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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF PLACER

MEADOW VISTA PROTECTION,

Petitioner and Plaintiff,

v.

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

Respondents and Defendants.

Case No.: SCV 19614

Complaint Filed: 7/12/06

PLAINTIFF MEADOW VISTA
PROTECTION'S RESPONSE TO
DEFENDANT'S STATEMENT OF
UNDISPUTED FACTS

Date: 5/15/07

Time: 8:30 a.m.

Dept.: 4

Trial: 11/13/07

The Hon. Charles D. Wachob

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DEFENDANT’S UNDISPUTED
MATERIAL FACTS

- | | |
|---|--|
| 1. Since 1946, Chevreaux has acquired ownership of and/or leasehold interests in the following properties located in the City of Meadow Vista, County of Placer, State of California: | Immaterial. Defendant’s ownership of land and/or leasehold interests is not material to the lapse issue raised in the MSA. |
| APN 71-020-001 | |
| APN 72-010-039 | |
| APN 72-020-013 | |
| APN 72-020-014 | |
| APN 72-030-001 | |
| APN 72-030-008 | |
| APN 74-250-001 | |
| APN 74-250-002 | |
| APN 74-250-008 | |
| APN 74-250-010 | |
| APN 74-250-017 | |
| APN 74-250-018 | |
| APN 74-250-019 | |
| APN 74-260-002 | |
| APN 74-260-003 | |
| APN 74-260-004 | |
| [hereinafter referred to collectively as the “Property.”] | |
| 2. In 1946, Chevreaux commenced its surface mining operations on the Property and has continuously conducted surface mining operations on the Property since that time. | Immaterial. The dates of surface mining operations are not material to the lapse issue raised in the MSA. The material issue is the lapse in asphalt plant operations from 1995 to |

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- 2001, and from 2002 to the present.
3. In 1963, Placer County established its first comprehensive zoning with designated land uses consistent with Chevreaux’s historic surface mining operation.
- The 1963 Zoning Code included Recreation & Forestry or RF District, applicable to Chevreaux’s operations which states: “development and processing of natural resources including mines, quarries, . . ., rock crushers, paving and concrete batch plants” and Industrial or M District, which included quarry, **bitumen paving plant**, and concrete plants. §8.0651.
- The Code also stated that “Accessory uses . . . in any district may be permitted where such uses . . . are incidental to and do not alter the character of the premises in respect to their use for purposes permitted in the District.” 1963 Zoning Code version dated March 1964 (§9.012).
4. In 1965 Placer County adopted a General Plan which stated that mining has continued and remains a major contribution to the County’s economy and shows a photo of the Chevreaux surface mining operations.
5. In 1965, Placer County adopted a new Zoning Ordinance. The 1965 Zoning Code included Recreation & Forestry or RF District, applicable to Chevreaux’s operations which states: “development and processing of natural resources including mines, quarries, . . ., rock crushers, paving and concrete batch plants” and Industrial or M District, which included quarry, **bitumen paving plant**, and concrete plants. §8.0651.
- The Code also stated that “Accessory uses . . . in any district may be permitted where such uses . . . are incidental to and do not alter the character of the premises in respect to their use for purposes permitted in the District.” (§9.012).
6. In 1965 Edward Pruss obtained a land development permit for quarry operations adjacent to
- Immaterial. The dates of surface mining operations and zoning code designations are not material to the lapse issue raised in the MSA. The material issue is the lapse in asphalt plant operations from 1995 to 2001, and from 2002 to the present.
- Immaterial. The dates of surface mining operations are not material to the lapse issue raised in the MSA.
- Immaterial. The dates of surface mining operations and historical zoning code designations are not material to the lapse issue raised in the MSA. The material issue is the lapse in asphalt plant operations from 1995 to 2001, and from 2002 to the present.
- Immaterial. The issue in the MSA is lapse of asphalt plant operations, not

- 1 Chevreaux's property. quarry operations.
- 2 7. In 1968, Placer County adopted a new Zoning Immaterial. The dates of surface
3 Ordinance. mining operations and historical
4 zoning code designations are not
5 The 1968 Zoning Code included Recreation & material to the lapse issue raised in
6 Forestry or RF District, applicable to Chevreaux's the MSA. The material issue is the
7 operations which states: "development and lapse in asphalt plant operations from
8 processing of natural resources including mines, 1995 to 2001, and from 2002 to the
9 quarries, . . . , rock crushers, paving and concrete present.
10 batch plants" and Industrial or M District, which
11 included quarry, **bitumen paving plant**, and
12 concrete plants. §8.0651.
- 9 The Code also stated that "Accessory uses ... in any
10 district may be permitted where such uses ... are
11 incidental to and do not alter the character of the
12 premises in respect to their use for purposes
13 permitted in the District." (§9.012).
- 14 8. In 1971, Chevreaux purchased the Pruss property Immaterial. The issue in the MSA is
15 and leased the ARP property and has conducted its lapse of asphalt plant operations, not
16 surface mining operations on said property since surface mining operations.
17 that time.
- 18 9. In 1971, Chevreaux obtained Permit LDA-691 for Immaterial. There is no triable issue
19 an asphalt plant on the Property. of fact regarding the date on which
20 Defendant obtained LDA-691, nor is
21 the date material to the lapse issue set
22 forth in the MSA.
- 23 10. In 1972, Chevreaux obtained Permit LDA-786 in Immaterial. There is no triable issue
24 order to relocate the asphalt plant 600' from the of fact regarding the date on which
25 location permitted in LDA-691, to the property Defendant obtained LDA-786, nor is
26 covered under LDA-1030. the date material to the lapse issue set
27 forth in the MSA.
- 28 11. In 1972, Chevreaux obtained a Permit to Operate an Immaterial. The issue is lapse of
Asphalt Plant (Fresno Paving). asphalt plant operations from 1995-
2001 and from 2002 to the present.
12. In 1975, the California Legislature passed Public Immaterial and objectionable. This is
Resources Code §§ 2710 et seq. [SMARA] with the not a "fact," but rather a SMARA
express intent to provide for the protection of mined code provision. Also objectionable in
lands and permit the continued mining of minerals. that the quotation is incomplete,
SMARA § 2711(b). Under SMARA, "[n]o person leaving out the crucial "continuous"
who has obtained a vested right to conduct surface language. Also immaterial in that
mining operations prior to January 1, 1976, shall be nothing in SMARA encompasses

- 1 required to secure a permit”, and “[a] person shall
2 **be deemed to have vested rights if, prior to**
3 **January 1, 1976, the person has, in good faith and**
4 **in reliance upon a permit or other authorization, if**
5 **the permit or other authorization was required,**
6 **diligently commenced surface mining operations .**
7 **...**” [emphasis added] SMARA §2776(a). Under
8 SMARA, a reclamation plan was required to apply
9 to mining operations to be conducted after January
10 1, 1976. SMARA §2776(b).
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13. In 1976, Placer County incorporated SMARA into Chapter 30 of the Placer County Code of 1967. Immaterial. See Response No. 12, *supra*.
14. In 1983, the California Department of Conservation, Division of Mines and Geology, under the authority of SMARA [§ 2761(b)] and at the direction of the State Mining and Geology Board, made a finding that significant high quality aggregate resources (quality, suitability, and threshold value) existed in the Chevreux properties to warrant a Mineral Resource Zone-2 (MRZ-2) classification. Immaterial. The issue is lapse of asphalt plant operations from 1995-2001 and from 2002 to the present.
15. In June, 1983, Placer County was notified of the Classification of the Joe Chevreux Company Deposit as MRZ-2 pursuant to SMARA in a letter addressing the land-use threat of continued residential growth along the boundaries of the Chevreux mineral properties. Section 2762 of SMARA required the County to establish mineral resource management policies in its General Plan that: (1) recognize the mineral lands classification information; and (2) emphasize the conservation and development of identified mineral resources. Immaterial. The issue is lapse of asphalt plant operations from 1995-2001 and from 2002 to the present.
16. In 1983/1984, Placer County adopted a series of Emergency Ordinances to establish interim zoning to review uses of land which may conflict with quarry operations. Immaterial. The issue is lapse of asphalt plant operations from 1995-2001 and from 2002 to the present.
17. In April 1984, Placer County adopted an Ordinance amending the Placer County Zoning Code to add a Mineral (-MR) combining zone district which included the existing land being mined, as well as other property owned or leased by CHEVREUX in the vicinity. Immaterial. The issue is lapse of asphalt plant operations from 1995-2001 and from 2002 to the present.

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18. In 1984, the Placer County Mineral Resource Conservation Plan (an element of the General Plan), Final E.I.R. was adopted, and the section titled Mining Operations Inventory states that CHEVREAUX's mining operations include quarrying, processing, and asphalt concrete and permits LDA-786, LDA-691, LD-1030. (§1654.2)
19. In 1986, Placer County adopted the Chevreaux Reclamation Plan prepared and submitted pursuant to SMARA by CHEVREAUX encompassing its entire holdings, both owned and leased.
20. In 1987, Nevada County adopted the Chevreaux Reclamation Plan prepared and submitted pursuant to SMARA by CHEVREAUX encompassing its entire holdings, both owned and leased.
21. In 1990, Placer County adopted a new Zoning Ordinance.
- The 1990 Zoning Code included Recreation & Forestry or RF District, applicable to Chevreaux's operations which states: "development and processing of natural resources including mines, quarries, . . . , rock crushers, paving and concrete batch plants" and Industrial or M District, which included quarry, **bitumen paving plant**, and concrete plants. §1650.2.
- The Code also stated that "Accessory uses ... in any district may be permitted where such uses ... are incidental to and do not alter the character of the premises in respect to their use for purposes permitted in the District." (§1700(b)).
22. In 1994, Chevreaux obtained a permit to add a portable concrete batch plant to the existing surfacing mining operations.
23. In 1995, Placer County adopted a new Zoning Ordinance, which included the Lapse provision, but also states that the requirements of the new ordinance are not retroactive in their effect on a use of land that was lawfully established before the new ordinance or any applicable amendment became
- Immaterial. Exhibit B-52, "Mining Operations Inventory," merely sets forth Defendant's various CUPs, including LDA-786. Also immaterial in that the issue is lapse of asphalt plant operations, an issue which is not addressed in Defendant's Exhibit B-51 or B-52.
- Immaterial. The issue is lapse of asphalt plant operations from 1995-2001 and from 2002 to the present.
- Immaterial. The issue is lapse of asphalt plant operations from 1995-2001 and from 2002 to the present.
- Immaterial. The dates of surface mining operations and zoning code designations are not material to the lapse issue raised in the MSA. The material issue is the lapse in asphalt plant operations from 1995 to 2001, and from 2002 to the present.
- Immaterial. The issue is lapse of asphalt plant operations, not portable concrete batch plant operations.
- Objectionable and immaterial. Defendant misstates §17.02.030 of the Placer County Zoning Ordinance. This section also carves out an exception for operations which have lapsed, and which are presumed

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effective, except where an alteration, expansion, or modification to an existing use is proposed.
§17.02.030

abandoned. Also immaterial, as even if it is assumed that Defendant has vested rights (which it does not), these rights can lapse from nonuse. (See MVP’s Reply Brief at Section VI.C.)

24. In 1996, Placer County adopted the Meadow Vista Community Plan, Final and Draft Environmental Impact Report which includes the Chevreaux surface mining operations, including asphalt.

Immaterial. The issue is lapse of asphalt plant operations from 1995-2001 and from 2002 to the present.

25. In 2001, APCD issued a Permit to Operate an asphalt plant on the Property (Kiewitt [sic] Pacific)

Immaterial. The APCD does not have jurisdiction to determine whether an underlying CUP has lapsed; thus issuance of an APCD permit is not determinative of the issue of lapse. Moreover, APCD staff testified at deposition that the validity of LDA-786 was not confirmed before the 2004 permit was issued. (Deposition of Don Duffy pp. 88:17-24 and 156:8 – 159:11, Exhibit 4 to Declaration of Timothy V. Kassouni (Kassouni Declaration) filed concurrently herewith. See Response No. 31, *infra*.)

26. In 2004, APCD issued a Permit to Operate an asphalt plant on the Property (Chevreaux)

Immaterial. The APCD does not have jurisdiction to determine whether an underlying CUP has lapsed; thus issuance of an APCD permit is not determinative of the issue of lapse. Moreover, APCD staff testified at deposition that the validity of LDA-786 was not confirmed before the 2004 permit was issued. (See Deposition of Don Duffy, *supra*, Exhibit 4 to Kassouni Declaration.) See Response to No 31, *infra*.

27. The County has issued numerous opinions, authored correspondence and made oral statements at public meetings confirming the validity of Chevreaux’s

Immaterial. This issue is lapse of asphalt plant operations, not historic surface mining operations. Moreover, the *Markey* case¹ held that an

¹ A copy of *Markey v. Danville Warehouse & Lumber, Inc.* (1953) 119 Cal.App.2d 1 is attached as Exhibit 1 to MVP’s separately filed memorandum of points and authorities.

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historic surface mining operations and permits.

administrative land use decision which contravenes a local zoning ordinance is of no effect, and does not create a vested right in the permit holder. (See also MVP's separately filed Points and Authorities at Section III.B.)

28. Nevada County, California Division of Mines and Geology; Central Valley Regional Water Quality Control Board, and the Legislative Analyst for the California Legislature have all confirmed the validity of Chevreaux's historic surface mining operations.

Immaterial. This issue is lapse of asphalt plant operations, not historic surface mining operations. Moreover, the *Markey* case held that an administrative land use decision which contravenes a local zoning ordinance is of no effect, and does not create a vested right in the permit holder. (See MVP's separately filed Points and Authorities at Section III.B.)

29. Chevreaux's surface mining operations are continuous, seasonal and intermittent in nature.

Immaterial. This issue is lapse of asphalt plant operations, not historic surface mining operations.

30. Chevreaux produced asphalt intermittently between 1947 to the present.

Immaterial. The issue is lapse of asphalt plant operations from 1995-2001 and from 2002 to the present.

31. APCD continued to issue yearly renewals of Authority to Construct/Permits to Operate for Chevreaux's surface mining operations upon receiving verbal confirmation from Planning as to the Land Use Permit validity.

Immaterial. APCD does not determine validity or lapse of LDA-786. Also immaterial in that the *Markey* case held that an administrative land use decision which contravenes a local zoning ordinance is of no effect, and does not create a vested right in the permit holder. (See also MVP's Reply Brief at Section III.)

Moreover, Defendant asserted in its Opposition at pp. 10:23-11:15 that Don Duffy, John Finnell and Tom Christofk (all of whom are officials with the Placer County APCD), testified that the APCD confirms the validity of the underlying use permit prior to issuing an Authority to Construct/Temporary Permit to

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Operate for a piece of equipment such as an asphalt plant. This is not an accurate representation of these witnesses' testimony. Both John Finnell and Tom Christofk testified that this confirmation is the responsibility of the engineer working on the permit application who, in Defendant's case, is Don Duffy. (See Christofk Deposition at p.33:2-24 (Exhibit 2 to Kassouni Declaration); Finnell Deposition at pp. 14:17-15:3; 91:18-92:24 (Exhibit 3 to Kassouni Declaration).) Neither Christofk nor Finnell personally obtained confirmation of LDA-786 prior to the issuance of Defendant's Authority to Construct/Temporary Permit to Operate in 2004, because Don Duffy was the responsible engineer. In turn, Don Duffy testified that he did *not* confirm the underlying permit's validity before issuing the 2004 permit to Defendant. (See Duffy Deposition at pp. 88:17-24; 156:8-159:11 (Exhibit 4 to Kassouni Declaration).) In light of this testimony, Defendant's assertion that the APCD issued the 2004 permit "after receiving confirmation from the Planning Department that [its permit] was still valid" (Opp. at p. 7:23-26) is obviously false.

- 32. Land Use Permits and APCD Permits do not expire, even if the expiration date has come and gone, unless action to revoke is taken by the agency.

- 33. APCD and its predecessors issued Permits to Operate the asphalt plant no matter the length of

Immaterial. The issue is lapse of asphalt plant operations from 1995-2001 and from 2002 to the present. Also, the Placer County Code provides that permits do expire without official action. (See Placer County Code §17.58.160(B), attached to MVP's separately filed Points and Authorities as Exhibit 6.)

Immaterial. APCD does not determine validity or lapse of LDA-

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time that had elapsed between use/production or the last permit issuance.

786. Also immaterial in that the *Markey* case held that an administrative land use decision which contravenes a local zoning ordinance is of no effect, and does not create a vested right in the permit holder. See also Response No. 31, *supra*.

34. Placer County confirmed that LDA-786 was still valid no matter the length of time that had elapsed between use/production.

Immaterial. The cited evidence predates the adoption of the lapse ordinance in 1995. Also immaterial in that the *Markey* case held that an administrative land use decision which contravenes a local zoning ordinance is of no effect, and does not create a vested right in the permit holder. (See also MVP's Reply Brief at Section III.)

35. Chevreaux has expended substantial sums of money in support of its surface mining operations in reliance on the County's authorization and permits.

Immaterial. This issue is lapse of asphalt plant operations, not historic surface mining operations. Also immaterial in that a vested right can nevertheless lapse. Moreover, a permit holder cannot have a vested right in an administrative decision which is contrary to local ordinances under *Markey*.

36. Neither MVP nor anyone else appealed the approvals of LD-1030 [approved 1965], LDA-786 [approved 1972], or CUP-853 [approved in 1986 after a series of lengthy public hearings], although notice of these permits were provided to the public and the board members of MVP uniformly acknowledged living in Meadow Vista at the time Permits LDA-786 and CUP-853 were issued:

Immaterial. The issue in the MSA is lapse of asphalt plant operations from 1995 – 2001 and 2002 to the present. MVP does not contend that the referenced CUPs were invalid when issued.

Linda Lodwig has lived in Meadow Vista since 1974.

Stewart Feldman moved to Meadow Vista in 1977.

John Blodger moved to Meadow Vista in 1967.

James Schreiber has lived in his Meadow Vista home for almost 30 years.

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37. Neither MVP nor anyone else filed a lawsuit to invalidate the Kiewitt [sic] Pacific Asphalt plant Permit to Operate when it was issued in 2001, although all but one board member of MVP lived in Meadow Vista as of 2001:

Linda Ludwig has lived in Meadow Vista since 1974.

Dan Foreman purchased his property in Meadow Vista in 1995.

Stewart Feldman moved to Meadow Vista in 1977.

John Blodger moved to Meadow Vista in 1967.

James Schreiber has lived in his Meadow Vista home for almost 30 years.

Cheryl Berg purchased her home in Meadow Vista in 1999.

38. MVP admits that “the County has taken no action to investigate Chevreaux’s use permits or enforce the conditions of those permits.”

Immaterial. The MSA does not seek a ruling that Kiewit Pacific’s permit was invalid when issued.

Immaterial and conflicts with Defendant’s alleged Undisputed Material Fact Nos. 33 and 34, *supra*.

DATED: May 10, 2007.

Respectfully submitted,

RONALD A. ZUMBRUN
TIMOTHY V. KASSOUNI
ANGELA C. THOMPSON
THE ZUMBRUN LAW FIRM

By _____
TIMOTHY V. KASSOUNI
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