Agricultural Land Commission Appeal Decision, ALC File 207376

In the matter of an appeal under section 55 of the *Agricultural Land Commission Act*

BETWEEN:

Sran Trucking Ltd.

Appellant

AND:

Agricultural Land Commission

Respondent

BEFORE: An Appeal Panel of the ALC (the "**Appeal Panel**")
Jennifer Dyson, ALC Chair
Ione Smith, ALC Vice Chair
Janice Tapp, ALC Vice Chair

DATE: Conducted by way of written submissions concluding on November 25, 2024

The Appeal

[1] This is an appeal from a penalty order (the "**Penalty Order**") made by the Chief Executive Officer (the "**CEO**") of the Agricultural Land Commission ("**ALC**"). The Penalty Order imposed a $70,000 fine against the Appellant for depositing

prohibited fill on a 6.28 ha property at 11130 Stave Lake Road, Mission (the "**Property**").

[2] The appeal is dismissed for the following reasons.

Background

[3] The Property is agricultural land, within the meaning of the *Agricultural Land Commission Act*, SBC 2002, c 36 (the "***Act***").

[4] On June 1, 2023, the ALC received a complaint that fill was being dumped on the Property, affecting blueberry fields and a creek.

[5] "Fill" is a defined term in the *Act*. It means "any material brought onto agricultural land other than materials exempted by regulation".

[6] Section 20.3(1) of the *Act* prohibits the placement of fill on agricultural land, except as permitted. The ALC had not authorized anyone to place any fill on the Property, and it is not argued that the placement of fill on the Property was otherwise permitted by statute or by regulation.

[7] On June 2, 2023, an ALC compliance and enforcement officer (the "**Officer**") visited the Property and observed that a truck with the logo "SRAN Trucking Ltd. Abbotsford, BC" was dumping fill on the Property, and that an excavator and a bulldozer were on site, moving fill about.

[8] One of the two directors of the Appellant, Lakhvir S. Sran, was present at the Property when the Officer visited. Mr. Sran told the Officer that approximately 250 loads of fill, which the Officer estimated covered approximately 4,000 m^2, had been

brought in from an excavation site in Maple Ridge. Mr. Sran advised that the fill was being placed to build an access road and that the intention was to build a small house on the Property and to grow blueberries. The Officer observed that the height of the land had been raised significantly by the fill, and that a watercourse on site appeared to be affected by the fill deposited.

[9] The Officer observed that the fill appeared to include construction waste. There was rebar, plastic, rocks, concrete and soils in the fill.

[10] The deposition of construction waste on agricultural land is prohibited by section 36(1) of the *Agricultural Land Reserve Use Regulation*, BC Reg 30/2019 (the "***Use Regulation***"), which provides in relevant part:

> (1) Except as permitted under subsection (2), the following must not be used as fill on agricultural land:
>
> (a) construction or demolition waste, including masonry rubble, concrete, cement, rebar, drywall and wood waste;
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> (b) asphalt;
>
> (c) glass;
>
> (d) synthetic polymers;
>
> (e) treated wood;
>
> (f) unchipped lumber.

[11] Section 36(2) of the *Use Regulation* provides:

(2) Recycled concrete aggregate and recycled asphalt pavement may be used as fill on agricultural land for the purpose of maintaining an existing farm road as described in section 35(d).

[12] The Property did not have an "existing farm road".

[13] The Officer advised Mr. Sran that a Soil or Fill Use Application had to be filed and approved before *any* fill could be deposited on the Property. The Officer directed that all activity on the Property cease and advised that it was prohibited to bring further fill onto the Property. The Officer confirmed that the ALC would issue a Stop Work Order.

[14] On June 6, 2023, the ALC issued the Stop Work Order. The Stop Work Order was promptly sent by registered mail to the registered and records office of the owner of the Property, a numbered company (the "**Owner**"). The package was sent to the attention of Lakhvir S. Sran, on the understanding that Mr. Sran was the sole director of the Owner. In fact, Lakhvir S. Sran was the director of the Owner until June 1, 2023, when a notice of change of directors was filed with the corporate registry. It appears that the ALC did not become aware of the change in directors until later in June.

[15] Also on June 6, 2023, the ALC issued a Notice of Contravention to the Owner. As with the Stop Work Order, the Notice of Contravention was addressed to Lakhvir S. Sran.

[16] The Notice of Contravention stated that the placement of fill on the Property contravened section 20.3(1) of the *Act*. The Notice also stated, in bold typeface,

> *Pursuant to Section 50 of the Agricultural Land Commission Act, you or other persons are required to immediately cease depositing fill on the Property. A Stop Work Order has been placed on your Property.*

[17] At this point it is convenient to note that at all relevant times, the Owner and the Appellant had the same registered and records office and mailing addresses, and that the Property at that address was owned by Mr. Sran and another person.

[18] On June 12, 2023, the Officer attended at the Property again. The Officer observed that further earth works had been performed since June 2, 2023: fill had been moved around and levelled. The Officer posted a coloured placard advertising of the Stop Work Order at the entrance to the Property. The following statement was included in the placard in red typeface:

> *… notice is hereby given to all persons that you must cease depositing unauthorized fill on the property*.

[19] Photographs of the posted Stop Work Order placard show that it was prominently displayed on a tree stump at the entry to the Property.

[20] The Owner did not appeal the Stop Work Order.

[21] On June 27, 2023, the copy of the Stop Work Order sent to the Owner was returned to the ALC as unclaimed mail.

[22] On June 28, 2023, the Fraser Valley Regional District (the **"Regional District"**) Planning and Development Department wrote to the Owner, care of Mr. Sran, to advise that no development permit for alternation of the Property had been obtained, but that one was required. Because the Property was located in a

riparian zone, the Owner was also required to submit a riparian assessment report to the Regional District. The Regional District's letter was copied to the ALC.

[23] On July 18, 2023, the provincial Ministry of Forests issued orders against the Owner and the Appellant, pursuant to section 93 of the *Water Sustainability Act*, SBC 2014, c 15, for unauthorized changes to a stream. The orders and the Ministry of Forest's cover correspondence were copied to the ALC.

[24] On July 27, 2023, the Officer once again attended the Property and observed trucks dumping two loads of fill on the Property. The Officer was not able to identify the trucks.

[25] In early August 2023, the ALC received photographs, taken by a member of the public on or about July 24, 2023, showing trucks depositing fill on the Property. The photos showed a truck with the logo "Sran Trucking Ltd., Abbotsford, BC" on the cab door.

[26] One or more members of the public submitted photographs to the ALC, apparently taken on August 15, 21, 23 and 26, 2023, showing dump trucks depositing fill on the Property. The Appeal Panel is not able to see any logo on the trucks in the photos.

[27] On August 25, 2023, the ALC issued a Stop Work Order against the Appellant for unauthorized placement of fill on the Property. The letter enclosing the Stop Work Order contained the following statement in bold typeface:

> *Pursuant to Section 50 of the Agricultural Land Commission Act, Sran Trucking Ltd. and all other persons are required to immediately cease depositing fill on the Property.*

[28] The August 25, 2023 Stop Work Order was personally served on Mr. Sran. There is evidence that the Officer who served the Order went over its terms with Mr. Sran at the time of service.

[29] The August 25, 2023 Stop Work Order was not appealed and is not at issue in these proceedings.

[30] On October 31, 2023, a Regional District employee visited the Property and reported observing 5 or 6 double dump trucks coming and going from the site. The Regional District employee reported to the ALC that "Every dump truck was marked with Sran trucking [sic.]". The Regional District employee took photographs. The Appellant's logo, "Sran Trucking Ltd., Abbotsford, BC" is clearly visible on one of the dump trucks that was photographed. A panel van with the Appellant's name and logo was also photographed on site.

[31] In November 2023, a member of the public sent the ALC video footage of nighttime activity on the property on October 28, 2023. The Appeal Panel has reviewed the footage. It shows dump trucks active on the Property in the dark.

[32] On November 7, 2023, the Officer attended the Property again. A gate, which had been installed at the entrance to the Property, was locked. No work was taking place on site but the Officer observed that additional fill appeared to have been deposited on the Property. The Officer also observed additional road

construction work since her last visit to the Property. The Officer observed that the roadbed material contained asphalt, rocks and other construction waste.

[33] In early 2024, a member of the public submitted photographs to the ALC showing dump trucks dumping loads, and road construction work, at the Property between January 26 and 31, 2024. Sran Trucking logos are visible on some of the trucks in the photographs. One of the photographs shows an unidentified dump truck depositing a load after dark.

[34] On January 31, 2024, the CEO issued a Notice of Consideration of Penalty to the Owner. The Notice was sent by registered mail to the registered and records office address for the Owner and was sent to an email address containing the name of the Appellant.

[35] The Notice detailed observations of fill being deposited on the Property since June 2023 and concluded that the Owner was continuing to contravene the June 6, 2023 Stop Work Order. The Notice advised that the CEO was considering leveying a penalty against the Owner for contraventions of the *Act* and regulations. The Notice invited the Owner to provide a written response by March 4, 2024.

[36] On February 1, 2024, a member of the public photographed dump trucks placing fill on the Property.

[37] On February 7, 2024, the Department of Fisheries and Oceans took aerial photographs of the Property. These were provided to the ALC. The photographs show multiple dump trucks on site, extensive placement of fill and obvious land disturbance.

[38] On February 13, 2024, an Officer inspected the Property again. No work was happening at the Property at the time of inspection but the Officer observed that two excavators and a bulldozer were present on site. The Officer reported that it appeared that further fill had been added to the Property and was being moved into an area with blueberry fields. Photographs taken by the Officer show fill, with debris embedded it in, adjacent to a blueberry field. The Officer estimated that the area of fill had increased to 10,600 m^2. Piles of fill that included prohibited debris – plastic, concrete, brick and asphalt – were observed on site.

[39] On March 3, 2024, a person with the last name "Sran", but not a director of either the Appellant or the Owner, sent an email from the Sran Trucking email address, responding to the Notice of Consideration of Penalty. The writer stated that the Owner had taken steps to rectify the situation, which included retaining a biologist to address "mapping and planning" matters, and had applied to develop a nursery on the Property. The email concluded:

> *We have completely stopped work at the location and are willing to cooperate and follow the correct procedures to bring the property to standards recommended and implied by the Agriculture Land Commission. Please take our efforts into consideration before implying any penalties. We are fully committed to follow all standards and procedures put in place by the Agricultural Land Commission.*

[40] The contention that work had stopped at the Property was false. Later in March, a member of the public submitted photographs to the ALC, apparently taken on March 11 and 12, 2024, showing multiple dump trucks and an excavator on site at the Property. One of the photographs shows an unidentified dump truck dumping a load.

[41] On March 28, 2024, the Officer submitted a report to the CEO recommending that a remediation order and a penalty order be imposed against the Owner. The report noted that fill, containing prohibited materials, had been placed on 1.06 ha (the "**affected area**"), which is approximately 17 percent of the Property.

[42] On April 11, 2024, the CEO, acting pursuant to section 52 of the *Act*, ordered the Appellant and the Owner to remediate the Property. The remediation order, which was not appealed and is not at issue in these proceedings, ordered the Owner and the Appellant to:

a. promptly commence removal of all of the unauthorized fill, including the prohibited fill, from the affected area;

b. submit monthly progress reports on the implementation of the order, with the first due by May 31, 2024;

c. by September 30, 2024, complete the removal of all of the unauthorized fill, including the prohibited fill, from the affected area;

d. by October 15, 2024, complete specified remediation work in the affected area;

e. by October 31, 2024, submit a report, completed by a qualified professional with a background in soil sciences, assessing the remediation outcome and agricultural capability; and

f. by September 30, 2025, submit a follow-up report on the outcome of the remediation.

[43] On April 11, 2024, the CEO also levied a $50,000 penalty against the Owner. That penalty was not appealed and is not at issue in these proceedings.

[44] On April 29, 2024, an Officer and the ALC Director of Operations (the "**ALC Director**") attended at the Property and observed a truck belonging to the Appellant dumping two loads of fill onto the land. An excavator was moving the fill and piling it onto a large mound. The ALC employees observed that the fill appeared to be mainly soils, rock, sand and some prohibited construction waste, including asphalt and concrete. They approached the equipment operators and advised that a Stop Work Order was in effect and that they must cease depositing and moving fill around on the Property. The equipment operators denied knowledge of the Stop Work Order and told the ALC officials to call their boss.

[45] Photographs taken by the Officer and ALC Director on April 29, 2024 show dumping in progress, document construction waste in the fill, and show fill partly covering a blueberry field.

[46] The Officer returned to the Property on May 1, 2024. Mr. Sran was on site and expressed an intention to do work to clean up and rearrange the fill. The Officer advised that work was prohibited, pursuant to the Stop Work Order. Mr. Sran apparently inquired about the consequences of contravening the Stop Work Order. Potential consequences were explained to him.

[47] The Officer remained on site until 5:34 pm, and then left. At 5:54 and 8:22 pm, the Officer received text messages reporting that dumping of fill was happening at the Property.

[48] For completeness, the Appeal Panel notes that on May 23, 2024, the CEO issued a second penalty order against the Owner, imposing a $100,000 penalty. Like the first penalty order against the Owner, this second order was not appealed and is not at issue in these proceedings.

The Penalty Order

[49] On April 11, 2024, the CEO issued a Notice of Consideration of Penalty to the Appellant. The CEO is empowered by section 54(1) of the *Act* to levy penalties, up to a prescribed amount, against a person who contravenes the *Act*, the regulations or orders of the ALC.

[50] The Notice of Penalty (the **"**Notice") was served upon the Appellant at its registered and records office. It was also sent to the Appellant's email address. The Notice advised that the CEO had concluded that the Appellant had contravened section 20.3(1) of the *Act* and section 36 of the *Use Regulation*. It warned that the CEO was considering levying a penalty against the Appellant. The Notice confirmed that it (*i.e.*, the Notice) was additional to the notice issued to the Owner on January 31, 2024. The Notice warned that the penalty could be up to $100,000 for a single contravention of the *Use Regulation*. The Appellant was given until May 11, 2024 to respond to the Notice. There is no record of a response.

[51] On May 22, 2024, the CEO issued the Penalty Order against the Appellant. The Penalty Order imposes a $70,000 penalty. The Penalty Order was personally served on Lakhvir S. Sran on May 23, 2024.

[52] The Penalty Order states the following facts:

a. Lakhvir S. Sran was the sole director of the Owner until June 1, 2023.

b. The Appellant was responsible for transporting, depositing and managing the unauthorized and prohibited fill on the Property. Lakhvir S. Sran is one of two directors of the Appellant.

c. The Owner and the Appellant share the same registered address. That address is associated with a 14.21 acre parcel of agricultural land (not the subject Property) owned by Mr. Sran and another person.

d. The evidence supports a conclusion that there is a relationship between the Owner and the Appellant.

e. 100 percent of the Property is within the agricultural land reserve.

[53] The Penalty Order goes on to refer to section 20.3 of the *Act* and section 36 of the *Use Regulation* and recites the history of the ALC's engagement with the Property, the Owner, the Appellant and Mr. Sran since June 2023.

[54] The Penalty Order further states:

> *Due to the continued dumping of unauthorized fill by Sran Trucking in defiance of the Act and the regulations and the SWO [Stop Work Order] issued to the Owner, the ALC was forced to deploy Commission Officials on a daily or near-daily basis to the vicinity of the Property between April 29, 2024 and May 13, 2024, including in the evenings and on weekends, to monitor trucks coming to the Property to dump fill. On May 1, 2024 at 16:18 hours, Lahkvir S. Sran met a Commission Official at the front gate of*

the Property and was advised of potential penalties that could be imposed for continued violations of the Act.

[55] The Penalty Order states that the CEO considered the following factors in determining the penalty to be imposed:

Factors	**Applicability**
a. The gravity and magnitude of the contravention	Unauthorized and prohibited fill has been deposited over an estimated 1.06 ha on the Property at a depth of over a meter. The Appellants has dumped large volumes of unauthorized and prohibited fill on the Property on multiple occasions. This a serious contravention of the Act and Use Regulation, and has contributed to damage to agricultural land of significant magnitude.
b. Whether the contravention was deliberate, repeated or continuous	The contravention was and is deliberate, repeated and continuous. The Appellant continued the importation and placement of unauthorized fill after being verbally advised by a Commission Official that doing so contravened the Act and

	regulations, in defiance of the highly visible notice posted in connection with the Stop Work Order, including after the issuance of the Remediation Order and the Notice of Consideration of Penalty. The Appellant continues to deliver unauthorized fill to the Property as observed by Commission Officials on April 29, 2024. I attach significant weight to the deliberate, repeated or continuous contravention of the Act and regulations in these circumstances.
c. Whether there has been any contravention of a similar nature by the Appellant	The ALC has no record of similar contraventions by the Appellant. There are unproven allegation that the Appellant has dumped unauthorized fill on other ALR properties in the area, but in the absence of evidence of such dumping at this time, the allegations will not be considered in the decision.

d. Whether there was an economic benefit derived by the Appellant from the contravention	On June 2, 2023, Lahkvir S. Sran, the director of the Appellant, advised a Commission Official that the unauthorized fill was from an excavation site in Maple Ridge and that 250 truckloads had been dumped onto the Property which covered approximately 4,000 m^2 at that time. Typically fill disposal fees range from $50 to $200 per truck. Fill contaminated with prohibited fill is more than $250 per load. Taking a low average of $100 per load would mean revenue or [a] saving of $25,000 for not disposing of this fill at an authorized facility. Currently the fill covers over 10,600 m^2 which represents (as a rough estimate) approximately 663 truckloads. The 663 loads would have generated approximately $66,300 in revenue or savings from not disposing at an authorized facility.

	While it is not possible to conclude definitively from the evidence that the Appellant was responsible for dumping all of the approximately 663 truckloads, it is clear that the company has dumped a significant proportion of the unauthorized fill on the Property and has derived an economic benefit from doing so.
e. The Appellant's cooperativeness and efforts to correct the contravention	The Appellant has not made any efforts to cease or correct the ongoing contravention of the Act and the Use Regulation. The Appellant has been uncooperative.
f. The degree to which the contravention detrimentally affected or impaired the agricultural capability of the Property or its suitability for farm use.	The Property, like other properties in the area, has a suitable agricultural capability for growing blueberries and other crops. The quality topsoil was buried by the unauthorized fill which Lakhvir S. Sran advised is from excavation/development sites. These lower horizon soils are typically of

	much lower agricultural capability and create issues with drainage. The unauthorized fill includes prohibited fill which, by its nature, is detrimental to agricultural capability.

[56] The factors considered by the CEO in determining the amount of the penalty are prescribed by section 30 of the *Agricultural Land Reserve General Regulation*, BC Reg 57/2020 (the "***General Regulation***"), which provides as follows:

> (1) The chief executive officer must consider all of the following before levying a penalty against a person for contravening the Act, the regulations or an order of the commission:
>
> (a) the gravity and magnitude of the contravention;
>
> (b) whether the contravention was deliberate, repeated or continuous;
>
> (c) whether there has been any contravention of a similar nature by the person;
>
> (d) whether the person derived an economic benefit from the contravention;
>
> (e) the person's cooperativeness and efforts to correct the contravention;

(f) the degree to which the contravention detrimentally affected or impaired the agricultural capability of agricultural land or its suitability for farming.

(2) The maximum penalty which the chief executive officer may levy is as follows:

(a) for any single contravention, $100 000;

(b) for a subsequent contravention, double the amount of the penalty levied for the first contravention.

The Appeal Process

[57] Section 55(1) of the *Act* provides that a person subject to a penalty order may appeal the order to the ALC by serving a notice of appeal. Section 55(2) of the *Act* provides that, on an appeal, the ALC may confirm, vary or reverse the penalty or refer the matter, with or without directions, back to the person who made the order.

[58] On June 20, 2024, the Appellant emailed a completed Environmental Appeal Board notice of appeal form to the ALC. Notwithstanding the form used, the notice of appeal was clearly intended to initiate an appeal from the Penalty Order with the ALC.

[59] The notice of appeal stated that the very extensive amount of the penalty ($70,000) was the reason for the appeal. The Appellant further stated that it had completely stopped dumping at the Property and had been "complying with anything required of [it] … by the ALC". It stated that it was in the process of

remediating the Property, at a high cost, and had applied for a permit to construct a house on the Property. The Appellant suggested that some of the fill could be moved as a preload to the front of the Property. The notice of appeal continued:

> *We did not make any money from depositing the fill on the property. Our original intentions were to construct a roadway and we could potentially build a greenhouse/nursery in the back. Which we also applied a permit for. However, we were naïve and deposited the fill prior to applying for the permit. We had also retained … [an environmental consultant and aborist] to assist in this matter.*
>
> *We have already incurred substantial amount of cost and are in no position to make a payment for this penalty order. Our trucking work is also extremely slow as most of the trucks have just been parked due to the current ongoing recession that the country as a whole is experiencing.*

[60] On July 17, 2024, the ALC wrote to the Appellant, describing the appeal process and setting deadlines for the steps in the appeal.

[61] On July 24, 2024, the Respondent delivered the following to the Appellant:

a. the evidence that was before the CEO in making the Penalty Order, save for a copy of the title search for the Appellant's registered and records office address, which was inadvertently omitted from the materials delivered;

b. a copy of the Penalty Order; and

c. to the extent not included in the above:

i. a recent air photo of the Property;

ii. an ALC context map in relation to the Property;

iii. a soil capability map related to the Property; and

iv. copies of the previous decisions, determinations, decisions, orders or penalties made under sections 50, 52 or 54(1) of the *Act* in relation to the Property, except for the remediation order which, was mistakenly omitted from the package.

[62] On September 5, 2024, a letter was sent to the Appellant confirming that the appeal would proceed in writing. The letter set a final deadline of September 13, 2024 for the Appellant to file evidence and written argument in the appeal. Nothing was received from the Appellant by or after September 13th. The Appeal Panel has treated the representations made in the Appellant's notice of appeal as the Appellant's argument on appeal.

[63] On October 28, 2024, counsel for the Respondent filed an affidavit made by the ALC Director, Avtar Sundher (the "**Sundher Affidavit**") and a written argument. The Sundher Affidavit exhibited a title search document and the remediation order inadvertently omitted from the package sent to the Appellant in July. Mr. Sundher also deposed that the ALC had not received any of the progress reports required by the remediation order, and that he was unaware of either the Owner or the Appellant having taken any steps to remediate the Property, as required by the remediation order.

[64] The Respondent's written argument states that the basis for the Penalty Order is the Appellant's continuous dumping, over an extended period of time, and in defiance of repeated informal directions that the dumping activity contravened the *Act* and the regulations. The Respondent notes that the Appellant does not deny dumping fill on the Property. The Respondent argues that the Penalty Order should not be varied. It says that the Penalty Order was properly made in the circumstances of the Appellant's intentional and continued non-compliance with the *Act* and the regulations, and that the penalty amount is appropriate for the reasons given in the Penalty Order.

[65] The Respondent says that the Appeal Panel should reject the argument that the Appellant did not make any money from placing the fill on the Property. It points out that the assertion is unsupported by evidence. Moreover, the Appellant does not challenge any of the assumptions the CEO relied on in estimating the benefit to the Appellant of dumping fill on the Property, nor the conclusion that the Appellant had likely realized a significant economic benefit from the dumping.

[66] The Respondent argues that the Appeal Panel should reject the Appellant's arguments in mitigation. It says the Appellant's past conduct demonstrates that it intentionally breached the *Act* and orders made by the CEO. It says there is no evidence that the Appellant has taken any steps to comply with the remediation order. It also contends that the Appellant's suggestions that some of the fill could be used as preload for the construction of a house, or for other developments on the property (*e.g.*, a greenhouse nursery), are speculative. The Respondent also says that the Appeal Panel should reject the claim to economic hardship, as it is

unsupported by evidence and disregards the economic benefit the Appellant received from dumping fill on the Property.

[67] The Sundher Affidavit and the Respondent's written argument were provided to the Appellant. The Appellant did not request an opportunity to make submissions after these were delivered to it.

Discussion and Findings

[68] Having considered the evidence, the representations in the notice of appeal and the Respondent's arguments, the Appeal Panel denies the appeal and confirms the Penalty Order. The Panel agrees with the CEO that an analysis of the factors to be considered under section 30(1) of the *General Regulation* supports a penalty of $70,000.

[69] The first factor to be considered under section 30(1) is the "gravity and magnitude of the contravention". The evidence supports the conclusion that the Appellant's contravention of the *Act* and the *Use Regulation* is serious.

[70] The Appeal Panel takes into consideration the sheer amount of fill dumped on the Property. It is excessive to the amount of fill that would be permitted to be placed on the Property, pursuant to the *Act* and the *Use Regulation*. For example, fill placed for the construction or maintenance of a structure for farm use or for a principal residence must be 1,000 m^2 or less in area (section 35(a) of the *Use Regulation*). In contrast, the affected area amounts to approximately 10,600 m^2.

[71] In addition, the evidence is indisputable – and, in any event, the Appellant does not contest – that the fill the Appellant dumped on the Property contains

prohibited materials. Prohibited fill is not permitted for any farm use, construction or preloading. The dumping of thousands of square metres of prohibited fill flagrantly flouts the *Act* and the *Use Regulation*.

[72] The extent of the impact of the dumping in the affected area is shown by the drone photos taken by the Department of Fisheries and Oceans. These photos show that the placement of fill on the Property has altered the topography of the Property.

[73] The second factor to be considered is whether the contravention was deliberate, repeated or continuous. The contravention was all of these things.

[74] From his interaction with the Officer on June 2, 2023, the Appellant's director, Mr. Sran, knew that the dumping of fill was prohibited and must stop. Any illusion about whether the activity was permitted could not have persisted beyond June 12, 2023, at the latest, when the placard advertising the Stop Work Order against the Owner was posted at the entrance to the Property. Notwithstanding the Stop Work Order, the Appellant's trucks were observed dumping fill on the Property on July 24, 2023. In addition, trucks were observed dumping on the property by an Officer and members of the public on July 27 and August 15, 21, 23 and 26, 2023.

[75] The Appeal Panel takes into consideration that the dumping continued after the ALC issued the Stop Work Order to the Appellant on August 25, 2023. As noted above, this order was personally served on, and explained to, Mr. Sran. Nonetheless, the Appellant's trucks were observed in the act of dumping fill at the Property on October 31, 2023, in late January 2024 and on April 29, 2024. For the

reasons given above, we also infer that the trucks observed dumping at night on October 28, 2023 and during daylight hours on February 1 and 7, March 11 and 12 and May 1, 2024 most likely were the Appellant's trucks.

[76] The Appeal Panel rejects the Appellant's contention that it engaged in dumping activity out of naïveté. After June 2, 2023, the dumping was obviously deliberate: it continued in complete disregard of two Stop Work Orders, the initial penalty order against the Owner, the remediation order and the warning to Mr. Sran on May 1, 2024 of the penalties that could be imposed for continued contravention of the Stop Work Orders.

[77] With respect to the third factor to be considered in assessing the penalty levied against the Appellant, the Appeal Panel acknowledges that there is no indication of a contravention of a similar nature by the Appellant. This is a neutral factor in our considerations.

[78] The fourth factor is whether the Appellant derived an economic benefit from the prohibited dumping. The Appellant has submitted that it "did not make any money from depositing the fill on the property" but tendered no evidence to support this argument. Absent evidence, the argument is not compelling. In any event, the question is not whether the Appellant "made money" from the dumping but whether it realized "an economic benefit" from doing so.

[79] The CEO inferred that it was likely that the Appellant benefitted economically from the prohibited dumping by saving disposal costs on the loads of fill deposited at the Property, likely to the extent of $66,300. However, the CEO led no evidence to support this conclusion.

[80] The Appeal Panel views the question of economic benefit as an essentially neutral factor in the appeal. We assign it less weight than the magnitude and gravity of the impact, the deliberate and prolonged nature of the Appellant's conduct, and the deleterious effect of the dumping on the agricultural capability of the Property.

[81] The fifth factor is the Appellant's cooperativeness and efforts to correct the contravention. Both of these factors weigh against the Appellant, and in favour of upholding the Penalty Order. The Appellant was wholly uncooperative over a period of almost one year. It continued to dump despite two Stop Work Orders and a remediation order, only stopping, it would appear, after the Penalty Order and the second penalty order against the Owner were issued.

[82] The evidence does not show that the Appellant has done anything to correct the contravention. While the Appellant says it has retained an environmental consultant and arborist, there is no evidence that the consultant is working on remediation.

[83] The Appeal Panel turns to the last factor considered by the CEO: the degree of impairment to agricultural capacity. We weigh this factor heavily in considering the appropriateness of the penalty.

[84] In our view, the penalty is proportionate to the damage caused to the agricultural potential of the Property. The areas of the Property not covered by the fill had demonstrable agricultural capacity before the dumping began; this is evident from the cultivation of blueberries on the Property. Before the dumping of prohibited fill, the agricultural capability of the Property had been classed as

organic class 5, with the potential for improvement to organic class 3. The Appellant's dumping degraded the existing agricultural capability in the affected area and impeded the potential for improvement. This aspect of the harm to the Property is serious.

[85] In addition, the evidence clearly shows that the fill the Appellant deposited on the Property contains heavy soils, rocks and other prohibited materials. This low-quality fill has covered 1.06 ha, or approximately 17 percent, of the native topsoil on the Property. An impact of this extent represents a significant impairment of the agricultural potential of the Property.

[86] The Appeal Panel turns, finally, to the Appellant's argument that it cannot afford to pay the penalty imposed. Ability to pay is not a factor which the *General Regulation* indicates is to be considered in assessing a penalty. In any event, the Appellant has provided no evidence to support its argument. We are not prepared to entertain the argument in the absence of any supporting evidence.

[87] For these reasons, the appeal is dismissed.

Appeal Panel:

Jennifer Dyson Ione Smith Janice Tapp

Appeal Decision Date: December 30, 2024