

News Release

FOR IMMEDIATE RELEASE

June 19, 2015



Amended Petition Filed With BC Supreme Court Regarding Contaminated Soils Facility

Duncan, BC – The Cowichan Valley Regional District filed an amended petition with the BC Supreme Court on June 18, 2015 to enforce its zoning bylaw in relation to a proposed contaminated soil facility on Stebbings Road in Shawnigan Lake.

Following an Environmental Appeal Board decision in March upholding a permit issued by the Ministry of Environment under the Environmental Management Act in respect of the facility, the owner of the property has indicated it is now operating and open for business under the permit. The property in question is located in an F1 (Forestry) zone which does not permit a contaminated soil treatment or landfill facility. The CVRD is seeking relief of the BC Supreme Court to enforce the zoning bylaw and, among other relief, issue an order prohibiting a contaminated soil treatment or landfill facility on the property.

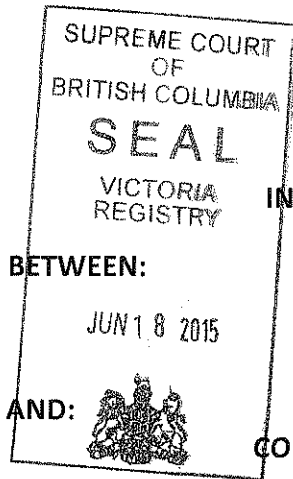
"The CVRD filed a petition with the BC Supreme Court in October 2013 to enforce our zoning bylaw. However, it was held in abeyance pending the outcome of the appeal to the Environmental Appeal Board" states Board Chair Jon Lefebure. "With the recent decision of the Environmental Appeal Board to uphold the permit, the CVRD must enforce its zoning bylaw to ensure its bylaws are being respected and prevent potential impacts to the water source for the Shawnigan Lake community."

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For Further Information, Contact:

Brian Carruthers, Chief Administrative Officer
Phone: 250.510.0331
Email: bcarruthers@cvrld.bc.ca

Amended pursuant to Rule 6-1(2)(a)
Original Petition, filed: October 10, 2013.



No. 13 3547
VICTORIA REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

COWICHAN VALLEY REGIONAL DISTRICT

PETITIONER

AND:

**COBBLE HILL HOLDINGS LTD. AND SOUTH ISLAND
AGGREGATES LTD.**

RESPONDENTS

AMENDED PETITION TO THE COURT

ON NOTICE TO:

Cobble Hill Holdings Ltd.
c/o Cox, Taylor
Burnes House, 3rd Floor
26 Bastion Square
Victoria, B.C. V8W 1H9

South Island Aggregates Ltd.
c/o Cox Taylor
Burnes House, 3rd Floor
26 Bastion Square
Victoria, B.C. V8W 1H9

Attorney General of British Columbia
PO Box 9289 Stn Prov Govt
Victoria, B.C. V8W 9J7

This proceeding has been started by the Petitioner for the relief set out in Part 1 below.

If you intend to respond to this Petition, you or your lawyer must

- (a) file a Response to Petition in Form 67 in the above-named registry of this court within the time for response to Petition described below, and
- (b) serve on the Petitioner
 - (i) 2 copies of the filed Response to Petition, and
 - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the Response to Petition within the time for response.

TIME FOR RESPONSE TO PETITION

A Response to Petition must be filed and served on the Petitioner,

- (a) if you were served with the Petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the Petition anywhere in the United States, within 35 days after that service,
- (c) if you were served with the Petition anywhere else, within 49 days after that service, or
- (d) if the time for response has been set by order of the court, within that time.

(1)	The address of the registry is:	850 Burdett Avenue Victoria, B.C. V8W 1B4
(2)	The ADDRESS FOR SERVICE of the Petitioner:	c/o Young Anderson 1616 - 808 Nelson Street Box 12147, Nelson Square Vancouver, BC V6Z 2H2
	Fax number address for service <i>(if any)</i> of the Petitioner:	604.689.3444
	Email address for service <i>(if any)</i> of the Petitioner:	Not applicable.

(3)	The name and office address of the Petitioner's lawyer is:	Alyssa Bradley Young Anderson 1616 - 808 Nelson Street Box 12147, Nelson Square Vancouver, BC V6Z 2H2
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CLAIM OF THE PETITIONER

Part 1: ORDER(S) SOUGHT

1. A declaration that a contaminated soil treatment facility is not a permitted use on the property located at 640 Stebbings Road in the Cowichan Valley Regional District and legally described as PID: 026-226-502, Lot 23 Blocks 156, 201 and 323 Malahat District Plan VIP78459 (the "Property") under Cowichan Valley Regional District Electoral Area B – Shawnigan Lake Zoning Bylaw No. 985 (the "Zoning Bylaw");
2. A declaration that a landfill facility is not a permitted use on the Property under the Zoning Bylaw;
3. A declaration that the storage of contaminated soil and ash not originating on the Property is not a permitted use on the Property under the Zoning Bylaw;
4. An injunction restraining the Respondents, Cobble Hill Holdings Ltd. and South Island Aggregates Ltd. and all persons having notice of this order from using, or allowing, or permitting the use of, the Property as a contaminated soil treatment facility contrary to the Zoning Bylaw;
5. An injunction restraining the Respondents, Cobble Hill Holdings Ltd. and South Island Aggregates Ltd. and all persons having notice of this order from using, or allowing, or permitting the use of, the Property as a landfill facility contrary to the Zoning Bylaw;
6. An injunction restraining the Respondents, Cobble Hill Holdings Ltd. and South Island Aggregates Ltd. and all persons having notice of this order from using, or allowing, or permitting the use of, the Property for the storage of contaminated soil and ash not originating on the Property contrary to the Zoning Bylaw;
7. A mandatory injunction requiring the Respondents, Cobble Hill Holdings Ltd. and South Island Aggregates Ltd. and all persons having notice of this order to remove from the Property, the soil management facility, the soil treatment facility and all landfill cells and any contaminated soil and ash stored, treated or landfilled within such facilities;
8. A mandatory injunction requiring the Respondents, Cobble Hill Holdings Ltd. and South Island Aggregates Ltd. and all persons having notice of this order to remove from the Property, the water treatment system and the settling pond;

9. Costs; and
10. Such further and other relief which this Honourable Court deems just.

Part 2: FACTUAL BASIS

1. The Petitioner, the Cowichan Valley Regional District (the "CVRD") is a local government incorporated under the *Local Government Act*, R.S.B.C. 1996, c. 323 and has a business address of 175 Ingram Street, Duncan, British Columbia, V9L 1N8.
2. The Respondent, Cobble Hill Holdings Ltd. ("Cobble Hill Holdings") is an active corporation incorporated under the laws of British Columbia on April 11, 2006 and has its registered office at Herald Street Law, 101-536 Herald Street, Victoria, British Columbia, V8W 1S6.
3. The Respondent, Cobble Hill Holdings is the registered owner of property located at 640 Stebbings Road in the Cowichan Valley Regional District and legally described as: PID: 026-226-502, Lot 23 Blocks 156, 201 and 323 Malahat District Plan VIP78459 (the "Property").
4. The Respondent, South Island Aggregates Ltd. ("South Island Aggregates") is an active corporation incorporated under the laws of British Columbia on June 7, 2006 and has its registered office at Herald Street Law, 101-536 Herald Street, Victoria, British Columbia, V8W 1S6.
5. On or about October 4, 2006, the Chief Inspector of Mines with the B.C. Ministry of Energy, Mines and Petroleum Resources (at that time) issued Permit Q-8-094 to South Island Aggregates to operate The Respondent, South Island Aggregates operates a quarry on the Property.
- ~~6. Over the past several years, there has been significant illegal dumping of contaminated soil in the Cowichan Valley, which has resulted in the issue of contaminated soil in the Cowichan Valley becoming a serious land-use concern.~~
- ~~7. The CVRD has expressed its concerns to the Ministry of Environment regarding provincial regulations not being monitored or enforced and the potential environmental impact of contaminated soil in the region, including contaminated soil currently being stored on the Property.~~
6. On or about August 21, 2013, Hubert Bunce acting in the capacity of Director of Waste Management with the B.C. Ministry of Environment ~~under the *Environmental Management Act*, S.B.C. 2003, c. 53~~ issued Permit PR-105809 to Cobble Hill Holdings under the provisions of the *Environmental Management Act* authorizing the discharge of up to 100,000 tonnes/year of contaminated soil and associated ash as well as effluent from a proposed contaminated soil treatment facility and landfill facility to be located on the Property (the "Permit").

7. The president and director for Cobble Hill Holdings and South Island Aggregates, ~~Martin Michael~~ Kelly, announced in a press release on the same day as the issuance of the Permit that "South Island Aggregates is pleased with the Ministry of Environment's decision to issue a permit to treat and landfill waste soil" and that they "are now proceeding with construction and intend to be operational in the near future".
8. The soil to be accepted for treatment and landfilling on the Property is to originate off the Property from excavation and remediation of contaminated sites ~~originating in the South Vancouver Island area~~. Organic/treatable soils below hazardous waste standards under the *Environmental Management Act and Regulations* are proposed to be remediated at the treatment facility and then encapsulated in engineered landfill cells on the Property, reused as fill material at the quarry site on the Property or shipped off the Property.
9. Contaminated soil and ash below hazardous waste standards (whether organic/treatable soils or inorganic/untreatable soils) ~~Inorganic/untreatable soils~~ are also proposed to simply be permanently landfilled within engineered landfill cells on the Property.
10. On or about September 12, 2013, the CVRD advised Cobble Hill Holdings and South Island Aggregates that a contaminated soil treatment facility and/or landfill facility is not a permitted use of the Property under the CVRD's Zoning Bylaw.
11. The Property is within the Shawnigan Lake watershed. The Shawnigan Lake watershed is a source of drinking water for thousands of people. More than 12,000 people rely on the Shawnigan Lake watershed as their primary drinking water source.
- ~~12. The application and issuance of the Permit has raised significant public concern given the location of the Property within the Shawnigan Lake watershed and the potential risks to drinking water resources and the environment.~~
- ~~13. The CVRD has opposed the granting of the Permit and has sought to work with the Ministry of Environment to find a suitable location for a contaminated soil treatment facility that is not in a watershed that provides domestic drinking water.~~
12. The Property was not selected and zoned as a location for a contaminated soil treatment facility and/or a landfill facility through the CVRD's ~~work with the Ministry of Environment or through the appropriate land use procedures.~~
13. The justification to construct a contaminated soil treatment facility and a landfill facility on the Property is simply opportunistic as it allows South Island Aggregates and Cobble Hill Holdings to conduct an additional business on the Property, ~~and to progressively reclaim the quarry at a reduced cost.~~

14. The soil management facility, the soil treatment facility, the water treatment system and the settling pond described in the Permit have been constructed on the Property and the first landfill cell described in the Permit has been or is being constructed on the Property. Contaminated soil not originating on the Property is being stored in the soil management facility.
15. The facilities and activities described in the Permit are not necessary or normal for the reclamation of quarry operations.
16. On or about May 13, 2015, Cobble Hill Holdings issued a statement to the press indicating that it is "operating and open for business" in accordance with the Permit.

Part 3: LEGAL BASIS

1. Section 903 of the *Local Government Act* provides that a local government may, by bylaw, regulate or prohibit within a zone the use of land, buildings and other structures.
2. Pursuant to the CVRD's authority under s. 903 of the *Local Government Act*, on or about September 10, 1986, the CVRD adopted Electoral Area B – Shawnigan Lake Zoning Bylaw No. 985 (the "Zoning Bylaw").
3. Section 4.2 of the Zoning Bylaw states:

Land or the surface of water shall not be used and structures shall not be constructed, altered, located or used except as specifically permitted by this bylaw.
4. The Property is zoned F-1 (Primary Forestry) under the Zoning Bylaw.
5. Section 7.4(a) of the Zoning Bylaw provides that the following uses and no others are permitted in the F-1 zone:
 - (1) Management and harvesting of primary forest products excluding sawmilling and all manufacturing and dry land log sorting operations;
 - (2) Extraction crushing milling concentration for shipment of mineral resources or aggregate materials excluding all manufacturing;
 - (3) Single family residential dwelling or mobile home;
 - (4) Agriculture silviculture horticulture;
 - (5) Home occupation – domestic industry;
 - (6) Bed and breakfast accommodation;

- (7) Secondary suite or small suite on parcels that are less than 10.0 hectares in area;
 - (8) Secondary suite or a second single family dwelling on parcels that are 10.0 hectares or more in area.
6. In addition, s. 5.20 of the Zoning Bylaw states:
- Unless explicitly permitted in a zone, no parcel shall be used for the purpose of storing contaminated waste or contaminated soil, if the contaminated material did not originate on the same legal parcel of land that it is being stored on.
- 7. A contaminated soil treatment facility is not a permitted use on the Property under the Zoning Bylaw.
 - 8. The court considered this issue in *Cowichan Valley Regional District v. Lund Small Holdings Ltd.*, unreported, oral reasons for judgment of the Honourable Mr. Justice Melvin, November 9, 2000 on an application for an interim injunction. The court held that the treatment of contaminated soils was not a permitted use in the F-1 zone of the CVRD's Zoning Bylaw.
 - 9. A landfill facility is not a permitted use on the Property under the Zoning Bylaw.
 - 10. The landfill facility constructed on the Property is not the simple deposit of soil onto the Property but rather, the encapsulation of imported contaminated soil and ash within engineered landfill cells on the Property.
 - 11. The storage of contaminated soil and ash not originating on the Property is not a permitted use on the Property under the Zoning Bylaw.
 - 12. The storage of contaminated soil and ash not originating on the Property is not the simple deposit of soil onto the Property but rather, the storage of imported contaminated soil and ash within structures or buildings on the Property associated with the contaminated soil treatment facility and/or the landfill facility.
 - 13. The mere existence of provincial legislation in a given field does not oust municipal prerogatives to regulate or prohibit the subject matter.

114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town),
2001 SCC 40

Greater Vancouver (Regional District) v. Darvonda Nurseries Ltd.,
2008 BCSC 1251 (regarding the *Environmental Management Act*)

Squamish (District) v. Great Pacific Pumice Inc., 2003 BCCA 404
(regarding the *Mineral Tenure Act* and *Mines Act*)

14. Section 37(6) of the *Environmental Management Act* specifically acknowledges that a local government's zoning bylaw may not allow the land to be used for the purpose allowed under a permit issued under the *Environmental Management Act*. In such circumstances, only the Lieutenant Governor in Council may, by order, suspend the operation of the bylaw to the extent the Lieutenant Governor in Council considers necessary to enable the rights given by a permit.
15. To the extent, if any, the imported contaminated soil and ash will be used to reclaim the quarry on the Property, the courts have held that certain activities including the storage and processing of materials on the mine site can be precluded by a municipal zoning bylaw even if a permit issued under the *Mines Act* expressly authorizes such activities or it is economically advantageous to do so.

Cowichan Valley (Regional District) v. Norton, [2005] BCSC 1056

Squamish (District) v. Great Pacific Pumice Inc., [2003] BCCA 404

16. Pursuant to s. 281 of the *Local Government Act* and s. 274 of the *Community Charter*, S.B.C. 2003, c. 26, a local government may enforce, prevent or restrain the contravention of its bylaws by injunction proceedings in the B.C. Supreme Court.
17. The CVRD also relies on the following:
- (a) the *Environmental Management Act* and associated regulations;
 - (b) the *Community Charter* and associated regulations;
 - (c) the *Local Government Act* and associated regulations;
 - (d) Rules 2-1, 10-4, 14-1, 16-1 and 20-4 of the *Rules of Court*; and
 - (e) the inherent jurisdiction of the Court.

Part 4: MATERIAL TO BE RELIED ON

~~1. Affidavit #1 of Tom Anderson made on October 3, 2013;~~

1. Affidavit #1 of Jenn Benson made on October 10, 2013;

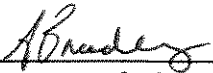
2. Affidavit #1 of Eric Michael Tippet made on June 11, 2015;

3. Affidavit #1 of Anne I. Moody made on June 16, 2015; and,

4. Such other material as may become relevant or available prior to the hearing of the Petition.

The Petitioner estimates that the hearing of the Petition will take ~~2-5~~ 3 days.

Date: ~~10/Oct/2013~~ 17/Jun/2015.


 Signature of Alyssa Bradley
☒ lawyer for Petitioner

To be completed by the court only:

Order made

☐ in the terms requested in paragraphs _____ of Part 1 of this
 Petition

☐ with the following variations and additional terms:

Dated: _____.
 [dd/mm/yyyy]

Signature of ☐ Judge ☐ Master