

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Garnet Valley Agri-Tourism v. British Columbia (Ministry of Mining and Critical Minerals)*,
2026 BCSC 302

Date: 20260226
Docket: S250797
Registry: Vancouver

Between:

Garnet Valley Agri-Tourism Association and Douglas Raftery
Petitioners

And

**Chief Permitting Officer of the Ministry of Mining and Critical Minerals
and 1440254 B.C. Ltd.**
Respondent

Before: The Honourable Justice Koturbash

On judicial review from: A decision of the Chief Permitting Officer, Minister of Mining and Critical Minerals, dated July 9, 2024 (*Mines Act* Permit G-1000000442).

Reasons for Judgment

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Place and Date of Hearing: Penticton, B.C.
February 3 – 4, 2026

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I. Introduction

[1] The petitioners seek a judicial review of the Chief Permitting Officer's July 9, 2024 decision under the *Mines Act* to issue a permit to a company, 1440254 B.C. Ltd. (the "Company"), to operate a grave pit in the Garnet Valley, in the District of Summerland.

[2] The petitioners, Garnet Valley Agri-Tourism Association and Douglas Raftery, contend the decision should be set-aside because it was unreasonable and the process procedurally unfair.

[3] The Chief Permitting Officer and the Company oppose the petition and seek to uphold the permit and its conditions.

II. The Legal Framework

[4] While *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [*Vavilov*], arose from the unusual circumstances of a Canadian-born child of Russian intelligence operatives, facts that later are said to have inspired the television series *The Americans*, its significance is in its discussion of the legal framework governing judicial review and the proper role of a reviewing judge. This framework applies with equal force to the present matter concerning the issuance of a permit for a sand and gravel pit in the Garnet Valley, a place far removed from the world of international espionage.

[5] According to *Vavilov*, a judge's role is limited. In assessing the decision to issue the pit permit, the judge does not re-decide the application afresh, reweigh the evidence, or substitute their own view for that of the decision-maker. Rather, their role is to review the decision-making process and determine whether the outcome (the permit) was unreasonable given the facts and the governing legal framework.

[6] The standard of review is reasonableness, meaning that the central question is whether the decision is justified, transparent, and intelligible, and whether the reasons, assessed against the record before the decision-maker, is defensible given the relevant legal and factual constraints.

[7] The party challenging the decision bears the burden of establishing it was unreasonable. Reasonableness does not require perfection. The judge's role is not to decide whether the decision is correct, but simply whether it is reasonable. A decision may be reasonable even if it is not ideal, or the one that the judge might have reached.

[8] Decision-makers are not required to provide detailed, judge-like reasons or address every argument, but their reasoning must permit meaningful review. Minor flaws, imperfect drafting, or the failure to refer to every piece of evidence do not render a decision unreasonable. Instead, to succeed, the applicant must demonstrate shortcomings that are significant. Examples may include misinterpreting a key statutory provision, overlooking decisive evidence, fundamentally misapprehending the record, or failing to address a submission that could have materially affected the outcome.

[9] The review requires restraint. Administrative decision-makers act within delegated authority and expertise, balancing policy, technical, and public-interest considerations often under complex statutory schemes. A judge must not intervene simply because they would have reached a different conclusion or preferred a different process.

[10] Internal coherence is the first hallmark of reasonableness. A decision may be unreasonable where the reasons fail to disclose a rational chain of analysis from the evidence and submissions to the result or outcome. In such cases, the problem lies in the reasoning process itself. In other words, one cannot understand how the decision-maker moved from the record (all of the information and submissions before them) to the conclusion they reached.

[11] A reviewing judge must be able to trace the reasoning from the evidence and submissions to the conclusion reached by the decision-maker. Contradictions, circular logic, unsupported claims, or conclusions that do not follow from the facts, or that just do not add up, render a decision unreasonable.

[12] For instance, where a decision-maker finds that an applicant satisfied all filing requirements but then refuses the application because the filing requirements were not met, the reasoning lacks internal coherence. The flaw lies in the rational chain of analysis: the conclusion does not logically follow from the factual findings.

[13] Unreasonableness can also arise where the result cannot be justified on the record and under the governing statute. The outcome must accord with the evidence and the applicable legal constraints (the law that applies to the decision and process). If it does not, the decision is unreasonable. Decision-makers have to act within their legal authority, rely on the evidence before them, and address the key issues, including those raised in submissions. Ignoring a required rule, misinterpreting important evidence, or overlooking a main issue may render a decision indefensible. Even with logical reasoning, the result must be grounded in law and facts.

[14] For instance, if a decision-maker acknowledges that a central issue is whether an applicant meets a safety threshold but fails to address uncontradicted expert evidence directly bearing on that issue, the reasons may still appear structured and intelligible. Yet the decision would be unreasonable because it does not meaningfully grapple with key evidence going to the heart of the matter.

[15] The seriousness of the impact on affected individuals forms part of the context and may require more robust justification from the decision-maker. However, the importance of the decision alone does not convert a reasonableness review into a review for correctness.

[16] A reasonableness review is conducted holistically. The decision must be examined in light of the reasons, the evidentiary record, and the governing statutory framework. This approach avoids line-by-line parsing of the reasons or reweighing of the evidence. The court instead asks whether the decision, read fairly and in context, is justified, transparent, intelligible, and defensible on the record.

[17] Where a statute does not require reasons and none are provided, or where the reasons are brief, the judge may look to the record and the surrounding context to assess reasonableness. However, the judge cannot invent new rationales or supply justification that the decision-maker did not adopt. A decision is reasonable if it is supported by the record. For example, if a permit is denied with minimal explanation, but the record clearly establishes that mandatory requirements were not met, the decision may nevertheless fall within the range of reasonable outcomes.

[18] The requirement of reasonableness is closely connected to procedural fairness. The decision-maker has broad discretion over which procedures to implement, and this can vary depending on the significance of the decision and its potential impact. The fairness of these procedural choices can affect the assessment of reasonableness. For example, inadequate notice or the failure to meaningfully consider submissions may render an otherwise well-reasoned decision unreasonable because the process deprived parties of a fair opportunity to be heard.

[19] When given the opportunity by the decision-maker, affected parties are entitled to make submissions and, if received, considered. While a decision-maker is not required to address every submission or argument, a failure to meaningfully engage or grapple with issues that are central, or critical to the outcome may undermine the decision's reasonableness.

[20] Failing to address key submissions may suggest that stakeholder participation was disregarded, undermining confidence in both the process and the outcome. On judicial review, meaningful engagement with central issues is essential to maintaining trust in administrative decision-making.

[21] Where a reviewable error is established, the usual remedy is to set aside the decision and remit the matter for reconsideration in accordance with the court's reasons. Rarely will a more intrusive remedy be appropriate, and none are sought here.

III. Admissibility of Evidence Outside the Record

[22] On judicial review, the evidentiary record, or what a judge is allowed to consider when assessing the reasonableness of the decision, is generally limited to the material that was before the decision-maker at the time the decision was made. This includes the application and accompanying materials, submissions, applicable policies and guidelines, and any prior decisions of the relevant administrative body that informed the decision-making process.

[23] This record-based approach underscores the fundamental principle that the judge's job on review does not involve a rehearing or reassessment of the facts as presented to the original decision-maker but to assess the reasonableness and fairness of the decision based on the existing record. Therefore, evidence intended to supplement the merits, fill gaps, or introduce new arguments is generally inadmissible.

[24] There are limited exceptions that permit the admission of evidence beyond the record where it is necessary for the court to fulfill its role on judicial review. For instance, situations might include providing background context, addressing issues of procedural fairness, or establishing a jurisdictional error. The additional evidence must also be admissible under our common law and the *Supreme Court Civil Rules* [Rules].

[25] In this case, the respondents oppose any additional evidence being tendered by the petitioners because they say the petitioners missed a deadline imposed by the *Rules*. Although it is debatable whether the deadline was missed, the respondents have had the proposed evidence for several months, including before the first scheduled hearing, and have had ample opportunity to review, prepare, and respond. No prejudice has been shown, as neither respondent was deprived of the opportunity to make full submissions or adjust their arguments in response to the material.

[26] By way of very brief background, this dispute concerns the issuance of a permit by the Chief Permitting Officer of which several parties were opposed, including the SnPink'tn Indian Band.

[27] The petitioners seeks to adduce, through an affidavit, the submissions made by Chief Gabriel of the SnPink'tn Indian Band to the Chief Permitting Officer, together with any correspondence exchanged before and after the permit was issued.

[28] Submissions and correspondence predating the permit decision would ordinarily form part of the record before the Chief Permitting Officer but in this case, it was not made available to the petitioners or the court because of privacy concerns.

[29] I agree with the petitioners, that although the SnPink'tn Indian Band is not a party to this judicial review, having a complete record is appropriate and necessary for me to fulfill my role on judicial review. This evidence is admitted.

[30] The petitioners submit that Chief Gabriel's post-decision letter to the Ministry of Energy and Mines and Low Carbon Innovation are relevant to whether there is a reasonable apprehension that reasons issued by the Chief Permitting Officer months after the permit was issued were drafted to justify the earlier decision to issue the permit, rather than to reflect the decision-maker's reasoning at the time of issuance.

[31] They also argue that media posts following the permit decision are relevant for the same reason.

[32] The respondents oppose admission on the grounds of relevance and lack of probative value. They contend the material is unnecessary extra-record evidence and incapable of supporting an inference that the decision-maker retroactively justified the permit in response to external pressure. They point out that there is no evidence the Chief Permitting Officer saw Chief Gabriel's letter or any of the post-decision media commentary, or that either had any influence in the creation of the reasons. They also submit that the material contains hearsay and improper opinion evidence.

[33] The threshold for relevance is low. Establishing reasonable apprehension does not require direct proof that the decision maker saw the letter from Chief Gabriel or the media reports. Inferences may be drawn where appropriate. I am satisfied the evidence meets the low threshold of relevance and has sufficient probative value at this stage to be admitted.

[34] The hearsay objection is misplaced. The evidence is offered not for the truth of its contents, but solely to show that the statements and opinions were made. It is submitted for no other purpose. The evidence is therefore admitted.

[35] The petitioners also seek to introduce evidence from Messrs. Raftery and Lornie that the information package regarding the application that was publicly available at the library was incomplete. This evidence is relevant to procedural fairness and is admitted.

[36] The respondents seek to introduce evidence from Mr. Grymonpre that he obtained evidence from a post on social media concerning the contents of the application at the library confirming it was complete. The petitioners oppose its admission arguing that this is hearsay, and I am being asked to accept it as true. I agree and it is not admissible.

[37] The respondents further seek to adduce fresh evidence to clarify the classification of the area as predominantly "ESA moderate", rather than "ESA high", as reflected in the record before the Chief Permitting Officer. This goes beyond just background information and amounts to further argument on the merits. The evidence is inadmissible.

[38] The respondents also propose to tender evidence from Mr. Grymonpre about allegations made to the decision-maker that his family was responsible for the 2018 landslide and that they purportedly had ulterior motives for making their application for a mining permit. Although the allegations played no role in the decision under review and will not be considered in assessing its reasonableness, their broader dissemination in these proceedings, together with the respondents' lack of an earlier

opportunity to respond, justifies their admission on fairness grounds. The allegation evidence is admitted solely for that purpose.

IV. The Circumstances

The Statutory Scheme

[39] In British Columbia, mining operations, including sand and gravel extraction, are regulated under the *Mines Act* [Act] and the *Health, Safety and Reclamation Code for Mines in British Columbia* [Code].

[40] The Act and the Code together create a comprehensive regulatory framework for mining. The main goal is to protect public and worker safety, safeguard the environment and cultural resources, and ensure proper mine reclamation so sites are safely restored after mining ends. They also have a statutory objective to promote mining in the province.

[41] Under this framework, nobody can commence a sand and gravel pit operation without first obtaining a permit from the Chief Permitting Officer within the former Ministry of Mining and Critical Minerals, and now Ministry of Mining and Critical Minerals and Carbon Innovation (the “Ministry”).

[42] The permit process begins with a notice of work application. After submission, an Inspector of Mines (the “Inspector”), appointed by the Chief Permitting Officer, conducts a technical review to ensure statutory compliance. In some cases, including this one, the Inspector also acts as the Chief Permitting Officer.

[43] If the application meets its basic statutory requirements, the Inspector may refer it to other ministries, levels of government, or agencies, including a section 9 *Mines Act* advisory committee, and seek public submissions through a public notice. If First Nations may be affected, the Chief Permitting Officer must provide them with the application and consult with them.

[44] If written submissions are received, the Code requires the decision maker to consider them.

[45] If the Chief Permitting Officer finds the application satisfactory, a permit may be issued with any necessary conditions. There is no statutory requirement for the decision-maker to provide reasons.

[46] In addition to any conditions that might accompany a permit, the statutory scheme contemplates a regime of ongoing regulatory oversight to ensure compliance by the permit holder, including the ability for the Chief Permitting Officer to inspect the mining operation, impose additional conditions, or even close the mine.

[47] The scheme also imposes ongoing obligations on permit holders such as requiring the mine owner to appoint a manager who must attend daily at an operating mine, provide annual reports on environmental monitoring, and responsibly follow prescribed standards for reclamation.

The Company's Application

[48] On November 15, 2023, the Company applied for a permit to build and operate a sand and gravel pit on its property in the Garnet Valley by submitting a notice of work application to the Ministry (the "Application").

[49] The Application was for a small-medium sized aggregate mine. It included among other things, a noise and dust control plan, proposed measures for soil erosion, confirmation that areas for the mine were chosen to avoid parts of the property with steep grades and setbacks from watercourses, and a plan for reclamation.

[50] The Inspector requested more information from the applicant about slope slippage that occurred in the proposed area in 2018. The Company told the Inspector that the slippage occurred on an adjacent property and was likely caused by groundwater originating from higher Crown lands that flowed through proposed upslope property. The Company also informed the Inspector that some remedial work had been done to the area to stabilize it and that it would not have any impact on the proposed mining area.

[51] A copy of an April 18, 2022, Environmental Assessment Report was also requested and provided. This report, prepared for an earlier rezoning application for a cannabis production facility on land adjacent to the proposed mining area, examined potential impacts of lot development on wildlife, habitat, and sensitive areas.

Referrals and Public Submissions

[52] The Application was referred by the Inspector to the SnPink'tn Indian Band, the District of Summerland, and the Ministry of Water, Land and Resource Stewardship – Ecosystems Section, among others.

[53] The Company published notice of the Application in the British Columbia Gazette and the Summerland Review Newspaper for two weeks. The notice stated the Application would be available for public review at the local library for 30 days, during which written submissions could be made to the Chief Permitting Officer.

[54] The notice, which the Inspector did not review, also stated that zoning and land-use planning issues were outside the Chief Permitting Officer's mandate.

[55] The Notice of Work Application and some maps were made available at the library. I accept the evidence of Messrs. Raftery and Lornie that page 6 of the Application was missing. This page included a reference to the Official Community Plan and the estimated annual extraction. Attachments such as the Archaeological Chance Find Procedure, Noise and Dust Control Plan, and Water Management Plan were also missing.

[56] The Inspector made the Application available on the Regional Mines Public Engagement Portal, where most of the public submissions were received. There is no suggestion that documents on the portal were incomplete.

[57] The District of Summerland (the "District") opposed the Application, raising concerns about environmental effects on the surrounding ecosystem and identifying the area as highly sensitive. The District questioned the applicant's description of the

zoning bylaw and Official Community Plan, stating it was incorrect, and the proposed gravel pit would not align with community planning. Additional concerns raised also included potential impacts on road infrastructure, road safety, and the agri-tourism economy.

[58] Although the proposed gravel pit was not within the Regional District of Okanagan-Similkameen (“Regional District”), the Regional District noted that adjacent land, under their governance, was designated for resource industries, including mining. However, they opposed the gravel pit due to potential environmental, agricultural, recreational, and road impacts.

[59] Chief Gabriel, representing the SnPink’tn Indian Band, wrote the Inspector stating the land was within their traditional territory and considered sacred. He strongly opposed the permit due to risks to the fragile ecosystem and archaeological potential. He explained that impacts on wildlife habitat would affect band members’ rights to harvest wildlife for food, ceremonial, and social purposes. The Lower Nicola Band’s submissions echoed those of the SnPink’tn Indian Band.

[60] An ecosystem biologist from the Ministry of Water, Land, and Resource Stewardship – Ecosystem Section stated the proposed gravel pit would have “substantial negative effects” on the local ecosystem, including critical habitat for species at risk. These impacts, according to the biologist, “[were] likely to be permanent or long term and irreversible regardless of the level of mitigation attempted.” The biologists recommended against granting the permit.

[61] The Chief Permitting Officer responded directly to Chief Gabriel and the SnPink’tn Indian Band by letter stating, “The ecosystem biologist had advised the Decision-Maker that due to the significant risk of long-term negative impacts on these ecosystem values, they do not recommend authorization of the proposed mining operations.” The Chief Permitting Officer later attempted to arrange a meeting with the Band’s representatives by email but was unsuccessful.

[62] Chief Gabriel states, and I accept, that he understood the email to mean that authorization of the permit would not proceed.

[63] The Inspector received over 300 submissions and public comments, all of which are part of the record and considered in this review. Most submissions raised similar core concerns. What follows summarizes the submissions of the two petitioners.

[64] Mr. Lornie, on behalf of the Garnet Valley Agri-Tourism Association, stated that all businesses in the Valley opposed the proposed gravel pit. He identified potential negative effects on farming, tourism, road safety, water quality, wildlife, and other values. He also cited a BC Wildlife Federation press release opposing the Application and expressing concern that the gravel pit could undermine significant financial investment and years of conservation in the valley.

[65] Mr. Raftery raised concerns about traffic safety from large trucks on narrow roads, potential damage to road infrastructure, and impacts on nearby sensitive habitats. Most importantly, he noted risks to his family, as the Application proposed excavation on a steep slope overlooking his property without sufficient information to show it could be done safely. He pointed out that the Application lacked hydrological or geotechnical reports and he submitted that a local engineering firm told him that the slope should not be disturbed due to its steepness and underlying material.

The Permit Decision

[66] On July 9, 2024, a permit was issued for the “Garnet Valley Road Gravel Pit” authorizing the construction and operation of a sand and gravel pit as detailed in the application (the “Permit”).

[67] The Permit included several conditions, such as requirements for erosion control, plans for geotechnical monitoring, environmental protection, land use, watercourses and ongoing regulatory oversight. General conditions limited the mining area and total disturbance, prohibited aggregate washing, restricted operating days and hours, and set a maximum extraction tonnage.

[68] At the time the Permit was issued, the Inspector prepared a table summarizing public comments and the Inspector's general responses (the "July Reasons").

[69] On August 23, 2024, all parties who made submissions were notified of the decision and received a copy of the July Reasons.

The Public Response

[70] After the Permit was issued, there was significant negative media coverage. Headlines included: "Summerland in uproar after province approves gravel mine in Garnet Valley", "Makes absolutely no sense: Summerland council angered by provincial approval of controversial gravel pit", and "Summerland and Area residents declare fight against contentious gravel mine." The MLA, a provincial election candidate, and the Penticton Chamber of Commerce also expressed through the media their displeasure with the decision.

[71] The District and the SnPink'tn Indian Band wrote to the Ministry demanding the Permit be revoked. The Ministry responded that the Permit was irrevocable.

[72] On October 8, 2024, the District wrote to the Ministry requesting written reasons for issuing the Permit. The District stated they remained firmly opposed and reserved the "right to challenge [the decision to issue the Permit] by any legal means necessary."

[73] The Ministry replied to the District that the Inspector would finalize a "Reasons for Decision" document, which they said was "intended to provide a more fulsome account of how the decision-maker considered the different issues that were expressed and how the issues were accounted for in the permit document."

[74] According to the Ministry's affiant, although aware of the District of Summerland's post-decision letter to the Ministry, which prompted the Reasons for Decision, the Inspector did not read the letter.

[75] The affiant further states, that in preparing the Reasons for Decision, the Inspector relied only on the information considered when issuing the Permit, along with the summary table of public comments and the Chief Permitting Officer's responses (July Reasons).

Reasons for Decision (October Reasons)

[76] On October 29, 2024, the Inspector released the Reasons for Decision document (the "October Reasons").

[77] The Company submits that neither the "Chart" nor the "Reasons for Decision" document constitutes reasons in the traditional sense and therefore ought not to be considered part of the record. I do not accept that submission. The statute neither requires that reasons be given nor prescribes the form they must take. Reasons may assume a variety of forms.

[78] As explained in *Vavilov*, reasons are to be read holistically with the record. They need not take any particular form, nor must they conform to a judicial style. The question is whether the materials meaningfully explain why the decision was made. I am satisfied that both documents were intended to communicate the basis for the decision to the public. The Inspector's reference to the October document as the "Reasons for Decision" reinforces that conclusion and erases any doubt.

V. The Analysis

Is the Permit Decision Unreasonable?

[79] The petitioners challenge the reasonableness of the permit decision in two ways. First, they contend that the decision-maker did not meaningfully engage with key issues raised in the submissions and based their decision on the mistaken assumption that the decision-maker could not consider local land-use planning, and zoning. They argue that the resulting conclusions are irrational and lack support in the record and the law.

[80] Second, they assert that the permit decision lacks proper reasoning. They also contend the timing and the content of the October Reasons suggests they were

written to retroactively justify the permit decision, rather than to reflect the decision-maker's original rationale.

[81] The respondents maintain that, when considered holistically, the permit decision is reasonable.

Key issues requiring the decision-maker's engagement

[82] The petitioners fairly concede that the Inspector was not required to respond to every issue raised. They submit, however, that three key concerns or significant issues were consistently raised throughout the process and required meaningful consideration. These were:

- a) risks to the local ecosystem, with potential impacts beyond the immediate mining area;
- b) a conflict between the proposed project and established regional land-use planning, with implications for residents and the regional economy; and
- c) landslide risks, given the project's location in an area vulnerable to landslides.

[83] I agree. While a decision-maker is entitled to some flexibility in characterizing the issues, the record clearly indicates that these matters were fundamental to the outcome. In accordance with *Vavilov*, a reasonable decision must demonstrate responsiveness to the central issues arising from the record. The absence of such engagement raises concerns regarding the transparency and justification of the reasoning process.

Was the decision-maker's treatment of the risks to the local ecosystem reasonable?

[84] The petitioners submit that the decision-maker did not meaningfully address or grapple with the central concern of the potential, irreversible risk to the local ecosystem.

[85] Environmental effects are inherent in mining projects of all sizes, and community opposition grounded in environmental protection is likely common. Given the legislation's objective of promoting mining, permitting decisions will, in many cases, proceed notwithstanding such opposition.

[86] In this case, the concerns surpassed general environmental issues and were supported by expert evidence. The government's biologist concluded that the anticipated consequences on ecosystems and species at risk would likely be long-term, permanent, and irreversible, despite proposed mitigation measures, and recommended against authorizing the mining operation. The SnPink'tn Indian Band, the District of Summerland, and others raised similar concerns.

[87] In addition to the biologist's concerns, the Inspector reviewed a 2022 private environmental assessment prepared for an earlier rezoning application for a smaller cannabis production facility on the same property. The report addressed the environmental impact on a substantially smaller portion of the property and a qualitatively different use of the land.

[88] The assessment, like the biologist, classified most of the property, including the entire proposed gravel pit area, as ESA-1, the highest environmental sensitivity category. Lands in this category contain habitats critical to the surrounding ecosystem's function and integrity. The report also described the site as highly diverse and ecologically valuable.

[89] Although the assessment did not address whether rezoning should proceed, it provided mitigation recommendations to reduce ecological harm but did not comment on their likely effectiveness.

[90] All this evidence identified the core risk, a risk that the Inspector needed to meaningfully engage with. When professional opinions indicate the potential for irreversible harm to sensitive ecosystems, a reasonable decision must acknowledge this evidence and provide a rational explanation of how the risks were weighed against statutory objectives and the decision to issue the Permit.

[91] This does not require the Inspector to accept the biologist's recommendation. A decision-maker may prefer one body of evidence over another, even if it is less robust, provided the reasoning is transparent, clear, and justified.

[92] The petitioners bear the burden of proving unreasonableness. The absence of evidence directly refuting the biologist's opinion does not, on its own, render the decision unreasonable. A decision is unreasonable if the record does not show that the decision-maker addressed the seriousness of the risk, considered trade-offs, and engaged with evidence of irreversible environmental harm.

[93] As noted in the "Circumstances" section above, several conditions dealing with environmental concerns were attached to the Permit, along with other statutory protective measures for ongoing application. For example, the Permit required a qualified professional to complete environmental assessments before any disturbance, for the mine to follow all recommendations, and to undergo ongoing monitoring.

[94] Although mitigation was addressed through permit conditions and the statutory scheme, the record does not explain why these measures were considered sufficient despite the biologist's contrary conclusion.

[95] Although there was no statutory obligation to provide written reasons, the Inspector did so, first in July and later in October (collectively, the "Reasons"). These Reasons are part of the record and are relevant to my review.

[96] In the July Reasons, the Inspector addressed ecosystem impacts briefly and concluded the Permit should be issued, relying on permit conditions to mitigate environmental impacts. Notably, the July Reasons do not acknowledge the biologist's opinion, nor explain why it was rejected or discounted.

[97] The July Reasons do not address the core environmental concern. They acknowledge that mining will alter the landscape and suggest reclamation measures, such as terracing, to address these concerns. The July Reasons also note permit conditions requiring animal sweeps and vegetation removal by a

qualified professional. However, they do not explain how these measures address expert evidence predicting irreversible harm.

[98] The October Reasons similarly acknowledge concerns regarding vegetation removal and impacts on wildlife and habitat. They note that the Permit includes conditions requiring wildlife and vegetation surveys by a qualified professional, limiting disturbance to six hectares at any one time, and requiring progressive reclamation. Like the July Reasons, even in combination with the October Reasons, and the rest of the record, the Inspector does not meaningfully engage with the government biologist's evidence that no mitigation measures would likely be successful.

[99] The Company argues that the petitioners' position would render any mining permit unreasonable whenever negative ecosystem impacts cannot be fully mitigated, which they claim is inconsistent with the legislative objective of encouraging mining. The Company cites examples such as the construction of Garnet Valley Road, vineyards, and related facilities that proceeded despite environmental impacts.

[100] I am unable to accept that submission.

[101] The environmental concerns raised in this case were serious and far-reaching. Although the *Act* promotes mining activity, it does so within a statutory scheme that expressly requires a balance between maximum extraction and minimum environmental disturbance, while accounting for prevailing economic conditions. Reasonableness, therefore, requires that the permitting decision demonstrate a rational and intelligible engagement with the serious environmental risks raised.

[102] Although mitigation conditions and ongoing statutory measures exist, the Reasons do not explain how the Inspector reconciled the biologist's conclusion with the decision to rely on mitigation. They do not explain why mitigation was considered

sufficient. Without this explanation, the Court cannot trace a rational path from the evidence to the outcome or discern the reasoning from the record.

[103] This is not a case where the decision-maker preferred competing expert evidence, because there was none. The lack of engagement with the biologist's clear conclusion that mitigation would likely not prevent irreversible harm leaves the Court unable to trace a rational path from the evidence to the outcome. On a holistic reading, the permit decision lacks the justification and clarity required for a reasonableness review and is therefore unreasonable.

Was the decision-maker's treatment of municipal land-use concerns reasonable?

[104] The petitioners argue that the Inspector failed to justify the treatment of zoning and land-use considerations, treating them as outside the statutory analysis without explanation. By disregarding these issues, the Inspector did not address material matters on the record, which undermines the permit decision's reasonableness.

[105] The petitioners further argue that the Inspector did not grapple with conflicting evidence concerning jurisdiction and zoning, undermining the reasonableness of the permit decision. They also submit that the Reasons fail to meaningfully engage with concerns about road infrastructure and the safety implications of increased industrial traffic.

Relevance of applicable zoning

[106] The District of Summerland submitted that the proposed gravel pit was incompatible with the planned use of the Valley, as outlined in its Official Community Plan and the zoning bylaws. The District also expressed concern that applying the *Mines Act* in this context would circumvent their authority in municipal planning.

[107] Residents also voiced similar concerns, noting that their livelihoods and life decisions relied on the Valley's long-standing designation as an environmentally protected, non-industrial area.

[108] Municipal zoning and bylaws are outside the Inspector's jurisdiction under the *Mines Act*. However, municipal zoning and Official Community Plans are often part of the context in which the Inspector exercises statutory discretion. Land-use designations affect environmental impacts, public interest, and compatibility with surrounding uses, making them relevant considerations that require effective engagement.

[109] Section 10.3(2) of the *Code* reinforces this position by requiring the Inspector to consider submissions addressing key issues. The District made such a submission, but the Reasons do not show that it was considered.

[110] In the July Reasons, the Inspector stated that the Province has exclusive jurisdiction over mining and that local zoning, land-use, and bylaws are not enforceable at the mining site. The October Reasons are silent on this point.

Factual uncertainty about applicable zoning

[111] The record also raises a second concern: a factual dispute over which authority had jurisdiction over the site and which zoning applied.

[112] The Company asserted that the site was within the Regional District of Okanagan-Similkameen, and its application proceeded on the basis that resource extraction was permitted under the Regional District's Official Community Plan. The District of Summerland, however, maintained that the property falls within its own municipal boundaries, and that development of a gravel pit would directly conflict with both its zoning bylaws and its Official Community Plan.

[113] This disagreement over jurisdiction and applicable land-use controls highlights a material factual conflict that the Inspector's Reasons did not resolve.

[114] Because land-use compatibility was part of the analysis the Inspector was required to undertake, the competing submissions on zoning required resolution in the Reasons. The lack of explanation for how the Inspector resolved this dispute leaves a material gap.

Infrastructure and road safety

[115] Another issue raised was whether heavy truck traffic from the proposed gravel pit is compatible with existing rural road infrastructure. Submissions highlighted safety risks from narrow, winding roads not designed for frequent heavy industrial traffic. The Permit deals with this by restricting days and hours of operation, and the Reasons acknowledge these concerns and link them to the operational restrictions.

[116] Although brief, the Reasons demonstrate a rational connection between the safety concerns raised and the operational restrictions imposed.

[117] In contrast, there is no comparable reasoning regarding zoning and land-use planning. Although municipal zoning and Community Plans do not bind the Inspector under the *Mines Act*, it was a central issue. The District and residents submitted that the proposed gravel pit conflicted with the Official Community Plan and zoning bylaws, and there was uncertainty about which municipal authority governed the land.

[118] The July Reasons cite exclusive provincial jurisdiction but do not explain how land-use considerations were weighed, if at all, or address the competing submissions on zoning. This lack of reasoning leaves a material gap, making it impossible for the Court to discern the basis for the permit decision. On a holistic approach, these omissions render the decision unreasonable.

Was the decision-maker's treatment of slope stabilization risks reasonable?

[119] The petitioners contend that the decision-maker failed to meaningfully grapple with the concerns raised regarding slope stability and did not disclose a rational chain of analysis explaining how the evidentiary record supported the conclusions reached.

[120] The Company's Application acknowledged previous "land slippage" on the property. However, it did not include a professional assessment of future slippage risk or provide data on the geotechnical stability of the area.

[121] In a follow-up email, the Inspector requested additional information. The Company's consultant responded by referencing remedial work undertaken following the earlier slippage and asserted that the "historical slippage [would] have no effect on the mining area." The consultant's response did not reference supporting data, calculations, or an updated geotechnical analysis.

[122] The District of Summerland raised concerns about land slippage and geotechnical instability. It noted that gravel pit operations could cause vibrations and other disturbances that might trigger slope failure, placing downslope residences at risk.

[123] Mr. Raftery, who lives adjacent to and downslope from the site, raised detailed concerns. He described slope angles sharper than those in the Application. He reported that an engineering firm advised against disturbing the slope due to its steepness and underlying material and noted the absence of hydrological and geotechnical reports in the Application.

[124] Beyond the initial request for clarification, the record does not reveal that the Inspector sought any further information, such as an independent geotechnical assessment. However, the record does demonstrate the Inspector was aware of the issue. The Permit requires reporting of unforeseen conditions affecting stability, mandates reporting of geotechnical incidents, restricts stockpile placement, requires operations to follow recommendations of a qualified professional, and mandates the development of a geotechnical monitoring plan before any work begins.

[125] The July Reasons reference concerns regarding slope stability and properties below the site, and notes that the Permit includes requirements for a professional assessment and monitoring.

[126] The petitioners maintain that the conditions imposed do not show that the Inspector addressed the central issues: the likelihood of slope instability, the seriousness of risks to life, property, and the environment. They also question whether there was enough information for the Inspector to determine whether those risks could be mitigated. Simply put, the information before the Inspector was not reasonably sufficient to conclude that the risks of slope instability could be adequately mitigated with the conditions of the Permit and the statutory obligations that all mine operators must comply with.

[127] In the October Reasons, the Inspector noted that slope stability is a common consideration in mining applications. The Inspector acknowledged awareness of the 2018 debris flow and explained that highly qualified technical experts from the Ministry's review team had conducted a comprehensive assessment of the Application. According to the Reasons, those experts recommended various conditions, including the implementation of a monitoring plan prepared by qualified professionals. The Inspector said it was satisfied the Application had been thoroughly reviewed and that the permit conditions provided sufficient safeguards.

[128] On their face, the October Reasons appear coherent and reasonable. However, the petitioners raise two persuasive challenges.

[129] First, the conditions are prospective in nature. They do not disclose or explain how the Inspector assessed the baseline risk before concluding that such conditions would be sufficient.

[130] The Inspector appears to have accepted the applicant's explanation for the prior slide without independent corroboration. While a decision-maker is not generally obliged to seek additional information, the absence of further inquiry heightens the obligation to explain how the existing record sufficiently addressed the identified risks. The failure to obtain more evidence is not unreasonable. The issue is whether, in light of the evidentiary record and the governing statutory framework, it was reasonable to proceed without further inquiry.

[131] Second, the October Reasons state that a comprehensive review and recommendations were obtained from technical experts. Yet the record contains no such recommendations, no evidence of any referral, no identification of reviewers, and no indication of the advice received. The July Reasons make no reference to such a review, and the affiant for the Chief Permitting Officer identifies no supporting materials. Although counsel for the Inspector asked for and was given an opportunity to supplement the record on this issue, no additional evidence was provided to the court.

[132] To the extent such internal recommendations existed, they cannot now be invoked to sustain the permit decision. As the Supreme Court of Canada held in *Vavilov*, it is unacceptable for a decision-maker to provide reasons that do not justify the outcome yet expect the decision to be upheld on the basis of internal records unavailable to the affected party or the court. The issue is not whether experts may have reviewed the matter, but that the reasons expressly rely on material that cannot be identified, scrutinized, or tested on judicial review. The absence of transparent and accessible justification falls short of the standard of reasonableness.

[133] *Vavilov* further instructs that where a decision has potential implications for personal safety and property, the duty of justification is correspondingly robust. In this regard, Mr. Raftery was entitled to a careful and transparent assessment of the risks to his safety and home.

[134] In these circumstances, the Reasons do not satisfy the requirements of justification, transparency, and intelligibility mandated by *Vavilov*. Applying a holistic approach, the decision is unreasonable.

Did the decision give rise to a reasonable apprehension of retroactive justification, rendering it unreasonable?

[135] The petitioner asserts that the October Reasons were drafted after the fact to shield the Permit from public and judicial criticism, and therefore, the Permit should be set aside.

[136] Where post-decision reasons merely explain the original rationale, they may be considered on judicial review. In contrast, if post-decision reasons materially alter or add new justifications, they are not considered on judicial review as inadmissible.

[137] The issue of when post-decision reasons may fail to reflect the decision-maker's original reasoning was addressed in *R. v. Teskey*, 2007 SCC 25. The Supreme Court held that written reasons delivered long after a conviction could not be considered if a reasonable and informed observer would believe they were written to justify a verdict already reached. Although decision-makers benefit from a strong presumption of integrity, this presumption may be displaced by clear and cogent evidence of a disconnect between the decision and later-issued reasons.

[138] Although *Teskey* arose in the criminal context, its underlying concern, that reasons not be constructed after the fact to justify a predetermined outcome, is instructive in the administrative decision-making context. Reasons that materially reconstruct the basis for a decision after the fact undermine the intelligibility of the decision on reasonableness review.

[139] The petitioners emphasize that the October Reasons were issued following public criticism and threatened litigation. Yet the evidentiary record does not demonstrate that the Inspector was aware of the correspondence or media commentary, nor that the decision was influenced by external pressure. I am not prepared to draw either inference and am not willing to infer an improper motive in the absence of more direct evidence. Delay alone does not rebut the strong presumption of integrity that attaches to administrative decision-makers.

[140] Second, the petitioners highlight substantive differences between the July Reasons and the October Reasons. The divergence may be summarized as follows:

- In July, the Inspector claimed that “empirical evidence” showed property values continued to appreciate near sand and gravel operations, despite no supporting evidence in the record. By October, this claim was replaced with the position that property values were outside the scope of the *Mines Act*.

- In July, road safety concerns were said to fall under the jurisdiction of other agencies. In October, the Inspector stated that these concerns were addressed by limiting the days and hours of operation to reduce the impact of the gravel trucks.
- Slope stability risks were initially addressed through permit conditions, but the October Reasons, for the first time, reference a comprehensive review by geotechnical experts and their recommendations.

[141] The petitioners say these differences indicate a pattern of altered reasoning. Together, they imply a complete reworking of the decision rationale, rather than a simple clarification and expansion.

[142] The presumption of integrity or regularity is not easily displaced and is rarely met.

[143] Unlike in *Teskey*, there was no extraordinary delay and no evidence of uncertainty at the time the permit decision was made. Furthermore, given my findings, there is no evidence that the October Reasons were made under the pressures of judicial review.

[144] The presumption of integrity has not been displaced. However, the material divergence between the July permit decision and the October Reasons, must still be assessed for reasonableness.

[145] I agree that the October Reasons introduce materially new grounds not reflected in the original decision and not supported by the evidentiary record. Viewed objectively, the divergences raise a concern that the October Reasons do not simply clarify the July permit decision but instead provide new justifications. I therefore find the reasoning defective, though I make no finding of impropriety. The requirements of justification, transparency, and intelligibility are not met. This deficiency requires a finding of unreasonableness.

Conclusion on Reasonableness

[146] Viewing the circumstances as a whole, I am satisfied that the petitioners have met their burden of establishing that the decision to issue the Permit was unreasonable.

[147] I am also satisfied that each of the principal deficiencies identified above would, on its own, be capable of supporting a finding of unreasonableness. Considered cumulatively, they reinforce that conclusion.

Was the Permit Decision procedurally unfair?

[148] The petitioners challenge the process leading to the decision and say it was procedurally unfair. They advance several grounds of procedural unfairness, two of which are central:

- a) Affected or interested parties were not provided copies of the Permit Application materials; and
- b) It provided misleading information to affected parties.

[149] Accordingly, they submit the permit decision must be set-aside.

Did the decision-maker breach procedural fairness by failing to provide affected parties with the permit Application?

[150] The petitioners submit that the process was procedurally unfair because the Inspector failed to make the complete permit Application available during the 30-day comment period.

[151] I found that a page of the Application was missing and that the supporting materials submitted with the Application were not available at the public library, despite the public notice directing affected parties to that location to review the Application. At least two affected parties (Messrs. Raftery and Lornie) reviewed only the incomplete materials available there.

[152] The respondents contend there was no statutory obligation to make the entire Application available to the public. I do not accept this argument.

[153] Section 10.3.2 of the *Code* provides that affected or interested parties may “view the application” and make written representations within 30 days of notice. Although “application” is not defined, when read in light of s. 10(1) of the *Mines Act*, the filing requirement encompasses both the notice of work and the supporting materials submitted in support of the permit. The statutory scheme draws no distinction between the two. In context, “application” reasonably refers to the complete package submitted to the Ministry. This interpretation creates a statutory obligation to make the full application package available for review during the comment period.

[154] This conclusion is reinforced, though not determined, by the Ministry’s *Guide to Preparing Mine Permit Applications for Aggregate Pits and Quarries in British Columbia*. While the Guide is not legally binding, it works as an interpretive aid and provides evidence of the Ministry’s administrative practice. The Guide confirms the Ministry’s own expectation that the completed application package should be available during the review period.

[155] The respondents rely on *Highlands District Community Association v British Columbia (Attorney General)*, 2020 BCSC 2135, aff’d 2021 BCCA 232, to argue that only a minimal degree of fairness is required in the context of a small mining permit. I accept that the duty lies at the lower end of the spectrum. However, the circumstances in *Highlands* were materially different. In *Highlands*:

- a) the full application materials were available to the public;
- b) extensive consultation occurred, including a community open house; and
- c) detailed written reasons were provided for the decision.

[156] Even on a lower standard of procedural fairness, the disclosure and consultation in *Highlands* significantly exceeded what occurred here.

[157] The Chief Permitting Officer also submits that affected parties could have sought additional materials from other sources. However, after the July Reasons, when Mr. Raftery and his counsel requested supporting documents, they were told to submit a Freedom of Information request. This response is difficult to reconcile with the claim that meaningful access was available during the consultation period.

[158] Failure to provide the complete materials limited the affected parties' ability to make fully informed submissions. Meaningful participation requires access to the information needed to assess the proposal, even where the procedural fairness obligations are at their lowest. Ensuring access to information protects confidence in the legitimacy of the process.

[159] However, over 300 submissions were received, addressing a wide range of issues, including detailed comments on the core concerns. There is no clear indication that additional disclosure would have materially changed the nature of the participation or the issues raised. Although, it remains possible that access to the complete Application package could have revealed issues not previously considered or foreclosed the possibility of more targeted objections or alternative proposals, suggesting that some affected parties may have been hindered in identifying other concerns, I am not satisfied that the petitioners have demonstrated any material prejudice.

[160] In these circumstances, although failing to make the complete Application package available constitutes a breach of the statutory disclosure requirement, the breach is minor. The duty of fairness was limited, and no material prejudice has been shown.

Did the decision-maker breach procedural fairness by providing misleading information to affected parties?

[161] The petitioners submit that procedural fairness was compromised because affected parties were provided with misleading information in two respects.

[162] The first concerns the public notice, which stated that the Chief Permitting Officer lacked authority to consider the merits of the proposed mine from a zoning or land-use planning perspective. The notice suggested such considerations were categorically irrelevant, and that was incorrect.

[163] The respondents argue that the applicant was responsible for the notice and that the Inspector did not review it before publication. That submission does not answer the fairness concern. The integrity of the consultation process is the responsibility of the statutory decision-maker.

[164] Whether the error was intentional or inadvertent is immaterial. The issue is whether affected parties were misled in a manner that could impair their meaningful participation. In this instance, providing inaccurate information about the scope of decision-making authority potentially undermined that participation.

[165] This misstatement was not a trivial matter. Public notices must accurately identify the scope of decision-making considerations, as inaccurate or insufficient information may impair the fairness of the consultation process.

[166] The second concern the petitioners raised is that a single email from the Chief Permitting Officer to Chief Gabriel conveyed an impression that permit approval was unlikely. In that message, the Chief Permitting Officer relayed the biologist's recommendation against authorizing the proposed mining operation due to serious long-term risks to ecosystem values. However, the communication did not clarify whether the Chief Permitting Officer accepted or rejected the recommendation. As a result, Chief Gabriel reasonably interpreted the message as indicating that the Permit would not be approved.

[167] The respondents note that subsequent attempts to contact Chief Gabriel were made without response. The record is silent on reasons for the lack of response. Nonetheless, the message conveyed information that could create a misleading impression of the likely outcome of the Application and deterred further participation.

[168] Procedural fairness requires that affected parties be afforded a fair opportunity to participate, free from materially misleading information about the scope of decision-making authority or the likely disposition of the application. In both instances, the communications were capable of generating confusion.

[169] However, the record shows that extensive submissions were received. All of the central issues were squarely before the Inspector. On a proportionality assessment, the breadth and depth of participation and the volume of relevant submissions eclipsed any residual confusion caused by the misleading information. There is no indication that participation was curtailed or that the outcome turned on any misunderstanding created by the notice or the communication.

[170] The governing principle is clear: procedural fairness is not vitiated by misleading information unless the affected party demonstrates actual prejudice arising from the deficiency. In this case, although the consultation process was imperfect due to the misstatements identified above, those missteps carried limited weight in the overall fairness analysis. Standing alone, they do not justify setting aside the permit decision.

Conclusion on procedural fairness

[171] While non-trivial mistakes occurred, there is no evidence that the missteps materially limited participation or affected the issues placed before the decision-maker. In these circumstances, remittal would not be warranted. However, when considered on a holistic approach, cumulatively, with all the other deficiencies found, they support remittal.

VI. Conclusion

[172] Viewed in its entirety, the permit decision cannot be sustained on a standard of reasonableness. The decision-maker failed to grapple with core issues and the reasoning did not coherently connect the evidentiary record and the statutory framework to the ultimate conclusions. The errors were significant. The result therefore falls outside the range of outcomes defensible in fact and law.

[173] Having found the permit decision unreasonable, the ordinary remedy is to set it aside and return the matter to the decision-maker for redetermination. I therefore quash the Permit and remit the application to the Chief Permitting Officer for reconsideration in accordance with these reasons. The Court expresses no view on the ultimate merits of the Application.

[174] The petitioners seek costs against the Chief Permitting Officer.

[175] Costs are not ordinarily awarded against an administrative decision-maker in judicial review proceedings absent perversity or misconduct in the proceedings leading to the decision under review. This principle reflects the institutional role of administrative decision-makers and the supervisory nature of judicial review: *18320 Holdings Ltd. v Thibeau*, 2014 BCCA 494 at paras. 55–56; and *Lang v British Columbia (Superintendent of Motor Vehicles)*, 2005 BCCA 244 at paras. 47–48.

[176] I recognize the petitioners’ concerns, particularly considering that following the making of the decision, the Chief Permitting Officer declined to disclose the application materials except through a formal Freedom of Information process. However, I have made no finding of bad faith, misconduct, or conduct warranting rebuke on the part of the Chief Permitting Officer. Although the petitioners have succeeded on the merits, the high threshold for awarding costs against an administrative decision-maker has not been met.

[177] The application for costs is therefore dismissed.

[178] The decision of the delegate of the Chief Permitting Officer of the Ministry of Mines and Critical Minerals to issue the authorization known as Mine #2000391 dated July 9, 2024, is quashed.

“Koturbash J.”