirements. The tables in this section are for convenience, to simultaneously show all zone districts, the uses allowed within them, and the permit requirements applicable to each use.

17.06.050

(Placer County Supp. No. 24, 9-06) 644

LAND USE TYPES	ZONE DISTRICTS																				
	RESIDENTIAL				COMMERCIAL							INDUSTRIAL				AGRICULTURAL, RESOURCE OPEN SPACE					
	RS	RM	RA	RF	C1	C2	C3	CPD	HS	OP	RES	AP	BP	IN	INP	AE	F	FOR	O	TPZ	W
Agricultural, Resource and Open Space Uses																					
Agricultural accessory structures (Section 17.56.020 (B))	C		C	C							C					C	C	C	C	C	
Agricultural processing			MUP	MUP			C							C	MUP	MUP	MUP	MUP		MUP	
Animal raising and keeping	15	15	15	15	15	15	15				15	15	15	15	15	15	15	15	15	15	



114

Plant production nurseries (See Section 17.56.165)			15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	
Water extraction and storage (commercial)			CUP	CUP			CUP	CUP	CUP		CUP	CUP		CUP							

**Key To Permit Requirements**

Allowed use, zoning compliance required (Section 17.06.050)	A
Zoning Clearance required (Section 17.06.050)	C
Administrative Review Permit required (Section 17.06.050)	ARP
Minor Use Permit required (Section 17.06.050)	MUP
Conditional Use Permit required (Section 17.06.050)	CUP
Permit requirements set by Article 17.56	15
Use not allowed	

See Article 17.04 for definitions of listed land uses.

645 (Placer County Supp. No. 24, 9-06)

	ZONE DISTRICTS			
LAND USE TYPES	RESIDENTIAL	COMMERCIAL	INDUSTRIAL	AGRICULTURAL, RESOURCE OPEN SPACE

Manufacturing and Processing Uses	RS	RM	RA	RF	C1	C2	C3	CPD	HS	OP	RES	AP	BP	IN	INP	AE	F	FOR	O	TPZ	W
Chemical products																					
Clothing products							C						C	C	MUP						
Concrete, gypsum and plaster products							MUP							MUP							
Electric generating plants			CUP	CUP								CUP		CUP	CUP						
Electrical and electronic equipment, instruments													C	C	MUP						
Explosives manufacturing and storage (Section 17.56.110)															CUP	CUP	CUP				
Food products							C							C	MUP	CUP	CUP				
Furniture and fixtures manufacturing							C						C	C	MUP						
Glass products							MUP							MUP	MUP						
Industrial subdivisions												A	CUP	A	CUP						
Lumber and wood products							MUP							MUP				CUP			CUP
Machinery												CUP	C	MUP	MUP						



117

Conditional Use Permit required (Section 17.06.050)	CUP
Permit requirements set by Article 17.56	15
Use not allowed	

See Article 17.04 for definitions of listed land uses.

17.06.050

17.06.050

(Placer County Supp. No. 24, 9-06) 648

LAND USE TYPES	ZONE DISTRICTS																					
	RESIDENTIAL				COMMERCIAL						INDUSTRIAL			AGRICULTURAL, RESOURCE OPEN SPACE								
	RS	RM	RA	RF	C1	C2	C3	CPD	HS	OP	RES	AP	BP	IN	INP	AE	F	FOR	O	TPZ	W	
Manufacturing and Processing Uses - Continued																						
Recycling facilities (Section 17.56.170)				15		15	15		15			15	15	15	15							
Recycling, scrap and wrecking yards (Section 17.56.170)							CUP							CUP								
Slaughterhouses and rendering plants														CUP								
Small-scale manufacturing							MUP					C	C	C	MUP							
Stone and cut							MUP															



119

Outdoor commercial recreation						MUP	MUP	CUP	MUP		MUP										
Parks, playgrounds, golf courses	MUP	CUP	MUP	MUP	MUP	MUP	CUP	MUP	MUP		MUP	MUP	CUP		ML						

**Key To Permit Requirements**

Allowed use, zoning compliance required (Section 17.06.050)	A
Zoning Clearance required (Section 17.06.050)	C
Administrative Review Permit required (Section 17.06.050)	ARP
Minor Use Permit required (Section 17.06.050)	MUP
Conditional Use Permit required (Section 17.06.050)	CUP
Permit requirements set by Article 17.56	15
Use not allowed	

See Article 17.04 for definitions of listed land uses.

647 (Placer County Supp. No. 24, 9-06)

	ZONE DISTRICTS																				
LAND USE TYPES	RESIDENTIAL				COMMERCIAL								INDUSTRIAL				AGRICULTURAL, RESOURCE OPEN SPACE				
	RS	RM	RA	RF	C1	C2	C3	CPD	HS	OP	RES	AP	BP	IN	INP	AE	F	FOR	O	TPZ	W
Recreation, Education and Public																					











125

(Section 17.06.050)	
Permit requirements set by Article 17.56	15
Use not allowed	

See Article 17.04 for definitions of listed land uses.

649 (Placer County Supp. No. 24, 9-06)

LAND USE TYPES	ZONE DISTRICTS																				
	RESIDENTIAL				COMMERCIAL								INDUSTRIAL				AGRICULTURAL, RESOURCE OPEN SPACE				
	RS	RM	RA	RF	C1	C2	C3	CPD	HS	OP	RES	AP	BP	IN	INP	AE	F	FOR	O	TPZ	W
Retail Trade - Continued																					
Restaurants, fast food (Section 17.56.190)						MUP		CUP	MUP	MUP		MUP	MUP	MUP	MUP						
Retail stores, general merchandise					C	C	MUP	CUP	C		MUP		MUP	MUP	MUP						
Roadside stands for agricultural products			C	C							MUP					C	C	C			
Secondhand stores					C	C	C	CUP	C												
Shopping centers, up to 5 acres					MUP	C	MUP	CUP	C		MUP										
Shopping centers, 5 to 10 acres					CUP	MUP	MUP	CUP	MUP		MUP										





128

Service Uses - Continued	RS	RM	RA	RF	C1	C2	C3	CPD	HS	OP	RES	AP	BP	IN	INP	AE	F	FOR	O	TPZ	W
Medical services - Hospitals and extended care		CUP	CUP		MUP	MUP		CUP	CUP	MUP			MUP				MUP				
Medical services - Veterinary clinics and hospitals			MUP	MUP	C	C	C	CUP	C	MUP			C				MUP				
Offices					C	C	C	CUP	C	C	C	MUP	C	C	MUP						
Offices, temporary (Section 17.56.300)	See Section 17.56.300																				
Personal services					C	C	C	CUP	C	MUP	C	MUP	C	C	C						
Public safety facilities	MUP	MUP	MUP	MUP	C	C	C	CUP	C	C	C	C	C	C	C		MUP	MUP			
Public utility facilities	MUP	MUP	MUP	MUP	MUP	MUP	MUP	CUP	MUP	MUP	MUP	MUP	MUP	C	MUP	MUP	MUP	MUP	MUP		
Repair and maintenance - Accessory to sales					C	C	C	CUP	MUP				C	C	MUP						
Repair and maintenance - Consumer products					C	C	C	CUP						C	MUP						
Repair and maintenance - Vehicle (Section 17.56.320)					MUP	MUP	MUP		MUP			MUP		C	MUP						



130

Administrative Review Permit required (Section 17.06.050)	ARP
Minor Use Permit required (Section 17.06.050)	MUP
Conditional Use Permit required (Section 17.06.050)	CUP
Permit requirements set by Article 17.56	15
Use not allowed	

See Article 17.04 for definitions of listed land uses.

651 (Placer County Supp. No. 24, 9-06)

LAND USE TYPES	ZONE DISTRICTS																			
	RESIDENTIAL				COMMERCIAL							INDUSTRIAL				AGRICULTURAL, RESOURCE OPEN SPACE				
	RS	RM	RA	RF	C1	C2	C3	CPD	HS	OP	RES	AP	BP	IN	INP	AE	F	FOR	O	TPZ
Transient Lodging																				
Bed and breakfast lodging (Section 17.56.070)	MUP	MUP	MUP	MUP	MUP				C		C					MUP	MUP			
Hotels and motels (Section 17.56.130)						MUP	MUP	CUP	MUP		MUP	MUP	MUP	CUP	CUP					
Recreational vehicle parks (Section 17.56.080)						CUP			CUP		CUP	CUP								
Transportation and																				



132

required (Section 17.06.050)	
Minor Use Permit required (Section 17.06.050)	MUP
Conditional Use Permit required (Section 17.06.050)	CUP
Permit requirements set by Article 17.56	15
Use not allowed	

See Article 17.04 for definitions of listed land uses.

(Ord. 5416-B (Exh. A) (part), 2006; Ord. 5375-B § 2, 2005; Ord. 5339-B (Exh. A) (part), 2004; Ord. 5126-B (part), 2001)

17.06.050

[<< previous](#) | [next >>](#)

# EXHIBIT 6

Chapter 17 ZONING\*

Article 17.58 DISCRETIONARY USE REQUIREMENTS

**17.58.160 Permit time limits, exercising of permits, and extensions.**

A. Time Limits for Action by County. As provided by California Government Code Section 65950, an administrative review, minor or conditional use permit shall be approved or disapproved by the granting authority within the following time limits:

1. If a negative declaration is adopted or if the project is exempt from regulation under the California Environmental Quality Act (CEQA) pursuant to Chapter 18 of this code, the project shall be approved or disapproved within three months from the date of adoption of a negative declaration, or, for those projects which are exempt from regulation under CEQA, within three months from the date that the application is determined to be complete pursuant to Section 17.58.050 (Initial review of applications), unless the project proponent requests an extension of the time limit (see Section 17.58.160(A)(3).
2. If an environmental impact report is prepared for the project pursuant to the provisions of Chapter 18 of this code, the project shall be approved or disapproved within six months from the date of certification by the hearing body of the environmental impact report, unless the project proponent requests an extension of the time limit (see Section 17.58.160(A)(3).
3. If a project proponent requests, in writing, an extension of the time limits specified in Sections 17.58.160(A)(1) and 17.58.160(A)(2), the agency director may grant or deny such a request for good cause. A request for a decision by the agency director to grant an extension of the time limits specified above shall be made prior to the expiration of such time limits. The agency director may grant an extension for such a reasonable additional time period as is deemed appropriate.
4. If the county fails to approve or disapprove a development project within the time limits specified by this section, the failure to act shall be deemed approval of the permit application for the development project. However, the permit shall be deemed approved only if the public notice required by law has occurred. (See California Government Code Section 65956(b).)
5. Except that where the land use permit application is accompanied by an application for a general plan amendment, rezoning or zoning text amendment that is needed to allow the processing of the land use permit, the above time limits shall commence as of the effective date of the general plan amendment, rezoning or zoning text amendment, whichever is chronologically later in time.

B. Permit Expiration. An approved administrative review permit, minor use permit, conditional use permit or variance is subject to the following time limits. It shall be the responsibility of the applicant alone to monitor the time limits and make diligent progress on the approved project, so as to avoid permit expiration.

1. Time Limit for Permit Implementation. An approved permit is valid for twenty-four months from its effective date (Section 17.58.140(D)), or for any other period specified by the granting authority in conditions of approval, or other provision of this chapter. At the end of twenty-four months, the permit shall expire and become void unless by that time:
  - a. The permit has been implemented because conditions of approval prerequisite to construction have been satisfied, any required building or grading permits have been issued, and a foundation inspection has been conducted and approved by the building official or a designee; or
  - b. The permit has been implemented because a use not requiring construction permits has been established on the site and is in operation as approved, and all conditions of approval prerequisite to establishment of the use have been satisfied; or
  - c. The permit has been implemented for a multiple building or multiple structure project because conditions of approval prerequisite to construction have been satisfied, any required building or grading permits have been issued, and foundation inspections for each and every building or structure have been conducted and approved by the building official or a designee (Note: For multiple phase projects which require a discretionary permit, the conditions of approval for that permit can provide for extended dates of expiration); or
  - d. A conditional use permit granted for a planned residential development (Section 17.54.080) has been implemented through the recordation of the final subdivision map pursuant to the

134

approved PD; or

e. An extension of time has been granted according to subsection C of this section.

2. Lapse of Permit After Implementation. Once a project has been implemented as set forth in Section 17.58.140(E), the permit that authorized the use shall remain valid and in force and shall run with the land, including any conditions of approval adopted with the permit, unless one of the following occurs:

a. Work under an approved construction permit toward completing the project and complying with the permit conditions of approval ceases such that the construction permit expires pursuant to Chapter 15 of this code (Construction Requirements), and one additional year elapses after the expiration of the construction permit.

b. After a use has been established and/or operated as approved, the use (if no appurtenant structure is required for its operation) is discontinued for more than twelve consecutive months, or (if an appurtenant structure is required for the conditionally-permitted use) the structure is removed from the site for more than twelve consecutive months. If a structure associated with the operation of a conditionally permitted use is issued a certificate of occupancy and all other conditions of approval of the conditional use permit are satisfactorily completed, the entitlement remains in effect even if the structure is vacant for more than twelve consecutive months; however, no use may be reestablished in the structure and/or on the site unless the use is determined by the planning director to be substantially the same as the original conditionally permitted use.

c. The time limit set for the duration of the use by a condition of approval expires.

3. If one of the foregoing events occurs, the permit shall be deemed to have lapsed. No use of land, building or structure for which a permit has lapsed shall be reactivated, re-established or used unless a new permit is first obtained as provided by this subchapter. The site of a lapsed permit shall be used only for uses allowed in the applicable zone district by Articles 17.06 through 17.52 (Zone districts and allowable uses of land) without a permit pursuant to this chapter.

C. Extensions of Time. The time limit established by subsection (B)(1) of this section for the implementation of an approved administrative review permit, minor use permit, conditional use permit or variance may be extended by the granting authority for a total of no more than three years as provided by this section:

1. Time For Filing an Extension Request. The applicant for an approved permit shall request an extension of time not later than the date of expiration of the permit established by subsection B of this section. The request shall be in writing, shall explain the reasons for the request, and shall be accompanied by the nonrefundable filing fee established by the most current planning department fee schedule. Upon the filing of an extension request as required by this subsection, the time limit for expiration of the permit established by subsection B of this section shall be suspended until a decision is made by the appropriate hearing body regarding the extension request.

2. Notice of Requested Extension. The planning department shall send notice of the requested extension by mail to all individuals and entities (or their legal successors in interest) which were provided notice of the hearing that preceded the approval of the permit requested for extension, and to all members of the development review committee. The notice shall state that any person who objects to the requested extension of time shall notify the planning director, in writing, of the objection within fifteen days from the date of mailing of the notice.

3. Hearing on Objections to Extension. If any objection to the time extension is received, the granting authority that approved the original permit shall follow the entire procedure set forth in Section 17.58.140 (Permit issuance) to consider and approve or disapprove the requested extension, as well as the following subsection.

4. Approval of Extension. After a public hearing, or if no objection to an extension is received, without a public hearing, the granting authority may extend the expiration date of the approved administrative review permit, minor use permit, conditional use permit or variance by no more than a total of three years, provided that the granting authority first finds that:

a. No change of conditions or circumstances has occurred that would have been grounds for denying the original application;

b. The applicant has been diligent in pursuing implementation of the permit; and

c. Modified conditions have been imposed which update the permit to reflect current adopted standards and ordinance requirements. (Ord. 5373-B (part), 2005; Ord. 5126-B (part), 2001)

[<< previous](#) | [next >>](#)

135

# **EXHIBIT 7**

Chapter 17 ZONING\*Article 17.02 INTRODUCTORY PROVISIONS**17.02.030 Applicability of zoning chapter.**

This chapter applies to all land uses and development within the unincorporated areas of Placer County as provided by this section, including land uses and development undertaken by units of government, except that uses and development located within the areas covered by the community plans listed below, in which case the regulatory provisions of such plans (or land use ordinances adopted pursuant to such plans) shall apply, unless such regulations conflict with Section 17.02.050(D) or defer to the provisions of this chapter, or unless such regulations are silent regarding land use matters otherwise governed by the provisions of this chapter:

1. Squaw Valley General Plan/Squaw Valley Land Use Ordinance, Appendix A to Chapter 17 of the Placer County Code;
2. Tahoe City Community Plan or the Tahoe City Area General Plan, Appendix B to Chapter 17 of the Placer County Code;
3. North Tahoe Community Plan, Appendix C to Chapter 17 of the Placer County Code.
4. West Shore Area General Plan, Appendix D to Chapter 17 of the Placer County Code.

A. New Land Uses and Changes to Existing Uses. It is unlawful, and a violation of the Placer County Code, for any person or public agency to establish, construct, reconstruct, alter, replace or allow any use of land, building or structure, or divide any land, unless:

1. The proposed use of land is allowed by Articles 17.06 through 17.52 (Zone Districts and Allowable Uses of Land) within the zone district and any combining districts that apply to the subject site; and
2. The proposed use of land, building or structure, or division of land satisfies all applicable requirements of this chapter, including but not limited to minimum parcel size, height limits, required setbacks, parking standards, residential density, sign standards, specific use requirements; and
3. Any land use permit or other approval required by Articles 17.06 through 17.52 (Zone Districts and Allowable Uses of Land) is first obtained as provided by Article 17.58 (Discretionary Land Use Permit Procedures), and any applicable conditions of approval are first satisfied.

B. Issuance of Building Permits. No building permit shall be issued by the building official pursuant to Chapter 15 of this code unless the proposed land use and/or construction satisfies the provisions of this chapter.

C. Continuation of an Existing Use. It is unlawful and a violation of this code for any person to operate or maintain a land use established according to the requirements of the zoning ordinance in any manner that violates any provisions of this chapter. However, the requirements of this chapter are not retroactive in their effect on a use of land that was lawfully established before this chapter or any applicable amendment became effective, except where an alteration, expansion or modification to an existing use is proposed, and except as provided by Sections 17.60.120, et seq. (Nonconforming Uses).

D. Effect of Zoning Ordinance Changes on Projects in Progress. The enactment of this chapter or amendments to its requirements may have the effect of imposing different standards on development or new land uses than those that applied to existing development (e.g., this chapter or a future amendment could require more off-street parking spaces for a particular land use than former zoning ordinance provisions). This subsection determines how the requirements of this chapter apply to development project in progress at the time requirements are changed.

1. Projects With Pending Applications. All land use permit applications that have been determined to be complete as provided by California Government Code Section 65943 before the effective date of this chapter or any amendment, shall be processed according to the regulations and requirements in effect at the time the application was accepted as complete. Applications for land use permit extensions of time shall be consistent with the requirements of the zoning ordinance in effect when the time extension application is accepted as complete (see BOS Minute Order #93-02).

2. Approved Projects Not Yet Under Construction. Any use authorized by an administrative review permit, minor use permit, conditional use permit or variance, for which construction has

not begun as of the effective date of this chapter, or any amendment, may still be constructed as provided by the approved permit, as long as the permit is exercised before the expiration of the permit pursuant to Section 17.58.160 (Permit time limits and extensions), or, where applicable, before the expiration of any time extension granted under Section 17.58.160.

3. Completion of Projects Under Construction. A building or structure that is under construction as of the effective date of this chapter or any amendment, need not be changed to satisfy any new or different requirements of this chapter as long as the building permit remains valid and current.

E. Other Requirements May Still Apply. Nothing in this chapter shall eliminate the need for obtaining any other required permits, including but not limited to those required by Chapters 15 and 16 of this code, such as building permits, plumbing, electrical, or mechanical permits, grading permits, the approval of a parcel or final map, or any permit, approval or entitlement required by other chapters of this code or the regulations of any county department or other public agency, including but not limited to authority to construct or permit to operate from the Placer County air pollution control district, or streambed alteration agreements from the California Department of Fish and Game. Where a California Land Conservation Act (Williamson Act) Agreement exists that includes a specific parcel of land, the provisions of that Agreement, as well as the provisions of Chapter 6, Placer County Administrative Rules and Section 51200 et seq. of the California Government Code also apply. (Ord. 5126-B (part), 2001)

[<< previous](#) | [next >>](#)

# **EXHIBIT 8**

## Chapter 17 ZONING\*

## Article 17.60 ZONING ADMINISTRATION

**17.60.120 Nonconforming uses.**

No land use permit shall be approved pursuant to Article 17.58 (Discretionary Land Use Permit Procedures) which results in the creation of a nonconforming use of land or building, or which makes any existing use, building or structure nonconforming as to the provisions of this chapter. A nonconforming use of land or buildings may be continued, changed or replaced only as provided by this section. Nonconforming mobile homes are covered by Section 17.56.150(E).

A. **Nonconforming Uses of Land.** A nonconforming use of land may be continued, transferred or sold, provided that no such use shall be enlarged or increased, nor be extended to occupy a greater area than that which it lawfully occupied before becoming a nonconforming use. Additionally, non-conforming uses shall not be enlarged, extended expanded nor increased to occupy a larger area, nor a more intensive use than that which it was characterized by in the prior twelve months.

B. **Nonconforming Buildings.** A nonconforming building may continue to be used as follows:

1. **Changes to Building.** The enlargement, extension, reconstruction or structural alteration of a building that is nonconforming only as to height and setback regulations, may be permitted if such additions or improvements conform to all other applicable provisions of this chapter (See Sections 17.54.020, 17.54.130, 17.54.140, 17.54.150, and 17.54.160), and the exterior limits of new construction do not encroach any further into the setback or the height limit than the comparable portions of the existing building.

2. **Maintenance and Repair.** A nonconforming building may undergo normal maintenance and repairs, provided that the work does not exceed fifteen percent of the appraised value thereof as shown in the assessor's records in any one year period.

C. **Nonconforming Use of a Conforming Building.** The nonconforming use of a building that otherwise conforms with all applicable provisions of this chapter may be continued, transferred and sold, as follows:

1. **Expansion of Use.** The nonconforming use of a portion of a building may be extended throughout the building provided that a minor use permit is first secured in each case where the expansion exceeds thirty percent of the original size of the nonconforming use.

2. **Substitution of Use.** The nonconforming use of a building may be changed to a use of the same or more restricted nature.

D. **Nonconforming Residential Uses in a Commercial or Industrial Zone.** A nonconforming residential use located in a commercial or industrial zone may be expanded, enlarged or remodeled without regard to the limitations provided by subsections (B)(2) and (C)(1); however, the provisions of subsection (B)(1) shall apply.

E. **Industrial Districts.** A nonconforming industrial or agricultural use located in an industrial district may undergo minor alterations or additions, except that such use shall be brought into conformity with all applicable provisions of this chapter if it is proposed to be altered or increased to more than thirty percent of its original size as it existed on the date the use became nonconforming, or to such an extent that the use of land is different from the initial use and the new use would require a minor or conditional use permit.

F. **Destroyed Structure.** The reconstruction of a building damaged by fire or calamity which at the time was devoted to a nonconforming use may be authorized by the zoning administrator through minor use permit approval, provided that reconstruction shall occur within twenty-four months after the date of the damage and that the reconstructed building shall have no greater floor area than the one damaged.

G. **Loss of Nonconforming Status.** If a nonconforming use of land or a nonconforming use of a conforming building is discontinued for a continuous period of one year, it shall be presumed that the use has been abandoned. Without further action by the county, further use of the site or building shall comply with all the regulations of the zone district in which the building is located, (Sections 17.60.060 et seq.) and all other applicable provisions of this chapter. (Ord. 5126-B (part), 2001)

[<< previous](#) | [next >>](#)

141

RECEIVED

JUL 20 2007

CDRA

FILED

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF PLACER

MAY 29 2007

JOHN MENDES  
EXECUTIVE OFFICER & CLERK  
BY T. Lewis, Deputy

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

10 SUPERIOR COURT FOR THE STATE OF CALIFORNIA

11 COUNTY OF PLACER

12 MEADOW VISTA PROTECTION,

Case No: SCV 19614

13 Petitioner and Plaintiff,

Complaint Filed: 7/12/06

14 v.

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

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

19 Respondents and Defendants.

Date: 5/22/07

Time: 8:30 a.m.

Dept.: 4

Judge: The Hon. Charles D. Wachob

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

TABLE OF CONTENTS

		<u>Page</u>
1		
2		
3	TABLE OF AUTHORITIES .....	iii
4	INTRODUCTION.....	1
5	ARGUMENT.....	2
6		
7	I. THE PLANNING DIRECTOR NO LONGER HAS JURISDICTION TO	
8	ISSUE A DETERMINATION OF NON-LAPSE OF LDA-786 BECAUSE	
9	THIS COURT HAS PRIORITY OF JURISDICTION AND BECAUSE	
10	THE COUNTY HAS PREVIOUSLY WAIVED ANY RIGHT TO	
11	ASSERT JURISDICTION.....	2
12		
13	A. THE FIRST TRIBUNAL TO ASSUME JURISDICTION OVER	
14	CERTAIN SUBJECT MATTER CANNOT BE DIVESTED OF	
15	ITS JURISDICTION THROUGH THE SUBSEQUENT	
16	INTERVENTION OF ANOTHER TRIBUNAL HAVING	
17	CONCURRENT JURISDICTION.....	2
18		
19	B. EVEN IF PLACER COUNTY FIRST ASSUMED SUBJECT	
20	MATTER JURISDICTION IN THIS CASE, IT HAS SINCE	
21	WAIVED JURISDICTION AND MAY NOT ATTEMPT TO	
22	INTERFERE AT THIS JUNCTURE .....	4
23		
24	II. MVP HAS NO DUTY TO EXHAUST ANY ADMINISTRATIVE	
25	REMEDY BEFORE THIS COURT MAY MAKE A SUBSTANTIVE	
26	RULING ON THE PENDING MOTION FOR SUMMARY	
27	ADJUDICATION BECAUSE MVP WAS NOT A PARTY TO THE	
28	PLANNING DIRECTOR'S DETERMINATION AND RECEIVED NO	
	NOTICE OF SAME.....	5
	A. There Is No Duty To Exhaust Administrative Remedies When The	
	Litigant Was Not A Party To The Administrative Decision And	
	Where The Lawsuit's Purpose Is To Protect A Public Interest.....	5
	B. There Is No Duty To Exhaust Administrative Remedies When The	
	Local Agency Has Failed To Give The Notice Required By Law .....	7
	III. THE <i>MARKEY</i> DECISION INVALIDATES THE PLANNING	
	DIRECTOR'S DETERMINATION AS A MATTER OF LAW.....	9
	IV. THE PLANNING DIRECTOR'S DETERMINATION IS INVALID ON	
	BOTH SUBSTANTIVE AND PROCEDURAL GROUNDS.....	11

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

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

1 A. Every Authority Cited by the Planning Director In His  
2 Determination Letter Is an Authority Funneled To Him By  
3 Defendant's Counsel, Revealing the Lack of Independent Analysis ..... 11  
4 B. The Determination Is Not An "Interpretation" of the Code Within  
5 The Meaning of Section 17.02.050(E); It Is a Unilateral  
6 Exemption From a Mandatory Code Provision Awarded To One  
7 Specially Singled Out Permit Holder--Defendant.....12  
8 C. The Planning Director's Determination Is Entitled To No  
9 Deference or Preferential Treatment Based on the Analyses in the  
10 *Agnew And Yamaha Cases* .....13  
11 D. The Determination Fails To Satisfy the Basic Procedural Criteria  
12 Of Placer County Code Section 17.02.050(E) Relative To Planning  
13 Director Interpretations .....15  
14 CONCLUSION.....15  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

TABLE OF AUTHORITIES

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Page

Cases

*Agnew v. State Board of Equalization* (1999) 21 Cal.4<sup>th</sup> 310 ..... 13

*Browne v. Superior Court* (1940) 16 Cal.2d 593 ..... 2

*Calvert v. County of Yuba* (2007) 145 Cal.App.4<sup>th</sup> 613 ..... 8, 9

*Cutting v. Bryan* (1929) 206 Cal. 254 ..... 3

*Environmental Law Fund v. Town of Corte Madera* (1975) 49 Cal.App.3d 105 ..... 5, 6, 7

*Magruder v. City of Redwood* (1928) 203 Cal. 665 ..... 10

*Markey v. Danville Warehouse and Lumber, Inc.* (1953) 119 Cal.App.2d 1 ..... 9, 10, 11

*McQueen v. Board of Directors* (1988) 202 Cal.App.3d 1136 ..... 7

*Pettit v. City of Fresno* (1973) 34 Cal.App.3d 813 ..... 10

*Scott v. Industrial Accident Commission* (1956) 46 Cal.2d 76 ..... 2, 3

*Sea World Corporation v. Superior Court of San Diego County* (1973)  
 34 Cal.App.3d 494 ..... 4, 5

*Temecula Band of Luiseno Mission Indians v. Rancho California  
 Water District* (1996) 43 Cal.App.4<sup>th</sup> 425 ..... 7, 9

*Western States Petroleum Association v. Superior Court* (1995) 9 Cal.4<sup>th</sup> 559 ..... 7

*Wilson v. City of Laguna Beach* (1992) 6 Cal.App.4<sup>th</sup> 543 ..... 10

*Yamaha Corp. of America v. State Board of Equalization* (1998) 19 Cal.4<sup>th</sup> 1 ..... 13, 14

Statutes

Corte Madera Municipal Code, § 18.46.070 ..... 6

Placer County Code § 17.02.050 ..... 12, 13

Placer County Code § 17.02.050(E)(3) ..... 12

Placer County Code § 17.58.160(B)(2) ..... 13, 14, 15

Placer County Code; § 17.60.110(B)(1) and (C)(1) ..... 5

Other Authorities

1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	

2 Within Cal. Proc. (4<sup>th</sup> ed. 1996) Jurisdiction § 413, p. 1022 ..... 2

Longfins Cal. Land Use (2d ed. 1987) § 11.10, p. 989 ..... 8



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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. (4<sup>th</sup> 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.

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

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

8 Prior to initiating this lawsuit, counsel for MVP submitted a comprehensive legal analysis  
9 to Placer County Counsel Scott Finley, requesting a determination, or at least a public hearing, on  
10 the issue of lapse of LDA-786. As set forth in the verified complaint, no action was ever taken to  
11 officially respond to this letter or even to acknowledge MVP's concerns.<sup>1</sup> (Verified Complaint,  
12 ¶¶ 7, 37.)

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

21 *Sea World Corporation v. Superior Court of San Diego County* (1973) 34 Cal.App.3d  
22 494 held that even where an agency has prior jurisdiction, this jurisdiction may be waived. In  
23 that case, the two competing tribunals were the superior court and the Workers Compensation  
24 Appeals Board (WCAB). The WCAB assumed jurisdiction four days before the superior court  
25 assumed jurisdiction. *Sea World* thus contended that the superior court was without jurisdiction  
26 to award relief. However, the WCAB had voluntarily stayed its own proceedings, apparently  
27

28 <sup>1</sup> 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.4<sup>th</sup> 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.4<sup>th</sup> 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.4<sup>th</sup> 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 Longins 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.4<sup>th</sup> 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 ordinance.

26 In *Markey*, the county issued a building permit for a concrete mixing plant on the basis of  
27 "a favorable opinion of a Deputy District Attorney and approval of the County Planning  
28 Commission." (*Id.* at p. 6.) However, the applicable county ordinance allowed land use permits  
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  
7 can certainly no more influence the force of the ordinance or cause a vested  
8 right in appellants or an estoppel than an invalid permit of the Board of  
9 Supervisors itself.]*

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

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

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

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

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.4<sup>th</sup> 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*  
16 *an agency’s interpretation of a statute or regulation is contextual. Its power to*  
17 *persuade is both circumstantial and dependent on the presence or absence of*  
18 *factors that support the merit of the interpretation.*

19 (*Yamaha Corp. of America v. State Board of Equalization* (1998) 19 Cal.4<sup>th</sup> 1, 7, emphasis  
20 added.)

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

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

(*Agnew v. State Board of Equalization, supra*, 21 Cal.4<sup>th</sup> at p. 322, emphasis added.)

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.4<sup>th</sup> 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.*)

///

///

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

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

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

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

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

16 CONCLUSION

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

22 DATED: May 29, 2007.

Respectfully submitted,

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

26 By Angela C. Thompson  
27 ANGELA C. THOMPSON  
28 Attorneys for Petitioner and Plaintiff

RECEIVED

JUL 20 2007

CDRA

(DRC), the hearing body may waive the ten-day waiting period and may establish an effective date for the variance action at any time following the conclusion of the public hearing, not to exceed the original ten-day waiting period.

F. Time Limits and Extensions. A variance is subject to the time limits, extension criteria and other provisions of Section 17.58.160 of this chapter. (Ord. 5126-B (part), 2001)

**17.60.105 Administrative approvals—Relief from standards**

The County recognizes that its geographic diversity makes the application of uniform standards for setbacks, height, lot size, and accessory building size limitations occasionally illogical and overly restrictive. In order to create a simplified process for obtaining relief from these standards, where specific topographic, vegetative, geographic, and/or pre-existing conditions warrant relief, the county has created an administrative approval process.

A. Administrative Approval. An administrative approval may be granted to allow partial relief from the below-mentioned types of standards unless such relief is sought after a violation of the standard is willfully and illegally created.

1. Up to a 50% reduction in the required setback from any road easement where the minimum setback for the applicable zone district (without consideration of the necessary adjustment related to road easement width) is met;
2. Up to a 50% reduction in the minimum setback from any man-made canal;
3. An increase of not more than 5 feet or 10%, whichever is less, in the height of any structure, fence or other feature to which a height limit applies;
4. Up to a 10% reduction in parking standards;
5. Up to a 50% increase in the permitted size of a residential or agricultural accessory structure;
6. Any signing proposal where the new sign is closer to conforming with the current applicable standards than the sign that is being replaced.

B. Application and Processing. A request for an administrative approval shall be filed with the Planning Department and processed as provided by Sections 17.58.020 - 17.58.050.

C. Action on Administrative Approval. The Planning Director, or his designee, shall approve, deny, or conditionally approve each request made under this section.

1. In order to authorize relief from the standards noted above the Planning Director must determine that the following circumstances exist:

a. Relative to A.1. above. It is unlikely that in the foreseeable future the affected roadway will be widened such that the structure authorized at the reduced setback will be an obstruction of any type and the minimum setback applicable in the base zone is still met and that a new structure built at the new setback is not incompatible with surrounding improved properties.

b. Relative to A.2. above. The reduced setback from the canal is not likely to jeopardize the canal structure, nor threaten the quality of water in the canal, nor inhibit access to the canal.

c. Relative to A.3. above. The increased height is essentially de minimus due to elevation differences between properties, or so small a change as to be unnoticeable.

d. Relative to A.4. above. The required number of parking spaces is unreasonable given the specific development proposed on a site and the likelihood of a change in use that would require more parking, is remote.

e. Relative to A.5. above. The property is proportionately larger than the minimum parcel size upon which the standard is based and the property is located in an area of generally larger (than the minimum) parcels and the larger accessory building has setbacks which are proportionately greater than the minimum.

f. Relative to A.6. above. The new proposed sign is substantially closer to meeting the current standards than the sign being replaced and is considered to be an improvement over the current situation.

2. Conditions of approval. In approving relief from the above mentioned standards, conditions shall be placed on the approval to ensure that the conditions which justified the action are maintained over time, or are necessary to eliminate or minimize any adverse affect on a neighboring property, or are necessary to ensure compliance with the intent of the standard being modified.

C. Effective date, time limits, and extensions. The administrative approval shall become effective on the 11<sup>th</sup> day after approval by the Planning Director, or his designee. An applicant may seek review by the agency director. An appeal may be filed pursuant to Section 17.60.110(A)(2). The decision shall be set aside and of no effect until resolved by the agency director or the appeal body.

Administrative approvals shall be subject to the time limits, extension criteria and other provisions of Section 17.58.160 of this chapter. (Ord. 5373-B (part), 2005)

**17.60.110 Appeals.**

Decisions of the planning director, agency director, the zoning administrator, the environmental review commit-

RECEIVED

JUL 20 2007

CDRA

160

tee, the parcel review committee, the design/site review committee, the development review committee and the planning commission may be appealed by an applicant or by any aggrieved person as provided by this section.

A. Appeal Subjects and Jurisdiction. Actions and decisions that may be appealed, and the authority to act upon an appeal shall be as follows:

1. Administration and Interpretation. The following actions of the planning director and his/her staff may be reviewed by the agency director and, thereafter, may be appealed to the planning commission and then to the board of supervisors:

a. Determinations on the meaning or applicability of the provisions of this chapter that are believed to be in error, and cannot be resolved with staff;

b. Any determination that a permit application or information submitted with the application is incomplete, pursuant to California Government Code Section 65943.

2. Land Use Permit and Hearing decisions. Rulings of the planning director, agency director, the zoning administrator, the design/site review committee, or the parcel review committee (other than road improvement requirements) may be appealed to the planning commission and then to the board of supervisors. Rulings of the parcel review committee related to road improvement requirements may be appealed to the agency director (see Section 16.20.090 of the Placer County Code) and then to the board of supervisors. Rulings of the planning commission may be appealed directly to the board of supervisors. Rulings of the development review committee and the environmental review committee may be appealed to the hearing body having original jurisdiction in the matter being appealed. (Note: See Section 17.60.050 (Decisions of the planning commission and board of supervisors) for a discussion of the voting requirements of appeal bodies.)

B. Who May Appeal.

1. An appeal may be filed by any person affected by a planning department administrative action or interpretation as described in subsection (A)(1).

2. A hearing decision described in subsection (A)(2) may be appealed by anyone who, in person or through a representative explicitly identified as such, appeared at a public hearing in connection with the decision being appealed, or who otherwise informed the county in writing of the nature of his/her concerns before the hearing.

3. A representative of a county department presenting departmental recommendations at a hearing shall not be authorized to appeal a decision reached at such hearing.

C. Filing of Appeals:

1. Timing and Form of Appeal. An appeal must be filed within ten days of the decision that is the subject of

the appeal; appeals filed more than ten days after the decision shall not be accepted by the planning department. A notice of appeal shall be in writing, shall specify the decision or portion of the decision being appealed, shall include a detailed state of the factual and/or legal grounds upon which the appeal is being taken and shall include other information required by the planning director, and may include any explanatory materials the appellant may wish to furnish within thirty (30) days of the date of filing the appeal, the appellant shall provide to the Planning Department all written materials which the applicant desires the appellate body to consider at the appeal hearing, including, if applicable, any proposed changes to the project. The appeal shall be accompanied by the filing fee set by the most current planning department fee schedule.

2. Filing and Processing. An appeal shall be filed with the planning director, who shall process the appeal pursuant to this section, including scheduling the matter before the appropriate appeal body.

3. Effect of Filing. In the event of an appeal, the decision being appealed shall be set aside and of no effect until final action by the appeal body pursuant to this section.

4. Appellant not project applicant. In the event that the person filing the appeal is not the applicant for the project that is the subject of the appeal, a copy of the notice of appeal shall be provided to the applicant within ten (10) days after receipt by the Planning Director. A copy of all materials received from the appellant pursuant to subsection (c)(1) herein shall also be provided to the applicant upon the applicant's request. Not later than ten (10) days prior to the date of the hearing, the applicant shall submit to the Planning Department any responsive materials to the appeal that the applicant wishes the appellate body to consider.

D. Processing of Appeals:

1. Extension of Prior Permit. Where the subject of an appeal is a business or activity in continuous or ongoing seasonal operation pursuant to a previously issued permit, the board of supervisors may grant a temporary extension of the previously issued permit pending the outcome of the appeal, but no longer than sixty days from the date of expiration. The temporary extension may be granted only in a public meeting of which all appellants of record have been individually notified, and at which all interested parties are given an opportunity to be heard.

2. Report and Scheduling of Hearing. When an appeal has been filed, the planning director shall prepare a report on the matter and shall schedule the matter for consideration by the appropriate appeal body identified in subsection A of this section after completion of the report.

3. **Board Assumption of Appeal Hearing Authority.** In any case where a ruling of the agency director or zoning administrator has been appealed to the planning commission, the board of supervisors may determine that they shall hear and decide upon the appeal instead of the planning commission. A decision for the board to assume appeal authority shall occur through the vote of three or more board members at a regular meeting of the board of supervisors, either before the distribution of public notice for the planning commission hearing, or within ten days after a continued hearing before the commission.

4. **Action and Findings.**

a. **General Procedure.** After an appeal has been scheduled for consideration by an appellate body, the appellate body shall conduct a public hearing pursuant to the provisions of Section 17.60.140 (Public hearing). At the hearing (a hearing conducted "over again"), the appellate body shall initiate a discussion limited to only those issues that are the specific subject of the appeal, and, in addition, the specific grounds for the appeal. For example, if the permit for a project approval or denial has been appealed, the entire project will be the subject of the appeal hearing; however, if a condition of approval has been appealed, then only that condition and issues directly related to the subject of that condition will be allowed as part of the discussion by the appellate body.

i. The appeal body may affirm, affirm in part, or reverse the action, decision or determination that is the subject of the appeal, based upon findings of fact about the particular case. The findings shall identify the reasons for the action on the appeal, and verify the compliance or non-compliance of the subject of the appeal with the provisions of this chapter

ii. When reviewing a decision on a land use permit (Article 17.58), the appellate body may adopt additional conditions of approval that may address other issues or concerns than the subject of the appeal, only if such other issues or concerns are substantially related to the subject of the appeal.

iii. A decision on an appeal by an appeal body may also be appealed as provided by subsection A of this section, provided that the decision of the board of supervisors on an appeal shall be final.

b. **Appeals to Board.** When a decision of the planning commission has been appealed to the board of supervisors, the board may choose to not conduct a hearing on the appeal, based on their review of the report and action of the planning commission. Such action by the board shall constitute affirmation of the decision being appealed.

c. **Time Limits on Appeals.** Upon receipt of an appeal in proper form, the planning director or clerk of the

board of supervisors, as applicable, shall schedule the matter for consideration by the appropriate appeal body. The appeal body shall commence a public hearing on the appeal within ninety days of its proper filing, or within such other time period as may be mutually agreed upon by the appellant, in writing, and the appeal body, in writing. If the public hearing is not commenced within ninety days, or an alternative time period is not agreed upon by the appellant and the appeal body, the decision rendered by the last hearing body shall be deemed affirmed. (Note: Once commenced, a public hearing on an appeal may be continued from time to time for good cause.)

5. **Withdrawal of Appeal—Hearing Decisions.** After an appeal of a decision has been filed, an appeal shall not be withdrawn except with the consent of the appropriate hearing body. (Ord. 5373-B (part), 2005; Ord. 5126-B (part), 2001)

**17.60.120 Nonconforming uses.**

No land use permit shall be approved pursuant to Article 17.58 (Discretionary Land Use Permit Procedures) which results in the creation of a nonconforming use of land or building, or which makes any existing use, building or structure nonconforming as to the provisions of this chapter. A nonconforming use of land or buildings may be continued, changed or replaced only as provided by this section. Nonconforming mobile homes are covered by Section 17.56.150(E).

A. **Nonconforming Uses of Land.** A nonconforming use of land may be continued, transferred or sold, provided that no such use shall be enlarged or increased, nor be extended to occupy a greater area than that which it lawfully occupied before becoming a nonconforming use. Additionally, non-conforming uses shall not be enlarged, extended expanded nor increased to occupy a larger area, nor a more intensive use than that which it was characterized by in the prior twelve months.

B. **Nonconforming Buildings.** A nonconforming building may continue to be used as follows:

1. **Changes to Building.** The enlargement, extension, reconstruction or structural alteration of a building that is nonconforming only as to height and setback regulations, may be permitted if such additions or improvements conform to all other applicable provisions of this chapter (See Sections 17.54.020, 17.54.130, 17.54.140, 17.54.150, and 17.54.160), and the exterior limits of new construction do not encroach any further into the setback or the height limit than the comparable portions of the existing building.

2. **Maintenance and Repair.** A nonconforming building may undergo normal maintenance and repairs, provided that the work does not exceed fifteen percent of the