

S-105307



Kenneth John Dove # 1  
Sworn: JULY 21, 2010

No.

Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

FRIENDS OF DAVIE BAY, TEXADA ISLAND, SOCIETY

Petitioner

And

HER MAJESTY IN RIGHT OF THE PROVINCE OF BRITISH  
COLUMBIA, and LEHIGH HANSON MATERIALS LIMITED,

Respondent

AFFIDAVIT

I, **Kenneth John Dove**, retired geologist, of P.O. Box 136, 2748 Sanderson Road, Gillies Bay, British Columbia, MAKE OATH AND SAY THAT:

1. I am a Director of the Friends of Davie Bay, Texada Island, Society incorporation number S-56711 (the "Friends of Davie Bay"), the Petitioner in this proceeding, and as such have personal knowledge of the facts and matters hereinafter deposed to, save and except where the same are stated to be based on information and belief, and where so stated I verily believe them to be true.
2. I have reviewed the facts set out in the Petition to be filed by Friends of Davie Bay and verily believe them to be true.
3. I am authorized to provide evidence on behalf of the Friends of Davie Bay, which was incorporated on May 18, 2010 under the *Society Act*, R.S.B.C. 1996, c. 433, with the purpose of conserving and protecting the environment of the Davie Bay area of Texada Island according to the law and regulations of BC and Canada. Attached as **Exhibit "A"** to this my Affidavit is a true copy of Friends of Davie Bay's incorporation documents.

4. The membership of Friends of Davie Bay consists of residents of Texada Island and the nearby areas that have a personal interest in the preservation of the natural environment in and around the Davie Bay area.
5. I have been a full time resident of Gillies Bay, Texada Island since 1966. For more than forty years I have been visiting the Davie Bay area by boat and on foot to enjoy the natural beauty of the shoreline, islands and forest, both alone and with friends and visitors. I believe that residents and visitors generally view Davie Bay as a part of Texada Island that has exceptional natural beauty and should be preserved for the future enjoyment of all who engage in activities such as hiking, boating, fishing, bird watching and sometimes caving.
6. I have devoted many years of my life to the conservation of rare and endangered species of plants and animals both on Texada Island and elsewhere. I believe that a quarry in the Davie Bay area will devastate a unique area of forest, open grassy bluffs, limestone caves with streams and waterfalls and fragile marine habitat. I became a member and Director of Friends of Davie Bay with the goal of ensuring that this precious environment was not disrupted without a detailed examination of the social, economic and environmental consequences of the proposed project.
7. Friends of Davie Bay first organized as an ad hoc citizen's group in response to concerns about the potential effects of the Respondent, Lehigh Hanson Materials Limited's ("Lehigh"), proposed quarry to be located on Texada Island (the "Proposed Texada South Quarry").
8. Friends of Davie Bay's involvement with the Proposed Texada South Quarry began in May, 2009 and includes:
  - (a) Presentation to Powell River Regional District in July, 2009.
  - (b) Soliciting and attending meetings with government bodies:
    - (i) Integrated Land Management Bureau, September 9, 2009;
    - (ii) Department of Fisheries and Oceans, October 14, 2009; and

- (iii) Transport Canada, February 10, 2010.
  - (c) Providing submissions and reports to the Ministry of Environment; Ministry of Energy, Mines and Petroleum Resources; Ministry of Agriculture and Lands; Department of Fisheries and Oceans; and to Transport Canada.
- 9. From May 2009 to the present, Friends of Davie Bay engaged in correspondence with officials in the federal, provincial and local governments. Attached and marked as **Exhibit "B"** to this my Affidavit is a true copy of that correspondence. To avoid duplication, each document has only been produced once, and not reproduced if it was also an attachment to a later submission.
- 10. The members of Friends of Davie Bay have expended significant time and personal resources in order to provide various government bodies and ministries with accurate and reliable information about the environment of the Davie Bay area and potential risks associated with the Proposed Texada South Quarry.
- 11. I have read Lehigh's Texada South Quarry Mine Plan dated May 15, 2009 (the "Mine Plan") and Lease Application for Barge Loading Facility on Crown Land Davie Bay Area, Texada Island of November 15, 2008 (the "Lease Application"). Attached to this my Affidavit and marked as **Exhibits "C" and "D"**, respectively, are true copies of the Mine Plan and Lease Application, which I believe were submitted to the provincial government.
- 12. Based on my review of Exhibits "B" and "C", I believe that the Proposed Texada South Quarry would include a quarry site 1.6 km inland from Davie Bay and a marine terminal site to be constructed in Davie Bay. The intended infrastructure for the Proposed Texada South Quarry includes an elevated conveyor system, supported by pylons across the tidal foreshore, extending from the upland property to a floating standoff and a permanently moored conveyor barge located at the marine terminal. This infrastructure would be engaged in the movement of the quarried product to the marine terminal for loading. Attached and marked as **Exhibit "E"** to this my Affidavit is a true copy of a map of Texada Island with an arrow indicating the location of Davie Bay.

13. Davie Bay is located on the southwest shore of Texada Island. The research generated by Friends of Davie Bay establishes that the area that will be impacted by the Proposed Texada South Quarry is host to a wide range of natural environments and species of flora and fauna.
14. The location of the Proposed Texada South Quarry contains an extensive network of caves. The karst cave system in the Davie Bay area has been identified by experts in the field as the most extensive and well-decorated of all the known karst caves along the BC mainland coast. Lehigh has withdrawn 35 hectares of land from their application because of the presence of karst, caves and waterfalls. After reviewing the opinion of Paul Griffiths and Carol Ramsey, karst experts, I believe, however, that a full and proper cave and karst assessment using dye-tracing techniques is required to determine what risks the Proposed Texada South Quarry may have on the karst system and what the resulting environmental impact could be. At Exhibit "B", Tab 2, p. 011 to this my Affidavit is a copy of a letter from Paul Griffiths and Carol Ramsey to the Honourable Barry Penner, Minister of the Environment, dated September 16, 2009. The letter highlights the importance of the karst caves located in the Davie Bay area and the risks to them from the Proposed Texada South Quarry.
15. The marine environment in Davie Bay is also home to important aquatic species. Friends of Davie Bay have gathered significant evidence of substantial eelgrass beds located in and around the bay. Eelgrass is designated by the Department of Fisheries and Oceans as a "species of importance" as it is a critical fish habitat for juvenile salmon and other fish smelt. Attached and marked as **Exhibit "F"** to this my Affidavit is a true copy of the report of Mark Biagi of Vision Marine Consulting Ltd. dated February 2010.
16. Davie Bay is also part of a Rockfish Conservation Area which is designed to protect the various species of Rockfish in British Columbia. Several species of Rockfish are listed by the Committee on the Status of Endangered Wildlife in Canada and I believe that one or more of these species may be present in the Rockfish Conservation Area. Friends of Davie Bay gathered evidence which establishes that to maintain high productivity in a Rockfish Conservation Area, industrial activity such as the Proposed Texada South

Quarry should be avoided. Attached and marked as **Exhibit "G"** to this my Affidavit is a true copy of an email chain between Gary Logan of the Department of Fisheries and Oceans, Scott Wallace a Sustainable Fisheries Analyst with the David Suzuki Foundation and Brian Seymour of Friends of Davie Bay for the dates of August 25 and 26, 2009.

17. Numerous other important environmental features are found in the Davie Bay area. These are described in the March 8, 2010 letter from Richard Fletcher of Friends of Davie Bay to the Honourable John Baird, Minister of Transport Infrastructure and Communities et al. This letter is at Exhibit "B", Tab 27, p. 139 of this my Affidavit.
18. Recently, the importance of the Davie Bay area, including the foreshore and inland karst system, was recognized in the Regional District Parks and Greenspace Plan which was prepared by HB Lanarc, a planning and design firm, at the request of the Powell River Regional District. The plan is intended to provide the foundation of the parks and greenspace system that will address the long-term needs and interest of the region. As part of this plan, Stromberg Falls, which is located upland of Davie Bay, was identified as a Park Acquisition Priority. It was recognized because of its unique karst topography. The Davie Bay foreshore was identified as a secondary park and greenspace priority. This recognition of the Davie Bay area as a significant and unique natural environment in the Powell River Regional District further highlights the importance of ensuring a full environmental assessment is conducted before the Proposed Texada South Quarry is permitted to move forward. Attached and marked as **Exhibit "H"** to this my Affidavit is a true copy of an excerpt of the draft Regional District Parks and Greenspace Plan, dated June 25, 2010, that sets out the Park Acquisition Priorities and Secondary Park and Greenspace Priorities.
19. In 1973 the northern part of Davie Bay was designated a Crown Reserve for the Use, Recreation and Enjoyment of the Public ("UREP"). Attached and marked as **Exhibit "I"** to this my Affidavit is a true copy of a map showing the area of Davie Bay that is designated as a UREP.
20. The Texada Island Official Community Plan ("OCP") seeks to preserve the recreational value of UREPs and discourage the development of incompatible uses adjacent to these


areas. The Texada Island OCP also seeks to ensure that public access to and the use of public lands and foreshore, that have been identified as being suitable for recreation, are maintained and enhanced as development occurs. Attached and marked as **Exhibit "J"** to this my Affidavit is a true copy of the portion of the Texada Island OCP that addresses recreation.


21. Based on my knowledge of the Davie Bay area and my review of the above reports, I believe that it is highly likely that the Proposed Texada South Quarry will have a detrimental effect on the natural features of the Davie Bay. My concern relates in particular to the streams, caves and waterfalls of the karst, a significant part of the Rockfish Conservation Area, including the eelgrass beds, the habitat of transient and resident mammals such as orca, porpoise and dolphins, seabirds and the biodiversity of species in the Coastal Douglas Fir zone.
22. Friends of Davie Bay have attested to the high opportunity cost of the Proposed Texada South Quarry. Texada has poor demographics, and is unduly reliant of the cyclical aggregates industry. Existing quarries on Texada are on the north of the island, but to the south it is still largely a beautiful natural wilderness. Development of a new quarry in the south, in an area of exceptional natural beauty, would threaten the growth of recreation and tourism and limit economic options for the future. It would not be consistent with the future development of a sustainable, more diverse economy on Texada Island. I firmly believe these issues should be addressed as part of a comprehensive environmental assessment of the Proposed Texada South Quarry. These economic concerns are detailed in the correspondence from Friends of Davie Bay to the Honourable Barry Penner et al., which is found at Exhibit "B", Tab 5, p. 026 of this my Affidavit.
23. Further, the assessment of the potential environmental impacts of the Texada South Quarry completed by Ocean Dynamics and IEC International and included by Lehigh in their Mine Plan and Lease Application is deficient as key information is absent from the analysis. These documents state, at pages 21 and 12 respectively, that there are no eelgrass beds in Davie Bay. Evidence gathered by Friends of Davie Bay clearly establishes otherwise. Therefore, I believe this assessment cannot be relied upon to

accurately determine the potential environmental effects. Attached and marked as **Exhibit “K”** to this my Affidavit is a true copy of a document I created identifying possible eelgrass beds in Davie Bay. See also Exhibits “C”, “D”, and “F” attached to this my Affidavit.

24. Lehigh’s Mine Plan and Quarry Operation Notice of Work dated May 20, 2009 (“Notice of Work”) state a mining disturbance of 75.6 hectares, estimated total mineable reserves greater than 100 million metric tonnes, and a planned production or estimated extraction from the Proposed Texada South Quarry of 240,000 tonnes per year. Attached and marked as **Exhibit “L”** to this my Affidavit is a true copy of the Notice of Work.
25. Lehigh’s Notice of Work and Lease Application set out the equipment, infrastructure and operation schedule that is intended to be utilized at the Proposed Texada South Quarry. When this information is considered together it becomes clear that the production capacity of the Proposed Texada South Quarry is markedly greater than the stated rate of 240,000 tonnes per year.
26. On September 24, 2009 Friends of Davie Bay notified the Environmental Assessment Office that based on the information contained in the Mine Plan and the Lease Application the production capacity of the Proposed Texada South Quarry exceeded the trigger amount set out in the *Reviewable Project Regulations*, B.C. Reg. 370/2002 for new construction stone and industrial mineral quarries. They were therefore mandated to initiate the environmental assessment process pursuant to the *Environmental Assessment Act*, S.B.C. 2002 c. 43. A letter from David Perry at Singleton Urquhart to the Honourable Barry Penner and Blair Lekstrom on September 24, 2009 is attached as Exhibit “B”, Tab 4, p. 024 to this my Affidavit.
27. On February 16, 2010, Karen Christie wrote to Mr. Perry describing the Environmental Assessment Office’s interpretation of the *Reviewable Project Regulation* regarding new construction stone and industrial mineral quarries. Attached at Exhibit “B”, Tab 26, p. 138 to this my Affidavit is an email letter from Karen Christie to David Perry dated February 16, 2010.

- 28. I believe that this interpretation is incorrect and inconsistent with the purpose of environmental legislation in British Columbia and Canada.
- 29. I believe that before the Proposed Texada South Quarry can move forward, the laws of British Columbia require that a full and comprehensive study of the environmental risks must be assessed.

SWORN BEFORE ME at  
Powell River  
 Province of British Columbia, this 21 day of  
July, 2010.  
  
 Name: Robert D. Villani  
 A Commissioner for taking Affidavits  
 in British Columbia

  
 Kenneth John Doye

**ROBERT D. VILLANI**  
 BARRISTER & SOLICITOR  
 #103 - 7020 DUNCAN STREET  
 POWELL RIVER, BC V8A 1V9

*Witness as to execution only.  
 No legal advice sought or given.*