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April 27, 2015

Ministry of Energy, Mines and Natural Gas
PO Box 9395
STN PROV GOVT
VICTORIA BC V8W 9M9

via email: Eddy.Taje@gov.bc.ca

Attention: Ed Taje, Regional Manager, Mining Operations

Dear Mr. Taje:

**Re: SIA/CHH Encroachment and Damage to CVRD Property
(Lot 22, VIP 78459, Blocks 201 and 303, Malahat Land District)**

The Cowichan Valley Regional District (CVRD) requests immediate follow-up by the Ministry of Energy, Mines and Natural Gas (Ministry) to address outstanding issues related to encroachments and damage to the above noted property owned by the CVRD as well as to the five (5) metre buffer (the "buffer") on the western side of the property located at 640 Stebbings Road in Shawnigan Lake as a result of activities undertaken by South Island Aggregates (SIA) and Cobble Hill Holdings (CHH).

The Ministry, along with the Ministry of Environment, was formally advised by the CVRD by way of a letter dated April 22, 2014 (attached) with follow-up correspondence of the CVRD's concerns regarding various activities undertaken by SIA/CHH on the CVRD's property as well as within the buffer on SIA/CHH's property adjacent to the CVRD's property.

On August 1, 2014, the CVRD's solicitor wrote a letter to SIA/CHH's solicitor (attached) regarding the various activities and required a survey and geotechnical report to be provided by SIA/CHH. The Ministry was copied on this letter given the requirements in the mines permit issued by the Ministry in respect of SIA/CHH's property. The CVRD has received no response from SIA or CHH to the CVRD's August 1, 2014 letter and is therefore following up directly with the Ministry.

Despite your letters dated March 24, 2014 and April 1, 2014 indicating that the CVRD's property shall be returned to its normal pre-encroachment state at SIA/CHH's cost to the satisfaction of the CVRD, to date there has been no remediation of damage to the CVRD's property with the CVRD's consent. Furthermore, minimal remediation has been undertaken to the buffer between the mine and the CVRD's property which is required to be maintained under the mines permit for SIA/CHH's property. The CVRD is therefore greatly concerned that the issuance of any amendment to the mines permit regarding a contaminated soil facility without full and proper remediation of the CVRD's property and the buffer beforehand to the satisfaction of the CVRD will result in further damage and ongoing impacts to the CVRD's property.

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The following issues as previously conveyed to both the Ministry and SIA/CHH, remain outstanding and must be fully addressed to the satisfaction of the CVRD:

1. The lack of proper marking of a five (5) metre buffer has resulted in blasting and excavation of rock from the CVRD's property in at least two locations as well as within the buffer on SIA/CHH's property contrary to the mines permit. To date, the CVRD has not seen evidence of a survey as required by your letters to SIA/CHH to delineate the quarry footprint in its excavated location. Furthermore, the CVRD requires the survey to show the original and altered grade of SIA/CHH's property within the buffer and the CVRD's property within 20 metres from the property boundary. At the Environmental Appeal Board hearing regarding the Ministry of Environment's permit in relation to SIA/CHH's property, Mr. Miller, a blaster with Western Grater Contracting hired by SIA/CHH to undertake the blasting in and about the buffer indicated that they were instructed by SIA/CHH to blast within the buffer and that the intent was to lower the grade so that water in the quarry could drain off onto the CVRD's property.
2. Moreover, without the consent of the CVRD, the larger excavated area on the CVRD's property was backfilled. The CVRD is not satisfied with the work done. The CVRD expected such work to be completed based on a remediation plan prepared by a geotechnical engineer, and that such plan to be provided to the CVRD for review and approval before undertaking work to the CVRD's property. The CVRD is also concerned about the quality and condition of material used for backfilling. As previously requested, the CVRD requires a report to be completed by a geotechnical engineer confirming that the backfilling work done without approval on the CVRD's property and within the buffer is of the same structural stability and grade as its condition prior to SIA/CHH's activities and does not pose any risk to the CVRD's property. Furthermore, the geotechnical report must provide an estimation of the amount of rock removed from the CVRD's property. The CVRD requires compensation for the rock removed from the CVRD's property. In addition, a survey will be required confirming that the work (if acceptable to the CVRD) has been completed up to the metre buffer.
3. As previously expressed to the Ministry, construction of the water treatment plant settling pond berm and placement of the outlet pipes within the five (5) metre mines buffer area is of significant concern to the CVRD, as there does not remain in place appropriate emergency access for equipment to make in case of failure, unless such access is done through trespass on the CVRD's property. The entirety of the water treatment plant settling pond infrastructure needs to be removed from the five (5) metre perimeter buffer. Also, an updated geotechnical report is required confirming the berm and settlement pond is structurally stable, meets all necessary requirements and does not pose a risk to the CVRD's property given its necessary relocation after the original geotechnical report and assessment of the settlement pond were prepared. It is noted that Levelton

Consultants in their August 6, 2014 letter to SIA specifically indicate that the internal stability of the berm was not assessed by them.

4. The blasting of rock and the construction of a spillway on the CVRD's property in the location described in the EAB hearing as the ephemeral stream remains of great concern to the CVRD in that this area is to be used for the discharge of effluent from the proposed contaminated soil facility. Without accepting that any such ephemeral stream existed prior to SIA/CHH's activities, the CVRD does not consider the letter prepared by Levelton dated August 6, 2014 to be sufficient. Levelton did not, for example, address the structural stability of the work undertaken by SIA/CHH on the CVRD's property. Nor did Levelton base its letter on the fact that SIA/CHH significantly altered this area. The CVRD sought to undertake its own investigation with respect to the activities in and about this area but a survey prepared by SIA/CHH showing the original and altered grade is required before the issue can be addressed further. The CVRD ought not to have to undertake such a survey at its expense.
5. As previously expressed to the Ministry, the CVRD is concerned both about the source and quantity of the water flow and effects of siltation on the CVRD's property (which is already extensively evidenced to the west of the water treatment plant settling pond outlet pipes), given SIA's/CHH's active quarry immediately adjacent the settling pond. There is evidence that blasting appears to have occurred on SIA/CHH's property into the water table in violation of the mines permit and that the water is artificially being diverted onto the CVRD's property. It is the understanding of the CVRD that most, if not all aggregate operating permits in BC prohibit excavation within the water table. Further investigations in this regard should be undertaken by the Ministry and if this is the case, SIA/CHH should be required to cease excavating below the water table and to obtain and implement a remediation plan prepared by a geotechnical engineer to address the issue.
6. The land clearing and placement of rock materials on the CVRD's property and within the buffer still has not been properly restored to a condition acceptable to the CVRD. Hydroseeding done last year without the CVRD's approval is not considered proper restoration work. As previously requested, a restoration plan prepared by a qualified professional is required for review and approval by the CVRD prior to any work taking place on the CVRD's property. The impacted areas include CVRD lands to the west of the active quarry, to the west of the water treatment plant settling pond and the location where blast rock was dumped onto CVRD's lands. There also remains quarried rock in amongst the trees on CVRD's property beyond the 15 to 20 metre area that was cleared without permission on the CVRD's property to the west of the active quarry. Furthermore, a report prepared by a geotechnical engineer is required confirming that the rock piles that were placed on the CVRD's property or within the buffer have been

pulled back from the CVRD property and the buffer and are structurally stable and will not pose a risk to the CVRD's property.

7. The lack of any clearly defined boundary around SIA's/CHH's two properties involved with the quarry mine activities and proposed contaminated soil facility continue to be of great concern to the CVRD, given the apparent disregard of SIA/CHH to contain their works to their property. This disregard is not only evident along the western boundary of Lot 23 but is also evident along the western boundary of Lot 21 with significant sloughing of non-native material onto CVRD property from earlier soil dumping activities. The CVRD reiterates that SIA/CHH should be mandated to construct a permanent industrial grade fence along the boundary of the CVRD's property and SIA/CHH's two properties prior to the approval of any amendment to the mines permit regarding a contaminated soil facility to ensure SIA/CHH activities do not trespass onto the CVRD's property bordering their site in the future.

As an adjacent property owner that has been blatantly impacted by the mining activities of SIA/CHH, the CVRD remains disappointed by the lack of action on the part of SIA/CHH or the Ministry in addressing these outstanding issues. I request that you contact me to discuss the CVRD's concerns further at your earliest convenience.

Sincerely,



Brian Carruthers
Chief Administrative Officer

BC/ann

pc: D. Howe, Deputy Chief Inspector of Mines, Permitting
SIA/CHH
Sonia Furstenau, Director, Electoral Area B – Shawnigan Lake

Attachments

File ADMINISTRATOR/Correspondence/Ministries/to MEM SIA CHH Encroachment and Damage to CVRD Property April 27 2015

VIA EMAIL: alexander@coxtaylor.ca

August 1, 2014

L. John Alexander
Cox, Taylor
Barristers, Solicitors/Notaries
Third Floor - Burnes House
26 Bastion Square
Victoria, BC V8W 1H9

Dear Mr. Alexander:

**Re: 640 Stebbings Road, Shawnigan Lake (the "Property")
Our File No. 00005-0173**

As you are aware, we are the solicitors for the Cowichan Valley Regional District (the "CVRD") and write with respect to the above noted Property and the CVRD's adjacent property to the west. If you do not represent South Island Aggregates ("SIA") and Cobble Hill Holdings ("CHH") in respect of any of the below noted issues, please advise and we will correspond directly with SIA and CHH regarding such issues.

We write in follow up to the CVRD's letter dated April 22, 2014 to the Ministry of Energy and Mines and the Ministry of Environment (which your clients were copied) and the CVRD's letter dated May 7, 2014 to your clients with respect to recent activities undertaken on the CVRD's property as well as within the 5 m buffer on the western side of the Property adjacent to the CVRD's property (the "5 m buffer").

It is our understanding that under your clients' direction the following was undertaken without the proper authorizations:

1. Rock has been blasted and removed on the CVRD's property (as well as within the 5 m buffer) along the northeastern boundary as well as in and about the settlement pond resulting in the grade of the land being lowered and surface water and groundwater from the Property being artificially encountered and diverted onto the CVRD's property.
2. A portion of the settlement pond was constructed on the CVRD's property (as well as within the 5 m buffer).

3. A gravel and rock spillway has been constructed on the CVRD's property that extends more than 20 metres westward on the CVRD's property.
4. Several trees and vegetation have been cut and removed on the CVRD's property (as well as within the 5 m buffer).
5. Several rocks and boulders have been placed on the CVRD's property (as well as within the 5 m buffer).

The above noted activities were done on the CVRD's property without the CVRD's consent and constitute a trespass. Furthermore, several of the activities have resulted in an unsafe condition in and about the CVRD's property.

The CVRD did a further visit to the CVRD's property on July 31, 2014 and was surprised to discover that further work has been undertaken on the CVRD's property without the CVRD's consent and despite the CVRD's clear position in its letters that before SIA or CHH undertakes any further work to the CVRD's property the CVRD's express consent is required. In particular, rock that has been blasted on the CVRD property to the north of the settlement pond appears to have been backfilled without the CVRD's consent. The CVRD has not received any communication from SIA or CHH regarding the above noted activities except a letter from Mr. Block that was e-mailed to the CVRD on April 28, 2014. This continuing trespass and lack of appreciation for property boundaries is of great concern to the CVRD.

The CVRD hereby requires your clients to on or before August 15, 2014 provide a survey showing the extent of the excavation on the CVRD's property as well as the original grade of the Property within the 5 m buffer and the CVRD's property within 20 m from the property boundary. To date, the CVRD has not received a copy of a survey that meets the requirements set out in the letters of the Ministry of Energy and Mines. The Ministry of Energy and Mines required the survey to not only show the required quarry footprint but also the quarry footprint in its excavated location. In this regard, rock has been blasted to the north of the settlement pond as well as in and about the settlement pond.

The CVRD hereby further requires your clients to on or before August 15, 2014 provide a geotechnical report confirming that the backfill that has been placed on the CVRD's property and within the 5 m buffer is of the same structural stability and grade as its condition prior to the above noted activities up to the 5 m buffer. In addition, the geotechnical report is to provide an estimation of the amount of rock that has been removed from the CVRD's property. The CVRD will require compensation for the rock that was blasted on its property. In addition, the geotechnical report is to confirm that the rock piles that were placed on the CVRD's property or within the 5 m buffer in and about the settlement pond have been pulled back from the CVRD property and the 5 m buffer and are structurally stable such that they will not fail and release onto the CVRD's property.

Furthermore, the CVRD hereby requires your clients to restore the CVRD's property to its condition prior to all of the above noted activities. Given the circumstances of past unauthorized incursions and works on the CVRD's property by your clients, the CVRD is undertaking its own investigations with respect to several of the activities undertaken by your clients on the CVRD's property including the rock that was blasted in and about the settlement pond and the construction of the gravel and rock spillway and will seek the cost of any reports from your clients. Any reports will be provided to your clients to enable them to pursue the option of undertaking the remedial work under the supervision of the CVRD. Should your clients refuse to carry out any recommended remedial work, the CVRD will carry out the work and seek to recover the cost of such remedial work from your clients. Under no circumstances is further work to be undertaken to the CVRD's property without the CVRD's express consent.

Given the activities that have occurred on the CVRD's property without the CVRD's consent and the requirements in the permits issued by the Ministry of Energy and Mines and the Ministry of Environment in respect of the activities of SIA and CHH, we have copied this letter to the regulatory agencies having jurisdiction.

Please be advised that if your clients fail to comply with any of the time limits specified in this letter or fail to fully compensate the CVRD for its unlawful activities and restore the CVRD's property to its previous condition, the CVRD may pursue legal action against your clients.

Sincerely,

YOUNG ANDERSON



Alyssa Bradley

bradley@younganderson.ca

AB/adb

cc: Ed Taje, Ministry of Energy and Mines
Hubert Bunce, Ministry of Environment



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April 22, 2014

Ministry of Energy and Mines
Mining Division
PO Box 9395 Stn Prov Govt
VICTORIA BC V8W 9M9

Attention: Ed Taje, Regional Manager, Coast Area

Dear Ed Taje:

**Re: SIA/CHH Encroachment and Damage to CVRD Property
(Lot 22, VIP 78459, Blocks 201 and 303, Malahat Land District)**

The Cowichan Valley Regional District (CVRD) is of the understanding that South Island Aggregates (SIA) was formally notified by Mr. Taje in writing, by way of letters dated March 24, 2014, and April 1, 2014, that encroachments onto property owned by the CVRD shall be returned to its normal, pre-encroachment state at SIA's cost and that, at the very least, a five meter buffer is required between the mine and the property boundary (a copy of Mr. Taje's letters are attached). On April 11, 2014, representatives of the CVRD were provided a guided tour of the SIA/Cobble Hill Holdings' (CHH) site to assess the extent of encroachments onto CVRD property, inclusive of the location of the SIA/CHH excavator rollover onto CVRD's lands that occurred on March 27, 2014. Determining the exact location of SIA's/CHH's property boundaries in relation to the CVRD's property was difficult due to lack of permanent boundary markers (which the CVRD understands is required under SIA's Mines Permit). Survey stakes were noted in place during the tour along the western boundary of SIA's/CHH's Lot 23, VIP 78459, Blocks 156, 201 and 323, Malahat District and are therefore referenced below in relation to observations made during the tour. Representatives of the CVRD did a further visit to the CVRD property on April 15, 2014, to take photographs of its observations of the CVRD property and the SIA/CHH property (a couple of which are attached).

The CVRD is not satisfied with the state of the CVRD's property as a result of SIA's/CHH's activities along the eastern boundary of the CVRD's property. In particular:

1. The CVRD is concerned about the steep piled rock slope that intersects with the staked survey line. Of concern is shifting rock causing future failure and release of rock further onto the CVRD's property. As CVRD staff and the public may be in this area of the CVRD's property at any time, the risk of injury or worse from such a future rock failure encroachment is unacceptable.
2. Further action should be required to engineer the rock slope for stability and to pull back the rock slope to establish, at the very least, the 5 m buffer (as required by the Ministry of Mines Permit and the Ministry of Environment Permit). In particular there is a substantial boulder near the toe of the slope that is underpinned by smaller boulders which appears to be on the CVRD property side of the survey line. Also on the CVRD's property at this location is an extensive area which was previously encroached by SIA/CHH activities (rock pile) that requires further mitigation to re-establish the previous vegetation.

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3. In the location of the water treatment plant settling pond, to the immediate west of the settling pond on the CVRD's property there is evidence of land clearing, excavation activity and placement of rock materials on the CVRD's property, all of which occurred without the express consent of the CVRD. During the site tour on April 11th, machinery was at work around the water treatment plant settling pond; however a portion of the facility appears to remain within the 5 m buffer based on the survey stakes. The two water settling pond outlet pipes at the base of the pond were also within the 5 m buffer based on the survey stakes. The proximity of the settling pond and outlet pipes to the survey line is of concern to the CVRD, as future maintenance or emergency repairs to this section would in all likelihood require future trespass with equipment onto CVRD property to undertake such works. On April 15, 2014, it appeared that part of the CVRD's property had been hydro seeded. This is not acceptable restoration work to the CVRD.
4. To the immediate west of the two water settling pond outlet pipes, a gravel and rock spillway has been constructed on the CVRD's property that extends 20 metres plus westward from the outside toe of the settling pond. In addition to the rock spillway, it appears that extensive excavation was undertaken to lower the natural grade in this area before deposition of the rock material. The CVRD did not authorize the construction of these works on its property or the alteration of its property to accommodate these works. Without the CVRD accepting that the ephemeral stream extended to the western property boundary of the SIA/CHH site, assuming it did, it does not appear that an authorization under the *Water Act* was obtained to do work in and about a stream. Of particular concern to the CVRD is that this area is to be used for the discharge of effluent from the proposed contaminated soil facility without all necessary authorizations. Furthermore, at the downhill end of the constructed spillway, there is water running out from under the rock and what appears to be extensive siltation deposit for at least 100 metres along the route this water is flowing through and around a linear grouping of young alders. The CVRD is concerned about the source of this water flow and siltation, given SIA's/CHH's active quarry immediately adjacent to the water treatment settling pond.
5. To the west of the survey stakes adjacent to the active quarry, a large area extending 15 to 20 metres plus on the CVRD's property has been cleared of trees and vegetation and covered with a mix of fractured rock and dirt material. There also remains what appears to be quarried rock in amongst the trees just beyond the cleared area on the CVRD's property.
6. In addition, SIA's/CHH's active rock quarry face extends across the survey stakes in the direction of the CVRD's property. On the site visit April 11, 2014, it appeared that the extent of quarrying had removed rock from the CVRD's property based on the location of the survey stakes; however this would need to be confirmed through a specific survey of the quarry face in relation to the survey of the property line. Of significant concern is both what appears to be the removal of rock from the CVRD's property and the extent of quarrying that has taken place within 5 metres of the property boundary, based on the survey stakes in place in an area where SIA/CHH proposes to landfill contaminated soil.

The CVRD's position is that before SIA/CHH undertakes any further work to the CVRD's property, the CVRD's express consent is required. Furthermore, it is the CVRD's position that SIA/CHH should be required to take immediate action to obtain a restoration plan prepared by a qualified professional that details the remedial work required to restore the CVRD's property to its previous condition and that such plan should be provided to the CVRD for review and approval. SIA/CHH should be required to complete the restoration work in accordance with the approved restoration plan to the satisfaction of the CVRD. SIA/CHH should also be required to provide a survey confirming that the rock slope/pile, the settling pond, the outlet pipes and any other materials or works associated with the mine or the proposed contaminated soil facility have been removed from the CVRD property and pulled back to, at the very least, the 5 m buffer from the CVRD's property line.

In addition, it is the CVRD's position that SIA/CHH should be required to obtain a report prepared by a geotechnical engineer that addresses the stability of the rock slope as well as the construction and stability of the settlement pond given the relocation of the settling pond after its initial construction and its potential impact on the CVRD property. Furthermore, it is the CVRD's position that SIA/CHH should be required to sample and investigate the extensive siltation downhill of the rock spillway to determine the composition and origin of the siltation in locations acceptable to the CVRD.

The CVRD further requests that the Mines Inspector review the safety issues of this quarry, given the proximity of the open quarry to the CVRD's property.

The lack of due diligence by SIA/CHH to contain their site activities within the bounds and required setbacks has negatively impacted CVRD's adjoining property on more than once occasion and in several different locations. The lack of a clearly-defined boundary around their entire site, inclusive of property boundaries with CVRD lands to the south, north and west, has proven somewhat challenging in identifying and documenting where encroachments from their activities may be taking place. The encroachments noted in this letter are therefore subject to possible further verification and there may be additional encroachment concerns that become apparent with improved property boundary verification on site and additional requirements to address those concerns. It is therefore requested that the Ministry of Mines require SIA/CHH to survey and clearly identify with permanent markers and/or fencing their property boundaries, the 5 m setback and the covenanted areas to prevent future encroachments and improve SIA's/CHH's ability to monitor and control their site activities.

I am away from the office until Monday April 28th, but would welcome the opportunity to discuss further the concerns of the CVRD outlined above and remediation actions to address such concerns.

Yours truly,



Brian Farquhar
Manager, Parks & Trails
Development Services Department
BTF/lar

pc: M. Block, South Island Aggregates, Cobble Hill Holdings
D. Howe, Deputy Chief Inspector, Ministry of Energy and Mines











