

## **FRIENDS OF DAVIE BAY**

January 26, 2011

Dear Friends and Supporters,

### **Judicial Review. Texada South Quarry, Davie Bay, Texada**

Friends of Davie Bay have been preparing for the hearing of our petition, which will take place in the **BC Supreme Court in Vancouver on Tuesday, February 1st.**

#### **The proposed quarry at Davie Bay**

In May 2009 Lehigh Hanson applied for permits to open a substantial limestone quarry mainly on Crown land mining 75.6 hectares with total mineable reserves greater than 100 million metric tonnes. A loading ramp is proposed to be built over Davie Bay with a barge loading capacity of 2,500 tonnes per hour.

#### **BC's Environmental Assessment Act**

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"

Lehigh Hanson has indicated that it intends the Davie Bay quarry to produce 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.

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 on Lehigh's estimated production rate of 240,000 tonnes per year, rather than working out the actual production scope and scale, and thus capacity of the quarry.

### **“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.

We contend that 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. Friends contend that when reviewing the proponent's application 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.

### **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.

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 UREP 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. As well, the Davie Bay foreshore was identified as a Secondary Park and Greenspace Priority.

## **Economics**

The PRRD and Friends of Davie Bay have called 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.

Why, one wonders, would Lehigh be prepared to spend a few million dollars to open a quarry at Davie Bay to extract 240,000 tonnes per year, when plentiful supplies are available locally from the low cost producer? And why has the Ministry of the Environment waived it through without a full Environmental Assessment? Lehigh is a significant contributor to the BC Liberal Party so one would expect a higher standard of care in BC's analysis of the project to protect the public interest.

## **Environmental Assessment**

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

- 1 A full assessment of the cave and karst system above Davie Bay using dye tracing methods
- 2 Measurement of the capacity of the project, and if over 1 million tonnes per annum, 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.

