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SUPERIOR COURT OF CALIFORNIA
COUNTY OF PLACER

MEADOW VISTA PROTECTION,
Petitioners and Plaintiffs,

v.

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

Respondents and Defendants.

Case No. SCV 19614

**DEFENDANT CHEVREAUX
AGGREGATES, INC.'S MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR
JUDGMENT ON THE PLEADINGS AND
DECLARATION OF RIGHTS AND
DUTIES OF PARTIES**

DATE: May 15, 2007
TIME: 8:30 a.m.
DEPT.: 4
JUDGE: Hon. Charles D. Wachob

Class II Disposition Date: January 12, 2008

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INTRODUCTION1

A JUDGMENT ON THE PLEADINGS DECLARING THE RIGHTS AND DUTIES OF THE PARTIES OPPOSED TO PLAINTIFF AND IN FAVOR OF DEFENDANT IS PROPER BECAUSE THE COMPLAINT PRESENTS NO TRIABLE ISSUE AND SHOWS ON ITS FACE, OR IT APPEARS FROM JUDICIALLY NOTICED MATTER, THAT PLAINTIFF MVP IS NOT ENTITLED TO FAVORABLE DECLARATIONS4

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1 INTRODUCTION

2 MVP's lawsuit is a disguised attempt to seek direct enforcement of SMARA and thus
3 circumvent statutory and constitutional protections and regulations. MVP's claims for
4 declaratory judgment and injunction (2nd, 3rd and 4th Causes of Action) are barred because there
5 is no private right to enforce either SMARA or Placer County local ordinances. Although the
6 Court overruled Defendant CHEVREAUX AGGREGATES, INC.'s ("Chevreaux") demurrer to
7 these causes of action on October 16, 2006, two months later the Court of Appeal decided
8 *Calvert v. County of Yuba*, January 3, 2007 [2007 Cal. App. Lexis 8] (hereinafter *Calvert*), which
9 holds that there is no private right to enforce SMARA. Although MVP's causes of action do not
10 name Placer County, nevertheless the land use permits and Placer County's Mineral Resource
11 Conservation Plan ("MRCP") are defacto SMARA statutes, and the effort by MVP to privately
12 enforce them is expressly rejected by *Calvert*. Plaintiff will argue that this motion is essentially
13 one for reconsideration of Chevreaux's demurrer. However, reconsideration is required when
14 there is a change of law. At the time the demurrers were heard, there was a trial court order in
15 *Calvert* which could not be cited because it was from an unpublished opinion, and because the
16 order and judgment were being appealed. *Calvert* is now final and binding on trial courts within
17 California. In reviewing Defendant's motion the Court is entitled to have the benefit of the trial
18 court analysis of Calvert v. County of Yuba [Western Aggregates], Case No. 00CS01434, 145
19 Cal.App.4th 613, upheld by the Court of Appeals in Calvert v. County of Yuba, Case No.
20 C047857 (filed December 5, 2006, after this Court denied Defendant's demurrers to these causes
21 of action on October 16, 2006), and as modified by Calvert v. County of Yuba, January 3, 2007
22 [2007 Cal. App. Lexis 8].

23 Chevreaux is expressly entitled to raise similar grounds to those raised in demurrer but
24 overruled, where as here, the *Calvert* case amounts to a material change in applicable case law
25 arising since the ruling on demurrer. Code Civ. Proc. §438(g). The ruling in *Calvert* is directly
26 applicable to the allegations of MVP's verified complaint ("VC") [attached as Chevreaux's **RJN**
27 **#1**], and this Court's October 16, 2006 Ruling on Submitted Matter overruling Chevreaux's
28 demurrer [attached as Chevreaux's **RJN #2**]. *Calvert*, including the two-page revision dated

1 January 3, 2007, is attached as Chevreaux's **RJN #3 and RJN #4**. The Sacramento Superior
2 Court judgment from which the published case arises, in which Real Party in Interest Western
3 Aggregates successfully obtained summary adjudication on four of the five grounds asserted, is
4 attached as Chevreaux's **RJN #5**.

5 Chevreaux's Answer to MVP's Verified Complaint [attached as Chevreaux's **RJN #6**]
6 includes: (1) Seventh Affirmative Defense—"CHEVREAU's surface mining, asphalt, and
7 dredging operations are vested pursuant to the provisions of the Surface Mining and Reclamation
8 Act, and the Placer County Ordinance"; (2) Eighth Affirmative Defense—"LD-1030 and LDA-
9 786 are vested pursuant to the provisions of the Placer County Zoning Ordinance"; (3)
10 Seventeenth Affirmative Defense – MVP's rights to challenge the validity of Chevreaux's rights
11 under the 2nd and 3rd Causes of Action "are barred by the statute of limitations"; and (4)
12 Twentieth Affirmative Defense—"CHEVREAU alleges that all MVP claims of permit
13 invalidity are barred under the doctrine of vested rights."

14 **Judicial Notice.** As in the case of a demurrer, the court may, in ruling on a motion for
15 judgment on the pleadings, consider matters subject to judicial notice. Code Civ. Proc. §438(d);
16 see also Megeff v. Doland (1981) 123 Cal.App.3d 251, 257-258, 176 Cal.Rptr. 467.

17 This Court sustained the County's demurrer, determining that upon applying relevant
18 sections of Placer County's Zoning Code, the County's duties to review and enforce Chevreaux's
19 permits were discretionary; therefore, mandate against the County would not lie. However, the
20 Court overruled Chevreaux's demurrer on the grounds that the "prayers to the second and third
21 causes of action, relating to Chevreaux's quarry and asphalt operations, respectively make clear
22 that petitioners/plaintiffs do not seek to invalidate the County's issuance of the subject permits.
23 Rather, in essence, petitioners seek a declaration that Chevreaux's various activities are not in
24 compliance with the valid permits issued long ago." [Ruling, 3:7-12]. Contrary to this Court's
25 understanding of MVP's original assertions, MVP's motion for summary adjudication
26 [hereinafter "MSA"], to be heard at the same time as this motion, seeks to invalidate asphalt
27 operations LDA-786 on the basis of "lapse". As such it ignores the detailed history of Placer
28 County confirmations that Chevreaux's asphalt use permit is a vested right to produce asphalt on

1 an intermittent basis, confirmed by the State of California upon adoption of Chevreaux's Placer
2 County Reclamation Plan (Part A) and Use Permit LDA-853, as protected by the Mineral
3 Resource Conservation Plan, and attacks Placer County's jurisdiction to determine the validity of
4 operations subject to its permits at its core. [See Defendant's Opposition to MSA, to be heard
5 5/15/07.]

6 Likewise, the challenges to LD-1030 [2nd Cause of Action], that Chevreaux is mining
7 outside the boundaries of this use permit without government approval; and to enjoin the alleged
8 violations of LD-1030 and LDA-786 [4th Cause of Action] all revolve around MVP's attempts to
9 get this Court to make decisions exclusively within the County's purview under SMARA, and
10 therefore to interfere with the regulatory scheme set forth thereunder. MVP thereby seeks to
11 directly enforce Placer County ordinances according to its interpretation of these ordinances
12 (which are SMARA ordinances – see below) by enjoining Chevreaux from mining, in much the
13 same way as Calvert unsuccessfully attempted to compel SMARA enforcement. For these
14 reasons, this Court should grant Chevreaux's motion and dismiss all of the remaining causes of
15 action.¹

16 Private enforcement of the type sought by MVP interferes with government enforcement.
17 MVP admits that the Planning Department is responsible for zoning enforcement [VC 8:9-11].
18 Placer County Zoning Code §17.02.050 D, E, and F explicitly provides that the Planning
19 Department has exclusive authority to interpret the provisions of the Zoning Code. [See 1995
20 Placer County Zoning Code, attached as Chevreaux's **RJN #7.**] The rationale for prohibiting
21 private enforcement is that it may interfere with the government's even-handed enforcement of
22 the laws. The best proof of such interference lies in the documents opposing summary
23 adjudication. The County has looked at the permit - vested rights issue regarding Chevreaux's
24 surface mining operations several times, and on each occasion has found that Chevreaux's
25 surface mining operations, including its asphalt operations, are vested.² Yet MVP's pleading

26 ¹ The 5th Cause of Action for Public Nuisance was voluntarily dismissed without prejudice by MVP, and the 6th and
27 7th Causes of Action [Private Nuisance and Trespass] are "deemed dismissed" because MVP never amended its
pleading after the Court sustained Chevreaux's demurrer.

28 ² See Defendant's Separate Statement of Disputed and Undisputed Material Facts, filed in support of its Opposition
to MVP's MSA.

1 contradicts the County's prior investigations and determinations without it being a party to the
2 action, and without following County or SMARA procedures.

3 *Calvert* holds that the only standing of a private citizen to enforce SMARA is by the
4 procedure for writ of mandate set forth in the statute, PRC §2716. Likewise, no provision of the
5 Placer County ordinance gives a private citizen standing to directly enforce the zoning law.
6 MVP's only remedy was to appeal the decision of the Zoning Administrator or Planning
7 Department, to get the County to perform what it claimed was a mandatory duty. The County's
8 interpretation of its own laws, and its decision when to bring enforcement action, can only be
9 reviewed for abuse of discretion. [See Court's Ruling on Submitted Matter, **RJN #2.**]

10 MVP has no standing to assert the claims for violations of Placer County permits LD-
11 1030 and LDA-786 against Chevreux. All rights to determine Chevreux's alleged violations
12 lie exclusively with the Placer County Zoning Administrator or Planning Director, and if
13 appealed, to the Planning Commission and/or Board of Supervisors, as set forth in the Placer
14 County Zoning Code §§17.02.050, 17.60.030A and B, 17.60.140A, 17.62.120, and 17.62.160.
15 Copies of all relevant provisions of the 1995 Zoning Code are attached as **RJN #7.**³

16 Likewise, MVP's 4th Cause of Action for injunction also fails because the actions sought
17 to be enjoined are the acts alleged unlawful relative to these permits.

18 **A JUDGMENT ON THE PLEADINGS DECLARING THE RIGHTS AND DUTIES OF**
19 **THE PARTIES OPPOSED TO PLAINTIFF AND IN FAVOR OF DEFENDANT IS**
20 **PROPER BECAUSE THE COMPLAINT PRESENTS NO TRIABLE ISSUE AND**
21 **SHOWS ON ITS FACE, OR IT APPEARS FROM JUDICIALLY NOTICED MATTER,**
22 **THAT PLAINTIFF MVP IS NOT ENTITLED TO A FAVORABLE DECLARATION**

23 **A. Objection to Complaint by Motion for Judgment on Pleadings.** A defendant
24 may move for judgment on the pleadings on the ground that the complaint fails to state a legally
25 cognizable cause of action against him or her. Code Civ. Proc. §438(c)(1)(B)(ii); see also IMO
26 Development Corp. v. Dow Corning Corp. (1982) 135 Cal.App.3d 451, 457; Pierson v. Sharp
27 Memorial Hospital, Inc. (1989) 216 Cal.App.3d 340, 343.

28 ³ Placer County's enforcement and appeals structure remains unchanged since 1964. Always, the Planning Director
or Zoning Administrator makes zoning code interpretations or enforcement decisions. Aggrieved members of the
public or the permittee may appeal that decision to the Planning Commission, and then to the Board of Supervisors.

1 The Declaratory Relief and Injunction causes of action -- all that remains of MVP's
2 complaint -- are disguised attempts to have the Court determine, and hopefully constrict or
3 destroy Chevreaux's vested mining rights protected under County ordinances and SMARA, in
4 derogation of all prior public reviews and determinations by Placer County [VC 8:9-11, RJN #1],
5 determined to be lead agency for SMARA, in violation of the explicit terms of Public Resources
6 Code §§2756, 2757, 2771, and 2776; without allowing Chevreaux the opportunity for public
7 hearings on revocation of its permits as explicitly provided by Placer County ordinance, in
8 violation of Chevreaux's constitutional rights. Such further action allows MVP's remaining
9 causes of action to proceed to judicial determination where MVP has not availed itself of the
10 administrative remedies.

11 **B. Judgment on the Pleadings on the Merits.** The determination of a declaratory
12 relief action and entry of judgment on the merits declaring the rights and duties of the parties
13 opposed to plaintiff and in favor of defendant are proper on a motion by defendant for judgment
14 on the pleadings when the complaint states a cause of action for declaratory relief but presents no
15 triable issue, and shows on its face that plaintiff is not and defendant is entitled to a favorable
16 declaration. This motion is available if (a) the court has no jurisdiction of the subject of the
17 cause of action alleged in the complaint, or (b) the complaint does not state facts sufficient to
18 constitute a cause of action against that defendant. Code Civ. Proc. § 438(c)(1)(B). Common
19 law also authorizes relief in the following two situations:

20 (1) The complaint states a cause of action for declaratory relief, but it appears from the
21 face of the complaint or from matters of which the court must or may take judicial notice [Evid.
22 Code §§ 451, 452] that plaintiff is not entitled to a favorable declaration on that depending on the
23 nature of the action defendant is entitled as a matter of law to a declaration in his, her, or its
24 favor. Dohrmann Co. v. Security Sav. & L. Ass'n (1970) 8 Cal.App.3d 655, 661-662; Wilson v.
25 Board of Retirement (1957) 156 Cal.App.2d 195, 200-201; see Code Civ. Proc. §438(c)(1); and

26 (2) The complaint states a cause of action for declaratory relief, but it appears from the
27 face of the complaint or from matters of which the court must or may take judicial notice [Evid.

1 Code §§ 451, 452] that a judicial determination or declaration is not necessary or proper at the
2 time under all the circumstances. See Code Civ. Proc. §1061.

3 In this case, MVP alleges that Chevreaux is surface mining outside LD-1030 boundaries;
4 that Chevreaux violated that permit regarding blasting, water quality control, and dust mitigation
5 [VC 9:1-7]; that LDA-786 has lapsed [VC 9:19-28]; and that Chevreaux violated its terms by
6 relocating the asphalt plant an alleged 1,000 feet from its original location [VC 9:21-22, RJN
7 #1]. All these acts must be determined by Placer County under Placer County's Code. Thus,
8 MVP's pleading expressly challenges Placer County's enforcement of Chevreaux's vested
9 surface mining operations under SMARA. In enacting SMARA, the Legislature explicitly
10 recognized the continuing importance of the extraction of minerals to the economy of California
11 and the well-being of society. The Legislature created and maintains a comprehensive surface
12 mining and reclamation policy to protect and regulate surface mining operations, and to
13 recognize vested rights thereunder. PRC §2712. In general, SMARA applies to all surface
14 mining operations. See PRC §§2714, 2756. "Surface mining operations" are defined as all, or
15 any part of, the process involved in the mining of minerals on mined lands by removing
16 overburden and mining directly from the mineral deposits, open-pit mining of naturally exposed
17 minerals, mining by the auger method, dredging and quarrying, and surface work incident to an
18 underground mine. PRC §2735.

19 In the *Calvert* lawsuit, the plaintiffs (private citizens) sought to directly enforce SMARA
20 and cause Yuba County to enjoin Western's operations. The trial court, as upheld by the 3rd
21 DCA, determined that such assertions of extra-statutory activity by a private plaintiff were not
22 valid on several grounds.

23 (1) The statutory scheme included in SMARA provides for detailed levels of
24 regulatory enforcement, not private enforcement; therefore, plaintiffs did not have standing to
25 assert the alleged violations. *Calvert* at pg. 634-635. MVP has asserted violations by Chevreaux
26 of its mining and asphalt permits, implicating Chevreaux's vested mining rights as confirmed by
27 SMARA under its reclamation plan, and ignoring SMARA's exclusive enforcements scheme.

1 MVP thus violates the same provisions of SMARA which were determined to exculpate Western
2 in the *Calvert* decision.

3 (2) Plaintiffs had not availed themselves of the methods of private enforcement
4 available to them: private actions for nuisance. In *Calvert*, plaintiffs had [as here] dismissed
5 their claims for nuisance.

6 I. **The Statutory Scheme Included in Placer County's Zoning Code Provides**
7 **for Detailed Levels of Regulatory Enforcement, Not Private Enforcement;**
8 **Therefore Plaintiff Does Not Have Standing to Assert the Alleged Violations.**

8 MVP ignored the appropriate private remedies it had under Zoning Code §§17.62.030,
9 17.62.070, and 17.60.110 [RJN #7], just as did *Calvert* in his case. The remedies available to a
10 private citizen are limited to the administrative procedures set forth in the Placer County Code.
11 For example, §17.62.010 specifically provides that:

12 [t]he enforcement procedures of this [Article] are intended to support timely correction of
13 nuisances and violations of the provisions of this code while assuring due process of law
14 in the abatement or correction of such nuisances and violations, 17.60.110 provides for
15 appeals of the Planning Director's or Zoning Administrator's decision.

15 Placer County's Zoning Code makes clear expressly what private rights of enforcement
16 are available against violators applicable to the claims of the 2nd and 3rd Causes of Action, none
17 of which were asserted by MVP in the verified complaint. Citizens can file complaints seeking
18 Zoning Code Enforcement or nuisance pursuant to Zoning Code §§17.62.030D, F and G,
19 17.62.070, or can seek a planning director's determination which may be appealed per
20 §17.60.110 [RJN #7]. The VC is devoid of any mention of MVP's utilization of this process
21 because no request for abatement of nuisances has ever occurred. MVP could have also sought a
22 formal determination on one or both of Chevreaux's use permits pursuant to Zoning Code
23 §17.02.050. MVP's complaint alleges no evidence that Placer County has cited Chevreaux for
24 any of these alleged violations, or taken any action to restrict the permits. MVP admits that
25 Placer County concluded that there is presently nothing to investigate or enforce with respect to
26 Chevreaux's permits [VC 2: 26-28, 8:3-4]. MVP's causes of action for declaratory relief ask the
27 Court to act in place of the County for actions the Court has already determined to be within the
28 County's discretion. [Ruling on Submitted Matter (Demurrer) 2:6-16, RJN #2.]

1 Other than seeking a Planning Director's determination or requesting abatement, no
2 member of the public has a private right of action to enforce the terms of the Code. As noted
3 above, Zoning Code §§17.62.030D, F, and G, 17.62.070, §17.62.030, and 17.60.110 [RJN #7]
4 provide for code enforcement proceedings should any member of the interested public believe
5 that an individual or entity is violating the terms of a permit. MVP's VC makes no allegation
6 that it first utilized the administrative code enforcement process to address its concerns regarding
7 any of Chevreaux's operations before bringing this VC. Where MVP's needs can be addressed
8 by other legal or equitable remedies which are as speedy and adequate and as well suited,
9 declaratory relief is unnecessary. Communist Party v. Peek (1942) 20 Cal.2d 536, 540. [Held:
10 Trial court properly sustained demurrer to cause of action for declaratory relief when it was
11 evident on the face of the complaint that a speedy and adequate remedy for plaintiff's purpose is
12 provided by Elections Code, §2900.] MVP's apparent frustration with the County's failure to
13 cite Chevreaux does not relieve MVP from following County procedures. As MVP has not
14 sought to use zoning enforcement procedures, declaratory judgment is not necessary or proper in
15 this case, and this motion should be granted.

16 The state of MVP's pleadings is inexplicable in light of explicit Zoning Code
17 enforcement language. The Zoning Code provisions addressing enforcement are themselves
18 discretionary. Given that MVP does not assert that it availed itself of the relevant provisions of
19 the Zoning Code, and has never amended its complaint to correct these defects, MVP cannot be
20 entitled to the relief it seeks because it has wholly failed to exhaust the remedies which the
21 Zoning Code provides. It is well settled in California that a court is without jurisdiction to hear a
22 claim until all available administrative remedies have been exhausted. Abelleira v. District Court
23 of Appeal (1941) 17 Cal.2d 280, 293; Environmental Law Fund, Inc. v. Town of Corte Madera
24 (1975) 49 Cal.App.3d 105, 111; Morton v. Superior Court (1970) 9 Cal.App.3d 977, 981. If a
25 party fails in its attempts to block a project approval by a subordinate agency, the party must
26 exhaust any right of appeal to an appellate body that oversees its functioning before seeking
27 judicial review. Sea & Sage Audubon Society, Inc. v. Planning Com. (1983) 34 Cal.3d 412, 417-
28 418 (Audubon Society failed to appeal planning commission approval of subdivision to City

1 Council and therefore could not seek review through administrative mandamus); Concerned
2 Citizens of Palm Desert, Inc. v. Board of Supervisors (1974) 38 Cal.App.3d 257, 266; Frisco
3 Land & Mining Co. v. State of California (1977) 74 Cal.App.3d 736, 754.

4 The VC's allegations do not compel a single inference that Chevreaux has violated the
5 permits, given MVP's admission that Placer County has taken no action against Chevreaux.
6 Where a statute leaves room for discretion, a petitioner seeking to determine the rights of the
7 parties must show that the respondent agency acted arbitrarily, beyond the bounds of reason, or in
8 derogation of the applicable legal standards, thus abusing its discretion. California Correctional
9 Supervisors Organization, Inc. v. Department of Corrections (2002) 96 Cal.App.4th 824, 827.

10 Placer County's Zoning Code does not authorize a private right of action to directly set
11 aside, interpret the terms of those permits, or seek invalidation of the Court without following the
12 procedures included in the Code.

13 The rationale for prohibiting private enforcement is that it may interfere with the
14 government's even-handed enforcement of the laws. If this matter were to proceed under
15 SMARA, Placer County would, if it detected a notice of violation, first contact the mine operator
16 and try to reach an accommodation. If that failed, the County could issue a Notice of Violation
17 pursuant to PRC §2774.1(a). The lead agency sends the operation a Notice of Violation, then 30
18 days to correct, then another 30 days, then a public hearing with a chance to present witnesses,
19 and only after the hearing can the County go to court to get an injunction. PRC §2774.1. MVP's
20 action eliminates all the procedural safeguards given to an operator by the statute. Allowing
21 private enforcement through the Court gives a private citizen greater rights to enforce SMARA
22 than the County (or the State Mining and Geology Board) has.

23 **II. MVP's Complaint Seeks SMARA Enforcement Disguised as a Local Regulatory**
24 **Challenge; Therefore Calvert's Determination that SMARA Precludes Private**
25 **Enforcement is Directly Applicable.**

26 Placer County's mining ordinances are SMARA ordinances. The State Mining and
27 Geology Board ("SMGB") is charged with establishing state policy for reclaiming mined lands.
28 PRC §2775. State policy must apply to the conduct of surface mining operations. PRC §2756.
As set forth in PRC §2757, "the state policy adopted by the board *shall be* based upon a study of

1 the factors that significantly affect the present and future condition of mined lands, and *shall be*
2 *used as standards by lead agencies in preparing specific and general plans, including the*
3 *conservation and land use elements of the general plan and zoning ordinances*". [Emphasis
4 added.] All terminology in these provisions is mandatory. SMGB is empowered to designate
5 mining areas of the state, and has designated Chevreaux's quarry with a mineral classification
6 located proximately to I-80 and therefore important for state and national transportation and
7 national defense purposes. A copy of SMGB's designation of mineral resources is attached as
8 Chevreaux's **RJN #8**. These designations are part of the state policy and indicate the reason
9 behind the designation, the adverse effects that might result from premature development of
10 incompatible land uses, the advantages that might be achieved from the extraction of the
11 minerals in the area, and the specific goals and policies to protect against the premature
12 incompatible development of the area. PRC §2790; see PRC §§2791, 2792 (vested rights).

13 Under SMARA, "[a] person shall be deemed to have vested rights if, prior to January 1,
14 1976, the person has, in good faith and in reliance upon a permit or other authorization, if the
15 permit or other authorization was required, diligently commenced surface mining operations...."
16 PRC §2776(a).

17 PRC §2774(a) requires that counties adopt mining ordinances consistent with State
18 policy, as was done by Placer County beginning August 21, 1976, with the adoption of
19 Subchapter 26 "Surface Mining and Reclamation" to Chapter 30 of the Placer County Code in
20 conformance with SMARA.

21 Thereafter, the Mineral Resource Conservation Plan ("MRCP") was adopted in 1984,
22 which was incorporated as an amendment to Placer County's General Plan, and Zoning Text
23 Amendment. Relevant pages of the MRCP are attached as Chevreaux's **RJN #9**. The section
24 titled Mining Operations Inventory states that Chevreaux's mining operations include quarrying,
25 processing, and asphalt concrete and permits LDA-786, LDA-691, LD-1030. In April, 1985,
26 Chevreaux prepared and submitted a Reclamation Plan encompassing its entire holdings ---
27 owned and leased --- to Placer County, which was adopted after several public hearings as
28 SMARA Permit CUP-853 on January 20, 1986, thus confirming a vested right under SMARA

1 for Chevreaux's surface mining of the area covered by the Reclamation Plan. Relevant pages of
2 CUP-853 are attached as Chevreaux's **RJN #10**. Placer County's conflict provisions provide at
3 §17.02.050D.2 that in the case of an apparent conflict, the provisions of the general and
4 community plans have precedence over the provisions of the Zoning Ordinance [**RJN #7**].

5 Placer County determined that Chevreaux's mining operations, in their entirety, were
6 vested by the 1985 Placer County Counsel Opinion No. 85-07 regarding Chevreaux's vested
7 rights under SMARA. The Opinion [attached as Chevreaux's **RJN #11**] concludes that the
8 Chevreaux operation has a vested right to extract minerals without a permit based upon its
9 mining activities undertaken prior to January 1, 1976, and may conduct future surface mining
10 without a permit on lands which are owned or leased by Chevreaux, but upon which there has not
11 been any past mineral extraction activity:

12 *It is our opinion that . . . any surface mining operations which establish*
13 *the existence of a vested right under SMARA may expand into areas set*
14 *aside for mining even though these areas were not being mined at the*
time of adoption of SMARA or local ordinances which implement that
act. [Emphasis added].

15 Vested rights under SMARA include those without a permit and those in reliance upon a
16 permit prior to January 1, 1976. PRC §2776(a). The 1985 Rose opinion also states: "in order to
17 preserve his vested right, CHEVREAUX must include all land for which such right is claimed in
18 a reclamation plan" The approved Reclamation Plan includes all holdings of Chevreaux,
19 owned and leased, including the areas covered by LD-1030 and LDA-786. Once vested rights
20 are established they can only be lost by legal abandonment (not by statute), which is defined as
21 the cessation of all mining activity coupled with a demonstrable intent not to resume mining.
22 Hansen Brothers Enterprises, Inc. v. Board of Supervisors of Nevada County (1996) 12 Cal.4th
23 533. The MRCP's explicit protections of valuable mineral resources identified at the Chevreaux
24 quarry preclude residential creep, and a series of emergency ordinances adopted in 1983 were
25 intended to prevent siting of residential approvals in close proximity to quarry sites. Ordinance
26 Nos. 3335-B, 3341-B, 3354-B, and 3458-B, attached as Chevreaux's **RJN #12**, protect
27 Chevreaux's operations against the private enforcement attempts asserted by MVP in its
28

1 complaint. These general plan amendments and zoning text amendments incorporate the express
2 requirements of SMARA.

3 The determining aspect of *Calvert* is that pursuant to SMARA, the procedures whereby
4 mining lands are determined by the lead agency to have been vested pre-1976, and thus intended
5 to be preserved and protected against encroaching surrounding land uses, has been absorbed by
6 the statewide procedures set forth in the Act. Thus, the designated lead agency, in this case
7 Placer County, must comply with the protections and prescriptions of SMARA when interpreting
8 and enforcing elements of surface mining operations such as Chevreaux's. *Calvert*, 145, at 617.
9 The jurisdictional issues are made clear: "recognizing the diverse conditions throughout the
10 state, SMARA provides for 'Home rule.' This means the local lead agency, usually a city or
11 county, has primary responsibility to implement the provisions of SMARA. PRC §2728. . .
12 SMGB , which is part of the Department of Conservation within the Resources Agency, may step
13 into the shoes and assume the role of the local lead agency if SMGB finds that the local agency
14 has not been fulfilling its duties under SMARA." *Calvert*, 145 at 618, §2774.4.

15 As to MVP's standing to bring direct action against Chevreaux for alleged violations of
16 its surface mining operations in this context, *Calvert* is determinative. The court held that no
17 direct actions against the mining operator asserting violations as to elements of its vested
18 operations are permitted under SMARA. *Calvert* at 634. "SMARA does not contain an explicit
19 provision authorizing private enforcement through an action for an injunction against a mining
20 operator. Instead SMARA sets forth detailed provisions for administrative enforcement by the
21 lead agency or the Director of Conservation. See §2774.1". The *Calvert* court relied on Moradi-
22 Shalal v. Fireman's Fund Ins. (1988) 46 Cal.3d 287 to confirm that the statutory interpretation of
23 a comprehensive state regulatory scheme involving unfair business claims did not establish a
24 private right of action against insurance companies that committed such practices.

25 As a practical matter, the SMGB can veto local legislation it finds inconsistent with
26 SMARA and SMGB policies, and a party aggrieved by the County's procedures regarding a
27 vested operation may appeal the local agencies' determination pursuant to its provision. PRC
28 §2770. This makes the local ordinance in effect a SMARA ordinance. SMARA itself does not

1 regulate how you get the permits granted; but it does require certain elements to be in a local
2 ordinance, and provides for supervision and review by SMGB. Thus, when MVP seeks to
3 enforce local law, it is really bringing a SMARA action.

4 **III. Plaintiff Has Not Availed Itself of the Methods of Private Enforcement Available**
5 **to It: Private Actions for Nuisance.**

6 Where the state has acted to establish such a comprehensive scheme, the remedy for the
7 aggrieved public is civil damages based on traditional theories of, for example, private nuisance.
8 *Calvert* at 635, discussing *Moradi-Shalal*, 46 at 304-305 and PRC§2715(d). Of course, here
9 MVP chose not to amend its complaint to properly establish a cause of action for private
10 nuisance, and voluntarily withdrew its claim for public nuisance.

11 Under PRC §2757, the State policy shall not include aspects of regulating surface mining
12 operations which are solely of local concern, and not of statewide or regional concern, as
13 determined by the board; such as, but not limited to, hours of operation, noise, dust, fencing, and
14 purely aesthetic considerations. Thus, such claims as made in the VC regarding dust would be
15 regulated by Placer County. However, as pointed out above, MVP has not utilized any of the
16 available provisions under the Code to challenge prior Placer County decisions, which it admits
17 find no violations. [VC 7:25-28; 8:1-4 & 12-16]. Plaintiff's continued attack on these permits is
18 a masked public nuisance claim, although it has voluntarily dismissed the prayer for same. Yet
19 MVP has produced not a single witness who claims to have purchased without notice of the
20 existence of quarry operations. A citizen cannot move toward or next to the nuisance and then
21 claim injury. Under *Calvert* at 635, plaintiff's failure to seek private claims for nuisance by
22 dismissal, just as in the present case, preclude any private right of action under either state or
23 local law.

24 **C. Leave to Amend Not Required.** In the absence of a showing that plaintiff can
25 amend his or her or its complaint so as to state a cause of action that would result in a declaration
26 in his or her or its favor, the trial court is not required to grant leave to amend before granting the
27 motion (see Code Civ. Proc. §438(h)(1)). The rule in the normal situation, that a plaintiff should
28 be given leave to amend when the complaint does not state facts sufficient to constitute a cause

1 of action, does not apply to a complaint that does state facts sufficient to constitute a cause of
2 action, but presents no triable issue and shows on its face that defendant is entitled to a
3 declaration in his or her or its favor. Wilson v. Board of Retirement (1957) 156 Cal.App.2d 195,
4 203, 319 P.2d 426. This Court granted ample opportunity to MVP to amend, and MVP failed to
5 do so [Ruling on Submitted Matter, **RJN #2**]. Further, as shown in this brief, even if MVP
6 amended to assert proper parties, it cannot meet its burden (1) because interpretation of the land
7 use permits are discretionary with Placer County, and (2) it has failed to timely exhaust any
8 administrative remedies.

9 **D. Lack of Subject Matter Jurisdiction.** A motion for judgment on the pleadings
10 may be made on the ground that the court has no subject matter jurisdiction of the cause of action
11 alleged in the complaint. Code Civ. Proc. §438(c)(1)(B)(i)). As shown in §II above, the subject
12 matter of MVP's complaint is largely preempted by State law, and neither the SMGB nor Placer
13 County, the bodies having jurisdiction to enforce the laws applicable to this lawsuit, are parties.

14 **E. Action Barred by Statute of Limitations.** Judgment on the pleadings is proper
15 if a complaint fails to state facts sufficient to constitute a cause of action because the complaint
16 shows on its face, or it appears from judicially noticed matter, that the action sued on is barred by
17 the statute of limitations and this fact has been pleaded in the answer as an affirmative defense.
18 See Wrightson v. Dougherty (1936) 5 Cal.2d 257, 262, 264-265, 54 P.2d 13. The last
19 administrative action was held in 1986. MVP's complaint makes no assertion that it has filed
20 appeals with either SMGB or Placer County since that time. Therefore, all actions are barred by
21 the statute of limitations.

22 CONCLUSION

23 For all the reasons set forth above, Defendant CHEVREAUX AGGREGATES, INC. asks
24 this Court to grant judgment for Defendant as to the remaining causes of action.

25 Dated: April 23, 2007

Respectfully submitted,
BRIGIT S. BARNES & ASSOCIATES, INC.,
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27 By: 

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