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Quarry issue goes to court

Save Our Sunol seeks countywide vote

By Matt Carter, STAFF WRITER

SUNOL -- A patch of former farmland next to Sunol's Willis Polk Water Temple won't become a rock quarry anytime soon.

Opponents of the quarry have hired an Oakland-based law firm that specializes in environmental issues to take their case to the California Court of Appeal.

For more than a decade, a group of residents calling themselves Save Our Sunol has been fighting Mission Valley Rock's attempts to expand quarrying on a 242-acre patch of land near Sunol.

The group maintains that a mining pit approved by Alameda County officials in 1994 is subject to a countywide vote under Alameda County's slow-growth initiative, Measure D.

An Alameda County Superior Court judge rejected that argument, saying it was not clear voters intended the initiative to apply to the quarry when they passed Measure D in November, 2000.

In an Oct. 30 ruling, Superior Court Judge Bonnie Sabraw also ruled that the quarry is not a new project, but an expansion of an existing quarry east of Interstate 680.

Save Our Sunol's founder and president, Pat Stillman, said the group filed notice Monday of its intent to appeal Sabraw's decision -- despite the cost of continuing the legal battle for another year or more.

"It's certainly no picnic getting involved in another lawsuit," Stillman said. "On the other hand, it's morally wrong to do this to a community ... no one felt we should just let this ride."

The group has hired Oakland-based attorney Stephan C. Volker, a former Sierra Club Legal Defense Fund lawyer who says he's had a hand in more than 250 environmental cases since 1974.

"I think Save Our Sunol has an excellent prospect for success on this appeal," Volker said. "Their case is meritorious and it will restore public confidence the initiative process, by enforcing the terms of Measure D."

Attorney Stephen Blich, who represents Mission Valley Rock and San Francisco, which owns the land where the quarry is proposed, said Save Our Sunol's arguments will carry little weight with the First Appellate District of the Court of Appeal.

"I'm not surprised, because it's not a very expensive proposition for them to appeal," said Blich, a partner in the Oakland law firm Reed, Smith, Crosby, Heafey. "I don't have any doubt this ruling will be affirmed on appeal."

Save Our Sunol claims a new quarry pit west of Interstate 680, on a patch of land next to the historic Willis Polk Water Temple, would harm protected species and subject nearby residents to harmful dust and noise.

In a press release, the group said Monday that the quarry would expose children at Sunol Glen School "to toxic dust and thunderous noise. About 30 school children at this school already suffer from acute asthma and are extremely vulnerable to quarry dust."

But the group lost an earlier legal challenge of a study formally known as an Environmental Impact Report, which found the project's impacts could be lessened to an acceptable level.

"For them to try to drag that up now is sensationalism," Blich said. "It has nothing to do with the present lawsuit."

Save Our Sunol's current challenge to the quarry maintains that final approvals were not in place when Alameda County's slow-growth initiative, Measure D, became law.

Although Measure D was primarily designed to restrict the construction of housing in unincorporated areas of eastern Alameda County, it also contained restrictions on projects such as quarries and power plants.

Measure D specifically states that the Sunol quarry "should not be established."

But Sabraw said the initiative was vaguely worded, and the statement amounted to a "wish" or "hope" rather than a legal directive. The judge said voters may not have been aware of all of Measure D's provisions, and it was not clear that they intended for the initiative to decide the fate of the Sunol quarry project.

"There are many independent grounds, including some fundamental legal and constitutional issues, why this supposed prohibition doesn't stand up," Blich said.

Volker agreed that the key issue is whether Measure D applies to the quarry project but said the Court of Appeal could easily come to a different conclusion than Judge Sabraw. He said the court could make a ruling on the case by the end of next year.

The next stop, should either side decide to appeal that decision, would be the California Supreme Court.

"We're prepared to take this up through the courts as far as we need to until we prevail," Volker said.