



Reasons for Decision of the Minister

IN THE MATTER OF AN APPLICATION TO DESIGNATE THE
BAMBERTON PROJECTS AS REVIEWABLE UNDER THE
ENVIRONMENTAL ASSESSMENT ACT (2018) BY THE SAANICH INLET
PROTECTION SOCIETY

JUNE 27, 2023



1.0 CONTEXT

I considered the application (the Application) from the Saanich Inlet Protection Society (the Applicant), a local non-government organization, requesting that a regional assessment be conducted under Section 35 of the [Environmental Assessment Act](#) (2018) (the Act) for the Bamberton Projects, located near Mill Bay, British Columbia (B.C.) and proposed by Malahat Investment Corporation and Malahat Nation (the Proponents). The Environmental Assessment Office (EAO) interpreted that the Applicant was requesting that the Bamberton Projects be designated as a reviewable project under Section 11 of the Act. This document outlines the reasons for my decision.

The Bamberton Projects, as described in the Application, included:

- 1) A proposed expansion of the existing Bamberton rock quarry for construction aggregates;
- 2) Renewal of the foreshore lease on Saanich Inlet; and
- 3) Soil storage at the Trowsse Road clean fill site.

On November 24, 2022, the Applicant clarified that they were also requesting the following activities be designated as reviewable:

- Proposed and anticipated future expansion of rock quarry activities;
- Storage of hydrocarbons in existing tanks on the foreshore;
- Barge and vessel maintenance and moorage of vessels associated with upland activities; and
- Barging, storage, and thermal desorption of contaminated soil.

Based on the information provided, I understand the Bamberton Projects proposed by the Proponents include:

- Expansion of the existing Bamberton quarry via amendment to *Mines Act* Permit Q-8-24, resulting in the maximum production volume increasing from 249,000 tonnes per year to 479,000 tonnes per year and an increase in disturbance area from 39.3 hectares (ha) to 45.7 ha, or approximately 16 percent of the current authorized disturbance area, which is below the Reviewable Projects Regulation disturbance criteria (50%) for the modification of an existing quarry.
- A proposed renewal of a foreshore lease under the *Land Act* for a term of 30 years, which would extend the lease area from 4.80 ha to 15.46 ha, an increase of 10.66 ha. The lease renewal does not result in any new foreshore or submerged land disturbances and does not authorize any new activities. Although the original lease term has expired, the Proponents continue to lawfully operate under the lease on a month-by-month basis.
- The Trowsse Road clean fill site, which has been accepting soil deposits for storage in accordance with a permit issued by the Cowichan Valley Regional District in 2020.

I recognize the unique importance of the Saanich Inlet for its recreational, economic, spiritual, and cultural value to nearby communities, residents, and First Nations. In making my decision, I considered the EAO's report entitled "Evaluation of an Application to Designate the Bamberton Projects as Reviewable under the Environmental Assessment Act (2018)" (the EAO's Report), and supporting materials, which are posted to the EAO's Project Information Centre website, linked here: <https://projects.eao.gov.bc.ca/p/63654a5d99a2870022a0621b/documents>. The supporting materials include the Application, submissions from the Applicant, Proponents, First Nations, government agencies, local governments, and the public.

2.0 NATURE AND SCOPE OF THE DECISION

Section 11 of the Act gives the Minister the power to designate an ‘eligible project’ as a reviewable project. Eligibility refers to a project that is not substantially started and is not reviewable under the Reviewable Projects Regulation (RPR).

In deciding on a Designation Application for an eligible project, the Minister must consider:

- a) Whether the applicant is an Indigenous nation;
- b) Whether the eligible project could have effects on Indigenous nations and the rights recognized and affirmed by Section 35 of the *Constitution Act, 1982*;
- c) Whether the potential effects of the eligible project would be equivalent to or greater than potential effects of a project in the prescribed category of the RPR; and
- d) Whether an assessment of the eligible project is consistent with the purposes of the EAO, as set out in Section 2 of the Act.

If the Minister declines to make a designation, reasons for that decision must be provided to the Applicant. A decision to decline to designate a project as reviewable does not authorize the project to proceed as it would remain subject to permitting or authorizations processes appropriate for the type of project or activity.

To facilitate engagement with participants in the designation request review process, I extended the timelines for a decision beyond the 30-day application review period time limit under Section 38 of the Act, recognizing that it would take more time for participants to review the materials.

3.0 REVIEW PROCESS

The designation request was reviewed by the EAO which engaged and consulted with First Nations, local governments, the Proponent, provincial agencies, and federal authorities as outlined in Section 4.0 of the EAO’s Report.

To facilitate public involvement in this review, the EAO also held a public comment period on its draft report from January 17 to February 21, 2023, and held a public virtual information session on February 2, 2023. I recognize that the extent of public engagement led by the EAO for this process was beyond what is typically done for designation requests, but I do think it was appropriate given the level of public interest on the Project and the designation application. I am confident that adequate public engagement occurred to inform the EAO’s evaluation and have reviewed a summary of public comments received in Section 7.6 of the EAO’s report.

4.0 KEY CONSIDERATIONS

4.1. If the Project is an Eligible Project

To consider if the Bamberton Projects, including related activities, can be designated as a reviewable project I must first consider if the Bamberton Projects are eligible projects for the purpose of Section 11 of the Act. Section 11(1) of the Act defines an “eligible project” as project that is not substantially started and is not a reviewable project under a regulation under the RPR.

I agree with the conclusion in the EAO’s report that the proposed Bamberton quarry expansion is an eligible project for consideration under Section 11 of the Act. As outlined in the EAO’s report, the proposed quarry expansion has not substantially started and would not require an assessment under the RPR. I also agree that the activities associated with the renewal of the foreshore lease and the Trowsse Road clean fill site have been substantially started and are not eligible for designation. Furthermore, with two of the three project components in operation, had I considered all the Bamberton projects to be one project, it would not have been an eligible project. Therefore, I agree with the EAO that the Bamberton quarry expansion is the only eligible project which has been proposed for designation.

4.2. Section 11(4) Factors

With respect to the matters relevant to my decision, I have considered the EAO's analysis of the factors set out in Section 11(4) of the Act.

Section 11(4)(a)

I agree with the conclusion in the EAO's report that the Applicant is not a First Nation. I recognize that while not applicants, the Tsartlip First Nation and Tsawout First Nation support designation of the Bamberton Projects, and that one of the Proponents is Malahat Nation, which is a First nation.

Section 11(4)(b)

I agree with the conclusion in the EAO's report that the Bamberton quarry expansion could have effects on First Nations and their rights recognized and affirmed by Section 35 of the *Constitution Act, 1982*. I recognize that the Bamberton Projects are within the core territory of Malahat Nation who has described that the Bamberton quarry expansion would have positive effects on their rights, including Douglas Treaty Rights, and title.

I also recognize that Tsartlip First Nation and Tsawout First Nation have indicated that the Bamberton quarry expansion would have adverse impacts on their Douglas Treaty Rights, including the right to carry on fisheries as formerly in their traditional territories. Tsartlip First Nation and Tsawout First Nation have noted that their Douglas Treaty rights to fish have been impacted by increased traffic of larger vessels, pollution to water ways, and impacts to fish and fish habitat.

Section 11(4)(c)

During the designation application review process for the Bamberton Projects conducted by the EAO, the Applicant, First Nations and other participants raised two key concerns: the potential effects (including cumulative effects) on the Saanich Inlet and the need for additional public engagement during the regulatory review process. The Tsartlip and Tsawout First Nations also raised concerns about cumulative effects and the potential impacts on their Douglas Treaty Rights.

I acknowledge that the EAO concluded that it is unlikely that the Bamberton quarry expansion would result in potential cumulative effects on the Saanich Inlet after considering proposed mitigation measures by the proponent and those that are or will be required by permit conditions together with required best management practices. I also recognize that there are unique environmental attributes of the Saanich Inlet as well as previously determined concerns regarding cumulative effects (identified in a Ministry of Environment review of the area in the Saanich Inlet Study conducted in 1996).

During my deliberations, I initiated discussions with the EAO, the Ministry of Energy, Mines, and Low Carbon Innovation (EMLI), the Ministry of Water, Land and Resource Stewardship (WLRS) and the respective Ministers to determine the best means to address cumulative effects and other concerns raised by the applicant and First Nations. As a result of these discussions, I understand that the province will enhance the *Mines Act* permit amendment review process as well as develop and implement a cumulative effects analysis in partnership with First Nations. These two measures will substantially enhance the existing regulatory process for the proposed quarry expansion that has been underway since 2019 under the *Mines Act* in response to the specific concerns expressed during the EAO review. These measures include:

- WLRS, as the lead ministry, will work with potentially impacted First Nations to develop and complete a collaborative cumulative effects analysis within the Saanich Inlet, which will run parallel to, but independently of, the *Mines Act* permit amendment process. WLRS may rely upon advice from the EAO regarding the scope, objectives and methods of the cumulative effects analysis and will work together with other participants including potentially impacted First Nations;

- The results of the cumulative effects analysis will not be completed concurrently with the *Mines Act* permit amendment process currently underway but, if relevant, the results of the analysis will inform future proposed authorizations or permit amendments in the area once results are available;
- The scope and approach for this analysis will need to be defined in partnership with First Nations and will require additional funding for First Nations to fully participate in this process;
- Consultation by EMLI with the EAO during the *Mines Act* permit amendment review and condition development to ensure the issues raised during the EAO's designation request review process are considered through permitting as appropriate;
- Technical review by EMLI geotechnical, reclamation and geoscience specialists to assess the ability to mitigate potential effects of the quarry expansion prior to the decision on the amendment;
- Enhanced public access to information, materials and progress milestones regarding the *Mines Act* permit amendment process and considerations in addition to an additional public comment period to allow public input and feedback on the *Mines Act* permit amendment prior to the decision on the amendment;
- Additional engagement with all potentially affected First Nations to consider and mitigate potential impacts of the quarry expansion on Indigenous rights and title, including Douglas Treaty rights; and
- Referral of the *Mines Act* permit decision to a senior statutory decision-maker.

I also understand the following issues identified by the Applicant, First Nations, and the public will be considered as part of the *Mines Act* permit amendment process, including development of mitigation measures:

- Potential impacts from the proposed Bamberton Quarry expansion on rights recognized and affirmed by Section 35 of the *Constitution Act, 1982* - including Douglas Treaty Rights;
- Potential effects to water quality from quarry operations, including potential adverse effects to the Saanich Inlet and key species such as salmon;
- Dust, noise and vibrations relating to blasting;
- Visual quality;
- Slope stability and geotechnical risks;
- Reclamation requirements;
- Potential effects of accidents or malfunctions; and
- Views of YOS (Malahat Mountain).

Finally, if the EMLI statutory decision maker amends the *Mines Act* permit to authorize the quarry expansion, I am recommending that:

- An Environmental Review Committee, or equivalent, be established by permit condition that could consist of representatives from the proponent, First Nations, local government, and provincial regulators;
- The Environmental Review Committee meet at least annually to review environmental monitoring results and *Mines Act* permit conditions to evaluate mitigation effectiveness against the results of the cumulative effects analysis;
- Following the conclusion of the cumulative effects analysis, the committee should also consider if additional measures by the proponent are necessary to mitigate cumulative effects and, if so, make recommendation to the Chief Permitting Officer as to whether further amendment or additional conditions to the *Mines Act* permit are required; and

- Establish requirements for public reporting regarding environmental monitoring and potential for cumulative effects impacts of the project to the Saanich Inlet, if any are found.

Although the foreshore lease renewal and associated activities were determined to not be eligible for designation by the EAO, I understand that the Ministry of Forests (FOR) is currently reviewing an application to renew the foreshore lease. I recommend that FOR consult with the EAO during the foreshore lease extension review process to ensure that all relevant issues, concerns, and information gathered during the EAO's designation request review process are shared and considered in FOR's authorization process.

I acknowledge, that the EAO report concluded that the potential effects of the Bamberton Projects would: not be equivalent to or greater than the potential effects of a project in the prescribed category of the RPR; not likely result in significant adverse effects, including cumulative effects; and likely be within the range of effects that are currently caused by the quarry that EMLI would consider in their *Mines Act* permit review process. However, I am of the view that the concerns raised in the designation request warrant further investigation which will be accomplished by an enhanced *Mines Act* permit amendment process and cumulative effects analysis such as the one proposed through my collaborative discussions with EAO, EMLI and WLRS.

Section 11(4)(d)

I understand the conclusion in the EAO's report with respect to whether designating the project as reviewable would promote sustainability by protecting the environment and fostering a sound economy and the well-being of British Columbians and their communities. Declining to designate the Bamberton Quarry expansion may support fostering a sound economy. Other regulatory frameworks, such as the enhanced mine permitting process and cumulative effects analysis, can ensure the environment, including the long-term health of the Saanich Inlet, are protected. The intention of environmental assessment is to capture major projects with the greatest effects without duplicating other regulatory processes.

The EAO's conclusion is that environmental effects related to the Bamberton Projects are within the normal range of effects to be considered through the permitting processes of other regulatory frameworks. Due to the sensitive nature of the Saanich Inlet (as noted in the Ministry of Environment review of the area in the Saanich Inlet Study conducted in 1996), and the significant public and First Nation concerns, the enhanced permitting and unique cumulative effects review processes will, in my view, be a fair, effective and reasonable way to ensure that this expansion receives rigorous review in all the areas of major concern that were put forward as reasons for the designation request.

I understand that the EAO was unable to conclude as to whether designating the Bamberton Projects as reviewable would support reconciliation with Indigenous peoples in British Columbia. The EAO did not conclude designation would advance reconciliation due to the expressed interests of Tsartlip First Nation, Tsawout First Nation, and Malahat Nation. In my view, the enhanced permitting process described above will appropriately address the potential impacts on Aboriginal interests in the absence of an environmental assessment and would therefore be consistent with reconciliation.

4.3. Other Considerations

I have also considered these additional matters in making my decision:

- The potential effects of the proposed Bamberton quarry expansion on the Saanich Inlet;
- The potential adverse and positive effects of the project to users of the Saanich Inlet, and economic effects to residents and businesses on the Saanich Peninsula;
- Comments provided during the public comment period held by the EAO, and summarized in the EAO's report;
- The Bamberton Projects are subject to the Cowichan Valley Regional District's bylaw no. 4236;

- Materials, such as those being quarried, are increasingly important to housing developments and infrastructure projects on Vancouver Island and the Lower Mainland in light of the current housing crisis, and sourcing these as close to local as possible has both social and environmental advantages;
- Potential risks to the Saanich Inlet, and the marine environment, are being considered and mitigated through the permitting and authorization processes underway, which include strict requirements to ensure water quality standards are met and marine life is protected, and through ongoing initiatives (see Section 7.4.1 of the EAO's report); and
- That consultation with First Nations is required under the *Mines Act* amendment review process and *Land Act* authorization process.

Cumulative Effects

I have also considered concerns raised regarding cumulative effects to the environment and on the ability of Tsartlip First Nation and Tsawout First Nation to exercise their Douglas Treaty rights, which include the right to hunt on unoccupied land and fish as formerly. I understand that the *Mines Act* permit amendment decision maker will consider the 2016 Cumulative Effects Framework Interim Policy for the Natural Resource Sector¹ prior to the *Mines Act* permit amendment decision. To ensure consistency with this interim policy I understand that EMLI decision makers are encouraged to consider available cumulative effects-related information and analysis when making mining-related permitting decisions where: WLRS referrals staff, Indigenous groups, or proponents have identified that the decision could potentially affect the condition of one or more cumulative effects framework values; and the decision maker has adequate discretion to consider and address environmental effects as part of the decision.

Notwithstanding the EAO's conclusion that it is unlikely that the Bamberton quarry expansion would result in significant cumulative effects, I believe that an analysis of cumulative effects by WLRS in the Project area is warranted due to the unique and fragile ecosystems present and to collect information regarding existing conditions for comparison to any environmental monitoring results required that may be required by conditions of the amended *Mines Act* permit.

A cumulative effects analysis would need to be designed and implemented in full partnership with First Nations and would identify values to be analyzed, methods and scale of analysis, and a report of existing conditions in a manner that will be valuable to understanding the current state of the area and to inform future regulatory decisions for proposed activities and projects that may impact the area or Aboriginal rights exercised there. Such work should be undertaken in consultation with Indigenous nations, including Douglas Treaty Nations.

An Environmental Review Committee established via an enhanced *Mines Act* permit amendment process would have the ability to compare environmental monitoring data with the findings of the cumulative effects analysis. The Environmental Review Committee could in turn recommend further amendment of the the *Mines Act* permit, if necessary, to consider additional measures to mitigate cumulative effects of the Project to the Saanich Inlet, if any are observed by the committee.

In making my decision I have also considered broader public interest concerns. I recognize extensive public engagement that the EAO undertook during the review of the designation application and the concerns put forth by the public, its proposed expansion, and the potential impacts of it on the Saanich Inlet. While I support the EAO's conclusion that the existing regulatory framework can address most of the concerns raised by the public I hold the view that the *Mines Act* permit amendment enhancements and cumulative effects analysis led by WLRS are necessary to address all of the

¹ Province of British Columbia. 2016. *Cumulative Effects Framework Interim Policy for the Natural Resource Sector*. Available at: <https://www2.gov.bc.ca/gov/content?id=E87B0DFB546347D79283EB0997B01BF5>

concerns raised by the public and potentially impacted First Nations. I also believe that the above noted processes can effectively accomplish what the Applicant hoped to achieve through a designation of the project as reviewable.

5.0 CONCLUSION

Having considered the EAO's Report, the review process undertaken, the factors set out in Section 11 of the Act, as well as additional information and advice provided to me through the post-referral process, I find it appropriate to decline to designate the Bamberton Quarry Project as reviewable under the Act.

I am confident that the enhanced *Mines Act* permit amendment process together with the cumulative effects analysis to be undertaken by WLRS can sufficiently, fairly, effectively and expeditiously address the concerns raised regarding the Bamberton quarry expansion.



Honourable George Heyman
Minister of Environment and Climate Change Strategy

Signed this 27 day of June 2023