

Tuesday, November 04, 2003

## **Backers of Sunol quarry wins ruling**

Judge decides Measure D is ambiguous about expansion of Mission Valley Rock project  
By Matt Carter, STAFF WRITER

A decade-long battle over an expansion of rock quarrying near the town of Sunol could be coming to an end, with a judge's ruling that Alameda County voters don't have to sign off on the project.

Opponents of a plan by Mission Valley Rock Co. to dig a quarry pit near Sunol filed a lawsuit in May, claiming a countywide growth-control initiative requires the project be put to a popular vote.

An Alameda County Superior Court judge has rejected that argument, saying it was not clear voters intended that Measure D -- the growth-control initiative approved in November 2000 -- should apply to the project.

Measure D tightened urban growth boundaries around cities in eastern Alameda County and required voter approval of new quarries outside the boundaries.

But in an Oct. 30 ruling made public Monday, Judge Bonnie Sabraw ruled the disputed project is an expansion of an existing quarry, not a new project.

Sabraw also said she was not convinced that by passing Measure D -- an initiative directed primarily against new housing developments in unincorporated areas -- voters were voicing opposition to the Sunol quarry.

Despite the complexities of the case, Sabraw said the main issue was a narrow one: Did the voters of Alameda County intend for Measure D to apply to the Sunol quarry?

The initiative states the Sunol quarry "should not be established."

But Sabraw found that, without more detailed language defining how Measure D was to be applied, that statement amounted to a "wish" or "hope" -- not a legal directive.

"Very little of the (section of Measure D pertaining to quarries) could be described as 'unambiguous,'" Sabraw wrote. "For that reason, the court had no choice but to engage in judicial construction to divine the voters' intent."

Sabraw said voters were not provided with information -- other than the text of the initiative itself -- clearly spelling out that Measure D was intended to stop the Sunol quarry project.

Pat Stillman, the founder and president of the group that filed the lawsuit, Save Our Sunol, said she was "absolutely appalled with the ruling."

"I haven't given up, but it's too early to decide what we will do," Stillman said. "It might be that we can't do anything, or we might want to appeal. I don't know. We're all kind of numb. This has been a mission of mine for 11 years, so I am terribly disappointed."

A lawyer representing Mission Valley Rock and the city and county of San Francisco, which owns the land to be mined, could not be reached Monday evening.

The dispute over the quarry dates back to 1992, when Mission Valley Rock applied for a permit to expand existing mining operations east of Interstate 680.

Although Save Our Sunol opposed the plan, in 1994 the Alameda County Board of Supervisors granted Mission Valley Rock a permit to mine a 242-acre parcel on the west side of Interstate 680.

Opponents objected to the proposed quarry's proximity to downtown Sunol, an elementary school and the historic Willis Polk Water Temple. But Save Our Sunol lost a previous lawsuit challenging an environmental study of the project's impacts.

Backers of the plan included the San Francisco Public Utilities Commission, which calculated the quarry would generate millions in lease revenue and provide 16,000 acre-feet of water storage when mining was completed in 2035.

The San Francisco Board of Supervisors approved a 40-year lease for the property in November 2000. Although some members of the current board want the city to withdraw from the lease, Mission Valley Rock has warned it would seek millions in damages.