



**PH-1**

**Public Hearing  
Information Package**

**May 23, 2017 at 7:00 pm**  
Sooke Council Chamber  
2225 Otter Point Road, Sooke, BC

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**6978 West Coast Road**

<b>Proposed Bylaw:</b>	<b>Bylaw No. 662, 6978 West Coast Road Phased Development Agreement Authorization Repeal Bylaw (461-1), 2017</b>
	The purpose of Bylaw No. 662, 6978 West Coast Road Phased Development Agreement Authorization Repeal Bylaw (461-1) is to terminate the Phased Development Agreement which forms Bylaw No. 461.

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3. Staff Report to Council, dated May 8, 2017 <ul style="list-style-type: none"><li>• PLN 01292 Subject Property Map</li><li>• PLN 01292 Subject Property Ortho</li><li>• Letter to Sooke Mayor and Council</li><li>• Form C Section 219 Covenant Lot 2 Revised April 26, 2017 (00672037xDDE43)</li><li>• Form C Section 219 Covenant Lot B Revised April 26, 2017 (00672033xDDE43)</li><li>• CA1877305</li><li>• CA1877307</li><li>• CA1997992</li><li>• CA1997994</li><li>• Bylaw No. 461</li></ul>	5
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*Please note that written and verbal submissions will  
become part of the public record.*





# NOTICE OF PUBLIC HEARING

The Council of the District of Sooke will hold a Public Hearing pursuant to the provisions of the *Local Government Act* in the Council Chambers at 2225 Otter Point Road, Sooke, BC on **Tuesday, May 23, 2017** commencing at 7:00 pm.

## Application Information:

**Bylaw:** 6978 West Coast Road Phased Development Agreement Authorization Repeal Bylaw No. 662 (461-1), 2017.

**Covenant Amendment:** Remove covenants CA1877305, CA1877307, CA1997992, CA1997994 and replace with a new covenant to address the applicant's request for a reduced buffer area adjacent to the Agricultural Land Reserve.

**File No:** PLN01292

**Civic Address:** 6798 & Lot B West Coast Road (shown outlined in black and hatched on the subject map)

**Legal Description:** Lot 2, Section 4, Sooke District, Plan 29991 & Lot B, Section 4, Sooke District, Plan 11326

**Applicant:** **Michael Volk**

## Proposal:

Applicant has requested to terminate the Phased Development Agreement which forms Bylaw No.461, essentially invalidating the Bylaw. Therefore, repeal of *6978 West Coast Road Phased Development Agreement Authorization Bylaw, 2010*, is recommended.

Covenants CA1877305, CA1877307, CA1997992, CA1997994 restrict the use of the land at 6978 & Lot B West Coast Road. The applicant has requested that the 15m vegetative buffer area that includes solid fencing and a 2m high berm adjacent to the Agricultural Land Reserve required under these current covenants, be reduced to a width of 7.5m with a 5-6 foot high chain link fence and a 2m wide hedge. The covenants will be replaced with a new S.219 Covenant that will address the intent of the previous covenants, and incorporates the new language regarding the ALR buffer area. The following clauses have been removed because of redundancy:

- There shall be a 15m buffer separating the subject property from the Agricultural Land Reserve to the north (replaced)
- A berm, designed by a Qualified Professional shall be constructed within the 15m buffer according to the Ministry of Agriculture Guide to Edge Planning document (replaced)
- A 6 foot high solid green fence shall be constructed along the north property line separating Agricultural Land Reserve from the residential development (replaced)
- Service the new development in accordance with the District of Sooke Subdivision and Development Standards bylaw 65 (Made redundant by Bylaw 404)
- The internal road shall be constructed as per Cross Section SDD-R06C, modified to a 7m pavement with 2.0m wide sidewalk and ornamental street lighting, cyclone CY1507. (Made redundant by Bylaw 404)
- Prior to fourth reading for the rezoning, the applicant, at their cost, is to coordinate with the District of Sooke for the completion of a sewer feasibility study to review the capacity of downstream sewers. (Completed)

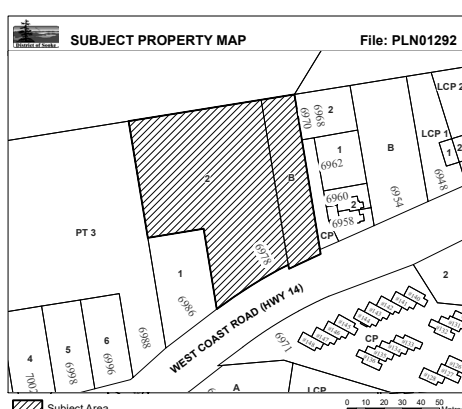
## Further Information:

Copies of the bylaw(s), supporting written reports and any relevant background documentation may be viewed in the "Public Notices" section of the District of Sooke website [www.sooke.ca](http://www.sooke.ca) or inspected at the District Municipal Offices at 2205 Otter Point Road, Sooke, BC, between the hours of 8:30 am and 4:30 pm, Monday to Friday (excluding statutory holidays) commencing May 10, 2017 to and including May 23, 2017.

## Public Input:

All persons who believe their interests in property are affected by the proposed bylaw(s) will be afforded an opportunity to be heard at the Public Hearing on the matters contained in the proposed bylaw(s). Should you have any concerns or comments you wish to convey to Council, please submit in writing by fax to 250-642-0541, email [publichearing@sooke.ca](mailto:publichearing@sooke.ca) or in person to the Corporate Officer at the District Municipal Offices no later than **Tuesday, May 23, 2017 at 12:00 pm**. Please be advised that submissions to Council will become part of the public record and are subject to disclosure under the *Freedom of Information and Protection of Privacy Act (FOIPPA)*

**NOTE: Council cannot receive further information concerning this application after the Public Hearing has concluded.**







**DISTRICT OF SOOKE  
PHASED DEVELOPMENT AGREEMENT  
REPEAL  
BYLAW NO. 662**

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A bylaw to repeal Bylaw No. 461, *6978 West Coast Road Phased Development Agreement Authorization Bylaw, 2010*.

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The Council of the District of Sooke, in open meeting assembled, enacts as follows:

1. This bylaw is cited as *6978 West Coast Road Phased Development Agreement Authorization Repeal Bylaw No. 662 (461-1), 2017*.
2. Bylaw No. 461, *6978 West Coast Road Phased Development Agreement Authorization Bylaw, 2010*, is hereby repealed.

READ a FIRST and SECOND time the 8<sup>th</sup> day of May, 2017.

PUBLIC HEARING held the            day of            2017.

READ a THIRD time the            day of            2017.

APPROVED by Ministry of Transportation and Infrastructure the            day of  
2017.

ADOPTED the            day of            2017.

Certified by:

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Maja Tait  
Mayor

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Patti Rear  
Acting Corporate Officer

*FOR INFORMATION ONLY:*

Notice of intention to proceed with this bylaw was published on the 10<sup>th</sup> day of May, 2017 and the 17<sup>th</sup> day of May, 2017, in the Sooke News Mirror newspaper, pursuant to Section 94 of the *Community Charter*.

Section 219 Modified Covenants registered the \_\_\_\_ day of \_\_\_\_\_, 2017 in the Victoria Land Titles Office under number CA1877305 and CA1877307.





## 6978 & Lot B West Coast Road - Remove and Replace Covenants & Termination of Phased Development Agreement

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### RECOMMENDATION:

THAT COUNCIL give first and second reading to Bylaw No. 622 (461-1), to repeal *Bylaw No. 461 6978 West Coast Road Phased Development Agreement Authorization Authorization Bylaw, 2010*;

THAT Council consider termination and discharge the Phased Development Agreement;

THAT Council consider release of S.219 covenants CA1877305, CA1877307, CA1997992 and CA1997994;

THAT Council consider replacement of those covenants with a new S.219 covenant for 6978 & Lot B West Coast Road that includes the requested changes to the ALR Buffer Area;

AND THAT Council schedule a public hearing for Bylaw No. 622 (461-1) to repeal *Bylaw No. 461 6978 West Coast Road Phased Development Agreement Authorization Bylaw, 2010* and for consideration of the proposed changes in the new S.219 covenant as they relate to the ALR Buffer Area.

### Report Summary:

The owners of 6978 & Lot B West Coast Road have requested that the Agricultural Land Reserve (ALR) buffer, secured through two S.219 covenants and the Phased Development Agreement, be reduced. Currently, the registered covenants and the Phased Development Agreement (PDA), which forms part of Bylaw No. 461, specifies that a 15m wide vegetative buffer be established within the proposed new subdivision adjacent to the ALR lands. The buffer includes an 8metre vegetated no cut zone, a 6 foot high solid fence along the north boundary, a 2metre berm and no structures permitted within the remaining 7metre buffer area.

The applicant has requested changes to the ALR buffer in the form of a 7.5metre wide buffer, with a 6 foot high chain link fence along the northern boundary, a 2m wide hedge, with the remainder of the buffer being lawn or garden.

To facilitate this request, the applicant has drafted a new covenant for each property that adequately address the requirements in the PDA and the existing covenants, and includes language to reduce the ALR Buffer area.

**Previous Council Action:**

At the March 29, 2016 Regular Council meeting, the owners' submitted a letter (attached) to Council that identified that the ALR Buffer on their property as being problematic for marketing. Council directed staff to work with the applicant at 6978 West Coast Road to reduce the required Agricultural Land Reserve (ALR) buffer as presented by the applicant. The owner has now made application to make the changes discussed at that meeting. This change in covenants and termination of the Phased Development Agreement requires a public hearing.

**Report:**

The applicant has submitted documentation to remove and replace covenants to reduce the ALR buffer area to 7.5 metres wide, a chain link fence, and a 2 metre wide Leyland Cyprus hedge. The remainder of the buffer area will remain free of structures.

The intent is to remove the two S.219 covenants that reiterate and itemize the requirements for an ALR buffer and replace it with one, concisely written covenant that addresses all issues.

The following itemizes the proposed changes to the Schedule A of the new covenant:

- Paragraph 1 - provides detail on proposed new buffer area; 7.5m wide, 6 foot tall chain link fence and hedging.
- Paragraphs 2 - 4 - remains the same.
- Paragraph 5 - "Servicing" requirements stay the same, except the following clauses have been removed from the original covenant:
  - There shall be a 15m buffer separating the subject property from the Agricultural Land Reserve to the north (replaced by language in paragraph 1)
  - A berm, designed by a Qualified Professional shall be constructed within the 15m buffer according to the Ministry of Agriculture Guide to Edge Planning document (replaced by language in paragraph 1)
  - A 6 foot high solid green fence shall be constructed along the north property line separating Agricultural Land Reserve from the residential development (replaced by language in paragraph 1)
  - Service the new development in accordance with the District of Sooke Subdivision and Development Standards bylaw 65 (Made redundant by Bylaw 404)
  - The internal road shall be constructed as per Cross Section SDD-R06C, modified to a 7m pavement with 2.0m wide sidewalk and ornamental street lighting, cyclone CY1507. (Made redundant by Bylaw 404)
  - Prior to fourth reading for the rezoning, the applicant, at their cost, is to coordinate with the District of Sooke for the completion of a sewer feasibility study to review the capacity of downstream sewers. (Completed)



The Phased Development Agreement also reiterates the language that was itemized in the covenants, and therefore Council will need to consider termination of the PDA. The PDA Bylaw must be repealed and the agreement terminated.

#### Current Policy

The District of Sooke does not have a formal policy regarding application of buffer areas adjacent to lands in the ALR (Agricultural-Urban edges), which has led to inconsistencies in ALR buffer areas for subdivisions and developments adjacent to ALR lands since the District's incorporation. Section 4.5 of the Official Community Plan, 2010 states that the primary Agriculture Goals are "To protect the availability of existing agricultural lands and the ability of the community to produce food locally in a sustainable manner; and To better understand the agricultural potential of the District of Sooke through public consultation, discussions with agricultural stakeholder groups and the preparation of an agricultural plan, lands which have potential for agriculture and to realize that potential."

The Agricultural Land Commission has produced a "Guide to Edge Planning", a best practices guide which promotes compatibility along Agricultural-Urban edges. This document provides various options and cross sections for buffer areas adjacent to agricultural lands. Appendix A of the Guide to Edge Planning recommends municipalities create Development Permit Areas (DPA) and Guidelines to Protect Farming (attached) as effective tools in implementation. Although separate from this application, an Agricultural DPA could be considered by Council in the review of the Official Community Plan that is currently underway.

#### **Legal Impacts:**

The applicant has prepared a covenant that incorporates the ALR buffer language that Council was in favour of considering. The applicant has also removed language from the covenants that are no longer applicable or language that is considered redundant.

Following Public Hearing, Council will need to give consideration to discharge the covenants and authorize entering into the proposed covenant. Council will also need to authorize termination of the Phased Development Agreement by considering 3rd Reading and Adoption of the repeal bylaw.

#### **Frequently Asked Questions:**

##### **Why not 'modify' existing covenants, rather than the 'release and replace' covenant approach, as proposed?**

The applicant did not want to encumber the property with additional charges to title. Every modification to a covenant is a new charge noted on the title. Staff agreed that release of the existing covenants, and replacement with a new covenant that incorporates all requirements and the new buffer area would be satisfactory.

##### **Why terminate the PDA?**

The PDA contains language reiterated in the existing covenants. The proposed covenant secures the requirements and contains consistent language and format as covenants written in more recent rezoning applications.

**Attached Documents:**

[PLN01292 Subject Property Map](#)

[PLN01292 Subject Property Map Ortho](#)

[Letter to Sooke Mayor & Council](#)

[Form C Section 219 Covenant Lot 2 Revised April 26 17 \(00672037xDDE43\)](#)

[Form C Section 219 Covenant Lot B Revised April 26 17 \(00672033xDDE43\)](#)

[CA1877305](#)

[CA1877307](#)

[CA1997992](#)

[CA1997994](#)

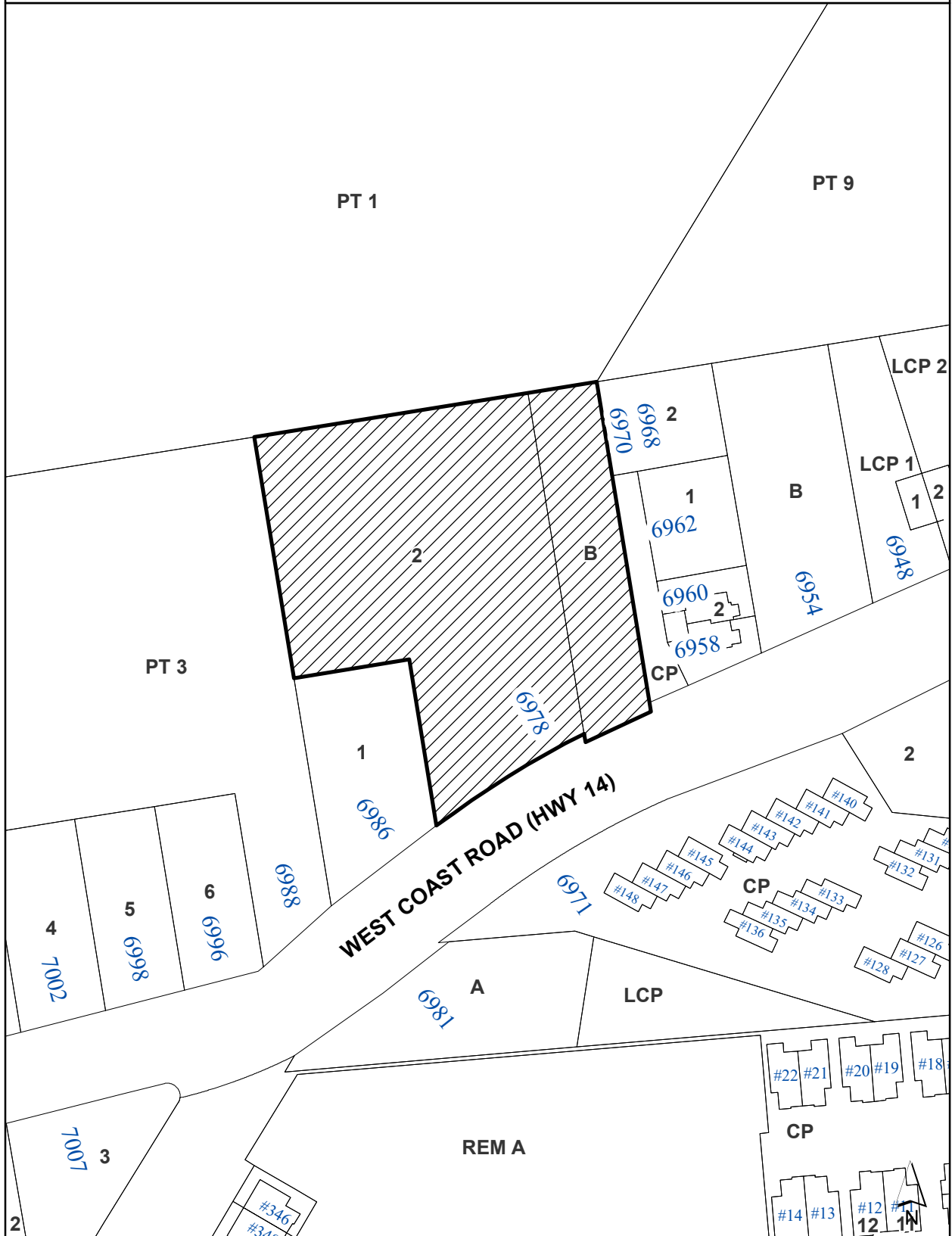
[461 6978 WC Rd PDA Bylaw](#)


[662-PDA repeal bylaw 4461-6978 WC Rd](#)



# SUBJECT PROPERTY MAP

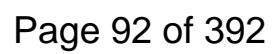
File: PLN01292



 Subject Area

0 10 20 30 40 50  
Metres







## Letter to Mayor and Council for the District of Sooke



Michael Volk

250.744.7574 mvolk@shaw.ca 708 Skyview Place Victoria, BC V9B 6G5

March 3, 2016

Mayor Maja Tait and Sooke City Council  
2205 Otter Point Road  
Sooke, BC V9Z 1J2

Dear Mayor and Council,

I'm a local real estate agent with 25 years of experience in land development, and specifically sub-division project marketing, and I'm writing you about the District of Sooke and their ALR Edge Planning Strategy.

The idea is simple. Maintain a 'buffer' to effectively shield sensitive lands from proposed development and vice-versa. The problem that we've run into is that Sooke properties have been asked to provide a buffer of dense vegetation, and also a 6 foot tall fence to be built on top of a berm.

The resulting 15m 'buffer' then has dense trees and green space which includes a 7.5m 'no cut' zone. This is over ambitious buffer might make sense in Saskatchewan, but in Sooke where these lands haven't been farmed in generations, if ever - this just makes no sense at all. It must be noted, that most of the neighbouring developments along this ALR boundary have done nothing like this.

After review the Edge Planning Guide one thing that stands out is the distances the guide is referring to included farms that are very large in the hundreds of acres, and that most of these lands are being actively farmed. Most of the lands in Sooke haven't been actively framed in years.

It's interesting to note that much of the data was available back in the 1990's but policy was never adopted. The Subdivision Near Agriculture Guide was published in 1996, and Planning Subdivisions Near Agriculture - published in 1997.

The Edge Planning Guide is very clear and depends on a number of factors. The guide clearly states that ***"Locating the most eligible areas will involve undertaking an overview inventory to identify broadly where the critical and non-critical edges are. Such an overview will ensure that effort is not wasted on areas where there is little possibility of future conflict."*** I'm not sure that the District has identified any critical areas, anywhere in the District. This land was singled out, but it's not being farmed and has not been farmed in many years, if ever.

The Edge Planning Guide suggests that ***"It is important to know whether the surrounding non-farm land use will be subject to change to a more urban intensive use in the future. If changes are expected, it would be prudent to have the edge planning area (EPA) in place ahead of time."*** The Sooke OCP contains no mention of any EPA in the District.

## Letter to Mayor and Council for the District of Sooke

There is a reference to Edge Planning in one section of the OCP and it simply says that the District will ***"Ensure sufficient buffers, ..., between agricultural lands and adjacent, non-agricultural properties; use of 'best practices' guides from the ALC should be considered during the planning or development processes, e.g. Ministry of Agriculture and Land's Guide to Edge Planning."***

The simple fact is that so many homes already infringe on this boundary, and any future intensive farming on this land will not be negatively impacted by the location of these homes with a hedge and 6 foot tall fence to separate them from any farming potential.

The guide further suggests that city staff ***"identify broadly where the critical and non-critical edges are. Such an overview will ensure that effort is not wasted on areas where there is little possibility of future conflict."***

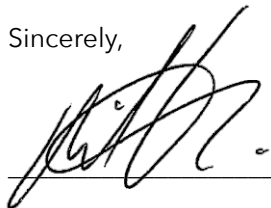
I suggest that Sooke consider adopting a policy for Edge Planning near these un-used farmlands that includes the following:

- 5 - 6' tall chain link fencing installed on the property line
- 2m wide Leyland Cypress (deer proof) hedge on the inside of the fencing. Chain link fencing is best because it allows light to the hedge, which will quickly hide any fencing.
- 5.5m buffer of lawn or gardens as shown on the attached. Allow garden sheds or any other usual yard items in this area.
- Total is a 7.5m buffer between the homes and the ALR lands.

In closing I would like to ask that Mayor and Council request that staff re-visit this issue in the District so that future would-be developers don't make this mistake. This has been a difficult process for these families to navigate, and the hope is that they can have these restrictive covenants removed or at very least modified so that they can market their property and sell without any further financial loss.

Thank you for your time and consideration.

Sincerely,



**Michael Volk**  
iView Development Corp.  
Project Marketing & Development  
c. (250) 744 7574  
e. mvolk@shaw.ca











LAND TITLE ACT  
FORM E

SCHEDULE

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM, OR GENERAL INSTRUMENT FORM.

5. TRANSFEROR(S):

DANIEL WILLIAM PERRIER, BONNIE LYNN PERRIER

BRIAN PETER SCOTNEY, CATHERINE ANN SCOTNEY

VANCOUVER CITY SAVINGS CREDIT UNION IN TRUST SEE BL51963 AS TO PRIORITY

**TERMS OF INSTRUMENT – PART 2**

**SECTION 219 COVENANT**

THIS MODIFICATION AGREEMENT dated for reference the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

BETWEEN:

**DANIEL WILLIAM PERRIER and BONNIE LYNN PERRIER**  
c/o 961 Dunford Avenue,  
Victoria, BC V9B 2S4  
as to an Undivided Interest 50/100 Interest as Joint Tenants

and:

**BRIAN PETER SCOTNEY and CATHERINE ANN SCOTNEY**  
c/o 885 Finlayson Road,  
Victoria, BC V9B 6E6  
as to an Undivided Interest 50/100 Interest as Joint Tenants

(collectively the “**Owners**”)

AND:

**DISTRICT OF SOOKE**  
a municipality incorporated under the *Local Government Act* (B.C.)  
2205 Otter Point Road,  
Sooke, BC V9Z 1J2  
(the “**District**”)

WHEREAS:

**R1** The Owners are the registered owners of the following lands and premises:

P.I.D.: 001-326-775  
Lot 2, Section 4, Sooke District, Plan 29991

(the “**Lands**”);

**R2** The Owners propose to develop the Lands;

**R3** The Owners, or their predecessors in interest, have granted to the District two Section 219 Covenants dealing with the development of the Lands, which were registered in the Victoria Land Title Office:

(a) on January 21, 2011 under Instrument No. CA1877305; and

(b) on January 21, 2011 under Instrument No. CA1877307;

(collectively referred to as the “**Prior Section 219 Covenants**”);

**D.** The Owners have requested that the District approve the discharge and release of the Prior Section 219 Covenants and replace the Prior Section 219 Covenants with the provisions

contained in this Agreement which are more appropriate to the development and proposed use of the Lands;

- E. The Council of the District has determined that the development of the Lands would, but for the covenants contained in this Agreement, not be in the public interest, and the Owner therefore wishes to grant pursuant to s. 219 of the Land Title Act, and the District wishes to accept, the new covenants over the Lands as herein defined that are set out in this Agreement in substitution for the Prior Section 219 Covenants;
- F. The parties have agreed to register this covenant in the Victoria Land Title Office under section 219 of the *Land Title Act* and section 905.1(4)(d) of the *Local Government Act*.

THIS AGREEMENT is evidence that in consideration of payment of Two (\$2.00) Dollars by the Transferee to each Transferor (the receipt of which is acknowledged by each Transferor), each Transferor covenants and agrees as follows with the Transferee :

#### **Restrictions on Use**

1. The Owners covenant and agree with the District that:
  - (a) the Lands must not be used; and
  - (b) the Lands must not be subdivided; and
  - (c) the Lands must not be altered; and
  - (d) development of the Lands, including by the construction or placement of any building or structure on the Lands and by development of any golf course on the Lands, is prohibited; and
  - (e) no building permit may be applied for, and the District is not obliged to issue any building permit, in respect of the Lands; and
  - (f) no occupancy permit may be applied for, and the District is not obliged to issue any occupancy permit, in respect of the Lands,

if the use, subdivision, alteration, development, building or occupancy is not in accordance with the Schedule of Restrictions attached as Schedule A.

#### **Release of Prior S.219 Covenants**

2. Upon and subject to the registration of this Covenant at the Land Title Office, the District shall release and execute and deliver to the Owners a registrable discharge of the Prior Section 219 Covenants.
3. Any opinion, decision, act or expression of satisfaction of the District provided for in this Agreement is to be taken or made by the District's Municipal Engineer or his or her delegate authorized as such in writing, in each case acting reasonably.
4. The Owners may, after the Rezoning Bylaws is adopted, request a discharge of any particular covenant granted in this Agreement in respect of any parcel into which the Land may be

subdivided, and the District shall execute and deliver a discharge in respect of any such covenant that has been, in the District's opinion, fully satisfied by the Owners.

5. The Owners release, and must indemnify and save harmless, the District, its elected and appointed officials and employees, from and against all liability, actions, causes of action, claims, damages, expenses, costs, debts, demands or losses suffered or incurred by the Owners, or anyone else, arising from the granting or existence of this Agreement, from the performance by the Owners of this Agreement, or any default of the Owners under or in respect of this Agreement.
6. The parties agree that this Agreement creates only contractual obligations and obligations arising out of the nature of this document as a covenant under seal. The parties agree that no tort obligations or liabilities of any kind exist between the parties in connection with the performance of, or any default under or in respect of, this Agreement. The intent of this section is to exclude tort liability of any kind and to limit the parties to their rights and remedies under the law of contract and under the law pertaining to covenants under seal.
7. The rights given to the District by this Agreement are permissive only and nothing in this Agreement imposes any legal duty of any kind on the District to anyone, or obliges the District to enforce this Agreement, to perform any act or to incur any expense in respect of this Agreement.
8. Where the District is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent, the Owner agrees that the District is under no public law duty of fairness or natural justice in that regard and agrees that the District may do any of those things in the same manner as if it were a private party and not a public body.
9. This Agreement does not:
  - (a) affect or limit the discretion, rights or powers of the District under any enactment (as defined in the *Interpretation Act*, on the reference date of this Agreement) or at common law, including in relation to the use of the Land;
  - (b) affect or limit any enactment related to the use of the Land; or
  - (c) relieve the Owners from complying with any enactment, including in relation to the use of the Land.
10. Every obligation and covenant of the Owners in this Agreement constitutes both a contractual obligation and a covenant granted under s.219 of the *Land Title Act* in respect of the Land and this Agreement burdens the Land and runs with it and binds the successor in title to the Land. This Agreement burdens and charges all of the Land and any parcel into which it is subdivided by any means and any parcel into which the Land is consolidated. The Owners are only liable for breaches of this Agreement that occur while the Owners are the registered Owners of the Land.
11. The Owners agree to do everything reasonably necessary, at the Owners' expense, to ensure that this Agreement is registered against title to the Land with priority over all financial charges, liens and encumbrances registered, or the registration of which is pending, at the time of application for registration of this Agreement.

12. An alleged waiver of any breach of this Agreement is effective only if it is an express waiver in writing of the breach in respect of which the waiver is asserted. A waiver of a breach of this Agreement does not operate as a waiver of any other breach of this Agreement.
13. If any part of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.
14. This Agreement is the entire agreement between the parties regarding its subject.
15. This Agreement binds the parties to it and their respective successors, heirs, executors and administrators.
16. The Owners must do everything reasonably necessary to give effect to the intent of this Agreement, including execution of further instrument.
17. By executing and delivering this Agreement each of the parties intends to create both a contract and a deed executed and delivered under seal.

**Priority Agreement**

18. Vancouver City Savings Credit Union (the **Chargeholder**) being the holder of Mortgage No. CA1752916 (the **"Charge"**). The Chargeholder, in consideration of the premises and the sum of One Dollar (\$1.00) now paid to the Chargeholder by the Transferee, hereby approves of and consents to the granting of the within Agreement and covenants and agrees that the same shall be binding upon its interest in or charge upon the Lands and shall be an encumbrance upon the Lands prior to the Charge in the same manner and to the same effect as if it had been dated and registered prior to the Charge.

IN WITNESS WHEREOF the Chargeholder has executed this Agreement on Form D to which this Agreement is attached and which forms part of this Agreement.

As evidence of their agreement to be bound by the terms of this instrument, the parties hereto have executed the Land Title Office Form C that is attached hereto and forms part of this Agreement.

**SCHEDULE 'A'**  
**SCHEDULE OF RESTRICTIONS**

**Buffer**

1. The Owners covenant that they shall not subdivide the Lands and that they shall not construct any buildings, improvements or structures on the Lands, except for structures such as roads, pipes, mains, pumps, and all related facilities and equipment as may be necessary to provide water, sanitary sewer, stormwater management and fire suppression services to the Lands in accordance with all required permits and approvals, until and unless:
  - (a) the Owners have constructed and/or planted:
    - (i) a 5' – 6' tall chain link fence on or adjacent to the northern boundary of the Lands with and extending across the buffer area described in Exhibit 'A' attached hereto; and
    - (ii) a Leyland Cypress or equivalent hedge within two (2) metres of the fence referred to in Section (a)(i).
  - (b) the buffer area as depicted in Exhibit 'A' attached hereto shall be restricted to use as a lawn, gardens or other landscaping and no permanent improvements or buildings shall be located within the buffer area.

**Amenities**

2. The amenities to be provided are one or more of the following: parks and trail development, waterfront walkway, affordable housing, open space (in addition to statutory park dedications), day care facilities (not for profit), public art, park equipment, ALR acquisitions, community gardens, parking structures, performing arts facility, green infrastructure, beautification projects, and preservation of heritage structures, having in the aggregate a market value not exceeding \$5,000 for each additional dwelling unit in excess of the 9.2 dwelling unit Base Density on the land, in the locations and in accordance with standards approved in writing by the District's Municipal Planner and Municipal Engineer.
3. Despite Section 2 of this Schedule, in lieu of provision of these amenities the Developer may at subdivision stage pay the District \$5,000 for each additional dwelling unit in excess of the 9.2 dwelling unit Base Density on the land, and the District must use the amount paid only for provision of the amenities to be collected at time of subdivision.
4. The amenity contribution shall be based on the maximum residential density of the lots created at the time of subdivision.



### **Servicing**

5. The Developer shall at its sole cost design, install, plant and construct the following works, services and other things in advance of the issuance of a subdivision approval on the Land:
  - (a) Frontage dedication requirements; 15m from Highway 14 centerline;
  - (b) Complete a detailed erosion and sediment control plan prior to commencement of any construction;
  - (c) Offsite road improvements as noted in the Traffic Impact Assessment report, completed by Boulevard Transportation Group, dated 26 July, 2010;
  - (d) All driveways within public property are to be hard surfaced to the property line; and
  - (e) Cash in lieu for 2.0m concrete sidewalk along Highway 15.
6. Prior to the issuance of a building permit in respect of the Lands authorizing the construction and installation or other provision of the Servicing required under Section 1 and Section 5 of this Schedule A, and the Subdivision and Development Standards Bylaw (as amended), the Developer must provide to the District security in the form of an irrevocable letter of credit, or in a form satisfactory to the District, and in the amount of one hundred ten (110%) percent of the estimated cost of constructing and installing and otherwise providing the Servicing required under both the Subdivision and Development Standards Bylaw (as amended) and Sections 1 and 5, as estimated by a Professional Engineer and accepted by the Municipal Engineer acting reasonably, which security will be released to the Developer upon completion of the works and services and upon final acceptance by the District's Municipal Engineer.

### **General**

7. In all obligations and covenants where the Owner are required to construct certain works and improvements, the Owner may post sufficient security with the Municipality, in a form and amount acceptable to the Municipality, in exchange for completing the works and/or improvements within a specified time period.
8. The Owner may, therefore, request a discharge of any particular covenant granted in this Agreement, for which, either sufficient security was posted by the Owner and accepted by the Municipality, or the work has been completed and accepted by the Municipality, therefore deemed to be fully satisfied by the Owner, and the Municipality shall execute and deliver a discharge in respect of any such covenant.

# EXHIBIT A – CONCEPT PLAN



**LAND TITLE ACT**  
**FORM C (Section 233) CHARGE**  
**GENERAL INSTRUMENT - PART 1 Province of British Columbia**

PAGE 1 OF 12 PAGES

Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 1996 c.250, and that you have applied your electronic signature in accordance with Section 168.3, and a true copy, or a copy of that true copy, is in your possession.

1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)

**JONES EMERY HARGREAVES SWAN LLP**

**Barristers & Solicitors**

**#1212-1175 Douglas Street**

**Victoria**

**BC V8W 2E1**

File No.: 17-0301 PCT

Telephone No.: 250-382-7222

LTO Client No.: 1021

Deduct LTSA Fees? Yes ☒

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:  
 [PID] [LEGAL DESCRIPTION]

**005-001-056 LOT B SECTION 4 SOOKE DISTRICT PLAN 11326**

STC? YES ☐

3. NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

**Covenant**

4. TERMS: Part 2 of this instrument consists of (select one only)

(a) ☒ Filed Standard Charge Terms D.F. No.

(b) ☐ Express Charge Terms Annexed as Part 2

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument.

5. TRANSFEROR(S):

**SEE SCHEDULE**

6. TRANSFEREE(S): (including postal address(es) and postal code(s))

**DISTRICT OF SOOKE**

**2205 OTTER POINT ROAD**

**SOOKE**

**V9Z 1J2**

**BRITISH COLUMBIA**

**CANADA**

**Incorporation No**

**N/A**

7. ADDITIONAL OR MODIFIED TERMS:

8. EXECUTION(S): This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)

\_\_\_\_\_

**Execution Date**

Y	M	D

Transferor(s) Signature(s)

\_\_\_\_\_  
**DANIEL WILLIAM PERRIER**

\_\_\_\_\_  
**BONNIE LYNN PERRIER**

**OFFICER CERTIFICATION:**

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

**LAND TITLE ACT  
FORM D**

**EXECUTIONS CONTINUED**

PAGE 2 of 12 PAGES

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

Y M D

BRIAN PETER SCOTNEY

CATHERINE ANN SCOTNEY

**OFFICER CERTIFICATION:**

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**LAND TITLE ACT  
FORM D**

**EXECUTIONS CONTINUED**

PAGE 3 of 12 PAGES

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

Y M D

VANCOUVER CITY SAVINGS CREDIT  
UNION IN TRUST SEE BL51963  
by its authorized signatory(ies)

Name:

Name:

**OFFICER CERTIFICATION:**

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

**LAND TITLE ACT  
FORM D**

**EXECUTIONS CONTINUED**

PAGE 4 of 12 PAGES

Officer Signature(s)

**Execution Date**

Y M D

Transferor / Borrower / Party Signature(s)

DISTRICT OF SOOKE  
by its authorized signatory(ies)

Name:

Name:

**OFFICER CERTIFICATION:**

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

**LAND TITLE ACT  
FORM E**

**SCHEDULE**

**PAGE 5 OF 12 PAGES**

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM, OR GENERAL INSTRUMENT FORM.

**5. TRANSFEROR(S):**

DANIEL WILLIAM PERRIER, BONNIE LYNN PERRIER

BRIAN PETER SCOTNEY, CATHERINE ANN SCOTNEY

VANCOUVER CITY SAVINGS CREDIT UNION IN TRUST SEE BL51963 AS TO PRIORITY

**TERMS OF INSTRUMENT – PART 2**

**SECTION 219 COVENANT**

THIS MODIFICATION AGREEMENT dated for reference the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

BETWEEN:

**DANIEL WILLIAM PERRIER and BONNIE LYNN PERRIER**  
c/o 961 Dunford Avenue,  
Victoria, BC V9B 2S4  
as to an Undivided Interest 50/100 Interest as Joint Tenants

and:

**BRIAN PETER SCOTNEY and CATHERINE ANN SCOTNEY**  
c/o 885 Finlayson Road,  
Victoria, BC V9B 6E6  
as to an Undivided Interest 50/100 Interest as Joint Tenants

(collectively the “**Owners**”)

AND:

**DISTRICT OF SOOKE**  
a municipality incorporated under the *Local Government Act* (B.C.)  
2205 Otter Point Road,  
Sooke, BC V9Z 1J2  
(the “**District**”)

WHEREAS:

**R1** The Owners are the registered owners of the following lands and premises:

P.I.D.: 005-001-056  
Lot B, Section 4, Sooke District, Plan 11326

(the “**Lands**”);

**R2** The Owners propose to develop the Lands;

**R3** The Owners, or their predecessors in interest, have granted to the District two Section 219 Covenants dealing with the development of the Lands, which were registered in the Victoria Land Title Office:

(a) on May 3, 2011 under Instrument No. CA1997992; and

(b) on May 3, 2011 under Instrument No. CA1997994;

(collectively referred to as the “**Prior Section 219 Covenants**”);

**D.** The Owners have requested that the District approve the discharge and release of the Prior Section 219 Covenants and replace the Prior Section 219 Covenants with the provisions



contained in this Agreement which are more appropriate to the development and proposed use of the Lands;

- E. The Council of the District has determined that the development of the Lands would, but for the covenants contained in this Agreement, not be in the public interest, and the Owner therefore wishes to grant pursuant to s. 219 of the Land Title Act, and the District wishes to accept, the new covenants over the Lands as herein defined that are set out in this Agreement in substitution for the Prior Section 219 Covenants;
- F. The parties have agreed to register this covenant in the Victoria Land Title Office under section 219 of the *Land Title Act* and section 905.1(4)(d) of the *Local Government Act*.

THIS AGREEMENT is evidence that in consideration of payment of Two (\$2.00) Dollars by the Transferee to each Transferor (the receipt of which is acknowledged by each Transferor), each Transferor covenants and agrees as follows with the Transferee :

#### **Restrictions on Use**

1. The Owners covenant and agree with the City that:
  - (a) the Lands must not be used; and
  - (b) the Lands must not be subdivided; and
  - (c) the Lands must not be altered; and
  - (d) development of the Lands, including by the construction or placement of any building or structure on the Lands, is prohibited; and
  - (e) no building permit may be applied for, and the City is not obliged to issue any building permit, in respect of the Lands; and
  - (f) no occupancy permit may be applied for, and the City is not obliged to issue any occupancy permit, in respect of the Lands,

if the use, subdivision, alteration, development, building or occupancy is not in accordance with the Schedule of Restrictions attached as Schedule A.

#### **Release of Prior S.219 Covenants**

2. Upon and subject to the registration of this Covenant at the Land Title Office, the District shall release and execute and deliver to the Owners a registrable discharge of the Prior Section 219 Covenants.
3. Any opinion, decision, act or expression of satisfaction of the District provided for in this Agreement is to be taken or made by the District's Municipal Engineer or his or her delegate authorized as such in writing, in each case acting reasonably.
4. The Owners may, after the Rezoning Bylaws is adopted, request a discharge of any particular covenant granted in this Agreement in respect of any parcel into which the Land may be

subdivided, and the District shall execute and deliver a discharge in respect of any such covenant that has been, in the District's opinion, fully satisfied by the Owners.

5. The Owners release, and must indemnify and save harmless, the District, its elected and appointed officials and employees, from and against all liability, actions, causes of action, claims, damages, expenses, costs, debts, demands or losses suffered or incurred by the Owners, or anyone else, arising from the granting or existence of this Agreement, from the performance by the Owners of this Agreement, or any default of the Owners under or in respect of this Agreement.
6. The parties agree that this Agreement creates only contractual obligations and obligations arising out of the nature of this document as a covenant under seal. The parties agree that no tort obligations or liabilities of any kind exist between the parties in connection with the performance of, or any default under or in respect of, this Agreement. The intent of this section is to exclude tort liability of any kind and to limit the parties to their rights and remedies under the law of contract and under the law pertaining to covenants under seal.
7. The rights given to the District by this Agreement are permissive only and nothing in this Agreement imposes any legal duty of any kind on the District to anyone, or obliges the District to enforce this Agreement, to perform any act or to incur any expense in respect of this Agreement.
8. Where the District is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent, the Owner agrees that the District is under no public law duty of fairness or natural justice in that regard and agrees that the District may do any of those things in the same manner as if it were a private party and not a public body.
9. This Agreement does not:
  - (a) affect or limit the discretion, rights or powers of the District under any enactment (as defined in the *Interpretation Act*, on the reference date of this Agreement) or at common law, including in relation to the use of the Land;
  - (b) affect or limit any enactment related to the use of the Land; or
  - (c) relieve the Owners from complying with any enactment, including in relation to the use of the Land.
10. Every obligation and covenant of the Owners in this Agreement constitutes both a contractual obligation and a covenant granted under s.219 of the *Land Title Act* in respect of the Land and this Agreement burdens the Land and runs with it and binds the successor in title to the Land. This Agreement burdens and charges all of the Land and any parcel into which it is subdivided by any means and any parcel into which the Land is consolidated. The Owners are only liable for breaches of this Agreement that occur while the Owners are the registered Owners of the Land.
11. The Owners agree to do everything reasonably necessary, at the Owners' expense, to ensure that this Agreement is registered against title to the Land with priority over all financial charges, liens and encumbrances registered, or the registration of which is pending, at the time of application for registration of this Agreement.

12. An alleged waiver of any breach of this Agreement is effective only if it is an express waiver in writing of the breach in respect of which the waiver is asserted. A waiver of a breach of this Agreement does not operate as a waiver of any other breach of this Agreement.
13. If any part of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.
14. This Agreement is the entire agreement between the parties regarding its subject.
15. This Agreement binds the parties to it and their respective successors, heirs, executors and administrators.
16. The Owners must do everything reasonably necessary to give effect to the intent of this Agreement, including execution of further instrument.
17. By executing and delivering this Agreement each of the parties intends to create both a contract and a deed executed and delivered under seal.

**Priority Agreement**

18. Vancouver City Savings Credit Union (the **Chargeholder**) being the holder of Mortgage No. CA1752900 (the "**Charge**"). The Chargeholder, in consideration of the premises and the sum of One Dollar (\$1.00) now paid to the Chargeholder by the Transferee, hereby approves of and consents to the granting of the within Agreement and covenants and agrees that the same shall be binding upon its interest in or charge upon the Lands and shall be an encumbrance upon the Lands prior to the Charge in the same manner and to the same effect as if it had been dated and registered prior to the Charge.

IN WITNESS WHEREOF the Chargeholder has executed this Agreement on Form D to which this Agreement is attached and which forms part of this Agreement.

As evidence of their agreement to be bound by the terms of this instrument, the parties hereto have executed the Land Title Office Form C that is attached hereto and forms part of this Agreement.

**SCHEDULE 'A'**  
**SCHEDULE OF RESTRICTIONS**

**Buffer**

1. The Owners covenant that they shall not subdivide the Lands and that they shall not construct any buildings, improvements or structures on the Lands, except for structures such as roads, pipes, mains, pumps, and all related facilities and equipment as may be necessary to provide water, sanitary sewer, stormwater management and fire suppression services to the Lands in accordance with all required permits and approvals, until and unless:
  - (a) the Owners have constructed and/or planted:
    - (i) a 5' – 6' tall chain link fence on or adjacent to the northern boundary of the Lands with and extending across the buffer area described in Exhibit 'A' attached hereto; and
    - (ii) a Leyland Cypress or equivalent hedge within two (2) metres of the fence referred to in Section (a)(i).
  - (b) the buffer area as depicted in Exhibit 'A' attached hereto shall be restricted to use as a lawn, gardens or other landscaping and no permanent improvements or buildings shall be located within the buffer area.

**Amenities**

2. The amenities to be provided are one or more of the following: parks and trail development, waterfront walkway, affordable housing, open space (in addition to statutory park dedications), day care facilities (not for profit), public art, park equipment, ALR acquisitions, community gardens, parking structures, performing arts facility, green infrastructure, beautification projects, and preservation of heritage structures, having in the aggregate a market value not exceeding \$5,000 for each additional dwelling unit in excess of the 9.2 dwelling unit Base Density on the land, in the locations and in accordance with standards approved in writing by the District's Municipal Planner and Municipal Engineer.
3. Despite Section 2 of this Schedule, in lieu of provision of these amenities the Developer may at subdivision stage pay the District \$5,000 for each additional dwelling unit in excess of the 9.2 dwelling unit Base Density on the land, and the District must use the amount paid only for provision of the amenities to be collected at time of subdivision.
4. The amenity contribution shall be based on the maximum residential density of the lots created at the time of subdivision.

**Servicing**

5. The Developer shall at its sole cost design, install, plant and construct the following works, services and other things in advance of the issuance of a subdivision approval on the Land:
  - (a) Frontage dedication requirements; 15m from Highway 14 centerline;
  - (b) Complete a detailed erosion and sediment control plan prior to commencement of any construction;
  - (c) Offsite road improvements as noted in the Traffic Impact Assessment report, completed by Boulevard Transportation Group, dated 26 July, 2010;
  - (d) All driveways within public property are to be hard surfaced to the property line; and
  - (e) Cash in lieu for 2.0m concrete sidewalk along Highway 15.
6. Prior to the issuance of a building permit in respect of the Lands authorizing the construction and installation or other provision of the Servicing required under Section 1 and Section 5 of this Schedule A, and the Subdivision and Development Standards Bylaw (as amended), the Developer must provide to the District security in the form of an irrevocable letter of credit, or in a form satisfactory to the District, and in the amount of one hundred ten (110%) percent of the estimated cost of constructing and installing and otherwise providing the Servicing required under both the Subdivision and Development Standards Bylaw (as amended) and Sections 1 and 5, as estimated by a Professional Engineer and accepted by the Municipal Engineer acting reasonably, which security will be released to the Developer upon completion of the works and services and upon final acceptance by the District's Municipal Engineer.

**General**

7. In all obligations and covenants where the Owner are required to construct certain works and improvements, the Owner may post sufficient security with the Municipality, in a form and amount acceptable to the Municipality, in exchange for completing the works and/or improvements within a specified time period.
8. The Owner may, therefore, request a discharge of any particular covenant granted in this Agreement, for which, either sufficient security was posted by the Owner and accepted by the Municipality, or the work has been completed and accepted by the Municipality, therefore deemed to be fully satisfied by the Owner, and the Municipality shall execute and deliver a discharge in respect of any such covenant.

# EXHIBIT A – CONCEPT PLAN



LAND TITLE ACT  
FORM C (Section 233) CHARGE  
GENERAL INSTRUMENT - PART 1 Province of British Columbia

Jan-21-2011 11:30:08.001

CA1877305 CA1877306

PAGE 1 OF 16 PAGES

Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 1996 c.250, and that you have applied your electronic signature in accordance with Section 168.3, and a true copy, or a copy of that true copy, is in your possession.

Richard Russell  
Mayhue HCSHZI

Digitally signed by Richard Russell  
Mayhue HCSHZI  
DN: cn=Richard Russell Mayhue  
HCSHZI, c=CA, o=Lawyer, ou=Verity  
ID at www.juricor.com/LKUP.cfm?  
id=HCSHZI  
Date: 2011.01.21 11:28:37 -0800

1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)

MAYHUE &amp; COMPANY

Barrister &amp; Solicitor

PERD 003

2077 CHURCH ROAD, P.O. BOX 728

SOOKE, B.C., V9Z 1H7

Document Fees: \$143.80

Deduct LTSA Fees? Yes ☒

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID]

[LEGAL DESCRIPTION]

001-326-775 LOT 2 SECTION 4 SOOKE DISTRICT PLAN 29991

STC? YES ☐

3. NATURE OF INTEREST

Covenant

CHARGE NO.

ADDITIONAL INFORMATION

Priority Agreement

S.219 Land Title Act

Page 6 of Part 2

4. TERMS: Part 2 of this instrument consists of (select one only)

(a) ☐ Filed Standard Charge Terms D.F. No.(b) ☒ Express Charge Terms Annexed as Part 2

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument.

5. TRANSFEROR(S):

SEE SCHEDULE

6. TRANSFEREE(S): (including postal address(es) and postal code(s))

DISTRICT OF SOOKE

2205 OTTER POINT ROAD,

SOOKE

BRITISH COLUMBIA

V9Z 1J2

CANADA

7. ADDITIONAL OR MODIFIED TERMS:

NONE

8. EXECUTION(S): This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)

Execution Date

Transferor(s) Signature(s)

RICHARD MAYHUE  
Barrister & Solicitor  
2077 Church Road  
PO Box 728  
Sooke, BC V9Z 1H7

Y	M	D
10	12	15

DANIEL WILLIAM PERRIER

BONNIE LYNN PERRIER

## OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

**LAND TITLE ACT  
FORM D  
EXECUTIONS CONTINUED**

PAGE 2 OF 16 PAGES

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

\_\_\_\_\_  
RICHARD MAYHUE  
Barrister & Solicitor  
2077 Church Road  
PO Box 728  
Sooke, BC V9Z 1H7

Y	M	D
10	12	15

\_\_\_\_\_  
BRIAN PETER SCOTNEY

( as to both signatures )

\_\_\_\_\_  
CATHERINE ANN SCOTNEY

\_\_\_\_\_  
Rosella Buchannon  
A Commissioner for Taking Affidavits  
for British Columbia  
Suite 1300 - 13450 - 102 Avenue  
Surrey, BC V3T 5X4

10	12	20
----	----	----

VANCOUVER CITY SAVINGS CREDIT  
UNION IN TRUST SEE BL51963 by its  
authorized signatory(ies)

\_\_\_\_\_  
Print Name: Sandy Bevilacqua

( as to both signatures )

\_\_\_\_\_  
Print Name:

**OFFICER CERTIFICATION:**

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.



LAND TITLE ACT  
FORM D  
EXECUTIONS CONTINUED

Officer Signature(s)

Execution Date

Y	M	D
11	01	17

Bonnie Sprinkling, Corporate Officer  
District of Sooke  
2205 Otter Point Road  
Sooke, BC V9Z 1J2  
Commissioner for taking Affidavits in  
British Columbia

Transferor / Borrower / Party Signature(s)

DISTRICT OF SOOKE by its authorized  
signatory(ies)

Mayor: Janet Evans

Chief Administrative Officer: Evan  
Parliament

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

LAND TITLE ACT  
FORM E

SCHEDULE

PAGE 4 OF 16 PAGES

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM, OR GENERAL INSTRUMENT FORM.

5. TRANSFEROR(S):

DANIEL WILLIAM PERRIER, BONNIE LYNN PERRIER, BRIAN PETER SCOTNEY, CATHERINE ANN SCOTNEY AND VANCOUVER CITY SAVINGS CREDIT UNION IN TRUST SEE BL51963

**TERMS OF INSTRUMENT – PART 2**

**SECTION 219 COVENANT**

THIS AGREEMENT dated for reference the 15th day of December, 2010

BETWEEN:

**Daniel William Perrier & Bonnie Lynn Perrier**  
961 Dunford Avenue  
Victoria BC V9B 2S4

**Brian Peter Scotney & Catherine Ann Scotney**  
3504 Happy Valley Road  
Victoria BC V9C 2Y3

(hereinafter called the “Owner”)

AND:

**DISTRICT OF SOOKE**  
2205 Otter Point Road,  
Sooke, B.C. V9Z 1J2

(hereinafter called the “Municipality”)

WHEREAS:

- A. The Owner is the registered owner of, and has applied to rezone those lands and premises in the District of Sooke, in the Province of British Columbia legally described as:

Parcel Identifier: 001-326-775

Legal Description: Lot 2, Section 4, Sooke District, Plan 29991

(hereinafter called the “Lands”);

- B. The Owner proposes to develop the Land for residential purposes as shown on Schedule A;

- C. The Owner has requested the Municipality to adopt Bylaw No. 456 (the “Rezoning Bylaw”) rezoning the Land to permit the development proposed by the Owner, and

- D. the Council of the Municipality has determined that the adoption of the Rezoning Bylaw would, but for the covenants contained in this Agreement, not be in the public interest; and the Owner therefore wishes to grant pursuant to s.219 of the Land Title Act, and the Municipality wishes to accept, the covenants over the Land that are set out in this Agreement.
- E. The Owner has agreed to grant the within covenants to ensure construction and maintenance of fencing, landscaping and a berm on the Lands in the course of development on the Lands to be constructed as per Schedule B;

NOW THEREFORE THIS AGREEMENT WITNESSES that pursuant to Section 219 of the *Land Title Act*, and in consideration of the sum of ONE (\$1.00) DOLLAR now paid to the Owner by the Municipality (the receipt and sufficiency whereof is hereby acknowledged), the parties hereto agree and covenant with each other as follows:

- 1. The Owner covenants and agrees with the Municipality that:
  - (a) the Land must not be used;
  - (b) the Land must not be subdivided;
  - (c) development of the Land, including by construction or placement of any building or structure on the Land is prohibited;
  - (d) no building permit may be applied for, and the Municipality is not obliged to issue any building permit, in respect of the Land; and
  - (e) no occupancy permit may be applied for, and the Municipality is not obliged to issue any occupancy permit, in respect of the Land,

Unless the use, subdivision, alteration, development, building or occupancy is in accordance with the Schedule of Restrictions (Schedule A and Schedule B)

- 2. The Owner shall not apply to the Lands any chemicals including pesticides, fungicides and herbicides, whether for pest and weed control or for any other purpose, except in accordance with product package or other manufacturer's directions, and shall contain all spray drift within the boundaries of the Lands.
- 3. The Owner shall provide a 15 metre wide vegetative buffer on the Lands as shown in Schedule "A". The 8 metre buffer area immediately abutting the Agricultural Land Reserve is a no cut area and shall be densely landscaped as per the Ministry of Agriculture's *Guide to Edge Planning* document Urban Side Buffer D set out in Schedule "B". This 8 metre buffer area shall also include a six (6) foot high solid screen wood fence following the property line on the north boundaries of the Lands and a berm with

minimum height 2 metres above natural grades (collectively, the “Landscaping”) as shown within Schedule “B”. No structures are permitted within the remaining seven (7) metre buffer area outside the 8 metre no cut area.

4. At all times from and after the day that the Municipality certifies that the Landscaping has been completed, and in perpetuity, the Owner covenants and agrees with the Municipality that the Owner will carry out or cause to be carried out, at its sole cost and expense, the maintenance, irrigation, repair, cleaning, renewal, replacement, replanting and any other servicing of the Landscaping located as a prudent owner would do and to the standard set out in the British Columbia Landscape Standard: Level 3 Moderate. The Owner shall replace trees and shrubs as may be necessary, regardless of the cause of the need for replacement.
5. The Owner acknowledges, understands, and agrees that the Lands are adjacent to lands within the agricultural land reserve and may be adversely affected by normal farm practices carried out by the owners of the farm land (including, without restriction, noise from farm operations including propane cannons and other devices used to deter birds and pests, farm smells and chemical sprays, aesthetic appearance of fields including unkempt areas, materials storage, and light from greenhouses).
6. The Owner releases the Municipality and shall indemnify and save harmless the Municipality and its councillors, officers and employees from any claim of any nature by the Owner or any other person, that may be made against the Municipality or its councillors, officers or employees in connection with the breach by the Owner of the covenants in this Agreement, or the use or development of the Lands, if such claim arises in relation to the subject matter of this Agreement, including diminished property value or other impact suffered personally or in connection with agricultural practices on neighbouring land.
7. The Owner shall comply with all requirements of this Agreement at its own cost and expense.
8. The parties agree that this Agreement creates only contractual obligations and obligations arising out of the nature of this document as a covenant under seal. The parties agree that no tort obligations or liabilities of any kind exist between the parties in connection with the performance of, or any default under or in respect of, this Agreement. The intent of this section is to exclude tort liability of any kind and to limit the parties to their rights and remedies under the law of contract and under the law pertaining to covenants under seal.
9. The rights given to the Municipality by this Agreement are permissive only and nothing in this Agreement imposes any legal duty of any kind on the Municipality to anyone, or obliges the Municipality to enforce this Agreement, to perform any act or to incur any

expense in respect of this Agreement, except that nothing in this section shall affect the contractual rights and obligations of the parties hereto under this Agreement.

10. This Agreement shall restrict use of the Lands in the manner provided herein notwithstanding any right or permission to the contrary contained in any bylaw of the Municipality.
11. Where the Municipality is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent, the Owner agrees that the Municipality is under no public law duty of fairness or natural justice in that regard and agrees that the Municipality may do any of those things in the same manner as if it were a private party and not a public body.
12. This Agreement does not
  - (a) affect or limit the discretion, rights or powers of the Municipality under any enactment (as defined in the *Interpretation Act* on the reference date of this Agreement) or at common law, including in relation to the use or subdivision of the Lands;
  - (b) affect or limit any enactment relating to the use or subdivision of the Lands, or
  - (c) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Lands.

and the Owner covenants and agrees to comply with all such enactments with respect to the Lands.

13. Every obligation and covenant of the Owner in this Agreement constitutes both a contractual obligation and a covenant granted under s. 219 of the *Land Title Act* in respect of the Lands and this Agreement burdens the Lands and runs with them and binds the successors in title to the Lands. This Agreement burdens and charges all of the Lands and any parcel into which the Lands are subdivided by any means and any parcel into which the Lands are consolidated (including by removal of interior parcel boundaries) and shall be extended, at the Owner's cost, to burden and charge any land consolidated with the Lands.
14. An alleged waiver of any breach of this Agreement is effective only if it is an express waiver in writing of the breach in respect of which the waiver is asserted. A waiver of a breach of this Agreement does not operate as a waiver of any other breach of this Agreement.

15. If any part of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.
16. This Agreement binds the parties to it and their respective successors, heirs, executors and administrators.
17. The parties hereto shall execute and do all such further deeds, acts, things and assurances that may be reasonably required to carry out the intent of this Agreement.
18. Time is of the essence of this Agreement.
19. This covenant is not intended to create a partnership, joint venture, or agency between the Owner and the Municipality.
20. By executing and delivering this Agreement each of the parties intends to create both a contract and a deed executed and delivered under seal.

As evidence of their agreement to be bound by the terms of this instrument, the parties each have executed and delivered this Agreement under seal by executing Part 1 of the *Land Title Act* Form C to which this Agreement is attached and which forms part of this Agreement.

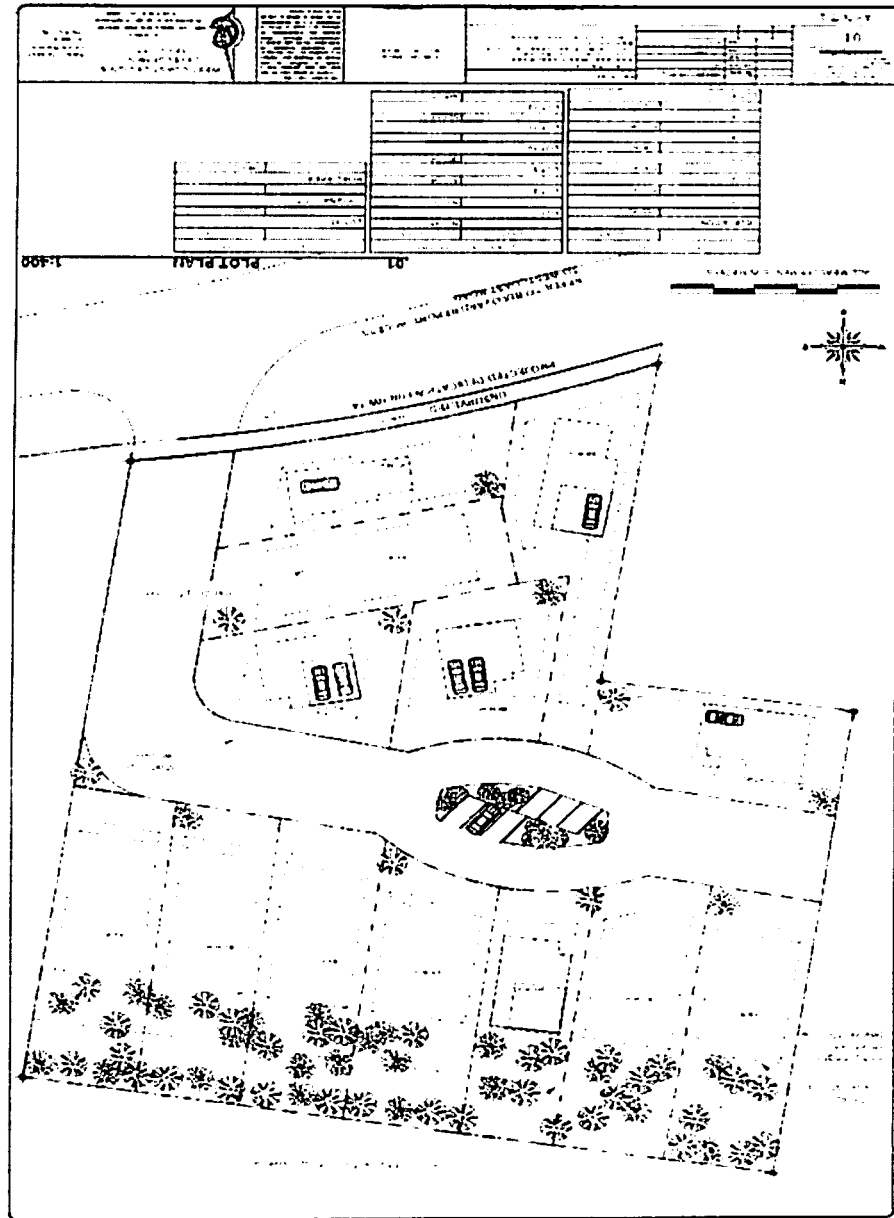
### **PRIORITY AGREEMENT**

**Vancouver City Savings Credit Union** (the "Chargeholder") being the holder of Mortgage No. CA1752916 (the "Charge")

The Chargeholder, in consideration of the premises and the sum of One Dollar (\$1.00) now paid to the Chargeholder by the Transferee, hereby approves of and consents to the granting of the within Agreement and covenants and agrees that the same shall be binding upon its interest in or charge upon the Lands and shall be an encumbrance upon the Lands prior to the Charge in the same manner and to the same effect as if it had been dated and registered prior to the Charge.

IN WITNESS WHEREOF the Chargeholder has executed this Agreement on Form D to which this Agreement is attached and which forms part of this Agreement.



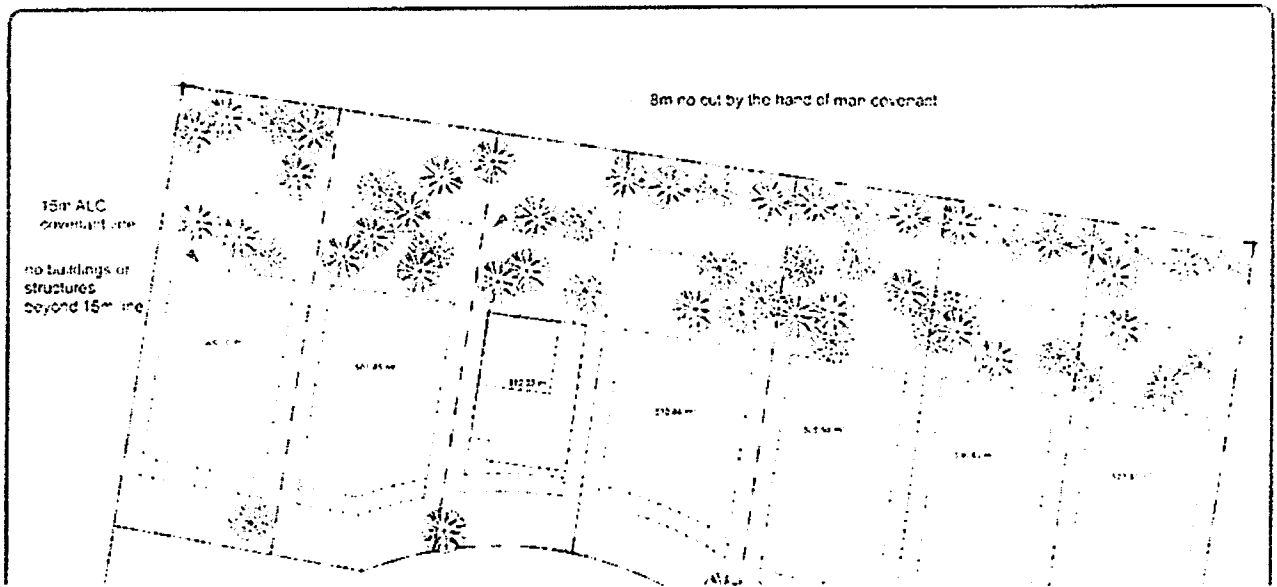


**SCHEDULE "A"**  
 Concept Plan showing 15 metre buffer area (8 metre no cut zone and a 7 metre setback area for structures from the no cut zone)

## SCHEDULE OF RESTRICTIONS

## SCHEDULE "A"

Concept Plan showing 15 metre buffer area (8 metre no cut zone and a 7 metre setback area for structures from the no cut zone)



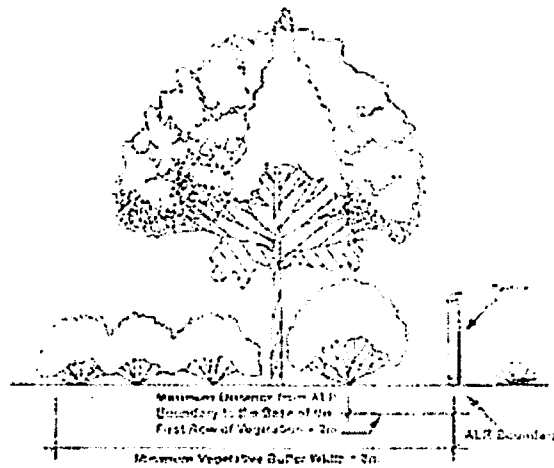
## SCHEDULE "B"

### Urban Side Buffer D Design Specifications

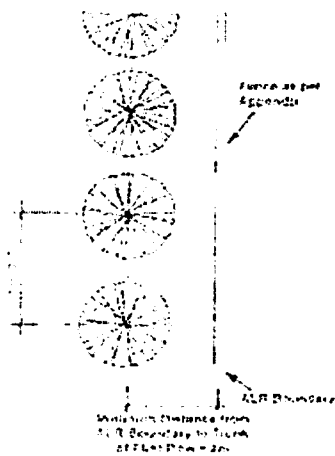
#### Urban Side Buffer D - Design specifications, layout & spacing

The Urban Side Buffer D includes:

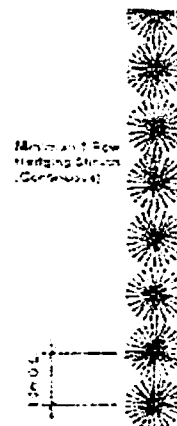
- single row deciduous/coniferous or just coniferous trees (see Appendix B for plant list)
- triple row trespass inhibiting shrubs (see Appendix B for plant list)
- single row screening shrubs (see Appendix B for plant list)
- solid wood fence or chain link fence with a height of 6 feet (1.8 metres) and built as per Appendix C, or as per the local government's fencing specifications



#### Single row deciduous/coniferous trees



#### Single row screening shrubs



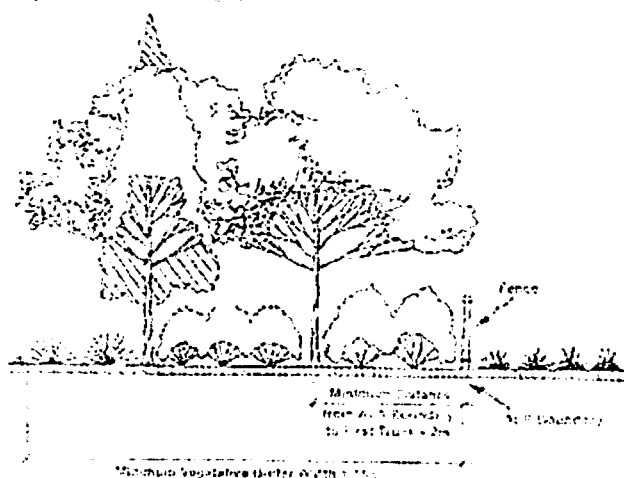
## SCHEDULE "B"

Berm as per Design Specifications within Urban Side Buffer B  
(exclude design specifications in Urban Side Buffer A)

### Urban-Side Buffer A (no berm) - Design specifications & layout

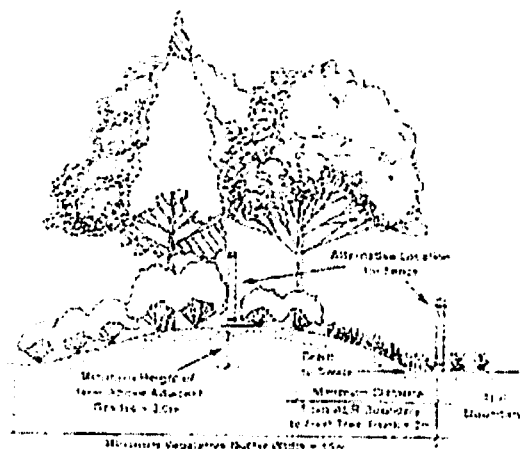
The Urban-Side Buffer A includes:

- double row deciduous/coniferous trees (see Appendix B for plant list)
- triple row trees/shrubs including shrubs (see Appendix B for plant list)
- double row screening shrubs (see Appendix B for plant list)
- solid wood fence or chain link fence with a height of 6 feet (1.8 meters) and built as per Appendix C or as per the local government's fencing specifications



### Urban-Side Buffer B (with berm) - Design specifications & layout

The Urban-Side Buffer B includes all elements of Buffer A as well as a berm with minimum height 2m above adjacent grade.



## SCHEDULE "B"

Six (6) foot high solid screen wood fence following the property line on the north boundaries of the Lands using the following fencing requirements:

### Solid Wood Fence

The following specifications are recommendations. A local government can use its own specifications if they meet or exceed the following specifications.

1. All posts and rails shall be rough sawn of "No. 1 Structural" grade, pressure treated with a wood preservative non-toxic to surrounding plant material, in accordance with CSA Standard G80.2 and compatible with staining requirements below.
2. All fence boards and planks shall be rough sawn of "Quality Fencing" grade, finished with penetrating stain with preservative, conforming to CGSB Standards 1-GP, 1SM and 201M, applied to all surfaces prior to installation, and on any cuts there after.
3. Line posts shall be minimum 8.0 ft. in length and at least (standard) 4" x 4"
4. Corner posts shall be minimum 8.0 ft. in length and at least (standard) 6" x 6"
5. Fence rails (end rails) shall be maximum 7.5 ft. in length and at least (standard) 2" x 4"
6. Top rails shall be at least (standard) 2" x 6". Cant to drain.
7. The finished height of a proper fencing shall be at least 6.0 ft.
8. All nails used in fence construction shall meet the following specifications:
  - Minimum gauge of nails used - #9, common in post/rail connections
  - Minimum gauge of nails used - #11.5, common in rail/fence board connections
  - Galvanized - CSA G40.61
9. Line posts shall be placed no more than 8.0 ft. O.C. and be firmly anchored in the soil to a depth of not less than 24 in.
10. The fence shall be constructed in accordance with these specifications and details provided in Figure 1 - Solid Wood Fence.

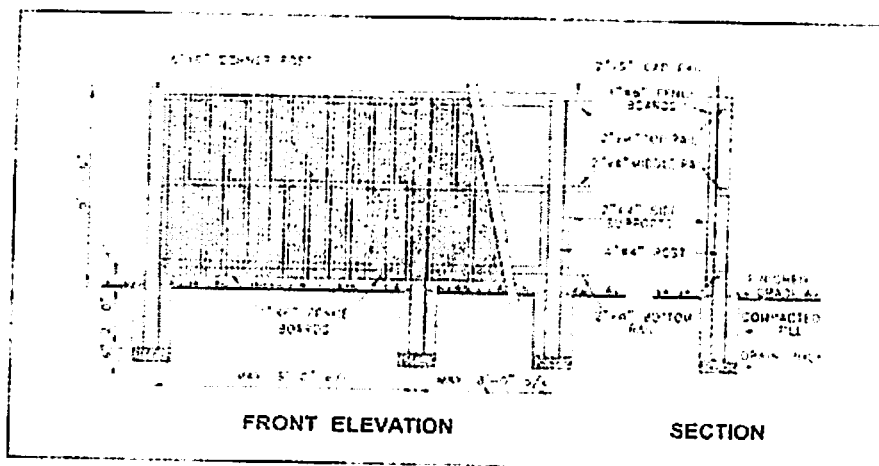


Figure 1 - Solid Wood Fence

**END OF DOCUMENT**

LAND TITLE ACT  
FORM C (Section 233) CHARGE

Jan-21-2011 11:30:08.002

CA1877307 CA1877308

GENERAL INSTRUMENT - PART 1 Province of British Columbia

PAGE 1 OF 10 PAGES

Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 1996 c.250, and that you have applied your electronic signature in accordance with Section 168.3, and a true copy, or a copy of that true copy, is in your possession.

Richard Russell  
Mayhue HCSHZI

Digitally signed by Richard Russell  
Mayhue HCSHZI  
DN: cn=Richard Russell Mayhue  
HCSHZI, c=CA, o=Lawyer, ou=Verily  
ID at www.juricent.com/LKUP.cfm?  
id=HCSHZI  
Date: 2011.01.21 11:29:06 -0800

1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)

MAYHUE &amp; COMPANY

Barrister &amp; Solicitor

PERD 003

2077 CHURCH ROAD, P.O. BOX 728

SOOKE, B.C., V9Z 1H7

Document Fees: \$143.80

STC Fees: \$10.20

Deduct LTSA Fees? Yes ☒

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID]

[LEGAL DESCRIPTION]

001-326-775

LOT 2 SECTION 4 SOOKE DISTRICT PLAN 29991

STC? YES ☒

3. NATURE OF INTEREST

Covenant

Priority Agreement

CHARGE NO.

ADDITIONAL INFORMATION

s.219 Land Title Act

page 4 of Part 2

4. TERMS: Part 2 of this instrument consists of (select one only)

(a) ☐ Filed Standard Charge Terms D.F. No.(b) ☒ Express Charge Terms Annexed as Part 2

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument.

5. TRANSFEROR(S):

SEE SCHEDULE

6. TRANSFEREE(S): (including postal address(es) and postal code(s))

DISTRICT OF SOOKE

2205 OTTER POINT ROAD,

SOOKE

BRITISH COLUMBIA

V9Z 1J2

CANADA

7. ADDITIONAL OR MODIFIED TERMS:

NONE

8. EXECUTION(S): This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)

RICHARD MAYHUE  
Barrister & Solicitor  
2077 Church Road  
PO Box 728  
Sooke, BC V9Z 1H7

Execution Date		
Y	M	D
10	12	15

Transferor(s) Signature(s)

DANIEL WILLIAM PERRIER

BONNIE LYNN PERRIER

## OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

**LAND TITLE ACT  
FORM D**
**EXECUTIONS CONTINUED**

PAGE 2 OF 10 PAGES

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

\_\_\_\_\_  
 RICHARD MAYHUE  
 Barrister & Solicitor  
 2077 Church Road  
 PO Box 728  
 Sooke, BC V9Z 1H7

( as to both signatures )

Y	M	D
10	12	15

\_\_\_\_\_  
 BRIAN PETER SCOTNEY

\_\_\_\_\_  
 CATHERINE ANN SCOTNEY

\_\_\_\_\_  
 Rosella Buchannon  
 A Commissioner for Taking Affidavits  
 for British Columbia  
 Suite 1300 - 13450 - 102 Avenue  
 Surrey, BC V3T 5X4

( as to both signatures )

10	12	20
----	----	----

VANCOUVER CITY SAVINGS CREDIT  
 UNION IN TRUST SEE BL51963 by its  
 authorized signatory(ies)

\_\_\_\_\_  
 Print Name: Sandy Bevilacqua

\_\_\_\_\_  
 Print Name:

**OFFICER CERTIFICATION:**

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.



**LAND TITLE ACT  
FORM D**

**EXECUTIONS CONTINUED**

PAGE 3 OF 10 PAGES

Officer Signature(s)

Execution Date

Y	M	D
11	01	17

Transferor / Borrower / Party Signature(s)

DISTRICT OF SOOKE by its authorized  
signatory(ies)

\_\_\_\_\_  
Bonnie Sprinkling, Corporate Officer  
District of Sooke  
2205 Otter Point Road  
Sooke, BC V9Z 1J2  
Commssioner for taking Affidavits in  
Britis Columbia

\_\_\_\_\_  
Mayor: Janet Evans

\_\_\_\_\_  
Chief Administrative Officer: Evan  
Parliament

**OFFICER CERTIFICATION:**

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

**LAND TITLE ACT  
FORM E**

**SCHEDULE**

**PAGE 4 OF 10 PAGES**

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM, OR GENERAL INSTRUMENT FORM.

**5. TRANSFEROR(S):**

DANIEL WILLIAM PERRIER, BONNIE LYNN PERRIER, BRIAN PETER SCOTNEY, CATHERINE ANN SCOTNEY AND VANCOUVER CITY SAVINGS CREDIT UNION IN TRUST SEE BL51963

**TERMS OF INSTRUMENT – PART 2**

**SECTION 219 COVENANT**

THIS AGREEMENT, dated for reference December 15, 2010 is made

BETWEEN:

**Daniel William Perrier & Bonnie Lynn Perrier**  
961 Dunford Avenue  
Victoria BC V9B 2S4

**Brian Peter Scotney & Catherine Ann Scotney**  
3504 Happy Valley Road  
Victoria BC V9C 2Y3

(the "Owner")

AND:

**DISTRICT OF SOOKE**, a municipality incorporated under the  
Local Government Act, R.S.B.C. 1996, c.323 and having its office  
at 2205 Otter Point Road, Sooke, BC V9Z 1J2

(the "Municipality")

GIVEN THAT:

- A. The Owner is the registered Owner in fee simple of the land in Sooke, British Columbia, legally described as:
- Parcel Identifier: 001-326-775
- Lot 2, Section 4, Sooke District, Plan 29991
- (the "Land");
- B. The Owner proposes to develop the Land for a residential use;
- C. The Owner has requested the Municipality to adopt Bylaw No. 456 (270-74) (the "Rezoning Bylaw") rezoning the Land to permit the development proposed by the Owner, and
- D. The Council of the Municipality has determined that the adoption of the Rezoning Bylaw would, but for the covenants contained in this Agreement, not be in the public interest; and the Owner therefore wishes to grant pursuant to s.219 of the *Land Title Act*, and the Municipality wishes to accept, the covenants over the Land that are set out in this Agreement;

- E. The parties have agreed to register this covenant in the Victoria Land Title Office under section 219 of the *Land Title Act* and section 905.1(4)(d) of the *Local Government Act*.

THIS AGREEMENT is evidence that in consideration of payment of \$1.00 by each of the Municipality to the Owner (the receipt of which is acknowledged by the Owner), the Owner grants to the Municipality in accordance with s.219 of the *Land Title Act* the following covenants:

1. The Owner covenants and agrees with the Municipality that:
  - (a) The Land must not be redeveloped beyond its current use;
  - (b) The Land must not be subdivided;
  - (c) Development of the Land, including by construction or placement of any building or structure on the Land is prohibited;
  - (d) No building permit may be applied for, and the Municipality is not obliged to issue any building permit, in respect of the Land; and
  - (e) No occupancy permit may be applied for, and the Municipality is not obliged to issue any occupancy permit, in respect of the Land,

Unless the use, subdivision, development, building or occupancy is in accordance with the Schedule of Restrictions attached as Schedule A.

2. Any opinion, decision, act or expression of satisfaction of the Municipality provided for in this Agreement is to be taken or made by the Municipality's Municipal Engineer or his or her delegate authorized as such in writing, in each case acting reasonably.
3. The Owner may, after the Rezoning Bylaw is adopted, request a discharge of any particular covenant granted in this Agreement in respect of any parcel into which the Land may be subdivided, and the Municipality shall execute and deliver a discharge in respect of any such covenant that has been, in the Municipality's opinion, fully satisfied by the Owner.
4. The Owner releases, and must indemnify and save harmless, the Municipality, its elected and appointed officials and employees, from and against all liability, actions, causes of action, claims, damages, expenses, costs, debts, demands or losses suffered or incurred by the Owner, or anyone else, arising from the granting or existence of this Agreement, from the performance by the Owner of this Agreement, or any default of the Owner under or in respect of this Agreement.
5. The parties agree that this Agreement creates only contractual obligations and obligations arising out of the nature of this document as a covenant under seal. The parties agree that no tort obligations or liabilities of any kind exist between the parties in connection with the performance of, or any default under or in respect of, this Agreement. The intent of this section is to exclude tort liability of any kind and to limit the parties to their rights and remedies under the law of contract and under the law pertaining to covenants under seal.

6. The rights given to the Municipality by this Agreement are permissive only and nothing in this Agreement imposes any legal duty of any kind on the Municipality to anyone, or obliges the Municipality to enforce this Agreement, to perform any act or to incur any expense in respect of this Agreement.
7. Where the Municipality is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent, the Owner agrees that the Municipality is under no public law duty of fairness or natural justice in that regard and agrees that the Municipality may do any of those things in the same manner as if it were a private party and not a public body.
8. This Agreement does not:
  - (a) affect or limit the discretion, rights or powers of the Municipality under any enactment (as defined in the Interpretation Act, on the reference date of this Agreement) or at common law, including in relation to the use of the Land,
  - (b) affect or limit any enactment related to the use of the Land, or
  - (c) relieve the Owner from complying with any enactment, including in relation to the use of the Land.
9. Every obligation and covenant of the Owner in this Agreement constitutes both a contractual obligation and a covenant granted under s.219 of the Land Title Act in respect of the Land and this Agreement burdens the Land and runs with it and binds the successors in title to the Land. This Agreement burdens and charges all of the Land and any parcel into which it is subdivided by any means and any parcel into which the Land is consolidated. The Owner is only liable for breaches of this Agreement that occur while the Owner is the registered Owner of the Land.
10. The Owner agrees to do everything reasonably necessary, at the Owner's expense, to ensure that this Agreement is registered against title to the Land with priority over all financial charges, liens and encumbrances registered, or the registration of which is pending, at the time of application for registration of this Agreement.
11. An alleged waiver of any breach of this Agreement is effective only if it is an express waiver in writing of the breach in respect of which the waiver is asserted. A waiver of a breach of this Agreement does not operate as a waiver of any other breach of this Agreement.
12. If any part of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.
13. This Agreement is the entire agreement between the parties regarding its subject.
14. This Agreement binds the parties to it and their respective successors, heirs, executors and administrators.

15. The Owner must do everything reasonably necessary to give effect to the intent of this Agreement, including execution of further instrument.
16. By executing and delivering this Agreement each of the parties intends to create both a contract and a deed executed and delivered under seal.

### **PRIORITY AGREEMENT**

**Vancouver City Savings Credit Union** (the "Chargeholder") being the holder of Mortgage No. CA1752916 (the "Charge")

The Chargeholder, in consideration of the premises and the sum of One Dollar (\$1.00) now paid to the Chargeholder by the Transferee, hereby approves of and consents to the granting of the within Agreement and covenants and agrees that the same shall be binding upon its interest in or charge upon the Lands and shall be an encumbrance upon the Lands prior to the Charge in the same manner and to the same effect as if it had been dated and registered prior to the Charge.

IN WITNESS WHEREOF the Chargeholder has executed this Agreement on Form D to which this Agreement is attached and which forms part of this Agreement.

As evidence of their agreement to be bound by the terms of this instrument, the parties hereto have executed the Land Title Office Form C that is attached hereto and forms part of this Agreement.

## **SCHEDULE "A"**

### **SCHEDULE OF RESTRICTIONS**

#### **AMENITIES**

1. The amenities to be provided are one or more of the following: parks and trail development, waterfront walkway, affordable housing, open space (in addition to statutory park dedications), day care facilities (not for profit), public art, park equipment, ALR acquisitions, community gardens, parking structures, performing arts facility, green infrastructure, beautification projects, and preservation of heritage structures, having in the aggregate a market value not exceeding \$5,000 for each additional dwelling unit in excess of the 9.2 dwelling unit Base Density on the land, in the locations and in accordance with standards approved in writing by the District's Municipal Planner and Municipal Engineer.
2. Despite section 1 of this Schedule, in lieu of provision of these amenities the Developer may at subdivision stage pay the District \$5000 for each additional dwelling unit in excess of the 9.2 dwelling unit Base Density on the land, and the District must use the amount paid only for provision of the amenities to be collected at time of subdivision.
3. The amenity contribution shall be based on the maximum residential density of the lots created at the time of subdivision.

#### **SERVICING**

4. The Developer covenants that it shall not subdivide the Lands and that it shall not construct any buildings, improvements or structures on the Lands except for structures such as roads, pipes, mains, pumps, and all related facilities and equipment as may be necessary to provide water, sanitary sewer, stormwater management and fire suppression services to the Lands, in accordance with all required permits and approvals, until the conditions outlined in sections 4 and 5 are fulfilled.
5. The Developer shall at its sole cost design, install, plant and construct the following works, services and other things in advance of the issuance of a subdivision approval on the Land:
  - There shall be a 15 m vegetative buffer separating the subject property from the Agricultural Land Reserve to the north
  - A berm, designed by a Qualified Professional shall be constructed within the 15 m buffer according to the Ministry of Agriculture Guide to Edge Planning document.
  - A 6 foot high solid green fence shall be constructed along the north property line separating Agricultural Land Reserve from the residential development.
  - Service the new development in accordance with the District of Sooke Subdivision and Development Standards Bylaw 65.
  - Frontage dedication requirements; 15m from Highway 14 centerline.
  - Complete a detailed erosion and sediment control plan prior to commencement of any construction.
  - Offsite road improvements as noted in the Traffic Impact Assessment report, completed by Boulevard Transportation Group, dated 26 July, 2010.

- The internal road shall be constructed as per Cross Section SDD-R06C, modified to a 7m pavement with 2.0m wide concrete sidewalk and ornamental street lighting, cyclone CY1507.
  - All driveways within public property are to be hard surfaced to the property line.
  - Cash in lieu for 2.0m concrete sidewalk along Highway 14
  - Prior to fourth reading for the rezoning, the applicant, at their cost, is to coordinate with the District of Sooke for the completion of a sewer feasibility study to review the capacity of downstream sewers.
  - Upon receiving final approval from the District of Sooke for rezoning and development the applicant must apply, and receive, a controlled access permit from the Ministry of Transportation and Infrastructure prior to access construction within the Sooke right-of-way.
6. Prior to the issuance of a building permit in respect of the Lands authorizing the construction and installation or other provision of the Servicing required under sections 3 through 5 of this Schedule "A" , and the Subdivision and Development Standards Bylaw (as amended), the Developer must provide to the District security in the form of an irrevocable letter of credit, or in a form satisfactory to the District, and in the amount of one hundred ten (110%) percent of the estimated cost of constructing and installing and otherwise providing the Servicing required under both the Subdivision and Development Standards Bylaw (as amended) and sections 3 through 5, as estimated by a Professional Engineer and accepted by the Municipal Engineer acting reasonably, which security will be released to the Developer upon completion of the works and services and upon final acceptance by the District's Municipal Engineer.

#### **GENERAL**

7. In all obligations and covenants where the Owner are required to construct certain works and improvements, the Owner may post sufficient security with the Municipality, in a form and amount acceptable to the Municipality, in exchange for completing the works and/or improvements within a specified time period.
8. The Owner may, therefore, request a discharge of any particular covenant granted in this Agreement, for which, either sufficient security was posted by the Owner and accepted by the Municipality, or the work has been completed and accepted by the Municipality, therefore deemed to be fully satisfied by the Owner, and the Municipality shall execute and deliver a discharge in respect of any such covenant.

**END OF DOCUMENT**



## VICTORIA LAND TITLE OFFICE

May-03-2011 13:37:59.001

CA1997992 CA1997993

LAND TITLE ACT  
FORM C (Section 233) CHARGE

GENERAL INSTRUMENT - PART 1 Province of British Columbia

PAGE 1 OF 16 PAGES

Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 1996 c.250, and that you have applied your electronic signature in accordance with Section 168.3, and a true copy, or a copy of that true copy, is in your possession.

Richard Russell  
Mayhue HCSHZI

Digitally signed by Richard Russell  
Mayhue HCSHZI  
DN: cn=Richard Russell Mayhue  
HCSHZI, c=CA, o=Lawyer, ou=Verify  
ID at www.juricert.com/LKUP.cfm?  
id=HCSHZI  
Date: 2011.05.03 13:32:04 -07'00'

1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)

MAYHUE &amp; COMPANY

Barrister &amp; Solicitor

PERD 004

2077 CHURCH ROAD, P.O. BOX 728

SOOKE, B.C., V9Z 1H7

Document Fees: \$143.80

Deduct LTSA Fees? Yes ☒

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID]

[LEGAL DESCRIPTION]

005-001-056

LOT B SECTION 4 SOOKE DISTRICT PLAN 11326

STC? YES ☐

3. NATURE OF INTEREST

Covenant

Priority Agreement

CHARGE NO.

ADDITIONAL INFORMATION

s.219 Land Title Act

Page 10 of Part 2

4. TERMS: Part 2 of this instrument consists of (select one only)

(a) ☐ Filed Standard Charge Terms D.F. No.(b) ☒ Express Charge Terms Annexed as Part 2

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument.

5. TRANSFEROR(S):

SEE SCHEDULE

6. TRANSFEREE(S): (including postal address(es) and postal code(s))

DISTRICT OF SOOKE

2205 OTTER POINT ROAD,

SOOKE

BRITISH COLUMBIA

V9Z 1J2

CANADA

7. ADDITIONAL OR MODIFIED TERMS:

NONE

8. EXECUTION(S): This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)

Execution Date

Transferor(s) Signature(s)

RICHARD MAYHUE  
Barrister & Solicitor  
2077 Church Road  
PO Box 728  
Sooke, BC V9Z 1H7

Y	M	D
11	04	04

DANIEL WILLIAM PERRIER

BONNIE LYNN PERRIER

## OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

LAND TITLE ACT  
FORM D

EXECUTIONS CONTINUED

PAGE 2 OF 16 PAGES

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

\_\_\_\_\_  
RICHARD MAYHUE  
Barrister & Solicitor  
2077 Church Road  
PO Box 728  
Sooke, BC V9Z 1H7

( as to both signitures )

\_\_\_\_\_  
Sandy Bevilacqua  
A Commissioner for Taking Affidavits  
for British Columbia  
13450-102 Avenue  
Surrey, BC V3T 5X4

( as to both signatures )

Y	M	D
11	04	04
11	04	08

\_\_\_\_\_  
BRIAN PETER SCOTNEY

\_\_\_\_\_  
CATHERINE ANN SCOTNEY

VANCOUVER CITY SAVINGS CREDIT  
UNION IN TRUST SEE BL51963 by its  
authorized signatory(ies)

\_\_\_\_\_  
Print Name: Jadranka Tashin

\_\_\_\_\_  
Print Name:

OFFICER CERTIFICATION:

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LAND TITLE ACT  
FORM D

EXECUTIONS CONTINUED

PAGE 3 OF 16 PAGES

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

Bonnie Sprinkling  
Commissioner for taking Affidavits in  
British Columbia  
2205 Otter Point Road  
Soke, Bc V9Z 1J2

Y	M	D
11	04	29

DISTRICT OF SOOKE by its authorized  
signatory(ies)

Mayor: JANET EVANS

Chief Administrative Officer: EVAN  
PARLIAMENT

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

FORM\_E\_V17

**LAND TITLE ACT  
FORM E**

**SCHEDULE**

**PAGE 4 OF 16 PAGES**

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM, OR GENERAL INSTRUMENT FORM.

**5. TRANSFEROR(S):**

DANIEL WILLIAM PERRIER, BONNIE LYNN PERRIER, BRIAN PETER SCOTNEY, CATHERINE ANN SCOTNEY AND VANCOUVER CITY SAVINGS CREDIT UNION IN TRUST SEE BL51963

**TERMS OF INSTRUMENT – PART 2****SECTION 219 COVENANT**

THIS AGREEMENT dated for reference the 4th day of April, 2011

BETWEEN:

**Daniel William Perrier & Bonnie Lynn Perrier**  
961 Dunford Avenue  
Victoria BC V9B 2S4

**Brian Peter Scotney & Catherine Ann Scotney**  
3504 Happy Valley Road  
Victoria BC V9C 2Y3

(hereinafter called the “Owner”)

AND:

**DISTRICT OF SOOKE**  
2205 Otter Point Road,  
Sooke, B.C. V9Z 1J2

(hereinafter called the “Municipality”)

WHEREAS:

- A. The Owner is the registered owner of, and has applied to rezone those lands and premises in the District of Sooke, in the Province of British Columbia legally described as:

Parcel Identifier: 005-001-056

Legal Description: Lot B, Section 4, Sooke District, Plan 11326

(hereinafter called the “Lands”);

- B. The Owner proposes to develop the Land for residential purposes as shown on Schedule A;
- C. The Owner has requested the Municipality to adopt Bylaw No. 456 (the “Rezoning Bylaw”) rezoning the Land to permit the development proposed by the Owner, and

- D. the Council of the Municipality has determined that the adoption of the Rezoning Bylaw would, but for the covenants contained in this Agreement, not be in the public interest; and the Owner therefore wishes to grant pursuant to s.219 of the Land Title Act, and the Municipality wishes to accept, the covenants over the Land that are set out in this Agreement.
- E. The Owner has agreed to grant the within covenants to ensure construction and maintenance of fencing, landscaping and a berm on the Lands in the course of development on the Lands to be constructed as per Schedule B;

NOW THEREFORE THIS AGREEMENT WITNESSES that pursuant to Section 219 of the *Land Title Act*, and in consideration of the sum of ONE (\$1.00) DOLLAR now paid to the Owner by the Municipality (the receipt and sufficiency whereof is hereby acknowledged), the parties hereto agree and covenant with each other as follows:

1. The Owner covenants and agrees with the Municipality that:
  - (a) the Land must not be used;
  - (b) the Land must not be subdivided;
  - (c) development of the Land, including by construction or placement of any building or structure on the Land is prohibited;
  - (d) no building permit may be applied for, and the Municipality is not obliged to issue any building permit, in respect of the Land; and
  - (e) no occupancy permit may be applied for, and the Municipality is not obliged to issue any occupancy permit, in respect of the Land,

Unless the use, subdivision, alteration, development, building or occupancy is in accordance with the Schedule of Restrictions (Schedule A and Schedule B)

2. The Owner shall not apply to the Lands any chemicals including pesticides, fungicides and herbicides, whether for pest and weed control or for any other purpose, except in accordance with product package or other manufacturer's directions, and shall contain all spray drift within the boundaries of the Lands.
3. The Owner shall provide a 15 metre wide vegetative buffer on the Lands as shown in Schedule "A". The 8 metre buffer area immediately abutting the Agricultural Land Reserve is a no cut area and shall be densely landscaped as per the Ministry of Agriculture's *Guide to Edge Planning* document Urban Side Buffer D set out in Schedule "B". This 8 metre buffer area shall also include a six (6) foot high solid screen wood fence following the property line on the north boundaries of the Lands and a berm with

minimum height 2 metres above natural grades (collectively, the “Landscaping”) as shown within Schedule “B”. No structures are permitted within the remaining seven (7) metre buffer area outside the 8 metre no cut area.

4. At all times from and after the day that the Municipality certifies that the Landscaping has been completed, and in perpetuity, the Owner covenants and agrees with the Municipality that the Owner will carry out or cause to be carried out, at its sole cost and expense, the maintenance, irrigation, repair, cleaning, renewal, replacement, replanting and any other servicing of the Landscaping located as a prudent owner would do and to the standard set out in the British Columbia Landscape Standard: Level 3 Moderate. The Owner shall replace trees and shrubs as may be necessary, regardless of the cause of the need for replacement.
5. The Owner acknowledges, understands, and agrees that the Lands are adjacent to lands within the agricultural land reserve and may be adversely affected by normal farm practices carried out by the owners of the farm land (including, without restriction, noise from farm operations including propane cannons and other devices used to deter birds and pests, farm smells and chemical sprays, aesthetic appearance of fields including unkempt areas, materials storage, and light from greenhouses).
6. The Owner releases the Municipality and shall indemnify and save harmless the Municipality and its councillors, officers and employees from any claim of any nature by the Owner or any other person, that may be made against the Municipality or its councillors, officers or employees in connection with the breach by the Owner of the covenants in this Agreement, or the use or development of the Lands, if such claim arises in relation to the subject matter of this Agreement, including diminished property value or other impact suffered personally or in connection with agricultural practices on neighbouring land.
7. The Owner shall comply with all requirements of this Agreement at its own cost and expense.
8. The parties agree that this Agreement creates only contractual obligations and obligations arising out of the nature of this document as a covenant under seal. The parties agree that no tort obligations or liabilities of any kind exist between the parties in connection with the performance of, or any default under or in respect of, this Agreement. The intent of this section is to exclude tort liability of any kind and to limit the parties to their rights and remedies under the law of contract and under the law pertaining to covenants under seal.
9. The rights given to the Municipality by this Agreement are permissive only and nothing in this Agreement imposes any legal duty of any kind on the Municipality to anyone, or obliges the Municipality to enforce this Agreement, to perform any act or to incur any

expense in respect of this Agreement, except that nothing in this section shall affect the contractual rights and obligations of the parties hereto under this Agreement.

10. This Agreement shall restrict use of the Lands in the manner provided herein notwithstanding any right or permission to the contrary contained in any bylaw of the Municipality.
11. Where the Municipality is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent, the Owner agrees that the Municipality is under no public law duty of fairness or natural justice in that regard and agrees that the Municipality may do any of those things in the same manner as if it were a private party and not a public body.
12. This Agreement does not
  - (a) affect or limit the discretion, rights or powers of the Municipality under any enactment (as defined in the *Interpretation Act* on the reference date of this Agreement) or at common law, including in relation to the use or subdivision of the Lands;
  - (b) affect or limit any enactment relating to the use or subdivision of the Lands, or
  - (c) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Lands,

and the Owner covenants and agrees to comply with all such enactments with respect to the Lands.

13. Every obligation and covenant of the Owner in this Agreement constitutes both a contractual obligation and a covenant granted under s. 219 of the *Land Title Act* in respect of the Lands and this Agreement burdens the Lands and runs with them and binds the successors in title to the Lands. This Agreement burdens and charges all of the Lands and any parcel into which the Lands are subdivided by any means and any parcel into which the Lands are consolidated (including by removal of interior parcel boundaries) and shall be extended, at the Owner's cost, to burden and charge any land consolidated with the Lands.
14. An alleged waiver of any breach of this Agreement is effective only if it is an express waiver in writing of the breach in respect of which the waiver is asserted. A waiver of a breach of this Agreement does not operate as a waiver of any other breach of this Agreement.



15. If any part of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.
16. This Agreement binds the parties to it and their respective successors, heirs, executors and administrators.
17. The parties hereto shall execute and do all such further deeds, acts, things and assurances that may be reasonably required to carry out the intent of this Agreement.
18. Time is of the essence of this Agreement.
19. This covenant is not intended to create a partnership, joint venture, or agency between the Owner and the Municipality.
20. By executing and delivering this Agreement each of the parties intends to create both a contract and a deed executed and delivered under seal.

As evidence of their agreement to be bound by the terms of this instrument, the parties each have executed and delivered this Agreement under seal by executing Part 1 of the *Land Title Act* Form C to which this Agreement is attached and which forms part of this Agreement.

**PRIORITY AGREEMENT**

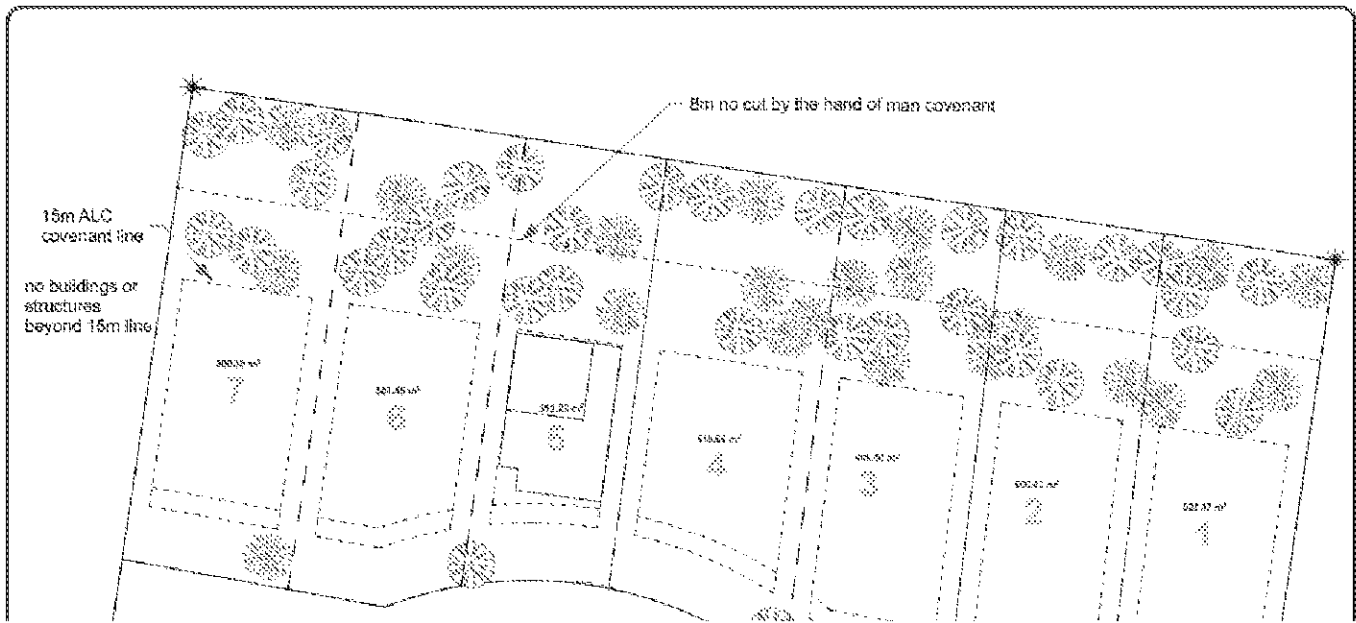
**Vancouver City Savings Credit Union** (the "Chargeholder") being the holder of Mortgage No. CA1752900 (the "Charge")

The Chargeholder, in consideration of the premises and the sum of One Dollar (\$1.00) now paid to the Chargeholder by the Transferee, hereby approves of and consents to the granting of the within Agreement and covenants and agrees that the same shall be binding upon its interest in or charge upon the Lands and shall be an encumbrance upon the Lands prior to the Charge in the same manner and to the same effect as if it had been dated and registered prior to the Charge.

IN WITNESS WHEREOF the Chargeholder has executed this Agreement on Form D to which this Agreement is attached and which forms part of this Agreement.



**SCHEDULE “A”**  
Concept Plan showing 15 metre buffer area (8 metre no cut zone and a 7 metre setback area for structures from the no cut zone)



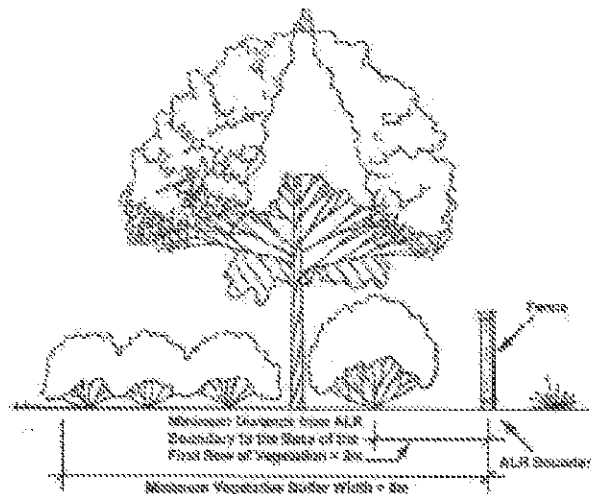
## SCHEDULE "B"

### Urban Side Buffer D Design Specifications

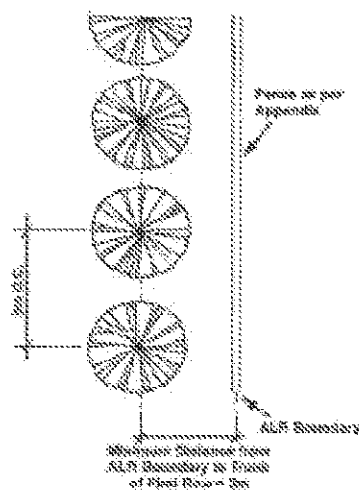
#### Urban-Side Buffer D - Design specifications, layout & spacing

The Urban-side Buffer D includes:

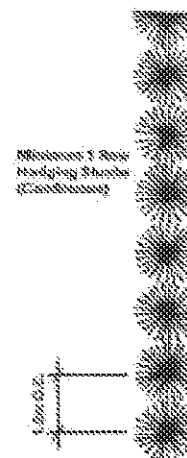
- ♦ single row deciduous/coniferous or just coniferous trees (see Appendix B for plant list)
- × triple row trespass inhibiting shrubs (see Appendix B for plant list)
- × single row screening shrubs (see Appendix B for plant list)
- ♦ solid wood fence or chain link fence with a height of 6 feet (1.8 metres) and built as per Appendix C or as per the local government's fencing specifications.



Single row deciduous/coniferous trees



Single row screening shrubs



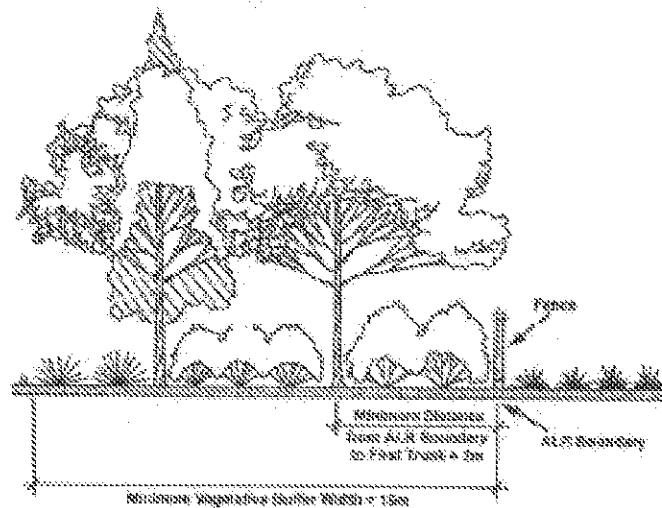
## SCHEDULE "B"

Berm as per Design Specifications within Urban Side Buffer B  
(exclude design specifications in Urban Side Buffer A)

### Urban-Side Buffer A (no berm) - Design specifications & layout

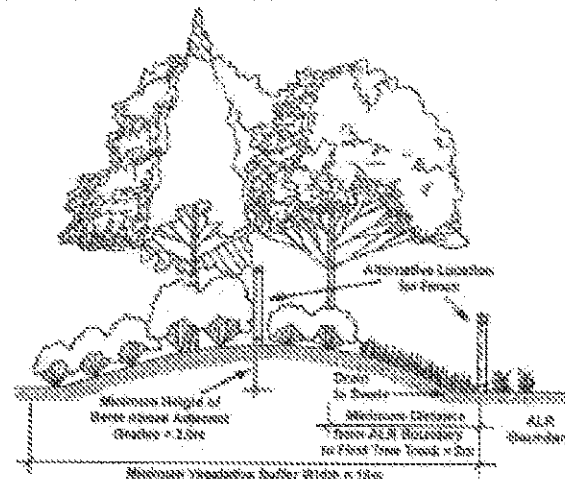
The Urban-side Buffer A includes:

- \* double row deciduous/coniferous trees (see Appendix B for plant list)
- \* triple row trespass inhibiting shrubs (see Appendix B for plant list)
- \* double row screening shrubs (see Appendix B for plant list)
- \* solid wood fence or chain link fence with a height of 6 feet (1.8 metres) and built as per Appendix C or as per the local government's fencing specifications.



### Urban-Side Buffer B (with berm) - Design specifications & layout

The Urban-side Buffer B includes all elements of Buffer A as well as a berm with minimum height 2 m above adjacent grades.



## SCHEDULE "B"

Six (6) foot high solid screen wood fence following the property line on the north boundaries of the Lands using the following fencing requirements:

### Solid Wood Fence

The following specifications are recommendations. A local government can use its own specifications if they meet or exceed the following specifications.

1. All posts and rails shall be rough sawn of "No. 1 Structural" grade, pressure treated with a wood preservative non-toxic to surrounding plant material, in accordance with CSA Standard 084.2 and compatible with staining requirements below.
2. All fence boards and planks shall be rough sawn of "Quality Fencing" grade, finished with penetrating stain with preservative, conforming to CGSB Standards 1-GP145M and 264M, applied to all surfaces prior to installation and on any cuts thereafter.
3. Line posts shall be minimum 8.0 ft. in length and at least (standard) 4"x 4".
4. Corner posts shall be minimum 8.0 ft. in length and at least (standard) 6"x 6".
5. Fence rails (min. 3) shall be maximum 7.5 ft. in length and at least (standard) 2"x 4".
6. Cap rails shall be at least (standard) 2"x 6". Cap to drain.
7. The finished height of opaque fencing shall be at least 6.0 ft.
8. All nails used in fence construction shall meet the following specifications:
  - Minimum gauge of nails used - #9, common in post/rail connections
  - Minimum gauge of nails used - #11.5, common in rail/fence board connections
  - Galvanized - CSA G164
9. Line posts shall be placed no more than 8.0 ft. O.C. and be firmly anchored in the soil to a depth of not less than 2.0 ft.
10. The fence shall be constructed in accordance with these specifications and details provided in Figure 1 - Solid Wood Fence.

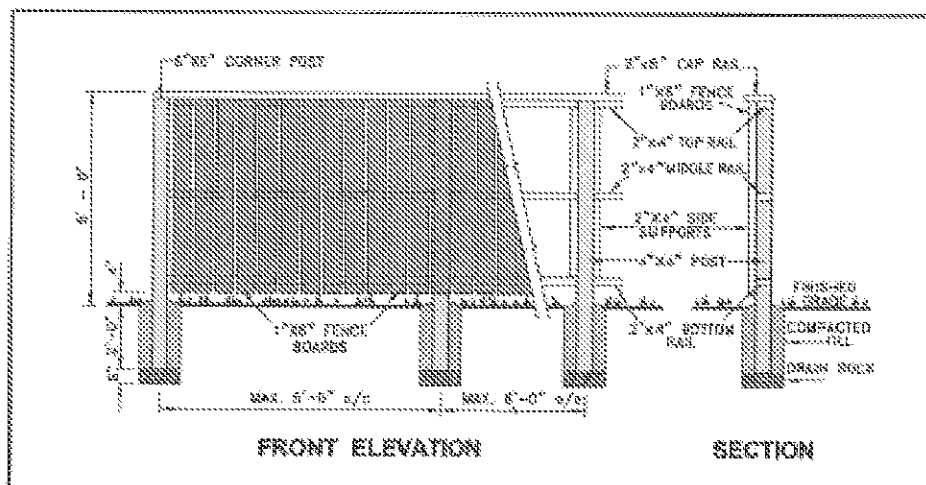


Figure 1 - Solid Wood Fence

Page 16

**END OF DOCUMENT**



## VICTORIA LAND TITLE OFFICE

May-03-2011 13:37:59.002

CA1997994 CA1997995

LAND TITLE ACT  
FORM C (Section 233) CHARGE

GENERAL INSTRUMENT - PART 1 Province of British Columbia

PAGE 1 OF 10 PAGES

Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 1996 c.250, and that you have applied your electronic signature in accordance with Section 168.3, and a true copy, or a copy of that true copy, is in your possession.

Richard Russell  
Mayhue HCSHZI

Digitally signed by Richard Russell  
Mayhue HCSHZI  
DN: cn=Richard Russell Mayhue  
HCSHZI, c=CA, o=Lawyer, ou=Verify  
ID at www.juricert.com/LKUP.cfm?  
id=HCSHZI  
Date: 2011.05.03 13:36:31 -07'00'

1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)

MAYHUE &amp; COMPANY

Barrister &amp; Solicitor

PERD 004

2077 CHURCH ROAD, P.O. BOX 728

SOOKE, B.C., V9Z 1H7

Document Fees: \$143.80

Deduct LTSA Fees? Yes ☒

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID]

[LEGAL DESCRIPTION]

005-001-056

LOT B SECTION 4 SOOKE DISTRICT PLAN 11326

STC? YES ☐

3. NATURE OF INTEREST

Covenant

Priority Agreement

CHARGE NO.

ADDITIONAL INFORMATION

s.219 Land Title Act

Page 4 of Part 2

4. TERMS: Part 2 of this instrument consists of (select one only)

(a) ☐ Filed Standard Charge Terms D.F. No.(b) ☒ Express Charge Terms Annexed as Part 2

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument.

5. TRANSFEROR(S):

SEE SCHEDULE

6. TRANSFEREE(S): (including postal address(es) and postal code(s))

DISTRICT OF SOOKE

2205 OTTER POINT ROAD,

SOOKE

BRITISH COLUMBIA

V9Z 1J2

CANADA

7. ADDITIONAL OR MODIFIED TERMS:

NONE

8. EXECUTION(S): This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)

Execution Date

Transferor(s) Signature(s)

RICHARD MAYHUE  
Barrister & Solicitor  
2077 Church Road  
PO Box 728  
Sooke, BC V9Z 1H7

Y	M	D
11	04	04

DANIEL WILLIAM PERRIER

BONNIE LYNN PERRIER

## OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

LAND TITLE ACT  
FORM D

EXECUTIONS CONTINUED

PAGE 2 OF 10 PAGES

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

\_\_\_\_\_  
RICHARD MAYHUE  
Barrister & Solicitor  
2077 Church Road  
PO Box 728  
Sooke, BC V9Z 1H7

( as to both signitures )

Y	M	D
11	04	04

\_\_\_\_\_  
BRIAN PETER SCOTNEY

\_\_\_\_\_  
CATHERINE ANN SCOTNEY

\_\_\_\_\_  
Sandy Bevilacqua  
A Commissioner for Taking Affidavits  
for British Columbia  
Suite 1300  
13450-102 Avenue  
Surrey, BC, V3T 5X4

( as to both signatures )

11	04	08
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VANCOUVER CITY SAVINGS CREDIT  
UNION IN TRUST SEE BL51963 by its  
authorized signatory(ies)

\_\_\_\_\_  
Print Name: Jadranka Tasin

\_\_\_\_\_  
Print Name:

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

**LAND TITLE ACT  
FORM D**

**EXECUTIONS CONTINUED**

PAGE 3 OF 10 PAGES

Officer Signature(s)

**Execution Date**

Transferor / Borrower / Party Signature(s)

Bonnie Sprinkling  
Commissioner for Taking Affidavits in  
British Columbia  
2205 Otter Point Road  
Sooke, BC V9Z 1J2

Y	M	D
11	04	29

DISTRICT OF SOOKE by its authorized  
signatory(ies)

Mayor: JANET EVANS

Chief Administrative Officer: EVAN  
PARLIAMENT

## OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

**LAND TITLE ACT  
FORM E**

**SCHEDULE**

**PAGE 4 OF 10 PAGES**

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM, OR GENERAL INSTRUMENT FORM.

**5. TRANSFEROR(S):**

DANIEL WILLIAM PERRIER, BONNIE LYNN PERRIER, BRIAN PETER SCOTNEY, CATHERINE ANN SCOTNEY AND VANCOUVER CITY SAVINGS CREDIT UNION IN TRUST SEE BL51963

**TERMS OF INSTRUMENT – PART 2****SECTION 219 COVENANT**

THIS AGREEMENT, dated for reference April 4, 2011 is made

BETWEEN:

**Daniel William Perrier & Bonnie Lynn Perrier**  
961 Dunford Avenue  
Victoria BC V9B 2S4

**Brian Peter Scotney & Catherine Ann Scotney**  
3504 Happy Valley Road  
Victoria BC V9C 2Y3

(the "Owner")

AND:

**DISTRICT OF SOOKE**, a municipality incorporated under the  
Local Government Act, R.S.B.C. 1996, c.323 and having its office  
at 2205 Otter Point Road, Sooke, BC V9Z 1J2

(the "Municipality")

GIVEN THAT:

- A. The Owner is the registered Owner in fee simple of the land in Sooke, British Columbia, legally described as:
- Parcel Identifier: 005-001-056
- Lot B, Section 4, Sooke District, Plan 11326
- (the "Land");
- B. The Owner proposes to develop the Land for a residential use;
- C. The Owner has requested the Municipality to adopt Bylaw No. 456 (270-74) (the "Rezoning Bylaw") rezoning the Land to permit the development proposed by the Owner, and
- D. The Council of the Municipality has determined that the adoption of the Rezoning Bylaw would, but for the covenants contained in this Agreement, not be in the public interest; and the Owner therefore wishes to grant pursuant to s.219 of the *Land Title Act*, and the Municipality wishes to accept, the covenants over the Land that are set out in this Agreement;

- E. The parties have agreed to register this covenant in the Victoria Land Title Office under section 219 of the *Land Title Act* and section 905.1(4)(d) of the *Local Government Act*.

THIS AGREEMENT is evidence that in consideration of payment of \$1.00 by each of the Municipality to the Owner (the receipt of which is acknowledged by the Owner), the Owner grants to the Municipality in accordance with s.219 of the Land Title Act the following covenants:

1. The Owner covenants and agrees with the Municipality that:
  - (a) The Land must not be redeveloped beyond its current use;
  - (b) The Land must not be subdivided;
  - (c) Development of the Land, including by construction or placement of any building or structure on the Land is prohibited;
  - (d) No building permit may be applied for, and the Municipality is not obliged to issue any building permit, in respect of the Land; and
  - (e) No occupancy permit may be applied for, and the Municipality is not obliged to issue any occupancy permit, in respect of the Land,

Unless the use, subdivision, development, building or occupancy is in accordance with the Schedule of Restrictions attached as Schedule A.

2. Any opinion, decision, act or expression of satisfaction of the Municipality provided for in this Agreement is to be taken or made by the Municipality's Municipal Engineer or his or her delegate authorized as such in writing, in each case acting reasonably.
3. The Owner may, after the Rezoning Bylaw is adopted, request a discharge of any particular covenant granted in this Agreement in respect of any parcel into which the Land may be subdivided, and the Municipality shall execute and deliver a discharge in respect of any such covenant that has been, in the Municipality's opinion, fully satisfied by the Owner.
4. The Owner releases, and must indemnify and save harmless, the Municipality, its elected and appointed officials and employees, from and against all liability, actions, causes of action, claims, damages, expenses, costs, debts, demands or losses suffered or incurred by the Owner, or anyone else, arising from the granting or existence of this Agreement, from the performance by the Owner of this Agreement, or any default of the Owner under or in respect of this Agreement.
5. The parties agree that this Agreement creates only contractual obligations and obligations arising out of the nature of this document as a covenant under seal. The parties agree that no tort obligations or liabilities of any kind exist between the parties in connection with the performance of, or any default under or in respect of, this Agreement. The intent of this section is to exclude tort liability of any kind and to limit the parties to their rights and remedies under the law of contract and under the law pertaining to covenants under seal.

6. The rights given to the Municipality by this Agreement are permissive only and nothing in this Agreement imposes any legal duty of any kind on the Municipality to anyone, or obliges the Municipality to enforce this Agreement, to perform any act or to incur any expense in respect of this Agreement.
7. Where the Municipality is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent, the Owner agrees that the Municipality is under no public law duty of fairness or natural justice in that regard and agrees that the Municipality may do any of those things in the same manner as if it were a private party and not a public body.
8. This Agreement does not:
  - (a) affect or limit the discretion, rights or powers of the Municipality under any enactment (as defined in the Interpretation Act, on the reference date of this Agreement) or at common law, including in relation to the use of the Land,
  - (b) affect or limit any enactment related to the use of the Land, or
  - (c) relieve the Owner from complying with any enactment, including in relation to the use of the Land.
9. Every obligation and covenant of the Owner in this Agreement constitutes both a contractual obligation and a covenant granted under s.219 of the Land Title Act in respect of the Land and this Agreement burdens the Land and runs with it and binds the successors in title to the Land. This Agreement burdens and charges all of the Land and any parcel into which it is subdivided by any means and any parcel into which the Land is consolidated. The Owner is only liable for breaches of this Agreement that occur while the Owner is the registered Owner of the Land.
10. The Owner agrees to do everything reasonably necessary, at the Owner's expense, to ensure that this Agreement is registered against title to the Land with priority over all financial charges, liens and encumbrances registered, or the registration of which is pending, at the time of application for registration of this Agreement.
11. An alleged waiver of any breach of this Agreement is effective only if it is an express waiver in writing of the breach in respect of which the waiver is asserted. A waiver of a breach of this Agreement does not operate as a waiver of any other breach of this Agreement.
12. If any part of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.
13. This Agreement is the entire agreement between the parties regarding its subject.
14. This Agreement binds the parties to it and their respective successors, heirs, executors and administrators.

Page 4

15. The Owner must do everything reasonably necessary to give effect to the intent of this Agreement, including execution of further instrument.
16. By executing and delivering this Agreement each of the parties intends to create both a contract and a deed executed and delivered under seal.

As evidence of their agreement to be bound by the terms of this instrument, the parties hereto have executed the Land Title Office Form C that is attached hereto and forms part of this Agreement.

### **PRIORITY AGREEMENT**

**Vancouver City Savings Credit Union** (the "Chargeholder") being the holder of Mortgage No. CA1752900 (the "Charge")

The Chargeholder, in consideration of the premises and the sum of One Dollar (\$1.00) now paid to the Chargeholder by the Transferee, hereby approves of and consents to the granting of the within Agreement and covenants and agrees that the same shall be binding upon its interest in or charge upon the Lands and shall be an encumbrance upon the Lands prior to the Charge in the same manner and to the same effect as if it had been dated and registered prior to the Charge.

IN WITNESS WHEREOF the Chargeholder has executed this Agreement on Form D to which this Agreement is attached and which forms part of this Agreement.



**SCHEDULE "A"****SCHEDULE OF RESTRICTIONS****AMENITIES**

1. The amenities to be provided are one or more of the following: parks and trail development, waterfront walkway, affordable housing, open space (in addition to statutory park dedications), day care facilities (not for profit), public art, park equipment, ALR acquisitions, community gardens, parking structures, performing arts facility, green infrastructure, beautification projects, and preservation of heritage structures, having in the aggregate a market value not exceeding \$5,000 for each additional dwelling unit in excess of the 9.2 dwelling unit Base Density on the land, in the locations and in accordance with standards approved in writing by the District's Municipal Planner and Municipal Engineer.
2. Despite section 1 of this Schedule, in lieu of provision of these amenities the Developer may at subdivision stage pay the District \$5000 for each additional dwelling unit in excess of the 9.2 dwelling unit Base Density on the land, and the District must use the amount paid only for provision of the amenities to be collected at time of subdivision.
3. The amenity contribution shall be based on the maximum residential density of the lots created at the time of subdivision.

**SERVICING**

4. The Developer covenants that it shall not subdivide the Lands and that it shall not construct any buildings, improvements or structures on the Lands except for structures such as roads, pipes, mains, pumps, and all related facilities and equipment as may be necessary to provide water, sanitary sewer, stormwater management and fire suppression services to the Lands, in accordance with all required permits and approvals, until the conditions outlined in sections 4 and 5 are fulfilled.
5. The Developer shall at its sole cost design, install, plant and construct the following works, services and other things in advance of the issuance of a subdivision approval on the Land:
  - There shall be a 15 m vegetative buffer separating the subject property from the Agricultural Land Reserve to the north
  - A berm, designed by a Qualified Professional shall be constructed within the 15 m buffer according to the Ministry of Agriculture Guide to Edge Planning document.
  - A 6 foot high solid green fence shall be constructed along the north property line separating Agricultural Land Reserve from the residential development.
  - Service the new development in accordance with the District of Sooke Subdivision and Development Standards Bylaw 65.
  - Frontage dedication requirements; 15m from Highway 14 centerline.
  - Complete a detailed erosion and sediment control plan prior to commencement of any construction.
  - Offsite road improvements as noted in the Traffic Impact Assessment report, completed by Boulevard Transportation Group, dated 26 July, 2010.

- The internal road shall be constructed as per Cross Section SDD-R06C, modified to a 7m pavement with 2.0m wide concrete sidewalk and ornamental street lighting, cyclone CY1507.
  - All driveways within public property are to be hard surfaced to the property line.
  - Cash in lieu for 2.0m concrete sidewalk along Highway 14
  - Prior to fourth reading for the rezoning, the applicant, at their cost, is to coordinate with the District of Sooke for the completion of a sewer feasibility study to review the capacity of downstream sewers.
6. Prior to the issuance of a building permit in respect of the Lands authorizing the construction and installation or other provision of the Servicing required under sections 3 through 5 of this Schedule "A" , and the Subdivision and Development Standards Bylaw (as amended), the Developer must provide to the District security in the form of an irrevocable letter of credit, or in a form satisfactory to the District, and in the amount of one hundred ten (110%) percent of the estimated cost of constructing and installing and otherwise providing the Servicing required under both the Subdivision and Development Standards Bylaw (as amended) and sections 3 through 5, as estimated by a Professional Engineer and accepted by the Municipal Engineer acting reasonably, which security will be released to the Developer upon completion of the works and services and upon final acceptance by the District's Municipal Engineer.

#### **GENERAL**

7. In all obligations and covenants where the Owner are required to construct certain works and improvements, the Owner may post sufficient security with the Municipality, in a form and amount acceptable to the Municipality, in exchange for completing the works and/or improvements within a specified time period.
8. The Owner may, therefore, request a discharge of any particular covenant granted in this Agreement, for which, either sufficient security was posted by the Owner and accepted by the Municipality, or the work has been completed and accepted by the Municipality, therefore deemed to be fully satisfied by the Owner, and the Municipality shall execute and deliver a discharge in respect of any such covenant.

**END OF DOCUMENT**



## DISTRICT OF SOOKE

### BYLAW NO. 461

---

A bylaw to authorize a Phased Development Agreement for development at 6978 West Coast Road.

---

The Council of the District of Sooke, in open meeting assembled, having given notice and held a public hearing, enacts under section 905.1 of the *Local Government Act* as follows:

1. This Bylaw is cited as *6978 West Coast Road Phased Development Agreement Authorization Bylaw, 2010*.
2. The Mayor and the Chief Administrative Officer may execute and deliver an Agreement with DANIEL WILLIAM PERRIER AND BONNIE LYNN PERRIER and BRIAN PETER SCOTNEY AND CATHERINE ANN SCOTNEY in the form attached as Schedule "A" to this Bylaw.

Introduced and read a first time the 13<sup>th</sup> day of September, 2010.

Read a second time the 13<sup>th</sup> day of September, 2010.

Public hearing held on the 29<sup>th</sup> day of November, 2010.

Amended the 29<sup>th</sup> day of November, 2010.

Read a third time the 29<sup>th</sup> day of November, 2010.

Adopted the 14<sup>th</sup> day of February, 2011.

Rescinded adoption the 28<sup>th</sup> day of February, 2011

Rescinded third reading the 28<sup>th</sup> day of February, 2011

Rescinded second reading the 28<sup>th</sup> day of February, 2011

Amended the 28<sup>th</sup> day of February, 2011

Read a second time the 28<sup>th</sup> day of February, 2011

Public hearing held the 14<sup>th</sup> day of March, 2011

Read a third time the 14<sup>th</sup> day of March, 2011

Adopted on the 9<sup>th</sup> day of May, 2011

---

Janet Evans  
Mayor

---

Bonnie Sprinkling  
Corporate Officer

FOR INFORMATION ONLY: Section 219 Covenants registered the 21<sup>st</sup> day of January, 2011 in the Victoria Land Titles officer under number CA1877305/06 and CA1877307/08.

FOR INFORMATION ONLY: Section 219 Covenants registered the 3rd day of May, 2011 in the Victoria Land Titles officer under number CA1997994 and CA1997992 for lot B.

## **SCHEDULE A**

This Agreement dated for reference the    day of            , 2010

BETWEEN:

**DISTRICT OF SOOKE**  
2205 Otter Point Road  
Sooke, BC V9Z 1J2  
(the "**District**")

AND:

**DANIEL WILLIAM PERRIER**  
**BONNIE LYNN PERRIER**  
961 Dunford Avenue  
Vicotria, B.C. V9B 2S4  
**As to an undivided 50/100 interest as Joint Tenants**

**BRIAN PETER SCOTNEY**  
**CATHERINE ANN SCOTNEY**  
3504 Happy Valley Road  
Victoria, B.C. V9C 2Y3  
**As to an undivided 50/100 interest as Joint Tenants**  
(the "**Developer**")

### **GIVEN THAT:**

- A. The Developer is the owner of lands known as 6978 West Coast Road and legally described as:

PID 001-326-775 Lot 2, Section 4, Sooke District, Plan 29991  
PID 005-001-056 Lot B, Section 4, Sooke District, Plan 11326

- B. The Developer has applied to the District for an amendment to the District of Sooke Bylaw No. 270, *Sooke Zoning Bylaw, 2006*, as amended, by way of Bylaw No. 456, *Zoning Amendment Bylaw (270-74)* (the "Zoning Amendment Bylaw") to permit the development on the Lands as generally depicted in Schedule A;

- C. The Developer has undertaken to provide certain amenities, works and services in conjunction with the development of the Lands and the parties wish to ensure that the provisions of the Zoning Amendment Bylaw continue to apply to the Lands for the period more particularly set out in this Agreement, that the Lands are developed in the phases and in the sequence specified, and that the Amenities are provided in conjunction with the development of the Lands and in the sequence specified in this Agreement;

- D. The Council of the District has, by bylaw, authorized the making of this Agreement;
- E. The parties have agreed to register in the Victoria Lands Title Office a covenant under section 219 of the *Land Title Act* and section 905.1(4)(d) of the *Local Government Act* to secure compliance with and enforcement of the Developer's obligations under this Agreement.

**NOW THEREFORE** in consideration of the mutual promises set out in this Agreement, the Developer and the District agree under section 905.1 of the *Local Government Act* as follows:

## **1.0 DEFINITIONS AND INTERPRETATION**

### **1.1 In this Agreement**

**"Amenities"** means the improvements provided for under Section 9.0;

**"Development"** means the development of the Lands as generally depicted on the Site Plan attached as Schedule A.

**"Development Phase"** means a phase of the development, including all services and Amenities contemplated or required in connection with that Phase, as depicted on the Phasing Plan.

**"Force Majeure"** means any act reasonably beyond the control of the party seeking to invoke the benefit of Force Majeure under this Agreement including but without restricting the generality thereof, severe weather conditions, lightning, earthquakes, fires, floods and storms, strikes, lockouts and industrial disturbances, any acts, rules, regulations, order or directives of any government or agency thereof, civil disturbances, explosions, transportation embargoes, or failure or delays in transportation, breakdown or mechanical or operational failure of any technical facilities, excessive electrical power fluctuations, excessive water pressure fluctuations, the order of any Court, or any other causes either herein enumerated or otherwise not reasonably within the control of such party; provided that financial incapacity, insolvency and general economic conditions shall not in any event constitute or be deemed to constitute an event of Force Majeure.

**"Lands"** means the parcels of land legally described in paragraph A of the preamble.

**"Phase 1"** means that Phase of the Development numbered as Phase 1 on the Phasing Plan.

**"Phase 2"** means that Phase of the Development numbered as Phase 2 on the Phasing Plan.

**"Phasing Plan"** means the plan attached as Schedule B depicting the Development Phases;

**"Specified Zoning Bylaw Provisions"** means all those provisions of the Zoning Amendment Bylaw that are applicable to the Lands and that are adopted under section 903 of the *Local Government Act*.

- 1.2 The headings and captions are for convenience only and do not form a part of this Agreement and will not be used to interpret, define or limit the scope, extent or intent of this Agreement or any of its provisions.
- 1.3 The word "including" when following any general term or statement is not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar terms or matters but rather as permitting it to refer to other items or matters that could reasonably fall within its scope.
- 1.4 A reference to currency means Canadian currency.
- 1.5 A reference to a statute includes every regulation made pursuant thereto, all amendments to the statute or to any such regulation in force from time to time, and any statute or regulation that supplements or supersedes such statute or any such regulation.
- 1.6 This Agreement shall be governed by and construed in accordance with and governed by the laws applicable in the Province of British Columbia.
- 1.7 A reference to time or date is to the local time or date in Sooke, British Columbia.
- 1.8 A word importing the masculine gender includes the feminine or neuter, and a word importing the singular includes the plural and vice versa.
- 1.9 A reference to approval, authorization, consent, designation, waiver or notice means written approval, authorization, consent, designation, waiver or notice.
- 1.10 A reference to a section means a section of this Agreement, unless a specific reference is provided to a statute.

## **2.0 SCHEDULES**

- 2.1 The following Schedules are attached to and form part of this Agreement:

Schedule A - Concept Plan/Subject Property

Schedule B - Phasing Plan

Schedule C - Amenities

## **3.0 APPLICATION OF AGREEMENT**

- 3.1 This Agreement applies to the Lands and to no other Lands.

#### **4.0 CONDITIONS PRECEDENT**

- 4.1 Except for the Developer's and the District's obligations under section 8.0, 9.0 and 10.0, the obligations of the parties under this Agreement are subject to the Council of the District, in its sole and unfettered discretion, adopting both the zoning amendment bylaw and the bylaw to authorize the making of this Agreement.

#### **5.0 SPECIFIED ZONING BYLAW PROVISIONS**

- 5.1 For the term of this Agreement, any amendment or repeal of the Specified Zoning Bylaw provisions shall not apply to the Lands, subject to:

- (a) the express limits set out at section 905.1 of the *Local Government Act*;
- (b) the termination of this Agreement under section 7.0; and
- (c) changes that the Developer agrees in writing shall apply.

#### **6.0 TERM OF AGREEMENT**

- 6.1 The term of this Agreement is ten (10) years from the date it is fully executed by the parties.

#### **7.0 TERMINATION**

- 7.1 The parties may terminate this Agreement at any time by written agreement.
- 7.2 If the Developer does not comply with any of the provisions of sections 8.0 through 10.0 of this Agreement, the District may at its option terminate this Agreement before the expiry of the Term by providing notice in writing to the Developer, provided that:
- (a) in the case of a failure on the Developer's part to pay a sum of money or to provide security for an obligation, the District has, at least thirty (30) days prior to giving such notice, advised the Developer in writing of the alleged failure to pay or to provide the security (the "**Default Notice**") and the Developer has not corrected the failure to the reasonable satisfaction of the District within that thirty (30) day period;
  - (b) in the case of any other failure on the Developer's part to comply with the provisions of sections 8.0 through 10.0 of this Agreement, the District has, at least sixty (60) days prior to giving such notice, provided the Developer with a Default Notice in respect of such failure, and the Developer has not corrected the failure or deficiency in performance to the reasonable satisfaction of the District, within that sixty (60) day period; or



- (c) if a failure or deficiency [but for certainty, not including a failure to pay a sum of money or provide security as referred to in section 7.2(a)] requires longer than sixty (60) days to remedy, the Developer has failed to substantially commence remedying such failure or deficiency within sixty (60) days after receipt of the Default Notice to the reasonable satisfaction of the District and further has failed to diligently pursue remedying the failure or deficiency thereafter.

## **8.0 DEVELOPMENT AND DEVELOPMENT PHASING**

- 8.1 The Developer covenants that it shall not develop the Lands, disturb the surface of the Lands, cut or damage vegetation on the Lands or subdivide the Lands except in accordance with the terms of this Agreement.
- 8.2 The Developer covenants to develop and construct the Development in the Phases shown in the Phasing Plan, such that all Development Phases are substantially completed on or before the expiry of the Term.
- 8.3 For the purpose of this Agreement, "substantially completed" or "substantial completion" means that all requisite occupancy permits for all construction that is to occur within a Development Phase have been issued by the authority having jurisdiction, and that with respect to that Development Phase, the Developer has completed and fulfilled all of the Developer's obligations under this Agreement with respect to subdivision, servicing of that Development Phase, the transfer or dedication of Lands to the District, the provision of Amenities, enhancement of the surface of the Lands and landscaping of the Lands, all to the satisfaction of the District.

## **9.0 AMENITIES**

- 9.1 The Developer covenants and agrees to provide, to the satisfaction of the District's Municipal Engineer and Municipal Planner, the Amenities, prior to final approval by the approving officer of the Subdivision of the Lands in accordance with section 9.2 of this Agreement:
- 9.2 The Developer covenants and agrees to provide at its sole cost the community amenities set out in Schedule C.

## **10.0 SERVICING**

- 10.1 The Developer covenants that it shall not subdivide the Lands and that it shall not construct any buildings, improvements or structures on the Lands except for the Amenities, improvements and enhancements required under sections 9.0 and 10.0, and except for structures such as roads, pipes, mains, pumps, and all related facilities and equipment as may be necessary to provide water, sanitary sewer, stormwater management and fire suppression services to the Lands, in accordance with all required permits and approvals, until the conditions outlined in this section 10.0 are fulfilled.

10.2 The Developer shall at its sole cost design, install, plant and construct the following works, services and other things:

- There shall be a 15 m vegetative buffer separating the subject property from the Agricultural Land Reserve to the north as shown in Schedule A
- A berm, designed by a Qualified Professional shall be constructed within the 15 m buffer according to the Ministry of Agriculture Guide to Edge Planning document.
- A 6 foot high solid green fence shall be constructed along the north property line separating Agricultural Land Reserve from the residential development.
- The Owners shall, in advance of the issuance of a subdivision approval on the Land carry out the following improvements:
  - Service the new development in accordance with the District of Sooke Subdivision and Development Standards Bylaw 65.
  - Frontage dedication requirements; 15m from Highway 14 centerline.
  - Complete a detailed erosion and sediment control plan prior to commencement of any construction.
  - Offsite road improvements as noted in the Traffic Impact Assessment report, completed by Boulevard Transportation Group, dated 26 July, 2010.
  - The internal road shall be constructed as per Cross Section SDD-R06C, modified to a 7m pavement with 2.0m wide concrete sidewalk and ornamental street lighting, cyclone CY1507.
  - All driveways within public property are to be hard surfaced to the property line.
  - Cash in lieu for 2.0m concrete sidewalk along Highway 14
  - Prior to fourth reading for the rezoning, the applicant, at their cost, is to coordinate with the District of Sooke for the completion of a sewer feasibility study to review the capacity of downstream sewers.

## **11.0 SECTION 219 COVENANT**

11.1 Concurrent with the making of this Agreement the parties will register in the Victoria Land Title Office a covenant under section 219 of the *Land Title Act* and section 905.1(4)(d) of the *Local Government Act* to secure compliance with and enforcement of the Developer's obligations under this Agreement.

## **12.0 INDEMNITY AND RELEASE**

12.1 The Developer shall indemnify and keep indemnified the District from any and all claims, causes of action, suits, demands, fines, penalties, costs, deprivation, expenses or legal fees whatsoever, whether based in law or equity, whether known or unknown, which anyone has or may have against the District or which the District incurs as a result of any loss, damage or injury, including economic loss or deprivation, arising out of or connected with this Agreement, including the

restrictions and requirements of this Agreement, or any breach by the Developer of any covenant in this Agreement.

12.2 The Developer hereby releases, saves harmless and forever discharges the District of and from any claims, causes of action, suits, demands, fines, penalties, costs, deprivation, expenses or legal fees whatsoever which the Developer can or may have against the District, whether based in law or equity, whether known or unknown, for any loss, damage or injury, including economic loss or deprivation, that the Developer may sustain or suffer arising out of or connected with this Agreement, including the restrictions and requirements of this Agreement, the provisions of the Amenities and the development of the Lands as contemplated under this Agreement, or any breach by the Developer of any covenant in this Agreement.

12.3 The indemnity and release provisions of sections 12.1 and 12.2 shall survive the expiry or termination of this Agreement.

### **13.0 NO RECOVERY OF AMENITIES**

13.1 The Developer covenants and agrees that expiry of the Agreement and any termination in accordance with section 7.0 or otherwise, does not entitle the Developer to recover any portion of the Amenities provided prior to termination, or to seek restitution in relation thereto or in relation to any other obligation of the Developer as performed prior to such termination (and the Developer specifically agrees that the Specified Zoning Bylaw Provisions of this Agreement for the period prior to expiry or termination provides sufficient consideration for the Amenities) and the release and indemnity provisions under sections 12.1 to 12.2 apply in this regard.

13.2 The Developer covenants and agrees it will not commence or advance a legal proceeding of any kind to seek to quash, set aside, hold invalid this Agreement, or the Zoning Amendment Bylaw, or to recover any portion of the Amenities provided under this Agreement, or seek restitution in relation to any of the Amenities provided under this Agreement, and if the Developer does any of the foregoing, the District may provide this Agreement to the Court as a full and complete answer.

### **14.0 ASSIGNMENT OF AGREEMENT**

14.1 Except as provided in section 14.2, the Developer may assign this Agreement only with the prior written consent of the District under section 905.2(5)(c) of the *Local Government Act*, if the assignee enters into this Agreement with the District and without limitation assumes all outstanding obligations of the Developer under this Agreement. To the extent that it may lawfully do so under the provisions of the *Local Government Act*, the District agrees that its consent to an assignment will not be withheld unreasonably.

14.2 The District's consent will not be required for any assignment of this Agreement to an affiliate (as defined in the *Business Corporations Act* (British Columbia)) of the Developer.

### **15.0 AMENDMENT OF AGREEMENT**

- 15.1 The parties may in writing agree to minor amendments to this Agreement, and for that purpose a "minor amendment" is a change or amendment to any of Schedules A and Schedule B of this Agreement.

## 16.0 DISPUTE RESOLUTION

- 16.1 If a dispute arises between the parties in connection with this Agreement, the parties agree to use the following procedure as a condition precedent to any party pursuing other available remedies:
- (a) either party may notify the other by written notice ("**Notice of Dispute**") of the existence of a dispute and a desire to resolve the dispute by mediation;
  - (b) a meeting will be held promptly between the parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute;
  - (c) if, within forty-eight (48) hours after such meeting or such further period as is agreeable to the parties (the "**Negotiation Period**"), the parties have not succeeded in negotiating a resolution of the dispute, they agree to submit the dispute to mediation and to bear equally the costs of mediation;
  - (d) the parties will jointly appoint a mutually acceptable mediator (who must be an expert in the subject matter of the dispute), within forty-eight (48) hours of the conclusion of the Negotiation Period;
  - (e) the parties agree to participate in good faith in the mediation and negotiations related thereto for a period of thirty (30) days following appointment of the mediator or for such longer period as the parties may agree. If the parties are not successful in resolving the dispute through mediation or if the mediation has not commenced within fourteen (14) days following the appointment of the mediator or if the parties cannot agree upon the mediator appointment, then the parties agree that the dispute will be settled by a single arbitrator in accordance with the *Commercial Arbitration Act*, R.S.B.C. 1996, Chapter 55, as amended. The decision of the arbitrator will be final and binding and will not be subject to appeal on a question of fact, law, or mixed fact and law; and
  - (f) the costs of mediation or arbitration will be awarded by the mediator or arbitrator in his or her absolute discretion.
- 16.2 In no event shall the foregoing be construed as impeding or affecting the District's authority to enforce its zoning and other regulatory bylaws.

## 17.0 NOTICE

- 17.1 Any notice permitted or required by this Agreement to be given to either party must be delivered in writing to that party at the address set out above, or to any other address provided by the party to the other under this section.

## **18.0 POWERS PRESERVED**

- 18.1 Except as expressly set out in this Agreement, nothing in this Agreement shall prejudice or affect the rights and powers of the District in the exercise of its powers, duties or functions under the *Community Charter* or the *Local Government Act* or any of its bylaws, all of which may be fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered to the Developer, subject only to section 905.1 of the *Local Government Act*.

## **19.0 DISTRICT'S REPRESENTATIVE**

- 19.1 Any opinion, decision, act or expression of satisfaction or acceptance of the District provided for in this Agreement may be taken or made by the Chief Administrative Officer or his or her designate, unless expressly provided to be taken or made by another official of the District.

## **20.0 PERMITS**

- 20.1 The Developer acknowledges that the District may, despite any public law limitations on the withholding of building permits and occupancy permits, withhold building permits and occupancy permits for the purpose of ensuring compliance with and administering the terms of this Agreement.

## **21.0 CONFLICT**

- 21.1 In the event of a conflict between the terms of this Agreement and the provisions of the District Official Community Plan or Zoning Bylaw applicable to the Lands, the Official Community Plan or Zoning Bylaw will prevail, except insofar as section 905.1(5) of the *Local Government Act* applies to a bylaw adopted after the date of execution of this Agreement by the District.

## **22.0 TIME**

- 22.1 Time is to be the essence of this Agreement.

## **23.0 BINDING EFFECT**

- 23.1 This Agreement will ensure to the benefit of and be binding on the parties hereto and their respective heirs, administrators, executors, successors, and permitted assignees.

## **24.0 WAIVER**

- 24.1 The waiver by a party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement is not to be construed as a waiver of any future or continuing failure, whether similar or dissimilar.

## **25.0 LANGUAGE**

- 25.1 Wherever the singular, masculine and neuter are used throughout this Agreement, the same is to be construed as meaning the plural or the feminine or the body corporate or politic as the context so requires.

## **26.0 CUMULATIVE REMEDIES**

- 26.1 No remedy under this Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies at law or in equity.

## **27.0 LAW APPLICABLE**

- 27.1 This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

## **28.0 RELATIONSHIP OF PARTIES**

- 28.1 No provision of this Agreement shall be construed to create a partnership or joint venture relationship, an employer-employee relationship, a Landlord-tenant, or a principal-agent relationship.

## **29.0 AMENDMENT**

- 29.1 This Agreement may not be modified or amended except by the written agreement of the parties.

## **30.0 INTEGRATION**

- 30.1 This Agreement contains the entire agreement and understanding of the parties with respect to the matters contemplated by this Agreement and supersedes all prior and contemporaneous agreements between them with respect to such matters.

## **31.0 SURVIVAL**

- 31.1 All representations and warranties set forth in this Agreement and all provisions of this Agreement, the full performance of which is not required prior to a termination of this Agreement, shall survive any such termination and be fully enforceable thereafter.

## **32.0 NOTICE OF VIOLATIONS**

- 32.1 Each party shall promptly notify the other party of any matter which is likely to continue or give rise to a violation of its obligations under this Agreement.

### **33.0 ENTIRE AGREEMENT**

33.1 The whole agreement between the parties is set forth in this document and no representations, warranties or conditions, express or implied, have been made other than those expressed.

### **34.0 SEVERABILITY**

34.1 Each article of this Agreement shall be severable. If any provision of this Agreement is held to be illegal or invalid by a Court of competent jurisdiction, the provision may be severed and the illegality or invalidity shall not affect the validity of the remainder of this Agreement.

### **35.0 COUNTERPART**

35.1 This Agreement may be executed in counterpart with the same effect as if both parties had signed the same document. Each counterpart shall be deemed to be an original. All counterparts shall be construed together and shall constitute one and the same Agreement.

**IN WITNESS WHEREOF** the parties hereto have set their hands and seals as of the day and year first above written.

DISTRICT OF SOOKE by its authorized )  
signatories: )

\_\_\_\_\_) )  
Mayor Janet Evans )

\_\_\_\_\_) )  
Evan Parliament )  
Chief Administrative Officer )

Signed in the presence of: )

\_\_\_\_\_) )

\_\_\_\_\_) )  
DANIEL WILLIAM PERRIER )

\_\_\_\_\_) )  
BONNIE LYNN PERRIER )

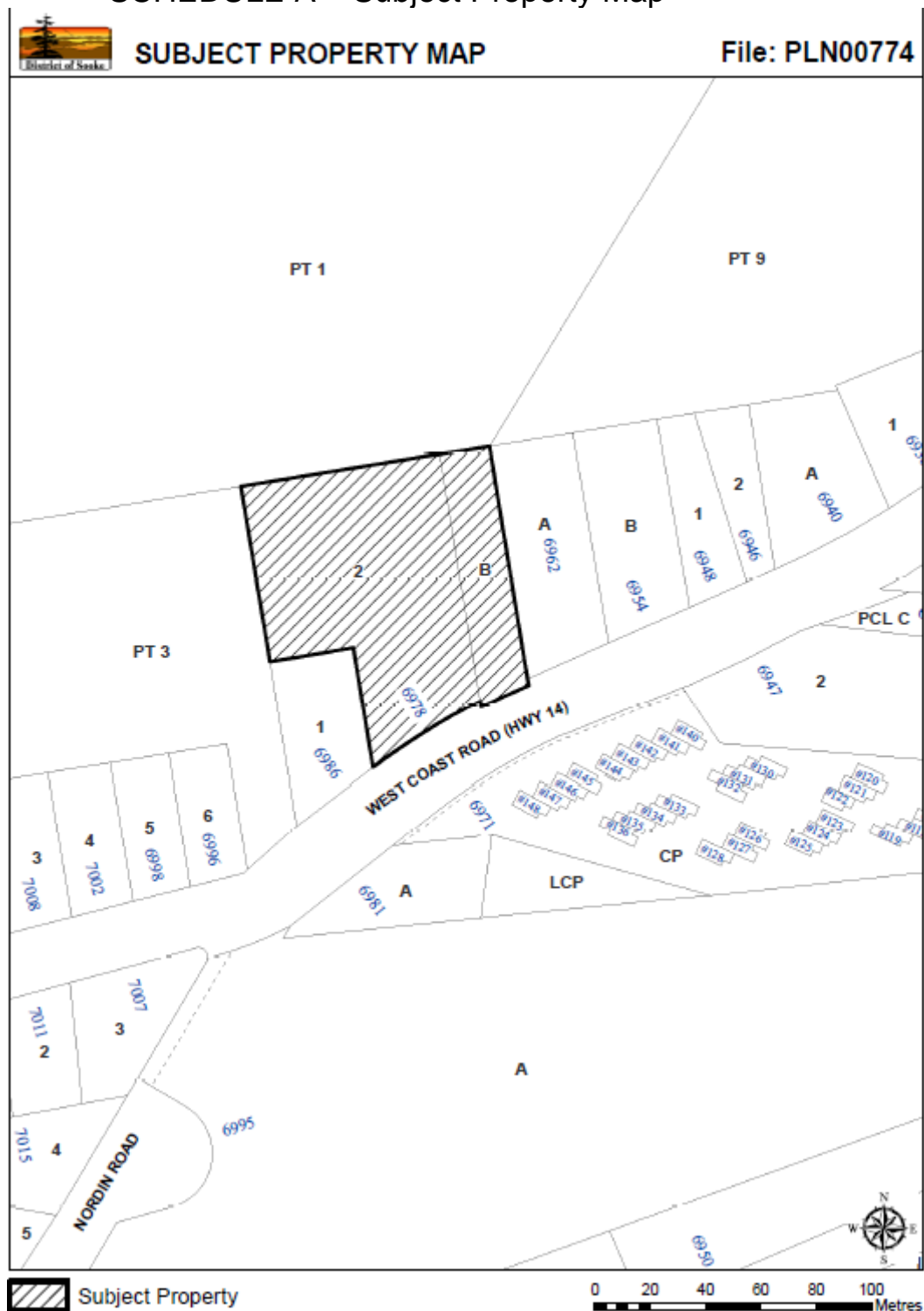
Signed in the presence of: )

\_\_\_\_\_) )

\_\_\_\_\_) )  
BRIAN PETER SCOTNEY )

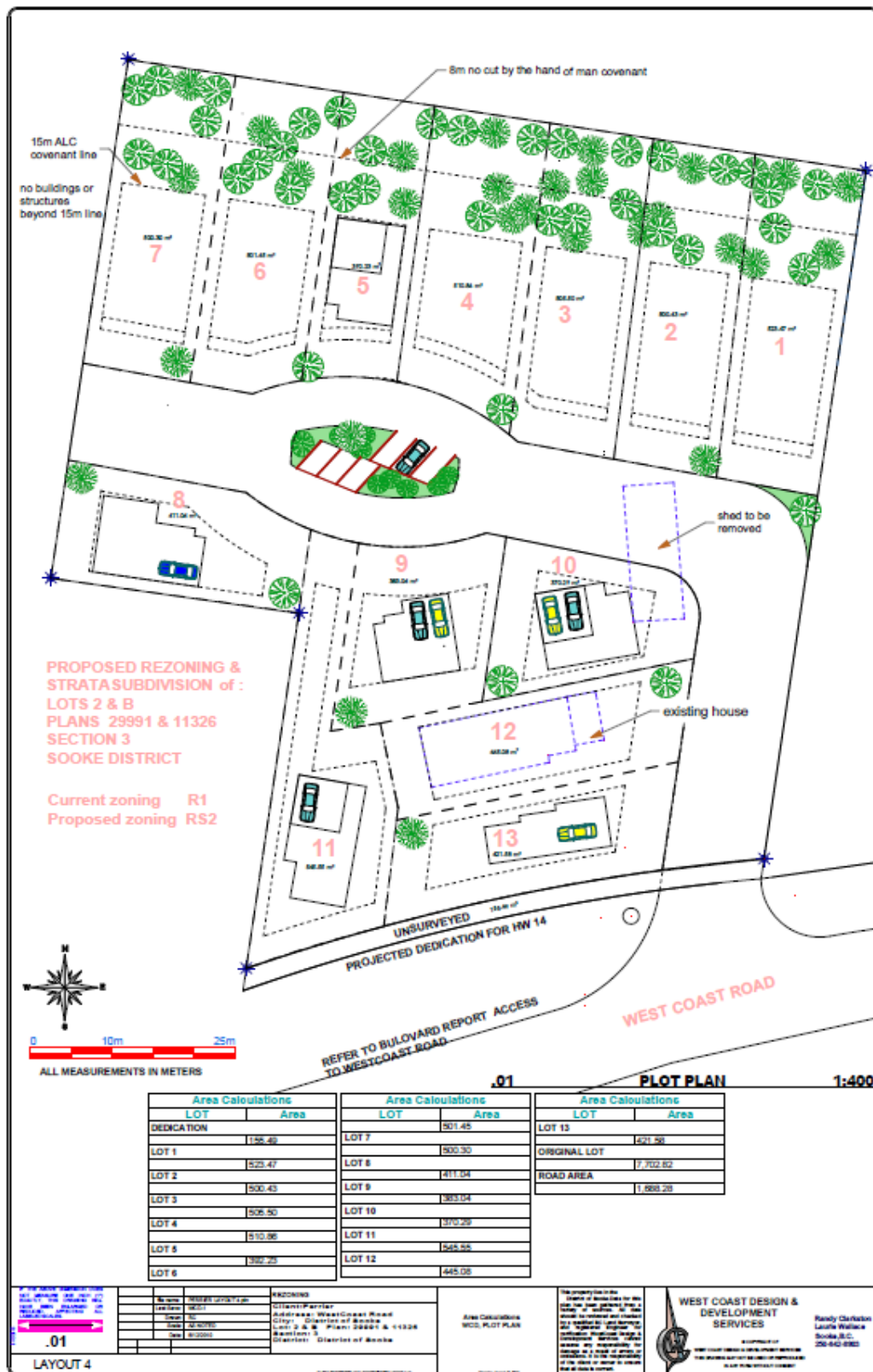
\_\_\_\_\_) )  
CATHERINE ANN SCOTNEY )

## SCHEDULE A – Subject Property Map





## SCHEDULE A –Concept Plan



## SCHEDULE B – PHASING PLAN

PHASE 1 – Development Permits, Subdivision and Servicing

PHASE 2 – Building Permits and Development

## SCHEDULE C – AMENITIES

1. The amenities to be provided are:
  - a. parks and trail development, waterfront walkway, affordable housing, open space (in addition to statutory park dedications), day care facilities (not for profit), public art, park equipment, ALR acquisitions, community gardens, parking structures, performing arts facility, green infrastructure, beautification projects, having in the aggregate a market value not exceeding \$5,000.00 for each additional dwelling unit in excess of the 9.2 dwelling unit Base Density on the land to be collected at time of subdivision; and,
  - b. preservation of heritage structures, in the locations and in accordance with standards approved in writing by the District of Sooke Municipal Planner and Municipal Engineer, except that in lieu of provision of these amenities the Developer may elect to pay the District \$5,000.00 for each additional dwelling unit in excess of the 9.2 dwelling unit Base Density on the land to be collected at time of subdivision.





File No: PLN00774

## REQUEST FOR DECISION

Regular Council Meeting

March 29, 2016

To: Teresa Sullivan, Chief Administrative Officer  
From: Development Services  
Re: **Covenant Amendment for ALR Buffer – 6978 West Coast Road**

### RECOMMENDATION:

**THAT COUNCIL** consider the applicant's request to reconsider the Agricultural Land Reserve (ALR) buffer as per the attached correspondence dated March 3, 2016;

**AND** if Council agrees to consider an amendment to Covenant CA1877305, direct the landowners to work with staff to make application to amend the covenant related to the ALR Buffer in accordance with the requirements of the *Community Charter* and *Local Government Act*.

### Executive Summary:

The ALR buffer was secured by way of a S.219 Covenant (CA1877305). When a covenant is granted in connection with a rezoning, and was integral to the approval of the rezoning, changes to any part of the Schedule of Restrictions requires a Public Hearing. An application fee of \$1200 will be necessary to cover the costs of the public hearing.

### Background:

The owners of 6978 West Coast Road would like Council to reconsider the Agricultural Land Reserve (ALR) buffer put in place at the north edge of their property when they rezoned in 2010 (see attached correspondence from Agent). The buffer that was put in place was based on input from the ALC during the referral period and the ALC's Edge Planning Guide, which looks at providing a buffer between new development and agricultural lands on a case-by-case basis.

The proposed Modification to Covenant CA1877305 will not impose additional costs on the District. The Owner will pay the Public Hearing fee and will pay legal and registration fees for preparation and registration of the s.219 covenant modification.


### Strategic Relevance:

N/A

**Attachments:**

1. Subject Property Map
2. Letter from Agent – Mar 3, 2016
3. Covenant CA1877305

Respectfully Submitted,

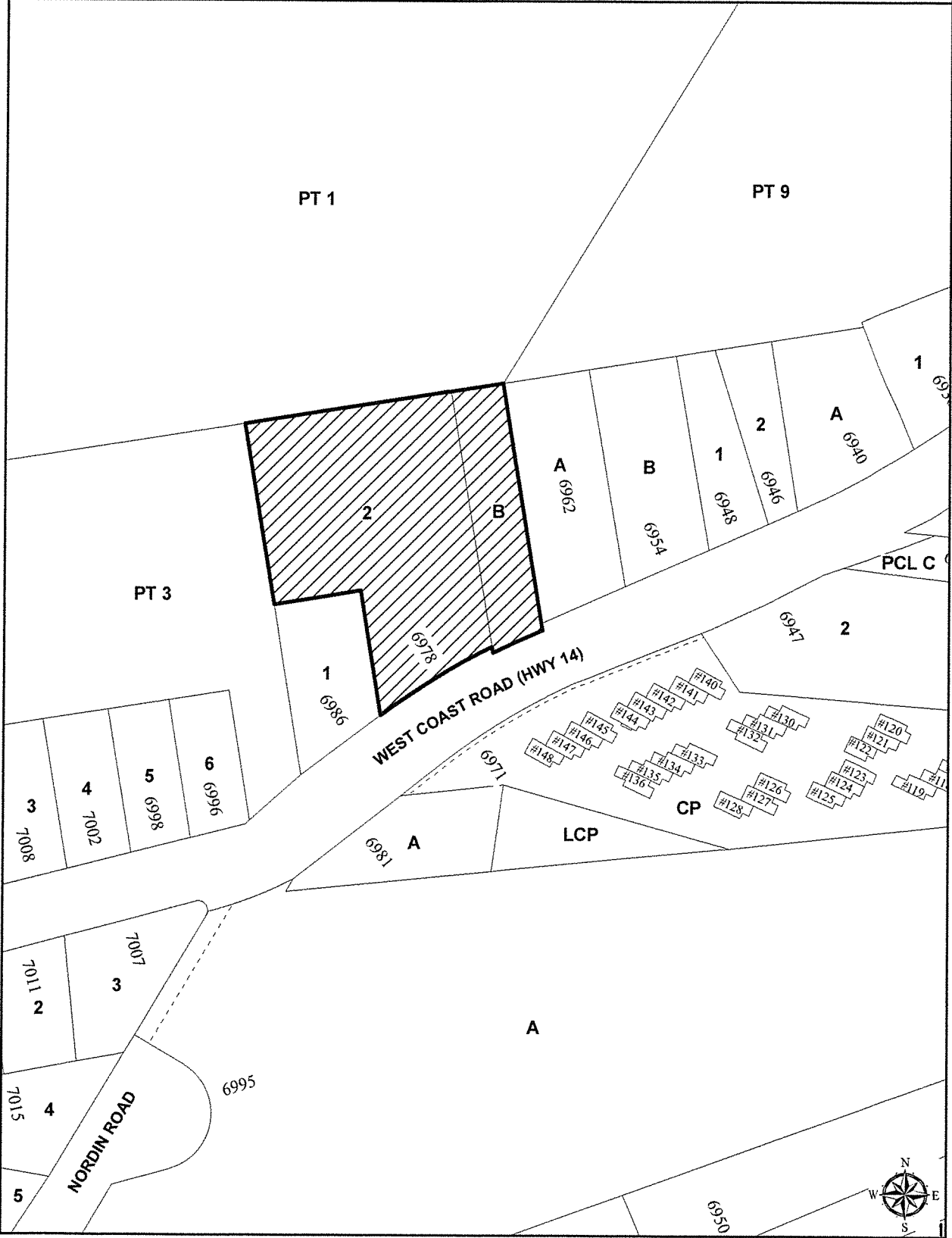
  
\_\_\_\_\_  
Katherine Lesyshen, RPP, MCIP  
Planner II

Approved for Council Agenda
 _____ Development Services
 _____ Corp Services
_____ Financial Services
 _____ CAO



SUBJECT PROPERTY MAP

File: PLN00774



 Subject Property

0 20 40 60 80 100 Metres



Michael Volk

March 3, 2016

Mayor Maja Tait and Sooke City Council  
2205 Otter Point Road  
Sooke, BC V9Z 1J2

Dear Mayor and Council,

I'm a local real estate agent with 25 years of experience in land development, and specifically sub-division project marketing, and I'm writing you about the District of Sooke and their ALR Edge Planning Strategy.

The idea is simple. Maintain a 'buffer' to effectively shield sensitive lands from proposed development and vice-versa. The problem that we've run into is that Sooke properties have been asked to provide a buffer of dense vegetation, and also a 6 foot tall fence to be built on top of a berm.

The resulting 15m 'buffer' then has dense trees and green space which includes a 7.5m 'no cut' zone. This is over ambitious buffer might make sense in Saskatchewan, but in Sooke where these lands haven't been farmed in generations, if ever - this just makes no sense at all. It must be noted, that most of the neighbouring developments along this ALR boundary have done nothing like this.

After review the Edge Planning Guide one thing that stands out is the distances the guide is referring to included farms that are very large in the hundreds of acres, and that most of these lands are being actively farmed. Most of the lands in Sooke haven't been actively framed in years.

It's interesting to note that much of the data was available back in the 1990's but policy was never adopted. The Subdivision Near Agriculture Guide was published in 1996, and Planning Subdivisions Near Agriculture - published in 1997.

The Edge Planning Guide is very clear and depends on a number of factors. The guide clearly states that ***"Locating the most eligible areas will involve undertaking an overview inventory to identify broadly where the critical and non-critical edges are. Such an overview will ensure that effort is not wasted on areas where there is little possibility of future conflict."*** I'm not sure that the District has identified any critical areas, anywhere in the District. This land was singled out, but it's not being farmed and has not been farmed in many years, if ever.

The Edge Planning Guide suggests that ***"It is important to know whether the surrounding non-farm land use will be subject to change to a more urban intensive use in the future. If changes are expected, it would be prudent to have the edge planning area (EPA) in place ahead of time."*** The Sooke OCP contains no mention of any EPA in the District.



Letter to Mayor and Council for the District of Sooke

There is a reference to Edge Planning in one section of the OCP and it simply says that the District will ***"Ensure sufficient buffers, ..., between agricultural lands and adjacent, non-agricultural properties; use of 'best practices' guides from the ALC should be considered during the planning or development processes, e.g. Ministry of Agriculture and Land's Guide to Edge Planning."***

The simple fact is that so many homes already infringe on this boundary, and any future intensive farming on this land will not be negatively impacted by the location of these homes with a hedge and 6 foot tall fence to separate them from any farming potential.

The guide further suggests that city staff ***"identify broadly where the critical and non-critical edges are. Such an overview will ensure that effort is not wasted on areas where there is little possibility of future conflict."***

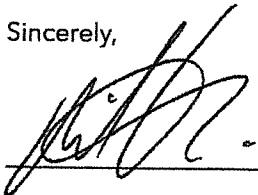
I suggest that Sooke consider adopting a policy for Edge Planning near these un-used farmlands that includes the following:

- 5 - 6' tall chain link fencing installed on the property line
- 2m wide Leyland Cypress (deer proof) hedge on the inside of the fencing. Chain link fencing is best because it allows light to the hedge, which will quickly hide any fencing.
- 5.5m buffer of lawn or gardens as shown on the attached. Allow garden sheds or any other usual yard items in this area.
- Total is a 7.5m buffer between the homes and the ALR lands.

In closing I would like to ask that Mayor and Council request that staff re-visit this issue in the District so that future would-be developers don't make this mistake. This has been a difficult process for these families to navigate, and the hope is that they can have these restrictive covenants removed or at very least modified so that they can market their property and sell without any further financial loss.

Thank you for your time and consideration.

Sincerely,



Michael Volk  
iView Development Corp.  
Project Marketing & Development



LAND TITLE ACT  
FORM C (Section 233) CHARGE  
GENERAL INSTRUMENT - PART 1 Province of British Columbia

Jan-21-2011 11:30:08.001

CA1877305 CA1877306

PAGE 1 OF 16 PAGES

Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 1996 c.250, and that you have applied your electronic signature in accordance with Section 168.3, and a true copy, or a copy of that true copy, is in your possession.

Richard Russell  
Mayhue HCSHZI

Digitally signed by Richard Russell  
Mayhue HCSHZI  
DN: cn=Richard Russell Mayhue  
HCSHZI, c=CA, o=Lawyer, ou=Vunty  
ID at: www.juicer.com/LKUP.cfm?  
x=HCSHZI  
Date: 2011.01.21 11:28:37 -0800

1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)

MAYHUE &amp; COMPANY

Barrister &amp; Solicitor

PERD 003

2077 CHURCH ROAD, P.O. BOX 728

Sooke, B.C., V9Z 1H7

Document Fees: \$143.80

Deduct LTSA Fees? Yes ☒

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID]

[LEGAL DESCRIPTION]

001-326-775 LOT 2 SECTION 4 SOOKE DISTRICT PLAN 29991

STC? YES ☐

3. NATURE OF INTEREST

Covenant

CHARGE NO.

ADDITIONAL INFORMATION

Priority Agreement

S.219 Land Title Act

Page 6 of Part 2

4. TERMS: Part 2 of this instrument consists of (select one only)

(a) ☐ Filed Standard Charge Terms D.F. No.(b) ☒ Express Charge Terms Annexed as Part 2

A selection of (a) includes any additional or modified terms referred to in item 7 or in a schedule annexed to this instrument.

5. TRANSFEROR(S):

SEE SCHEDULE

6. TRANSFEREE(S): (including postal address(es) and postal code(s))

DISTRICT OF SOOKE

2205 OTTER POINT ROAD,

Sooke

BRITISH COLUMBIA

V9Z 1J2

CANADA

7. ADDITIONAL OR MODIFIED TERMS:

NONE

8. EXECUTION(S): This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)

RICHARD MAYHUE  
Barrister & Solicitor  
2077 Church Road  
PO Box 728  
Sooke, BC V9Z 1H7

Execution Date		
Y	M	D
10	12	15

Transferor(s) Signature(s)

DANIEL WILLIAM PERRIER

BONNIE LYNN PERRIER

## OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

LAND TITLE ACT  
FORM D

## EXECUTIONS CONTINUED

PAGE 2 OF 16 PAGES

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

\_\_\_\_\_  
 RICHARD MAYHUE  
 Barrister & Solicitor  
 2077 Church Road  
 PO Box 728  
 Sooke, BC V9Z 1H7

( as to both signatures )

Y	M	D
10	12	15

\_\_\_\_\_  
 BRIAN PETER SCOTNEY

\_\_\_\_\_  
 CATHERINE ANN SCOTNEY

\_\_\_\_\_  
 Rosella Buchannon  
 A Commissioner for Taking Affidavits  
 for British Columbia  
 Suite 1300 - 13450 - 102 Avenue  
 Surrey, BC V3T 5X4

( as to both signatures )

10	12	20
----	----	----

VANCOUVER CITY SAVINGS CREDIT  
 UNION IN TRUST SEE BL51963 by its  
 authorized signatory(ies)

\_\_\_\_\_  
 Print Name: Sandy Bevilacqua

\_\_\_\_\_  
 Print Name:

## OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

LAND TITLE ACT  
FORM D

## EXECUTIONS CONTINUED

PAGE 3 OF 16 PAGES

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

\_\_\_\_\_  
Bonnie Sprinkling, Corporate Officer  
District of Sooke  
2205 Otter Point Road  
Sooke, BC V9Z 1J2  
Commissioner for taking Affidavits in  
British Columbia

\_\_\_\_\_

\_\_\_\_\_

Y	M	D
11	01	17

DISTRICT OF SOOKE by its authorized  
signatory(ies)

\_\_\_\_\_  
Mayor: Janet Evans

\_\_\_\_\_  
Chief Administrative Officer: Evan  
Parliament

\_\_\_\_\_

\_\_\_\_\_

## OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

LAND TITLE ACT  
FORM E

SCHEDULE

PAGE 4 OF 16 PAGES

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM, OR GENERAL INSTRUMENT FORM.

5. TRANSFEROR(S):

DANIEL WILLIAM PERRIER, BONNIE LYNN PERRIER, BRIAN PETER SCOTNEY, CATHERINE ANN SCOTNEY AND VANCOUVER CITY SAVINGS CREDIT UNION IN TRUST SEE BL51963

**TERMS OF INSTRUMENT – PART 2**

**SECTION 219 COVENANT**

THIS AGREEMENT dated for reference the 15th day of December, 2010

BETWEEN:

**Daniel William Perrier & Bonnie Lynn Perrier**  


**Brian Peter Scotney & Catherine Ann Scotney**  


(hereinafter called the "Owner")

AND:

DISTRICT OF SOOKE  
2205 Otter Point Road,  
Sooke, B.C. V9Z 1J2

(hereinafter called the "Municipality")

WHEREAS:

- A. The Owner is the registered owner of, and has applied to rezone those lands and premises in the District of Sooke, in the Province of British Columbia legally described as:

Parcel Identifier: 001-326-775

Legal Description: Lot 2, Section 4, Sooke District, Plan 29991

(hereinafter called the "Lands");

- B. The Owner proposes to develop the Land for residential purposes as shown on Schedule A;
- C. The Owner has requested the Municipality to adopt Bylaw No. 456 (the "Rezoning Bylaw") rezoning the Land to permit the development proposed by the Owner, and

- D. the Council of the Municipality has determined that the adoption of the Rezoning Bylaw would, but for the covenants contained in this Agreement, not be in the public interest; and the Owner therefore wishes to grant pursuant to s.219 of the Land Title Act, and the Municipality wishes to accept, the covenants over the Land that are set out in this Agreement.
- E. The Owner has agreed to grant the within covenants to ensure construction and maintenance of fencing, landscaping and a berm on the Lands in the course of development on the Lands to be constructed as per Schedule B;

NOW THEREFORE THIS AGREEMENT WITNESSES that pursuant to Section 219 of the *Land Title Act*, and in consideration of the sum of ONE (\$1.00) DOLLAR now paid to the Owner by the Municipality (the receipt and sufficiency whereof is hereby acknowledged), the parties hereto agree and covenant with each other as follows:

- 1. The Owner covenants and agrees with the Municipality that:
  - (a) the Land must not be used;
  - (b) the Land must not be subdivided;
  - (c) development of the Land, including by construction or placement of any building or structure on the Land is prohibited;
  - (d) no building permit may be applied for, and the Municipality is not obliged to issue any building permit, in respect of the Land; and
  - (e) no occupancy permit may be applied for, and the Municipality is not obliged to issue any occupancy permit, in respect of the Land,

Unless the use, subdivision, alteration, development, building or occupancy is in accordance with the Schedule of Restrictions (Schedule A and Schedule B)

- 2. The Owner shall not apply to the Lands any chemicals including pesticides, fungicides and herbicides, whether for pest and weed control or for any other purpose, except in accordance with product package or other manufacturer's directions, and shall contain all spray drift within the boundaries of the Lands.
- 3. The Owner shall provide a 15 metre wide vegetative buffer on the Lands as shown in Schedule "A". The 8 metre buffer area immediately abutting the Agricultural Land Reserve is a no cut area and shall be densely landscaped as per the Ministry of Agriculture's *Guide to Edge Planning* document Urban Side Buffer D set out in Schedule "B". This 8 metre buffer area shall also include a six (6) foot high solid screen wood fence following the property line on the north boundaries of the Lands and a berm with

minimum height 2 metres above natural grades (collectively, the "Landscaping") as shown within Schedule "B". No structures are permitted within the remaining seven (7) metre buffer area outside the 8 metre no cut area.

4. At all times from and after the day that the Municipality certifies that the Landscaping has been completed, and in perpetuity, the Owner covenants and agrees with the Municipality that the Owner will carry out or cause to be carried out, at its sole cost and expense, the maintenance, irrigation, repair, cleaning, renewal, replacement, replanting and any other servicing of the Landscaping located as a prudent owner would do and to the standard set out in the British Columbia Landscape Standard: Level 3 Moderate. The Owner shall replace trees and shrubs as may be necessary, regardless of the cause of the need for replacement.
5. The Owner acknowledges, understands, and agrees that the Lands are adjacent to lands within the agricultural land reserve and may be adversely affected by normal farm practices carried out by the owners of the farm land (including, without restriction, noise from farm operations including propane cannons and other devices used to deter birds and pests, farm smells and chemical sprays, aesthetic appearance of fields including unkempt areas, materials storage, and light from greenhouses).
6. The Owner releases the Municipality and shall indemnify and save harmless the Municipality and its councillors, officers and employees from any claim of any nature by the Owner or any other person, that may be made against the Municipality or its councillors, officers or employees in connection with the breach by the Owner of the covenants in this Agreement, or the use or development of the Lands, if such claim arises in relation to the subject matter of this Agreement, including diminished property value or other impact suffered personally or in connection with agricultural practices on neighbouring land.
7. The Owner shall comply with all requirements of this Agreement at its own cost and expense.
8. The parties agree that this Agreement creates only contractual obligations and obligations arising out of the nature of this document as a covenant under seal. The parties agree that no tort obligations or liabilities of any kind exist between the parties in connection with the performance of, or any default under or in respect of, this Agreement. The intent of this section is to exclude tort liability of any kind and to limit the parties to their rights and remedies under the law of contract and under the law pertaining to covenants under seal.
9. The rights given to the Municipality by this Agreement are permissive only and nothing in this Agreement imposes any legal duty of any kind on the Municipality to anyone, or obliges the Municipality to enforce this Agreement, to perform any act or to incur any



expense in respect of this Agreement, except that nothing in this section shall affect the contractual rights and obligations of the parties hereto under this Agreement.

10. This Agreement shall restrict use of the Lands in the manner provided herein notwithstanding any right or permission to the contrary contained in any bylaw of the Municipality.
11. Where the Municipality is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent, the Owner agrees that the Municipality is under no public law duty of fairness or natural justice in that regard and agrees that the Municipality may do any of those things in the same manner as if it were a private party and not a public body.
12. This Agreement does not
  - (a) affect or limit the discretion, rights or powers of the Municipality under any enactment (as defined in the *Interpretation Act* on the reference date of this Agreement) or at common law, including in relation to the use or subdivision of the Lands;
  - (b) affect or limit any enactment relating to the use or subdivision of the Lands, or
  - (c) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Lands.

and the Owner covenants and agrees to comply with all such enactments with respect to the Lands.

13. Every obligation and covenant of the Owner in this Agreement constitutes both a contractual obligation and a covenant granted under s. 219 of the *Land Title Act* in respect of the Lands and this Agreement burdens the Lands and runs with them and binds the successors in title to the Lands. This Agreement burdens and charges all of the Lands and any parcel into which the Lands are subdivided by any means and any parcel into which the Lands are consolidated (including by removal of interior parcel boundaries) and shall be extended, at the Owner's cost, to burden and charge any land consolidated with the Lands.
14. An alleged waiver of any breach of this Agreement is effective only if it is an express waiver in writing of the breach in respect of which the waiver is asserted. A waiver of a breach of this Agreement does not operate as a waiver of any other breach of this Agreement.

15. If any part of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.
16. This Agreement binds the parties to it and their respective successors, heirs, executors and administrators.
17. The parties hereto shall execute and do all such further deeds, acts, things and assurances that may be reasonably required to carry out the intent of this Agreement.
18. Time is of the essence of this Agreement.
19. This covenant is not intended to create a partnership, joint venture, or agency between the Owner and the Municipality.
20. By executing and delivering this Agreement each of the parties intends to create both a contract and a deed executed and delivered under seal.

As evidence of their agreement to be bound by the terms of this instrument, the parties each have executed and delivered this Agreement under seal by executing Part 1 of the *Land Title Act* Form C to which this Agreement is attached and which forms part of this Agreement.

### **PRIORITY AGREEMENT**

**Vancouver City Savings Credit Union** (the "Chargeholder") being the holder of Mortgage No.

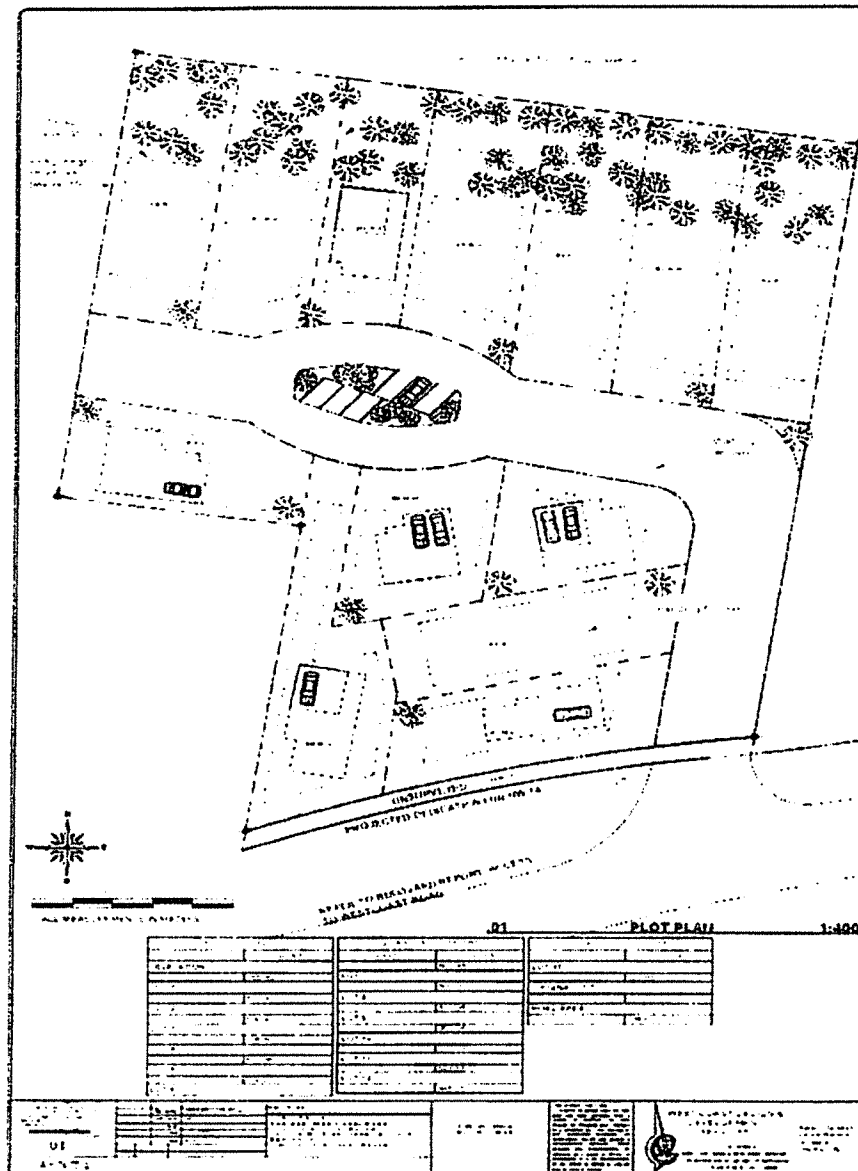
The Chargeholder, in consideration of the premises and the sum of One Dollar (\$1.00) now paid to the Chargeholder by the Transferee, hereby approves of and consents to the granting of the within Agreement and covenants and agrees that the same shall be binding upon its interest in or charge upon the Lands and shall be an encumbrance upon the Lands prior to the Charge in the same manner and to the same effect as if it had been dated and registered prior to the Charge.

IN WITNESS WHEREOF the Chargeholder has executed this Agreement on Form D to which this Agreement is attached and which forms part of this Agreement.

## SCHEDULE OF RESTRICTIONS

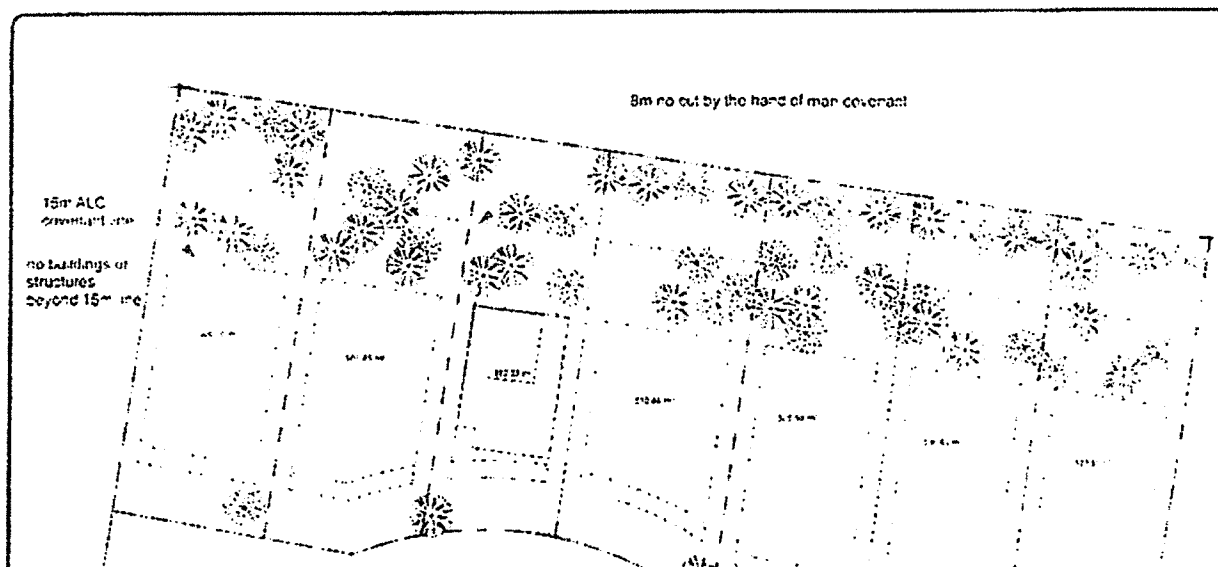
### SCHEDULE "A"

Concept Plan showing 15 metre buffer area (8 metre no cut zone and a 7 metre setback area for structures from the no cut zone)



## SCHEDULE "A"

Concept Plan showing 15 metre buffer area (8 metre no cut zone and a 7 metre setback area for structures from the no cut zone)



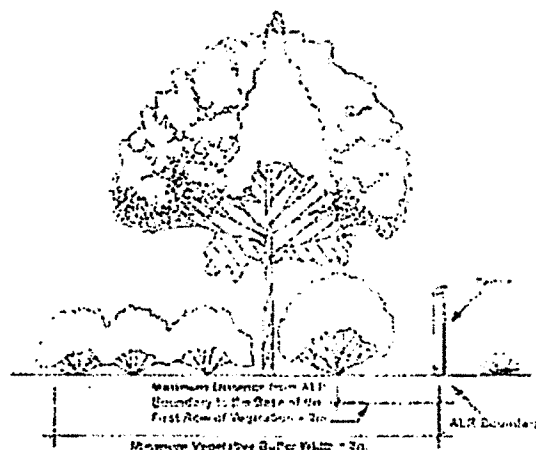
## SCHEDULE "B"

### Urban Side Buffer D Design Specifications

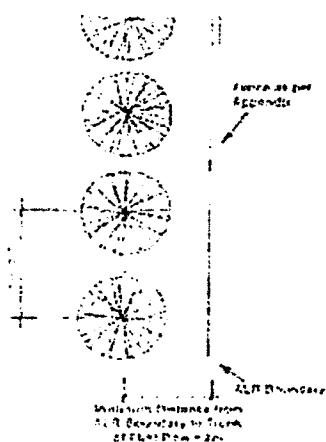
#### Urban Side Buffer D - Design specifications, layout & spacing

The Urban-side Buffer D includes:

- single row deciduous/coniferous or just coniferous trees (see Appendix B for plant list)
- triple row mesopachyphlebous shrubs (see Appendix B for plant list)
- single row screening shrubs (see Appendix B for plant list)
- solid wood fence or chain link fence with a height of 6 feet (1.8 metres) and built as per Appendix C, or as per the local government's fencing specifications



#### Single row deciduous/coniferous trees



#### Single row screening shrubs



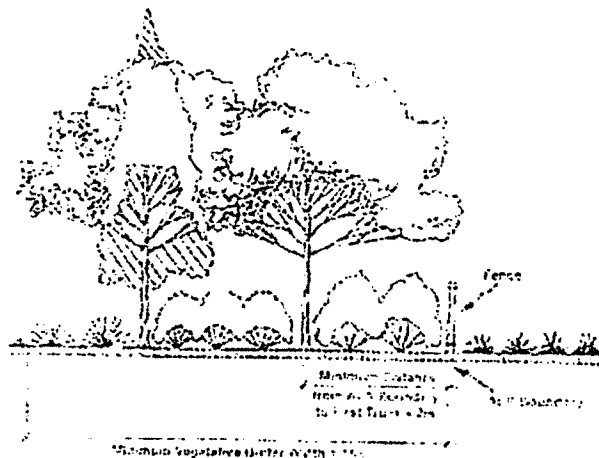
## SCHEDULE "B"

Berm as per Design Specifications within Urban Side Buffer B  
(exclude design specifications in Urban Side Buffer A)

### Urban-Side Buffer A (no berm) - Design specifications & layout

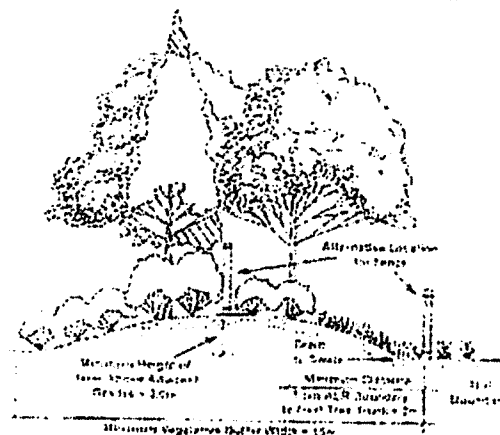
The Urban-Side Buffer A includes:

- double row deciduous/evergreen trees (see Appendix B for plant list)
- triple row trees/shrubs including shrubs (see Appendix B for plant list)
- double row screening shrubs (see Appendix B for plant list)
- solid wood fence or chain-link fence with a height of 6 feet (1.8 meters) and built as per Appendix C or as per the local government's fencing specifications



### Urban-Side Buffer B (with berm) - Design specifications & layout

The Urban-Side Buffer B includes all elements of Buffer A as well as a berm with minimum height 2m above adjacent grade.



## SCHEDULE "B"

Six (6) foot high solid screen wood fence following the property line on the north boundaries of the Lands using the following fencing requirements:

### Solid Wood Fence

The following specifications are recommendations. A local government can use its own specifications if they meet or exceed the following specifications.

1. All posts and rails shall be rough sawn of "No. 1 Structural" grade, pressure treated with a wood preservative non-toxic to surrounding plant material, in accordance with CSA Standard Q80.2 and compatible with staining requirements below.
2. All fence boards and planks shall be rough sawn of "Quality Fencing" grade, finished with penetrating stain with preservative, conforming to CGSB Standards 1-GP, 15M and 204M, applied to all surfaces prior to installation and on any cuts thereafter.
3. Line posts shall be minimum 8.0 ft. in length and at least (standard) 4" x 4".
4. Corner posts shall be minimum 8.0 ft. in length and at least (standard) 6" x 6".
5. Fence rails (end rails) shall be maximum 7.5 ft. in length and at least (standard) 2" x 4".
6. Cap rails shall be at least (standard) 2" x 6". Cant to drain.
7. The finished height of a panel fencing shall be at least 6.0 ft.
8. All nails used in fence construction shall meet the following specifications:
  - Minimum gauge of nails used - #9, common in post/rail connections
  - Minimum gauge of nails used - #11.5, common in rail/fence board connections
  - Galvanized - CSA G40.1
9. Line posts shall be placed no more than 8.0 ft. O.C. and be firmly anchored in the soil to a depth of not less than 24 in.
10. The fence shall be constructed in accordance with these specifications and details provided in Figure 1 - Solid Wood Fence.

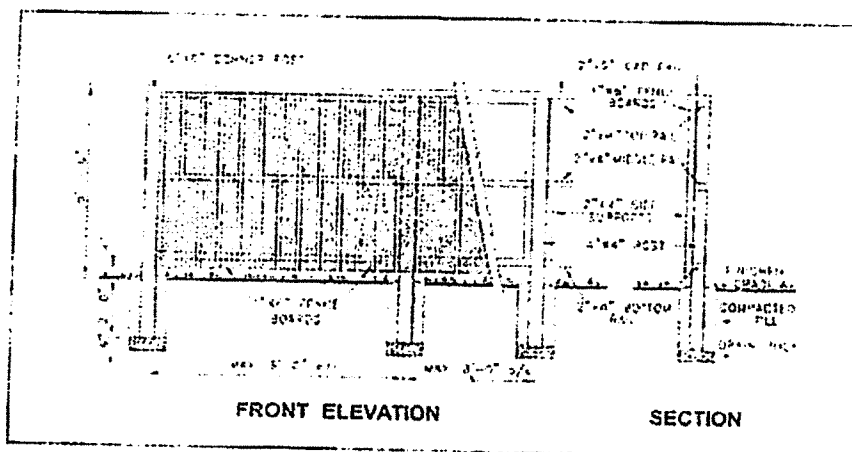


Figure 1 - Solid Wood Fence



**END OF DOCUMENT**