EVALUATION OF AN APPLICATION TO DESIGNATE THE BAMBERTON PROJECTS AS REVIEWABLE UNDER THE ENVIRONMENTAL ASSESSMENT ACT (2018) - DRAFT

REQUESTED BY:
SAANICH INLET PROTECTION SOCIETY

JANUARY 17, 2023

Pursuant to Section 11 of the *Environmental Assessment Act,* S.B.C. 2018, c.51.

DRAFT



BRITISH COLUMBIA
EAO | Environmental Assessment Office

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1.0 PURPOSE OF THIS REPORT

On November 2, 2022, the Saanich Inlet Protection Society (the Applicant), a local non-government organization, submitted an application (the Application) to the British Columbia (B.C.) Minister of Environment and Climate Change Strategy requesting that a regional assessment be conducted under Section 35 of the *Environmental Assessment Act* (2018) (the Act) for the Bamberton Projects, located near Mill Bay, B.C. and proposed by Malahat Investment Corporation and Malahat Nation (the Proponents).The Environmental Assessment Office (EAO) interpreted that the Applicant was requesting that the Bamberton Projects be designated as a reviewable project under Section 11 of the Act.

This report provides the EAO's analysis of the designation request, the input received from review participants, and an evaluation of the Bamberton Projects against factors that must be considered by the Minister under Section 11 of the Act. Following a public comment period on a draft version of this report, the EAO will provide a final report and recommendation to the Minister to inform their decision on whether to designate the Bamberton Projects as reviewable under Section 11 of the Act. If designated as reviewable, the Bamberton Projects must undergo an assessment under the Act before a decision is made to amend the *Mines Act* permit and to issue other required authorizations. If not designated as reviewable, the EAO will not conduct an Environmental Assessment (EA) and the Bamberton Projects could only proceed if they successfully obtain all required permits and authorizations.

2.0 SECTION 11 OF THE ACT

Section 11 of the Act gives the Minister the power to designate an 'eligible project' as reviewable. Eligibility refers to a project that is not substantially started and is not reviewable under the Reviewable Projects Regulation (RPR). The Minister must consider:

> (a) whether the applicant is an Indigenous nation;
>
> (b) whether the eligible project could have effects on an Indigenous nation and the rights recognized and affirmed by Section 35 of the *Constitution Act, 1982;*
>
> (c) if the eligible project is in a category of project described in the RPR, whether the potential effects of the eligible project will be equivalent to or greater than the potential effects of projects in that category that are reviewable projects;
>
> (d) whether an assessment of the eligible project is consistent with the purposes of the EAO, as set out in Section 2 of the Act; and
>
> (e) whether designating the eligible project as reviewable is in the public interest.

The list is not exhaustive. If the Minister declines to make a designation, the Minister must provide reasons for that decision to the Applicant.

3.0 THE EAO'S DESIGNATION REQUEST REVIEW PROCESS

After receiving the Application, the EAO engaged with the following participants on the Application and on the factors outlined in Section 11 of the Act:

Applicant

- Saanich Inlet Protection Society (SIPS)

Proponents

- Malahat Investment Corporation (MICO) and Malahat Nation

Local Governments

- Cowichan Valley Regional District (CVRD)

Provincial Government Agencies

- Ministry of Energy, Mines, and Low Carbon Innovation (EMLI)
- Ministry of Forests (FOR)
- Ministry of Indigenous Relations & Reconciliation (IRR)
- Ministry of Environment and Climate Change Strategy (ENV)

Federal Government Authorities

- Department of Fisheries and Oceans Canada (DFO)
- Impact Assessment Agency of Canada (the Agency)
- Parks Canada
- Transport Canada

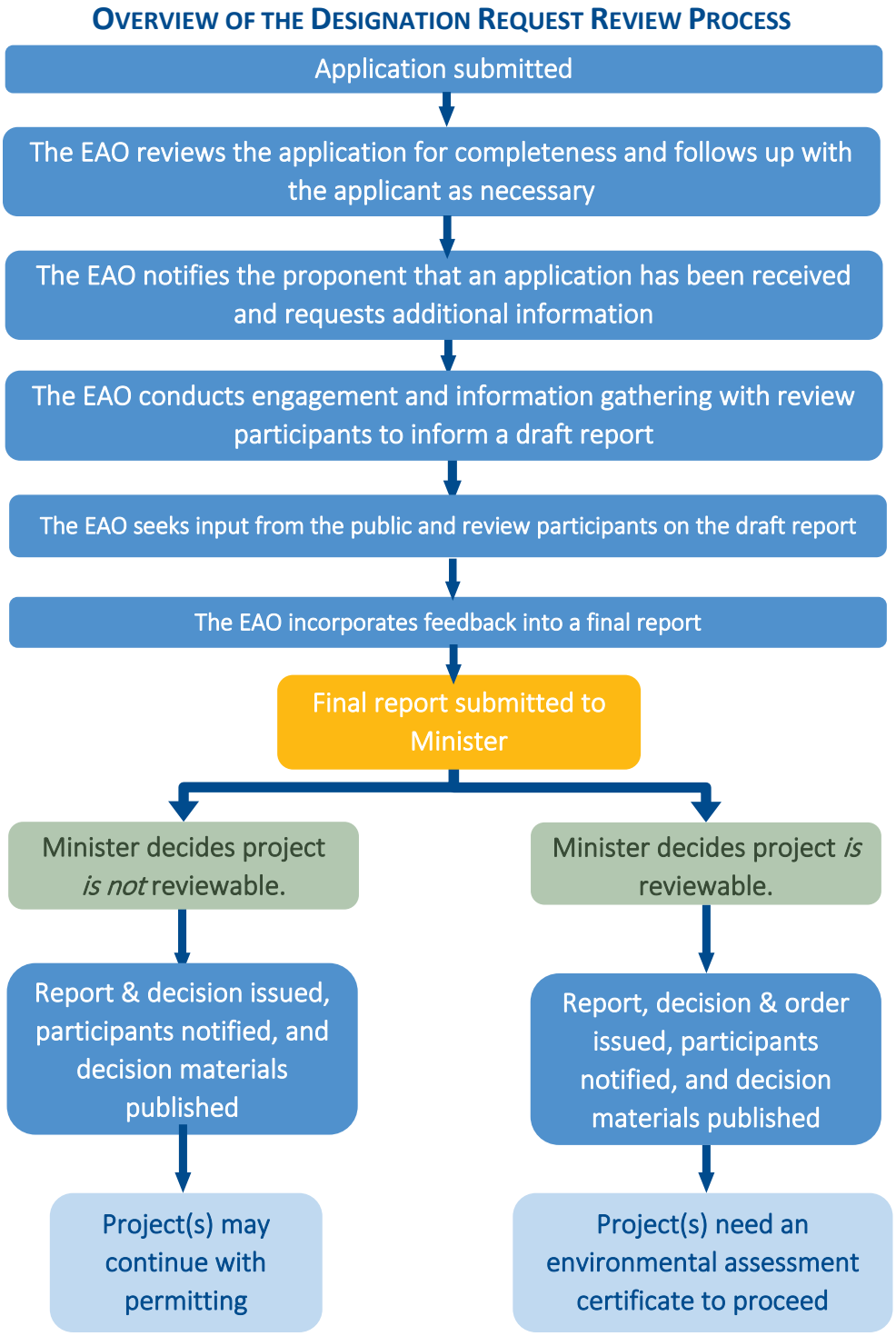
Indigenous nations

- Cowichan Tribes
- Snuneymuxw First Nation
- Halalt First Nation
- Lyackson First Nation
- Malahat Nation
- Pauquachin First Nation
- Penalakut Tribe
- Stz'uminus First Nation
- Tsawout First Nation (Tsawout)
- Tsartlip First Nation (Tsartlip)
- Tseycum First Nation
- Ts'uubaa-asatx Nation

The EAO received submissions from SIPS, MICO, Malahat Nation, EMLI, FOR, the CVRD, Ts'uubaa-asatx Nation, Tsartlip First Nation, and Tsawout First Nation during the designation review process. The Application, letters, and submissions are posted on the *EAO's Project Information Centre page for the Bamberton Projects*.

The EAO prepared a draft of this report following review of the Application and submissions by review participants and after a site visit with EMLI and FOR staff on December 8, 2022. The draft report will be shared with participants for review and comment from January 17 to February 14, 2023. The EAO will hold a public comment period on the draft report from January 17 to February 14, 2023, and will host a virtual information session on February 2, 2023. A summary of public comments received will be included in the final report, along with additional submissions or comments from participants received following their review of the draft report. After the public comment period has concluded, and comments on the draft report have been considered, the EAO will finalize the report and provide it to the Minister for consideration. The Minister must provide reasons for decision, which will be posted on the EAO's Project Information Centre (EPIC) website.

The diagram below outlines the EAO's designation request review process:



4.0 BACKGROUND

4.1 Application

The Bamberton Projects, as described in the November 2, 2022, Application and for consideration in the EAO's designation request review, include three components:

1) a proposed expansion of the existing Bamberton rock quarry for construction aggregates;
2) renewal of lease on the foreshore of Saanich Inlet; and,
3) soil storage at the Trowsse Road Fill Site.

On November 24, 2022, a submission from SIPS clarified that they were requesting the following activities be designated as reviewable:

- proposed and anticipated future expansion of rock quarry activities;
- storage of hydrocarbons in existing tanks on the foreshore;
- barge and vessel maintenance and moorage of vessels associated with upland activities; and
- barging, storage and thermal desorption[1] of contaminated soil;

4.2 Bamberton Site History and Current Activities

The Bamberton Properties consist of 525 hectares (ha) within the CVRD which is partially owned as fee simple land by Malahat Nation and as Crown land by the Province.

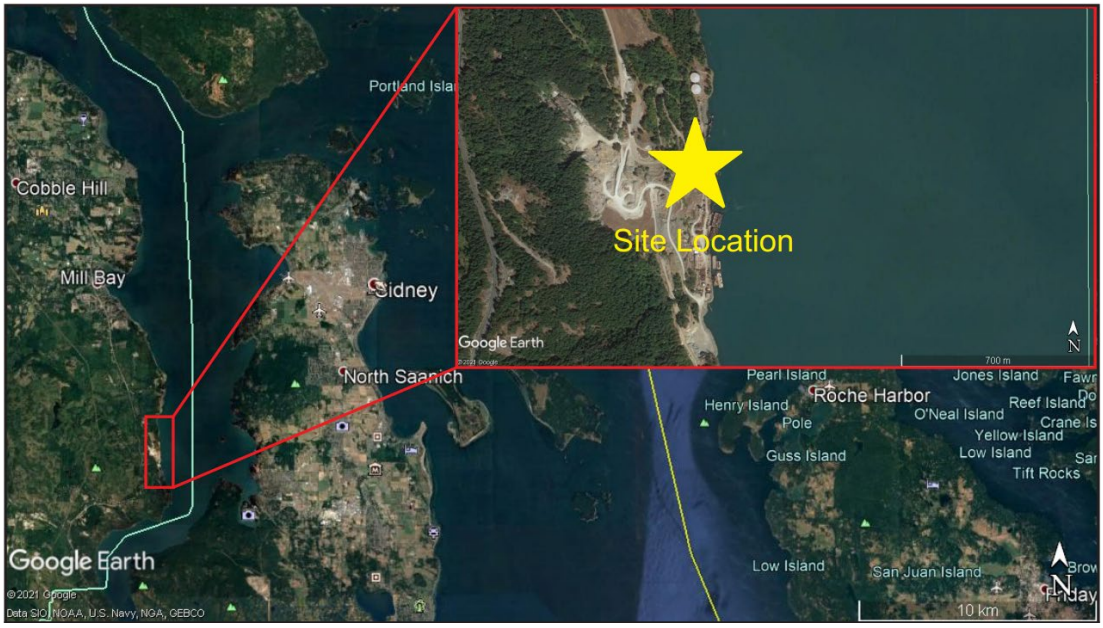


FIGURE 1 – LOCATION OF THE BAMBERTON PROJECTS

[1] Thermal desorption is an environmental remediation technology that uses heat to increase the volatility of contaminants such that they can be removed from the solid matrix (typically soil). The volatilized contaminants are then either collected or thermally destroyed.

The Bamberton area previously was home to a cement plant that operated from 1912 to 1980 and a quarry that operated from 1913 to 1953. A foreshore lease was granted to enable moorage of barges and boats adjacent to the Bamberton Properties in 1989. In 1994, South Island Development Corporation sought a Project Approval Certificate to construct the Bamberton Town Development Project under the *Environmental Assessment Act*, 1994, and the Bamberton Town Development Project was designated as reviewable in 1995. However, in July 1997, the application for a Project Approval Certificate was withdrawn. As the EAO's registry was paper-based at the time, not all information from that review is available on the EAO's Project Information Centre (*EPIC*).

Based on available information, the EAO understands the following activities are currently occurring at the Bamberton Properties: rock quarrying, concrete storage and transportation, highway operations support (e.g. storage of road salt and brine), sawmill operations, tourism (e.g. the Malahat Skywalk), marine services support activities, spill and maritime response activities, soil storage, and activities related to cultural and traditional uses (e.g. a sweat lodge).

5.0 Regulatory History, Considerations, and Status

The following sections describe the authorizations issued to date for the Bamberton quarry, continued use of a foreshore lease on the Saanich Inlet, and the Trowsse Road Fill Site, including the status of active applications submitted by MICO for amendments to each existing authorization to continue and/or expand existing activities.

5.1 Regulation of the Bamberton Quarry under the *Mines Act*

5.1.1 *Mines Act* Considerations

Mines, including quarries, are regulated by EMLI under the *Mines Act*. The *Mines Act* and *the Health, Safety and Reclamation Code for Mines in British Columbia* provide the framework for the regulation of all mining activities in B.C. from early exploration to development, production, reclamation, closure, and post-closure. A permit must be in place before any work in, on, or about a mine can occur. Key elements of a mine plan typically required for a quarry include:

- site plan - a general arrangement showing mine facilities and infrastructure within a geographical area;
- mine plan - planned mine workings and schedule of mining activities, including extent of mining within an approved disturbance boundary;
- cross sections of planned mine workings and material storage facilities;
- property Description indicating tenure of the proposed facilities and infrastructure;
- material quality and quantities for mined and stockpiled materials;
- mining methods;
- blast plans;
- soil salvage and stockpile designs;
- additional mine site Infrastructure designs outside of the site plan;
- geotechnical considerations;
- a description of noise, dust and groundwater impacts;
- a groundwater mitigation and control plan;
- a fugitive dust control plan;
- surface water management;
- an erosion control and sediment retention plan;
- a Metal Leaching and Acid Rock Drainage (ML/ARD) Plan and reclamation and closure plan; and
- a post-mining land use plan.

For more information on the requirements, principles, and guidance applicable to quarries, please visit:

- *Guide to Preparing Mine Permit Applications for Aggregate Pits and Quarries in British Columbia*
- *Aggregate Management Principles*
- *Aggregate Operators Best Management Practices Handbook for British Columbia Volume I*
- *Aggregate Operators Best Management Practices Handbook for British Columbia Volume II*
- *Health and safety: A practical Guide for Aggregate Operations*

5.1.2 Mines Act Permit History

The Bamberton rock quarry was issued permit Q-8-24 under the *Mines Act* in 1991. In 2005, the *Mines Act* permit was amended when Three Point Properties purchased the land and began remediation of 750,000 tonnes of metal contaminated soils and other waste debris from the previous industrial operations on the site with the intent of turning the area into a low-density housing development. An engineered soil storage facility (SSF) was constructed from 2006 to 2007, under the regulatory oversight of the Ministry of Environment and Climate Change Strategy (ENV). In 2011, the permit was amended again and issued to Bamberton Properties LLP with an authorized production up to 225,000 tonnes per year. Between 2015 and 2018 the Bamberton Properties were acquired by Malahat Nation and the Province.

5.1.3 Current Status of Permitting

The existing Bamberton rock quarry is authorized under *Mines Act* permit number Q-8-24 issued by the Chief Inspector of Mines.

While there are no active permits under the *Environmental Management Act* related to the Bamberton quarry, MICO is required to provide annual Site Risk Classification reports to ENV on the SSF on site, which is currently closed and capped.

In 2016, permit Q-8-24 was amended once more to its current authorized disturbance area of 39.3 ha and production capacity of up to 240,000 tonnes per year. The current holder of the permit is MICO, and the current quarry operator is Coast Mountain Resources Ltd. Authorized activities include blasting, crushing, screening, and washing of aggregate, which is shipped from site by truck or by barge via the Saanich Inlet. The 2016 amendment also brought the SSF into the Mines Act permit area for the quarry and associated activities. The current approval end date for *Mines Act* permit Q-8-24 is July 1, 2024.

In 2019 and in October 2020, MICO applied to amend *Mines Act* permit Q-8-24 to increase annual production to 479,000 tonnes per year and to expand the mine permit area to 57.6 hectares, a proposed increase in disturbance area of 47 percent. The proposed amendment to the Bamberton Quarry did not automatically trigger a review under the *Environmental Assessment Act* since it did not meet the *Reviewable Projects Regulation threshold for Construction Stone and Industrial Mineral Quarries* of a production capacity greater than 250,000 tonnes per year AND an increase in disturbance area greater than 50 percent. This *Mines Act* permit amendment was the subject of SIPS's Application to the EAO, requesting to designate the Bamberton Projects as reviewable under the Act.

In response to concerns raised by SIPS and others, MICO submitted the most recent revised application to amend permit Q-8-24 on December 21, 2022, requesting EMLI authorize the following activities:

- An annual production capacity of up to 479,000 tonnes per year; and
- Expansion of disturbance area for existing mine operations from 39.3 ha to 45.7 ha, an increase in new disturbance area of roughly 16 percent.

The latest amendment application proposes to remove the SSF from the requested permitted area. EMLI is currently reviewing MICO's application and the active *Mines Act* amendment application documents can be found on the EAO's *Bamberton Projects EPIC website*. Figure 2 below outlines the permitted 2016 and the proposed *Mines Act* permit boundaries.

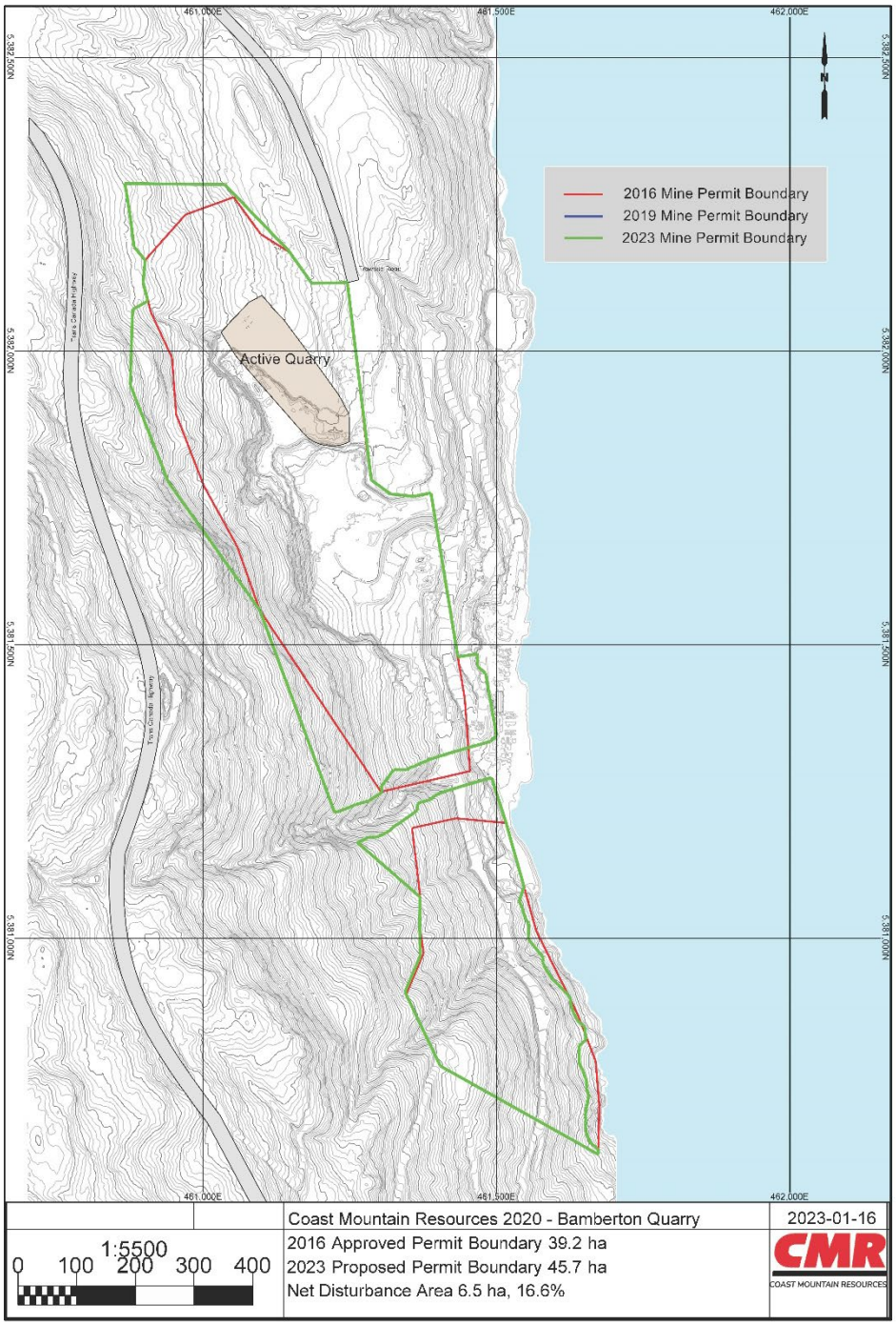


FIGURE 2 - COMPARISON OF PERMITTED 2016 VS. PROPOSED 2023 MINES ACT PERMIT BOUNDARIES

5.2 Regulation of the Foreshore Lease under the Land Act

5.2.1 Land Act Considerations

The marine dock used for transportation of quarry materials to and from the site is located on the foreshore[2] of the Saanich Inlet. Aquatic Crown land is managed by FOR under the *Land Act* and includes all the land and foreshore from the high-water mark down into the water to the limits of provincial jurisdiction. FOR operates within a framework of policies that govern the disposition, administration, and management of Crown land. Policies establish principles on land use, allocation, tenure term, pricing and all other aspects associated with Crown land[3].

Continued barging activities require the application for extension of an existing foreshore lease held by MICO, which would occur in accordance with FOR's Land Use Operational Policy Commercial – General. When an application is submitted for a foreshore lease it must include: general application requirements; a general location map; a site plan and site profile; and, a Management Plan which must be prepared in accordance with the *Management Plan Application Guidance Document*. A foreshore lease holder is responsible for ensuring that any activities by authorized users of the lease area are consistent with the terms of the lease. FOR also posts application materials to their Applications, Comments & Reasons for Decision website (*https://comment.nrs.gov.bc.ca/applications*) for public comment as part of their application review process.

5.2.2 Land Act Authorization History

MICO, Malahat Nation, or related entities have held a foreshore lease in the Bamberton area since 1989 under Crown land file number 0336205. The General Commercial/Industrial (Aquatic) tenure was granted by the BC Ministry of Crown Lands at the time over an area of 4.799 ha for the purposes of storage and shipment of non-hazardous commercial and industrial products and related small craft moorage.

5.2.3 Current Status of Authorization

The foreshore lease is authorized under the *Land Act* by FOR (Crown land file #0336205). The 30-year lease was issued in 1989 and expired in 2019 and since that time the lease has been renewed month by month while FOR reviews an application to replace the expired lease for another 30-year term. FOR accepted the foreshore lease replacement application on December 13, 2021. The application proposes to expand the existing lease area to 15.46 ha to support continued industrial use of the area and ensure vessels moored perpendicular to the shoreline are within the tenure boundary. Proposed operations for the foreshore lease include the maintenance of existing infrastructure, loading and unloading of barge materials, storage of hydrocarbons in existing upland tanks, barge and vessel maintenance, and vessel moorage. FOR has indicated that their application review process is currently on hold and will resume following the Minister's designation determination for the Bamberton Projects. The *Land Act* application, which includes a general and detailed site map and a proposed Management Plan, was posted for public comment from July 15, 2022, to September 12, 2022, can be found on FOR's *Applications, Comments, & Reasons for Decision website*.

[2] Foreshore is the land between the high and low watermarks of streams, rivers, lakes, and the ocean.

[3] For more information, visit the *Crown land policies website.*

5.3 Regulation of the Trowsse Road Fill Site by the Cowichan Valley Regional District

5.3.1 Permit and Bylaw Considerations

In the Cowichan Valley Regional District (CVRD), any deposition of soil that does not meet exemption requirements from permitting must be authorised by the regional government with a soil deposit permit to maintain operations of the site. Under *Bylaw No. 4236* any soil deposits over 1000 metres³, unless otherwise exempted, in the CVRD must hold a Soil Deposit Permit. The Bylaw allows for the deposition of soil in permitted areas where soil is defined as "clay, silt, sand, gravel, rock, peat or other substances of which land is naturally composed but does not include other material."

Prior to soil being deposited at the fill site the soil generator must fill out a clean fill declaration and an application to deposit fill from a particular site that includes the details of interest concerning the site and soil must meet the following criteria:

- Fill material substance concentrations must meet BC *Environmental Management Act* (EMA) Contaminated Sites Regulation (CSR) B.C. Reg. 376/96 including: Schedule 3.1 - Numerical Soil Standards for Residential Low Density, and Schedule 3.3 - Generic Numerical Vapour Standards for Agricultural, Urban Park, Residential.
- Fill material must not contain odour, staining, sheen or prohibited wastes (asbestos, PCBs, creosote timbers, etc.).

Under Section 16 of the Bylaw, any deposit of soil in an Electoral Area, including deposits exempt from permit requirements, must comply with requirements including, but not limited to:

- The slope of any exposed face of deposited soil must not be greater than the angle of repose necessary for stability of the deposited material. For any slope face within 10 metres (m) of a property boundary or a riparian assessment area boundary, the maximum slope grade will be 4: 1 (4 horizontal to 1 vertical)
- The deposited soil must be graded so that positive gravity drainage is assured, and a drainage system of sufficient capacity and extent must be installed to ensure that runoff onto adjacent lands will be no greater than prior to commencement of the soil deposit.
- All streams, watercourses, wetlands, and drainage facilities must be kept free of silt, clay, sand, debris, and other material attributable to the soil deposit activity, which could obstruct, impair, or impede drainage facilities and watercourses.

Applications for a CVRD soil deposit permit must include: a completed Type C Soil Deposit Permit application form; a title search; a survey of the parcel prepared by a British Columbia Land Surveyor; a Soil Assessment and Deposit Plan prepared by a Registered Professional[4]; an Environmental Protection Plan prepared by a Registered Professional; and a Site Remediation Plan prepared by a Registered Professional.

5.3.2 Current Status of Permitting

The Trowsse Road fill site is located adjacent to the Bambeton quarry and is permitted under Soil Deposit Permit SDC-20-05 by the Cowichan Valley Regional District (CVRD). In March 2020, Coast Mountain Resources applied for a soil deposit permit from the CVRD to place fill in a new area beyond the limits of the Bamberton quarry. Prior to CVRD Board consideration and issuance of Soil Deposit Permit SDC-20-05, CVRD staff retained a Professional Hydrogeologist to

[4] A Registered Professional means an engineer, biologist, agrologist, land surveyor or other professional that is registered with a professional association that is regulated by a statue (e.g., *Professional Governance Act* or *Land Surveyors Act*), appointed and qualified to act in the capacities described by the bylaw requiring a report, certification, or estimate of a Registered Professional.

undertake a review of the application and to advise the CVRD on the sufficiency of the application in relation to Bylaw No. 4236[5], prior to consideration by the CVRD Board.

On October 14, 2020, Coast Mountain Resources was granted permit *SDC-20-05* by the CVRD under *Bylaw No. 4236* to deposit soil beyond the limits of the Bamberton quarry on lands owned by Malahat Nation covering a 5.7-hectare area for a 5-year term, expiring on October 14, 2025. The permit allows the holder to deposit over 1000m³ of soil that meets the standards for Residential Low-Density developments as required by the BC Environmental Management Act on a parcel of land per calendar year. The expected soil deposits over the 5-year permit life will be 400,000m³.

6.0 Issues Raised, Participant Comments, and Proponent Responses

The following sections outline the key issues and concerns raised by the Applicant, the public and Indigenous nations; relevant feedback and comments from review participants; and responses from the Proponents to each concern that was reviewed and considered by the EAO.

6.1 Issues Raised with the Bamberton Quarry Expansion

Key issues raised by SIPS in the Application with the quarry expansion included an increase in production capacity and disturbance area, greenhouse gas emissions, noise, dust, environmental and ecosystem effects, and a lack of public engagement during EMLI's permit amendment review process.

6.1.1 Increase in Production Capacity and Disturbance Area

SIPS raised concerns about the proposed increase in the disturbance area and production capacity of the existing quarry, as outlined in the 2019 *Mines Act* permit amendment application (e.g. a production capacity to 479,000 tonnes per year and an increase in disturbance area of 47 percent). SIPS was also concerned that future expansions could increase the total mineable reserves to approximately 19.5 million tonnes over 15 to 30 years and incremental expansion of the quarry through permit amendments could result in the entire 500-acre site becoming disturbed.

6.1.1.1 Participant Comments

The CVRD stated that they had no objection to an expansion of the permitted quarry area provided that, if required, a rezoning or temporary use permit be obtained for any processing activity outside of the I-2 zone (Heavy Industrial) and a Development Permit is obtained for any development activities not covered under the *Mines Act* permit.

EMLI noted that they received a revised *Mines Act* permit amendment application from MICO for the Bamberton quarry expansion on December 21, 2022, proposing a production capacity of 479,000 tonnes per year and a net increase in mine footprint of 0.7 percent from the existing permit boundaries. EMLI's review of an application can only consider the scope of the application, and the area and timeframe proposed therein. Any possible future expansion would require a subsequent amendment and application review process. The *Mines Act* does not limit the number of times an individual or corporation may apply for a permit or permit amendment, nor does it limit the area or production rate that may be applied for.

6.1.1.2 Response from Proponents

The 2019 permit amendment application was under review by EMLI when the EAO began its designation request review process, and it is the 2019 production capacity and new disturbance area that the EAO has been asked to consider as part of the Application. However, EMLI, the Proponents, and the quarry operator have informed the EAO that the 2019

[5] In 2021 Bylaw No. 4236 was replaced with Bylaw No. 4380.

application is no longer reflective of the quarry's current proposed expansion. In their December 7, 2022, submission to the EAO, the Proponents indicated a 2.5 ha or 6.4 percent increase in new disturbance area as outlined in a *comparison of the approved 2016 and proposed 2019 and 2022 boundaries*. Then, on December 21, 2022, EMLI confirmed that the Proponents had submitted a revised *Mines Act* permit amendment application proposing an increase in new disturbance area from 39.3 ha to 39.6 ha, an increase of 0.29 ha or 0.7 percent. The revised amendment application also removed the soil storage facility from the proposed mine permit area[6]. The proposed mine plan includes mining phases, with each phase progressively reclaimed as it is completed. The December 21, 2022, permit amendment application included a production capacity of 479,000 tonnes per year and the Proponents stated that the revised amendment application would allow quarrying activities for up to 30 years.

On January 16, 2023, a discrepancy in the calculated amount of new disturbance area was pointed out by SIPS. The EAO requested that the Proponents conduct additional analysis that determined an increase in new disturbance area of approximately 6.5 ha or 16%.

6.1.2 Greenhouse Gas Emissions

SIPS's application includes concerns regarding greenhouse gas (GHG) emissions and referenced the potential for the proposed quarry expansion to trigger *Section 5(3) of the Reviewable Projects Regulation*. SIPS noted that information on GHG emissions was not included in the *Mines Act* amendment application.

6.1.2.1 Participant Comments

B.C. requires industrial facilities that emit 10,000 tonnes or more of carbon dioxide equivalent (CO_2e) per year to report their emissions to government under the *Greenhouse Gas Emission Reporting Regulation* of the *Greenhouse Gas Industrial Reporting and Control Act*. It is the proponent's responsibility to ensure they operate in compliance with the *Environmental Assessment Act* and the *Greenhouse Gas Industrial Reporting and Control Act*.

EMLI has encouraged the Proponents to consider:

- the BCH Low-Carbon Electrification Program, which helps BCH customers to switch all or parts of their operations from carbon-based fuels to clean electricity; and,
- the Clean BC Facilities Electrification Fund, which provides support towards costs associated with planning, designing and/or construction of BCH's electrical infrastructure including transmission lines.

6.1.2.2 Response from Proponents

MICO noted that they have been working with BC Hydro for a year to electrify much of the operation on site, which would result in reduced GHG emissions from existing conditions by offsetting approximately 1.4 megawatts (MW) of diesel power generation on site. The upgrade project is in the design phase, with construction expected to begin in the fall of 2023. This would allow the operator to begin transitioning mobile equipment from diesel to electric vehicles.

6.1.3 Noise Management

SIPS expressed concern regarding the adverse impacts of noise from blasting, crushing, loading and transporting of rock that the quarry expansion would generate seven days a week near residential neighbourhoods. SIPS also stated that the

[6] See Sections 5.1.2 and 5.1.3 of this report for more information on the soil storage facility.

noise from blasting at the existing quarry can be heard in the Saanich Peninsula including at Brentwood Bay, Tsartlip First Nation, and Willis Point.

6.1.3.1 Participant Comments

The CVRD stated that they had no objection to an expansion of the permitted quarry area provided that blasting and quarry operations occur during appropriate hours to be consistent with neighbouring rural residential uses.

Tsartlip echoed SIPS's concerns regarding potential impacts of noise from blasting, crushing, loading, and transport of rock from the quarry.

EMLI confirmed that the *Mines Act* review will consider appropriateness of proposed operating hours with consideration of surrounding values, public input, proposed rates of processing and proposed annual production rate. The Statutory Decision Maker may adjust or set operating days and hours via permit conditions.

6.1.3.2 Response from Proponents

Noise issues are commonly associated with blasting and the operation of equipment and machinery during quarrying activities. The Notice of Work and Reclamation Program for the quarry stated that mining activities will take place approximately 300 days per year and crushing, screening and pneumatic/hydraulic rock work, product sales and shipping will be conducted 7 days per week. The planned hours of work are 7:00 am to 7:00 pm Monday to Friday, with 24-hour operation used when required. Blasting is planned to average 2 to 3 times per month. Noise mitigation measures for use in the operation include the following: operating within defined work times, maintaining berms and/or placement of gravel stockpiles in strategic locations to provide a barrier effect to the receiver locations, orientation of the equipment to direct noise away from receptor locations, locating noise sources at lower depths (bottom of excavation), keeping equipment maintained for peak efficiency and overall reduction of noise, operator awareness when operating equipment, and substitution of back-up alarms with strobe warning lights during night-time operation.

A *Drill and Blast Program* is required by the current permit and an updated *Drill and Blast Overview* was provided by the Proponents for the proposed expansion. This program identifies the conditions under which blasting would occur, how blasts would be monitored, how hazards would be controlled, and details of the blasting notification process.

As part of the *Mines Act* permit amendment process EMLI has recommended to the decision maker that MICO would provide residences within a 1000 m radius a notification 48 hours prior to blasting as well as an on-line public facing website with a calendar indicating the proposed dates of up-coming scheduled blasts. This notification would specify a 4-hour window within which the blast would occur.

6.1.4 Dust Management

SIPS raised concerns that removal of tree cover and plants could cause erosion close to the Malahat Highway and generate dust that could adversely impact vegetation on the east facing Malahat slopes and marine habitats in the Saanich Inlet. SIPS was also concerned that the Proponent would not effectively control dust generated from operation activities including blasting, crushing, loading, and transporting of rock.

6.1.4.1 Participant Comments

Tsartlip shared SIPS concerns around ineffective control of dust generated from the Bamberton quarry.

EMLI confirmed that the *Mines Act* review will assess suitability of mitigation plans to control water, dust, run-off in relation to the quarry, and seek to minimize impacts through proponent mitigations and/or permit conditions where necessary.

6.1.4.2 Response from Proponents

To minimize dust impacts, the Proponents and operator are required to maintain all heavy equipment and plant machinery in good operating condition. Appropriate dust suppression equipment would be available and in good working order. The most significant source of dust to be controlled is from trucks traveling within the pit as well as dust from stockpiles and crushers. An updated *Dust Mitigation and Monitoring Plan* for the quarry was provided by the Proponents. The plan includes regular application of dust suppressants (e.g., water sprinkling); drilling machinery would be equipped with dust collectors; use of vegetative coverings on overburden stockpiles and filled reclamation slopes; and watering and sweeping of access routes.

6.1.5 Environmental and Ecosystem Effects

SIPS and Tsartlip expressed concern of potential runoff from the mine impacting the four streams that run into the Saanich Inlet. SIPS and Tsartlip stated this could have an adverse impact on the marine ecosystem and residents living around Saanich Inlet. SIPS also stated that they believe that monitoring of pollutants leaving the site was insufficient and Tsartlip stated the pollution will impact the entire marine ecosystem of the Saanich Inlet, including the Goldstream estuary and salmon run.

6.1.5.1 Participant Comments

The permit amendment application has been referred to an EMLI geotechnical engineer and mines inspector to assess the mine plan regarding terrain stability risks and water management. Input from the geotechnical specialists may inform additional *Mines Act* application requirements, proponent mitigations, and/or permit conditions to mitigate related risks. The current permit for the Bamberton Quarry includes conditions regarding terrain stability. The issue of erosion and sediment control relating to the amendment application has been raised with the Proponents. Sediment and Erosion Control Plans (SECP) would be developed by the Proponents and released in conjunction with the final detailed engineering of each phase of the mine. SECPs would outline how to divert water from entering the mine and collect it in settling ponds, where the water will be polished before it is released into the inlet.

The 30-meter Shoreline and Bamber Creek Exclusion Zones would be established along Bamber Creek and the Saanich Inlet to reduce the possibility of sediments from entering the water. Settling ponds would be strategically located on the mine property to capture water that has run through the quarry to clarify the water of sediments before being released into the environment. The Proponents stated sediment laden water runoff into the Saanich Inlet has not occurred during existing operations. Ongoing monitoring will continue for the SECP and *Environmental Management Plan* (EMP).

The *Mines Act* permit amendment application review will assess the mine plan in relation to water management, protection, and reclamation of watercourses, including erosion and sediment control, and the use of settling ponds to capture and retain sediment laden water to ensure the release of any water is below the permitted limit of 25 milligram(mg)/L. Mines Act permit Q-8-24 includes a condition that "All surface water and runoff shall report to a sediment control structure prior to being discharged from site. Sediment load shall not exceed 25mg/L."

An authorization from the Ministry of Environment & Climate Change Strategy (ENV) is not generally required for activities associated with the mining/exploration of sand, gravel, crushed rock as mined from a pit or quarry. Although a site-

specific authorization may not be needed, any activity must not cause pollution, as per Section 6 (4) of the *Environmental Management Act* (EMA).

EMLI staff review all permit applications for adherence to the Health, Safety and Reclamation Code for Mines in B.C. (Code), which is designed to safeguard the public from health and safety risks, and to protect and reclaim land and watercourses affected by mining, among other purposes. Reviews include environmental considerations associated with specific Code requirements, as well as established best management practices, including potential impacts to air, land, water, ecosystems, and wildlife. Each application is also assessed for overlaps with environmental management areas, such as habitat areas for protected species. Any overlaps would require mitigation plans and/or alterations to the proposed project.

EMLI staff refer *Mines Act* applications to other government agencies with an interest or jurisdiction related to the project activities, area, or values, which may include biologists, water specialists, forestry experts, among others. Input from these experts may lead to additional application requirements, project adjustments, or permit conditions to support appropriate management and/or protection of environmental values. Referrals for the subject application were made to: CVRD, FOR (Lands and Ecosystems offices), the Ministry of Indigenous Relations and Reconciliation, the Ministry of Transportation and Infrastructure, the Ministry of Environment and Climate Change Strategy, and EMLI geoscience and geotechnical specialists.

The CVRD stated that they had no objection to an expansion of the permitted quarry area provided that quarry operations are designed to prevent pollutants from entering the groundwater resource and adjacent foreshore and marine areas.

6.1.5.2 Response from Proponents

To mitigate the risk of hydrocarbon pollution, the Proponents are required to maintain all equipment and machinery in good operating condition, including being free of leaks or excess oil and grease. No refueling or servicing would be allowed within 30 m of any watercourse or surface water drainage and spill kits would be required to be readily accessible on site. A Hydrocarbon Management Plan is a condition of the current Mines Act permit and would apply to the proposed expansion. The plan guides the storage, fueling, operational servicing, spill prevention, disposal and clean-up for fuels and lubricants stored on the mine site and conforms to the requirements of the *Field Guide to Fuel Handling, Transportation and Storage*. The proponents indicated that a copy of the plan is posted at the mine site and all workers are instructed on the use of the plan.

The Proponents' Surface Water Management Plan aims to keep pre-existing water courses to their original location and condition when possible. Drainage courses and storm flows in and around the extraction site would be managed to minimize the deposit of sediment and other possible contaminants into the local aquatic drainages and adjacent marine shoreline. The existing and proposed extraction work would be undertaken and completed in a manner to prevent the direct or indirect discharge of soils, sediment and/or sediment-laden water or any other deleterious substances into any watercourse. Surface water flows containing suspended sediments would be controlled using surface contouring, strategically located water containment berms, and control traps and settlement ponds. Water flows would be contained within the extraction areas by maintaining grade elevations that are strategically sloped, maintaining undisturbed buffer strips, and installing ditches/berms along the perimeter of the extraction sites. Water would be confined and allowed to naturally evaporate and/or percolate into the porous adjoining subsurface limiting the escape of surface water. Captured surface water within the quarry would also be recycled as part of the dust control program and material washing. Contained solids in the pond overflow is targeted to not exceed 25 parts per million(ppm). During the full life cycle of the quarry operation, water management planning will be continually updated as required for each phase of mining.

The Proponents were also advised to contact DFO to assess their obligations regarding projects near federal waters. The Proponents have revised the proposed amendment, which now has a reduced expansion area, as well as a 30 m buffer zone around Bamber Creek and the Saanich Inlet.

6.1.6 Lack of Public Engagement During the Permit Review Process

SIPS raised concerns about the lack of opportunities for the public to express opinions about the authorizations for the Bamberton Projects including opportunities to comment, selection of newspapers, and length of comment periods.

6.1.6.1 Participant Comments

District of Highlands requested that EMLI delay the approvals process for mining activities to allow for additional consultation to take place throughout the Saanich Inlet on the Bamberton quarry expansion.

The *Mines Act* provides Mines Inspectors with discretion regarding public notification requirements. Applications proximate to communities are generally required to post signage regarding the application at the site, to advertise the application in local newspapers, and/or to make the application available in a locally accessible public location such as a library. Where posting or advertising is required, a public comment period is open for 30 days following the last advertisement. Mines Inspectors may also require applicants to host public engagement sessions to distribute project information and address public concerns. The requirement for a public meeting can be established at any point in the application process and is commonly informed by public comments.

For the proposed Bamberton Quarry expansion the Proponents were required to post signage at the site, to advertise in local newspapers, and to make the application available at the Mill Bay library. A staked sign providing notice of the application was posted at the entrance of the quarry and the application was first published in the Goldstream Gazette on September 15, 2021. Following public feedback regarding lack of awareness of the application, the Mines Inspector directed the Proponents to re-advertise in the Cowichan Valley Citizen (CVC), with the related advertisements published on October 6 and 13, 2022. A second 30-day public comment period ran from October 13 to November 14, following the last advertisement. The staked sign and advertisements included contact information for the EMLI Southwest Regional Mines office, and the office routinely made electronic copies of the application documentation available upon request.

EMLI received over 180 public comment submissions, which are shared with the EMLI Statutory Decision Maker for their consideration. To date EMLI has not required the Proponents to host a public meeting. A summary of public comments has also been shared with the Proponents for them to identify mitigations in relation to identified concerns.

6.2 Issues Raised with the Foreshore Lease Extension for the Dock on the Saanich Inlet

Key issues with the extension of the foreshore lease raised by SIPS in the Application included the duration of the lease term, the size of increase in the lease area, multiple users in the foreshore area, barge and vessel maintenance and moorage, transportation of contaminated soils, and a lack of public engagement during FOR's lease extension review process.

6.2.1 Duration of Lease Term

SIPS raised concerns regarding the 30-year term of the foreshore lease and stated that it did not appear necessary to support investment in the site by the Proponents. SIPS also stated that a term of five years was reasonable and that, if necessary, the Proponents could apply for a renewal.

6.2.1.1 Participant Comments

The current authorization requested by the Proponents from FOR would replace the current lease contract with a new tenure contract that expands the area of submerged land covered by the lease to support continued industrial use of the area. Operations that can occur under the current lease include the maintenance of existing infrastructure, the loading and unloading of barge materials (including quarry materials, cement, and contaminated soil), storage of hydrocarbons in existing upland tanks, and vessel moorage and minor vessel maintenance. No new infill of submerged land or construction would occur as part of the foreshore lease extension although the repair, maintenance, or replacement of pilings could take place in accordance with the terms of the lease and DFO requirements. FOR confirmed that a 30-year lease term is consistent with Land Use Operational Policy Commercial – General, but that an applicant has discretion in what term length they wish to apply for. The Statutory Decision Maker considering a lease application also has discretion when considering if the proposed term is appropriate for a location or use.

6.2.1.2 Response from Proponents

MICO indicated that the 30-year term for the lease has been the historic regime of the province and would avoid constant approval processes. For example, the previous 30-year lease term ended nearly 5 years ago and has been month to month ever since. The longer term provides for the certainty needed to make financial investments in equipment over reasonable payback periods.

6.2.2 Size of Increase in Lease Area

SIPS raised concerns regarding the increase in the lease area from 4.79 ha to 15.46 ha and its extension further into the Saanich Inlet. SIPS stated that a rationale for the increased area was not included in the proposed Management Plan and inquired why the proposed activities can not be conducted within the current lease area. SIPS also noted specific concerns regarding the proposed increase in lease area, including:

- the requested lease area is located above a steep marine slope that, in 2017, supported a rich benthic community, including species of functional significance to ecosystem integrity (e.g. glass sponges and corals), as deemed by DFO.; and
- inconsistency of the proposal with Saanich Inlet Special Management Zone (SMZ-16) of the *Vancouver Island Land Use Plan*.

SIPS also made the following recommendations regarding the foreshore lease extension:

- that as a condition of approval, the proponent engage in a post-baseline study of the water column and seabed that fronts the quarry, and that key physio-chemical and biological features and a description of current condition should be presented in a Monitoring Plan;
- that an approved lease area should not include the sea pen/sea whip community at the northern end of the proposed area in recognition of the Vulnerable Marine Ecosystem status of such aggregations by the Food and Agriculture Organization of the United Nations;
- that the lease period be set at five years with renewal contingent on analysis of repeat surveys that confirm no further degradation of habitat has occurred;
- that the size of the footprint be reduced commensurate with the environmental risk from moorings and other activities; no expansion or minimal (double current extent) given that the application states that activities will remain the same;
- that any extension in the northern 25 percent of the area should not surpass the 20m depth contour to ensure that no disposal, mooring, or maintenance activities occur over the coral bed;

- that the proponent's Management Plan should include the use of mooring systems that will cause no/minimal damage to the seabed; and
- that the Proponent should address the implications or permissions required due to the presence of a submarine cable in the southern end of the lease area.

6.2.2.1 Participant Comments

Tsartlip raised the following concerns:

- that the foreshore area of the project application extension is 100 metres into the Saanich Inlet, covering 25 additional acres of ocean;
- barge and vessel maintenance – oil, spills, or parts dropping in the Inlet and contaminating the marine ecosystem;
- risk of introducing invasive marine species due to increased vessel traffic;
- negative impacts on the entire marine ecosystem, including the Goldstream salmon;
- danger to fish, waterfowl, shellfish, and starfish populations; and
- contamination of current and traditional fishing grounds;

FOR explained that the extension of the lease area is related to the operation of existing facility to allow barges to be fully within the lease area boundaries when moored and/or docked. Barges currently mooring perpendicular to the foreshore extend beyond the previous lease area boundary. No additional piles or physical structures would be needed to increase the foreshore lease area, rather, the increase in size would ensure the Proponents complied with the lease area boundaries of their tenure. FOR may require the Proponents to submit additional technical/professional assessments, feasibility studies, and evaluations to support the Crown land tenure application. To date no additional assessments have been requested by FOR. Any request for additional assessments by FOR will await the determination of whether the foreshore lease is designated as a reviewable project under the Act. FOR also confirmed that the Statutory Decision Maker for the foreshore lease application considers consistency with provincial land use plans, including the Saanich Inlet Special Management Zone (SMZ-16) of the *Vancouver Island Land Use Plan*, and can consider if the proposed lease area is appropriate for the proposed activities, the potential impact(s) of activities, and can require amendments to a proposed lease area prior to making a decision.

Any physical works that would take place within the lease area, including the repair, maintenance, or replacement of pilings indicated in the proposed Management Plan may be subject to DFO requirements under the *Fisheries Act* and related guidance including the DFO Best Management Practices for Pile Driving and Related Operations.

6.2.2.2 Response from Proponents

The Proponents provided the following responses to concerns:

- the proposed use of the water lot and extension will not impact benthic marine life. This has been reviewed within the context of the habitat provisions of the *Fisheries Act*. Use of the water lot will not change substantially from what has been previously permitted;
- there will be no contaminated soils stored within the water lease area. Transportation is regulated under CSR and soil relocation agreements;
- the Proponents have information pertaining to the status of the ocean within the lease area. The Monitoring Plan does not require baseline study and description of key physiochemical and biological features. This is an existing water lease, with a proposed areal extension. Baseline monitoring is not a requirement for the renewal of this lease;
- The Canadian Coast Guard is responsible for initial response to spills within the marine environment. Contingency plans are outlined within the Spill Response Plan for the site. Marine spills within the water lot will be addressed

in accordance with relevant federal spill response legislation. Activating a spill response will occur in accordance with the site-specific Spill Response Plan;
- the Proponents have continued to work within the regulatory requirements of provincial and federal agencies. The lease renewal, and the proposed activities within the water lot, would not warrant a review by DFO;
- there are no plans for a larger dock at this time, as per the submitted Management Plan. Vessels will be moored to established foreshore bulkheads and there will be no changes to the mooring systems from the current process. No impact to the seabed from the mooring system is expected;
- disposal is not an identified (or approved) activity. Approved uses of the water lot are not changing from the existing permitted activities; and
- two to three additional barge movements per month would occur because of the quarry expansion; however, no additional shipments are expected to occur specifically because of the foreshore lease extension.

6.2.3 Multiple Users of the Foreshore Lease Area

SIPS noted that the foreshore lease area would have multiple users and requested clarity on who would be supervising the lease area and how the lessee would ensure compliance with the terms of the lease and applicable legislation.

6.2.3.1 Participant Comments

FOR confirmed that a foreshore lease holder is responsible for ensuring that activities by authorized users or tenants of the lease area are consistent with the terms of the lease. This could occur through contracts between the lease holder and authorized users. Lease tenure contracts also require that any sub-lease agreements between the leaseholder and tenants receive the prior approval of FOR. FOR, including the Natural Resource Officers Service, conducts inspections and investigations relating to unauthorized activities on Crown Land and potential non-compliance with Crown land tenures (including leases).

6.2.3.2 Responses from Proponents

The proposed Management Plan indicates tenants that currently hold a sublease include Ruskin Construction Ltd., Heavy Metal Marine Ltd., Lehigh Hanson Materials Ltd., and Hall Construction Corporation. Coast Mountain Resources (2020) Ltd, the operator of the Bamberton Quarry, and Hall Construction Corporation are related entities though the Hall Group of Companies.

Lease uses are not solely related to the quarry. In 2021 Lehigh Hanson confirmed, as part of the ongoing Delta Grinding Facility Assessment, that cement product produced in Metro Vancouver continues to be shipped to Lehigh Cement in Bamberton and then trucked to markets on Vancouver Island. The storage of concrete powder, as a current activity, is also referenced in the proposed Management Plan. Other confirmed activities within the lease area include marine services (e.g. Ruskin Construction) and spill and emergency response equipment storage.

6.2.4 Barge and Vessel Maintenance and Moorage of Vessels

SIPS noted concerns that information in the proposed lease extension application related to barge and vessel maintenance, and the moorage of vessels, was overly broad and that it could include most port activities. SIPS's specific concern is that this could include shipbreaking, similar to that underway at Baynes Sound in Union Bay, B.C. Tsartlip also noted concerns regarding barge and vessel maintenance including risks associated with oil, spills, or parts dropping in the Inlet and contaminating the marine ecosystem.

6.2.4.1 Participant Comments

FOR confirmed that they can include conditions in a lease against specific activities and have done so previously at this location as part of the 1989 lease to limit aquaculture activities, and that they can require a revision to the management plan for the lease to clarify that shipbreaking is not an intended use.

6.2.4.2 Responses from Proponents

The Proponents have confirmed that shipbreaking is not an activity they intend to carry out under the proposed lease extension.

6.2.5 Storage of Hydrocarbons

SIPS raised concerns regarding the storage of hydrocarbons in existing tanks on the foreshore. SIPS also stated that to the best of their knowledge the existing tanks for hydrocarbon storage have not been used for about forty years.

6.2.5.1 Participant Comments

Tsartlip shared SIPS's concerns regarding the storage of hydrocarbons on site.

FOR noted that the site plan submitted by the Proponents included a review of aerial imagery, and discussions with the Proponents indicate that the two storage tanks used for hydrocarbon storage and the three other silos exist in the private upland area and are outside the jurisdiction of FOR. Pending the Minister's designation decision, FOR is in the process of reviewing the tanks with the Proponents to potentially remove these details from the management plan.

6.2.5.2 Response from Proponents

The Proponents confirmed that the storage of hydrocarbons remain a contemporary use of the site, and that the tanks were last used in approximately 2015.

6.2.6 Transportation of Contaminated Soil

SIPS noted concerns with a specific use of the foreshore lease to load and unload barges of contaminated soils and requested that the barging and storage of contaminated soil be designated as a reviewable project. SIPS stated that contaminated soil could contain heavy metals, PCBs, hydrocarbons, and other substances that could cause damage to the environment and human health and raised concerns regarding the uncertainty of potential sources and quantities of contaminants, the need for an incident response plans, and liability if an incident were to occur.

6.2.6.1 Participant Comments

The lease holder is responsible for ensuring that any authorized users of the lease area act in accordance with the terms of the lease. FOR confirmed that while references to other legislation and authorizations can be included in a lease it is atypical to include references to the legislation other than the enabling legislation due to changing requirements and the number of potentially applicable laws, regulations, and polices. FOR also confirmed that storage or placement of contaminated soils would not be permitted within the lease area, and this would be clarified in an updated version of the management plan. Passage of contaminated soil to and from barges would remain permitted under the conditions of the lease.

The regulation of marine transportation is generally within federal jurisdiction. All barges will be crewed by local, licensed tug haulers in accordance with all Transport Canada rules and regulations. Barges will be loaded and trimmed to allowable limits as determined by qualified individuals, such as Naval Architects. Published barge capacities will be followed to ensure the hull stability of the barges is maintained and prevent accidental overturning. If an incident involving spillage occurs, it must be addressed in accordance with federal and provincial requirements. Federal requirements include adherence to the *Fisheries Act, Canada Shipping Act*, and reporting requirements (e.g. Guidelines for Reporting Incidents Involving Dangerous Goods, Harmful Substances and/or Marine Pollutants).

Provincial requirements are enabled under the *Environmental Management Act (EMA)*. Division 2.1 of EMA enables requirements to enhance the management of environmental emergencies in B.C. with regards to spill reporting, response, and recovery. Responsible persons (e.g. the spiller) must comply with provincial requirements regarding spill response. Those requirements are outlined in Section 91.2 of EMA and its associated Spill Reporting Regulation (SRR) and Spill Preparedness, Response and Recovery Regulation. In instances where government action is needed to address a spill, Section 91.4 (3) of EMA allows the government to recover costs from both the responsible person as well as the owner of the substance or thing spilled.

6.2.6.2 Response from Proponents

MICO notes that while there are no plans to receive contaminated soils on site, this was an allowed use when the site was acquired and in the historic authorization from FOR the foreshore lease. MICO believes this should be maintained as the barge facility is the only one between Victoria and Nanaimo. MICO would need to obtain relevant provincial permits and authorizations to transport any contaminated material.

6.2.7 Lack of Public Engagement During the Lease Extension Review Process

SIPS raised concerns about the lack of opportunities for the public to express opinions about the authorizations for the Bamberton Projects including opportunities to comment, selection of newspapers, and length of comment periods.

6.2.7.1 Participant Comments

Islands Trust shared SIPS's concerns and requested that additional public engagement be conducted on the proposed Crown land lease extension and throughout the Saanich Inlet and the Salt Spring Island Local Trust Area.

FOR stated that the lease extension application review process includes providing an opportunity for the public to review the application. This process involves signage staked at the application site and publishing a notification of the application in the local newspaper and on the Applications, Comments, and Reasons for Decisions (ACRFD) *website*. The public comments received are then reviewed by FOR as part of the decision-making process.

A notice for the application was staked at the entrance gate of the Bamberton property. The application information was advertised in the Cowichan Valley Citizen newspaper on July 29, 2022, and on August 4, 2022. Additionally, an application notice was placed in an accessible public location in Mill Bay. Application information was also provided on the ACRFD *website*. The public commenting period for Crown Lands File #0336205 was open from July 15 to September 12, 2022. Although this period has ended, FOR has continued to receive and accept comments from the public. A summary of public comments was shared with the Proponents to identify mitigation measures with opportunity to respond to FOR.

During FOR's initial review of the application, FOR requested and received additional documents from the proponent to support their application such as a Spill and Fire Response Plan, previous biological assessments, and a remediation plan

that was completed for the tenure area. Considering the public comments, the referral responses from the provincial and federal agencies, and consultation with First Nations, FOR may require the proponent to submit additional technical information/professional assessments and evaluations to support the application. FOR will wait for the EAO's designation request review process to complete and the Minister of Environment and Climate Change Strategy's decision on the designation of the Bamberton Projects before requesting any additional information from the proponent.

6.3 Issues Raised with the Bamberton Fill Site

SIPS raised the following key issues with the Bamberton Fill site in the Application: unknown sources of deposited soils; dust, sedimentation, water quality, and soil quality; soil remediation and thermal desorber; and a lack of public engagement during the CVRD's permit application review process.

6.3.1 Unknown Sources of Deposited Soils

SIPS stated that the source of soil deposits at the Bamberton Fill Site is not known, and noted that site profiles, showing the location of source materials, may be required as a request from the CVRD General Manager.

6.3.1.1 Participant Comments

Section 17 of CVRD Bylaw No. 4236 outlines permit conditions, which include the maintenance of a Soil Deposit Log Book which must include information on the source of soil. Log books allow the CVRD to suspend and review a permit if the log book is incomplete or determined to be false, and require a permit holder to contact the Ministry of Environment, FOR, EMLI, the Agricultural Land Commission, and DFO in order to determine the requirements of those agencies in relation to any soil deposit undertaken under the authority of a permit issued under this bylaw.

Section 17.5 also notes that the issuance of a permit does not relieve the permit holder from compliance with any other statute or regulation, including but not limited to a requirement under the Local Government Act for a development permit in a designated CVRD Development Permit Area, CVRD bylaws regulating noise and nuisance, the *Water Sustainability Act*, the Riparian Areas Regulation, the *Fisheries Act*, and *the Environmental Management Act.* The CVRD confirmed that their Soil Deposit Bylaw Officer has conducted several site visits to 1451 Trowsse Road following the issuance of Soil Deposit Permit and, to date, has observed no contraventions of the permit.

The CVRD also confirmed that the current CVRD Soil Deposit Bylaw is intended to regulate the deposit of soil, which may include wood waste, but not any other material. The current bylaw 12.4(e) also states "where the General Manager has reason to believe that soil to be deposited is contaminated soil, satisfactory evidence that the deposit will be in accordance with an authorization, order or exemption under the Environmental Management Act…as amended or replaced from time to time". Storage of soil (or any other material) could be deemed a land use and regulated under the zoning bylaw. However, a zoning bylaw would not regulate the quality of soil, as environmental quality falls within the purview of the Province under the *Environmental Management Act*.

6.3.1.2 Response from Proponents

The Proponents confirmed that soil deposits are accepted in accordance with permit conditions and the *Trowsse Road Fill Site: Soil Acceptance Guide* which indicates the site is authorized to receive soils that meet the requirements for Low-Density Residential standards under the BC Environmental Management Act Contaminated Sites Regulation.

6.3.2 Dust, Sedimentation, Water Quality, and Soil Quality

SIPS stated there is little monitoring or reporting on the nature of the soils being deposited, no berming to prevent sediment being washed off site and into the Inlet, no effective dust control, and no monitoring of pollutants leaving the site. SIPS also noted water quantity concerns, including impacts on the aquifer, and water quality concerns including monitoring requirements.

6.3.2.1 Participant Comments

CVRD confirmed that as part of their permit process, an Environmental Impact Assessment with respect to watercourses, and monitoring of run-off water and/or environmentally significant features on site was completed by a qualified environmental professional. Coast Mountain Resources provides the CVRD with surface and ground water quality monitoring data on a yearly basis. A monitoring report was received by CVRD in 2022 and the next report is anticipated 2023. The CVRD Soil Deposit Bylaw Officer has conducted several site visits following the issuance of the Soil Deposit Permit and, to date, has observed no contraventions of the permit.

The Bamberton Fill Site is authorized by the CVRD for residential level soils and is not authorized for storage of contaminated material. If contaminated soils were to be stored on the site a Contaminated Soil Relocation Agreement with the Province would be required before contaminated soil could be added or removed from the site.

6.3.2.2 Proponent Response

MICO has confirmed that multiple berms and settling ponds are in place to prevent sediments from entering the inlet. Operations are also curtailed or suspended during heavy rainfall events and reduced during the winter months.

The Proponents have also provided a *Dust Mitigation and Monitoring Plan* for the Bamberton Fill Site, a *overview of the site including the location of a berm and settling pond*, and Trowsee Fill Site Annual Reports for *2020* and *2021*.

6.3.3 Soil Remediation and Thermal Desorber

SIPS noted that a soil remediation facility operated by Nelson Environmental was previously located north of the quarry but that it has been removed. The remediation facility operated a thermal desorber, which removed organic contaminants from soil, sludge, or sediment. The evaporation process of the remediation efforts turned the organic contaminants in the soil into a vapour gas, which was then separated from the solid material and destroyed. SIPS stated that evaporation does not actually destroy something, that the prospect of volatizing hydrocarbons into the environment warrants scrutiny, and that heavy metals would not be remediated from the soils using the thermal desorber. SIPS also stated that although the thermal desorber has been removed, if there are plans to install a similar facility to treat contaminated soils in future it should be assessed under the Act along with the barging and storage of contaminated soils.

6.3.3.1 Participant Comments

A thermal desorber is not currently located, operating or planned on or near the site and no comments were submitted by any participants regarding this issue.

6.3.4 Lack of Public Engagement During the CVRD Permit Application Review Process

SIPS raised concerns about the lack of opportunities for the public to express opinions about the authorizations for the Bamberton Projects including opportunities to comment, selection of newspapers, and length of comment periods.

6.3.4.1 Participant Comments

The CVRD stated that their consultation and engagement requirements are consistent with requirements set out in Part 14 of the *Local Government Act*. When considering the issuance of a permit, the CVRD consults with persons, organizations and authorities it considers will be affected and it may consult with an Advisory Planning Commission. The extent to which input may influence the outcome of a development permit is limited – a development permit must be issued if the proposed development is consistent with the development permit guidelines set out in CVRD bylaws. When considering the issuance of a soil deposit permit, there is no legislation barring the CVRD from consulting with persons, organizations, and authorities it considers will be affected. However, similar to development permits, if a soil deposit permit application is consistent with the CVRD Soil Deposit Bylaw, the CVRD is obliged to issue the permit.

6.4 Other Overlapping Issues Raised

SIPS raised intersecting concerns related to all three components of the Bamberton Projects, including cumulative effects, the potential inclusion in a proposed National Marine Conservation Area, and socio-economic and visual effects.

6.4.1 Cumulative Effects

SIPS stated that they believe that the cumulative impact of the three separate applications is likely to result in environmental harm to the waters of Saanich Inlet and the lands from which water flows into the Saanich Inlet. SIPS was also concerned that the three separate applications are proceeding without an evaluation of their combined effect and that an evaluation of the combined and cumulative effects is urgently required. SIPS stated that cumulative impacts, including climate change impacts on the fjord, fishing, population growth around the Inlet, Brentwood Bay boat density and run-off from several land uses are of particular concern. Climate change and changing atmospheric patterns are affecting oxygen renewal in the lower waters of Saanich Inlet. Ocean heat waves, as occurred in 2015, 2019 and 2021, will intensify and have already hindered oxygen renewals in Saanich Inlet, causing breakdown of community structure. The environmental impacts of the quarry activities must be considered in the context of the wider cumulative impacts on the Special Management Zone (SMZ-16) of Saanich Inlet.

6.4.1.1 Participant Comments

Islands Trust raised concerns around the need for potential longer-term environmental impacts to be better understood and mitigated before any permits are considered for the Bamberton Projects.

Tsawout noted concerns regarding cumulative effects in relation to the foreshore lease extension. In their view, it could exacerbate ongoing impacts in their territory, and they requested the completion of a cumulative impact assessment.

Tsartlip also noted concerns regarding cumulative effects to the environmental, and on their Douglas Treaty rights. The following are excerpts from their submissions:

> *Tsartlip members face significant, compounding barriers to both access and availability of wildlife and marine resources required to exercise our constitutionally protected Aboriginal rights and Douglas Treaty rights to hunt and fish as formerly. Tsartlip's rights have been adversely affected by the cumulative impacts of urbanization, private land ownership, commercial and industrial development, marine vessel traffic, overfishing, declining fish habitat, and pollution. These cumulative impacts and compounding barriers to access have already diminished Tsartlip's ability to hunt, harvest, fish and undertake cultural activities, including in areas close to Tsartlip reserves. These impacts and barriers already constitute a violation of Tsartlip's liberty to exercise their Douglas Treaty rights to hunt and fish as formerly.*

The health of the Saanich Inlet, as a marine and terrestrial environment, is of the utmost importance for Tsartlip members. Tsartlip has engaged in ongoing discussions with Crown governments for many decades about cumulative effects in the Saanich Inlet and its surrounding landscape. Tsartlip has often expressed concerns about our ongoing ability to exercise our Douglas Treaty rights and sustain our way of life in the face of increasing urban and commercial development, on the one hand, and the failure of successive governments to invest in habitat restoration.

The effects of the quarry expansion, together with the related foreshore lease replacement application would further impact the ability of Tsartlip members to practice their constitutionally protected rights in and around the Bamberton area and in the Saanich Inlet, which is part of Tsartlip's core marine territory. These further effects would constitute an unjustified interference with the meaningful exercise of Tsartlip members' Section 35 rights. To date, the Crown has not adequately considered the significant and compounding impacts of either of these applications on Tsartlip's rights.

Tsartlip also requested that a cumulative effects study take place and that Tsartlip be involved in development of a cumulative effects management plan for the Saanich Inlet.

The EAO notes that SIPS's Application requested that the Bamberton Projects be designated under Section 35 of the Act which allows for Regional Assessments. As outlined in the Chief Executive Assessment Officer's November 7, 2022, letter to SIPS, Regional Assessments are assessments of the environmental, economic, social, cultural and health effects of projects in a region of B.C. Regional Assessments are enabled under the Act to complement, not duplicate, provincial monitoring, land-use planning, and cumulative effects assessments. The initiation of a Regional Assessment by the Minister is an independent matter from designating a project as reviewable and is a separate statutory decision. If initiated, a Regional Assessment would not prohibit new or existing projects within an area from proceeding while it is being conducted.

6.4.1.2 Response from Proponents

The Proponents did not provide a response to this concern.

6.4.2 Proposed National Marine Conservation Area

SIPS notes that the Saanich Inlet is being considered by the Government of Canada as part of a Southern Strait of Georgia National Marine Conservation Area (NMCA). An NMCA protects and conserves representative marine ecosystems, while ensuring sustainable use of marine resources.

6.4.2.1 Participant Comments

Parks Canada confirmed that the proposed Southern Strait of Georgia NMCA is currently in the feasibility assessment stage, which is expected to be completed in 2024, and that an NMCA could be established in 2025. Under the *National Conservation Marine Areas Act* general commercial shipping activities, including barge movements, can continue within a NCMA although additional restrictions may apply. The *National Conservation Marine Areas Act* prohibits the exploration or exploitation of hydrocarbons, minerals, aggregates, or any other inorganic matter within a marine conservation area and prohibits the disposal of any substance in waters within a marine conservation area except as authorized. It is not anticipated that an NMCA would prohibit activities above the high-water mark.

If a Southern Strait of Georgia NMCA is established, maritime operators would be required to observe *National Conservation Marine Areas Act* requirements and any additional NMCA restrictions that may apply.

6.4.3 Socio-Economic and Visual Effects

SIPS noted that two important drivers of the local economy are tourism and real estate and that these drivers are highly dependent on the natural beauty of the Saanich Inlet. SIPS expressed concern that a significantly larger quarry, increased barging activity (including barging of contaminated soil), storage of contaminated soil, thermal treatment of contaminated soil, storage of hydrocarbons and potential shipbreaking could have an adverse effect on these economic values. SIPS noted that the accumulated soil deposit is currently clearly visible from across the Inlet (a distance of about three kms).

6.4.3.1 Participant Comments

Tsartlip also noted concerns around a lack of a scenic view of YOS (Malahat Mountain), a site of cultural significance for Tsartlip community members. While this is a socio-economic concern, the EAO understands that sense of place can be a distinct effect on Indigenous nations and their members.

EMLI noted that the *Mines Act* permit application review considers visual impacts and seeks to minimize impacts through mitigations and/or permit conditions. Recent public concern regarding land clearing at the Bamberton quarry is in relation to clearing activities taking place within an area previously approved as part of the 2016 permit amendment. Other clearing on site has been done to allow for redevelopment of aging infrastructure including replacement of power lines and water mains on site. EMLI and the Proponents have discussed ways to reduce the increase in area of the quarry expansion, which would in turn reduce visual impacts. As a result of an engineering program carried out by the current operator of the quarry, the footprint of the proposed expansion would be reduced in a revised permit amendment application with an increase in new disturbance area of 6.5 ha or 16 percent, which was submitted to EMLI by MICO on December 21, 2022. The permit amendment application would also include plans for progressive reclamation of mined areas by replacing topsoil, re-seeding and potentially re-planting trees in areas no longer needed for mining activities, thus greening up the site as much as possible and helping to minimize visual impacts. The Proponents noted that the SIPS's submission included photographs of clearing on property adjacent the Bamberton quarry operations that are not part of the project works or operations.

6.4.3.2 Responses from Proponents

MICO noted that to minimize visual impacts of the operation and potential impacts to views of YOS, the quarry's Notice of Work and Reclamation Program states that existing vegetative barriers will be maintained, and progressive restoration will focus on more visible upper rock wall areas. The revised *Mines* Act permit amendment would incorporate 30 m buffer zones around Bamber Creek and the Saanich Inlet, which would further reduce visual impacts of the operations. The buffer zones would also result in the reduction of the current authorized disturbance area directly visible from across the Saanich Inlet by removing areas along the coast that have not been used for quarrying activities.

Malahat Nation noted that the Bamberton Projects are crucial to their continued success. If the quarry operations are disrupted or stopped, there would be economic implications for Malahat Nation's land holdings in the Bamberton area, including the future economic viability of the lands for treaty purposes. Malahat Nation intends for this land become a part of its treaty settlement lands and become entirely integrated into their nation re-building efforts. Malahat Nation expect that over time this land will be used for a wide variety of purposes including residential, recreational, industrial, commercial, and tourism activities, based on the needs and direction of Malahat Nation.

Malahat Nation stated they are committed to the long-term well-being of their community and lands which they have stewarded since time immemorial. The EAO notes these concerns include effects not experienced by non-Indigenous communities as they include aspects of governance and other Indigenous interests.

6.5 Issues Raised by Indigenous Nations on their Aboriginal and Treaty Rights

During the review process to date, the EAO has received comments from Ts'uubaa-asatx Nation, Tsawout First Nation, Tsartlip First Nation, and Malahat Nation, which are outlined below and have been posted to the EAO's EPIC website.

In their *submission* to the EAO, Ts'uubaa-asatx Nation noted that the Bamberton Projects are within their Statement of Intent area and stated that it does not have any specific comments related to the Application.

In their *submission* to the EAO, Tsawout First Nation (Tsawout) stated that the foreshore lease is within their Marine Use Law (2021) boundary and provided information on their Marine Use Law. As a signatory to the Douglas Treaty 1852, Tsawout noted that they have Treaty rights to carry on fisheries as formerly and noted barriers to accessing their traditional territories due to increased development and disturbance. Tsawout stated that their right to fish as formerly is impacted by increased traffic of larger vessels, pollution to water ways, and impacts to fish and fish habitat. Tsawout noted concerns that the foreshore lease would exacerbate impacts to their traditional territory and requested the completion of a cumulative impact assessment. Tsawout stated that it is in full support of the EAO's involvement in collectively assessing the projects potential environmental impact to their shared traditional territory and Douglas Treaty Rights.

Tsartlip First Nation (Tsartlip) provided comments on the *quarry expansion* and *foreshore lease extension* to the EAO. Tsartlip stated that these projects would place further constraints on Tsartlip's Douglas Treaty rights to hunt, fish, and collect and harvest resources, and to exercise cultural activities. Tsartlip provided information on contemporary and traditional uses near the project site, noted concerns regarding specific potential effects and activities that could take place as part of the Bamberton Projects, and concerns around cumulative effects on the Saanich Inlet. Tsartlip requested a cumulative effects study and development of a cumulative effects management plan for the Saanich Inlet with Tsartlip, and stated they support designation under the Act.

Malahat Nation provided a *cover letter* and *submission* to the EAO which included:

> *The proposed project expansions are located within the Bamberton Lands which are industrially zoned fee simple lands held by a number of companies that are beneficially owned by the Malahat Nation and controlled by the Malahat Nation. These lands are in the traditional territory of the Malahat Nation and are subject to Malahat Nation's Aboriginal rights, including title, and Douglas Treaty rights*[7]*,1 all of which are protected by Section 35 of the Constitution Act, 1982. Aboriginal title, in particular, protects Malahat's right to decide how to use our lands and benefit from them economically. Any government interference with the exercise of that right is an infringement of our Aboriginal title that must be justified.*
>
> *Designating the three independent Bamberton projects as one reviewable Project under Section 11 of the Environmental Assessment Act (2018) will result in potential effects on Malahat Nation's rights recognized and affirmed by Section 35 of the Constitution Act, 1982. Malahat Nation has significant Interests in the area of the*

[7] Malahat Nation stated "We do not accept that the Douglas Treaties resulted in a surrender or cession of any Aboriginal title. And, even if that were the case, the Bamberton Lands are not included in the lands purported to have been in the Saanich Douglas Treaties."

application which are protected under Section 35(1) of the Constitution Act, including those with respect to community and economic development on IR 11 as well as lands reserved for treaty purposes.

The ability to use and develop our lands is incredibly important to ensure that Malahat Nation proposers now and into the future. Any promise of our ability to carry out economic development on our lands will significantly impact nation rebuilding efforts, the value and usability of Bamberton lands, and the outcome of treaty negotiations.

Malahat Nation has existed on this land since time immemorial and colonization has greatly altered Malahat Nation's ability to make decisions regarding lands within the traditional territory. Designating the Bamberton projects as a reviewable project would further impact Malahat Nation's rights and interests.

Malahat also provided additional context for the previous proposed uses of the Bamberton Properties, Bamberton Properties ownership and potential future uses (including the lands in the context of treaty negotiations), and economic and relationship implications of designation.

6.5.1 Consultation with Indigenous Nations by Permitting Agencies

EMLI and FOR conduct consultation with potentially affected Indigenous nations to determine impacts on a Nation or its rights as a requirement for the permit amendment review under *Mines Act* and for the foreshore lease extension authorization review under the *Land Act*. Information available to EMLI and FOR, including the Remote Access to Archaeological Data mapping system maintained by the B.C. Archaeology Branch, is considered during consultation with Indigenous nations and by EMLI and FOR statutory decision makers. Archaeological sites, whether known or undocumented, are protected under the *Heritage Conservation Ac*t and must not be altered or damaged without a permit from the Archaeology Branch. An Archeological Chance Find Protocol has been provided as a *Mines Act* permit condition.

6.6 Issues Raised by the Public during the Public Comment Period

[placeholder for summary of public comments received during the Public Comment Period]

7.0 Evaluation of the Bamberton Projects Against Section 11 of the Act

The Minister must consider the factors under Section 11 of the Act in their decision to designate or not, including:

- Section 11(1) - whether the project is an eligible project for designation;
- Section 11(4)(a) - whether the applicant is an Indigenous nation;
- Section 11(4)(b) - whether the eligible project could have effects on an Indigenous nation and the rights recognized and affirmed by Section 35 of the *Constitution Act, 1982*;
- Section 11(4)(c) - if the eligible project is in a category of project described in the RPR, whether the potential effects of the eligible project will be equivalent to or greater than the potential effects of projects in that category that are reviewable projects;
- Section 11(4)(d) - whether an assessment of the eligible project is consistent with the purposes of the EAO set out in Section 2 of the Act; and
- Section 11(6) - whether designating the eligible project as reviewable is in the public interest.

The EAO's evaluation of the Bamberton Projects against each of these factors is outlined below.

7.1 Whether the Project is an Eligible Project

The Minister may only designate a project or a modification of an existing project as a reviewable project if the project has not substantially started and is not a reviewable project under the Reviewable Projects Regulation (RPR). The primary considerations for determining if a project has substantially started are in relation to the completion of physical project activities (e.g. construction or operation) and physical project components.

Below, the EAO has considered the information provided for each of the three components of the Bamberton Projects to determine if each is an eligible project.

7.1.1 Bamberton Quarry Expansion

Based on the information provided, the EAO concludes that the Bamberton quarry expansion has not substantially started and is an eligible project for designation.

The proposed quarry expansion has not yet substantially started and would not be required by the RPR to undergo an assessment under the Act; however it is considered to be an eligible project. The EAO notes that if the quarry expansion were designated as reviewable, the scope of its assessment would be determined through the issuing of a Process Order at the conclusion of the Process Planning Phase of the assessment. While the scope of an assessment for a quarry can include transportation of goods, including marine shipping activities, there are limits to the extent of provincial jurisdiction as marine shipping and transportation are within federal jurisdiction. Marine shipping is typically only included in the scope of a provincial environmental assessment, when a project is undergoing a co-ordinated or substituted assessment with the Impact Assessment Agency of Canada in accordance with the *Impact Assessment Cooperation Agreement*.

7.1.2 Foreshore activities associated with the Marine Dock on the Saanich Inlet

Based on the information provided, the EAO concludes that the marine dock and associated activities in the foreshore lease area on the Saanich Inlet has substantially started and is not an eligible project for designation.

The foreshore lease for the marine dock has previously been authorized by FOR and has substantially started with all physical structures, including pilings and dock structures, already in place. As such, it would not be required by the RPR to undergo an assessment under the Act. The marine dock is currently in operation and no new physical works would occur as part of the proposed lease extension, except for the repair or replacement of existing pilings, which was previously authorized by FOR and is integral to the continued operations of the existing marine port project.

On November 24 ,2022 SIPS requested two specific activities be designated that are directly related to the foreshore lease: the storage of hydrocarbons in existing tanks on the foreshore; and barge and vessel maintenance and moorage of vessels associated with upland activities. The EAO notes that the existing tanks storing hydrocarbons on the foreshore are part of the existing management plan for the foreshore lease and would meet the definition of an existing project under the RPR as they have not been abandoned and would be considered substantially started and not part of an eligible project. FOR has advised that barge and vessel maintenance and the loading and unloading of materials is consistent with the current uses of the foreshore lease. The hydrocarbon storage tanks are existing infrastructure, and barge and vessel maintenance and moorage of vessels associated with upland activities has occurred within the existing lease area for upload uses in relation to the current quarry. Furthermore, no new physical works, other than repair and maintenance of vessels, would be required for either of these activities.

7.1.3 Bamberton Fill Site Soil Deposits

Based on the information provided, the EAO concludes that the Bamberton fill site has substantially started and is not an eligible project for designation.

The Bamberton fill site was issued a permit by the CVRD on October 14, 2020, under Bylaw No. 4236, is now fully operational, does not currently have nor will it require any new physical structures, and has substantially started. If proposed, a new contaminated soil treatment facility (e.g. thermal desorber) could be an eligible project for designation under the Act, but the EAO would only conduct a review of its eligibility for designation if and when such a facility is proposed.

7.1.4 Summary

The EAO has determined that the proposed Bamberton quarry expansion has not substantially started and is an eligible project. However, the EAO has determined that the foreshore lease extension for the marine dock and the Bamberton fill site have substantially started and are not eligible projects for designation. As such, the EAO has only considered effects of the Bamberton quarry expansion in subsequent sections of this report.

7.2 Whether the Applicant is an Indigenous Nation

The EAO concludes that this is not a consideration for the Minister in their decision since the Applicant, SIPS, is a local non-government organization. The EAO notes that one of the proponents, Malahat Nation, is an Indigenous nation.

7.3 Whether the Project Could have Effects on Indigenous nations and their Section 35 Rights

Based on the information reviewed, the EAO is of the view that as proposed, the Bamberton quarry expansion would have positive effects on Malahat Nation's Aboriginal rights, including title, and Douglas Treaty Rights and designating the Bamberton quarry as reviewable could have adverse implications for Te'mexw Treaty Negotiations between Malahat Nation and the Province. Malahat Nation is one of the proponents and the EAO understands that the Bamberton Projects are in Malahat Nation's core territory. The EAO also understands that parts of the area surrounding the Bamberton quarry may become Malahat Nation treaty lands through Te'mexw Treaty Negotiations. Requiring the Bamberton Projects to undergo an environmental assessment review could jeopardize the treaty negotiation process and delay the ability for Malahat Nation to provide economic opportunities for its community members.

Malahat Nation stated that designation would place costs and burdens on Malahat Nation, impact regional economic development opportunities, and be in contradiction to the spirit of the Declaration of the Rights of Indigenous Peoples Act which outlines the intention to enhance Nations' fiscal capacity to deliver services to their citizens. Malahat Nation is in Stage 5 Final Agreement treaty negotiations with BC and Canada as part of the Te'mexw Treaty Association. Matters under active negotiations include the status of lands in the Bamberton area and the Environmental Assessment and Environmental Protection chapters.

Based on the information reviewed and as described in Section 6.5 and Section 7.5.2 of this report, the EAO is of the view that the Bamberton Projects could have potential effects on nearby Indigenous nations' Aboriginal and Treaty Rights. However, the EAO understands that these potential effects would be considered by EMLI and FOR in their respective permitting and authorization review processes.

7.4 Whether the Effects of the Project are Equivalent to or Greater than Potential Effects of a Project in the Prescribed Category of the RPR

Based on the information reviewed, the EAO considers that the proposed Bamberton quarry expansion would not be equivalent or greater than potential effects of a project in the modification of an existing quarry category of the RPR.

If an eligible project is in a category of projects described in the RPR, the Minister must consider if the potential effects of the eligible project will be equivalent to or greater than the potential effects of projects in that category that are reviewable projects.

The RPR outlines the following two requirements that must be met to automatically trigger an environmental assessment for a proposed modification (e.g. expansion) to an existing construction stone and industrial minerals quarry:

1. during operations, the modification will have a production capacity of greater or equal to 250,000 tonnes per year of quarried product; **AND**
2. the modification will result in the disturbance of an area of land that was not previously permitted for disturbance and that is at least 50 percent of the area of land that was previously permitted for disturbance at the existing project.

As proposed, the Bamberton quarry expansion would produce 479,000 tonnes per year of quarried product, exceeding the 250,000 tonnes per year requirement, but would result in a 16 percent increase in new disturbance area, which is well below the 50 percent requirement. This amount of increase in new disturbance area is not expected to result in significant adverse effects related to dust, noise and visual values and will likely be within the range of effects that currently exist from the project.

EMLI noted that the potential effects from the quarry expansion are within the range of projects typically considered solely under the *Mines Act.* Mitigation measures identified by EMLI or by the Proponents could address or partially address the key concerns identified in the Application and are within the normal range of mitigations for a project of this size. If the project were designated as reviewable, the proposed mitigations would likely be similar to those that would be required to address concerns that could be raised during an assessment (e.g. management and monitoring plans, avoidance of riparian areas, and buffer zones to reduce impacts to visual quality).

The Bamberton quarry expansion would result in an increase in barge shipments from the foreshore lease adjacent to the quarry by two to three barges per month. The Proponents regard this, and barging generally, as a mitigation measure as it leads to significant reductions in vehicle traffic to and from the quarry and has a lower impact than ground transportation.

The expansion could also result in increased visibility of the quarry from the Saanich Peninsula; however, the design of the expansion would allow for the creation of a buffer zone, which would include unused parts of the current authorized disturbance area, along portions of the Saanich Inlet which would partially mitigate this potential effect. If residual effects would occur, they would likely be within the range normally considered through permitting. In addition, mine reclamation at the end of the life of the Bamberton quarry would revegetate the quarry area, further reducing visual effects.

7.5 Whether an Assessment is Consistent with the Purposes of the EAO Set out in Section 2 of the Act

Based on the information provided during this review, the EAO does not believe that designating the Bamberton Projects as reviewable would be consistent with the purposes of the EAO.

The Minister must consider whether or not an Environmental Assessment of the Bamberton Projects would be consistent with the purposes of the EAO as set out in *Section 2 of the Act*, which include: promoting sustainability by protecting the environment and fostering a sound economy and the well-being of British Columbians and their communities; and supporting reconciliation with Indigenous peoples in B.C.

The EAO does not believe designating the Bamberton Projects as reviewable would result in significant changes to current cumulative effects conditions on southern Vancouver Island or in the Saanich Inlet. The EAO cannot conclude on whether designating the Bamberton Projects are reviewable would support reconciliation with Indigenous peoples.

7.5.1 Promoting Sustainability by Protecting the Environment and Fostering a Sound Economy and the Well-being of British Columbians and their Communities

Based on the available information, the EAO does not believe that designating the Bamberton Projects as reviewable would promote sustainability by protecting the environment and fostering a sound economy and the well-being of British Columbians and their communities.

The effects related to the quarry expansion are within the normal range of effects to be considered through permitting processes and below the thresholds under the RPR, particularly considering the substantial refinement of the proposed quarry disturbance area. They key issues identified in the Application are considered within the existing permitting processes, including noise management, dust management, and wastewater discharge management. In addition, mitigation measures were identified and are under active consideration for the proposed quarry expansion. Potential adverse socio-economic effects, such as visual quality and economic, would continue during the operation of the quarry regardless of the proposed expansion, though additional mitigation measures would be developed during the permit review process. In addition, if potential effects were to occur relating to fish habitat and marine shipping, they are in areas of primarily federal responsibility and are managed through legislation, including the *Fisheries Act* and *Canada Shipping Act*, which the Proponents, quarry operator, and lease users must comply with.

The Province of B.C. is committed to considering cumulative effects in natural resource decision-making. Improving cumulative effects assessment and management will be a vital part of sustainable and integrated resource management. The Cumulative Effects Framework (CEF) includes policy, procedures and decision-support tools that complement current land management achieved through B.C.'s legislative framework, land use plans and various best practices and processes. The framework provides important foundational information that can be used in a number of ways, including the potential to inform consultation with First Nations where a proposed decision or activity by the Province may affect claimed or proven Aboriginal or treaty rights. Transparently reporting on cumulative effects assessment information and management considerations will enable coordinated, consistent management of cumulative effects across the natural resource sector. The CEF Interim Policy was approved in October 2016 and is considered in EMLI and FOR decision-making.

Close inter-agency coordination during the planned permitting process for related the *Mines Act* and *Land Act* authorizations will help to ensure that cumulative effects are comprehensively considered during permitting processes and that fulsome and consistent public engagement takes place.

7.5.2 Supporting Reconciliation with Indigenous Peoples in B.C

Based on the available information, the EAO concludes that while designating the Bamberton Projects as reviewable may support reconciliation with Tsawout and Tsartlip First Nation, designation would not support reconciliation with the Malahat Nation.

While potential adverse effects on Aboriginal rights from the Bamberton Projects proceeding as proposed were noted by Tsawout First Nation and Tsartlip First Nation, potential adverse effects of designating the Bamberton Projects as reviewable on rights recognized and affirmed by Section 35 of the *Constitution Act, 1982*, were raised by Malahat Nation.

The duty to consult with Indigenous nations lies with the province of BC and consultation with Indigenous nations is required during the pending *Mines Act* permit amendment and *Land Act* authorization processes to determine the potential impacts on Indigenous nations' rights, including Douglas Treaty rights.

Tsawout First Nation noted that they have Treaty rights to carry on fisheries as formerly and noted barriers to accessing their traditional territories due to increased development and disturbance such as increased traffic of larger vessels, pollution to water ways, and impacts to fish and fish habitat.

Tsartlip First Nation stated the Bamberton Projects would place further constraints on Tsartlip's Douglas Treaty rights to hunt, fish, and collect and harvest resources, and to exercise cultural activities.

Continued operation and modification of the Bamberton Projects would further advance reconciliation with Malahat Nation because Malahat Nation would directly own and participate in a major industrial development in their territory. Malahat Nation is one of the proponents and has given its free, prior, and informed consent for the Bamberton Projects to proceed. Malahat Nation stated that designation would place costs and burdens on Malahat Nation, impact regional economic development opportunities, and be in contradiction to the spirit of the Declaration of the Rights of Indigenous Peoples Act which outlines the intention to enhance Nations' fiscal capacity to deliver services to their citizens. Malahat Nation is in Stage 5 Final Agreement treaty negotiations with BC and Canada as part of the Te'mexw Treaty Association. Matters under active negotiations include the status of lands in the Bamberton area and the Environmental Assessment and Environmental Protection chapters.

7.6 Whether Designating the Eligible Project as Reviewable is in the Public Interest

Based on the available information, the EAO concludes that designating the Bamberton Projects as reviewable is / is not in the public interest. [Placeholder - EAO to complete this section and conclude on this factor after the public comment period and public comments are considered]

Section 11(6) of the Act anticipates that designating a project as reviewable might not be in the public interest, even when the project may have an adverse effect. The Act allows the Minister to make a designation of an eligible project that is subject to a prescribed regulatory process only if the Minister is satisfied that the designation is in the public interest.

The following factors were considered by the EAO:

- the Bamberton Projects are subject to a robust and comprehensive regulatory process under the *Mines Act* led by EMLI and *Land Act* led by FOR;
- an environmental assessment is not needed for purposes set out in of Section 2 of the Act, as outlined in Section 7.5 of this report;

- consultation with Indigenous nations is required under the *Mines Act* amendment review process and *Land Act* authorization review process; and,
- the potential for adverse effects from the Bamberton Projects would not be equivalent or greater than the potential effects of other reviewable projects in its category of the RPR, as discussed in Section 7.4 of this report.

Projects that are not reviewable or designated for review under the *Environmental Assessment Act* will require applicable permits and authorizations. The EAO is confident that the regulatory framework in B.C. can address many, if not all the concerns raised for projects like those proposed at Bamberton by the Proponents. The EAO will carefully consider public comments that provide rationale for why an environmental assessment is necessary in addition to the applicable permitting process required for the proposed activities. The EAO is interested in understanding this rationale before concluding on whether designation for environmental assessment is in the public interest.

8.0 PRELIMINARY RECOMMENDATION

Based on the available information and the analysis in this report the EAO recommends that the Minister decline to designate the Bamberton Quarry expansion as a reviewable project under Section 11 of the Act.

In developing this report, the EAO considered SIPS's Application and supplemental information, and information and feedback provided by participants, including MICO, potentially affected Indigenous nations, EMLI, FOR, and the CVRD.

Based on the available information and the analysis in this report, the EAO has concluded that the proposed Bamberton Quarry expansion is an eligible project for the purposes of Section 11(1) but that the foreshore lease extension for the marine dock and the Bamberton fill site are not eligible projects.