



REPORT

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FILE: RZ-01-15 and RZ-02-15

TO: Tim Wood, Chief Administrative Officer
FROM: Laura Beckett, Planner
DATE: December 16, 2015
SUBJECT: **Gravel Extraction and Processing – Legal and Other Information**

Staff wishes to provide Council with information regarding gravel processing.

The first portion of this information originated from some of the comments Councillor Gord Baird provided to staff to assist with the Terms of Reference for planning assistance with the industrial applications. Staff were of the opinion that some of the items in those comments were best answered by provincial staff who deal with the *Mines Act* permitting applications or by municipal staff.

There is some other very basic information that staff thought might be useful, and that is included following the responses from Councillor G. Baird's questions.

The second portion of this information is the attached memorandum from one of the District's lawyers in regards to case law that establishes the interrelationship between municipal zoning power and permits issued under the *Mines Act*. This is important because there is no legislation directly addressing the relationship, and it is only case law that can best guide decisions with respect to gravel extraction and processing. To summarize the memorandum, case law suggests that municipal bylaws and regulations are not able to prohibit the extraction from the ground of soil, rock, etc. This inability to regulate is extended to the processing of the extracted material just to the point where it can fit on an appropriate vehicle to remove it from a site. Case law further suggests that the removal of the extracted material can be regulated, as can be the (further) processing of the material.

Questions from Councillor Gord Baird with Responses from Provincial/Municipal Staff

Questions

1. Report on what the implications are in regards to the *Mines Act* answering the following:
 - a. What requirements have to be met by the applicant to receive permission by the province
 - b. What environmental studies have to be conducted
 - c. Will these studies be available for the public
 - d. What bylaws of the District of Highlands could apply to the applicant if they were to receive a mining permit?
2. Review of the GAP analysis
3. Report on implications of Tervita's lining and leachate design with regard to provincial environmental assessments – would deleterious land uses that impact Tervita's design plans cause the refusal of the issuance of a Mining Permit?
4. Inform Provincial regulators of District of Highlands concerns regarding the above.
5. Report on legal implications of not allowing access to Millstream Road.

Responses

Regarding 1 a and b:

A limited amount of required information must be submitted in the Notice of Work application. This is listed in section 10(1) of the *Mines Act* and includes:

- A plan outlining the details of the proposed work
- A program for the conservation of cultural heritage resources
- A program for the protection and reclamation of the land, watercourses, and cultural heritage resources affected by the mine including the information, particulars and maps established by the regulations or the code (the Health, Safety and Reclamation Code).

If a mine is proposed to have a production capacity greater than or equal to 500,000 tonnes of both sand and gravel per year during at least one year of its operation, or greater than or equal to 1,000,000 tonnes of excavated sand or gravel or both sand and gravel over a period of less than or equal to four years (see Table 6 from the *Reviewable Projects Regulation*: http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/13_370_2002#section7), then the province has additional power for requesting information for permit applications pursuant to the *Mines Act* through the *Environmental Assessment Act* and related regulations. If a proposed mine is under those thresholds, the information requirements are at the discretion of the Chief Inspector of Mines. He or she may consider a community's requests for information.

When there is an application for a permit pursuant to the *Mines Act*, the local government is referred the application. Any comments received from a local government are considered, but not necessarily followed.

Regarding 1 c:

The Notice of Work application becomes publicly accessible and is included in the referral package. The Inspector may order a "Public Information Meeting," where the proponent presents their proposal and takes questions from the public. Any reports and studies ordered by the Inspector prior to this meeting would be available at the time. This meeting is very similar to a local government "public hearing" in that the purpose of the meeting is strictly for the public to present their views regarding the application.

Regarding 1 d:

All bylaws of the District are applicable to any *Mines Act* Permit, other than those that would not permit "excavation". Please also see the attached legal memorandum describing related case law in regards to gravel extraction and processing.

Regarding 2:

This answer is from Planning/Subdivision staff. The "Gap Analysis" work (source: July 13, 2015 Council Meeting) is fundamentally a review of the District's existing regulations in order to find any potential "missing" regulations to further protect and conserve ground and surface water. The purpose of that work was to find further opportunity for regulations. Because there are no bylaws imminently involved in the rezoning applications, staff is of the opinion that asking a consultant to review the Gap Analysis would be an ineffective use of resources at this time.

Regarding 3:

It was explained that Tervita's liner could not be damaged by concussion, but only by flying rock, so the requirements are typically to that a liner must have at least two feet of material on it. This was an example from the South Island Aggregate *Mines Act* Permit.

The Ministry of Environment would be included in the referrals and would presumably comment on any potential impacts to their *Environmental Management Act* permit over the Tervita site.

Regarding 4:

Through the conversation with the Acting Inspector of Mines, Planning staff had directly read the questions, and his response to this question was that he accepted that his department is aware that the District of Highlands has concerns with respect to long term rock processing on the subject sites.

Regarding 5:

This answer is from Planning/Subdivision staff. One of the primary requirements of any subdivision (thus, creation of any parcel including remaining portions) is sufficient highway access. This is simply not an option to be pursued by any legal means.

Other General Questions and Responses

6. Q – Under what circumstances is a *Mines Act* permit required?

A – The typically limiting factor is the action of quarrying rather than digging. This means that blasting and typically processing would also be permitted as part of a permit. The permit must also follow local regulations/bylaws. The *Mines Act* gives the following definition:

“mine” includes:

- (a) a place where mechanical disturbance of the ground or any excavation is made to explore for or to produce coal, mineral bearing substances, placer minerals, rock, limestone, earth, clay, sand or gravel,
- (b) all cleared areas, machinery and equipment for use in servicing a mine or for use in connection with a mine and buildings other than bunkhouses, cook houses and related residential facilities,
- (c) all activities including exploratory drilling, excavation, processing, concentrating, waste disposal and site reclamation,
- (d) closed and abandoned mines, and
- (e) a place designated by the chief inspector as a mine.

7. Q – What is the primary purpose of a *Mines Act* permit?

A – A permit issued under the *Mines Act* is done typically to assure worker and community safety. More thorough reviews involving detailed reports are triggered under larger proposed mines, with thresholds dictated in the *Environmental Assessment Act's Reviewable Projects Regulation*.

8. Q – Is there a maximum production capacity threshold where a *Mines Act* permit wouldn't be required?

A – No, but the Inspector may grant authorization to conduct mining without a permit very small, limited operations.

9. Q – How long does it take to process a permit pursuant to the *Mines Act*?

A – Anywhere from 60 days to more than a year depending on complexity and other issues.