

27. S-CV-0019614 Meadow Vista Protection vs. Chevreaux
Aggregates, Inc.

This tentative ruling is issued by Judge Charles Wachob. If oral argument is requested, such oral argument shall be heard on Tuesday, October 10, 2006, at 8:30 am in Dept. 4.

The demurrer of defendants County of Placer and County of Placer Planning Department to the first cause of action for mandamus in the complaint is sustained. Petitioner has failed to set forth a mandatory or ministerial duty of the defendants. Section 17.60.020 describes the general authority of the planning director and no mandatory duties are set forth in that provision. Section 17.62.170 provides that the code enforcement officer "may" initiate proceedings. This is clearly a discretionary duty. In an abundance of caution, and exercising liberality with respect to allowing petitioner to amend, the court will grant petitioner leave to amend. Any amended petition shall be served and filed by October 20, 2006.

With respect to the demurrer of defendant Chevreaux to the causes of action for declaratory relief, an actual, justiciable controversy has been alleged as between the parties. As to the causes of action for injunctive relief, plaintiff need not submit affidavits at the time the complaint was filed. The complaint was verified and sets forth sufficient facts to support the request for injunctive relief. For the purposes of demurrer, the court must accept the allegations as true. Defendant's demurrer to these causes of action is overruled.

Defendant Chevreaux's demurrer to the fifth cause of action for public nuisance is overruled. By definition a public nuisance is one that affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal. (Civil Code section 3480.) In this case, the complaint alleges plaintiff is a California nonprofit corporation (paragraph 10) and that defendant's blasting activities at its quarry cause noise and vibrations "on and near the property of nearby residents, including members of MVP" (paragraph 54). It is alleged defendant's various activities interfere with the comfortable enjoyment and use of MVP member's property (paragraph 54). Accordingly, the cause of action has been pled sufficiently. Further, by extension, the holding of *Residents of Beverly Glen v. City of Los Angeles* (1973) 34 CA3d 117 supports plaintiff's claim that it has standing to sue to abate a nuisance alleged to be public in nature.

As to the sixth cause of action for private nuisance, defendant Chevreaux's demurrer is sustained, with leave to amend. The essence of a private nuisance is its interference with the use and enjoyment of land. Unlike public nuisance, which is an interference with the rights of the community at large, private nuisance is a civil

wrong based on disturbance of rights in land. (Venuto v. Owens-Corning Fiberglas Corp.(1971) 22 CA3d 116, 124.) A nuisance may be both public and private, but to proceed on a private nuisance theory the plaintiff must prove an injury specifically referable to the use and enjoyment of his or her land. The injury, however, need not be different in kind from that suffered by the general public. (Koll-Irvine Center Property Owners Assn. v. County of Orange (1994) 24 CA4th 1036, 1041.) A plaintiff suing on this theory must allege and prove interference with a property interest. (Lew v. Super.Ct. (Byrd) (1993) 20 CA4th 866, 873; Oliver v. AT & T Wireless Services (1999) 76 CA4th 521, 533-534.) In a claim for private nuisance, a plaintiff typically must establish, among other elements, that it owns, leases, occupies or controls real property. (CACI 2021.) In this case, the plaintiff nonprofit corporation MVP does not allege interference with any property interest of its own. As to the cause of action for trespass, the demurrer of defendant Chevraux is sustained, with leave to amend. The cause of action for trespass is designed to protect possessory interests in land from unlawful interference. "An action for trespass may technically be maintained only by one whose right to possession has been violated; however, an out-of-possession property owner may recover for an injury to the land by a trespasser which damages the ownership interest." (Smith v. Cap Concrete, Inc. (1982) 133 CA3d 769, 774.) The proper plaintiff in an action for trespass to real property is the person in actual possession; no averment or showing of title is necessary. (Smith v. Cap Concrete, Inc., supra, 133 CA3d at 775.) Just as with its cause of action for private nuisance, plaintiff non-profit corporation MVP has not alleged unlawful interference with any possessory interest of its own so as to support a cause of action for private nuisance. Instead, plaintiff MVP alleges that it is its members, who are "nearby residents" at unspecified properties, whose possessory rights have suffered.

As to the sixth and seventh causes of action for private nuisance and trespass, respectively, plaintiff is granted leave to amend, with any such amended complaint to be served and filed by October 20, 2006.