

# Special report: Family fights to save storied Fogarty's Cove

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The land was in their family for nearly 200 years. With a pen stroke, it was gone.



Brian and Frank Fogarty hold stacks of paperwork concerning the expropriation of their family's land in Guysborough County. (INGRID BULMER / Staff)

Timothy William Fogarty arrived in Guysborough County back in 1820.

The Irishman settled in a picturesque area, now known as Fogarty's Cove.

By the 1850s, his son, Michael, was granted by the Crown 100 acres that would thereafter bear the family's name.

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Heirs would be born there, settle, go to church and fish. In all, almost 800 people once called it and the surrounding area home.

Folk legend Stan Rogers was so enamoured of the coastal site that he [penned a tune about it](https://www.youtube.com/watch?v=p1bB8hU_pzs) ([https://www.youtube.com/watch?v=p1bB8hU\\_pzs](https://www.youtube.com/watch?v=p1bB8hU_pzs)). Thousands of Rogers fans come to nearby Canso every summer to hear it.

Now the area, which some call pristine, is on the verge of becoming part of a quarry. A mining firm from the United States, in concert with a Nova Scotia developer, plans to mine granite gravel there and ship it to the U.S. and the Caribbean.

Municipality of the District of Guysborough council believes the operation will fire up the region's sagging economy and create jobs likely more than 100, according to the quarry developers.

But the Fogarty family, which has owned the property for 194 years, claim they barely received warning that their land was about to be taken from them.

"They just blindsided us," said Brian Fogarty, one of three family members shocked at how quickly they lost title.

**NO TIME TO FIGHT EXPROPRIATION**

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Last October, municipal council expropriated the land, and the family had no time to fight it, said Brian's cousin, Jim Fogarty, of Dominion, near Glace Bay.

Jim, the most recent Fogarty heir to pay property taxes on the land, said he received one visit in 2011 from a man with the last name MacDonald who said he was from the Guysborough municipality.

Some time later, a Halifax lawyer contacted him to offer \$15,555 for his share of the land. Around then, expropriation was brought up.

"They wanted to buy my interest," said Jim Fogarty.

"The letter (from the lawyer) states they were talking to the county about expropriation."

He turned down the offer.

MacDonald made no mention about expropriation or a quarry, said Fogarty, now 70.

He said he later contacted the municipality in person and by letter to check on MacDonald and expropriation. Municipal officials didn't know of a MacDonald, he said.

"I went down and the gentleman at the tax office ... he went and checked. ... He came back and said, 'No, there's nothing going on there.' So I believed there was nothing going on."

Then came the summons to attend a council meeting last October.

Fogarty went, spoke about the property for a few minutes and then a vote was taken. Councillors were solidly in favour of the Black Point quarry project.

The Fogartys lost their land.

"Everybody's arm shot up and that was it," said Brian Fogarty, describing the council vote.

“

They just blindsided us.  
- Brian Fogarty

In April, Morien Resources Corp. of Dartmouth [announced a deal](http://thechronicleherald.ca/novascotia/1197935-quarry-plan-awaits-oks) with Guysborough to develop a coastal quarry with Vulcan Materials Co. of Birmingham, Ala. (Morien is a spinoff firm Erdene Resource Development Corp.)

According to a report filed to the Canadian Environmental Assessment Agency, Morien expects construction to begin on the 280-hectare project in April 2018, with full operations starting in 2021.

Morien will get a total of \$1.8 million from Vulcan — \$1 million up front and the balance after environmental approvals. Royalties will also flow to Morien over the life of the project.

Developers expect operations could end in 2070.

Barry Carroll, chief administrative officer for the Municipality of the District of Guysborough, said nothing was done incorrectly regarding the expropriation, but he wouldn't reveal how it came to be.

"We follow all steps as detailed in the act," Carroll said in a recent interview, referring to the provincial Expropriation Act.

"There's a process in place and we followed it."

Jim Fogarty was the only heir officials could find, said Carroll.

“We were aware of one heir to the property because that person had been paying taxes to the municipality. We had sent two correspondences to him.”

One message was the invitation to speak at the council meeting, he said.

“Council took his comments into consideration.”

No one should be surprised about the venture, said Carroll, noting the area was zoned heavy industrial in 2007.

“This has been on the radar for a long, long time.”

Municipal records show the regional development authority, with the Natural Resources Department, decided in 2006 that the land had potential for development.

Six months before the Fogartys lost their land, an amended spring 2013 municipal planning strategy report stated officials were on the hunt for properties held “for generations” that hadn’t been developed.

The land in question has been listed for years as being held by the estate of Joseph Fogarty.

“The municipality needs to take advantage of its legislative authority to purchase land for subdivision and sale,” the report said.

Morien chairman Peter Akerley recently told The Chronicle Herald that he had worked on the project for more than seven years, and documents show Premier Stephen McNeil and Lloyd Hines, the MLA for the area, met with Morien in February to discuss the project.

“

There's a process in place and we followed it.  
- Barry Carroll, CAO, Municipality of the District of Guysborough

A joint Morien-municipal core drilling program was done in 2007-08, and Guysborough swapped some land it owned for neighbouring Crown property. Morien purchased another family’s property nearby, with the adjacent Fogarty land the only location standing in the way.

Documents filed to the Canadian Environmental Assessment Agency from a company hired by Morien said meetings with municipal officials began in 2008 and have continued.

But the Fogartys, who don’t live in Guysborough and use the land for recreation, maintain they weren’t notified about any such plans.

“Why didn’t they call one of us?” said Brian, a sixth-generation Fogarty, who, with his brother, Frank, only recently learned about the rezoning.

“It’s been seven years it’s been going on, and no one (in the family) knew anything about it,” said Frank, who lives in Halifax.

During an initial meeting about rezoning, some residents voiced worries regarding tourism. Municipal records note that but add that another session drew no detractors.

By law, the family can’t fight the expropriation because Nova Scotia’s Expropriation Act doesn’t allow for appeals.

Carroll said Guysborough was acting for the public good, as required by the act.

“The municipality takes its role ... very seriously and weighs the pros and cons of every decision it makes, and that’s what it did in this case.”

## ECONOMIC BOOST

John Budreski, Morien president and CEO, said everything was done correctly by the municipality.

He said the project will inject \$10 million to \$20 million into the economy annually, along with up to 150 jobs, depending on the season. The facility expects to take 3.5 million tonnes or more from the quarry annually.

The Fogartys have gone to the Canadian Environmental Assessment Agency, arguing the operation will destroy the offshore fishery, wetlands, flora and fauna. They have contacted local fishermen, First Nations groups, the Sierra Club and the Ecology Action Centre in Halifax. They’ve also alerted the provincial ombudsman.

“The only thing left to do is register our disapproval of the quarry on environmental grounds,” said Frank Fogarty.

The family is also keeping its legal options open as members research the process behind the expropriation, Brian Fogarty said.

Acting ombudsman Christine Delisle-Brennan confirmed there is a file open on the case, saying her office is investigating whether appropriate steps were taken by authorities during the expropriation process.

The Fogartys also said there are home foundations and graves on the site, as family ancestors lived there for decades after first settling and built a church.



Fogarty's Cove Beach (CONTRIBUTED PHOTO)

At a recent open house in Queensport, Brian Fogarty said a Vulcan official disputed that foundations were on the site. A report prepared for Morien, however, notes the family lived in that area in the 1870s and records show a church erected there was used in 1891.

Budreski said he didn't attend that session and couldn't speak to that conversation.

Mi'kmaq Rights Initiative officials are urging the agency to conduct an environmental impact and subsurface study to search for ancestral evidence.

“It is strongly recommended that a survey for petroglyphs in the barrens be conducted,” the

Truro organization said.

“The Mi'kmaq have genuine concerns,” Chief Sidney Peters, co-chair of the Assembly of Nova Scotia Mi'kmaq Chiefs, said in a statement.

“We are concerned with how this quarry could impact our harvesting and fishing activities, its environmental impact, and have stressed the importance of a proper archeological study before any work begins.”

## DEVELOPMENT VS. ENVIRONMENT

Aecom, an engineering firm hired by Morien, told the agency in a February report that the plant — expected to run 16 hours a day seven days a week for nine months of the year during peak production — will affect the environment. (An adjacent marine shipping terminal will run 24 hours daily, seven days a week, said Aecom.)

“Construction of the marine terminal is anticipated to result in the destruction of marine fish habitat,” the consultants wrote.

“Harm to or death to fish may occur during operation from collisions or other interactions with vessels, accidental aggregate spillage, or other accidents or malfunctions (e.g. fuel spills).”

Whales, turtles and seals might also be adversely affected, and pollution and noise might also harm migratory bird patterns and harlequin ducks, which are a protected species, they said.

The Guysborough County Inshore Fishermen’s Association has asked the agency for a full environmental review, saying there are 72 “multi-species” licence holders in the area, not just four lobster fishermen, as the Morien report stated.

“These fisheries could be impacted from poor water quality, gear silting, noise and increase of ship traffic from tugs, pilot or container vessels.”

While the association supports economic growth, it shouldn’t come at the cost of the fishery, president Eugene O’Leary said.

“These are real, sustainable, existing jobs that should be protected first and foremost from detrimental impact.”

Budreski said everything would be done to ensure the environment is looked after.

“We will build a plan with experts and industry and experts from government to minimize the impacts,” he said in an interview.

“It’s a good project, it’s a clean project,” said Budreski, who walked the site with agency officials last Wednesday.

Quarry developers expect full environmental approvals by September.

It’s not clear if approvals will come by fall. The agency is conducting an environmental assessment, a spokeswoman said. There have been two rounds of public commenting to date, said Sofie McCoy-Astell.

Morien must now return with a report, she said. After that, the public may again make comments. In total, there are four rounds of commenting, McCoy-Astell said.

Dozens of submissions came in during the first two rounds this spring.

Morien officials said the majority of submissions in the first round — about 100 —supported the project. Up to 60 people or groups didn’t.

“

I’m furious. It’s a veritable Eden.  
- June Jarvis, Stan Rogers’s aunt

Quarry proponents include Hines, Warden Vernon Pitts, the Guysborough council and a lawyer who has done work for the county. The Mining Association of Nova Scotia, the Strait-area campus of the Nova Scotia Community College, the Guysborough County Community Business Development Corp. and the nearby Melford International Terminal also back the project. Others supporters include area companies.

The prospect of jobs in a cash-strapped area where more people leave than stay is the motivation.

“The (municipality), like many rural communities in Nova Scotia, has experienced a gradual decline,” Pitts said in his letter of support.

“The proposed Black Point operation offers the potential to mitigate some of these impacts and create opportunities for individuals to provide for their families.”

The majority of support messages appear to be form letters, with printed names inserted in a provided blank space, followed by one or two identical paragraphs.

Budreski said he didn't know any of the specifics of those letters. Morien spokesman Sean Lewis said in an email that "the municipality co-ordinated many of the letters."

Stan Rogers's aunt, June Jarvis, who lives near the site, opposes the quarry.

"I'm furious. It's a veritable Eden," Jarvis said in a recent interview. "It is so beautiful and basically untouched."

She said the community was hoodwinked and the environment will pay.

"It happened behind all of our backs. It has been very slickly done. I think it's disgusting to announce this as a done deal.

"They're saying it's going to be a wonderful thing for Guysborough. Please tell me how it's going to be a wonderful thing to have huge acreage blasted off the face of the Earth for the next 50 years."

Jarvis calls the touted jobs numbers "hogwash," claiming the forecast has been inflated.

Gretchen Fitzgerald, head of the Sierra Club's Atlantic chapter, wonders about a possible conflict because the municipality will lease the land to quarry operators.

"We need to find out what the relationship is between the company and the municipality and what is going to be the financial gain they're going to get," she said in an interview.

Carroll refused to disclose how much money Guysborough, aside from property and other taxes, would receive. The municipality has a lease option agreement with Morien/Vulcan.

"It's commercially confidential," he said. "The terms of agreements are not made public. There's no conflict."

Budreski agreed. "There is not a conflict," he said.

The Fogartys and their supporters want the property declared a protected wilderness area, something a wildlife group tried in 2000. It was voted down by councillors, including then-warden Hines.

Newspaper accounts from 2000 quote Hines as arguing the designation would bar locals from hunting, camping or using all-terrain vehicles there. An article said licensing for such activities would be available even if the land was protected.

"You realize how much money's behind this company that wants that land?" said Jim Fogarty. "The truth of the matter is that it's always been whoever has the most money wins."

The Fogartys wonder about the final outcome.

"After they're done mining or developing, they walk away and leave it and the government ends up on the hook for remediation," said Jim Fogarty.

"All you got to do is look around. It happened with the Sydney Steel plant, it happened with Devco."

Said Jarvis: "Nothing is going to spring up around a deep, deep quarry."

Ann Marie Rhynold, owner of the Seabreeze Campground on nearby Fox Island Main, fears visitors won't come.

"Stan Fest is a very big part of our business. Stan wrote his songs about here," Rhynold said in a recent interview.

"When blasting starts, I can't see it being good for my business."

Budreski said the quarry won't pull up stakes without remediation.

“In planning to start a quarry, you have to promise how you’re going to finish a quarry. The plan is a full-life plan, not a startup plan

Brian Fogarty said he had hoped his granddaughter would be an eighth-generation land holder.

“The only reason we’re doing it is for my father and grandfather,” said the 63-year-old, who lives in Halifax. “It’s a beautiful, beautiful property. It wouldn’t matter if they offered us \$15 million, it’s not for sale.”



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