

Province's decision to skip environmental assessment for Texada Island quarry to be tested in BC Supreme Court tomorrow

GILLIES BAY, TEXADA ISLAND, BC – JANUARY 31, 2011 A petition that could save an ecologically fragile ocean bay from industrial development will be heard tomorrow (Tuesday, February 1) in BC Supreme Court in Vancouver.

The Friends of Davie Bay (FODB) have asked for a judicial review of the BC Environmental Assessment Office's decision that an environmental assessment is not required for the proposed Texada South Quarry at Davie Bay on Texada Island.

Mining giant Lehigh Hanson plans to open a 74.6 hectare limestone quarry with mining reserves greater than 100 million metric tonnes. A loading ramp is to be built over Davie Bay with a loading capacity of 2,500 tonnes per hour. However Lehigh says in its mining application that it estimates production of just 240,000 tonnes per year, shy of the 250,000 tonne production that would trigger an automatic environmental assessment, but the acreage, mining reserves and infrastructure build indicate a much larger quarry.

Friends of Davie Bay argue that BC's Environmental Assessment Office has incorrectly interpreted the Regulation by relying solely on Lehigh's stated production rate of 240,000 tonnes per year. Friends say "production capacity" in the Regulation means what a quarry of this scale is capable of producing, not just what the company says it will produce. The mandatory provisions of the *Act* cannot be evaded by a proponent's subjective declaration that they will voluntarily use only a fraction of a quarry's capacity.

"A quarry in the Davie Bay area would devastate a unique area of forest, open grassy bluffs, limestone caves and streams and waterfalls, and the fragile marine habitat," says Texada resident John Dove. "This should not be allowed without a detailed examination of the environmental, social and economic consequences, with full public input."

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Davie Bay Backgrounder

In May 2009 Lehigh Hanson applied for permits to open a substantial limestone quarry on Crown land mining 75.6 hectares with total mineable reserves greater than 100 million metric tonnes. A loading ramp is to be built over Davie Bay with a loading capacity of 2,500 tonnes per hour. However Lehigh estimates a production of just 240,000 tonnes per year, or just below the threshold that would require an environmental assessment. But the acreage, mining reserves and infrastructure build indicate a much larger quarry.

Under BC's *Environmental Assessment Act* only large projects, particularly likely to cause environmental problems, are assessed. The *Reviewable Projects Regulation* clarifies that new quarries will not be assessed under the *Act* unless they "have a production capacity of more than 250,000 tonnes per year of quarried product."

In July 2010 Friends of Davie Bay asked for a judicial review of the BC Environmental Assessment Office's decision that an environmental assessment is not required for the proposed Texada South Quarry at Davie Bay on Texada Island.

Friends of Davie Bay's position is that BC's Environmental Assessment Office has incorrectly interpreted the Regulation that would trigger an environmental assessment of the Texada South Quarry by relying solely on Lehigh's estimated production rate of 240,000 tonnes per year. Friends of Davie Bay is seeking a court order declaring that the *Reviewable Project Regulation*, B.C. Reg. 370/2002, (the "*RPR*") Part 3, Table 6 requires an environmental assessment for a new construction stone and industrial mineral quarry when the infrastructure investment, equipment, operational plan and size of a proposed quarry and reserves indicate that a project will have a capacity that exceeds the defined capacity of 250,000 tonnes per annum.

Friends of Davie Bay are requesting the Court quash any licenses, leases, permits or other types of authorizations provided to Lehigh Hanson Materials Ltd. for the proposed Texada South quarry, the approval of which should have been subject to an environmental assessment under the *Environmental Assessment Act*, S.B.C. 2002 c. 43 ("the *EAA*").

Production Capacity

The decision of the Court will depend on the meaning put to the term "production capacity" in the Regulation. Friends of Davie Bay contend that a purposeful consideration of the term "production capacity" requires consideration of multiple factors, which include the infrastructure investment, equipment, operational plan and the size of the proposed quarry and the reserves.

“Production capacity” in its ordinary meaning is not concerned with an intended, estimated or actual level of production, but rather what the capacity to produce is. The capacity of a gas tank is the volume of gasoline that the tank can contain at a single time, not the amount of gas actually in the tank.

The purpose of the *Environmental Assessment Act* is to require assessment where a project reaches a threshold that, by its footprint, will have a significant impact on the environment. The mandatory provisions of the *Act* cannot be evaded by a proponent's subjective declaration that they will voluntarily use only a fraction of a project's capacity. The Ministry of the Environment should have taken all reasonable steps to evaluate the scale and scope of the Davie Bay quarry using the data in the Mining Plan.

Ecological significance of the Davie Bay area

The Davie Bay area on Texada is ecologically significant. It is host to a wide range of natural environments and species of flora and fauna and the Coastal Douglas Fir Zone. The cave and karst system has been identified as the most extensive and well-decorated of all the known karst caves along the BC mainland coast. Davie Bay is part of a rockfish conservation area designed to protect the various species of rockfish in BC. The marine environment there is host to many important aquatic species and critical eelgrass beds.

“A full and proper cave and karst assessment using dye-tracing techniques is essential to determine what risks the Texada South Quarry may have on the karst system and what the resulting environmental impact could be,” says Texada Island resident James Mack. “This is too valuable a resource to destroy without careful study. And to allow a barge-loading facility inside a Rockfish Conservation Area, the first in BC, is plainly ridiculous.”

Greenspace

The Powell River Regional District (PRRD) has concerns about the loss of public access to the Davie Bay foreshore, the island containing the conveyor and to the provincially designated Use, Recreation and Enjoyment of the Public (UREP) site at the north end of the Bay. It also wants public access by road to Shingle Beach to be formalized. As part of the Greenspace Plan the PRRD recognized the Stromberg Falls as a Park Acquisition Priority because of its unique karst topography, and has been “emphatic” in calling for BC to conduct a full karst assessment of the Davie Bay area by a fully qualified karst professional. The Davie Bay foreshore has been identified as a Secondary Park and Greenspace Priority.

Impact on Texada

The Powell River Regional District and Friends of Davie Bay call on BC to weigh the short-term economic gain of the Davie Bay quarry against the long-term economic, social and environmental implications of the project on Texada Island and its community.

Texada is host to Canada’s largest limestone quarry, Lafarge’s TQL quarry, just 15 kms up the coast from the Lehigh’s proposed quarry at Davie Bay. The quarry has a capacity of over 8 million tonnes per annum and is operating well below capacity with more than 40 years of reserves. Lehigh is currently the major customer taking out about 30,000 tonnes per week, or about 1.5 million tonnes per year under long-term contracts. It appears to make little sense to open a new quarry when plentiful supplies are available locally from the low cost producer, or to allow this to happen.

Environmental Assessment

Out of the judicial review Friends of Davie Bay hope for a full environmental assessment of the project that will involve:

- 1 A full assessment of the cave and karst system above Davie Bay using dye tracing methods to determine the size and extent of the structure.
- 2 Measurement of the production capacity of the quarry by an independent mining consultant, and if well over 1 million tonnes per annum as we believe, for Environment Canada to lead the environmental assessment.

- 3 Evaluation of the value of the ecologically sensitive Davie Bay area in environmental, social and economic terms against the economic value to the proponent.
- 4 Full public input and participation.

The outcome of the judicial review has implications for how Texada Island will evolve. Also, the case could answer some crucial questions about how environmental assessments in BC need to be done, thereby strengthening BC's environmental assessment process.

About Friends of Davie Bay

Friends of Davie Bay, Texada Island, Society is incorporated under the *Society Act* 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.

For more information, including Google Earth maps, photos, Lehigh's applications and more, visit <http://www.daviebay.com> The Friends of Davie Bay e-mail group is friendsofdaviebay@gmail.com

Friends are grateful for generous support from **West Coast Environmental Law**. For 35 years West Coast Environmental Law has been the leading advocate for strong environmental laws in BC, including playing a major role in the creation of BC's first *Environmental Assessment Act*. The Friends of Davie Bay's court challenge has the potential to win a reprieve for Davie Bay, but it could also clarify that BC's Environmental Assessment Office must ensure that major projects with large environmental impacts are fully assessed.