

To: Electoral Area Services Committee

Date: 2020-10-15

From: Graham Daneluz, Director of Planning & Development

File No: 4300-35-2020-01

Subject: Commercial Gravel Operation Permit 2020-01 for Statlu Resources, 12 km Chehalis FSR, Area C

RECOMMENDATION

THAT the FVRD Board issue Commercial Gravel Operations Permit 2020-01 to Statlu Resources INC for the gravel operation at 12 KM of the Chehalis Forest Service Road in Area C.

THAT the FVRD Board direct staff to work with the Ministry of Forests, Lands, Natural Resource Operations and Rural Development and the Ministry of Transportation & Infrastructure to address community concerns regarding dust, traffic and safety associated with the Chehalis Forest Service Road.

AND THAT the FVRD Board direct staff to work with the Ministry of Energy & Mines to address community concerns with potential environmental impacts and potential conflicts with recreation uses associated with the Statlu Resources pit on the Chehalis Forest Service Road.

STRATEGIC AREA(S) OF FOCUS

Support Healthy & Sustainable Community

Foster a Strong & Diverse Economy

Provide Responsive & Effective Public Services

BACKGROUND

Statlu Resources INC (Statlu) holds Licence of Occupation #242421 for an area of Crown land approximately 12 km up the Chehalis Forest Service Road (Chehalis FSR) in Area C. Statlu was issued a Mines Permit by the Ministry of Energy & Mines (MEM) in 2009 and subsequently established a gravel pit at this location. The pit has been inactive for a few years. Statlu intends to reactivate the pit and has applied for a permit under *FVRD Commercial Gravel Operations Bylaw No. 1181* to do so.

The current footprint of the mine is about 8 hectares. The estimated annual volume of gravel to be removed is 249,999 tonnes. The mine has an anticipated life of 125 years. It is located at least 8 kilometres from any residence. At its closest point to homes on Morris Valley Road, Chehalis Forest

Service Road (the haul route) has 300 metres of forest between the nearest houses. Most houses are 500 to 1000 metres from Chehalis FSR. There are no drinking water sources in the vicinity of the mine site. Additional details are available in the Corporate Report dated July 14, 2020 included here as Attachment 1 and in the application.

Gravel resources are a provincial interest and the Province retains for themselves the primary jurisdiction over gravel operations. Local governments have much more constrained authority. FVRD *Commercial Gravel Operations Bylaw No. 1181* sets out Restricted Areas where new gravel operations are not allowed. In areas where gravel operations are allowed, the bylaw:

- establishes a permitting process and fees;
- defines Community Areas where noise restrictions apply;
- requires professional oversight and annual reporting;
- regulates dust emissions and screening at the mine site; and,
- prohibits the creation of hazards and fouling a drinking water source.

The Statlu Pit is not within a Restricted Area defined in *Bylaw No. 1181* nor is it within a Community Area where noise restrictions apply.

Statlu's permit application was considered by the Electoral Area Services Committee and Board in July, 2020. The FVRD Board passed the following resolution:

TO refer back to staff the motion 6.5 that is on the July 14, 2020 EASC Agenda: "THAT the FVRD Board issue Commercial Gravel Operations Permit 2020-01 to Statlu Resources INC for the gravel operation at 12 KM of the Chehalis Forest Service Road in Electoral Area C."

Board members noted a particular concern that the applicant prepare a communication plan to address community concerns.

DISCUSSION

This section of the Corporate Report discusses events and information arising after CGO Permit 2020-01 was considered by the Board in July. Background information and previous analysis of the application can be found in Attachment 1.

Communications Plan

FVRD Bylaw No.1181 requires that applicants provide a Communications Plan that "addresses how the permit holder proposes to communicate with the surrounding community both before and during operations." The bylaw doesn't prescribe how and when the communication should occur; it only requires that a plan be submitted to demonstrate that measures are in place.

At the July EASC and Board meetings, EA Directors commented that the communication plan submitted with the initial application was insufficient. Statlu submitted a revised Communications Plan on August 13, 2020. It is included here as Attachment 2 – Statlu Communications Plan.

The Communication Plan identifies the primary contacts for the mine operation and commits Statlu to maintaining a web site that will provide “pit details and pertinent information” to the community. The plan states that notice of any permit changes would follow any applicable legislated guidelines required in provincial legislation.

Statlu declined our offer of assistance to prepare a mail out to the Morris Valley community to share information about the gravel operation.

Site Visit

On September 8, 2020, Statlu provided a tour of the mine site to Area C Director Bales and Graham Daneluz. We observed the condition of the road, the effectiveness of a recent dust suppression treatment, evidence of heavy dust emissions arising from the road, and the layout of the mine site. Small stockpiles of gravel were present on the side of Chehalis FSR opposite to the mine site. Director Bales expressed concern that the stockpiles may be a concern to recreational users of area. Statlu committed to removing these stockpiles.

Public input

Commercial Gravel Operations Bylaw No. 1181 does not provide for public input on permit applications.¹ The bylaw is regulatory in nature and decisions to issue permits under it are not discretionary. The Board must issue the permit if the application satisfies the bylaw.

Notwithstanding the above, FVRD has received 14 public submissions from 17 individuals regarding the Statlu Pit. They are included as Attachment 4 – Public Input. The submissions identify the following community concerns:

- noise and dust from gravel trucks on the forest service road; desire for paving the lower 1.5 km of the forest service road;
- safety of users of the forest service road, traffic volume and interference with the use of the FSR;
- conflict with Crown land recreational activities;
- potential impacts to aquatic environment on Crown land;
- desire for public consultation; and,
- loss of peace and serenity.

¹ Public input was considered in the development and adoption of *Commercial Gravel Operations Bylaw No. 1181* including on the location of Restricted Areas.

Public submissions identify important concerns that are generally outside of FVRD's authority, but which may be addressed by working with the provincial agencies having jurisdiction.

Chehalis FSR

The Chehalis Forest Service Road (FSR) is a gravel surfaced resource road within the Chilliwack Natural Resource District. It is under the jurisdiction of the Ministry of Forests, Lands, Natural Resource Operations and Rural Development (MFLNRORD). FVRD has no authority over the road.

MFLNRORD licenses industrial users of the FSR through Road Use Permits and establishes road maintenance standards. Western Canadian Timber Products is the current 'designated road user' for maintenance purposes. Christopher's Spring Water is another industrial user of the road. The road is also used by the public for recreation, cultural and spiritual uses. Public use can be heavy during peak summer periods.

Statlu currently holds a Road Use Permit issued by MFLNRORD that allows up to 10 loads per day to be hauled on the FSR. Statlu must obtain a new permit from MFLNRORD to haul the volume of gravel proposed to be removed from the pit.

Under s. 79 of the *Forest Planning & Practices Regulation*, the District Manager of the Chilliwack Resource District may order the holder of a road use permit to assume all or part of the responsibility to maintain a road, to ensure:

- the structural integrity of the road prism and clearing width are protected;
- the drainage systems of the road are functional; and,
- the road can be used safely by industrial users.

According to the MFLNRO Engineering Manual for resource roads, "dust from unpaved roads is not only a nuisance, but can create a safety hazard by reducing a driver's visibility."² The manual identifies dust abatement, and specifically dust suppressant sealers, as a road maintenance practice where dust impacts the safe use of the road.

Engineering Assessment of the FSR

Statlu Resources has submitted a draft engineering assessment of the Chehalis Forest Service Road. The report, prepared by Onsite Engineering LTD, concludes that, "the Chehalis FSR is considered safe for industrial use but typical road maintenance work has been lacking in the last few years. It is recommended that at a minimum the following maintenance work and haul planning be completed:

- Brush the road R/W to remove all overhanging vegetation along the road sides.
- Prior to the fall of 2020 complete ditch cleaning activities. Note that this item may be able to be completed to some degree through road grading once the road sides are brushed out.

² MFLNRO. Engineering Manual. December 22, 2016. Section 6.10.5.

- Install additional signage on the roads, including speed limit signs.
- Determine which existing pullouts are long enough for the hauling equipment planned for use and which pullouts require lengthening.
- Create a hauling safety plan or Standers Operating Procedure.”

These maintenance items can be addressed by the MFLNRORD through a Road Use Permit.

COST

An application fee of \$2,500⁰⁰ was received.

RECOMMENDATION

Section 62 of *Commercial Gravel Operations Bylaw No. 1181* states that “where:

- a. an application for a permit under this bylaw has been made,
- b. the Board is satisfied that the proposed aggregate removal and processing conforms with this bylaw, and all other bylaws of the Regional District, and
- c. the applicant has paid the application fee,

the Board shall issue a permit to the applicant for the aggregate removal and processing specified in the permit application.”

The issuance of permits under *Bylaw No. 1181* is not discretionary. Applicants are entitled to permits if the requirements of the bylaw are met. It’s much like a building permit in this respect. This makes sense when we consider that *Bylaw No. 1181* outlines Restricted Areas where gravel operations are not permitted. Where the bylaw allows gravel operations to locate, the Board has no further opportunity to prohibit them; it can only regulate aspects of gravel operations through the provision of *Bylaw No. 1181*.³

In the opinion of staff, these conditions set out in s. 62 are satisfied and the Board may consider issuance of CGO Permit 2020-01 at its regular meeting on October 27, 2020.

The issuance of CGOP 2020-01 will benefit the community by establishing ongoing monitoring and requiring annual compliance reports. Annual fees paid by Statlu to FVRD will support the administration of Bylaw No. 1181 including compliance efforts. A copy of the draft permit is attached.

³ In contrast, in 2016 the FVRD Board was able to refuse a rezoning application Statlu made to develop a contaminated soil landfill at the same site. The Board has broad discretion to refuse zoning applications. Not so with gravel permits.

CGO Permit Conditions

The draft permit has been amended to limit days of work during July and August of each year to Monday through Friday so as to avoid conflicts – including potential site hazards and noise/dust nuisance - with the recreational use of adjacent lands during peak summer weekends.

Road & Water Issues

Input received from the community identifies legitimate concerns with Chehalis Forest Service Road and with potential environmental impacts. These matters are not within the jurisdiction of Fraser Valley Regional District and are outside the scope of *Bylaw No. 1181*.

Staff recommend that the Board direct staff and authorise the Area C Director to bring forward these concerns on behalf of the Board to the relevant provincial agencies to find ways to address them. This work has already begun:

- Director Bales brought to the attention of the Minister of Mines and Minister of Forests, lands & Natural Resource Operations this month through UBCM sessions; and,
- Director Bales and planning staff will meet with Ministry of Transportation & Infrastructure and Ministry of Forests, Lands, Natural Resources and Rural Development staff on September 17/20 to address road issues.

ALTERNATIVES

The Board may wish to consider the following alternatives to the staff recommendation:

Option 1: Require Additional Information

Under Section 63 of *Bylaw No. 1181*, if the Board determines that the information provided is inadequate for determining compliance with the bylaw, the Board can require the applicant to provide further information or reports to address the inadequacy.

If the Board wishes to require additional information before considering issuance of the permit, the following motion would be appropriate:

Motion for Additional Information: THAT the FVRD Board refer Commercial Gravel Operations Permit 2020-01 to staff for further work with the applicant to address noted information deficiencies

Option 2: Additional Public Input

The Province has retained for itself the primary jurisdiction over gravel resources. The powers the province has given local governments are constrained so that they don't significantly interfere with the provincial interest.

Any local government bylaw what would restrict where gravel extraction is permitted requires the approval of the Minister of Mines. *FVRD Bylaw No. 1181* does set out Restricted Areas where gravel operations are prohibited. The bylaw was approved by the Minister of Mines after an onerous and long review process that involved various provincial agencies; analysis of the impact of the bylaw on long term supply and demand for aggregates; and, bylaw revisions to minimize overlap between the bylaw and provincial authority. As a result, FVRD can refuse to issue permits for gravel operations located in a Restricted Area mapped in the bylaw. The Board cannot refuse permits for operations that are not within a Restricted Area. The Statlu Pit is not within a Restricted Area. Consequently, the key questions in front of the Board are:

- does the application meet the requirements of the bylaw?
- what site-specific permit conditions related to bylaw requirements should the Board impose?

These limitations are challenging to broad community consultation because the Board may end up having to issue a permit despite public opposition and many public concerns may be outside the scope of the regulations of the bylaw. In that case, residents may feel that consultation wasn't genuine.

If the Board wishes to invite further public input, it could consider doing so on the questions identified above. This could involve a mail out with information on the application and a comment form with these specific questions.

If the Board wishes to receive additional public input on this application, the following motions would be appropriate:

Motion for public input: THAT a mail out be sent to the Morris Valley community to provide information to the about the application by Statlu Resources INC for CGO Permit 2020-01 and to invite public submissions on: 1) whether the application meets the requirements of *FVRD Commercial Gravel Operations Bylaw No. 1181*; and, 2) what site-specific permit conditions related to bylaw requirements should be considered by the FVRD Board;

AND THAT the FVRD Board defer consideration of CGO Permit 2020-01 to the November 24, 2020 meeting of the FVRD Board to allow opportunity for community submissions on the permit application.

Option 3: Refuse the Permit

Section 68 of *Bylaw No. 1181* outlines circumstances in which the Board may refuse to issue a permit – generally where the operation won't be in compliance with the bylaw:

- information is inadequate to determine compliance;
- information provided is incorrect or misleading;
- plans are not prepared in accordance with good engineering practice;
- a report by a registered professional suggests that the gravel operation will not comply with the bylaw;
- there is evidence compelling to the Board that the gravel removal won't be in compliance with the bylaw.

If the Board wishes to refuse the permit application, the Board should identify the reason for refusal and consider the following motion:

Motion to refuse: THAT the FVRD Board refuse Commercial Gravel Operations Permit 2020-01 for the gravel operation at 12 KM of the Chehalis Forest Service Road in Area C

COMMENTS BY:

Kelly Lownsbrough, Chief Financial Officer/ Director of Financial Services:

Reviewed and supported.

Jennifer Kinneman, Chief Administrative Officer: Reviewed and supported.