

April 8th, 2022



CVRD Board of Directors

c/o Lauren Wright, Planner III – Development Services

RE: Aggregate Extraction and Closure Plan for 1715 & 1745 Thain Road

Dear CVRD Board of Directors,

I, Thomas R Elliot PhD P.Geo P.Ag, am an independent objective third party Qualified Professional with declared Agrologist practice competency in Arable land evaluation, conservation planning and management; Contaminated land assessment, remediation and decommissioning; and Soil and land conservation, reclamation planning and management. Additionally, I am a Geoscientist hydrogeologist with specialization including near surface groundwater hydrology influence on geohazards, and exchange with stream flows.

I have been a Professor and Canadian Federally-sponsored researcher at the Carbon Mitigation Institute (cmi.princeton.edu), whose mission is to lead the way to a compelling and sustainable solution to the carbon and climate change problem. Currently, I am the Chair of the Engineers and Geoscientists of BC Sustainability Advisory Group whose purpose is, in part, to recommend appropriate policy development, providing input into practice guideline development and revision, and recommend appropriate responses to requests for regulatory support. I have been President of the BC Institute of Agrologists local branch; a Qualified Professional Practice Reviewer due to my senior level of expertise; as well as a mentor for new professionals and students in the practice of objective Environmental Consulting.

I am writing to you in my proven capacity as a Subject Matter Expert, with an experience-based understanding of legislation and navigation of the consequent separate jurisdictions, and with perspective from an extensive track record of identifying, developing and executing environmentally and socially beneficial projects for agricultural, community and First Nation interests.

My attendance to the Electoral Area Services Committee (EASC) on April 6 saw my participation under Agenda item R.2, which is the subject of this letter.

The purpose of this letter is to review the subject Background Information, Jurisdiction and consequence of potential Board decisions made on the Updated Aggregate Extraction and Closure Plan (the 'Closure Plan') submission to the Agricultural Land Commission (ALC). The ALC requires such submissions be authorized by local municipalities (e.g. CVRD) before consideration by the ALC. Authorization is not an evaluation of technical accuracy, implementation methods, or adherence to existing provincial legislation administered by a Ministry or Provincial Commission – as all of those

matters are reviewed by the relevant authorities, technical experts and decision makers at the Provincial level.

The Closure Plan was first provided to Directors on April 1, 2022 as part of the Background Material and submission package, five days prior to the April 6, 2022 EASC meeting.

I have outlined some key matters in the following:

1. Consequence of Non-Authorization

Without CVRD Board authorization of the submitted Closure Plan to the ALC, the Farm Operator utilizing the subject ALR lands has no obligations other than those contained within the 1999 Aggregate Extraction Plan (AEP).

The 1999 AEP largely meets the ALC submission requirements, as detailed in ALC Policy P-13 which was provided in the Background Information package. However, the 1999 AEP has no closure timelines, milestones or any updated inventory of activities associated with the land reclamation component of closure – all of which were developed and included to the updated Closure Plan.

During the EASC, General Manager Kjerulf provided insight to what will happen should the Board not authorize the application, which I will repeat here: the ALC policy is that *'If the local government exercises its authority and does not authorize the application, the application proceeds no further and will not be considered by the ALC.'* Therefore, consequence of the Subject application not proceeding is that the submitted Closure Plan will be discarded, and the Farm Operator is only responsible to conditions of the 1999 AEP.

2. Jurisdiction

By not authorizing the Closure Plan application and instead seeking a facilitated roundtable type *'discussion on governance of this particular site, operations, non-compliance issues and how to move forward in a more positive way'* prior to authorization, the EASC is attempting to insert itself into the jurisdiction of the ALC and Ministry of Energy, Mines and Low Carbon Innovation.

This request of staff is challenging for legislative, precedent, and liability reasons, which I explain in the following paragraph. The legislated structure of the ALC, Ministry of Energy, Mines and Low Carbon Innovation, and the Local Governance Act – to which CVRD is subject – does not allow for shared jurisdiction over Provincially regulated activities^{1,2}. This was recently reinforced by legal precedent set by *'O.K. Industries vs. District of Highlands, 2021'*, and the more local *'Cowichan Valley Regional District vs. Cobble Hill Holdings, 2016 BCCA 432'*. In both legal cases, it was determined and

¹ Agricultural Land Commission Act. https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/02036_01

² Ministry of Energy and Mines Act. https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/00_96298_01, specifically Section 12 'Agreements with other jurisdictions' which does not include municipal governments.

affirmed through appeal that a municipal government is not empowered to regulate ‘mines,’ which include quarries, under its zoning power. Additionally, individual applications to the ALC are not a suitable arena or pathway through which CVRD Directors can pursue additional engagement for decision making on matters outside of their jurisdiction. This is largely due to potential for harm caused to the individual proponent through delay or additional engagement expenditure, which therefore creates potential for liability.

3. Content and Completeness of Reporting

During the EASC session, statements were made regarding composition of the Closure Plan – in particular that there were missing components such as a schedule. I bring the reader’s attention to select headings from the submitted Closure Plan, as follows:

- a. Existing **Sensitive Environmental Receptor Mapping** and Data (*including groundwater*);
- b. 1715 Thain Rd. Activities and Operations
 - i. Soil Importation [ALR]
- c. 1745 Thain Rd. Activities and Operations
 - i. Sand and Gravel Extraction
 - ii. Rock Crushing [Non-ALR]
 - iii. Cement and Asphalt Recycling [Non-ALR]
 - iv. Soil Importation [ALR]
 - v. Wood Residuals Storage and Processing [ALR]
- d. Aggregate Extraction from ALR Portion
 - i. Volume Estimate
 - ii. 1745 Thain Rd. Closure and Rehabilitation Plan
- e. Soil Management Plan
 - i. Soil Salvage
 - ii. **Soil Importation & Soil Environmental Certification Requirements**
- f. **Land Rehabilitation and Agricultural Capability**
- g. **1715 & 1745 Thain Rd. – Schedule of Activities**

With standard text indicating matters which were discussed during the EASC meeting, and bold text intended to draw reader attention to sections that were thought to be absent.

During the EASC meeting, there was also a request for ‘more information’ on matters which are outside of the subject Closure Plan. Regretfully, this application was submitted to the ALC; as such, there are no applicable CVRD bylaws or policy requiring specific composition of submitted reports. Since submission requirements to the ALC have been clearly laid out in ALC Policy P-13, that is how the document was composed in completeness.

Aggregate Extraction and Reclamation Plan for 1715 & 1745 Thain Road

In addition to the technical and legislative matters brought forward above, I take this opportunity to convey the following:

1. Development and submission of the Closure Plan is motivated by opportunity for new prime agricultural land to be brought into production as the generational Farm Operation looks toward a climate-resilient future of food production.

As a long-standing Cowichan Valley family who have already improved agricultural limitations on significant tracts of local farmland, the Farm Operators have their livelihood tied to the multi-generation investment that has been made to the lands and waters of their home;

The aggregate extraction operation is nearing end-of-life, evidenced by extracted volumes and remaining permitted volume – as such, reclamation and closure planning, as submitted, is both timely and in interest of the next generation Farm Operator;

The Closure Plan submission is a collection of work created from engagement by Ministerial and Municipal employees, Qualified Professional efforts and the Farm Operators who are planning for a water-constrained future under our changing climate.

2. As an urging for a collective, objective, and rational understanding of what this Closure Plan is set to accomplish; and resulting from my history of presenting to and collaborating with Electoral Area Services Committees (or their equivalents) in other municipal governments, I bring your attention to the strong likelihood that the CVRD Code of Conduct For Elected Officials was not adhered to during the last EASC meeting under the following points:
 - a. (*Working with Each Other 1.b*) Professional and respectful verbal and body language;
 - b. (*Working with Each Other 1.c*) Seeking to understand and asking questions rather than making assumptions;
 - c. (*Working with Each Other 1.d*) Arriving prepared for meetings and specific agenda items;
 - d. (*Working with Each Other 1.g*) Directing critique at the issue and not at the individual that raises it;
 - e. (*Working with Each Other 2*) Ensuring commentary at meetings remains focused on the issues, avoiding repetition or re-stating what has already been said;
 - f. (*Interactions with Public, 2.c*) Ensuring all members of the public are treated in the same manner and in accordance with this Code of Conduct;

I look forward to working with the Board in a positive, constructive and fair manner moving forward.

In closure, as a Subject Matter Expert and objective third party Qualified Professional I have concern about the EASC decision process and outcome regarding the submitted Closure Plan for 1715 & 1745 Thain Road. The referral back to staff toward a, currently, non-achievable multi-jurisdictional decision

Aggregate Extraction and Reclamation Plan for 1715 & 1745 Thain Road

making summit is – to be frank –antithetical to the local community goal of closing this aggregate extraction operation.

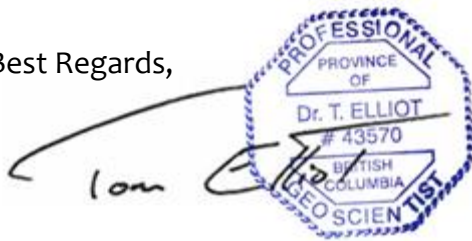
My professional recommendation is to authorize the Closure Plan that is intending to create new prime agricultural land where the existing aggregate extraction operation resides, within a reasonable timeline for agricultural operations, using Provincial best practices, under guidance of Qualified Professionals, for activities that are decidedly within the jurisdiction of Ministry of Energy, Mines and Low Carbon Innovation as well as the ALC – which includes matters of the environment, volumes and quantities of materials moved or utilized for rehabilitation, as well as monitoring and compliance activities.

If the Board feels that the Provincial and Qualified Professional oversight is insufficient, then individual members are welcome to propose additional considerations to the Proponent or their Qualified Professional as private citizens.

Non-authorization may result in continued operation of the aggregate extraction site, with no prospect of modified practices due to a lack of legislated requirements or updated plans (i.e. the Closure Plan).

Should follow-up be warranted on any of the above, please contact the undersigned.

Best Regards,

A handwritten signature in black ink, appearing to read "Tom Elliot", is written over a blue professional seal. The seal is a hexagon with a double border. The text inside the seal reads: "PROFESSIONAL OF" at the top, "Dr. T. ELLIOT" in the center, "# 43570" below that, and "BRITISH COLUMBIA GEO SCIENTIST" at the bottom.

Thomas R Elliot PhD P.Geo P.Ag

