



No. VLC-S-S-250797
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN THE MATTER OF THE *JUDICIAL REVIEW PROCEDURE ACT*

Between:

Garnet Valley Agri-Tourism Association and Douglas Raftery

Petitioners

And:

Chief Permitting Officer of the Ministry of Mining and Critical
Materials

Respondent

RESPONSE TO PETITION

Filed by: 1440254 B.C. Ltd. (the "**Company**")

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

1440254 B.C. Ltd. estimates that the application will take three days.

PART 1 ORDERS CONSENTED TO

1440254 B.C. Ltd. consents to the granting of none of the orders set out in Part 1 of the petition.

PART 2 ORDERS OPPOSED

1440254 B.C. Ltd. opposes the granting of all of the orders set out in Part 1 of the petition.

PART 3 ORDERS ON WHICH NO POSITION IS TAKEN

1440254 B.C. Ltd. takes no position on the granting of the following orders set out in Part 1 of the petition: not applicable.

PART 4 FACTUAL BASIS

I. INTRODUCTION AND OVERVIEW OF COMPANY'S POSITIONS

1. The Company is owned and operated by Darrell and Ruby Grymonpre (who are husband and wife). Their son, Marcus, is the Company's only employee.

2. On 15 November 2023, with the assistance of Holmes Mining Consultants Ltd., the Company applied under the *Mines Act*, R.S.B.C. 1996, c. 293, for a permit to operate a sand and gravel pit on property in Summerland, British Columbia, owned by Darrell and Ruby Grymonpre. The CPO issued Permit No. G-1000000442 to the Company approximately eight months later, on or about 09 July 2024 (the "**Permit**").

3. The petitioners challenge the CPO's granting of the Permit, alleging that the decision was both unreasonable and procedurally unfair. The petitioners' claims have no merit. The CPO's decision was justified, intelligible, and transparent and, therefore, reasonable. The CPO owed only a low degree of procedural fairness to the petitioners and provided a greater degree than required.

4. Additionally, the petitioners' affidavit evidence is flawed. Parts of it are inadmissible because they are opinion, hearsay, or were not part of the record before the CPO. Several assertions made in the petitioners' affidavits are factually inaccurate and require correction, as discussed below. The admissibility and quality of the petitioners' evidence must be closely scrutinized.

5. The petition ought to be dismissed.

II. THE COMPANY

6. The Company was incorporated pursuant to the laws of British Columbia in September 2023. It has a registered and records office at 300–1465 Ellis Street, Kelowna, British Columbia.¹

¹ Affidavit #1 of Darrell Grymonpre made 15 August 2025 ("**Grymonpre Affidavit**"), para. 3.

7. Darrell and Ruby Grymonpre are the only two directors and shareholders of the Company. Their son, Marcus, is the Company's only employee.²

8. The application process that is the subject of this dispute is the first time the Company applied for a permit under the *Mines Act*.³

III. THE PROPERTY

9. In November or December 2004, Darrell and Ruby Grymonpre purchased the property with a civic address 27410 Garnet Valley Road, Summerland, British Columbia, legally described as:

LOT 8 DISTRICT LOTS 3195, 3952, 3956 AND 3962
OSOYOOS DIVISION YALE DISTRICT PLAN 34376
PID: 002-991-381

("Lot 8")

LOT 4 DISTRICT LOTS 3195 AND 3952 OSOYOOS DIVISION
YALE DISTRICT PLAN 34376
PID: 002-991-331

("Lot 4")

LOT 3 DISTRICT LOTS 3962 AND 3195 OSOYOOS DIVISION
YALE DISTRICT PLAN 34376
PID: 002-991-322

("Lot 3")

(Lot 8, Lot 4, and Lot 3 are collectively, the "**Property**").⁴

10. The Property is located about nine kilometres north of Summerland. It is approximately 33.34 hectares in total (Lot 3 and Lot 4 together are about 4.05 hectares

² Grymonpre Affidavit, paras. 4-5.

³ Grymonpre Affidavit, para. 7.

⁴ Grymonpre Affidavit, para. 8.

and Lot 8 is about 29.24). The Property is primarily an undeveloped rural lot. There are no permanent structures on the Property.⁵

IV. THE PERMIT APPLICATION

11. Beginning in or around November 2022, Darrell Grymonpre started working with Holmes Mining Consultants Ltd. (the “**Consultant**”) to prepare an application under the *Mines Act* for a permit to operate a sand and gravel pit on the Property.⁶

12. The Consultant assisted the Company to prepare its application, including the following documents:

- (a) Notice of Work;
- (b) Archaeological Chance Find Procedure;
- (c) Noise and Dust Control Plan;
- (d) Mining Development Plan; and
- (e) Water Management Including Erosion and Sediment Control Plan.⁷

13. On 15 November 2023, on the Company’s behalf, the Consultant submitted the Company’s application to the Chief Permitting Officer of the Ministry of Mines and Critical Minerals (the “**CPO**”).⁸

14. The Company arranged for notice of the Company’s application to be published in the British Columbia *Gazette* and the *Summerland Review* newspaper as well as posted in the Summerland Public Library.⁹

⁵ Grymonpre Affidavit, para. 9.

⁶ Grymonpre Affidavit, para. 13.

⁷ These documents are attached to Affidavit #1 of George Pietrusinski made 20 June 2025, (“**Pietrusinski Affidavit**”), as Exhibits “I” through “M”.

⁸ Grymonpre Affidavit, para. 15.

⁹ Grymonpre Affidavit, paras. 16-18.

15. On 09 July 2024, the CPO issued the Permit.¹⁰

PART 5 LEGAL BASIS

I. PETITIONERS' STANDING

16. The Company takes no position on the petitioners' standing to bring the petition and adopts and relies on the legal principles cited by the CPO at paragraphs 15-19 of its response to petition.

II. PRELIMINARY ISSUE: DEFICIENCIES AND INACCURACIES IN PETITIONERS' AFFIDAVIT EVIDENCE

17. The Company adopts and relies on paragraphs 20-23 of the CPO's response to petition and submits that the extra-record evidence in the petitioners' affidavits is inadmissible.

18. Exhibits 14-27, 29, and 32 (at paragraphs 12-25, 27, and 30) of the affidavit of Kim Woytowich are inadmissible because the petitioners have not satisfied the requirements for the admissibility of newspaper articles on judicial review. The articles are not relevant to the CPO's motivation for its decision or for proof as to the decision maker's state of mind.¹¹

19. Paragraphs 8-9 of affidavit #1 of Steve Lornie and paragraph 5 of affidavit #1 of Douglas Raftery are incorrect. The notice of application posted at Summerland Public Library contained page 6.¹²

20. Paragraph 4 of Mr. Raftery's affidavit is incorrect. The application posted at Summerland Public Library had technical reports and substantive information appended.¹³

¹⁰ Grymonpre Affidavit, para. 21.

¹¹ *Brouwer et al v. HMTQ*, 2000 BCSC 1743, paras. 42-49.

¹² Grymonpre Affidavit, paras. 19, 22-25.

¹³ Grymonpre Affidavit, paras. 19, 27-31.

21. The following evidence and exhibits allege that the majority of the Property is rated ESA-1 (high):

- (a) page 2 of Exhibit 10 to the affidavit of Kim Woytowich;
- (b) page 1 of Exhibit 12 to the affidavit of Kim Woytowich;
- (c) page 1 of Exhibit 13 to the affidavit of Kim Woytowich; and
- (d) page 87 in Exhibit "K" to the affidavit of Douglas Raftery.

22. Such evidence is incorrect. The majority of the Property is rated ESA-moderate.¹⁴

23. The debris flow which occurred in May 2018 did not occur on the Property, and the Company did not cause it. Ecora Engineering & Environmental Ltd. concluded that the debris flow was likely caused by groundwater originating on crown lands above the Property. Since the debris flow, the Grymonpre family has spent approximately \$100,000 attempting to mitigate against the risk of similar incidents occurring in the future.¹⁵

III. CPO DID NOT BREACH DUTY OF PROCEDURAL FAIRNESS

24. The CPO did not breach the duty of procedural fairness owed to the petitioners. The Company adopts and relies on paragraphs 43-54 of the CPO's response to petition, and makes the following additional submissions.

25. Allegations of procedural fairness cannot be raised for the first time on judicial review if they could reasonably have been the subject of timely objection in the first-instance forum. The petitioners' procedural fairness argument must be dismissed on this basis.¹⁶

¹⁴ Grymonpre Affidavit, para. 38.

¹⁵ Grymonpre Affidavit, paras. 40-46.

¹⁶ *R.N.L. Investments Ltd. v. British Columbia (Agricultural Land Commission)*, 2021 BCCA 67, para. 72.

26. The petitioners allege that the copy of the notice of application posted in Summerland Public Library was missing page 6. The Company denies this allegation, as set out in paragraph 19 above. The petitioners could have notified the Company or the CPO that page 6 was missing, but did not.¹⁷ Even if page 6 was missing, the petitioners cannot rely on this as grounds for a breach of procedural fairness because they failed to raise this issue with the CPO (or anyone) at first instance. Furthermore, even if page 6 was missing, its omission had no impact on the petitioners' ability to understand and respond to the application.

27. The petitioners also allege that the copy of the application posted at Summerland Public Library did not append technical reports or other substantive information. The Company denies this allegation, as set out in paragraph 20 above.

28. The application posted at the library refers to both "an Environmental Assessment" and "a Noise and Dust Control Plan" (see pages 4, 8, and 9) so the petitioners knew or ought to have known that supporting reports existed. The petitioners could have requested the reports from the Company or the CPO, but did not.¹⁸

29. The petitioners cannot now claim that their right to procedural fairness was breached by not having access to the reports when they failed to raise this issue at first instance, despite having the opportunity to do so.

IV. CPO'S DECISION TO GRANT PERMIT WAS REASONABLE

30. The Company submits that the CPO's decision to grant the Permit was reasonable and that the court should not interfere with it. The Company adopts and relies on paragraphs 55-65 of the CPO's response to petition, and makes the following additional submissions.

31. In specific response to paragraph 47 of the petition, the Company submits that the Permit adequately addresses potential consequences associated with the slope

¹⁷ Grymonpre Affidavit, paras. 20, 26.

¹⁸ Pietrusinski Affidavit, para. 47; Grymonpre Affidavit, paras. 20, 32.

of the Property. The Permit specifically requires the Company to implement the Water Management Including Erosion and Sediment Control Plan (see affidavit #1 of George Pietrusinski, Exhibit "Z", page 853), which contains several control measures to mitigate against the risks associated with erosion, including keeping exposed soils to a minimum, immediately stabilizing working areas, containing aggregate stockpiles with berms and fences, installing silt fencing along road edges and check dams in ditches, covering overburden stockpiles with straw mulch (or other material), maintaining a vegetative buffer around site boundaries, adopting best practices generally, and conducting weekly inspections (see Pietrusinski Affidavit, Exhibit "M", pages 752-761).¹⁹

V. CONCLUSION

32. The petitioners are understandably concerned about protecting and preserving the natural environment in Garnet Valley. But that concern does not mean the CPO's process was procedurally unfair or its decision to grant the Permit was unreasonable. The CPO provided a level of procedural fairness above and beyond what it owed to the petitioners and its decision was justified, intelligible, and transparent. Accordingly, the petition must be dismissed.

¹⁹ Grymonpre Affidavit, paras. 51-52.

PART 6 MATERIAL TO BE RELIED ON

33. 1440254 B.C. Ltd. relies on:

- (a) Affidavit #1 of Darrell Grymonpre made 15 August 2025;
- (b) the pleadings and proceedings taken herein; and
- (c) such other materials as counsel may advise and the Honourable Court may permit.

Date: 15 August 2025



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