

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

EXEMPT FROM FILING FEES
PURSUANT TO GOVERNMENT
CODE SECTION 6103

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF PLACER

10

11 MEADOW VISTA PROTECTION,

Case No. SCV 19614

12 Petitioner/Plaintiff,

13 vs.

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

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

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

16

Respondents/Defendants.

17

18

19

20

21

22

23

24

25

26

27

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

TABLE OF CONTENTS

INTRODUCTION 3

STATEMENT OF FACTS 3

ARGUMENT 5

 A. Applicability of Demurrer to Writ Proceeding 5

 B. Standard for Demurrer/Pleading Requirements 5

 C. An Action Cannot Lie Against the COUNTY for
 Discretionary Failure to Enforce the Law 6

 D. The Action is Time Barred 10

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

 F. The Action is Barred by Petitioner's Failure to
 Plead a Beneficial Interest in the COUNTY'S
 Acts or Omissions 12

CONCLUSION 13

TABLE OF AUTHORITIES

2	CASES	PAGES
3	<i>Abelleira v. District Court of Appeal,</i> (1941) 17 Cal.2d 280	11
4		
5	<i>Carston v. Psychology Examining Com.,</i> (1980) 27 Cal.3d 793	12
6	<i>Ellis v. Workman,</i> (1904) 144 Cal. 113	13
7		
8	<i>Gong v. Fremont,</i> (1967) 250 Cal.App.2d 568	5
9	<i>Hansen Brothers Enterprises, Inc. v. Board of</i> <i>Supervisors of Nevada County,</i>	
10	(1996) 12 Cal.App.4th 533	10
11	<i>Hood v. Hacienda LaPuente Unified School District,</i> 65 Cal.App.4th 435	6
12		
13	<i>Lazan v. County of Riverside,</i> (2006) 140 Cal.App.4th 453	8
14	<i>Mt. Lion Found. v. Fish & Game Com,</i> (1997) 16 Cal. 4th 105	8
15		
16	<i>Painting & Drywall Work Preservation Fund,</i> <i>Inc. v. Aubry,</i>	
17	(1988) 206 Cal.App.3d 682	9
18	<i>Parker v. Bowron,</i> (1953) 40 Cal.2d 344	13
19	<i>People ex rel. Department of Conservation v. El</i> <i>Dorado County,</i>	
20	(2005) 36 Cal.4th 971	12
21	<i>Silva v. City of Cypress,</i> (1962) 204 Cal.App.2d 374	12
22		
23	<i>Sklar v. Franchise Tax Board,</i> (1986) 185 Cal.App.3d 616	8
24	<i>State of California v. Superior Court,</i> (1974) 12 Cal.3d 237	9
25		
26	CODES	
27	Code of Civil Procedure	
28	§430.10(e)	5, 6, 7
	§430.30(a)	5

1	§430.50 (a)	6
	§1085	8
2	§1086	12
	§1089	5
3	§1109	5
4	Government Code	
5	§65009 (c)	10
	§65009 (c) (1) (E)	11
6	Placer County Code	
7		
	§17.60.020	4, 7, 8
8	§17.60.110	10, 11
	§17.60.110 (B) (1)	12
9	§17.60.110 (C) (1)	10
	§17.62.170	4, 7, 9, 10
10	§17.62.170 (A)	9
	§17.62.170 (B)	9
11	§17.62.170 (C)	9

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

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

EXEMPT FROM FILING FEES
PURSUANT TO GOVERNMENT
CODE SECTION 6103

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF PLACER
10

11 MEADOW VISTA PROTECTION,
12 Petitioner/Plaintiff,

Case No. SCV 19614

13 vs.

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

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

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

16 Respondents/Defendants.
17 _____/

18 TO ALL PARTIES AND ATTORNEYS OF RECORD IN THIS ACTION:

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

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

1 complaint does not state facts that constitute a cause of action.

2 This demurrer is made as to the First Cause of Action contained
3 in the Petition on file herein.

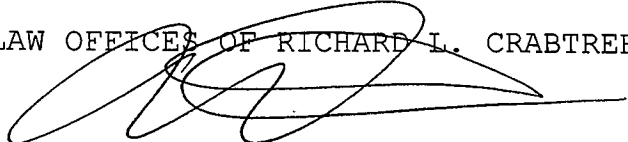
4 DEMURRER TO FIRST CAUSE OF ACTION

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

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

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

23 DATED:
24 *g-23-06*

LAW OFFICES OF RICHARD L. CRABTREE


Richard L. Crabtree,
Attorney for County of Placer and
County of Placer Planning Department

1 MEMORANDUM OF POINTS & AUTHORITIES

2 I

3 INTRODUCTION

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

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

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

19 II

20 STATEMENT OF FACTS

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

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

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

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

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

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

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

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

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

13 III

14 ARGUMENT

15 A. Applicability of Demurrer to Writ Proceeding

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

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

23 B. Standard for Demurrer/Pleading Requirements

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 ministerial duties.

2 Similarly Section 17.62.170 provides, in pertinent part:

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

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

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

29 _____
30 2

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

1 247.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 IV

19 CONCLUSION

20 Petitioner comes to the Court some 40 years after the issuance
21 of the subject CUP was approved and issued. Petitioner asks the
22 Court to substitute its discretion and judgment for the COUNTY
23 Respondents. Specifically, Petition wants the Court to impose
24 Petitioner's interpretation of the CUP and its enforcement
25 requirements.
26

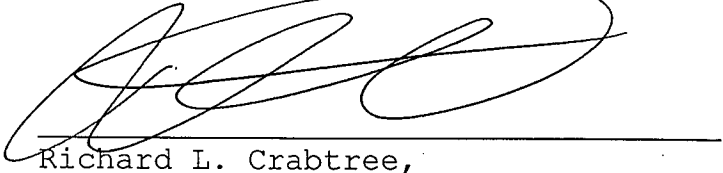
27 This belated and flawed effort by Petitioner must be rejected.
28 The COUNTY'S demurrer should be sustained without leave to amend.

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

DATED:

8-23-06

LAW OFFICES OF RICHARD L. CRABTREE



Richard L. Crabtree,
Attorney for County of Placer and
County of Placer Planning Department

1 Proof of Service

2
3 I am a citizen of the United States and employed in the County
4 of Butte; I am over the age of eighteen years and not a party to the
5 within action. My business address is 1395 Ridgewood Drive, Suite
6 300, Chico, California 95973. I am readily familiar with the practice
7 for collection and processing of correspondence/documents for mailing
8 with the United States Postal Service and that said
9 correspondence/documents are deposited with the United States Postal
10 Service in the ordinary course of business on the same day.

11 On August 23, 2006 I served the within NOTICE OF DEMURRER AND
12 DEMURRER TO PETITIONER'S PETITION/COMPLAINT on the parties below by
13 placing a true copy thereof in a sealed envelope and served same on
14 the parties/counsel, addressed as follows:

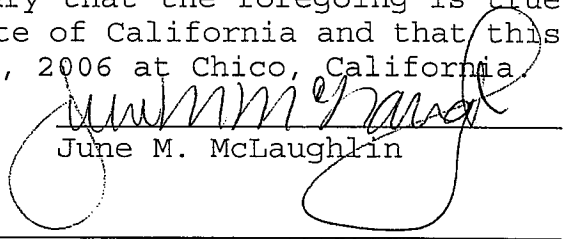
15 Ronald Zumbrun
16 Timothy Kassouni
17 Angela Thompson
18 Zumbrun Law Firm
19 3800 Watt Ave, Ste 101
20 Sacramento CA 95821

21 Brigit Barnes
22 Brigit Barnes & Associates, Inc.
23 3262 Penryn Rd, Ste 200
24 Loomis CA 95650

25 The following is a procedure in which service of this document was
26 effected:

27 XXXX U.S. Postal Service (by placing for collection and deposit
28 in the United States mail a copy of said document at 1395
Ridgewood Drive, Suite 300, Chico, California 95973, in a
sealed envelope, with postage full prepaid).

29 I declare under penalty of perjury that the foregoing is true
30 and correct under the laws of the State of California and that this
31 declaration was executed on August 23, 2006 at Chico, California.

32 
33 June M. McLaughlin

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

EXEMPT FROM FILING FEES
PURSUANT TO GOVERNMENT
CODE SECTION 6103

6
7
8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF PLACER
10

11 MEADOW VISTA PROTECTION, Case No. SCV 19614
12 Petitioner/Plaintiff, REQUEST FOR JUDICIAL NOTICE IN
13 vs. SUPPORT OF DEMURRER (CRC
313 (k))
14 CHEVREAUX AGGREGATES, INC.;
COUNTY OF PLACER; COUNTY OF
15 PLACER PLANNING DEPARTMENT; and DATE: 10/3/2006
DOES 1 through 50, inclusive, TIME: 8:30 a.m.
16 Respondents/Defendants. DEPT: 3
17 _____/

18 In support of its demurrer, Respondents COUNTY OF PLACER and
19 COUNTY OF PLACER PLANNING DEPARTMENT (the "COUNTY") request that the
20 Court take judicial notice of Placer County Code Sections 17.60.020
21 and 17.62.170. (Evid. Code §452(b) and §453.) "When any ground for
22 objection to a complaint, cross-complaint, or answer appears on the
23 face thereof, or from any manner of which the court is required to
24 or may take judicial notice, the objection on that ground may be
25 taken by a demurrer to the pleading." (Code of Civil Procedure
26 ("CCP") § 430.30(a), emphasis added.)

27 Petitioner MEADOW VISTA PROTECTION alleges violation by the
28 COUNTY of Placer County Code Section 17.60.020. (Complaint, 8:16.)

Request for Judicial Notice in Support of Demurrer

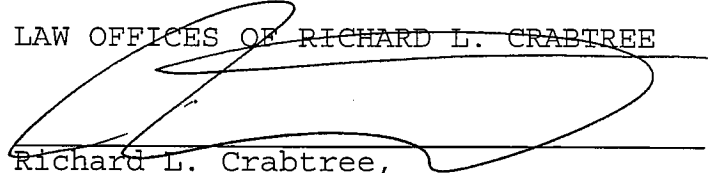
1 Additionally, in its prayer for relief, Petitioner MEADOW VISTA
2 PROTECTION requests this Court compel the COUNTY to hold a public
3 hearing to revoke or modify Defendant CHEVREAUX AGGREGATES, INC.'s
4 conditional use permit pursuant to Placer County Code Section
5 17.62.170. (Complaint, 13:18.)

6 Accordingly, the COUNTY respectfully requests that the Court
7 take judicial notice of code sections 17.60.020 and 17.62.170 of the
8 Placer County Code.

9 DATED:

10 8-27-06

LAW OFFICES OF RICHARD L. CRABTREE



11 Richard L. Crabtree,
12 Attorney for County of Placer and
13 County of Placer Planning Department

14
15
16
17
18
19
20
21
22
23
24
25
26
27
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

Proof of Service

I am a citizen of the United States and employed in the County of Butte; I am over the age of eighteen years and not a party to the within action. My business address is 1395 Ridgewood Drive, Suite 300, Chico, California 95973. I am readily familiar with the practice for collection and processing of correspondence/documents for mailing with the United States Postal Service and that said correspondence/documents are deposited with the United States Postal Service in the ordinary course of business on the same day.

On August 23, 2006 I served the within REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEMURRER on the parties below by placing a true copy thereof in a sealed envelope and served same on the parties/counsel, addressed as follows:

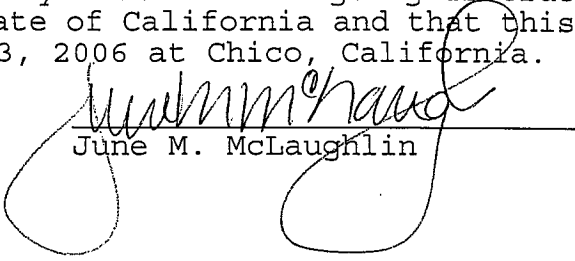
Ronald Zumbrun
Timothy Kassouni
Angela Thompson
Zumbrun Law Firm
3800 Watt Ave, Ste 101
Sacramento CA 95821

Brigit Barnes
Brigit Barnes & Associates, Inc.
3262 Penryn Rd, Ste 200
Loomis CA 95650

The following is a procedure in which service of this document was effected:

XXXX U.S. Postal Service (by placing for collection and deposit in the United States mail a copy of said document at 1395 Ridgewood Drive, Suite 300, Chico, California 95973, in a sealed envelope, with postage full prepaid).

I declare under penalty of perjury that the foregoing is true and correct under the laws of the State of California and that this declaration was executed on August 23, 2006 at Chico, California.


June M. McLaughlin

17.60.020 Planning director and planning department.

The planning director shall have the responsibility and authority to perform all the functions described by California Government Code Section 65103, and also to carry out any other responsibilities as assigned by the agency director, including but not limited to the administration and enforcement of the provisions of this chapter, and the review of projects pursuant to the California Environmental Quality Act and Chapter 18 of this Code. Except where otherwise provided by this chapter, the responsibilities of the planning director may also be carried out by planning department employees under the supervision of the planning director. (Ord. 5373-B (part), 2005; Ord. 5126-B (part), 2001)

17.62.170 Permit revocation.

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

A. Notice of Pending Revocation. The code enforcement officer shall notify the permittee of the intended revocation of the approval of a land use permit at least twenty-one days before a revocation hearing (Section 17.62.060, Enforcement hearings). Such notice shall contain the following:

1. A heading reading, "Notice of Revocation Hearing";
2. The provisions and/or conditions violated and the means to correct the violation(s), if any;
3. The date and place of the revocation hearing.

B. Revocation Hearing. Before any action is taken to revoke an approved land use permit, a hearing shall be conducted pursuant to Section 17.62.060 (Enforcement hearings). If the land use permit to be revoked is a conditional use permit, the revocation hearing shall be conducted by the planning commission. If revocation of a minor use permit, an administrative review permit or zoning clearance is being considered, the hearing shall be conducted by the agency director or designee acting as zoning administrator.

C. Action to Revoke. If, after the revocation hearing has been conducted, the hearing body finds that grounds for revocation have been established, the hearing body may:

1. Allow the permitted additional time to correct the violation or noncompliance; or
2. Modify conditions of approval on the basis of evidence presented at the hearing; or
3. Revoke the approved land use permit and order the discontinuance or removal of the approved use within a time specified by the hearing body. In the absence of an appeal pursuant to subsection D of this section, the revocation shall become effective fourteen days after the action of the hearing body. Upon the effective date of revocation, the code enforcement officer shall initiate nuisance abatement proceedings by preparing and serving a notice of nuisance pursuant to Section 17.62.150, with the time limit for action by the permittee specified in the notice being that set by the hearing body in the revocation order.

D. Appeal. The permittee may appeal the decision of the hearing body to the board of supervisors. Upon appeal, revocation shall not take effect until affirmed by the board. After the hearing, the board may affirm, modify or reverse the decision to revoke the permit.

E. Use after Revocation. When an approved land use permit has been revoked, no further development or use of the property authorized by the revoked permit shall be continued, except pursuant to approval of a new land use permit and any other authorizations or permits required by this chapter, or Chapters 5, 8, 12, 15, 16, 17 or 18 of this code. (Ord. 5373-B (part), 2005; Ord. 5126-B (part), 2001)