

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF PLACER

NOV 13 2006

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6 SUPERIOR COURT OF CALIFORNIA
7 COUNTY OF PLACER

8
9 MEADOW VISTA PROTECTION,
10
11 Petitioners and Plaintiffs,

Case No. SCV 19614

12 v.

**CHEVREAUX AGGREGATES, INC.'S
VERIFIED ANSWER TO MEADOW
VISTA PROTECTION'S VERIFIED
COMPLAINT**

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

Verification By Facsimile

15 Respondents and Defendants.

16 Defendant CHEVREAUX AGGREGATES, INC. ("CHEVREAUX") hereby answers
17 Plaintiff MEADOW VISTA PROTECTION's ("MVP") Verified Complaint as follows:

18 **INTRODUCTION**

19 1. This allegation refers to the First Cause of Action which has been eliminated by
20 MVP's failure to file an amended complaint after the COUNTY OF PLACER's ("COUNTY")
21 demurrer was sustained with leave to amend. As a result, no answer by CHEVREAUX is
22 required.

23 2. CHEVREAUX admits that MVP has brought an action against CHEVREAUX.
24 CHEVREAUX denies that it is conducting its operations in violation of its use permits or County
25 ordinances. CHEVREAUX admits that MVP is seeking damages for public nuisance, denies that
26 MVP has a valid right to bring a public nuisance action, and denies that CHEVREAUX has any
27 liability for the damages allegedly claimed.
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1 21. CHEVREAUX denies all the allegations in paragraph 21.

2 22. CHEVREAUX admits that it applied for LDA-691, and further admits that prior
3 to said application, it operated an asphalt plant and sold asphalt from its Combie operations.
4 CHEVREAUX denies all other allegations contained in paragraph 22.

5 23. CHEVREAUX admits that Exhibit 3 is a copy of LDA-786. CHEVREAUX
6 denies the remaining allegations and inferences of paragraph 23 on the basis of information and
7 belief.

8 24. CHEVREAUX denies all the allegations in paragraph 24.

9 25. CHEVREAUX admits that it reapplied for a use permit to operate a portable
10 concrete batch plant in 1993. CHEVREAUX denies that there was significant opposition from
11 Meadow Vista residents. CHEVREAUX admits the remaining allegations in paragraph 25.

12 26. CHEVREAUX denies that the PLANNING DEPT. held a hearing on April 28,
13 1994. CHEVREAUX admits that the Planning Commission held a hearing on April 28, 1994
14 and granted CHEVREAUX's appeal. CHEVREAUX denies that the PLANNING DEPT.
15 directed planning staff to prepare a negative declaration for the project. CHEVREAUX admits
16 that the Planning Commission directed planning staff to prepare a negative declaration for the
17 project. CHEVREAUX denies that it "then applied" for CUP-1772 for the Concrete Plant.
18 CHEVREAUX admits that after the April 28, 1994 hearing, the COUNTY processed its
19 application for a conditional use permit. CHEVREAUX is without sufficient knowledge or
20 information to either admit or deny what the PLANNING DEPT. files contain regarding the
21 public hearing held on June 23, 1994, and therefore denies the same. CHEVREAUX denies that
22 "the application" was ultimately granted. CHEVREAUX admits that the COUNTY granted it a
23 conditional use permit, and that CUP-1772 went into effect on June 24, 1994.

24 27. CHEVREAUX denies that it "never properly implemented LDA-786" within the
25 first two years of its issuance. CHEVREAUX is without sufficient knowledge or information to
26 either admit or deny the remaining allegations contained in paragraph 27, and therefore denies
27 the same.

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1 28. CHEVREAUX is without sufficient knowledge or information to either admit or
2 deny the allegations contained in paragraph 28, and therefore denies the same.

3 29. CHEVREAUX denies the allegations in paragraph 29.

4 30. CHEVREAUX admits the allegations in paragraph 30, except that the requested
5 permit authorizes 32,000 tons per quarter.

6 31. CHEVREAUX is without sufficient knowledge or information to either admit or
7 deny the allegations contained in paragraph 31, and therefore denies the same.

8 32. CHEVREAUX is without sufficient knowledge or information to either admit or
9 deny the allegations contained in paragraph 32, and therefore denies the same.

10 33. CHEVREAUX admits that the 2004 APCD permit was scheduled to expire in
11 June 2005. CHEVREAUX denies the remaining allegations contained in paragraph 33.
12 CHEVREAUX admits that it applied for a renewal of the 2004 APCD permit in June 2005, and
13 that this renewal was granted.

14 34. CHEVREAUX admits that it applied in April 2006 for another APCD permit to
15 operate a portable asphalt plant. CHEVREAUX admits that it has purchased a portable asphalt
16 plant, but denies that it "could begin producing asphalt in a matter of days".

17 35. CHEVREAUX denies the allegations contained in paragraph 35.

18 36. CHEVREAUX admits that the Board of Supervisors of Placer County has issued
19 no directive to initiate public hearings regarding LDA-786. CHEVREAUX is without sufficient
20 knowledge or information to either admit or deny the remaining allegations contained in
21 paragraph 36, and therefore denies the same.

22 37. CHEVREAUX admits that the COUNTY has taken no action to investigate
23 CHEVREAUX's use permits or enforce the conditions of those permits. CHEVREAUX admits
24 that Michael Johnson, the current Placer County Planning Director stated "unequivocally,
25 '[LDA-786] will never lapse.'" CHEVREAUX is without sufficient knowledge or information
26 to either admit or deny the allegations contained in paragraph 37, and therefore denies the same.

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1 CHEVREAUX admits that MVP contends that CHEVREAUX's permit LDA-786 has lapsed due
2 to long periods of non-use, but denies that any such lapse has occurred. CHEVREAUX admits
3 that MVP alternatively contends that the relocation of the plant 1,000 feet from the originally
4 permitted site is a material deviation requiring CHEVREAUX to apply for a new CUP, but
5 denies this allegation. CHEVREAUX admits that its rights to the Asphalt Plant are vested, and
6 that the location of the plant site is within the parameters of LDA-786. CHEVREAUX denies
7 that the site is "the new plant site".

8 48. CHEVREAUX admits that MVP seeks the relief alleged in paragraph 48, but
9 CHEVREAUX denies that it has any liability for the relief requested.

10 49. CHEVREAUX admits that MVP seeks the relief alleged in paragraph 49, but
11 CHEVREAUX denies that it has any liability for the relief requested.

12 FOURTH CAUSE OF ACTION

13 50. CHEVREAUX incorporates by reference its responses to paragraphs 1 through 49
14 above.

15 51. CHEVREAUX denies that it is mining outside the boundaries permitted by LD-
16 1030, because LD-1030 does not regulate its surface mining. CHEVREAUX denies that it is
17 failing to abide by the conditions imposed by LD-1030. CHEVREAUX denies that it is
18 operating an asphalt plant in violation of LDA-786. CHEVREAUX denies that it will or has
19 caused irreparable injury or injury or harm of any sort to MVP members or other Meadow Vista
20 residents. CHEVREAUX admits that MVP seeks temporary, preliminary and permanent
21 injunction, but denies any liability for the relief requested. CHEVREAUX denies the remaining
22 allegations contained in paragraph 51.

23 52. CHEVREAUX admits that MVP seeks the relief alleged in paragraph 52, but
24 denies any liability for the relief requested.

25 FIFTH CAUSE OF ACTION

26 53. CHEVREAUX incorporates by reference its responses to paragraphs 1 through 52
27 above.

28 54. CHEVREAUX denies all the allegations in paragraph 54.

1 55. CHEVREAUX denies all the allegations in paragraph 55.

2 56. CHEVREAUX denies all the allegations in paragraph 56.

3 **SIXTH CAUSE OF ACTION**

4 57. – 59. The Sixth Cause of Action was eliminated by CHEVREAUX's demurrer
5 and MVP's failure to file an amended complaint. No further response is required.

6 **SEVENTH CAUSE OF ACTION**

7 60. – 63. The Seventh Cause of Action was eliminated by CHEVREAUX's
8 demurrer and MVP's failure to file an amended complaint. No further response is required

9 **AFFIRMATIVE DEFENSES**

10 **FIRST AFFIRMATIVE DEFENSE**

11 **(Failure to State a Cause of Action)**

12 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO THE SECOND, THIRD,
13 FOURTH, AND FIFTH CAUSES OF ACTION, CHEVREAUX alleges that MVP has failed to
14 state facts sufficient to constitute any cause of action.

15 **SECOND AFFIRMATIVE DEFENSE**

16 **(Laches and Unclean Hands)**

17 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO THE SECOND, THIRD,
18 FOURTH, AND FIFTH CAUSES OF ACTION, CHEVREAUX alleges that the causes of action
19 alleged in the Complaint are barred by the doctrines of laches and/or unclean hands.

20 **THIRD AFFIRMATIVE DEFENSE**

21 **(Ratification/Waiver)**

22 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO THE SECOND, THIRD,
23 FOURTH, AND FIFTH CAUSES OF ACTION, CHEVREAUX alleges that MVP affirmed and
24 ratified CHEVREAUX's alleged conduct, and therefore is precluded from any recovery herein by
25 virtue of the doctrines of waiver and estoppel.

26 **FOURTH AFFIRMATIVE DEFENSE**

27 **(Failure to Do Equity)**

28 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO THE SECOND, THIRD,

1 FOURTH, AND FIFTH CAUSES OF ACTION, CHEVREAUX alleges that MVP has failed to
2 do equity in respect to the matters raised in its Complaint, and therefore MVP is barred from
3 recovery against CHEVREAUX.

4 **FIFTH AFFIRMATIVE DEFENSE**

5 (Failure to Mitigate)

6 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO THE SECOND, THIRD,
7 FOURTH, AND FIFTH CAUSES OF ACTION, CHEVREAUX alleges that following the
8 events described in the Complaint, MVP failed and neglected to mitigate damages, if any there
9 were, and that said conduct or failure of conduct on MVP's part proximately caused and
10 contributed to the damages sustained by MVP, if any.

11 **SIXTH AFFIRMATIVE DEFENSE**

12 (Excuse from Performance)

13 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO THE SECOND, THIRD,
14 FOURTH, AND FIFTH CAUSES OF ACTION, CHEVREAUX alleges that if it should be
15 determined that CHEVREAUX failed to perform any duty or obligation required under any
16 agreement with or obligation to MVP, which CHEVREAUX expressly denies, then
17 CHEVREAUX is excused from such performance by reason of the interference and/or waiver by
18 MVP and/or its successors, agents, partners, officers, directors, and employees, and/or other
19 persons, firms, corporations, entities or parties.

20 **SEVENTH AFFIRMATIVE DEFENSE**

21 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO THE SECOND, THIRD,
22 FOURTH, AND FIFTH CAUSES OF ACTION, CHEVREAUX's surface mining, asphalt, and
23 dredging operations are vested pursuant to the provisions of the Surface Mining and Reclamation
24 Act, and the Placer County Zoning Ordinance.

25 **EIGHTH AFFIRMATIVE DEFENSE**

26 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO THE SECOND, THIRD,
27 FOURTH, AND FIFTH CAUSES OF ACTION, LD-1030 and LDA-786 are vested pursuant to
28 the provisions of the Placer County Zoning Ordinance.

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NINTH AFFIRMATIVE DEFENSE

(Failure to Establish Damages)

AS A SEPARATE AND AFFIRMATIVE DEFENSE TO THE SECOND, THIRD, FOURTH, AND FIFTH CAUSES OF ACTION, CHEVREAUX alleges that MVP has failed to establish that it has suffered any actual damages and/or irreparable harm in order to support a cause of action for public nuisance, or injunctive relief.

TENTH AFFIRMATIVE DEFENSE

(Res Judicata/Collateral Estoppel)

AS A SEPARATE AND AFFIRMATIVE DEFENSE TO THE SECOND, THIRD, FOURTH, AND FIFTH CAUSES OF ACTION, CHEVREAUX alleges that the Complaint is barred by the doctrines of res judicata and/or collateral estoppel.

ELEVENTH AFFIRMATIVE DEFENSE

(Code of Civil Procedure Sections 335-363)

AS A SEPARATE AND AFFIRMATIVE DEFENSE TO THE SECOND, THIRD, FOURTH, AND FIFTH CAUSES OF ACTION, CHEVREAUX alleges that the causes of action alleged in the Complaint are barred by the provisions of Sections 335 through 363 of the California Code of Civil Procedure.

TWELFTH AFFIRMATIVE DEFENSE

(Civil Code Sections 1572-1573)

AS A SEPARATE AND AFFIRMATIVE DEFENSE TO THE SECOND, THIRD, FOURTH, AND FIFTH CAUSES OF ACTION, CHEVREAUX alleges that MVP's actions against CHEVREAUX are barred by operation of Civil Code Sections 1572 and/or 1573.

THIRTEENTH AFFIRMATIVE DEFENSE

(Proximate Cause)

AS A SEPARATE AND AFFIRMATIVE DEFENSE TO THE SECOND, THIRD, FOURTH, AND FIFTH CAUSES OF ACTION, CHEVREAUX alleges that the damages, if any, suffered by MVP were the proximate result of MVP's negligence and/or intentional conduct, and such conduct either bars or proportionately reduces any potential recovery.

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FOURTEENTH AFFIRMATIVE DEFENSE

(Assumption of Risk)

AS A SEPARATE AND AFFIRMATIVE DEFENSE TO THE SECOND, THIRD, FOURTH, AND FIFTH CAUSES OF ACTION, CHEVREAUX alleges that MVP is comprised of persons who purchased their properties with actual and/or constructive notice of quarry operations, and therefore assumed the risk of any injury actually suffered.

FIFTEENTH AFFIRMATIVE DEFENSE

AS A SEPARATE AND AFFIRMATIVE DEFENSE TO THE SECOND, THIRD, FOURTH, AND FIFTH CAUSES OF ACTION, CHEVREAUX alleges that MVP and its individual members had actual notice of CHEVREAUX's operations, and as a result have waived objections to the same.

SIXTEENTH AFFIRMATIVE DEFENSE

(Failure to Join Indispensable Parties (CCP Section 389(a))

AS A SEPARATE AND AFFIRMATIVE DEFENSE TO THE SECOND AND THIRD CAUSES OF ACTION, CHEVREAUX alleges that MVP has failed to join indispensable third parties.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Statute of Limitations – Govt. Code Sections 1094.5, 1094.6, 65009(c)(1)(e))

AS A SEPARATE AND AFFIRMATIVE DEFENSE TO THE SECOND AND THIRD CAUSES OF ACTION, CHEVREAUX alleges that these are barred by the statute of limitations.

EIGHTEENTH AFFIRMATIVE DEFENSE

(To Injunction – Doctrine of Balancing of Conveniences)

AS A SEPARATE AND AFFIRMATIVE DEFENSE TO THE FOURTH CAUSE OF ACTION, CHEVREAUX alleges that MVP will not suffer irreparable injury as a result of any of CHEVREAUX's on-going operations.

NINETEENTH AFFIRMATIVE DEFENSE

(To Public Nuisance – Failure of Special Injury)

AS A SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIFTH CAUSE OF

1 ACTION, CHEVREAUX alleges that MVP has failed to and cannot establish that it has suffered
2 unique injuries in order to support this cause of action.

3 TWENTIETH AFFIRMATIVE DEFENSE

4 AS A SEPARATE AND AFFIRMATIVE DEFENSE TO THE SECOND, THIRD,
5 FOURTH, AND FIFTH CAUSES OF ACTION, CHEVREAUX alleges that all MVP claims of
6 permit invalidity are barred under the doctrine of vested rights.

7 TWENTY-FIRST AFFIRMATIVE DEFENSE

8 (Allege Further Affirmative Defenses)

9 CHEVREAUX reserves the right to allege other affirmative defenses as they may arise
10 through the course of discovery.

11 WHEREFORE, CHEVREAUX prays as to the Second, Third, Fourth, and Fifth Causes
12 of Action that:

- 13 1. MVP take nothing by reason of its Complaint;
- 14 2. The Complaint be dismissed with prejudice in its entirety as against
15 CHEVREAUX;
- 16 3. For costs of suit incurred herein;
- 17 4. For attorney's fees as provided for by law; and
- 18 5. For such other and further relief as this Court may deem just and proper.

19
20 Dated: November 13, 2006

BRIGIT S. BARNES & ASSOCIATES, INC.,
A Law Corporation

21
22 By: 

23 Brigit S. Barnes, Attorney for
24 CHEVREAUX AGGREGATES, INC.
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VERIFICATION

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I, E.J. BELDING, declare:

I am the President of Chevreaux Aggregates, Inc., a Defendant in the above-entitled action, and am a resident of Placer County. I have read the foregoing Verified Answer and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true.

I declare, under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Dated: November 09, 2006

1 Matter: MEADOW VISTA PROTECTION v. CHEVREAUX AGGREGATES, INC.
2 Placer County Superior Court Case No. SCV 19614

3 PROOF OF SERVICE

4 I am a citizen of the United States, over the age of eighteen years, and not a party to or
5 interested in the within entitled cause. I am an employee of Brigit S. Barnes & Associates, Inc.,
A Law Corporation, located at 3262 Penryn Road, Suite 200, Loomis, California, 95650. On this
6 date, I served the following document:

7 **CHEVREAUX AGGREGATES, INC.'S VERIFIED ANSWER TO
8 MEADOW VISTA PROTECTION'S VERIFIED COMPLAINT**

9 X BY U.S. MAIL [C.C.P. §1013(a)] by enclosing one copy thereof in a sealed
10 envelope, with postage thereon fully prepaid. I am readily familiar with this firm's
11 practice for the collection and processing of correspondence for mailing with the
United States Postal Service, and that said correspondence is deposited with the
United States Postal Service at Sacramento, California, on the same day in the
ordinary course of business. Said correspondence was addressed as set forth
below.

12 **PARTY(S) SERVED:**

13 Ronald A. Zumbrun, Esq.
14 Angela C. Thompson, Esq.
15 The Zumbrun Law Firm
3800 Watt Avenue, Suite 101
16 Sacramento, CA 95821
Facsimile: (916) 486-5959
[Attorney for MEADOW VISTA PROTECTION]

17 Richard L. Crabtree, Esq.
18 Law Office of Richard L. Crabtree
1395 Ridgewood Drive, Suite 300
19 Chico, CA 95973
Facsimile: 530-566-9203
20 [Attorney for COUNTY OF PLACER and COUNTY OF PLACER PLANNING
DEPARTMENT]

21 Courtesy Copy to:
22 Scott Finley, Esq.
Placer County Counsel's Office
23 175 Fulweiler Avenue
Auburn, CA 95603
24 Facsimile: (530)889-4069

25 I declare, under penalty of perjury under the laws of the State of California, that the
26 foregoing is true and correct. Executed on November 13, 2006, at Loomis, California.

27 Noreen Patrignani
Noreen Patrignani

TRANSACTION REPORT

P. 01

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