No. 250797
Vancouver Registry

In the Supreme Court of British Columbia

IN THE MATTER OF THE *JUDICIAL REVIEW PROCEDURE ACT,* RSBC 1996, c. 241

Between

GARNET VALLEY AGRI-TOURISM ASSOCIATION
and DOUGLAS RAFTERY

PETITIONERS

and

CHIEF PERMITTING OFFICER OF THE
MINISTRY OF MINING AND
CRITICAL MINERALS

RESPONDENT

RESPONSE TO PETITION

Filed by: Chief Permitting Officer of the Ministry of Mining and Critical Minerals (the "respondent")

THIS IS A RESPONSE TO the petition filed January 31, 2025

The petition respondent estimates that the application will take two days.

Part 1: ORDERS CONSENTED TO

The petition respondent consents to the granting of the orders set out in the following paragraphs of Part 1 of the petition: ***none***.

Part 2: ORDERS OPPOSED

The petition respondent opposes the granting of the orders set out in paragraphs ***all*** of Part 1 of the petition.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The petition respondent takes no position on the granting of the orders set out in paragraphs ***none*** of Part 1 of the petition.

Part 4: FACTUAL BASIS

Permit Application

1. The Ministry of Mining and Critical Minerals (the "**Ministry**") is responsible for British Columbia's mining and critical minerals sector. The *Mines Act* and the *Health Safety and Reclamation Code for Mines in British Columbia* (the **"*Code*"** govern mining activity permits.

2. On November 15, 2023, the company 1440254 B.C. Ltd., through its agent Holmes Mining Consultants Ltd. (the "**Applicant**"), submitted a Notice of Work and Reclamation Program application (No. 2000391-2023-01) pursuant to section 10 of the *Mines Act* for a new permit to construct a sand and gravel pit on privately-owned land located at 27600 Garnet Valley Road, Summerland, BC (the "**Permit Application**").

3. The Permit Application included a Notice of Work, an "Archaeological Chance Find Procedure", a "Noise and Dust Control Plan", a "Mining Development Plan", a "Water Management, Including Erosion and Sediment Control Plan", and an "Environmental Assessment Report" (collectively the **"Permit Application Documents"**).

4. A senior permitting officer and inspector (the **"Inspector"**) was assigned to review the Permit Application.

Application review

5. On December 8, 2023, the Inspector referred the Permit Application, with the Permit Application Documents, to 22 First Nations and Indigenous communities,

the Ministry of Water, Land and Resource Stewardship - Ecosystems Section, the Regional District of Okanagan-Similkameen, and the District of Summerland.

6. On December 21, 2023, the Applicant published notice of the Permit Application in the British Columbia *Gazette* and published notice of the Permit Application in the *Summerland Review* newspaper.

7. On December 28, 2023, the Applicant published notice of the Permit Application in the *Summerland Review* newspaper.

8. On January 4, 2024, the Inspector published the Permit Application on the Regional Mines Public Engagement Portal (the **"Portal"**), which is an online webpage allowing members of the public to view notices of work and submit comments. The Inspector received 341 comments.

9. In January and February, 2024, the Inspector received responses from two First Nations, the Ministry of Water, Land and Resource Stewardship - Ecosystems Section, the Regional District of Okanagan-Similkameen, and the District of Summerland.

10. The Inspector reviewed the Permit Application Documents, the comments obtained from the Portal, the responses from the Permit Application Referrals, and maps of the proposed mining activity location.

The Decision

11. On July 9, 2024, the Inspector issued a 30-year permit for certain authorized activities to the Applicant (Permit No. G-100000442, Mine No. 2000381) on conditions (the "**Permit**"). The conditions include, among other things, that an updated mine plan be submitted for review and acceptance every five years, that authorized activities are restricted to non-holiday weekdays between 0700-1700h, and maximum amounts for annual extraction and for disturbance.

12. At the same time as the issuance of the Permit, the Inspector prepared a table summarizing the comments received from the public and responses to those comments, which were provided to those who submitted comments on August 23, 2024 (the **"Chart Reasons"**).

13. On October 8, 2024, the District of Summerland requested that the Ministry provide "stated reasons" for the Permit, and on October 25, 2024, the Ministry advised:

> The Statutory Decision Maker is finalizing a "Reasons for Decision" document, which I hope to share next week. The document is intended to provide a more

fulsome account of how the decision maker considered the different issues that were expressed and how the issues were accounted for in the permit document.

14. On October 29, 2024, the Ministry circulated a document titled "Reasons For Decision" in response to a request from the District of Summerland (the **"Narrative Reasons"**), which was based on the same record as the Permit and Chart Reasons.

Part 5: LEGAL BASIS

A. Preliminary Issue #1: Standing

15. The *Judicial Review Procedure Act*, RSBC 1996, c. 241 does not specify who has standing to commence a judicial review, although section 2 states that the court may grant an applicant "any relief that the applicant would be entitled to…" (emphasis added).

16. The respondent, the Chief Permitting Officer, takes no position on whether the petitioners have standing to bring the petition. The courts have held that the standing of the petitioner is always a threshold issue in judicial review proceedings.[1] The relevant principles on standing are set out below.

17. A petitioner must show either private or public interest standing to participate in a judicial review of an administrative decision.[2]

18. The test for private interest standing on judicial review requires the petitioners to demonstrate that they are an "aggrieved person," an "affected person", or someone who is "exceptionally prejudiced" by the impugned administrative action.[3] The petitioners must have some particular grievance beyond that suffered by members of the general public.[4]

19. For public interest standing, the court must consider: (1) whether there is a serious justiciable issue raised; (2) whether the plaintiff has a real stake or a genuine interest in it; and (3) whether, in all the circumstances, the proposed suit is a reasonable and effective way to bring the issue before the courts.[5]

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[1] *Abbcar Properties, LLC v. Vancouver (City)*, 2022 BCSC 190 [*Abbcar*] at para. 31.
[2] *Abbcar*, at paras. 31-32.
[3] *Gonzales Hill Preservation Society v. Victoria (City) Board of Variance*, 2021 BCSC 2091 [*Gonzales*] at para. 60.
[4] *Gonzales*, at para. 71.
[5] *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45 at para. 37.

B. Preliminary Issue #2: Inadmissible Extra-Record Evidence

20. Judicial review is based on the record before the decisionmaker. Subject to the court allowing some evidence providing limited background information and general context, evidence that was not before the decisionmaker in the first instance is generally not admissible in judicial review proceedings.[6]

21. Much of the petitioners' evidence is extra-record evidence that was not before the decisionmaker and so is not properly part of the record on judicial review.

22. While some of the petitioners' evidence may fall within the exceptions for background information or general context, much of it is inadmissible. The petitioners attempt to adduce impermissible evidence that was not before the decisionmaker, is objectionable because it includes opinion evidence, and postdates the decision. Any extra-record evidence should be struck as inadmissible.

23. In particular, the respondent submits that the following portions of the petitioners' evidence, including the exhibits referenced in the cited paragraphs, are inadmissible extra-record evidence for the reasons identified above:

    a. Affidavit #1 of Steve Lornie made January 23, 2025: paras. 14, 15, 18-22.

    b. Affidavit #1 of Douglas Raftery made January 23, 2025: paras. 8, 11-16, 18-33.

    c. Affidavit #1 of Kim Woytowich made January 29, 2025: paras 3, 4, 8, 12-25, 27, 30.

C. Statutory Overview

24. The *Mines Act* regulates all phases of mining in British Columbia: exploration, development, construction, production, closure, reclamation and abandonment.[7] The exploration, development, or production of sand, gravel, or rock is a "mining activity" that falls under the *Mines Act.*[8]

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[6] *Air Canada v. BC (Workers' Compensation Appeal Tribunal)*, 2018 BCCA 387, para. 34; *Canada Mink Breeders Assn. v. British Columbia,* 2023 BCCA 310, paras. 63-64; *Taku River Tlingit First Nation v. British Columbia (Minister of Environment),* 2014 BCSC 1278, para. 47.
[7] *United Steel Paper and Forestry Rubber Manufacturing Energy Allied Industrial and Service Workers International v. British Columbia (Ministry of Mines)*, 2014 BCSC 1403 [*United Steel*] at para. 5.
[8] Section 1, *Mines Act.*

25. The Chief Permitting Officer is appointed pursuant to s. 8.2 of the *Mines Act.* The Chief Permitting Officer may delegate powers to an inspector. Inspectors are appointed pursuant to s. 5 of the *Mines Act* by the Chief Inspector of Mines, who is himself appointed pursuant to s. 3 of the *Mines Act.*

26. Section 34(1) of the *Mines Act* requires "a code dealing with all aspects of health, safety and reclamation in the operation of a mine and may amend the code from time to time as required." The *Code* governs all phases of the mining process for mining activities carried out in British Columbia, including permit requirements for conducting work in, on, or about a mine.

27. The stated purpose of the *Code* is to

    1. Protect employees and all other persons from undue risk to their health and safety arising out of or in connection with activities at mines;

    2. Safeguard the public from risks arising out of or in connection with activities at mines;

    3. Protect and reclaim the land and watercourses affected by mining; and

    4. Monitor the extraction of mineral and coal resources and ensure maximum extraction with a minimum of environmental disturbance, taking into account sound engineering practice and prevailing economic conditions.

28. Section 10(1) of the *Mines Act* requires that before any work commences in, on, or about a mine, the owner, agent, manager, or any other person must hold a permit issued by the Chief Permitting Officer.

    (1) Before starting any work in, on or about a mine, the owner, agent, manager or any other person must hold a permit issued by the chief permitting officer and, as part of the application for the permit, there must be filed with an inspector a plan outlining the details of the proposed work and a program for the conservation of cultural heritage resources and for the protection and reclamation of the land, watercourses and cultural heritage resources affected by the mine, including the information, particulars and maps established by the regulations or the code.

29. To obtain such a permit, an applicant must submit an application that complies with the requirements of s. 10, including a plan detailing the proposed work and any other requirements set out in the *Code*.

30. Part 10 of the *Code* also addresses the granting of permits. Section 10.2.8 of the *Code* stipulates that before issuing a permit under s. 10(1) of the *Mines Act,* the Chief Permitting Officer must take into consideration, amongst other things, written representations received from a person affected by, or interested in, the application, from ministries or agencies, or from the regional advisory committee.

31. If the Chief Permitting Officer considers the application satisfactory, the Chief Permitting Officer (or in this case, his delegate) may issue the permit and impose any conditions he finds to be necessary. A permit may be revised or extended and, if that is done, the Chief Permitting Officer may impose additional conditions that he considers necessary.

32. The *Mines Act* also gives the Chief Inspector of Mines broad powers for ongoing supervision of mines. An inspector may inspect a mine at any time. If an inspector believes there is a contravention of the *Act*, the regulations, or the *Code*, the inspector has the power to make orders for remedial action and to suspend work at a mine until such action is taken. Section 35 of the *Act* provides inspectors with additional enforcement powers which include authorization to apply to the Supreme Court for an order directing compliance in the event of non-compliance.

33. Sections 21 and 22 of the *Mines Act* require the owner or agent to appoint and designate a mine manager who, as set out s. 1 of the *Act,* is someone who is "responsible for the management and operation of a mine". The manager or designate must attend daily at the mine site and must possess the qualifications prescribed by the regulations and the *Code*.

34. Section 24 imposes a general obligation on the owner, agent or manager to take all reasonable measures to ensure compliance with the *Act*, orders issued under it, the regulations and the *Code*.

35. Depending on the circumstances, various other statutes and regulations apply to mining activities in British Columbia, including but not limited to the *Mining Right of Way Act,* the *Mineral Tenure Act,* the *Mineral Tax Act,* and statutes focusing on environmental, forestry, land, water, and wildlife.

36. The *Local Government Act*, RSBC 2015, c. 1, at section 327, provides that if a regional district provides a service in relation to the control of soil depositing or removal, a regional district may, by bylaw, regulate or prohibit the removal of soil from any land within the regional district. However, s. 327 must be read in

conjunction with s. 9 of the *Community Charter*[9], a council may not adopt a bylaw prohibiting the removal or deposit of soil unless it is (a) in accordance with a regulation, (b) in accordance with an agreement or (c) approved by the minister responsible.

D. Permit Application Requirements and Procedure

37. To apply for a permit, an applicant must submit a Notice of Work application in writing to the Chief Permitting Officer. The application must comply with s. 10 of the *Mines Act* and must include any additional information set out in the *Mines Act* regulations or Part 10 of the *Code,* to the extent they are applicable to the proposed type of resource extraction.

38. In general, the minimum required documentation for a section 10 Notice of Work application for a sand or gravel quarry is (1) a notice of work, (2) an archeological chance find procedure, (3) a mining development plan, (4) and a water management plan, including an erosion and sediment control plan. However, the applicant may also be asked to provide additional documentation.

39. The permit application may be circulated to other ministries and agencies. If no responses are received within 30 days, the ministries and agencies are deemed to have no concerns.[10]

40. An applicant may be required to publish the notice of work in the Gazette or local newspaper. If that occurs, interested persons may view the permit application and make written representations to the Chief Permitting Officer within 30 days.[11] The Ministry maintains an online "Regional Mines Public Engagement Portal" through which those comments can be submitted. The number of public comments received varies depending on the proposed size, location, or contemplated activities of the proposed mine.

41. Before the Chief Permitting Officer may issue a permit, the Chief Permitting Officer must consider the notice of work based on the statutory and *Code* requirements, one of which includes considering the public comments.[12]

42. If the Chief Permitting Officer is satisfied with the permit application and is satisfied that the applicant has complied with the regulations, then the Chief

[9] S.B.C. 2003, c. 26.
[10] *Code*, s. 10.2.7.
[11] *Code*, ss. 10.3.1 and 10.3.2.
[12] *Code*, ss. 10.2.8, 10.3.1 & 10.3.2.

Permitting Officer may issue the permit. The permit may contain conditions that the chief permitting officer considers necessary.[13]

E. Procedural Fairness

43. The nature and extent of the duty of procedural fairness is informed by reference to the *Baker* factors.[14]

    a. the nature of the decision made and the decision-making process;

    b. the nature of the statutory scheme;

    c. the importance of the decision to the individual(s) affected;

    d. the legitimate expectations of the party challenging the decision; and

    e. the extent to which the decision-maker is given deference over its own process.

44. This court comprehensively dealt with the procedural fairness applicable to the issuance of a *Mines Act* permit under the *Mines Act* in *Highlands District Community Association v. British Columbia (Attorney General)*, 2020 BCSC 2135 (aff'd 2021 BCCA 232, leave to appeal ref'd [2021] SCCA No. 259). In that decision, Justice Mayer conducted a lengthy analysis of the *Baker* factors and concluded that in the context of a section 10 *Mines Act* permit, a "low degree of procedural fairness" is owed to interested third party neighbours.[15]

45. In the present case, the degree of procedural fairness owed to the petitioners was met or exceeded. Notice of the application was publicly posted, members of the public were provided an opportunity to submit comments, and those comments were considered by the Inspector. The *Mines Act* and *Code* requirements were met.

46. The petitioners raise two specific procedural fairness arguments at paras. 36 to 41 of the petition, saying that (a) the petitioners needed to "review, test, or make submissions" on the technical reports, and (b) the reasons were inadequate. The respondent submits that these bases do not reveal any breach of procedural fairness.

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[13] *Mines Act*, s. 10(3).
[14] *Baker v. Canada*, [1999] 2 SCR 817 at paras. 23-28.
[15] *Highlands District Community Association v. British Columbia (Attorney General)*, 2020 BCSC 2135 at para. 64 [*Highlands*] (aff'd 2021 BCCA 232 leave to appeal ref'd [2021] S.C.C.A. No. 259). See also *Brouwer et al v. HMTQ et al.,* 2000 BCSC 1743 [*Brouwer*] at para. 79.

a. The petitioners had no substantive right to test the evidence

47. The petitioners had no substantive right to "review, test or make submissions on the evidence", as they argue.[16] The ability for interested persons to provide comments under the *Code* creates no substantive rights following consideration of their representations.[17] The procedural fairness owed to the petitioners (or the public generally) does not include ensuring they receive and review technical reports, or that they can "test the evidence". Moreover, the petitioners could have requested the technical reports, but did not do so. The petitioners' representative governments, both regional districts and First Nations, received the Permit Application Documents.

48. Procedural fairness requirements were met: the petitioners had the opportunity to provide comments on a proposed gravel pit, they provided comments, and the decisionmaker considered those comments.

b. The adequacy of reasons is not a standalone basis for quashing a decision

49. It is foundational that judicial review concerns a "decision" that is an exercise of statutory authority that is of a sufficiently public character.[18] In other words, it is not the written reasons that are being judicially reviewed, but the administrative decision itself.

50. While a written explanation may be needed for some decisions, it "is well established that, as a matter of procedural fairness, reasons are not required for all administrative decisions."[19] Meaningful judicial review can take place in the absence of written reasons. *Vavilov* explains that in those circumstances, the courts focus their analysis on the record before the decisionmaker and the outcome of the decision:[20]

> [138] There will nonetheless be situations in which no reasons have been provided and neither the record nor the larger context sheds light on the basis for the decision. In such a case, the reviewing court must still examine the

[16] Petition at para. 36, emphasis added.
[17] *Brouwer* at para. 82; *Agraira v. Canada (Public Safety and Emergency Preparedness),* 2013 SCC 36 at para. 97; *Malcolm v. Canada (Fisheries and Oceans),* 2014 FCA 130 at paras. 47 and 48, leave to appeal refused 2014 CanLII 68699 (SCC)
[18] Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v. Wall, 2018 SCC 26 at para. 14; Strauss v. North Fraser Pretrial Centre (Deputy Warden of Operations), 2019 BCCA 207 at para. 21; Ngalim v. Insurance Corporation of British Columbia, 2022 BCSC 1822 at para. 19)
[19] *Vavilov* at para 77.
[20] *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para 138; *Yu v. Richmond (City),* 2021 BCCA 226; *Curran v. Victoria (City),* 2021 BCSC 1552.

> decision in light of the relevant constraints on the decision maker in order to determine whether the decision is reasonable. But it is perhaps inevitable that without reasons, the analysis will then focus on the outcome rather than on the decision maker's reasoning process. This does not mean that reasonableness review is less robust in such circumstances, only that it takes a different shape.

51. The issuance of a *Mines Act* permit does not require written reasons. The circumstances do not have the hallmarks of a decision requiring written reasons: among other things, the decision is administrative rather than adjudicative, the process is not adversarial, the parties do not have participatory rights such as in a tribunal setting, there is no statutory requirement for written reasons, there is no right of appeal, and the statutory scheme affords significant deference and discretion to the decisionmaker.[21] The courts have reviewed and upheld *Mines Act* permits that were issued without written reasons.[22] The same analysis applies here, supported by enabling legislation and the record. The Permit on its own would be sufficient in the circumstances.

52. Although they are not necessary in the circumstances, in this case the Inspector did provide written reasons in addition to the Permit. Those reasons are in the Chart Reasons and the Narrative Reasons. Where reasons have been provided, the "adequacy of reasons…is not a stand-alone basis for quashing a decision".[23]

53. There is no merit to the petitioners' allegation that the Narrative Reasons were provided as justification rather than an articulation of the reasoning that led to the decision. The Narrative Reasons are consistent with the Permit and Chart Reasons; they provide a narrative form of the same reasoning. Moreover, the Narrative Reasons relied on the same record as the Permit and Chart Reasons, and were provided only three months after the Permit was issued.

54. In the alternative, if the Narrative Reasons are treated as separate from the decision, there is a distinction between the issuance of post-decision communications explaining a decision, and an after-the-fact justification.[24] Post-decision communications explaining a decision that were initiated by someone other than the decisionmaker may be considered in assessing reasonableness. The Narrative Reasons are appropriately considered here, whether treated as "reasons" or alternatively as a post-decision communication.

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[21] *Vavilov* at para 77; *Baker* at paras 35-44; *Highlands* at paras 59-63.
[22] *Brouwer*, at para 83; *Voters Taking Action on Climate Change v. British Columbia (Ministry of Energy and Mines)*, 2015 BCSC 471 [*Voters*].
[23] *Vavilov* at para. 304; *Howes v. FortisBC Inc*., 2022 BCSC 1797 at para. 37.
[24] *KIK Custom Products Inc v. Canada (Border Services Agency),* 2020 FC 462 at para. 65

F. Standard of Review - Reasonableness

55. The parties agree that the standard of review is reasonableness, aside from the procedural fairness issues addressed above, which are reviewed on a correctness standard (*i.e.,* whether the requisite procedural fairness was provided).

56. Reasonableness is a deferential standard. The starting point for reasonableness analysis is judicial restraint. The petitioners bear the burden of showing the decision to issue the Permit was unreasonable, as explained in *Vavilov:*[25]

> [100] The burden is on the party challenging the decision to show that it is unreasonable. Before a decision can be set aside on this basis, the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. Any alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision. It would be improper for a reviewing court to overturn an administrative decision simply because its reasoning exhibits a minor misstep. Instead, the court must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable.

57. This court has recognized that decisionmakers who consider s. 10 *Mines Act* permits enjoy the confidence of the Legislature and have specialized expertise, warranting a "wide degree of deference" to the decision.[26]

58. The Permit decision was reasonable based on the record. The issuance of the Permit fell within the range of reasonable outcomes.

59. The petitioners argue at paras. 46 and 47 of their petition that the decision to issue the Permit is not reasonable because (a) the permitting officer did not consider zoning and land use and (b) the decision did not account for slope stability. The respondent submits that neither argument demonstrates a lack of reasonableness in the decision under review.

a. Zoning and land use

60. The petitioners rely on the newspaper and *Gazette* notices of the permit application (together, the "**Notice**") issued by the Applicant, to argue that the Inspector failed

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[25] *Wood-Tod v. The Superintendent of Motor Vehicles*, 2020 BCSC 155 at paras. 31-47; *Vavilov* at para 100; *Mowatt v. British Columbia (Attorney General),* 2023 BCSC 1583 at paras. 48-53.
[26] *Highlands*, at para. 62; *Voters*, at para. 70; *Brouwer* at para. 52; *United Steel*, at paras. 61-62; *Voters*, at para. 70.

to consider zoning or land use, or fettered herself. The Notice states "Please note that the Chief Permitting Officer does not have a mandate to consider the merits of the proposed mine from a zoning or land use planning perspective."

61. The Applicant, not the Inspector, published the Notice. The decisionmaker did not author, review, or issue the Notice. The Inspector could not fetter herself through the Notice when she was not involved in it.

62. Moreover, the record, the Permit, the Chart Reasons, and the Narrative Reasons, alone and together, show that the Inspector considered both zoning and land use.

63. While those points are dispositive of the petitioner's argument that zoning and land use were not considered, the respondent's "mandate" is not to consider whether a proposed mine is meritorious from a zoning or land use planning perspective. The decisionmaker must instead consider a wide range of factors (*e.g.,* economic, environmental, health and safety, etc.) in the exercise of her broad discretion. Zoning and land use are only part of that consideration, in appropriate circumstances; the authorities are clear that a *Mines Act* inspector is not bound by zoning or land use bylaws.[27]

b. Slope stability

64. The petitioners also claim that the decision fails to account for slope stability and possible related consequences. However, it is evident that the Inspector considered and addressed slope stability concerns.

65. On the record before the Inspector, the slope stability concerns primarily related to safety for the property located below the proposed site, soil erosion, and drainage. These concerns were addressed by the Inspector in the Permit through several conditions imposed in Parts C and D of the Permit. These included requirements that the Applicant:

    a. report the discovery of any adverse conditions that could impact, among other things, site stability and soil erosion;

    b. submit a geotechnical incident form for any geotechnical incident that is considered a multi-bench pit slope failure or a sign of dam instability;

    c. refrain from stockpiling materials in certain specified areas of the site;

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[27] *Anning* at paras 77-79; *Anning*, at paras. 77-79 *Highlands,* at para. 12, citing *Cowichan Valley (Regional District) v. Cobble Hill Holdings Ltd*., 2016 BCCA 432; *Brouwer* at para. 62; *OK Industries Ltd. v. Highlands (District),* 2022 BCCA 12 at para. 120.

d. construct, maintain and operate all access roads, drill sites, equipment laydowns, trenches, and locations where cuts and/or fills exceed 6.0 meters on terrain Class IV or V, in accordance with written recommendations by a Qualified Professional;

e. prepare and submit a geotechnical monitoring plan – which detects early evidence of slope instability – developed by a Qualified Professional prior to commencing work; and

f. effectively control erosion and sediment on the mine site and follow the Water Management Including Erosion and Sediment Control Plan.

G. Remedy

66. The petition should be dismissed. The decision was reasonable, and the procedure was fair.

67. If the court concludes the exercise of discretion was unreasonable or reached in a procedurally unfair manner and concludes it should exercise its discretion in the circumstances, the court ought to remit the matter back to the Inspector for reconsideration.[28]

H. No Costs

68. Costs are not awarded in judicial review proceedings absent perversity or misconduct. The petitioners have not sought an order for costs and the respondent similarly does not seek an order for costs. No costs should be awarded.[29]

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[28] *Tennis v. Stracuzza*, 2007 BCCA 480 at paras. 14, 18-19. *Dennis v. British Columbia (Superintendent of Motor Vehicles),* 2000 BCCA 653 at paras. 26-27.
[29] *18320 Holdings Inc. v. Thibeau*, 2014 BCCA 494 at para. 55. *Lang v. British Columbia, (Superintendent of Motor Vehicles),* 2005 BCCA 244 at paras. 47-49.

Part 6: MATERIAL TO BE RELIED ON

1. Affidavit #1 of George Pietrusinski, made on June 20, 2025.
2. Affidavit #1 of Janine Silk, to be commissioned.
3. Such further materials as counsel may advise and the Court permits.

Date: June 25, 2025

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