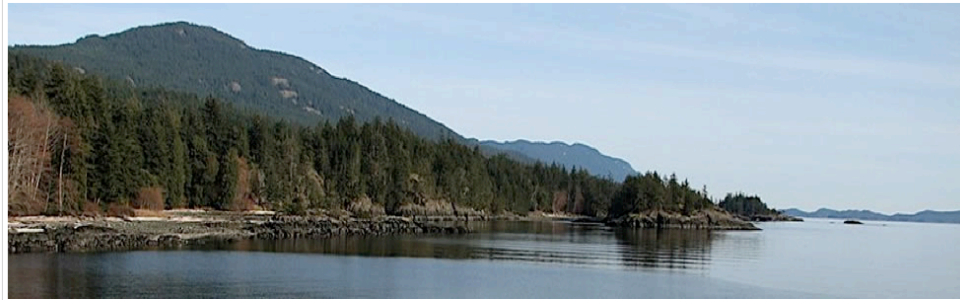


F R I E N D S O F D A V I E B A Y .



BY E-MAIL TO

Hon. Barry Penner, Minister of Environment, BC
Hon Blair Lekstrom, Minister of Energy, Mines and Petroleum Resources, BC
Hon. Steve Thomson, Minister of Agriculture and Lands, BC
Hon Pat Bell Minister of Forests and Lands BC
Hon Randy Rawes. Minister of State for Mining BC

Hon John Baird, Minister of Transport, Infrastructure, and Communities.
Hon Jim Prentice, Minister of the Environment.
Hon Gail Shea, Minister of Fisheries and Oceans.

December 31, 2009

Dear Sirs

RE-ITERATION OF SUBMISSION

- RE: Lehigh Hanson Materials. Application for a license of occupation for aggregate quarrying covering DL 573 and 589, Texada Land District, Davie Bay. File reference. 2410273**
- RE: License for Barge Loading Facility and Conveyor, Davie Bay, Texada Island, over Crown foreshore and upland fronting DL 400 on Texada Island for the shipment of aggregate material (CEAR reference number 09-01-49595)**
- RE: Notice of work for the Texada South Quarry located on DL 400, DL 235 (private land) and DL 573 (Mining Lease no 308820) Texada Island District.**

Applications as noted above are part of a single project to quarry in and ship aggregate material from the Davie Bay area hence its impact must be assessed as part of the same project across government hierarchical structures.

Friends of Davie Bay ("Friends") would like to respond to correspondence and re-iterate our submission. [All submissions and correspondence with government bodies can be seen on our web site <http://daviebay.com/> but those referred to in this submission are attached]

1 Texada South Quarry and associated barge conveyor is a Reviewable Project.

1-1 Given the facts from the application documents, the size of the limestone body, and the corporate goals and *modus operandi* of Heidelberg Cement AG as a global aggregate and cement company, we can conclude that the production capacity of the proposed facility, Texada South Quarry, is greatly in excess of 250,000 tonnes. Hence the Texada South Quarry (BC file reference 2410273, and TC CEAR reference 09-01-49595) is a Reviewable Project. Please refer to “Environmental Review for Lehigh's Proposed Quarry” David G Perry, Singleton Urquhart LLP. Letter to Ministers Penner and Lektrom. ---attached

1-2 The application documents state that the loading ramp or conveyor will be 1.8 metres wide capable of a loading rate of 2,500 tonnes per hour. [Highland Valley Copper, with a belt 1.52 metres wide, is capable of loading at 6,000 tonnes per hour]. Assuming a loading facility operating for one shift per day of 8 hours, for 48 weeks of the year, an annual production rate of 4.8m tonnes would be achieved, a factor of 20 times more than conceded in the application. Also, in the Mine Plan Lehigh state that it will be using 100 tonne trucks. So, it appears the applicant is conceding just 5% of the planned annual economic production (240,000 tonnes divided by 4,800,000 tonnes)

1-3 It is established practice in the global aggregate industry to seek economies of scale in operations; otherwise economic returns would not be achieved. Heidelberg Cement AG takes pride in its ability to enhance its group earnings and turnover profile by its ability to generate economies of scale resulting from higher efficiency of large production units and bundling of purchasing volumes, as well as from the relatively stable price levels for HC Group’s key products. . (Source: Heidelberg. Prospectus dated Sept 14, 2009)

1-4 Under Part 3, table 6 of the Reviewable Projects Regulation (the “Regulation”), an Environmental Assessment is required in BC for a new Construction Stone and Industrial Mineral Quarry if during operations the quarry will have an annual production CAPACITY of greater than or equal to 250,000 tonnes of quarried products. Hence, based on the capacity installed, regardless of the production rate conceded by the applicant, Minister Penner has a duty to conduct an Environmental Assessment under the Act.

1-5 With reference to a letter from John Mazure, Executive Project Assessment Director, EAO, dated Dec 15-09. (see attachment), wherein Minister Penner has accepted the advice of the Executive Director NOT to designate the proposed Texada South Quarry and associated loadout as a reviewable project under the Act, there appears to be some confusion between production CAPACITY and RATE of production. As the test under the Act is based on the annual production capacity of the facility rather than the rate of annual production, Minister Penner has a duty to conduct an Environmental Assessment under the Act.

1-6 There are significant and material concerns with this application and its impact on Texada and BC environmental policy in general (refer to CEAR ref 09-01-4959. Information Request, attached). Failure to conduct an Environmental Assessment as required under the Act would be prejudicial to the rights of those opposing this application, as due process as prescribed by law will be denied.

2 A full karst assessment of the Crown lands above Davie Bay is essential

2-1 The ILMB has drawn up a Section 16 map reserve of 7.8 hectares in the centre of DL 589 to protect the sensitive karst, after a telephone conversation with Paul Griffiths, a leading BC and international karst specialist. The area identified of 7.8 hectares was indicated as the “minimum”, and Paul Griffiths made clear to the ILMB at the time that the karst potential and value in this area is so much greater; there are possibly subsurface geo-hydrological connections between the proposed quarry site and the known caves.

2-2 Friends welcome the offer by Lehigh to withdraw all of DL 589 from its application, so we can presume now that the protected area has grown to 35 hectares. However Minister Bell has been misinformed as to the quality of the assessment of the proposed quarry on the karst as there is no experienced professional in karst or expert at the Ministry of Forests and Lands. Friends point out that information of sufficient accuracy is currently unavailable to ensure an adequate consideration of the karst issues at the present time. The caves could not have been properly assessed within the timeframe of the assessment Minister Bell refers to; one of the known caves (the one closest to the proposed upper quarry site) has been obstructed with bed materials, and all of the caves have been subject to high water levels at the time of the supposed assessment. Minister Bell is invited to publish the study for expert appraisal.

2-3 Minister Penner indicates as a reason not to conduct a full Environmental Assessment is that the MEMPR will address all the impacts including potential effects on the cave and karst system. We are told that the ILMB are committed to the protection of this geological system. All the more justification for authorizing a full cave and karst assessment to establish the boundaries of the “total karst catchment” associated with the karst unit/system in potential conflict with the proposed quarry project.

2-4 Paul Griffiths states;-

“In my view, the first objective of a karst catchment area strategy is to establish, as closely as possible, the location and extent of the surface areas contributing water to the karst system. Each karst system has a unique set of recharge characteristics, which, in turn, will determine the level of catchment area protection and management required. The “total karst catchment” area is comprised of all lands contributing surface runoff and/or diffuse recharge to the karst unit/system. The proposed quarry is located within Karst Unit 24488 (provincial Karst Potential Area identifier), which alone covers hundreds of hectares of land.

Both the karst and non-karst portions of catchment areas of the karst system associated with the proposed quarry project should be assessed and managed effectively to protect downstream karst resources. This particular karst system receives part of its water input from runoff originating on higher elevation non-carbonate rocks – the allogenic catchment areas. The surface runoff collects in the allogenic streams that sink or lose water in their beds and recharge the downstream karst at specific points (insurgences). The intercepted surface runoff is focused at these sink or loss points, and rapidly enters and is transmitted through the conduit part of the karst system. Allogenic recharge focal points in the karst system associated with the proposed quarry project are known to occur along Grow Op Creek, for example.

Whereas the available water within the allogenic catchment portion of the karst unit occurs primarily as surface runoff, the precipitation falling directly on the karst portions of the unit/system rapidly infiltrates the ground surface and enters the karst system as diffuse or autogenic recharge. Delineation of the autogenic recharge areas is complicated because this water cannot be traced over the surface. This is why “dry set” water tracing will be required in these areas. Knowledge of insurgences and karst springs in the area is required in order to undertake properly designed dye tracings to help delineate these karst systems. Unlike allogenic catchment areas, autogenic recharge areas may be shown to occur in more than one topographic basin, and they cannot be reliably inferred from local topography”.

2-5 Friends wrote to Minister Penner on Nov 23-09 on the importance of a cave and karst assessment in the Davie Bay area. The Powell River Regional District, the Texada Action Now Community Association, local politicians, residents, and many interest groups support a full and proper assessment. The ILMB is committed to the protection of the karst feature: the MEMPR is to address the potential effects of the quarry on the cave and karst system. It is blindingly obvious that a proper mitigation strategy cannot be developed without a full assessment and understanding of the facts. BC may have a valuable karst resource at Davie Bay worth protecting. The BC Government must proceed and authorize a full karst assessment by qualified karst specialists either independently of or as part of a full Environmental Assessment.

2-6 Friends are unsure of the Federal jurisdiction in the assessment of the caves and karst. The proposed quarry is located within Karst Unit 24488 (provincial Karst Potential Area identifier), which alone covers hundreds of hectares of land, so potentially here is a resource of Canadian or international significance which may require Federal protection under Canadian law and regulations.

3 Serious and substantial issues with the application.

Federal and BC authorities have been alerted to serious and material shortcoming of the Lehigh application with respect to the Texada South Quarry. (Please refer to CEAR 09-01-49595. Information Request dated Nov 18-09 (attached)—this document is also filed on <http://www.daviebay.com/submissions/submissions.htm>,

This document lists issues as follows

- **Environmental obligations and credit quality of the applicant.**
- **Economic viability of the Texada South Quarry.**
- **Production rate and economies of scale**
- **Capacity of facilities and equipment**
- **Energy costs and carbon dioxide emissions**
- **Sustainability and economic demand to Texada**
- **Crown Land Allocation Principles.**

3-1 Poor credit quality of the applicant

The parent of the applicant HeidelbergCement AG has a low corporate sub-investment grade credit rating of B-/B1 from S&P and Moody's. Given the long life of the project, and the tail of environmental liabilities, if BC is minded to approve the project, it is essential that performance guarantees be given by way of cash collateral.

3-2 Poor economics for the aggregate sector in the future

BC should appreciate that the economics of the cement and aggregate industry will change dramatically for the worse, as governments globally are forced to recognize the full environmental cost of these activities and to levy heavy emission taxes on these CO2 creating activities. This will force the global aggregates companies to be more efficient and force economic co-operation between the companies in the exploitation of reserves. It is entirely ludicrous for BC to approve a new aggregate quarry just a short distance away from the TQL quarry at Gillies Bay, which is the largest aggregate quarry in Canada, and working at just 60% of capacity. The quarry at Blubber Bay with many years of reserves is scheduled to close in Feb 2010.

3-3 Heavy economic loss for Texada

The quarries on Texada are to the north of the island. To the south Texada is still largely a natural wilderness area, with the most stunning rugged natural beauty of all the Gulf Islands. Davie Bay is by

many accounts, the single most stunning part of Texada. The lands in and around Davie Bay have a high public amenity value. Preservation of this area would be a key to preserving Texada's huge potential for recreation, nature tourism, wilderness activities, as a holiday destination and as a retirement community. These activities create their own economic opportunities offering sustainable economic base. Indeed, abuse of Texada's environment could affect the decisions of people wanting to move or stay here, and threaten economic options for the future. Hence the opportunity cost of the Davie Bay project or economic opportunity loss to Texada is judged to be very high.

3-4 Davie Bay lands have high amenity use

About 60% of the proposed Texada Quarry South would exist in Crown land, and additionally Lehigh requires a provincial tenure for the barge loading facility. The Province of BC follows a strategic policy and strict principles in the allocation of Crown land. Essentially the Province has stewardship obligation on behalf of the public to allocate land based on "highest and best use". In valuing Crown land and resources, consideration is given to their degree of scarcity, and the associated economic, social and environmental benefits.

Best use of the Davie Bay area may be preserving the Karst on Crown land. Friends have proposed a "best use" to the Powell River Regional District and others which is superior to the Lehigh proposal to extract limestone aggregate from the lands in and around Davie Bay. Due to the high social, economic and environmental value of the Davie Bay lands we propose that these lands be preserved for the use and enjoyment of the public in perpetuity. Others have informed the media of the investment potential on a community basis. (Future Vision

<http://www.prpeak.com/articles/2009/11/04/opinion/letters/doc4af0e94bcbccc312255028.txt>)

4 Protection of fish habitat

4-1 As the production capacity of the quarry is scaled to approximately 5 million tonnes per annum, the number of barge movements will be 20 times more than the applicant concedes in the application. (5m /240,000 tonnes). And, the impact on the fishery habitat in the sensitive rockfish conservation area (RCA) would potentially be devastating. This must alert Transport Canada to the need for a full Environmental Assessment of the Texada South Quarry.

4-2 The barge load out facility would be located well inside a designated rockfish conservation area ("RCA") where eelgrass is seen in abundance, and in a Davie Bay location where high winds are experienced on frequent occasions, meaning that limestone dust would permeate the area. The DFO are on record as stating, with respect to the Lehigh barge loadout at Davie Bay, "the RCA network will only work if the designated areas are kept in a somewhat pristine condition to ensure maximum productivity from those fish spawning within the closed areas..... and in order to maintain the high level of productivity, industrial activity such as those proposed should be avoided". There have been no permitted loading docks in RCA's in BC.

4-3 Friends understand that the DFO reached a decision on or before October 7, 2009 that the "DFO does not consider itself a Responsible Authority under CEAA (ie DFO does not believe that is necessary for them to issue a Fisheries Act Authorization for the project to proceed-which means that with mitigation measures in place, the project is not likely to cause a Harmful Alteration, Disruption, or Destruction (HADD) of fish habitat".

4-4 This proposed load out facility would be the first such facility ever allowed in an RCA. This fact, along with the presence of eelgrass beds and rearing and nursery areas, and the collapse of the salmon fishery, must trigger a HADD with specific surveys designed by DFO in order to assess the extent of eelgrass beds and rockfish rearing and nursery habitat and to consider any mitigation strategy, if, indeed, these are available.

4-5 *The Fisheries Act* provides for the protection of fish and fish habitat. Under the Act, no one may carry out any work or undertaking that results in the harmful alteration, disruption or destruction of fish habitat (HADD) unless authorized by the Minister of Fisheries and Oceans Canada. In most instances where a work or undertaking will result in a HADD, the DFO must also conduct an assessment under the Canadian Environmental Assessment Act (CEAA) prior to issuing an authorization under the *Fisheries Act*. Not to do so demonstrates a clear lack of responsibility to Section 35(2) authorization under the *Fisheries Act* for this project. The law protecting fish and fish habitat evokes HADD, which requires an environment assessment by the DFO.

4-6 Friends will be making full representations to BC Supreme Court Justice Bruce Cohen in his review of reasons for the collapse of the sockeye and the performance of the DFO itself. Friends are mindful of the recent case where the Georgia Strait Alliance, the Wilderness Committee and the David Suzuki Foundation were successful, saying the strategy to save the Nooksack dace was doomed to fail because the DFO did not identify habitat crucial to survival of the species. Judge Campbell agreed, saying critical habitat is mandatory in recovery strategies drafted under SARA.

4-7 With the Davie Bay loadout facility located in an RCA, the DFO are obliged to declare a HADD given the sensitivity of the area and its knowledge concerning the protection of RCA's. Friends have asked the DFO not to approve any action at Davie Bay that may be prejudicial to Justice Cohen's recommendations.

Given the size of the Texada South Quarry, the production capacity, the size and potential value of the karst under threat, the serious and substantial issues with the application, and protection of a sensitive RCA,,let alone protection of the Coastal Douglas Fir zone, it is absolutely essential that Transport Canada lead a full Environmental Assessment of the project so that legal intervenor rights of objection and representation will be not be prejudged through lack of due process.

Failure at Copenhagen means that the global community must adopt an adaptive stance in attempting to mitigate the worse impacts of global warming. The Lower Mainland is highly exposed to the threat of a sea level rise; hence one would expect BC to take the lead in enforcing adaptive behavior, and co-operative efficiency in the exploitation of BC natural resources. It is utterly ridiculous to consider approval of new quarry just miles away from the largest aggregate quarry in Canada operating below 60% capacity, and another quarry closing on Texada, with many years of reserves.

For all submissions made by Friends of Davie Bay, go to <http://daviebay.com/>

Yours truly

Richard Fletcher
Friends of Davie Bay.
December 31-2009

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References attached

Letter dated Dec 15-09 to Paul Griffiths and Carol Ramsay from the BC Environmental Assessment Office.

E-mail from Pat Bell on Caves and Karst, dated Dec 23-09

CEAR 09-01-49595. Information Request, dated Nov 18-09

Letter to Penner from Singleton Urguhart dated Sept 24-09

cc by e-mail

Office of the Premier

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