



File: 2401480

September 19, 2017

**BY EMAIL WBRADBURY@WHISTLER.CA**

Her Worship Mayor Nancy Wilhelm-Morden  
Resort Municipality of Whistler  
4325 Blackcomb Way  
Whistler, British Columbia  
V0N 1B4

Dear Mayor Wilhelm-Morden:

Please find attached my Reasons For Decision regarding Whistler Aggregates Ltd.'s application under Section 39 of the *Land Act*, to the Ministry of Forests, Lands, Natural Resource Operations and Rural Development to renew their licence of occupation under Crown land file 2401480 for the purposes of operating a quarry and asphalt plant near the Cheakamus Crossing neighbourhood in the Resort Municipality of Whistler.

I have dealt with this matter as an official given delegated authority under section 97 of the *Land Act* to consider such applications, and whether the granting of this tenure over Crown land would be in the public interest. Having considered all the available information, it is my decision to renew Whistler Aggregates Ltd.'s licence of occupation for a period of 10 years.

If you have any questions, please feel free to contact me by phone at 604-898-2141, or by email at [Dave.Southam@gov.bc.ca](mailto:Dave.Southam@gov.bc.ca).

Yours truly,

Dave Southam, RPF  
District Manager  
Sea to Sky Natural Resource District

Attachment: Whistler Aggregates Ltd. Reasons For Decision Crown Land File 2401480

pc: Mike Furey, Chief Administrative Officer, Resort Municipality of Whistler ([mfurey@whistler.ca](mailto:mfurey@whistler.ca))



## REASONS FOR DECISION

September 15, 2017

**FILE NUMBER:** 12800-20/2401480

**APPLICANT:** Whistler Aggregates Ltd.

**AREA:** 14.93 ha +/-

**PURPOSE:** Licence of occupation for quarrying and asphalt plant purposes.

**DECISION:** OFFERED - Whistler Aggregates Ltd. is offered a licence of occupation for 10 years, subject to certain terms and conditions.

### REASONS FOR DECISION:

The Minister of Forests, Lands, Natural Resource Operations and Rural Development has delegated to me, under section 97 of the *Land Act*, the authority to administer Crown land and make decisions regarding licences of occupation of Crown land under section 39 of the *Land Act*.

After considering all the information presented to me, and for the reasons below, I am renewing Whistler Aggregates Ltd.'s licence of occupation under Crown land file 2401480 for a term of 10 years to operate a quarry and asphalt plant near the Cheakamus Crossing neighbourhood in the Resort Municipality of Whistler (RMOW).

I have thoroughly reviewed the information provided to me for consideration. This information includes, but is not limited to, the following:

- Relevant strategic and operational policies that guide decision making on Crown land including the following allocation principles:
  - Crown land values are managed for the benefit of the public;
  - economic, environmental and social needs and opportunities are identified and supported;
  - the interests of First Nations communities are recognized and accommodated, when appropriate;
  - decisions are made in a timely, well-considered and transparent manner; and
  - public accountability is maintained during the allocation of Crown land.
- Documents, communications and information from Whistler Aggregates Ltd., the RMOW, government agencies, Ministry of Health, Vancouver Coastal Health Authority, environmental consultants, local residents, local businesses and the general public.

- Information from the Squamish and Lil'wat First Nations shared through consultation.

Making a decision on Whistler Aggregates Ltd.'s request to renew its licence of occupation requires me to assess the applicable legal principles and to consider multiple competing interests. I recognize it is not possible in the circumstances to make a decision which will satisfy everyone. That said, the *Land Act* provides me with the discretion to allow a person to occupy Crown land if I consider it to be in the public interest, which is the primary factor driving my decision.

## **Background**

Whistler Aggregates Ltd. operates a quarry and asphalt plant south of the Cheakamus River near the Cheakamus Crossing residential neighbourhood within the RMOW. Whistler Aggregates Ltd. has been mining aggregates and producing asphalt in the area since 1989. Whistler Aggregates Ltd. has operated this particular quarry since 2005.

The construction of the new Cheakamus Crossing neighbourhood was initiated as part of the athletes village for the Vancouver 2010 Olympic and Paralympic Winter Games with the longer term goal of providing legacy housing. The neighbourhood is now home to approximately 800 people, a hostel and an athletes centre<sup>1</sup>. Residential development continues to expand in the area.

Some of the residents in the Cheakamus Crossing neighbourhood are generally opposed to the quarry and asphalt plant being located near their homes. Although the RMOW has worked cooperatively with Whistler Aggregates Ltd. in the past, in more recent times, that relationship has been strained and in particular since a 2012 BC Supreme Court case involving the two parties.

## **Analysis of relevant information**

I have taken what I believe to be the most practical approach to reviewing and considering the information in support of and in opposition to Whistler Aggregates Ltd.'s request to renew its tenure. For example, I am giving considerable weight to the scientific evidence I received from appropriate agencies such as the Ministry of Health, the Vancouver Coastal Health Authority, and the Ministry of Environment (MOE), which sets the emissions standards, and monitoring and maintenance requirements to maintain public health through the *Asphalt Plant Regulation*.

I have also considered the information I received from other sources including the public and local business, which has ranged from fully supporting the quarry and asphalt plant to comparing the operation to a Nazi concentration camp.

I have found some of the public comments I received to be ill-informed and one in particular to be highly disrespectful. While I understand that decisions of this nature give rise to strong emotional reactions, it is unfortunate to have experienced such disrespect. Accordingly, I focused my analysis on the content of public comments as opposed to the rhetoric and emotion with which some comments were made. Despite this, the majority of the other public comments received opposed the renewal of the quarry in a respectful and well thought out manner.

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<sup>1</sup> Cheakamus Crossing webpage [www.cheakamuscrossing.ca](http://www.cheakamuscrossing.ca)

The factors described in the bullet points that follow reflect what I see as the main public interest issues.

- The RMOW and members of the public expressed concern primarily over the proximity of the quarry and asphalt plant to a residential neighbourhood. Their particular concerns related to emissions having detrimental health concerns, noise, and dust from the operation together with the number of large trucks and the speed of industrial traffic in and around the neighbourhood.

I had the benefit of reviewing several years of air quality emissions data from Levelton Consultants Ltd. (Levelton), commissioned by the RMOW, and asphalt plant emission data from environmental consultant, A. Lanfranco and Associates Inc. (Lanfranco) hired by Whistler Aggregates Ltd. The Levelton test results were collected from instrumentation provided by the MOE atop the Athletes' Hub (high performance training centre) and measured general air quality conditions, while the data provided by Lanfranco were stack test results used to assess environmental compliance of the asphalt plant.

Air quality monitoring reports show no significant reduction in air quality on days when the asphalt plant was operating. In early 2017, the provincial Ministry of Health contacted Vancouver Coastal Health Authority, MOE and RMOW for an update on the air quality in Cheakamus Crossing. The Ministry of Health was informed that continuous real-time monitoring of fine particulate matter has been in place since 2010. The Ministry of Health was also informed by RMOW staff and consultant reports that, with the exception of regionally significant forest fire smoke, real-time monitoring at the air quality station in the neighbourhood identified that PM<sub>2.5</sub> (fine particulate matter) concentrations have been below the BC Ambient Air Quality Objectives (BCAAQO), which are set to ensure public and environmental health. PM<sub>10</sub> (PM<sub>2.5</sub> + coarse particulate matter) monitoring began in 2016 when the RMOW purchased its own sampling equipment and RMOW staff confirmed there have been no BCAAQO exceedances. Air quality reports are available at the following web address – <http://airquality.ca/clients/Whistler/index.php>. The Ministry of Health has encouraged the concerned public to contact the Vancouver Coastal Health Authority medical health officer should they still have health concerns.

The table below is a summary of the asphalt plant emissions testing results, as identified in the Lanfranco reports.

Parameter	Testing Results***				MOE Permit Limit and Threshold *	Correct Threshold **
	Jun 29, 2013	Jun 3, 2014	Sept 11, 2015 Nov 14, 2015	Jul 25, 2017		
Particulate (mg/Sm <sup>3</sup> @ 16% O <sub>2</sub> )	6.2	9.1	31.4	12.5	120	90
CO (mg/Sm <sup>3</sup> @ 16% O <sub>2</sub> )	314	217	216	81	400	200
Organics (THC) (mg/Sm <sup>3</sup> @ 16% O <sub>2</sub> )	11.8	9.4	38.6	15.5	120	60
Opacity (%)	< 5	< 10	< 10	<5	20	20
Flowrate (Sm <sup>3</sup> /min)	577	591	552	503	N/A	N/A

\*Permit limit thresholds as stipulated by MOE's "Existing Hot Asphalt Plant Limits" as published in June 1997, and clarified by Ministry of Water, Land and Air Protection in 2002.

\*\*As described below, Whistler Aggregates Ltd. relied on emissions standards that apply to older facilities and as such relied on inaccurate thresholds from 2013-2015.

\*\*\*If emissions are in compliance for 3 consecutive years, then testing is skipped the 4<sup>th</sup> year of the cycle. The consultant's reports identified that the test results were all in compliance therefore they were permitted to skip the 4<sup>th</sup> year of testing. Whistler Aggregates Ltd. was under the impression the operation met all applicable emissions standards from 2013-2015 and as such, did not conduct emissions testing in 2016.

Asphalt plant emission thresholds are set out in Schedule B of the *Asphalt Plant Regulation* under the *Environmental Management Act*. The applicable thresholds are based on multiple factors but – most relevant to the Whistler plant – thresholds fall into two categories based on whether the plant was constructed before or after June 27, 1997. A representative from Alpine Paving confirmed by email on June 6, 2017 that the current asphalt plant was manufactured in mid-2011. Representatives of the Sea to Sky Natural Resource District confirmed with the Compliance Section of the Environmental Protection Division of MOE that the more stringent thresholds in Schedule B of the *Regulation* apply. Therefore, the more stringent thresholds in Schedule B of the *Regulation* apply and are in the column titled 'Correct Threshold' in the table above.

Between 2013 and 2015, Whistler Aggregates Ltd.'s consultant used the incorrect thresholds to determine the asphalt plant's emission compliance. I note the thresholds used by the consultant are for asphalt plants constructed before June 27, 1997, are also described in Schedule B and labelled in the table above as 'MOE Permit Limit and Threshold'. For example, the threshold that applies to the asphalt plant for CO is 200 mg/m<sup>3</sup>, not 400 mg/m<sup>3</sup>. As a result of the consultant's error, CO emissions from the asphalt plant were not in compliance from 2013 to 2015 (314, 217 and 216 mg/m<sup>3</sup> respectively).

Sea to Sky Natural Resource District representatives discussed the CO exceedances with the MOE Compliance Section who were to follow up directly with Whistler Aggregates Ltd. to determine if the non-compliance has been addressed. The July 25, 2017 test results confirm the CO emissions from the asphalt plant now meet the applicable threshold. I am satisfied that Whistler Aggregates Ltd. has sufficiently addressed the CO compliance issue, that enforcement measures exist to deal with any future potential compliance issues, and the previous inadvertent non-compliance is not a basis to deny Whistler Aggregates Ltd.'s replacement application.

- Members of the public raised concerns about potential damage to buildings in close proximity to the quarry as a result of blasting that occurs on site. Based on information I received from RMOW staff, I am satisfied that seismic testing results conducted within the Cheakamus Crossing neighbourhood, indicate there is no measurable impact on the buildings as a result of the operational blasting at the quarry.

- The quarry was in operation before the development of the residential area and residents who purchased property in the Cheakamus Crossing neighbourhood had full prior knowledge of the quarry and asphalt plant. In particular, purchasers were required to sign a disclosure statement as part of the condition of sale of their property. The disclosure statement reads as follows:

“The Development is adjacent to an operational asphalt and gravel facility which may create associated noise, dust, odours and activity. The Municipality is currently discussing the possibility of relocating the asphalt plant operation with the owner of the asphalt plant and gravel facility”.

- Whistler Aggregates Ltd. has taken steps to accommodate the RMOW and the residents of Cheakamus Crossing in recent years to reduce the impact of its operations:
  - In 1997, Whistler Aggregates Ltd. moved the asphalt plant at the request of the RMOW to accommodate planned upgrades to the community sewage treatment plant. Although the final location of the sewage treatment plant was ultimately located in another area close by, the cost to move their operations incurred by Whistler Aggregates Ltd. was realized nevertheless.
  - In 2009, Whistler Aggregates Ltd. stopped using diesel generators to supply power for their operations. Whistler Aggregates Ltd. installed power lines to the quarry instead as a measure to reduce the noise and emissions generated from the diesel generators.
  - In 2012, Whistler Aggregates Ltd. incurred a significant expense to modernize the asphalt plant, in part to ensure the plant would meet all Metro Vancouver air emission standards and exceed Provincial air emission standards.
  - I understand the RMOW and Whistler Aggregates Ltd. reached an agreement in 2008/2009 to move the operation further away from the residential neighbourhood to provide a bit more of a visual buffer. Whistler Aggregates Ltd. incurred significant expenses to prepare the newly proposed site. However, following a municipal election in 2011, the new municipal council was opposed to Whistler Aggregates Ltd. location altogether given its proximity to the residential development. The RMOW commenced a court proceeding challenging Whistler Aggregates Ltd.’s ability to manufacture asphalt under the zoning bylaws. In 2012, the court concluded that Whistler Aggregates Ltd.’s asphalt plant was a permissible use under the local bylaws. I am not aware of any subsequent dialogue between the RMOW and Whistler Aggregates Ltd. attempting to seek any possible further resolution.
  - In 2011, Whistler Aggregates Ltd. paved approximately 750 metres of road, sharing the expense with another business, to help reduce the dust generated from traffic using the access road.
- Whistler Aggregates Ltd. continues to show a high level of cooperation and has agreed to remove a 4.4 hectare area from its existing licence of occupation to provide a larger buffer between the residential development and its operations.

- Whistler Aggregates Ltd. has expressed a willingness to re-engage with the RMOW to explore the possibility of relocating the quarry and asphalt plant away from the residential area. However, whether the parties reach an agreement or not is not known and Whistler Aggregates Ltd. is requesting a multi-year tenure term to provide for business continuity while other options are explored.
- The RMOW is in the process of community planning to address a growing population and a shortage of residential housing. The RMOW indicated to me that development adjacent to the Whistler Aggregates Ltd.'s tenured area is in the planning stage and the tenured area itself will be key to future housing.

I appreciate the growth that the RMOW is experiencing and will likely continue to experience in the future. I am aware the RMOW controls large areas of lands on which residential development can take place. For development that is planned and already underway in the Cheakamus Crossing neighbourhood, prospective residents will have knowledge of Whistler Aggregates Ltd.'s operations as all existing residents had. There is no information before me to suggest the quarry and asphalt plant are affecting the demand for housing in the neighbourhood. New residents to the Cheakamus Crossing neighbourhood will also benefit from the steps taken by Whistler Aggregates Ltd. in recent years to reduce the impact of its operation on its neighbours.

With respect to the RMOW's comment that the Whistler Aggregates Ltd. tenured property is key to future housing, I am satisfied there are alternative areas set aside for housing through the Vancouver 2010 Olympic and Paralympic Winter Games legacy and that there is no immediate need for Whistler Aggregates Ltd.'s land, and any assumption the land would be available now was speculative. If circumstances change during the 10 years of this tenure, I encourage the RMOW to raise this issue as a concern if Whistler Aggregates Ltd. applies to replace this licence.

- Members of the public raised a concern about the speed at which trucks travel along the access road. I am aware of both a 30 km/hr and 50 km/hr speed limit being posted along the access road. In my view, any incidence of speeding is not a basis to deny Whistler Aggregates Ltd.'s application and I am satisfied that a simple reminder of the speed limit would be enough to ensure all traffic travelling along the access road, whether industrial or not, would be enough to gain compliance. If not, normal enforcement measures can be employed as per regular practice by the RCMP.
- The RMOW expressed a concern that Whistler Aggregates Ltd. was operating outside of its tenured area. Upon further review, Ministry of Forests, Lands, Natural Resource Operations and Rural Development (FLNRORD) staff determined that no quarrying activities have occurred outside of the licenced boundary. FLNRORD staff determined that Whistler Aggregates Ltd. was requested by the RMOW in 2010 to relocate the asphalt plant a further 150 metres back into the tenure area and further behind a treed buffer area in order to appease concerns about it being too visible from the Cheakamus Crossing community. I understand that Whistler Aggregates Ltd. did the preparation work (outside of their licence area) to prepare for this move but ultimately, the RMOW decided not to pursue this option. Quarrying activities have not taken place at this site.

It appears, however, that there is an access road from the lower processing area to the upper pit that runs outside of the licence boundary. Proper authorization of this road segment will be a requirement of Whistler Aggregates Ltd. moving forward.

- The viability of the quarry as well as the need to fully utilize a quarry before it is retired was another issue raised. The quarry has produced an average of approximately 85,000 metric tonnes of material annually over a ten year period (2006-2016). Assuming this production rate is consistent moving forward, the life of the quarry is approximately another 47 years, given there is an estimated 4 million metric tonnes remaining. Whistler Aggregates Ltd. confirmed that almost all of the material originating from this quarry is used within the RMOW. Although there are many issues to consider in this decision, I believe it demonstrates diligent use of the natural resources to attempt to fully utilize the resource provided in this quarry before moving to the next quarry.

### **First Nations Consultation**

The First Nations in the area did not raise any significant cultural rights and title issues during consultation for this tenure renewal. Lil'wat Nation did raise concern over the originally proposed 30 year term and suggested that a 5 year term may be more appropriate and in line with Lil'wat Nation policies.

### **Financial standing**

Whistler Aggregates Ltd. is current on all payments and accounts for annual rent for the tenure and the royalties payable to the Crown for stone removal. The applicant has adhered to all requirements of the previous licence.

### **Determination**

Having considered all of the available information, I am satisfied that replacing Whistler Aggregates Ltd.'s licence of occupation under Crown land file 2401480 for 10 years to operate a quarry and asphalt plant is in the public interest. The operation meets the applicable air quality and emission standards with one exception which, in my view, has been satisfactorily dealt with. Whistler Aggregates Ltd. has taken steps on its own accord to reduce the impact of the quarry and asphalt plant on the Cheakamus Crossing neighbourhood, and continues to show a willingness to discuss additional steps. Whistler Aggregates Ltd. provides local employment opportunities and contributes to the local and provincial economies.

I acknowledge that RMOW's council and some members of the public are opposed to the quarry and asphalt plant. However, in my opinion, the parties opposed to the operation did not provide any objective evidence to change my conclusion that it is in the public interest to replace the licence.

### **Term of tenure**

Whistler Aggregates Ltd. originally requested a 30 year replacement of its licence. I believe that a 10 year term is appropriate in the circumstances.

### **Conditions of issuance**

It appears to me the access road from the processing area and asphalt plant area to the main part of the quarry is outside of the current licence boundary. As a condition of approval, Whistler Aggregates Ltd. must submit an application to add this area to the licence of occupation.

The short access road originating from the Jane Lakes/Whistler Quarry road, which is one of the main roads in Cheakamus Crossing, to the quarry is currently untenured. Based on current ministry policy, this road requires land tenure. Portions of the road may be shared with Murrin Construction which operates a pit located to the west of Whistler Aggregates Ltd. This road was originally thought to be included in the plans for the Cheakamus Crossing neighbourhood development but ultimately this parcel was returned to the Crown. This issue is to be identified in the Notice of Final Review as something requiring an application within 120 days.

### **Opportunities for future discussion**

I am grateful to have received genuine and thoughtful comments and data when making my decision. I also recognize the steps taken by Whistler Aggregates Ltd. in recent years to reduce the impact of its operation on its Cheakamus Crossing neighbours and its willingness to continue to engage. I am aware of plans for the RMOW to undertake a major community planning study which will provide an opportunity to review longer term industrial and residential planning throughout the community, together with the community's ongoing and future needs for aggregates, landscape stone and asphalt. I am also aware that RMOW has expressed interest in working with the Province and Whistler Aggregates Ltd. to review alternate locations for the asphalt plant.

I encourage all stakeholders to continue exploring and discussing any other options or alternatives that may be for the benefit of all. As the ministry's representative, I will be ready, as always, to make a decision on any subsequent requests for a licence of occupation in the Sea to Sky Natural Resource District.



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Dave Southam, RPF  
District Manager  
Sea to Sky Natural Resource District