



INTRODUCTION

We are very disappointed in the EAO's dismissive attitude toward the level of public concern over the proposed activities at Bamberton. The central question for the Minister was whether an environmental assessment would be in the public interest. An important aspect of the public interest is the level of public concern. In the case of Bamberton, there was widespread concern from members of the public, municipalities, and First Nations. Yet the EAO chose to minimize this public concern by concluding that it was artificially inflated by false and misleading information. In fact, it was this deep Public concern, regarding the two permit applications on the Bamberton Development, amongst Mill Bay and Willis Point residents, that was the catalyst for SIPS getting involved and making an Application to the EAO, for a review for an Environmental Assessment.

In a section of the EAO report called *Public Interest in Designation*, the EAO claimed that misinformation was circulated that "may have led to increased public opposition to the Bamberton quarry expansion as a whole and an increased public interest in having the projects undergo an environmental assessment." In other words, the EAO appears to have discounted public opinion.

We asked for examples and you provided nine. Many of these examples are, in our opinion, minor. In many cases, the statements are, in fact, accurate. In some cases, the EAO comment does not actually rebut the supposed misinformation. In some cases, the alleged "misinformation" was provided late in the process when it could not have any effect in stirring up public opinion.

THE EAO ITSELF MADE MISLEADING STATEMENTS

On the other hand, the EAO has not acknowledged the misleading statements it made. Nor did it comment on the lack of public engagement and lack of information from the proponents and government agencies concerning the permit applications in the fall of 2022. That lack of engagement led to the request for an environmental assessment.

The EAO itself made two misleading statements on the EPIC website. The first of these stated that our request for an EA concerned a "modification of [a] marine port project". We tried to correct this more than once, but this mischaracterization of our request persisted in the final report. Even today, the EPIC website describes our request as follows (underlining added):

The EAO is reviewing an application from the Saanich Inlet Protection Society under Section 11 of the Environmental Assessment Act requesting to designate a proposed expansion of a rock quarry for construction aggregate, an extension of a marine dock on the Saanich Inlet, and an expansion of a soil deposition site as a reviewable project.

There was never an application to extend the dock. The application was to extend the area of the water lease. We never asserted that there was an application to extend the docks. We repeatedly explained this to the EAO.

The second example is that the EAO erroneously stated on the EPIC site that, due to an amended application, the new disturbance area of the quarry would be a mere 0.3 hectares, when the actual number was 6.4 hectares (of course, until we made our request for an EA, the proposed new disturbance area was 18.3 ha). This was eventually corrected but only after we pointed out the error.

THE EAO'S NINE EXAMPLES OF SUPPOSEDLY MISLEADING OR FALSE STATEMENTS

Here are our comments on the EAO's nine examples.

Example 1

From a January 17, 2023, post to SIPS' website (<https://saanichinletprotection.org/sips-response-to-eao-draft-report/>):

"The Permit Process Does Not Assess Environmental Risk

The EAO's website describes environmental assessments as follows:

The environmental assessment process ensures that any potential environmental, economic, social, cultural and health effects that may occur during the lifetime of a major project are thoroughly assessed. This is not the function of permit approvals. There is no requirement to assess the surrounding environment and the potential risks to that environment."

EAO comment: In fact, the Ministry of Energy, Mines, and Low Carbon Innovation's permitting process includes a thorough assessment of potential project effects on the environment and involves review by technical experts from a variety of disciplines, similar to the EA process.

First, this statement was made in our response to the EAO draft report. Given the timing, it could not have affected the level of public response.

Second, the EAO seems to have confused proposals to *minimize* environmental impacts with measures to *assess* the environment and potential risks to the environment. These are not the same thing.

In its draft report the EAO said that an environmental assessment was not needed because the quarry application would be subject to a "robust and comprehensive regulatory process". In our response we argued that the permit process was not an adequate substitute. Whereas the EA process "ensures" that a broad range of potential environmental effects are assessed, there is no requirement in the permit process to assess the surrounding environment or assess potential risks.

We were not given any description of the "permit process" and we are not aware that there is any formal policy document describing the permit process. So we looked at the relevant legislation. Nothing in the legislation governing quarries requires an assessment of the surrounding environment or the potential risks.

The draft report said that mine plans “typically” include certain elements such as a “groundwater mitigation plan” and “surface water management”. The draft report also said that:

The Proponents’ Surface Water Management Plan aims to keep pre-existing water courses to their original location and condition when possible. Drainage courses and storm flows in and around the extraction site would be managed to minimize the deposit of sediment and other possible contaminants into the local aquatic drainages and adjacent marine shoreline.

Other measures were described in this paragraph.

Two points can be made about this. First, none of these measures involves an assessment of the surrounding environment. None of these items involves an assessment of the potential risks. Mitigating groundwater (whatever that means) and minimizing sediment are good things but they imply an increased burden on the environment. Planning to minimize sediment does not imply *any* assessment of the receiving environment, let alone a *thorough* one.

So, in spite of the EAO’s comment above, nothing described in the draft report or final report calls for a “thorough assessment of potential project effects on the environment”.

The second point is that in spite of the good intentions of EMLI, none of these things is “required”. The fact that mine plans “typically” include certain elements implies that these elements are not required. The fact that the proponent's Surface Water Management Plan includes certain things does not imply that these things are required by the permitting process. This, we argued, is in contrast to the EA process which (we are told) “ensures” that potential effects are assessed. Hence the need for an environmental assessment.

Example 2

In news articles ([Cowichan Valley Citizen](#), [Vancouver Island Free Daily](#)) and in [SIPS’ presentation](#) at the EAO’s February 2, 2023, virtual information session (VIS), SIPS stated that the proposed foreshore lease expansion would “cover 40 more acres of ocean.”

EAO comment: The accurate figures indicate that the original foreshore lease had an area of 4.799 hectares and that the renewal is proposing an area of 15.46 hectares, which represents an increase of 10.66 hectares or 26.3 acres. Although the EAO advised SIPS of this correction prior to the VIS, the incorrect area remained in the presentation.

With respect, this is a minor discrepancy. Are we expected to think that the public would be concerned about an increase of 40 acres but would not be concerned about an increase of 10.66 acres? (“Good news, Martha. It turns out it is only 11 acres. Why don’t you put on the kettle and we’ll have a nice cup of tea?”)

Example 3

Also in [SIPS' VIS presentation](#), it is stated: "Imagine the state it could be in if MICO is allowed to log, blast, quarry and transport marine vessels carrying dangerous materials for 30 years, with no environmental assessment and necessary protections put in place."

EAO comment: EMLI's permitting process includes a thorough assessment of potential impacts of the quarry expansion on the environment, including proposed mitigation measures and permit conditions developed to ensure environmental and health safety standards are met and followed by the proponent throughout the life of the project.

This statement simply expresses our reasonable concerns. Granted the statement about "dangerous" materials is speculative but, on the other hand, no one has explained what is meant by "contaminated soil".

Again, given the timing of this statement, when members of the public were already attending the VIS, it could not have affected the level of public outcry.

Example 4

During the VIS, SIPS stated: "Quarrying an area of any size means clear cutting and blasting – which brings with it the threat of erosion, land degradation, and biodiversity loss. In terms of disturbance area MICO has reduced the size to 6.4 hectares (15.8 acres). But this means they will be blasting deeper — into a mountainside that is steeply sloped and very close to the Malahat Highway, risking the mountain's slope stability."

EAO comment: This is an unsubstantiated claim.

For the most part the statement is self-evident. Does the EAO deny that quarrying entails clearcutting and blasting? Or does it deny that these things carry a risk of erosion, land degradation and biodiversity loss? The statement about blasting deeper is simply a logical conclusion. Shrinking the proposed disturbance area without reducing the proposed volume would seem to imply going deeper.

To date we have not been given any information to counter concerns about slope stability. In a 2008 article in the *Journal of Commerce by Construct Connect*, the development manager for Three Point Properties, a professional geoscientist with a Master's degree in engineering described the challenges of rehabilitating the Bamberton site. She said, "In 1990, there was an earthquake that caused the collapse of the cliff's side causing contaminated soil to go down the bank and into the ocean (Saanich Inlet)".

Again, given that the statement was made during the VIS it could hardly have affected the level of public outcry.

Example 5

During the VIS, SIPS stated: “There is concern for the significant adverse health risks and the economic risk of remediation costs that are associated with exposure to contaminants.”

EAO comment: It is the EAO’s understanding that the rock being quarried does not contain contaminants and the primary environmental risk from the quarry comes from dust.

The statement is a statement of our concern. The fact that the EAO now says it “understands” that the rock being quarried doesn’t contain contaminants doesn’t turn the SIPS statement into misinformation. According to the EAO, the primary environmental risk from the quarry comes from dust. What is in the dust?

Presumably the statement was referring not just to the quarry, but to the proposed barging of contaminated soils and possibly the contaminated soil storage facility. We have been given no information about what contaminants might be in the proposed contaminated soil barges. As for the contaminated soil storage facility, we have received a copy of an undated *Site Risk Classification Report*, apparently prepared recently. The form asks “Are upper cap concentrations exceeded?” The answer given is “Yes” . . . “Antimony, arsenic, chromium, cobalt, copper, and lead in soil contained within the soil storage facility exceed upper cap concentrations.”

Example 6

During the VIS, SIPS stated: “The management plan states they will ‘load and unload barges of contaminated soils’ with no explanation as to the purpose of the contaminated soil or where it will be stored. It could contain heavy metals, PCBs, hydrocarbons and other substances known to cause damage to the environment and human health.”

EAO comment: this is unsubstantiated – we are not aware of any analysis conducted to determine what contaminants are in the soils.

The statement is accurate. Contaminated soil could contain any or all of those materials. The EAO comment is odd given that, at the time we made the statement, there had been no barging of contaminated soils. How could there be an analysis?

Example 7

“It is evident that in the case of the quarry the effects of annual production of aggregates that is nearly double the amount that automatically triggers an EA, will be greater than the potential effects of a reviewable project that just triggers an EA... No one knows the extent and magnitude, nor the impact on Saanich Inlet of these effects unless an EA is ordered...”

EAO comment: In fact, effects related to the Bamberton quarry expansion, the foreshore lease renewal, and the Trowsse Road clean fill site are within the normal range of effects to be considered through the permitting processes of other regulatory frameworks.

This statement was a public comment submitted to the EAO. The statement is accurate. Furthermore, the EAO comment does not contradict the statement. The statement says that the effect of the expanded quarry—479,000 tonnes annually--will be greater than the effects of a new quarry that requires an EA, or 250,000 tonnes annually. This is obvious. The EAO comment does not rebut this.

Example 8

“Neither Coast Mountain Resources nor MICO have demonstrated by their past actions that they are committed to protecting the environment and respecting permit conditions.”

EAO comment: EMLI is responsible for ongoing compliance and enforcement of the Mines Act permit and the Code for the Bamberton Quarry. EMLI’s inspection program ensures mine sites are regularly inspected for compliance with the *Mines Act*, regulations, and permit conditions. EMLI has conducted six inspections at the Bamberton Quarry over the last three years with no records of non-compliance. The permit remains in good standing, and there are no open or overdue orders at the site.

This was a public comment submitted to the EAO. It seems very unlikely that this comment could have provoked widespread public concern.

Example 9

“...all those uses proposed in the Management Plan are NEW uses. Not one of them is ‘substantially started’.”

EAO comment: In fact, ‘substantially started’ refers primarily to physical activities and components completed in relation to a project (e.g., those that have been constructed or are in operation). All physical structures, including pilings and dock structures, on the foreshore lease are already in place. The marine dock is currently in operation and no new physical activities would occur as part of the proposed lease extension, except for the repair or replacement of existing pilings, which was previously authorized by the Ministry of Forests. Associated activities, including the storage of hydrocarbons and the barging of contaminated soils, have already occurred in the past as part of the foreshore lease and are considered to have substantially started.

As far as we are aware there has been no barging of contaminated soils, so this would be an activity that has not been substantially started. In its final report the EAO references vague comments by MICO implying, without actually saying so, that this was not a new activity. These comments by MICO were not in the draft report we were responding to.

With respect to hydrocarbon storage, to the best of our knowledge when the statement was made, the tanks had not been used for about 40 years, so the activity could not be said to have substantially started. In the final report—which was not available when this comment was made—MICO implies that they were used in “approximately 2015”.

Additionally, the EAO is confused about the law relating to “substantially started”. The EAO says that it applies to physical structures only. Not so. Our request for an EA

referred to “activities” (barging and storage of hydrocarbons and contaminated soil). The legislation contemplates environmental assessments of activities. The issue was whether these activities had been substantially started. We explained this in our submission but our comments were ignored in the final report.

CONCLUSION

It is important to remember that public groups—including SIPS—and First Nations have been actively engaged in efforts to protect Saanich Inlet for decades (and in the case of First Nations, much longer than that). The public was heavily involved in the government’s 1996 study. A decade or so ago there was extensive opposition to a proposal for a large-scale residential development at Bamberton. There was widespread concern about the two permit applications among Mill Bay and Willis Point residents before SIPS got involved.

The EAO’s dismissive attitude to the concerns of the public is deeply disappointing. Your website states:

Public participation in the Environmental Assessment process helps ensure that community values and public goals are considered in project planning and decision-making. Public comments also help ensure that all potential effects of a project are captured and appropriately assessed.

Unfortunately, the EAO’s comments in its report indicate that this statement is a hollow one.



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