

**State of Vermont
Superior Court – Environmental Division**

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ENTRY REGARDING MOTION

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**In re Chaves Londonderry Gravel Pit
(Appeal of Act 250 District 2 Environmental Commission Decision)**

Docket No. 60-4-11 Vtec

Title: Motion to Postpone Trial Pending the Termination of the Hurricane Irene Emergency Quarry Exemption (Filing No. 3)

Filed: October 11, 2011

Filed By: David Grayck, Attorney for Cross-Appellants Riverside Farm and Thomas Ettinger

Response in agreement filed on 10/20/11 by Hans Huessy, Attorney for Interested Persons Kraig Hart and Doreena Hart

Response in opposition filed on 10/24/11 by C. Daniel Hershenson, Attorney for Appellants Chaves Londonderry Gravel Pit and David Chaves

Granted

Denied

Other

Chaves Londonderry Gravel Pit, LLC and David Chaves (“Appellants”) appeal the District 2 Environmental Commission’s (“the Commission”) March 4, 2011 Findings of Fact and Conclusions of Law concerning an Act 250 permit they obtained, subject to certain conditions, for the operation of a pre-existing quarry in Londonderry, Vermont. They also appeal the Commission’s April 11, 2011 Memorandum of Decision on Appellants’ Motion to Alter. Thomas Ettinger, individually and as a representative of Riverside Farm (“Cross-Appellants”), cross-appeals.

Cross-Appellants have now filed a motion to postpone trial pending the termination of the Hurricane Irene Emergency Quarry Exemption (“the Exemption”) issued by the Vermont Natural Resources Board (“NRB”). In order to ensure that material was available for road and infrastructure repair post-Irene, the Exemption suspended enforcement of extraction limits, allowing for the reopening of closed rock quarries and gravel pits and consenting to unpermitted extraction.

Cross-Appellants argue that during the exemption period, while Appellants’ quarry is meeting the emergency needs of the state, material facts will change and trial would needlessly waste client and judicial resources. However, the NRB has now terminated the Exemption, stating that as of November 15, 2011, all gravel and rock quarries must come into full compliance with Act 250 permitting requirements. See Natural Resources Board Updated Post-Irene Emergency Protocol: Gravel and Rock Fill, available at www.nrb.state.vt.us/lup.

Accordingly, as of November 15, 2011, Appellants’ quarry will no longer be working under the Exemption to meet Vermont’s emergency needs. Thus, the premises upon which

Cross-Appellants' motion is based are moot. We therefore **DENY** the motion to postpone trial pending the termination of the Exemption.

Thomas S. Durkin, Judge

November 3, 2011
Date

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Date copies sent to: _____

Clerk's Initials _____

Copies sent to:

- C. Daniel Hershenson, Attorney for Appellants Chaves Londonderry Gravel Pit and David Chaves
- David Grayck, Attorney for Cross-Appellants Riverside Farm and Thomas Ettinger
- Hans Huessy, Attorney for Interested Persons Kraig Hart and Doreena Hart
- Cross-Appellant Nancy Kemper
- Interested Person Angelique Jarvis
- Interested Person David A. Jarvis
- Interested Person David M. Rathburn
- For Informational Purposes Only Vermont Natural Resources Board/Land Use Panel
- For Informational Purposes Only Agency of Natural Resources