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Reply Attention of: Sean Hern
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Our File No.: 34575-0001

November 13, 2015

BY EMAIL AND MAIL

Ministry of Justice
 Legal Services Branch
 1001 Douglas Street
 Victoria, BC V8W 9J7

Underhill Gage Litigation
 1710 – 401 West Georgia Street
 Vancouver, BC
 V6B 5A1

Attention: David Cowie & Alandra Harlinton

Attention: Mark Underhill & Robin Gage

Cox, Taylor
 Barristers and Solicitors
 26 Bastion Square
 Victoria, BC V8W 19H

**Attention: John Alexander & Aurora
 Faulkner-Killam**

Dear Sirs/Mesdames:

**Re: Shawnigan Residents Association et al v. The Director and
 others**


Enclosed is an application for production of specified records and information arising from the disclosure orders in August and the cross examinations of Mr. Block, Kelly and Pye.

I have set it down for the same week as the stay application as it obviously makes sense for the same judge to hear this application as well.

Yours truly,

FARRIS, VAUGHAN, WILLS & MURPHY LLP

Per:


 ASSISTANT TO:
 Sean Hern

SH/tw
 Encl.



No. 15 1867
Victoria Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

SHAWNIGAN RESIDENTS ASSOCIATION

PETITIONER

AND:

**DIRECTOR, ENVIRONMENTAL MANAGEMENT ACT,
COBBLE HILL HOLDINGS LTD. and
ENVIRONMENTAL APPEAL BOARD**

RESPONDENTS

NOTICE OF APPLICATION

Name of applicant: Shawnigan Residents Association

To: the Respondents

And to: 0949812 B.C. Ltd.,
0949811 B.C. Ltd.
Active Earth Engineering Ltd.
South Island Aggregates Ltd.
Matthew Pye, Martin Block and Michael Kelly

TAKE NOTICE that an application will be made by the applicant to the presiding judge at the courthouse at 850 Burrard Avenue in the week of December 7, 2015 at 10 a.m. for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. Martin Block, Michael Kelly, South Island Aggregates Ltd., Cobble Hill Holdings Ltd., Matthew Pye, Active Earth Engineering Ltd., 0949812 B.C. Ltd. and 0949811 B.C. Ltd., or any of them, produce unredacted copies of the following attachments to emails that have been previously produced in this proceeding, all of which relate to the February 14, 2013 agreement between 0949812 B.C. Ltd., 0949811 B.C. Ltd., South Island Aggregates Ltd. and Cobble Hill Holdings Ltd.:
 - (a) "SIR Pricing Sheet – August 2013.xlsx" (Affidavit of T. Webb #4, page 178)
 - (b) "SIR Startup Costs.xlsx" (Webb #4, page 187 and 191)

- (c) "Landfill Startup and Operating Cost Projection.pdf"
(Webb #4, page 199-200)
 - (d) "Landfill Startup and Operating Schedule.pdf" (Webb #4, page 199-200)
 - (e) "Malahat Fees.pdf" (Webb #4, page 214)
 - (f) "Facility Infrastructure 100913.pdf" (Webb #4, page 214)
 - (g) "SIR-Detailed statement.pdf" (Webb #4, page 254-259)
 - (h) "SIR Infrastructure w Highlights.pdf" (Webb #4, page 272)
2. Martin Block, Michael Kelly, South Island Aggregates Ltd., Cobble Hill Holdings Ltd., Matthew Pye, Active Earth Engineering Ltd., 0949812 B.C. Ltd. and 0949811 B.C. Ltd., or any of them, disclose the name of "the lobbyist" referenced in the documents attached to Webb #4 at exhibit pages 202 and 203, and produce any other documents, communications or records of payments relevant to "the lobbyist".
 3. Provide copies of correspondence and records of payment to former Malahat First Nation Chief Michael Harry such as are indicated in the documents at Webb #4, exhibit pages 231, 233 and 234, and the attribution of those payments among the respondents or any of them.
 4. Provide all records of payment relating to expenses incurred by any of Martin Block, Michael Kelly, South Island Aggregates Ltd., Cobble Hill Holdings Ltd., Matthew Pye, Active Earth Engineering Ltd., 0949812 B.C. Ltd. or 0949811 B.C. Ltd. in relation to the trip to Las Vegas by members of the Malahat First Nation and/or their associates as disclosed in the email at Webb #4, exhibit page 236, and the attribution of those expenses among the respondents or any of them.
 5. Costs in the cause, including solicitor-client costs, at the discretion of the chambers judge hearing the merits of the application for judicial review.
 6. Such further and other relief as this Court may determine to be just.

Part 2: FACTUAL BASIS

1. The factual basis for this application is set out in the Petitioner's November 6, 2015 application for a stay of the March 20, 2015 decision of the Environmental Appeal Board in proceeding 2013-EMA-G02 (the "**Decision**"), and the terms defined in that application are adopted here.
2. In August 2015, this Court ordered that South Island Aggregates Ltd., Cobble Hill Holdings Ltd., Active Earth Engineering Ltd. and their principals (the "**Landfill Respondents**") produce all documents relevant to the Secret Agreement of February 14, 2013. Many new documents were produced.

3. Principals Martin Block, Michael Kelly and Matthew Pye have sworn affidavits in this Court stating that the Secret Agreement was abandoned shortly after its signing.
4. Among the documents they have disclosed are emails and other correspondence that indicates that in fact the Secret Agreement was not abandoned at all, and was actively performed by the parties to the agreement.
5. As a result, all communications and documents showing the extent to which the Landfill Respondents were incurring and attributing expenses in performance of the Secret Agreement are directly relevant to the question of whether the Secret Agreement was in fact abandoned as affiants Pye, Block and Kelly claim.
6. In the documentation, performance of the Secret Agreement included drafting and discussing pricing sheets for customers, drafting budgets for the landfill and creating spreadsheets of expenses incurred in relation to the landfill that were to be paid out of the proceeds of its operation. Emails have been produced by the Landfill Respondents which show that in their original form the emails included attached spreadsheets and documents of this nature, but the attachments have not been produced. They should be ordered produced as they are directly relevant to the status of the Secret Agreement and the allegations set out in the Amended Petition for Judicial Review.
7. In addition, there are expenses shown in the communications of the Landfill Respondents that they were making payments to a “lobbyist” for the landfill. There is no registered lobbyist associated with this project. This person is likely an important witness to the allegations of fraud contained in the Amended Petition for Judicial Review. The witness should be able to corroborate that there was a Secret Agreement between the Landfill Respondents and can likely advise how the fees of the lobbying work would be billed and attributed among the parties to the Secret Agreement. Accordingly, the name of this witness and the documents associated with the lobbyist should be produced.
8. Similarly, in the documents produced, there are records indicating that “consulting” payments were made by the Landfill Respondents, or some of them, to the former Malahat First Nations Chief and that the Landfill Respondents, or some of them, sent the Chief and others on a trip to Las Vegas. The origin and accounting for these payments are important because they will show who was making these payments and how they were accounted for – ie. as part of the performance of the Secret Agreement or otherwise. Accordingly, these documents should be produced.

Part 3: LEGAL BASIS

9. The Petitioners rely on the orders of Mr. Justice Bracken, the common law and Rule 16-1(18).

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit of Tiffany Webb #4, sworn November 4, 2015;

2. Cross-examination transcripts from October 2015 of Martin Block, Matthew Pye and Michael Kelly; and
3. The Amended Application for Judicial Review.

The applicant estimates that the application will take 1 hour if heard as part of the 3 days scheduled for the stay application in this proceeding.

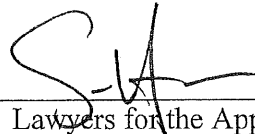
This matter is within the jurisdiction of a master.

This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to the application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated: November 13, 2015



Lawyers for the Applicant

THIS NOTICE OF APPLICATION is prepared and delivered by Robert S. Anderson Q.C. and Sean Hern of the firm Farris, Vaughan, Wills & Murphy LLP, Barristers & Solicitors, whose place of business and address for service is 3rd Floor, 1005 Langley Street, Victoria, BC, V8W 1V7.

To be completed by the court only:

Order made

- in the terms requested in paragraphs of Part 1 of this notice of application
- with the following variations and additional terms:

Dated:	Signature of <input type="checkbox"/> Judge <input type="checkbox"/> Master

Appendix

[The following information is provided for data collection purposes only and is of no legal effect.]

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery

- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- other