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Via Overnight Mail

Placer County Planning Department
Placer County Board of Supervisors
175 Fulweiler Ave.
Auburn, CA 95603

Re: Chevreaux Asphalt Facility in Meadow Vista, California

To Whom it May Concern:

Meadow Vista Protection (“MVP”) hereby requests that the County take action required by the County zoning code regarding the asphalt plant and activities currently being proposed at the Chevreaux Aggregates, Inc. (“Chevreaux”) quarrying facility located in Meadow Vista California. MVP’s request follows and incorporates previous requests submitted to the County on behalf of MVP by Soluri & Emrick in a letter and attached exhibits dated September 16, 2005 and all documents in the record for the Board of Supervisor’s hearing which occurred on November 7, 2007 regarding the lapse of Chevreaux’s asphalt permit under County Code.¹

At the November 7, 2007 hearing, County Counsel clarified that the appeal before the Board was limited to whether the Director’s interpretation of County Code Section 17.58.160(B)(2) was fair and reasonable and was not intended to be a determination regarding vesting rights. However, the Board’s action raises additional questions, set forth below, regarding whether Chevreaux has vested rights to conduct asphalt operations at the Meadow Vista site, and, if so, the extent or nature of the activity to which Chevreaux is reasonably entitled. These issues were formally raised by MVP in 2005, but have still not been addressed by the County.

Under law, MVP has the right to compel the performance of an action legally required. *See e.g., Conlan v. Bonta* (2002) Cal. App. 4th 745, 752 ; *Morris v. Harper* (2001) 94 Cal.

¹MVP also refers the County to documents contained in the County’s Superior Court file for *Meadow Vista Protection v. Chevreaux*, Placer County Superior Court Case No. SCV 196174, that have been judicially noticed in that action or are related to the issues raised in this letter.

App.4th 52, 58 *Rogers v. Detrich* (1976) 58 Cal. App. 3d 90, 104. As set forth below, as a non-conforming use, Chevreux's asphalt operations have been abandoned under both common law and County Code. Even if not abandoned, they cannot be expanded, relocated or substantially changed. MVP reiterates its prior requests that the County take the actions required by law to ensure that Chevreux's activities are consistent with law. If the County wishes to consider this as a request for a determination under County Code 17.02.050, MVP requests that the County inform MVP of a proposed schedule to make such determination and explanation of how the newly proposed asphalt facility at the Meadow Vista site will be operated during the pendency of this process.²

A. Chevreux's Asphalt Processing Plant Is a Non-Conforming Use

Chevreux' proposed asphalt processing operations are no longer consistent with current zoning for the property. In 1995 the quarry property was rezoned to Residential/Forestry, which allows a limited number of "Manufacturing and Processing Uses," which do *not* include asphalt processing. *See* County Code § 17.46.010. Thus, asphalt processing is properly characterized as a non-conforming use on the property.

1. Chevreux's Non-Conforming Asphalt Plant Was Abandoned by Non-Use Between the Years 1995 and 2001 and 2001 to the Present

Under County Code § 17.60.120.G, a nonconforming use of land "shall be presumed" to be abandoned if the nonconforming use "is discontinued for a continuous period of one year." As discussed in prior comments, there was no asphalt facility, activity or appurtenant structure at the Chevreux quarry site between the years 1995 to 2001, nor was there any activity between approximately September 2001 and 2007.

As noted by the Supreme Court, courts follow a strict policy against extension of nonconforming uses which have ceased operation. *See County of San Diego v. McClurken* (1951) 37 Cal. 2d 683, 687. Here, the discontinuance of any asphalt production during these years means that Chevreux's non-conforming use for asphalt production at the project site must be deemed to have been abandoned.

At the November 7, 2007 hearing the County found that Chevreux's asphalt facility was an "intermittent" use and thus incapable of lapse under the County Code. However, a non-conforming use cannot be characterized as "intermittent" and thus eternally exempt from the County zoning code. "The ultimate purpose of zoning is . . . to reduce all nonconforming uses within the zone to conformity as speedily as is consistent with proper safeguards for the interests of those affected." *Dienelt v. County of Monterey* (1952) 113 Cal. App. 2d 128, 131. Here,

²MVP also incorporates by reference its prior arguments submitted to the County and in the County Superior Court action SCV 196174 that Chevreux does not have vested rights to conduct asphalt processing at the quarry site.

Chevreaux's lack of asphalt production or facilities in the critical years after the use became non-conforming constituted a constructive abandonment of the non-conforming use. The facts here are in contrast to the quarrying operation addressed in *Hanson Brothers Enterprises, Inc., v. Board of Supervisors of Nevada County* (1996) 12 Cal. 4th 533, which the Supreme Court hypothesized might continue as a non-conforming use where the operation was continuous, with breaks in quarrying activity to allow aggregate stockpiles to be used up in ongoing processing.

2. The Current Proposal for Asphalt Production at the Chevreaux Quarry Site Represents a Substantial Expansion of the Existing Non-Conforming Use

A nonconforming use is limited to that use as it existed at the time of the adoption of the zoning ordinance. Given the objective of zoning to eliminate nonconforming uses, "courts throughout the country generally follow a strict policy against their extension or enlargement." *See Paramount Rock Company, Inc. v. County of San Diego* (1960) 180 Cal. App. 2d 217, 229. In addition, under County Code § 17.60.120.A, a nonconforming use of land may not be "enlarged or increased, nor be extended to occupy a greater area than that which it lawfully occupied before becoming a nonconforming use," nor "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."

As the County is aware, there were no asphalt processing facilities or activities at the Meadow Vista site occurring in the 12 months prior to the adoption of the 1995 zoning ordinance. Further, there has *never* been asphalt processing at this site requiring consistent and heavy truck traffic between the hours of 7 p.m. and 8 a.m. Even if the County were still to consider the asphalt processing plant as a valid non-conforming use, despite the lack of *any activity* between 1995 and 2001 and from 2001 to 2007, the current proposal to implement an asphalt processing facility that *relies on* routine nighttime truck travel through the residential neighborhoods of the Meadow Vista community is a substantial, unprecedented and thus unlawful expansion of a non-conforming use.

3. Chevreaux's Proposed Location for the Asphalt Facility is Different from the Location Existing Prior to 1995

In 2005, the original location of the 1972 permitted asphalt facility was moved 1000 feet away where the Teichert project was almost staged and then torn down. (*See Asphalt Plant Location Plan-Map, Chevreaux Aggregates - Meadow Vista Operation, Rev. June, 2004.*)³ The current proposed facility is in the new location. The moving of the originally permitted facility

³This map was submitted as part of Chevreaux's 2004 application to the Air Pollution Control District for a permit to construct an asphalt facility, which the APCD approved. *See Attachment 4.* The County has never conducted its own assessment of Chevreaux's new location and proposed operation for its asphalt facility, nor whether such changes constitute an unlawful expansion of a non-conforming use under common law and County code. *See Attachments 1-3.*

that is now non-conforming is contrary to law. *See County of San Diego v. McClurken* (1951) 37 Cal. 2d 683, 687 (“moving the operation to another location on the property is not permitted.”)

B. Were Asphalt Processing Characterized as a Component of the Surface Mining Operation, Chevreaux’s Current Proposal for Asphalt Production Would Represent a Substantial Change in Chevreaux’s Surface Mining Operation

Chevreaux has argued that its asphalt operation is a component of its surface mining operation, which is a permitted use under the current zoning designation for the property. MVP disagrees with this characterization. Chevreaux did not list such operations as part of its application for a reclamation permit for its surface mining operations and the County itself has required a separate permit for asphalt operations in addition to one for surface mining.

If the County were nevertheless to consider the asphalt operations as *potentially* part of a surface mining operation, the fact that the current zoning lists “Mining, surface and subsurface” as a permitted use, but limits “Manufacturing and Processing Uses” to only “electric generating plants” and “recycling collection stations” means that the asphalt processing component of the mining operation would still be non-conforming and thus subject to the requirements listed above. These specific references demonstrate that the intent of the zoning law was to allow surface mining but strictly limit the type of processing operations allowed onsite. As the County is aware, these provisions amended prior zoning that had allowed asphalt processing.

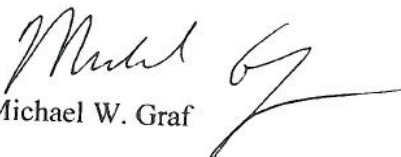
Even if the asphalt processing plant were considered to be “conforming” as part of the allowable surface mining operation, the expansion in use for the asphalt facility triggers the need for a new permit. Placer County Code § 17.56.270(D) states that “[c]onditional use permit and reclamation plan approval...” shall be required for the *expansion or substantial change of operation of any surface mine for which such expansion or changes have not been previously approved.*” (emphasis added.) The County Counsel’s office has already found that the construction of a permanent asphalt facility proposing to produce and deliver asphalt in up to 260 truck loads along residential streets throughout the night constitutes a new and unprecedented change in whatever activity may have been initially permitted or which occurred in the past. *See Attachment 6.* The County’s own ad hoc advisory committee has found that the increased activity represents a potentially significant impact to the community. *See Attachment 5.* As stated, Chevreaux’s reclamation plan for the surface mining operation does not mention asphalt processing. *See Attachment 4.* The addition of asphalt processing as a component of the surface mining operation would thus also require a new Reclamation Permit. *See County Code § 17.56.270(D).*

C. The County Should Take the Necessary Action to Avoid the Need for Litigation

In 2005 MVP requested the County to take action with regard to Chevreaux’s asphalt plant. However, the County has thus far not provided MVP any response. The purpose of this letter is to apprise the County of its need to take action and thereby avoid the need for judicial

review of the issues presented here, in MVP's prior comments dated November 6, 2007 and in the Soluri & Emrick letter dated September 16, 2005. MVP thus requests that the County take the regulatory action required by County Code and common law, as set forth above.

Respectfully submitted,


Michael W. Graf

Additional attachments enclosed

C005 - Letter to County re Asphalt Facility.wpd

List of Attachments

1. APCD Air permit and associated documents Issued to Kiewit Pacific Co dated May 29, 2001
2. Teichert Aggregates application for APDC Air Permit and related documents.
3. Reclamation Plan, Chevreux Quarry at Meadow Vista and related documents
4. APCD Permit to Operate and related documents dated October 24, 2007 issued to Chevreux Aggregate Inc.
5. County of Placer Department of Health and Human Services regarding Consensus Findings of Ad Hoc Air Pollution Advisory Committee dated March 10, 2005.
6. County Counsel Letter to Planning Director dated February 25, 2005.