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s.14 ; s.15

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Withheld pursuant to/removed as

s.14

PEREGRINE FALCON MITIGATION AGREEMENT

This Peregrine Falcon Mitigation Agreement is made this 11th day of January 2020, between Mountainside Quarries Ltd. (the "Proponent"), and Her Majesty the Queen in Right of the PROVINCE OF BRITISH COLUMBIA (the "Province"), as represented by the MINISTRY OF FORESTS, LANDS & NATURAL RESOURCE OPERATIONS AND RURAL DEVELOPMENT ("FLNRORD").

WHEREAS:

- A. The Proponent intends to conduct rock and gravel extraction through open pit blasting at the Quadling Road Quarry (the "Project"), located at 40251 Quadling Road, Abbotsford, British Columbia;
- B. A Peregrine Falcon nest has been established at the Quadling Road Quarry since at least 2016, with young successfully raised over multiple years thereafter;
- C. Cliff Swallows and other bird species have been observed to be nesting on-site, and these nests are protected under the Wildlife Act when occupied by eggs or young;
- D. Proposed Project activities cannot avoid destruction of the Peregrine Falcon nest site, and ongoing Project activity over the next 10-12 years will preclude nesting;
- E. The Proponent has received a permit Q-7-086 under the Mines Act for the Project;
- F. The Proponent requires a permit from FLNRORD under the Wildlife Act to destroy the Peregrine Falcon nest site (the "Permit");
- G. The Proponent and FLNRORD have reviewed and discussed the Project and the nature of the anticipated impacts to Peregrine Falcon nesting habitat resulting from the Project;
- H. The Proponent and FLNRORD have agreed that the Proponent will undertake the mitigation efforts and required funding for the purposes of mitigating anticipated impacts to the Peregrine Falcon nest site arising from the construction by the Proponent of the Project, as detailed in the Peregrine Falcon Mitigation Plan attached hereto as Schedule A; and
- I. FLNRORD has agreed that through the funding and the implementation of the commitments set out in the Plan and summarized below, the potential impacts of the Project to the Peregrine Falcon nest site will be reduced and the residual effect on Peregrine Falcon nesting is not anticipated to be significant.

NOW THEREFORE in consideration of the promises and mutual agreements between the parties and for other good and valuable consideration, the parties agree as follows:

1. **The Proponent's Obligations**

- (a) **Mitigation.** The proponent will implement the measures outlined below and described in the Peregrine Falcon Mitigation Plan (Schedule A; attached):

This section should be consistent with the conditions and the mitigation committed to in the Peregrine Falcon Mitigation Plan. If any discrepancies exist, the proponent shall defer to the obligations within this agreement.

- (i) establish a minimum of three (3) Peregrine Falcon nest boxes within one (1) year of issuance of the Permit for the Project;
 - (ii) monitor the success of nest boxes for at least five (5) years from the date of the first nest box establishment;
 - (iii) capture and fit satellite transmitters to the 2 adult Peregrine Falcons on site, or adults nesting nearby as a secondary option if that is not possible;
 - (iv) track movement and nesting success of Peregrine Falcons tagged with satellite transmitters for at least four (4) years;
 - (v) submit a final report outlining the results of measures i-iv above, by 5 years from the issuance of the Permit;
 - (vi) if the Peregrine Falcons nest on-site in 2021, establish a 50-metre no-disturbance buffer around the nest site until the end of the breeding season (March 30 – July 20, 2021); and
 - (vii) postpone any mining activities that may damage or physically disturb active nest sites of Cliff Swallows or other nesting birds during the songbird breeding season (March 15th to August 15th).
- (b) **Funding.** The Proponent will provide a total lump sum of \$75,900 held "In Trust" (the "Funds"), within 30 calendar days of issuance of the Permit. It is not anticipated that mitigation costs will exceed this amount. This funding will be used to implement the mitigation measures outlined in sections 1a) i-iv of this agreement and the Peregrine Falcon Mitigation Plan (Schedule A), including an estimated \$60,200 for establishing and monitoring nest boxes, and \$15,700 for tagging and monitoring adult Peregrine Falcons.

2. **FLNRORD Obligations**

- (a) Based on the information provided to FLNRORD by the Proponent as of the date of signing this Agreement, FLNRORD agrees that the provision of Funding set out in Section 1(a) and commitments set out in the Plan adequately mitigate the potential impacts of the Project on the Peregrine Falcon nest site. FLNRORD further agrees the




residual effect on Peregrine Falcon habitat is not anticipated to be significant and no further compensation or mitigation from the Proponent is expected.

3. **General Terms and Conditions**


- (a) **Term.** This Agreement will expire on the later of:
- (i) the fulfilment by the Proponent of the obligations set out in Section 1; or
 - (ii) December 31st, 2028

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date first written above.

Proponent

Per:  Mountain Side Quarry Inc.
Name
Title: President CEO

**MINISTRY OF FORESTS, LANDS AND
NATURAL RESOURCE OPERATIONS AND
RURAL DEVELOPMENT**

Per:  _____
Name: Josh Malt
Title: Terrestrial Wildlife Resources Section Head, South
Coast Region
Business Address: Suite 200, 10428 - 153 St.
Surrey, B.C. V3R 1E1

**THOMAS PLATH, R.P.Bio.
Wildlife Biologist**

**330 - 9411 Glendower Drive, Richmond, B.C., V7A 2Y6
tomplath@telus.net**

May 17th, 2021

Attn: Brent Palmer
Mountainside Quarries Ltd.
34912 Panorama Drive
Abbotsford BC V2S 7S3
604 504-4461

**Attention: Mr. Brent Palmer
Senior Project Manager**

Dear Mr. Palmer

Re: Peregrine Falcon buffer and nest recommendations for 40251 Quadling Road, Abbotsford.

1.0 Background

Thomas Plath Environmental Services was retained by Mountainside Ltd to implement Peregrine Falcon mitigation at 40251 Quadling Road, Abbotsford. Protection measures for the Peregrine Falcon at the fore-mentioned property are in accordance to the signed Mitigation Agreement between FLNR and Mountainside Ltd and as part of the General Permit.

Individuals monitoring the Peregrine pair expressed concern May 15th, 2021 that buffer flags had not been established and that mining works appeared to be within the 50-meter nest buffer. On May 16th, 2021 the quarry was visited and inspected for a marked buffer and the distance mining works was from nest. No buffers were in place and it appeared the rock crusher was within the 50-meter horizontal radius nest buffer. The Peregrine female was incubating during the entire site visit (45 min).

The quarry was visited on May 17th, 2021 with the intent of installing a 50-meter radius buffer with 4ft stakes and 6" wide yellow caution tape. Physically delineating nest buffers with flagging tape is normal practice in identifying environmentally sensitive areas and necessary in preventing disturbance. Quarry works was observed within the 50-meter horizontal radius. The female Peregrine was on the nest incubating.

2.0 Discussion

Measurement of Buffer Distance

The work site was visited and buffer distance and marking was discussed with the mine manager. There are differences in interpretation of the 50-meter buffer. The nest buffer(s) recommended by Thomas Plath Environmental Services is a horizontal distance from the nest. This is a standard practice in marking buffers.

Mountainside Ltd interprets the 50-meter buffer to be measured in a straight line to the nest regardless of angle, as opposed to a horizontal distance. This is a literal interpretation of the Mitigation Agreement.

Safety constraints prevented a GPS point to be taken underneath the nest however a rang-finder provided measurements to the cliff face. The north edge of the road near the rock crusher measured 31 meters horizontally to the cliff face, however 50 meters in a direct line to the nest.

Mountainside Ltd will delineate a buffer at the bottom of the quarry pit using 50 meters (direct line to nest) as a measurement. Large boulders placed along the edge of the road and color marked will mark the nest buffer. The rock crusher was moved on May 17th to the northeast several meters further away from the nest.



Figure 1. The location of the Peregrine nest at the Quadling Quarry May 10, 2021.

4.0 Discussion and Recommendations

The behavior of the pair is consistent with a pair on territory nesting. The female has been incubating from at least May 7th and possibly a few days earlier. Mountainside Ltd has chosen to take a literal interpretation of the Mitigation Agreement. My recommendations remain unchanged, as it is industry practice to measure buffers as a horizontal distance. Although there is no legal requirement, the establishment of a 100-meter “quiet zone” would greatly increase likelihood of successful nesting and fledgling of young.

Recommendations

As the Peregrine pair is nesting in accordance and **intent** of *Section 34* of the Wildlife Act and as per the Mitigation Agreement signed by the Province and Mountainside Ltd. the following measures are required:

- a) Establish a 50-metre horizontal radius no disturbance zone centred on the above-mentioned nest ledge until the young fledge and free flying (see Figure 1).
 - b) Establish a 100-metre horizontal radius quiet zone centre on the above-mentioned cliff face until the young fledge and are free flying. This includes no scaling, drilling or blasting within 100 meters of the buffer centre.
1. The permit states “*if the Peregrine Falcons nest on-site in 2021, establish a 50-metre no-disturbance buffer around the nest site until the end of the breeding season (March 30 – July 20, 2021)*” and refers specifically to a nest.
 2. Most projects of this size follow Best Management Practices (BMP) and a 100 metre “quiet zone” is consistent with BMP's for Peregrine Falcon.

I trust this information will be of assistance to you. Please call me should you have any questions (cell 778 928-9206).

Respectfully Yours,

Thomas Plath Environmental Services
Thomas Plath, *R.P.Bio.* #1790
Wildlife Biologist

**THOMAS PLATH, R.P.Bio.
Wildlife Biologist**

**330 - 9411 Glendower Drive, Richmond, B.C., V7A 2Y6
tomplath@telus.net**

May 10th, 2021

Attn: Brent Palmer
Mountainside Quarries Ltd.
34912 Panorama Drive
Abbotsford BC V2S 7S3
604 504-4461

**Attention: Mr. Brent Palmer
Senior Project Manager**

Dear Mr. Palmer

Re: Peregrine Falcon nest survey 40251 Quadling Road, Abbotsford.

1.0 Background

Thomas Plath Environmental Services was retained to conduct a detailed Peregrine Falcon nest survey at 40251 Quadling Road, Abbotsford. The survey at the fore-mentioned property are in accordance to Environment Canada's core breeding season window for songbirds and *Section 34* of the Wildlife Act.

The quarry was monitored for activity on May 10th, 2021. The purpose of the investigation was: **a)** record any evidence of nesting by Peregrine Falcon. A photograph of an adult Peregrine Falcon in incubating position was forwarded to Thomas Plath on Sunday May 9th at 09:25 AM. Howard Bailey and Chris Kitt had observed the Peregrine pair incubating on the ledge since the evening of May 7th (Figure 1).

2.0 Method

Weather conditions were good with 50% cloud cover, no precipitation, wind Beaufort 1, and temperature 10-15 C. On May 10th the quarry was monitored for two and a half hours starting at 06:00 and again starting 12:15.

The behavior of the Peregrine adults was recorded with the aid of 10x42 binoculars and a 20x – 60x Kowa spotting scope.

3.0 Results



Figure 1. The location of the Peregrine nest ledge on May 10, 2021.

May 10, 2021

Monitor: Thomas Plath

0600: arrived at quarry, parked beside safety trailer, Peregrine Falcon calling from quarry face but not seen

0632: adult female? observed landing on snag at central cliff face

0715: 2 excavators working west of nest

0734: male came in with prey (gosling), female accepted and moved to big stump eating prey, male perched out of sight on central cliff area, construction activities within 50 m of nest

0739: male flies over to female and copulates on big stump then moves to another perch

0747: male flies SE, female still eating

0814: male comes back perches calling, female moves to the upper NE cliff and perches on felled overhanging Douglas-fir

0816: female leaves out of sight, male still on perch, construction activities within 50 m of nest

0830: same: female leaves out of sight, male still on perch, construction activities within 50 m of nest, end monitoring

1215: arrived at quarry, parked beside safety trailer

1218: male brings in prey, female accepts and feeds on stump, male is out of sight

1240: female left stump and disappeared near central cliff face, no Peregrines in sight

1257: female flew back to felled overhanging Douglas-fir, followed by male

1303: male flew to upper ledge on central cliff face, female still on overhanging Fd

1338: male went back to female and copulated, then went to different perch

1343: female goes to nest ledge and settles

1433: female still on nest but now puffed up, feathers on mantle and coverts fluffed, gape open panting, ventral feathers puffed up and tail cocked and occasionally vibrated; head was thrown back a few times; female Peregrine in the process of laying

1440: female turns and attends to nest site by pulling grasses up, then turns again and resumes laying position

1453: same - female on nest, end monitoring

4.0 Discussion and Recommendations

The behavior of the pair is consistent with a mated, courting pair on territory. The female and male was observed on the nest ledge from the evening of May 7th through to the afternoon of May 9th by observers familiar with the pair and were photographed. Behaviors on the nest ledge by the female on May 10th appeared to be that of one in the process of egg-laying (see Figure 2).



Figure 1. Female Peregrine Falcon on the nest photographed 1:54 PM by Thomas Plath, May 10, 2021.

As the Peregrine pair is nesting in accordance and **intent** of *Section 34* of the Wildlife Act and as per the Mitigation Agreement signed by the Province and Mountainside Ltd. the following measures are required:

- a) Establish a 50-metre horizontal radius no disturbance zone centred on the above-mentioned nest ledge until the young fledge and free flying (see Figure 1).
- b) Establish a 100-metre horizontal radius quiet zone centre on the above-mentioned cliff face until the young fledge and are free flying. This includes no scaling, drilling or blasting within 100 meters of the buffer centre.

1. The permit states *“if the Peregrine Falcons nest on-site in 2021, establish a 50-metre no-disturbance buffer around the nest site until the end of the breeding season (March 30 – July 20, 2021)”* and refers specifically to a nest.

2. Most projects of this size follow Best Management Practices (BMP) and a 100 metre "quiet zone" is consistent with BMP's for Peregrine Falcon.

5.0 Monitoring requirements

Should a monitor be required the following will assist in documentation of monitoring:

Monitoring data report should include name of monitor, date, start and end time, weather conditions (temperature, wind, cloud cover and precipitation), all behavioral activities and description of construction events. The number of adults and young should also be recorded.

Behavioral and construction activities will be recorded every 15 minutes to analyze as a basis for detecting/evaluating behavior that may indicate risk. The following abbreviations should be used for behavior types: AF = adult feeding, BRO = brooding, CO = copulation, CT = courtship, DC = distress calls not associated with flushing or standing, FL/DC = flushing with distress calls, IN = incubating, NR = nest repair, STD/IN going from incubating to standing with distress calls, TD = territory defense

Some behaviors that may be interpreted as abnormal in response to construction activities include:

- 1) Adults raising or standing up over nest.
- 2) Increased time spent away from the nest by the adults not associated with normal nesting phenology.
- 3) Changes in flight patterns or perch tree use.
- 4) Distress calls.
- 5) Flushing behavior from nest or perch tree.
- 6) Changes in feeding schedule of the young(s)
- 7) Premature fledging of the young.

Descriptions of behaviors that would warrant concern are described below.

5.1 Indicators of Disturbance

1. Adult Behaviour at Nest

Peregrines often assume an alert posture in response to an unusual event that may be accompanied by distress calls and ultimately result in flushing behaviour. Incubating adults may react to a distraction or an annoyance by rising from their incubation posture and standing over their eggs or step off the eggs and stand on the side of the nest. They may or may not vocalize in conjunction with this behaviour. This standing behaviour may be seen prior to flying or as an indication that the bird may flush from the nest in response to a distraction.

The bird also may settle back down into incubation posture without flying, once the distraction has passed or the bird has decided the distraction is not a sufficient threat to warrant flushing from the nest. **This behaviour (whether the adult flushes or not) does indicate that the disturbance is great enough to interfere with normal behaviour and is of concern.**

The above-mentioned posture could be confused with stretching or egg turning which are normal parts of incubation behaviour. It will be the responsibility of the monitoring biologist to accurately judge whether a bird is exhibiting normal behaviour.

2. Patterns of Nest Attendance

Nest attendance may be sporadic early in the nesting season, but increases dramatically immediately prior to egg-laying. At least one adult is present almost 100% of the time during the 35-day incubation period and the first 2-3 weeks post-hatching. The female does the majority of the incubation and early nestling attendance, although the male participates in both activities. One adult (usually female) broods constantly during inclement (i.e., cool or rainy) weather. Nest attendance declines sharply after 5-6 weeks, and the adults often roost and loaf away from the nest.

Nest attendance would be considered abnormal if: 1) at least one adult is not present during two consecutive, 4-hour (minimum) monitoring days prior to egg laying or 2) both adults are absent for more than two consecutive 15-minute periods during incubation, early brooding or inclement weather prior to 2 weeks post-hatch.

I trust this information will be of assistance to you. Please call me should you have any questions (cell 778 928-9206).

Respectfully Yours,

Thomas Plath Environmental Services

Thomas Plath, *R.P.Bio.* #1790

Wildlife Biologist

References

Campbell, R.W., *et al.* 1990. The Birds of British Columbia, Vol. 2, Nonpasserines: Diurnal Birds of Prey through Woodpeckers. Royal B.C. Mus. In association with Environ. Can., Can. Wildl. Serv.

Re: Notice of Non-Compliance: Wildlife Act Permit Su20-609433 at Quadling Rd Quarry

From: Brent Palmer <quarries@telus.net>
To: Lensky, Kristina FLNR:EX <Kristina.Lensky@gov.bc.ca>, BECKER CHRIS <cbecker@kuhnco.net>
Cc: Thomas Plath <tomplath@telus.net>, Plamondon, Marc ENV:EX <Marc.Plamondon@gov.bc.ca>, Dunkley, Jim R EMLI:EX <Jim.Dunkley@gov.bc.ca>, Crawford, Chris EMLI:EX <Chris.Crawford@gov.bc.ca>, Malt, Joshua FLNR:EX <Joshua.Malt@gov.bc.ca>
Sent: May 19, 2021 11:52:32 AM PDT

[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.

Hi Kristina

Thank you for taking my phone call this morning .

As I had said in our conversation this morning that the 50 meter buffer has been set from the nest site as per the permit conditions.

It was put into place on Monday, and marked off with 1 to 2 meter sized rocks marked with high vis paint. For your information the crusher was and always has been on the outside of the berm area because of safety concerns.

The crusher was moved beyond the buffer in a different area at this time.

As was mentioned to Tom on Friday and again on Monday the works in the buffer area directly above the ledge had been stopped previously as well.

As per stopping Tom from entering the area of the pit directly under the face, yes he was stopped, as it was not a safe area to be in with the over hanging cliff face.

As I had mentioned safety in the mine site is my first concern.

As for the determination of the distance for measuring, "50 meter non disturbance buffer "around the nest site as the permit states is what is being used.

Thanks

Brent Palmer

From Brent

On May 19, 2021, at 10:19 AM, Lensky, Kristina FLNR:EX <Kristina.Lensky

Hi Brent,

I'm following up regarding non-compliance of *Wildlife Act* permit conditions SU20-609433 and its associated mitigation agreement. Specifically the Proponent Obligation: "1a(vi): if the Peregrine Falcons nest on-site in 2021, establish a 50-metre no-disturbance buffer around the nest site until the end of the breeding season (March 30- July 20, 2021)"

On May 10th, you were notified a Peregrine Falcon nest site was established. This was documented in:

1. Thomas Plath's report: "**Peregrine Falcon nest survey 40251 Quadling Road, Abbotsford – May 10th, 2021**" commissioned by Mountainside Quarries Ltd. Given the establishment of this nest, Mr. Plath also reminded you that you were required to establish a 50-metre buffer in that report per your permit conditions.

2. Email communication: “ **Re: Direction to comply with conditions of your permit – May 10th, 6:23pm**” from Josh Malt, Section Head, Terrestrial Wildlife Resources for Ministry of Forests, Lands, Natural Resource Operations and Rural Development and Deputy Regional Manager under the *Wildlife Act*.

On May 11th, Josh Malt met with you at the mine site 40251 Quadling Road, Abbotsford. In that meeting you were again advised of the requirement to establish a 50-metre buffer per your permit conditions.

On May 13th Josh Malt sent you an additional email following up from your May 11th meeting stating: “As discussed, you are now required to establish and respect the 50 meter no-disturbance buffer surrounding the confirmed Peregrine Falcon nest site, as per your permit conditions. To ensure this met, please flag the 50 meter buffer both at the bottom of the quarry, and at the top of the cliff face. I would like Tom Plath to confirm on site that flagging is in place and measurements are correct (please send photos). Also, please confirm that any movement of trucks or other vehicles within the quarry is outside the 50 meter buffer.”

On May 17th, Thomas Plath provided you another report: “**Peregrine Falcon buffer and nest recommendations for 40251 Quadling Road, Abbotsford. – May 17th, 2021**”. It is noted in this report that you have not flagged the 50-metre buffer and that quarry works were observed within the 50-metre buffer area on both May 16th, 2021 and May 17th, 2021.

As such, you have not effectively established a 50-metre no-disturbance buffer. I am very concerned that this has resulted despite multiple reminders from the Province and your environmental professional over the last eight days.

I am also concerned by your interpretation of how to measure the 50-metre buffer (direct line), your disregard of Tom Plath’s recommendations on how to measure the 50-metre buffer (horizontal radius) and your approach to not seek clarification with Josh in his role as the statutory decision maker and given the fundamental importance of this condition to safeguard breeding.

To ensure that you are in compliance with the conditions of your permit, you must:

1. Immediately establish a 50-metre no disturbance buffer. To clarify, this means 50-metres horizontally as described by Tom Plath (aka a cylinder around the nest site). This should be flagged as previously stipulated by Josh at the bottom of the quarry and at the top of the cliff face. No disturbance includes direct works within the 50 meters OR indirect works (e.g. debris etc coming from outside the 50 metres). **I have requested that the Conservation Officer Service attend on site with Tom Plath to verify your response and report back to me. If you are still in non-compliance I will be taking steps to suspend or cancel your permit per Section 25 of the *Wildlife Act*.**
2. I am also requesting Tom be onsite a minimum of 2 days a week and during all blasting activities to monitor the birds response and direct any further site-level mitigations that may be required to ensure compliance with the *Wildlife Act*. Please provide Tom the blasting schedule to facilitate this.

Please contact me directly if you have any questions.

Thank you,

Kristina Lensky

Kristina Lensky, RPBio, GDBA, BSc

Pronouns: she/her

Resource Manager, Stewardship – South Coast Region

Deputy Regional Manager under the Wildlife Act

Ministry of Forests, Lands, Natural Resource Operations and Rural Development

Suite 200, 10428 - 153 St, Surrey, BC, V3R 1E1

Tel: (778) 572-2179 / Kristina.Lensky@gov.bc.ca

With respect and gratitude, I acknowledge the Coast Salish People on whose traditional territory I work and live.

<mime-attachment>

<Peregrine survey and recommendations 40251 Quadling Road, Abbotsford May 10, 2021.doc>
<mime-attachment>
<PEFA Mitigation Agreement_final_2021Jan13.pdf>
<Peregrine nest buffer recommendations and update 40251 Quadling Road, Abbotsford May 17, 2021.doc>

Read: Notice of Non-Compliance: Wildlife Act Permit Su20-609433 at Quadling Rd Quarry

From: Thomas Plath <tomplath@telus.net>
To: Kristina.Lensky@gov.bc.ca, Lensky, Kristina FLNR:EX
<Kristina.Lensky@gov.bc.ca>
Sent: May 19, 2021 1:43:28 PM PDT
Attachments: Read: Notice of Non-Compliance: Wildlife Act Permit Su20-609433 at Quadling Rd Quarry

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Read: Notice of Non-Compliance: Wildlife Act Permit Su20-609433 at Quadling Rd Quarry

From: Thomas Plath <tomplath@telus.net>
To: Kristina.Lensky@gov.bc.ca, Lensky, Kristina FLNR:EX <Kristina.Lensky@gov.bc.ca>
Sent: May 19, 2021 1:43:28 PM PDT

Your message

To: Thomas Plath
Subject: Notice of Non-Compliance: Wildlife Act Permit Su20-609433 at Quadling Rd Quarry
Sent: 5/19/21, 10:19:37 AM PDT

was read on 5/19/21, 1:43:28 PM PDT

Permit Suspension - SU20-609433

From: Lensky, Kristina FLNR:EX
-s.15
To: Palmer, Brent <quarries@telus.net>
Cc: Sun, Sonja AG:EX <Sonja.Sun@gov.bc.ca>, Plamondon, Marc ENV:EX
<Marc.Plamondon@gov.bc.ca>, Malt, Joshua FLNR:EX
<Joshua.Malt@gov.bc.ca>, Thomas Plath <tomplath@telus.net>
Sent: May 20, 2021 10:30:15 AM PDT
Attachments: Permit Suspension - 609433.pdf

Hi Brent,

Attached is a letter notifying you of my decision to suspend *Wildlife Act* permit SU20-69433. Please respond to this email acknowledging your receipt.

Thank you,

Kristina

Kristina Lensky, RPBio, GDBA, BSc

Pronouns: she/her

Resource Manager, Stewardship – South Coast Region

Ministry of Forests, Lands, Natural Resource Operations and Rural Development

Suite 200, 10428 - 153 St, Surrey, BC, V3R 1E1

Tel: (778) 572-2179 / Kristina.Lensky@gov.bc.ca

With respect and gratitude, I acknowledge the Coast Salish People on whose traditional territory I work and live.



May 20th, 2021

File: SU20-609433

Brent Palmer
Mountainside Quarries Ltd.
34912 Panorama Drive
Abbotsford BC V2S 7S3

Dear Mr. Palmer

Re: Suspension of *Wildlife Act* Permit SU20-609433

On May 19th, 2021, I sent you an email notifying you that you were in non-compliance of *Wildlife Act* permit conditions SU20-609433 and its associated mitigation agreement. Specifically, the Proponent Obligation: “1a(vi): if the Peregrine Falcons nest on-site in 2021, establish a 50-metre no-disturbance buffer around the nest site until the end of the breeding season (March 30- July 20, 2021)”

You were also advised I would be taking steps to suspend or cancel your permit per Section 25 of the *Wildlife Act* if you did not immediately establish a 50-metre no-disturbance buffer.

You responded to my email with a phone call and follow-up email. You affirm that you think you are in-compliance with the requirement for a 50 metre no-disturbance buffer. The dispute is in a difference of interpretation of how to measure the 50 metre distance. You are applying a direct line from the ground to the vertical elevation of the nest site, effectively creating a sphere-shaped buffer with a 50 metre radius. I am applying a horizontal radius from the nest site, creating a cylindrical shaped buffer.

I have reviewed and considered all the information you have provided. It is my determination you are in non-compliance with your permit given you have not established a 50-metre no-disturbance buffer. Furthermore, works have occurred within the 50-metre buffer as documented by Thomas Plath's May 17th report: “Peregrin Falcon buffer and nest recommendations for 40251 Quadling Road, Abbotsford”. The intent of the 50-metre no disturbance buffer permit condition was to safeguard breeding should Peregrin Falcons initiate nesting at the mine site in 2021. The interpretation I have provided with respect to how the 50-metre buffer should be measured best supports that intent.

This letter serves as notice that your permit has now been suspended, effective May 20th, 2021.

I have also notified the B.C. Ministry of Energy, Mines and Low Carbon Innovation of the suspension of your *Wildlife Act* permit. If you wish to reinstate your *Wildlife Act* permit, please establish the 50 metre no-disturbance buffer measured with the clarification I provided using a horizontal radius.

You have the right to appeal this decision to the Environmental Appeal Board within 30 days. For more information on the EAB appeal process, see Appendix 1, attached to this letter, and the following website: www.eab.gov.bc.ca.

If you have any questions regarding this decision, please feel free to contact me at (778) 572-2179.

Yours truly,

A handwritten signature in blue ink, appearing to read 'K. Lensky'.

Kristina Lensky, RPBio, GDBA, BSc

Resource Manager, Stewardship – South Coast Region

Deputy Regional Manager under the Wildlife Act

Ministry of Forests, Lands, Natural Resource Operations and Rural Development

Suite 200, 10428 - 153 St, Surrey, BC, V3R 1E1

Right to Appeal (notice required by Ministry policy)

You may appeal this decision to the Environmental Appeal Board under section 101.1 of the *Wildlife Act*. To do this, you must give written notice of appeal to the Environmental Appeal Board not later than (a) 30 days from the date you actually receive this notice, or (b) 44 days from the date this decision is deposited in Canada Post, registered mail, whichever is earlier. A notice of appeal must comply with the Environmental Appeal Board procedure regulation (BC Reg. 1/82) under the *Environmental Management Act*. It may be provided by mailing it by registered mail to the chair of the Environmental Appeal Board at PO Box 9425 Stn. Prov. Govt., Victoria, B.C., V8W 9V1, or by leaving it for the chair during business hours at the 4th floor, 747 Fort Street, Victoria, B.C.

The notice of appeal must be signed by you or your counsel or a representative and contain:

- your name and mailing address,
- the name of your counsel or representative, if any,
- the reasons for the appeal,
- particulars relative to the appeal, and
- a statement of the nature of the order requested.

Your notice of appeal must be accompanied by a fee of \$25.00, payable to the Minister of Finance and Corporate Relations.

Read: Permit Suspension - SU20-609433

From: Thomas Plath <tomplath@telus.net>
To: Kristina.Lensky@gov.bc.ca, Lensky, Kristina FLNR:EX
<Kristina.Lensky@gov.bc.ca>
Sent: May 20, 2021 12:07:26 PM PDT
Attachments: Read: Permit Suspension - SU20-609433

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Read: Permit Suspension - SU20-609433

From: Thomas Plath <tomplath@telus.net>
To: Kristina.Lensky@gov.bc.ca, Lensky, Kristina FLNR:EX <Kristina.Lensky@gov.bc.ca>
Sent: May 20, 2021 12:07:26 PM PDT

Your message

To: Thomas Plath
Subject: Permit Suspension - SU20-609433
Sent: 5/20/21, 10:30:16 AM PDT

was read on 5/20/21, 12:07:26 PM PDT

clarification of May 17th letter

From: Thomas Plath <tomplath@telus.net>
To: kristina.Lensky@gov.bc.ca, Moonen, John <s.22>, Palmer, Brent <quarries@telus.net>, Lensky, Kristina FLNR:EX <Kristina.Lensky@gov.bc.ca>
Sent: May 20, 2021 3:31:47 PM PDT

[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.

Hello all,

I reviewed my letter dated May 17th. To clarify there were no ongoing quarry activities during the visit Sunday May 16th. The road to the rock crusher and the rock crusher was within the 50-meter horizontal radius buffer. On May 17th quarry operations were within the 50-meter horizontal radius buffer. Thanks

A 50-meter horizontal radius buffer has been established and marked.

From: Thomas Plath <tomplath@telus.net>
To: Malt, Joshua <joshua.malt@gov.bc.ca>, kristina.Lensky@gov.bc.ca, Palmer, Brent <quarries@telus.net>, Lensky, Kristina FLNR:EX <Kristina.Lensky@gov.bc.ca>, Malt, Joshua FLNR:EX <Joshua.Malt@gov.bc.ca>
Sent: May 21, 2021 12:20:46 PM PDT
Attachments: Peregrine nest buffer recommendations and update 40251 Quadling Road, Abbotsford May 21, 2021.doc

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**THOMAS PLATH, R.P.Bio.
Wildlife Biologist**

**330 - 9411 Glendower Drive, Richmond, B.C., V7A 2Y6
tomplath@telus.net**

May 21st, 2021

Attn: Brent Palmer
Mountainside Quarries Ltd.
34912 Panorama Drive
Abbotsford BC V2S 7S3
604 504-4461

**Attention: Mr. Brent Palmer
Senior Project Manager**

Dear Mr. Palmer

Re: Peregrine Falcon buffer and nest recommendations for 40251 Quadling Road, Abbotsford.

1.0 Background

Thomas Plath Environmental Services was retained by Mountainside Ltd to implement Peregrine Falcon mitigation at 40251 Quadling Road, Abbotsford. Protection measures for the Peregrine Falcon at the fore-mentioned property are in accordance to the signed Mitigation Agreement between FLNR and Mountainside Ltd and as part of the General Permit.

The quarry was visited on May 21st, 2021 and a 50-meter horizontal radius buffer was established and marked with large boulders with a spray-painted "X" and logs placed at the perimeter of the buffer (see photos below). A range finder accurate to within one meter was used to determine the 50-meter horizontal distance.

There are two variances to the buffer:

1. The buffer was "pinched in" close to the cliff face northeast of the nest to 45 meters horizontal radius to the nest. This is to allow for some rock and earth to spill into the buffer from quarry works to the northeast of the nest.
2. The southern buffer boundary by the truck entrance was reduced to 47-48 meters to allow for the 24-meter road allowance required (2 lanes) at the entrance merging into a 36-meter road allowance (3 lanes).



Photo 1. A view of the marked buffer, looking north from the pit floor.

No quarry/construction activities will take place within the 50-meter non-disturbance buffer. Nor will any equipment enter the established buffer.



Photo 12. View of the marked buffer looking south from the buffer north of the truck entrance.

Monitoring

Peregrine activity was noted while establishing the no-disturbance buffer. The female was observed eating prey at 0710 and the male flew to the nest for a turn at incubating. Quarry activities were ongoing after 0700.



Figure 1. The location of the Peregrine nest at the Quadling Quarry May 10, 2021.

4.0 Discussion and Recommendations

My recommendations remain unchanged. Although there is no legal requirement, the establishment of a 100- meter “quiet zone” would greatly increase likelihood of successful nesting and fledgling of young. A 100 metre "quiet zone" is consistent with BMP's for Peregrine Falcon (first edition).

Recommendations

As the Peregrine pair is nesting in accordance and **intent** of *Section 34* of the Wildlife Act and as per the Mitigation Agreement signed by the Province and Mountainside Ltd. the following measures are required:

- a) Establish a 50-metre horizontal radius no disturbance zone centred on the above-mentioned nest ledge until the young fledge and free flying (see Figure 1).

b) Establish a 100-metre horizontal radius quiet zone centre on the above-mentioned cliff face until the young fledge and are free flying. This includes no scaling, drilling or blasting within 100 meters of the buffer centre.

1. The permit states *“if the Peregrine Falcons nest on-site in 2021, establish a 50-metre no-disturbance buffer around the nest site until the end of the breeding season (March 30 – July 20, 2021)”* and refers specifically to a nest.

I trust this information will be of assistance to you. Please call me should you have any questions (cell 778 928-9206).

Respectfully Yours,

Thomas Plath Environmental Services
Thomas Plath, *R.P.Bio.* #1790
Wildlife Biologist

FW: revised letter of established 50-meter buffer

From: Lensky, Kristina FLNR:EX
s.15
To: Thomas Plath <tomplath@telus.net>
Sent: May 21, 2021 2:48:36 PM PDT
Attachments: Peregrine nest buffer recommendations and update 40251 Quadling Road, Abbotsford May 21, 2021.doc

Hi Tom,

Your report contradicts itself.

How can you state: “a 50-meter horizontal radius buffer was established in accordance with and to satisfy the requirements of the signed Mitigation Agreement between FLNR and Mountainside Quarries Ltd.” when you subsequently identify 2 areas Mountainside has varied the buffer down to 45m and 47-48m respectively. There have been no variances to the 50-metre buffer condition authorized in the permit.

Please clarify.

Thank you,
Kristina

Kristina Lensky, RPBio, GDBA, BSc

Pronouns: she/her

Resource Manager, Stewardship – South Coast Region

Ministry of Forests, Lands, Natural Resource Operations and Rural Development

Suite 200, 10428 - 153 St, Surrey, BC, V3R 1E1

Tel: (778) 572-2179 / Kristina.Lensky@gov.bc.ca

With respect and gratitude, I acknowledge the Coast Salish People on whose traditional territory I work and live.

From: Thomas Plath <tomplath@telus.net>

Sent: May 21, 2021 1:00 PM

To: Lensky, Kristina FLNR:EX <Kristina.Lensky@gov.bc.ca>; Malt, Joshua FLNR:EX <Joshua.Malt@gov.bc.ca>; Palmer, Brent <quarries@telus.net>

Subject: revised letter of established 50-meter buffer

[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.

Please see revised nest buffer recommendations. Chees

**THOMAS PLATH, R.P.Bio.
Wildlife Biologist**

**330 - 9411 Glendower Drive, Richmond, B.C., V7A 2Y6
tomplath@telus.net**

May 21st, 2021

Attn: Brent Palmer
Mountainside Quarries Ltd.
34912 Panorama Drive
Abbotsford BC V2S 7S3
604 504-4461

**Attention: Mr. Brent Palmer
Senior Project Manager**

Dear Mr. Palmer

**Re: Peregrine Falcon buffer and nest recommendations for 40251 Quadling Road,
Abbotsford.**

1.0 Background

Thomas Plath Environmental Services was retained by Mountainside Ltd to implement Peregrine Falcon mitigation at 40251 Quadling Road, Abbotsford. Protection measures for the Peregrine Falcon at the fore-mentioned property are in accordance to the signed Mitigation Agreement between FLNR and Mountainside Ltd and as part of the General Permit.

The quarry was visited on May 21st, 2021 and a 50-meter horizontal radius buffer was established in accordance with and to satisfy the requirements of the signed Mitigation Agreement between FLNR and Mountainside Quarries Ltd. Large boulders with a spray-painted "X" and logs placed at the perimeter of the buffer delineated the edge of the buffer (see photos 1 & 2 below). A range finder accurate to within one meter was used to determine the 50-meter horizontal distance. This

There are two variances to the buffer:

1. The buffer was "pinched in" close to the cliff face northeast of the nest to 45 meters horizontal radius to the nest. This is to allow for some rock and earth to spill into the buffer from quarry works to the northeast of the nest.
2. The southern buffer boundary by the truck entrance was reduced to 47-48 meters to allow for the 24-meter road allowance required (2 lanes) at the entrance merging into a 36-meter road allowance (3 lanes).



Photo 1. A view of the marked buffer, looking north from the pit floor.

No quarry/construction activities will take place within the 50-meter non-disturbance buffer. Nor will any equipment enter the established buffer.



Photo 12. View of the marked buffer looking south from the buffer north of the truck entrance.

Monitoring

Peregrine activity was noted while establishing the no-disturbance buffer. The female was observed eating prey at 0710 and the male flew to the nest for a turn at incubating. Quarry activities were ongoing after 0700.



Figure 1. The location of the Peregrine nest at the Quadling Quarry May 10, 2021.

4.0 Discussion and Recommendations

My recommendations remain unchanged. Although there is no legal requirement, the establishment of a 100- meter “quiet zone” would greatly increase likelihood of successful nesting and fledgling of young. A 100 metre “quiet zone” is consistent with BMP's for Peregrine Falcon (first edition).

Recommendations

As the Peregrine pair is nesting in accordance and **intent** of *Section 34* of the Wildlife Act and as per the Mitigation Agreement signed by the Province and Mountainside Ltd. the following measures are required:

- a) Establish a 50-metre horizontal radius no disturbance zone centred on the above-mentioned nest ledge until the young fledge and free flying (see Figure 1).
- b) Establish a 100-metre horizontal radius quiet zone centre on the above-mentioned cliff face until the young fledge and are free flying. This includes no scaling, drilling or blasting within 100 meters of the buffer centre.

1. The permit states “*if the Peregrine Falcons nest on-site in 2021, establish a 50-metre no-disturbance buffer around the nest site until the end of the breeding season (March 30 – July 20, 2021)*” and refers specifically to a nest.

I trust this information will be of assistance to you. Please call me should you have any questions (cell 778 928-9206).

Respectfully Yours,

Thomas Plath Environmental Services

Thomas Plath, *R.P.Bio.* #1790

Wildlife Biologist

FW: Suspension of Wildlife Act Permit SU20-609433

From: quarries@telus.net
To: Kristina.Lensky@gov.bc.ca, Lensky, Kristina FLNR:EX
<Kristina.Lensky@gov.bc.ca>
Cc: John Moonen s.22
Sent: May 21, 2021 4:30:59 PM PDT
Attachments: ~WRD0000.jpg

[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.

Hi Kristina

Thank you for your letter of May 20 concerning the above.

Earlier today we established the 50 metre no-disturbance buffer measured with the clarification you provided, i.e. using a horizontal radius. You may also have received a letter from Thomas Plath this afternoon to confirm this.

Given that we are in compliance with the buffer requirement of SU20-609433 and its associated mitigation agreement, would you kindly reinstate our permit?

Yours sincerely,

Brent Palmer
Mountainside Quarries

Virus-free. www.avg.com

Re: FW: revised letter of established 50-meter buffer

From: Thomas Plath <tomplath@telus.net>
To: Lensky, Kristina FLNR:EX <Kristina.Lensky@gov.bc.ca>, Palmer, Brent <quarries@telus.net>
Sent: May 23, 2021 3:09:40 PM PDT
Attachments: Peregrine nest buffer recommendations and update 40251 Quadling Road, Abbotsford May 22, 2021.doc

[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.

Hi Kristina,
Fair enough. Attached is a revised report to reflect Mountainside Quarries wishes. Thanks

On Fri, May 21, 2021 at 2:49 PM Lensky, Kristina FLNR:EX <Kristina.Lensky@gov.bc.ca> wrote:

Hi Tom,

Your report contradicts itself.

How can you state: “a 50-meter horizontal radius buffer was established in accordance with and to satisfy the requirements of the signed Mitigation Agreement between FLNR and Mountainside Quarries Ltd.” when you subsequently identify 2 areas Mountainside has varied the buffer down to 45m and 47-48m respectively. There have been no variances to the 50-metre buffer condition authorized in the permit.

Please clarify.

Thank you,
Kristina

Kristina Lensky, RPBio, GDBA, BSc

Pronouns: she/her

Resource Manager, Stewardship – South Coast Region

Ministry of Forests, Lands, Natural Resource Operations and Rural Development
Suite 200, 10428 - 153 St, Surrey, BC, V3R 1E1

Tel: (778) 572-2179 / Kristina.Lensky@gov.bc.ca

With respect and gratitude, I acknowledge the Coast Salish People on whose traditional territory I work and live.

From: Thomas Plath <tomplath@telus.net>

Sent: May 21, 2021 1:00 PM

To: Lensky, Kristina FLNR:EX <Kristina.Lensky@gov.bc.ca>; Malt, Joshua FLNR:EX <Joshua.Malt@gov.bc.ca>; Palmer, Brent <quarries@telus.net>

Subject: revised letter of established 50-meter buffer

[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.

Please see revised nest buffer recommendations. Chees

**THOMAS PLATH, R.P.Bio.
Wildlife Biologist**

**330 - 9411 Glendower Drive, Richmond, B.C., V7A 2Y6
tomplath@telus.net**

May 22nd, 2021

Attn: Brent Palmer
Mountainside Quarries Ltd.
34912 Panorama Drive
Abbotsford BC V2S 7S3
604 504-4461

**Attention: Mr. Brent Palmer
Senior Project Manager**

Dear Mr. Palmer

**Re: Peregrine Falcon buffer and nest recommendations for 40251 Quadling Road,
Abbotsford.**

1.0 Background

Thomas Plath Environmental Services was retained by Mountainside Quarries Ltd to implement Peregrine Falcon mitigation at 40251 Quadling Road, Abbotsford. Protection measures for the Peregrine Falcon at the fore-mentioned property aims to satisfy the signed Mitigation Agreement between FLNR and Mountainside Ltd as part of the General Permit Conditions.

The quarry was visited on May 21st, 2021 and a variable 45-50-meter horizontal radius buffer was established around the nest with two variances described below. Large boulders with a spray-painted "X" and logs placed at the perimeter of the buffer delineated the edge of the buffer (see photos 1 & 2 below). A range finder accurate to within one meter was used to determine the 50-meter horizontal distance.

Mountainside Quarries Ltd wishes to amend the permit to allow two variances to the buffer:

1. The buffer was "pinched in" close to the cliff face northeast of the nest to 45 meters horizontal radius to the nest. This is to allow for some rock and earth to spill into the buffer from quarry works to the northeast of the nest.
2. The southern buffer boundary by the truck entrance was reduced to 47-48 meters to allow for the 24-meter road allowance required (2 lanes) at the entrance merging into a 36-meter road allowance (3 lanes).



Photo 1. A view of the marked buffer, looking north from the pit floor.

No quarry/construction activities will take place within the 50-meter non-disturbance buffer. Nor will any equipment enter the established buffer.



Photo 12. View of the marked buffer looking south from the buffer north of the truck entrance.

Monitoring

Peregrine activity was noted while establishing the no-disturbance buffer. The female was observed eating prey at 0710 and the male flew to the nest for a turn at incubating. Quarry activities were ongoing after 0700.



Figure 1. The location of the Peregrine nest at the Quadling Quarry May 10, 2021.

4.0 Discussion and Recommendations

My recommendations remain unchanged. Although there is no legal requirement, the establishment of a 100- meter “quiet zone” would greatly increase likelihood of successful nesting and fledgling of young. A 100 metre “quiet zone” is consistent with BMP's for Peregrine Falcon (first edition).

Recommendations

As the Peregrine pair is nesting in accordance and **intent** of *Section 34* of the Wildlife Act and as per the Mitigation Agreement signed by the Province and Mountainside Ltd. the following measures are required:

- a) Establish a 50-metre horizontal radius no disturbance zone centred on the above-mentioned nest ledge until the young fledge and free flying (see Figure 1).
- b) Establish a 100-metre horizontal radius quiet zone centre on the above-mentioned cliff face until the young fledge and are free flying. This includes no scaling, drilling or blasting within 100 meters of the buffer centre.

1. The permit states “*if the Peregrine Falcons nest on-site in 2021, establish a 50-metre no-disturbance buffer around the nest site until the end of the breeding season (March 30 – July 20, 2021)*” and refers specifically to a nest.

I trust this information will be of assistance to you. Please call me should you have any questions (cell 778 928-9206).

Respectfully Yours,

Thomas Plath Environmental Services
Thomas Plath, *R.P.Bio.* #1790
Wildlife Biologist

RE: Suspension of Wildlife Act Permit SU20-609433

From: Lensky, Kristina FLNR:EX
s.15
To: quarries@telus.net
Cc: John Moonen s.22, Thomas Plath <tomplath@telus.net>
Sent: May 25, 2021 4:51:47 PM PDT
Attachments: Re: FW: revised letter of established 50-meter buffer, image003.jpg
Hi Brent,

I received a report from Thomas Plath the afternoon of May 21st. I asked him to clarify his statements as they were in contradiction (see attached). He emailed a revised report May 23rd to both of us. That report still identifies two areas where the established buffer was reduced to 45m and 47-48m respectively. Additionally, the report does not mention any establishment of the buffer (marking) done at the top of the cliff. Therefore you have still not established the 50m no-disturbance buffer.

Wildlife Act permit SU20-69433 remains suspended.

Per Section 34 of the *Wildlife Act*:

"A person commits an offence if the person, except as provided by regulation, possesses, takes, injures, molests or destroys

(a) a bird or its egg,

(b) the nest of an eagle, peregrine falcon, gyrfalcon, osprey, heron or burrowing owl, or

(c) the nest of a bird not referred to in paragraph (b) when the nest is occupied by a bird or its egg."

Following the recommendations of your environmental professional will help ensure you do not commit an offense of Section 34 of the *Wildlife Act*.

Thank you,
Kristina

Kristina Lensky, RPBio, GDBA, BSc

Pronouns: she/her

Resource Manager, Stewardship – South Coast Region

Ministry of Forests, Lands, Natural Resource Operations and Rural Development

Suite 200, 10428 - 153 St, Surrey, BC, V3R 1E1

Tel: (778) 572-2179 / Kristina.Lensky@gov.bc.ca

With respect and gratitude, I acknowledge the Coast Salish People on whose traditional territory I work and live.

From: quarries@telus.net <quarries@telus.net>
Sent: May 21, 2021 4:31 PM
To: Lensky, Kristina FLNR:EX <Kristina.Lensky@gov.bc.ca>
Cc: 'John Moonen' <s.22>
Subject: FW: Suspension of Wildlife Act Permit SU20-609433

[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.

Hi Kristina

Thank you for your letter of May 20 concerning the above.

Earlier today we established the 50 metre no-disturbance buffer measured with the clarification you provided, i.e. using a horizontal radius. You may also have received a letter from Thomas Plath this afternoon to confirm this.

Given that we are in compliance with the buffer requirement of SU20-609433 and its associated mitigation agreement, would you kindly reinstate our permit?

Yours sincerely,

Brent Palmer
Mountainside Quarries

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RE: Attached updated Peregrine recommendations and stepping away from

From: Lensky, Kristina FLNR:EX
s.15
To: Thomas Plath <tomplath@telus.net>
Cc: Malt, Joshua FLNR:EX <Joshua.Malt@gov.bc.ca>, quarries@telus.net
Sent: May 28, 2021 4:40:16 PM PDT

Hi Tom,

After speaking to Brent and Josh about this I understand the 3 of you had a meeting after you'd originally sent this email in April. I understand the outcome of that was that environmental monitoring related to the PEFA mitigations was part of your contract. I understand that to include guidance, monitoring and implementation of all the mitigation commitments, including the 50m buffer. You've subsequently been sending reports on those elements.

From our conversation today, you indicated you were not responsible for those elements however and brought up the below email stating you'd already advise Josh and Brent that you wouldn't be involved. You have also said you will be out of town the next 3 weeks anyways.

This is a critical time to monitor the birds and their nesting success.

Can you please send me a copy of your contract agreement. Brent says you are dealing directly with the lawyers who have the mitigation funds in trust, thus he is unable to access funds to retain another environmental monitor in your absence.

Please also let me know if I'm misinformed or relaying our conversation inaccurately.

Thank you,
Kristina

From: Thomas Plath <tomplath@telus.net>
Sent: May 28, 2021 1:00 PM
To: Lensky, Kristina FLNR:EX <Kristina.Lensky@gov.bc.ca>
Subject: Fwd: Attached updated Peregrine recommendations and stepping away from

[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.

FYI

----- Forwarded message -----

From: tomplath@telus.net <tomplath@telus.net>
Date: Wed, Apr 14, 2021 at 2:50 PM
Subject: Re: Attached updated Peregrine recommendations and stepping away from
To: Brent Palmer <quarries@telus.net>, Joshua Malt <joshua.malt@gov.bc.ca>
Cc: joel gillis <joel.gillis@gov.bc.ca>

Hello all,

I would like to reaffirm that I am currently not conducting environmental monitoring at the Quadling quarry nor am I available to do so. I encourage Mountainside Quarries Ltd. to adhere to my recommendations, follow Best Management Practices regarding species-of-concern and retain a qualified biologist to ensure regulatory expectations of senior government are met. If there are any concerns regarding the project please contact the appropriate agency.

I am fully committed to ensuring the Peregrine Falcon mitigation program is completed with the best interest for

Peregrine falcons in mind.

Thanks

----- Original Message -----

From: "Tom Plath" <tomplath@telus.net>

To: "Brent Palmer" <quarries@telus.net>, "Joshua Malt" <joshua.malt@gov.bc.ca>

Sent: Monday, April 12, 2021 3:05:22 PM

Subject: Attached updated Peregrine recommendations and stepping away from

Hi Brent,

I added some material and here is an updated report and recommendations. I stand by my recommendations as explained in the report. It is between FLNR and Mountainside to interpret the Mitigation Agreement. Mountainside Quarries Ltd pursued and received a permit for the removal of the Peregrine nest in order to begin quarry works, and did so as per the Mitigation Agreement. Unfortunately the definition of "nests" was not made clear which has complicating things.

The swallows haven't started nesting (building nests) yet however the Canada Geese are incubating. Up to Mountainside to sort out whether to abide by the Peregrine recommendations.

I was retained by Mountainside to implement the Peregrine mitigation program and will remove myself from on-site environmental mitigation for a few reasons:

1. There appears to be a lot of site history and involvement (possibly including past agreements) made by other parties and/or Provincial Ministries with regards to environmental issues that I wasn't aware of (i.e. Phantom Orchid agreement with previous owner - no details).
2. There is a wide gap between what is legally enforceable and what is recommended by BMP's with regard to species-of-concern. The site has a lot of environmental sensitivities making it difficult to work without contravening recommended Provincial and Federal BMP guidelines unless quarry activities are limited (April - August), which is impractical from an operational point of view.
3. The infilling of former and potential nest sites on the central cliff face was unexpected and compromised my ability to achieve a positive mitigation outcome. It is understood the permit was obtained to destroy the Peregrine nest and presumably other nesting opportunities in order to conduct aggregate mining. Quarry activities that impacted the former nest sites were conducted prior to March 30th, however the "intent" was protect the nest area if the birds were on territory. Unfortunately the definition of "nest" in the mitigation agreement is not clearly defined opening it to interpretation.
4. I've talked to several individuals with knowledge of the site and there appears to a lot of misinformation given and perhaps a lack of transparency by some parties involved in the permitting and mitigation process.

The artificial nest box portion of the mitigation went well thanks to your input and contacts!

Respectfully Yours

Permit Reinstatement - SU20-609433

From: Lensky, Kristina FLNR:EX
s.15
To: Thomas Plath <tomplath@telus.net>, Palmer, Brent <quarries@telus.net>
Cc: Malt, Joshua FLNR:EX <Joshua.Malt@gov.bc.ca>
Sent: May 28, 2021 5:05:57 PM PDT
Attachments: Re: Suspension of Wildlife Act Permit SU20-609433, Permit Reinstatement - 609433.pdf

Hi Brent,

Please see the attached notice advising you that your *Wildlife Act* Permit – SU20-609433 has been reinstated.

Per our conversation today I understand that you will not be initiating blasting or drilling again until late next week. I would like an environmental monitor on site to assess the effectiveness of the 50 meter no disturbance buffer condition and ensure it's been effectively implemented in context of work (e.g. ensure debris, side cast, etc not entering the buffer after blasting and assess birds response to blasting). I have sent you and Thomas Plath a separate email with some follow-up questions to sort out the contracting mechanism and obligations of this work in relation to the mitigation funds in trust.

Per our conversation today, I also understand that you've moved operations to the northeast corner (~200m away) and anticipate staying in this area until the birds have finished nesting and any young have fledged.

Please let me know if you have any questions or concerns,

Thank you,

Kristina

Kristina Lensky, RPBio, GDBA, BSc

Pronouns: she/her

Resource Manager, Stewardship – South Coast Region

Ministry of Forests, Lands, Natural Resource Operations and Rural Development

Suite 200, 10428 - 153 St, Surrey, BC, V3R 1E1

Tel: (778) 572-2179 / Kristina.Lensky@gov.bc.ca

With respect and gratitude, I acknowledge the Coast Salish People on whose traditional territory I work and live.

From: Thomas Plath <tomplath@telus.net>

Sent: May 27, 2021 12:56 PM

To: Lensky, Kristina FLNR:EX <Kristina.Lensky@gov.bc.ca>; Palmer, Brent <quarries@telus.net>

Subject: Please advise on status of permit.

[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.

Hello Kristina,

please advise on the status of the permit. The 50 meter horizontal radius buffer has been established where it is safe and no activities will occur within the 50-meter buffer. This satisfies the signed Mitigation Agreement between FLNR and Mountainside Quarries Ltd. Thanks for your attention to this matter.

Re: Suspension of Wildlife Act Permit SU20-609433

From: Thomas Plath <tomplath@telus.net>
To: Lensky, Kristina FLNR:EX <Kristina.Lensky@gov.bc.ca>, Palmer, Brent <quarries@telus.net>
Sent: May 26, 2021 2:03:55 PM PDT
Attachments: image003.jpg, Peregrine nest buffer recommendations and update 40251 Quadling Road, Abbotsford May 26, 2021.doc

[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.

Hi Kristina,

See attached buffer report. A 50-meter or greater buffer was established today at the pit floor. An attempt was made to buffer the top of the cliff however terrain constraints and safety issues prevented me from getting close to the 50-meter buffer edge at the top of the cliff. The access road was 130 to 190 meters from the nest at the top of the cliff. Thanks

On Tue, May 25, 2021 at 4:52 PM Lensky, Kristina FLNR:EX <Kristina.Lensky@gov.bc.ca> wrote:

Hi Brent,

I received a report from Thomas Plath the afternoon of May 21st. I asked him to clarify his statements as they were in contradiction (see attached). He emailed a revised report May 23rd to both of us. That report still identifies two areas where the established buffer was reduced to 45m and 47-48m respectively. Additionally, the report does not mention any establishment of the buffer (marking) done at the top of the cliff. Therefore you have still not established the 50m no-disturbance buffer.

Wildlife Act permit SU20-69433 remains suspended.

Per Section 34 of the *Wildlife Act*:

"A person commits an offence if the person, except as provided by regulation, possesses, takes, injures, molests or destroys

(a) a bird or its egg,

(b) the nest of an eagle, peregrine falcon, gyrfalcon, osprey, heron or burrowing owl, or

(c) the nest of a bird not referred to in paragraph (b) when the nest is occupied by a bird or its egg."

Following the recommendations of your environmental professional will help ensure you do not commit an offense of Section 34 of the *Wildlife Act*.

Thank you,
Kristina

Kristina Lensky, RPBio, GDBA, BSc

Pronouns: she/her

Resource Manager, Stewardship – South Coast Region

Ministry of Forests, Lands, Natural Resource Operations and Rural Development
Suite 200, 10428 - 153 St, Surrey, BC, V3R 1E1

Tel: (778) 572-2179 / Kristina.Lensky@gov.bc.ca

With respect and gratitude, I acknowledge the Coast Salish People on whose traditional territory I work and live.

From: quarries@telus.net <quarries@telus.net>

Sent: May 21, 2021 4:31 PM

To: Lensky, Kristina FLNR:EX <Kristina.Lensky@gov.bc.ca>

Cc: 'John Moonen' <[s.22](#)>

Subject: FW: Suspension of Wildlife Act Permit SU20-609433

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Hi Kristina

Thank you for your letter of May 20 concerning the above.

Earlier today we established the 50 metre no-disturbance buffer measured with the clarification you provided, i.e. using a horizontal radius. You may also have received a letter from Thomas Plath this afternoon to confirm this.

Given that we are in compliance with the buffer requirement of SU20-609433 and its associated mitigation agreement, would you kindly reinstate our permit?

Yours sincerely,

Brent Palmer

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**THOMAS PLATH, R.P.Bio.
Wildlife Biologist**

**330 - 9411 Glendower Drive, Richmond, B.C., V7A 2Y6
tomplath@telus.net**

May 26th, 2021

Attn: Brent Palmer
Mountainside Quarries Ltd.
34912 Panorama Drive
Abbotsford BC V2S 7S3
604 504-4461

**Attention: Mr. Brent Palmer
Senior Project Manager**

Dear Mr. Palmer

**Re: Peregrine Falcon buffer and nest recommendations for 40251 Quadling Road,
Abbotsford.**

1.0 Background

Thomas Plath Environmental Services was retained by Mountainside Quarries Ltd to implement Peregrine Falcon mitigation at 40251 Quadling Road, Abbotsford. Protection measures for the Peregrine Falcon at the fore-mentioned property satisfy the signed Mitigation Agreement between FLNR and Mountainside Ltd as part of the General Permit Conditions.



Photo 1. A view of the marked buffer, looking north from the pit floor

The quarry was visited on May 26th, 2021 and a 50-meter or greater horizontal radius buffer was established around the nest at the pit bottom. The perimeter of the buffer is delineated with a gravel berm, large spray-painted boulders and large logs (see photos 1). A range finder accurate to within one meter was used to determine the 50-meter or greater horizontal distance.

An attempt was made to delineate the buffer at the top of the cliff. The terrain was too dangerous to get within 50 meters. The access road top to the top of the cliff and behind the nest is between 130 to 190 meters from the nest measured with a GPS (4 meters accuracy). Quarry activities at the top of the cliff face are limited to the area approximately 100 meters or greater northeast of the nest (estimated). The access spur road located on the upper cliff 130 meters southwest of the nest was buffered (see Photo 2).



Photo 2. View of the buffered access road 130 meters southwest from the nest.

No quarry/construction activities will take place within the 50-meter non-disturbance buffer. Nor will any equipment enter the established buffer.

Monitoring

Peregrine activity was noted while establishing the no-disturbance buffer. The female was observed incubating 0725 and remained on the nest the entire time (1.3 hours). Quarry activities were ongoing.



Figure 1. The location of the Peregrine nest at the Quadling Quarry May 26th, 2021.

4.0 Discussion and Recommendations

My recommendations remain unchanged. Although there is no legal requirement, the establishment of a 100- meter “quiet zone” would greatly increase likelihood of successful nesting and fledgling of young. A 100 metre “quiet zone” is consistent with BMP's for Peregrine Falcon (first edition).

Recommendations

As the Peregrine pair is nesting in accordance and **intent** of *Section 34* of the Wildlife Act and as per the Mitigation Agreement signed by the Province and Mountainside Ltd. the following measures are required:

- a) Establish a 50-metre horizontal radius no disturbance zone centred on the above-mentioned nest ledge until the young fledge and free flying (see Figure 1).
- b) Establish a 100-metre horizontal radius quiet zone centre on the above-mentioned cliff face until the young fledge and are free flying. This includes no scaling, drilling or blasting within 100 meters of the buffer centre.

1. The permit states “*if the Peregrine Falcons nest on-site in 2021, establish a 50-metre no-disturbance buffer around the nest site until the end of the breeding season (March 30 – July 20, 2021)*” and refers specifically to a nest.

I trust this information will be of assistance to you. Please call me should you have any questions (cell 778 928-9206).

Respectfully Yours,

Thomas Plath Environmental Services

Thomas Plath, *R.P.Bio.* #1790

Wildlife Biologist



May 28th, 2021

File: SU20-609433

Brent Palmer
Mountainside Quarries Ltd.
34912 Panorama Drive
Abbotsford BC V2S 7S3

Dear Mr. Palmer

Re: Reinstatement of *Wildlife Act* Permit SU20-609433

I have reviewed Thomas Plath's May 26, 2021 report: "**Peregrine Falcon buffer and nest recommendations for 40251 Quadling Road, Abbotsford**" and am satisfied you have now established the 50-metre no disturbance buffer permit condition per the intent of the mitigation agreement.

This letter serves as notice that your permit SU20-609433 has now been reinstated, effective May 28th, 2021.

I have also notified the B.C. Ministry of Energy, Mines and Low Carbon Innovation of the reinstatement of your *Wildlife Act* permit.

If you have any questions regarding this decision, please feel free to contact me at (778) 572-2179.

Yours truly,

Kristina Lensky, RPBio, GDBA, BSc

Resource Manager, Stewardship – South Coast Region

Deputy Regional Manager under the Wildlife Act

Ministry of Forests, Lands, Natural Resource Operations and Rural Development

Suite 200, 10428 - 153 St, Surrey, BC, V3R 1E1