

# STAFF REPORT

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October 29, 2009

File No.: SS-SUB-2007.9/10

**To:** Salt Spring Island Local Trust Committee  
For **November 5, 2009 Local Trust Committee Meeting**

**From:** Mark Brodrick  
Island Planner

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**Re: Revised Frontage Variance and Five Covenants**

1. PID: 002-910-730, Lot A, Section 1, Ranges 2 West, and of Section 20, Salt Spring Island N., Cowichan District, Plan 25356 (4.05 ha);
2. PID: 004-627-474, Section 1, Range 2 West, Salt Spring Island N., Cowichan District, except in Plan 23168 and 25356 (3.14 ha);
3. PID: 004-627-385, Section 1, Range 2 West, Salt Spring Island, N., Cowichan District, except those parts in Plan 23168, and 25356 (28.9 ha);  
and
4. PID: 000-823-953, Lot 30, Salt Spring Island, N. Cowichan District (20.64 ha).

**Owner:** Peter and Karen Dorazio, Far Rockaway Land Ltd.

**Applicant:** Polaris Land Surveying Inc.

**Location:** Collins Road, N. Salt Spring Island

## THE PROPOSAL:

This report provides information and documents to the Local Trust Committee (LTC) for (i) consideration of a revised waiver of the 10% frontage requirements, and (ii) for acceptance of five final covenants. These two identified items are the last remaining items before Staff can provide the Approving Officer of the Ministry of Transportation and Infrastructure with a notice of compliance which is needed for the final approval of the proposed subdivision.

The subject subdivision application proposes to create 11 fee simple lots and 10 strata lots. The net result will total 21 lots, common property and park dedication. Park dedication has been previously addressed.

## BACKGROUND:

The following staff reports were previously presented to the LTC:

- October 30, 2008
- Memo, April 30, 2009.

Copied below is a relevant resolution from the November 6, 2008 LTC meeting which waived the frontage requirements waiver for lots 3, 4, 5, 6, 8, 9, 10, 11, and SL 8.

SSI-185-08

It was MOVED and SECONDED that the Salt Spring Island Local Trust Committee waive the 10 per cent frontage requirements of section 5.3.1 of the Salt Spring Island Land Use Bylaw 355 to the extent outlined on the plan of subdivision dated December 11, 2007 as prepared by Polaris Land Surveying Ltd.  
CARRIED

**STAFF COMMENTS:**

Frontage Waiver:

Section 944(2) of the Local Government Act provides the authority for a local government to waive the 10% frontage requirements. Section 5.3.1 of the Salt Spring Island Land Use Bylaw provides:

“The frontage of any lot in a proposed subdivision must be at least 10 per cent of lots perimeter, provided that in no case may the frontage be less than 10 metres.”

Subsequent to the November 6, 2008 LTC resolution the proposed subdivision configuration was modified to reduce the amount of roadway, to provide a better fit with the landscape, and to lessen the overall impact of subdivision. As a result, the 10% frontage waiver is now required on fee simple lots 3, 5, 8, 9, 10, 11 and no frontage waiver is required for the strata lots, as shown on the final subdivision Plans EPP2134 and EPS90 submitted to Islands Trust. All of these identified lots meet the required 10 meter minimum frontage.

Covenants:

Five final covenants are provided for consideration of the LTC acceptance. All have been reviewed and approved by Islands Trust legal counsel. The five covenants have been executed by the Owners, and priority registration provided where required by Islands Trust. The necessary Baseline Reports for the conservation covenants have been provided. The two conservation covenants will meet the development permit exemption provisions if accepted by the LTC. The five covenants are:

- Two covenants for Water Treatment (one covenant for Lots 1 to 6, and a second covenant for Lots 7 to 12);
- One conservation covenant for Development Permit Area 3 situated on Lots 1 and 2;
- One conservation covenant for Development Permit Area 4 on a portion of Maxwell Creek; and

- One restrictive covenant for Strata Common Property (no further subdivision, no dwelling units, no seasonal cottages).

This is a complex application and a detailed Letter of Undertaking has been submitted that has been vetted by Islands Trust legal counsel. The various registrations will be concurrent and will be done on an “all or nothing” basis.

#### Water Treatment:

An acceptable water report, prepared by an engineer, has been submitted. The report confirms that there is adequate water quantity as required by Table 1 in Section 5.5.5 of the Land Use Bylaw 355. Further, the report states that potable water quality can be achieved through water treatment.

#### Plans:

The following two final plans have been submitted:

- Plan EPP2134 for the fee simple subdivision; and
- Plan EPS90 for the strata subdivision.

Staff provides the following two recommendations for the LTC consideration.

## RECOMMENDATIONS:

1. That the Salt Spring Island Local Trust Committee waives the 10 per cent frontage requirements of section 5.3.1 of the Salt Spring Island Land Use Bylaw 355 as shown on the final subdivision Plan EPP2134, prepared by Wolfe-Milner Land Surveying Inc., associated with the subdivision application SS-SUB-2007.9/10 (Dorazio, Far Rockaway Land Ltd.).
2. That the Salt Spring Island Local Trust Committee accepts the five final covenants for (i) water treatment (two covenants), (ii) one conservation covenant for Development Permit Area 3, (iii) one conservation covenant for Development Permit Area 4, and (iv) one restrictive covenant, all associated with the subdivision application SS-SUB-2007.9/10 (Dorazio, Far Rockaway Land Ltd.).

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Respectfully submitted by:

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Mark Brodrick  
Island Planner

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Date

Concurred in by:

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Leah Hartley  
Regional Planning Manager

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Date

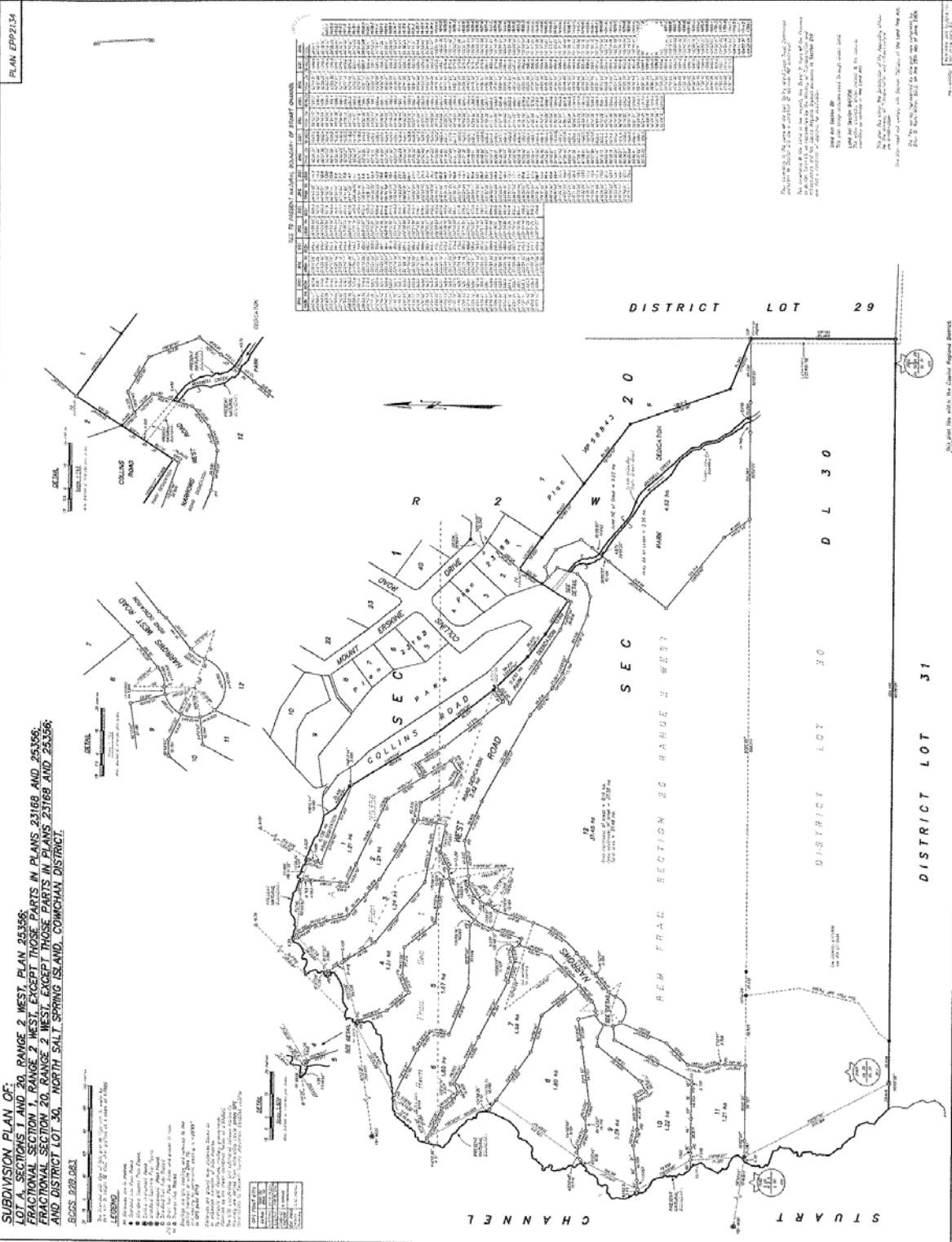
Pc: Peter and Karen Dorazio, Far Rockaway Land Ltd.

Appendix A: Plan EPP2134 for the 11 Lot Fee Simple Subdivision

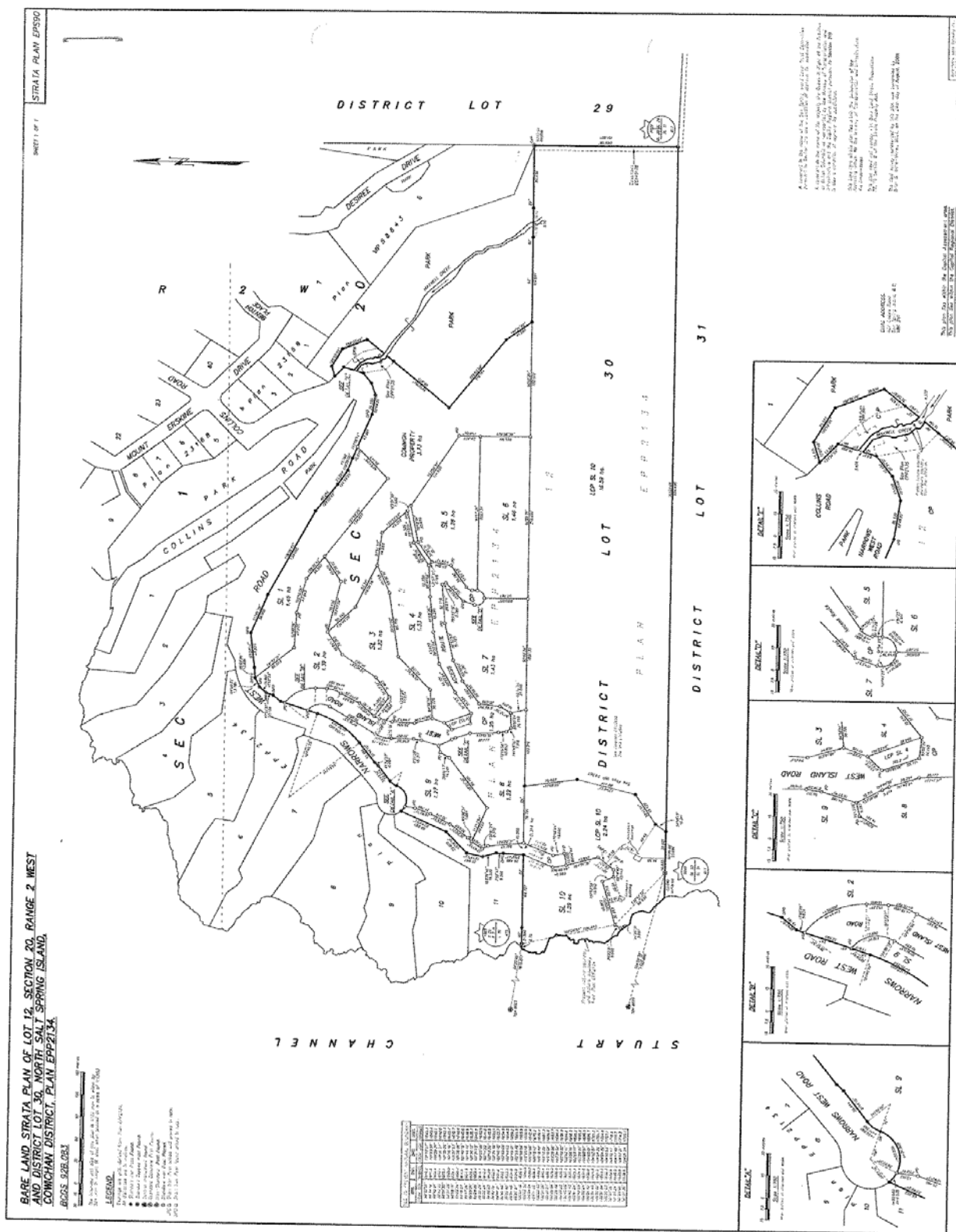
Appendix B: Plan EPS90 for the 10 Lot Bareland Strata Subdivision

Appendix C: Plan EPP2067 for the DPA3 Covenant

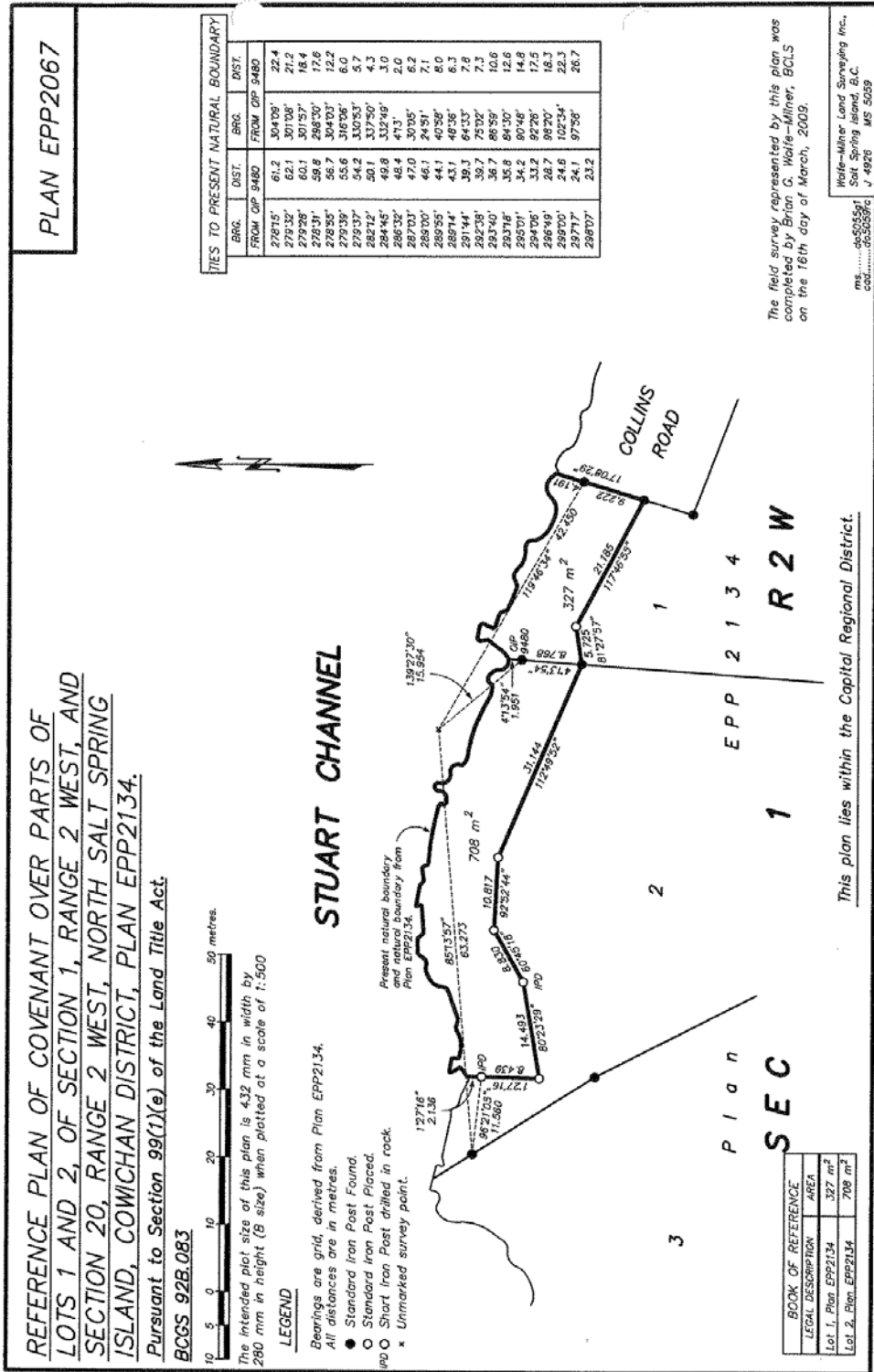
Appendix D: Plan EPP2135 for the DPA4 Covenant

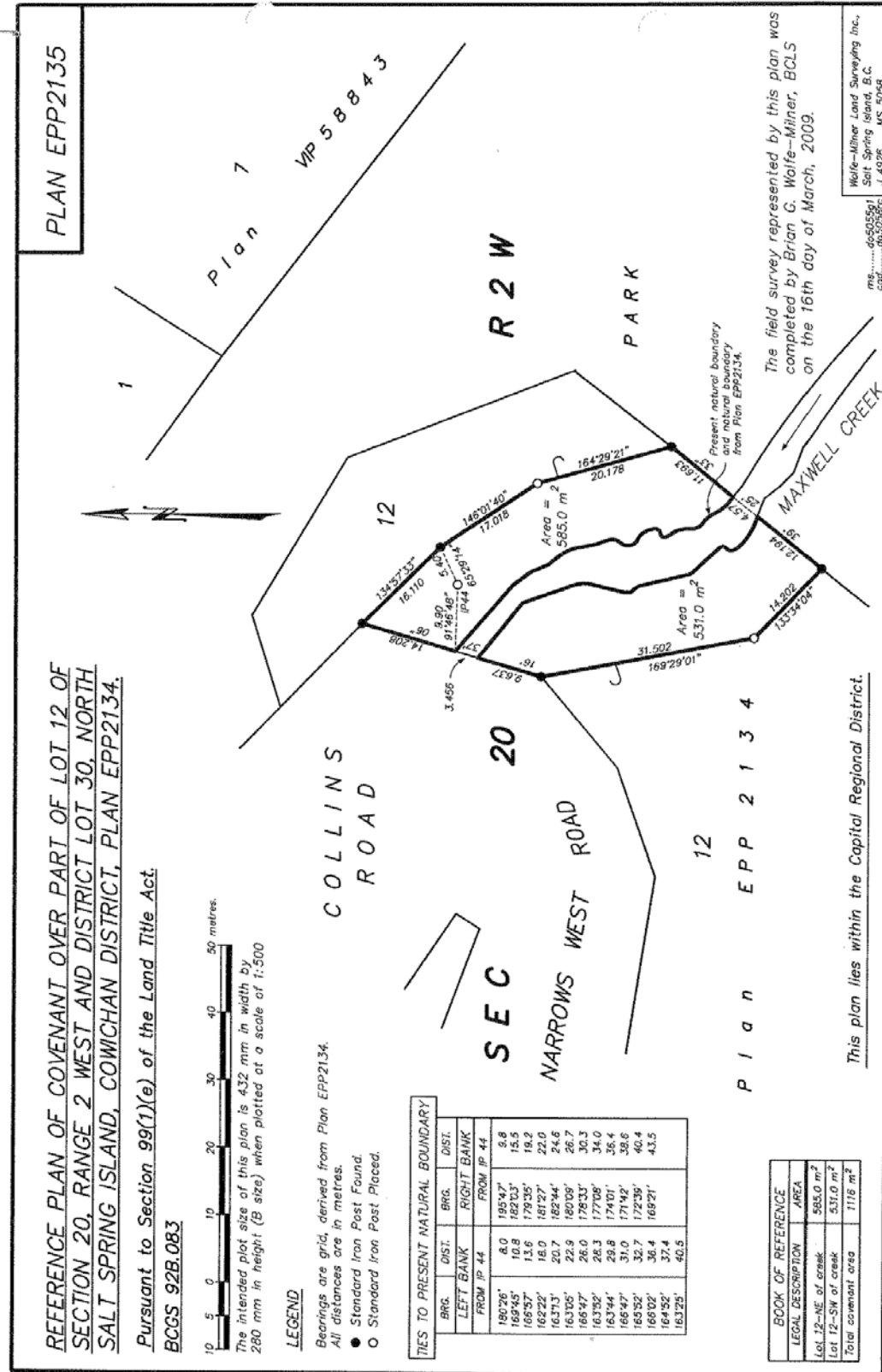


## Appendix B: Plan EPS90 for the 10 Lot Bareland Strata Subdivision



Appendix C: Plan EPP2067 for the DPA3 Covenant







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

PAGE 1 OF 8 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)

Pearlman Lindholm, Vincent P. Reilly

Barristers &amp; Solicitors

#201 - 19 Dallas Road

Victoria

BC V8V 5A6

Telephone: (250) 388-4433

File Number: 08-09-105

Deduct LTSA Fees? Yes ☒

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID]

[LEGAL DESCRIPTION]

**NO PID NMBR COMMON PROPERTY, SECTION 20 AND DISTRICT LOT 30, NORTH SALT  
 SPRING ISLAND, COWICHAN DISTRICT, PLAN EPS90**

STC? YES

Related Plan Number: **EPS90**

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))

**SEE SCHEDULE**

BRITISH COLUMBIA  
 CANADA

7. ADDITIONAL OR MODIFIED TERMS:

N/A

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)



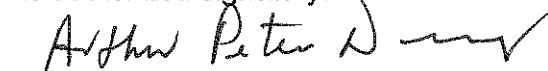
**TIMOTHY F. LOTT**  
 201 - 118 FUL ORD-GANGES ROAD  
 SALT SPRING ISLAND, B.C. V8K 2S4  
 BARRISTER & SOLICITOR

Execution Date

Y	M	D
9	9	25

Transferor(s) Signature(s)

The Owners, Strata Plan EPS90, by  
 its authorized signatory:

  
 Arthur Peter Dorazio

## 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 8 PAGES

Officer Signature(s)

**Execution Date**

Y M D

Transferor / Borrower / Party Signature(s)

Salt Spring Island Local Trust  
Committee by its authorized signatory  
(ies):

Print Name:

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 E****SCHEDULE**

PAGE 3 OF 8 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):**

The Owners, Strata Plan EPS90  
a strata corporation under the B.C. Strata Property Act and having an address of:  
427 Collins Road, Salt Spring Island, BC V2K 2N1  
on behalf of the strata lot owners

**6. TRANSFEREE(S):**

Salt Spring Island Local Trust Committee  
#1 - 500 Lower Ganges Road, Salt Spring Island, BC V8K 2N8

TERMS OF INSTRUMENT - PART 2

COVENANT

BETWEEN:

The Owners, Strata Plan EPS90  
a strata corporation under the B.C. *Strata Property Act* and having an address of  
427 Collins Road, Salt Spring Island, B.C.  
V8K 2N1 on behalf of the strata lot owners  
  
(hereinafter called collectively the "Owner")

OF THE FIRST PART

AND:

Salt Spring Island Local Trust Committee,  
#1 - 500 Lower Ganges Road,  
Salt Spring Island, B.C. V8K 2N8,  
  
(hereinafter called the "Covenant Holder")

OF THE SECOND PART

WHEREAS:

- A. The Owner is a strata corporation and may, under the provisions of the *Strata Property Act* grant charges over:

Common Property, Section 20 and District Lot 30, North Salt Spring Island,  
Cowichan District, Plan EPS90

(herein called the "Lands");

- B. Section 219 of the *Land Title Act* provides that a covenant in respect of the use of land or of a building that land is, or is not to be built on in favour of a local trust committee under the *Islands Trust Act* may be registered as a charge against the title to that land;
- C. Salt Spring Island Land Use Bylaw 355, as amended (the "Bylaw") requires that: where the approval of a bare land strata plan would create common property on which the Bylaw would permit the construction of a residential dwelling unit or seasonal cottage if the common property were a lot, the Owner must grant a covenant over the common property prohibiting the further subdivision of the common property, the construction of any residential dwelling unit or seasonal cottage on the common property, and the disposition of common property separately from the strata lots;

NOW THEREFORE in consideration of the payment of \$2.00 by the Covenant Holder to the Owner (the receipt and sufficiency of which is acknowledged by the Owner) and in consideration of the promises exchanged below, the parties agree:

## 1. Interpretation

### 1.1 In this Agreement:

- (a) "Successor" means any person who, at any time after registration of this Agreement, becomes the registered owner of the Lands or any part thereof by any means, including a beneficial owner.

### 1.2 This Agreement must be interpreted in accordance with the laws of British Columbia and the laws of Canada applicable in British Columbia, and the parties agree to attorn exclusively to the jurisdiction of the courts of British Columbia (the "courts").

### 1.3 This Agreement is comprised of the recitation of the Parties, the recitals to the Agreement, the Schedules to the Agreement and Part 1 of the Land Title Act Form C to which this Agreement is attached.

### 1.4 In this Agreement:

- (a) reference to the singular includes a reference to the plural, and vice versa, unless the context otherwise requires;
- (b) where a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
- (c) reference to a particular numbered section or article or to a particular lettered Schedule is a reference to the correspondingly numbered or lettered article, section or Schedule of this Agreement;
- (d) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
- (e) the word "enactment" has the meaning given to it in the *Interpretation Act* (BC) on the reference date of this Agreement;
- (f) reference to any enactment is a reference to that enactment as consolidated, revised, amended or re-enacted or replaced, unless otherwise expressly provided;
- (g) reference to a "party" or the "parties" is a reference to a party or the parties to this Agreement and their respective successors, assigns, trustees, administrators and receivers; and
- (h) reference to a "day", "month", or "year" is a reference to a calendar day, calendar month, or calendar year, as the case may be, unless otherwise expressly provided.

**2. Representations and Warranties**

- 2.1 The Owner warrants that the facts set out in Recital A are true as of the date of this Agreement.
- 2.2 The Covenant Holder warrants that the facts set out in Recital C are true as of the date of this Agreement.
- 2.3 The Parties warrant that the facts set out in Recitals B are true as of the date of this Agreement.

**3. Restrictions on use of the Lands**

- 3.1 The Owner covenants and agrees with the Covenant Holder that:
  - (a) the Lands may not be subdivided in any manner; and
  - (b) no residential dwelling unit or seasonal cottage may be constructed or built on the Lands.

**4. Owner's Obligations**

- 4.1 The rights given to the Covenant Holder by this Agreement are permissive only and nothing imposes any obligation on the Covenant Holder to anyone, or obliges the Covenant Holder to perform any act or incur any expense for any purpose in respect of this Agreement.
- 4.2 The Owner releases the Covenant Holder, its directors, officers, employees, agents and contractors, from and against all liability, causes of action, actions, claims, damages, expenses, costs, debts, demands or losses suffered or incurred by the Owner or any other person, arising from the granting of this Agreement, or by the act or omission of the Owner in relation to the operation and maintenance of the Covenant Area.
- 4.3 The Owner, as registered owner of the Lands, must pay all taxes, assessments, fees and charges of whatever description which may be levied on or assessed against the Lands.
- 4.4 The Owner agrees to indemnify the Covenant Holder and its elected and appointed officials, officers, employees and agents, from and against any and all liabilities, losses, suits, actions, damages, claims, demands, costs and other harm arising out of or in any way connected with this Agreement or its subject-matter, and for any fees or expenses it may occur as a result of a breach of the Covenant by the Owner.

**5. Owner's Reserved Rights**

- 5.1 The Owner reserves all of its rights as owner of the Lands, including the right to use, occupy, maintain, and subdivide the Lands in any way that is not expressly restricted by this Agreement.

**6. Successor in Title of the Owner**

- 6.1 This Agreement binds the parties to it and their respective Successors, heirs, executors, permitted assigns, and administrators.
- 6.2 The obligations and covenants contained in this Agreement shall be covenants running with the Lands and are perpetual, and will bind Successors in title to the Lands and all parcels created by subdivision of the Lands, and will be registered in the Land Title Office in Victoria pursuant to Section 219 of the *Land Title Act*.

**7. Obligation**

- 7.1 The rights given to the Covenant Holder by this Agreement are permissive only and nothing imposes any obligation on the Covenant Holder to anyone, or obliges the Covenant Holder to perform any act or incur any expense for any purposes in respect of this Agreement.
- 7.2 Nothing in this Agreement renders the Covenant Holder an owner or occupier of the Lands.

**8. No Tort Liability**

- 8.1 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 are created or exist between the parties in connection with this Agreement, it being the intent of this clause to exclude tort liability of any kind and to limit the parties to their rights and remedies under the law of contract and the law pertaining to covenants under seal.

**9. Registration**

- 9.1 The Owner agrees to do everything necessary at the Owner's expense to register this Agreement against title to the Lands in priority to all financial charges.

**10. Severance**

- 10.1 If any part of this Agreement is held to be invalid, illegal or unenforceable by the courts, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement is to remain in force unaffected by the severance.

**11. No Other Agreements**

- 11.1 This Agreement is the entire agreement between the parties and it terminates and supersedes all other such agreements regarding its subject.

**12. Independent Advice**

- 12.1 The Owner and Covenant Holder acknowledge and agree that each of them is satisfied with the legal and tax implications as to the meaning and effect of this Agreement.

- 12.2 The Owner acknowledges and agrees that no legal or tax advisor of the Covenant Holder has advised the Owner on the meaning or effect of this Agreement or in connection with this Agreement and that the Owner has not relied on any information from the Covenant Holder regarding legal or tax implications of such covenant.

**13. Amendments**

- 13.1 This Agreement is intended to be perpetual, and this Agreement may only be changed or cancelled by a written instrument signed by all the parties.

**14. Joint and Several**

- 14.1 Where the Owner of a parcel of land is comprised of more than one person, the obligations of the Owner under this Agreement shall be both joint and several.

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

**END OF DOCUMENT**



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

PAGE 1 OF 13 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)

**Pearlman Lindholm, Vincent P. Reilly**  
 Barristers & Solicitors  
 #201 - 19 Dallas Road  
 Victoria BC V8V 5A6

Telephone: (250) 388-4433  
 File Number: 08-09-105

Deduct LTSA Fees? Yes ☒

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

**SEE SCHEDULE**

STC? YES

3. NATURE OF INTEREST

**Covenant**  
**Priority Agreement**

CHARGE NO.

ADDITIONAL INFORMATION

**Section 219**  
**Over Mortgage FA44161**

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))

**SEE SCHEDULE**

**BRITISH COLUMBIA**  
**CANADA**

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)

**GORDON W. BENN**  
**Barrister & Solicitor**  
**201 - 19 Dallas Road**  
**Victoria BC V8V 5A6**

Execution Date

Y	M	D
09	09	08

Transferor(s) Signature(s)

**Karen Candis Dorazio**

**OFFICER CERTIFICATION:**

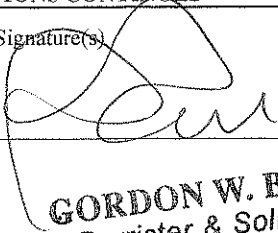
Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution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

LAND TITLE ACT  
FORM D

EXECUTIONS CONTINUED

PAGE 2 OF 13 PAGES

Officer Signature(s)

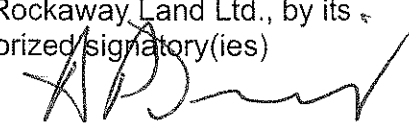
  
**GORDON W. BENN**  
Barrister & Solicitor  
201 - 19 Dallas Road  
Victoria BC V8V 5A6

Execution Date

Y	M	D
09	09	08

Transferor / Borrower / Party Signature(s)

Far Rockaway Land Ltd., by its  
authorized signatory(ies)

  
Arthur Peter Dorazio

## 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

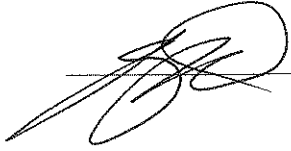
## EXECUTIONS CONTINUED

PAGE 3 OF 13 PAGES

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

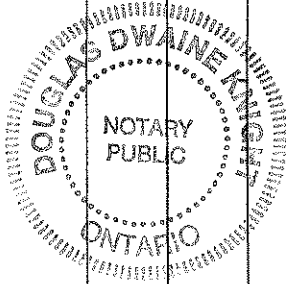


Douglas Dwaine Knight, Notary Public, City of  
Toronto, limited to the attestation of instruments and  
the taking of affidavits, for Canadian Imperial Bank  
of Commerce, CIBC Mortgages Inc. and CIBC  
Mortgage Corporation. Expires June 6, 2010.

Douglas Dwaine Knight  
100 University Avenue  
Toronto, Ontario  
M5J 2X4

Y M D

09 09 15



CIBC Mortgages Inc. by its authorized  
signatory(ies):

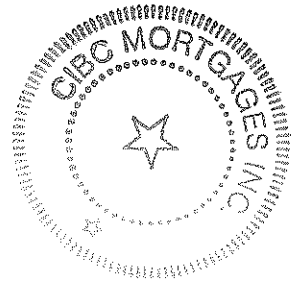


Print Name:

JANET HANIF FEROUZ

Print Name:

6273141.



## 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 13 PAGES

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

Y M D

Salt Spring Island Local Trust  
Committee, by its authorized signatory  
(ies):

Print Name:

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 E

## SCHEDULE

PAGE 5 OF 13 PAGES

## 2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND

Related Plan Number: **EPP2134**STC for each PID listed below? YES ☐

{PID}

{LEGAL DESCRIPTION – must fit in a single text line}

NO PID NMBR LOT 1 OF SEC 1 &amp; SEC 20 R2 W NORTH SALT SPRING ISLAND COWICHAN DISTRICT PLAN EPP2134

NO PID NMBR LOT 2 OF SEC 1 &amp; SEC 20 R2 W NORTH SALT SPRING ISLAND COWICHAN DISTRICT PLAN EPP2134

NO PID NMBR LOT 3 OF SEC 1 R2 W NORTH SALT SPRING ISLAND COWICHAN DISTRICT PLAN EPP2134

NO PID NMBR LOT 4 OF SEC 1 &amp; SEC 20 R2 W NORTH SALT SPRING ISLAND COWICHAN DISTRICT PLAN EPP2134

NO PID NMBR LOT 5 OF SEC 1 &amp; SEC 20 R2 W NORTH SALT SPRING ISLAND COWICHAN DISTRICT PLAN EPP2134

NO PID NMBR LOT 6 OF SEC 1 &amp; SEC 20 R2 W NORTH SALT SPRING ISLAND COWICHAN DISTRICT PLAN EPP2134

**LAND TITLE ACT  
FORM E****SCHEDULE**

PAGE 6 OF 13 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):**

KAREN CANDIS DORAZIO, as to Lots 4, 5 and 6, Plan EPP2134, and  
FAR ROCKAWAY LAND LTD. (Inc. No. BC0131130) as to Lots 1, 2 and 3, Plan EPP2134  
both of 427 Collins Road, Salt Spring Island, BC V8K 2N1, and  
CIBC Mortgages Inc. (as to Priority Agreement Only)

**6. TRANSFEREE(S):**

SALT SPRING ISLAND LOCAL TRUST COMMITTEE  
#1 - 500 Lower Ganges Road, Salt Spring Island, BC V8K 2N8

**TERMS OF INSTRUMENT – PART 2**

**SECTION 219 WATER TREATMENT COVENANT**

BETWEEN:

Karen Candis Dorazio, and  
Far Rockaway Land Ltd. (Incorporation # BC 0131130)  
both of 427 Collins Road  
Salt Spring Island, B.C. V8K 2N1

(collectively the “Owner”)

AND:

SALT SPRING ISLAND LOCAL TRUST COMMITTEE  
1 – 500 Lower Ganges Road  
Salt Spring Island, BC V8K 2N8

(the “Trust Committee”)

WHEREAS:

- A. The Owner is the registered owner in fee simple of that parcel of land on Salt Spring Island, British Columbia which is legally described as:

No PID Number, Lot 1, of Section 1 and Section 20, Range 2 West, North Salt Spring Island, Cowichan District, Plan EPP2134;  
No PID Number, Lot 2, of Section 1 and Section 20, Range 2 West, North Salt Spring Island, Cowichan District, Plan EPP2134;  
No PID Number, Lot 3, of Section 1, Range 2 West, North Salt Spring Island, Cowichan District, Plan EPP2134;  
No PID Number, Lot 4, of Section 1 and Section 20, Range 2 West, North Salt Spring Island, Cowichan District, Plan EPP2134;  
No PID Number Lot 5, of Section 1 and Section 20, Range 2 West, North Salt Spring Island, Cowichan District, Plan EPP2134; and  
No PID Number, Lot 6, of Section 1 and Section 20, Range 2 West, North Salt Spring Island, Cowichan District, Plan EPP2134

(the “Land”).

- B. The Salt Spring Island Land Use Bylaw, 355, as amended (the “Land Use Bylaw”) requires each subdivision lot to have a source of potable water, as that term is defined in the Land Use Bylaw;
- C. The Land will not be connected to a community water system and instead, water to the Land will be supplied by a private well located on the Land (the “Well”);

- D. Chemical analysis of water from the Well indicates that the water is not potable, as that term is defined in the Land Use Bylaw;
- E. Pursuant to the Land Use Bylaw, if a subdivided lot will not have a source of potable water, then, as a condition of subdivision approval, the owner must grant the Trust Committee a covenant agreeing to treat the water;
- F. Section 219 of the *Land Title Act* provides that there may be registered as a charge against the title to land a covenant, whether of a positive or negative nature, in respect of the use of land or the use of a building on or to be erected on land in favour of a local trust committee under the *Islands Trust Act*; and
- G. The Owner wishes to grant this Covenant to the Trust Committee in the interests of confirming the water treatment requirement to the Owner and all future owners, tenants, lenders and others;

NOW THEREFORE in consideration of the promises below and the sum of One Dollar (\$1.00) paid by the Trust Committee to the Owner, and other good and valuable consideration (the receipt and sufficiency of which the parties acknowledged), the parties covenant and agree, pursuant to Section 219 of the *Land Title Act*, as follows:

**Restriction on use of Land**

- 1. The Owner shall not use the Land or any building or structure located on the Land for any residential or domestic purpose unless the Owner is in full compliance with this Covenant.

**Water Treatment System**

- 2. The Owner shall install a water treatment system on the Land which is effective to make the water from the Well potable, which term means the water is safe to drink and suitable for domestic purposes and without limiting the foregoing, to no less a standard than those standards specified by the Land Use Bylaw.

**Upgrade of System**

- 3. The Owner shall upgrade, replace, clean, disinfect, service, and otherwise maintain the water treatment system as necessary from time to time.

**Owner's Responsibility for Treatment System**

- 4. The Owner is solely responsible for all aspects of the water treatment system, including its installation, monitoring, and effectiveness.



### **Water Testing**

5. The Owner shall test the water from the Well from time to time as is necessary to confirm that it is potable.

### **Owner's Responsibility for Water Testing**

6. The Owner is solely responsible for testing of the water from the Well, including the determination of the frequency of testing.

### **Applicable Laws**

7. The Owner acknowledges that there are or may be federal, provincial and local government laws, regulations and orders affecting the Well and private drinking water supplies and the Owner acknowledges that the acceptance of this Covenant by the Trust Committee does not relieve the Owner from complying with all applicable aspects of those requirements.

### **Discharge Against Public Interest**

8. In respect of a possible application to discharge this Covenant pursuant to the provisions of the *Property Law Act*, the Owner acknowledges that it is in the public interest that this Covenant remain registered against the title to the Land.

### **Indemnity**

9. The Owner shall release and indemnify and save harmless the Trust Committee and its elected and appointed officials, officers, employees and agents, from and against any and all liabilities, losses, suits, actions, damages, claims, demands, costs and other harm arising out of or in any way connected with this Covenant or its subject-matter.

### **Disposition of Land**

10. The Owner will not sell, transfer, lease, rent or otherwise dispose of the Land or propose to do any of them without giving all affected persons written notice of this Covenant.

### **Inspections**

11. The Trust Committee and any of its officers and employees may inspect the Land and any building or structure on the Land, for the purpose of ascertaining compliance with this Covenant, upon not less than 72 hours notice in writing to the Owner and to any tenants in occupation.

### **No Obligations on Trust Committee**

12. The rights given to the Trust Committee by this Covenant are permissive only and nothing in this Covenant:
- (a) imposes any duty of care or other legal duty of any kind on the Trust Committee to the Owner or to anyone else;
  - (b) obliges the Trust Committee to enforce this Covenant, which is a policy matter within the sole discretion of the Trust Committee; or
  - (c) obliges the Trust Committee to perform any act or to incur any expenses for any of the purposes set out in this Covenant.

### **No Effect on Laws or Powers**

13. This Covenant does not:
- (a) affect or limit the discretion, rights or powers of the Trust Committee under any enactment or at common law, including in relation to the use or subdivision of the Land; or
  - (b) affect or limit any law or enactment relating to the use or subdivision of the Land.

### **Interpretation**

14. Reference in this Covenant to:
- (a) the singular includes a reference to the plural, and references to the plural includes a reference to the singular, unless the context requires otherwise,
  - (b) a particular numbered section or lettered schedule is a reference to the corresponding numbered section or lettered schedule of this Covenant,
  - (c) an “enactment” is a reference to an enactment as that term is defined in the *Interpretation Act* on the reference date of this Covenant,
  - (d) any enactment is a reference to that enactment as amended, revised, consolidated or replaced, and
  - (e) a party is a reference to a party to this Covenant.

### **Covenant Runs With the Land**

15. Every obligation and covenant of the Owner in this Covenant constitutes both a contractual obligation and a covenant granted under Section 219 of the *Land Title Act* in respect of the Land and this Covenant burdens the Land and runs with it and binds the successors in title to the Land. This Covenant burdens and charges all of the Land and any parcels into which it may be subdivided by any means and any parcel into which the Land is consolidated.

### **Registration**

16. The Owner will do everything reasonably necessary, at the Owner's expense, to ensure that this Covenant is registered against title to the Land in priority to all financial charges at the time of application for registration of this Covenant.

### **Waiver**

17. An alleged waiver of any breach of this Covenant is effective only if it is an express waiver in writing of the breach in respect of which the waiver is asserted. A waiver by the Trust Committee of a breach of this Covenant by the Owner does not operate as a waiver of any other breach of this Covenant.

### **Severance**

18. If any part of this Covenant 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 Covenant and the rest of this Covenant remains in force unaffected by that holding or by the severance of that part.

### **No Other Covenants**

19. This Covenant is the entire such agreement between the parties regarding its subject.

### **Enurement**

20. This Covenant binds the Owner and his successors, heirs, executors and administrators.

### **Further Acts**

21. The Owner must do everything reasonably necessary to give effect to the intent of this Covenant, including execution of further instruments.

**Deed and Contract**

22. By executing and delivering this Covenant the Owner intends to create both a Contract and 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 Act Form C which is attached hereto and forms part of this Agreement.

### CONSENT AND PRIORITY AGREEMENT

WHEREAS **CIBC MORTGAGES INC.** (the "Chargeholder") is the holder of a Mortgage (called the "Charge") encumbering the lands (the "Lands") described in item 2 of the *Land Title Act* Form C attached hereto, which was registered in the Victoria Land Title Office under number **FA44161**.

THEREFORE THIS CONSENT AND PRIORITY AGREEMENT IS EVIDENCE THAT IN CONSIDERATION OF \$1.00 AND OTHER GOOD AND VALUABLE CONSIDERATION PAID BY THE TRANSFEREE TO THE CHARGEHOLDER:

1. The Chargeholder hereby consents to the granting and registration of the Section 219 Covenant attached hereto (the "Covenant") and the Chargeholder hereby agrees that the Covenant shall be binding upon its interest in and to the Lands.
2. The Chargeholder hereby grants to the transferee described in item 6 of the *Land Title Act* Form C attached hereto priority for the Covenant over the Chargeholder's right, title and interest in and to the Lands, and the Chargeholder does hereby postpone the Charge and all of its right, title and interest thereunder to the Covenant as if the Covenant had been executed, delivered and registered prior to the execution, delivery and registration of the Charge.

IN WITNESS WHEREOF, the Chargeholder has executed and delivered this Consent and Priority Agreement by executing the *Land Title Act* Form D above which is attached hereto and forms part of this Agreement.



**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)

Pearlman Lindholm, Vincent P. Reilly

Barristers & Solicitors

#201 - 19 Dallas Road

Victoria

BC V8V 5A6

Telephone: (250) 388-4433

File Number: 08-09-105

Deduct LTSA Fees? Yes ☒

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

**SEE SCHEDULE**

STC? YES

3. NATURE OF INTEREST

**Covenant**

**Priority Agreement**

CHARGE NO.

ADDITIONAL INFORMATION

Section 219

Over Mortgage CA1145157

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))

**SEE SCHEDULE**

BRITISH COLUMBIA  
 CANADA

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)

**GORDON W. BENN**  
 Barrister & Solicitor  
 201 - 19 Dallas Road  
 Victoria BC V8V 5A6

Execution Date

Y	M	D
09	09	08

Transferor(s) Signature(s)

Arthur Peter Dorazio

**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.



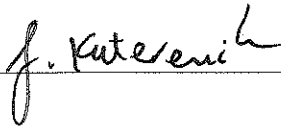


LAND TITLE ACT  
FORM D

EXECUTIONS CONTINUED

PAGE 3 OF 12 PAGES

Officer Signature(s)



Judy Lillian Katerenchuk  
Notary Public  
My Appointment Expires December 31, 2009  
The Toronto Dominion Bank  
500, 10205 - 101 Street  
Edmonton, AB T5J 5E8

Execution Date

Y	M	D
09	09	14

Transferor / Borrower / Party Signature(s)

The Toronto-Dominion Bank, by its  
authorized signatory(ies):



Print Name:

Angelica Belo  
Discharge Administrator  
Credit Administration Services

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 E****SCHEDULE**

PAGE 5 OF 12 PAGES

**2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND**Related Plan Number: **EPP2134**STC for each PID listed below? YES ☐

[PID] [LEGAL DESCRIPTION – must fit in a single text line]

NO PID NMBR LOT 7 OF SEC 1 &amp; SEC 20 R2W NORTH SALT SPRING ISLAND COWICHAN DISTRICT PLAN EPP2134

NO PID NMBR LOT 8 OF SEC 20 R2W NORTH SALT SPRING ISLAND COWICHAN DISTRICT PLAN EPP2134

NO PID NMBR LOT 9 OF SEC 20 R2W NORTH SALT SPRING ISLAND COWICHAN DISTRICT PLAN EPP2134

NO PID NMBR LOT 10 OF SEC 20 R2W NORTH SALT SPRING ISLAND COWICHAN DISTRICT PLAN EPP2134

NO PID NMBR LOT 11 OF SEC 20 R2W NORTH SALT SPRING ISLAND COWICHAN DISTRICT PLAN EPP2134

NO PID NMBR LOT 12 OF SEC 20 R2W &amp; DL 30 NORTH SALT SPRING ISLAND COWICHAN DISTRICT PLAN EPP2134

**LAND TITLE ACT  
FORM E****SCHEDULE**

PAGE 6 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):**

ARTHUR PETER DORAZIO, as to Lots 7, 8, 9, 10, 11 and 12, Plan EPP2134 and  
FAR ROCKAWAY LAND LTD., (Inc. No. BC0131130) as to Lot 12, all of 427 Collins Road, Salt Spring  
Island, BC V8K 2N1 and  
THE TORONTO-DOMINION BANK (as to Priority Agreement Only)

**6. TRANSFEREE(S):**

SALT SPRING ISLAND LOCAL TRUST COMMITTEE  
#1 - 500 Lower Ganges Road, Salt Spring Island, BC V8K 2N8

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

BETWEEN:

Arthur Peter Dorazio, and  
Far Rockaway Land Ltd. (Incorporation # BC 0131130)  
both of 427 Collins Road  
Salt Spring Island, B.C. V8K 2N1

(collectively the “Owner”)

AND:

SALT SPRING ISLAND LOCAL TRUST COMMITTEE  
1 – 500 Lower Ganges Road  
Salt Spring Island, BC V8K 2N8

(the “Trust Committee”)

WHEREAS:

- A. The Owner is the registered owner in fee simple of that parcel of land on Salt Spring Island, British Columbia which is legally described as:
- No PID Number, Lot 7, of Section 1 and Section 20, Range 2 West, North Salt Spring Island, Cowichan District, Plan EPP2134;  
No PID Number Lot 8, of Section 20, Range 2 West, North Salt Spring Island, Cowichan District, Plan EPP2134;  
No PID Number, Lot 9, of Section 20, Range 2 West, North Salt Spring Island, Cowichan District, Plan EPP2134;  
No PID Number, Lot 10, of Section 20, Range 2 West, North Salt Spring Island, Cowichan District, Plan EPP2134;  
No PID Number, Lot 11, of Section 20, Range 2 West, North Salt Spring Island, Cowichan District, Plan EPP2134; and  
No PID Number, Lot 12, of Section 20, Range 2 West and DL 30, North Salt Spring Island, Cowichan District, Plan EPP2134
- (the “Land”).
- B. The Salt Spring Island Land Use Bylaw, 355, as amended (the “Land Use Bylaw”) requires each subdivision lot to have a source of potable water, as that term is defined in the Land Use Bylaw;
- C. The Land will not be connected to a community water system and instead, water to the Land will be supplied by a private well located on the Land (the “Well”);
- D. Chemical analysis of water from the Well indicates that the water is not potable, as that term is defined in the Land Use Bylaw;
- E. Pursuant to the Land Use Bylaw, if a subdivided lot will not have a source of potable water, then, as a condition of subdivision approval, the owner must grant the Trust Committee a covenant agreeing to treat the water;

- F. Section 219 of the *Land Title Act* provides that there may be registered as a charge against the title to land a covenant, whether of a positive or negative nature, in respect of the use of land or the use of a building on or to be erected on land in favour of a local trust committee under the *Islands Trust Act*; and
- G. The Owner wishes to grant this Covenant to the Trust Committee in the interests of confirming the water treatment requirement to the Owner and all future owners, tenants, lenders and others;

NOW THEREFORE in consideration of the promises below and the sum of One Dollar (\$1.00) paid by the Trust Committee to the Owner, and other good and valuable consideration (the receipt and sufficiency of which the parties acknowledged), the parties covenant and agree, pursuant to Section 219 of the *Land Title Act*, as follows:

**Restriction on use of Land**

- 1. The Owner shall not use the Land or any building or structure located on the Land for any residential or domestic purpose unless the Owner is in full compliance with this Covenant.

**Water Treatment System**

- 2. The Owner shall install a water treatment system on the Land which is effective to make the water from the Well potable, which term means the water is safe to drink and suitable for domestic purposes and without limiting the foregoing, to no less a standard than those standards specified by the Land Use Bylaw.

**Upgrade of System**

- 3. The Owner shall upgrade, replace, clean, disinfect, service, and otherwise maintain the water treatment system as necessary from time to time.

**Owner's Responsibility for Treatment System**

- 4. The Owner is solely responsible for all aspects of the water treatment system, including its installation, monitoring, and effectiveness.

**Water Testing**

- 5. The Owner shall test the water from the Well from time to time as is necessary to confirm that it is potable.

**Owner's Responsibility for Water Testing**

- 6. The Owner is solely responsible for testing of the water from the Well, including the determination of the frequency of testing.

### **Applicable Laws**

7. The Owner acknowledges that there are or may be federal, provincial and local government laws, regulations and orders affecting the Well and private drinking water supplies and the Owner acknowledges that the acceptance of this Covenant by the Trust Committee does not relieve the Owner from complying with all applicable aspects of those requirements.

### **Discharge Against Public Interest**

8. In respect of a possible application to discharge this Covenant pursuant to the provisions of the *Property Law Act*, the Owner acknowledges that it is in the public interest that this Covenant remain registered against the title to the Land.

### **Indemnity**

9. The Owner shall release and indemnify and save harmless the Trust Committee and its elected and appointed officials, officers, employees and agents, from and against any and all liabilities, losses, suits, actions, damages, claims, demands, costs and other harm arising out of or in any way connected with this Covenant or its subject-matter.

### **Disposition of Land**

10. The Owner will not sell, transfer, lease, rent or otherwise dispose of the Land or propose to do any of them without giving all affected persons written notice of this Covenant.

### **Inspections**

11. The Trust Committee and any of its officers and employees may inspect the Land and any building or structure on the Land, for the purpose of ascertaining compliance with this Covenant, upon not less than 72 hours notice in writing to the Owner and to any tenants in occupation.

### **No Obligations on Trust Committee**

12. The rights given to the Trust Committee by this Covenant are permissive only and nothing in this Covenant:
  - (a) imposes any duty of care or other legal duty of any kind on the Trust Committee to the Owner or to anyone else;
  - (b) obliges the Trust Committee to enforce this Covenant, which is a policy matter within the sole discretion of the Trust Committee; or
  - (c) obliges the Trust Committee to perform any act or to incur any expenses for any of the purposes set out in this Covenant.

### **No Effect on Laws or Powers**

13. This Covenant does not:
- (a) affect or limit the discretion, rights or powers of the Trust Committee under any enactment or at common law, including in relation to the use or subdivision of the Land; or
  - (b) affect or limit any law or enactment relating to the use or subdivision of the Land.

### **Interpretation**

14. Reference in this Covenant to:
- (a) the singular includes a reference to the plural, and references to the plural includes a reference to the singular, unless the context requires otherwise,
  - (b) a particular numbered section or lettered schedule is a reference to the corresponding numbered section or lettered schedule of this Covenant,
  - (c) an “enactment” is a reference to an enactment as that term is defined in the *Interpretation Act* on the reference date of this Covenant,
  - (d) any enactment is a reference to that enactment as amended, revised, consolidated or replaced, and
  - (e) a party is a reference to a party to this Covenant.

### **Covenant Runs With the Land**

15. Every obligation and covenant of the Owner in this Covenant constitutes both a contractual obligation and a covenant granted under Section 219 of the *Land Title Act* in respect of the Land and this Covenant burdens the Land and runs with it and binds the successors in title to the Land. This Covenant burdens and charges all of the Land and any parcels into which it may be subdivided by any means and any parcel into which the Land is consolidated.

### **Further Subdivision**

16. Upon the said proposed Lot 12, Plan EPP2134, being created and title thereto issued, the owner covenants and agrees that each term, condition, Covenant and restriction contained herein shall apply to and be a Covenant against each new lot so created whether by subdivision, strata or bare land strata



**Registration**

17. The Owner will do everything reasonably necessary, at the Owner's expense, to ensure that this Covenant is registered against title to the Land in priority to all financial charges at the time of application for registration of this Covenant.

**Waiver**

18. An alleged waiver of any breach of this Covenant is effective only if it is an express waiver in writing of the breach in respect of which the waiver is asserted. A waiver by the Trust Committee of a breach of this Covenant by the Owner does not operate as a waiver of any other breach of this Covenant.

**Severance**

19. If any part of this Covenant 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 Covenant and the rest of this Covenant remains in force unaffected by that holding or by the severance of that part.

**No Other Covenants**

20. This Covenant is the entire such agreement between the parties regarding its subject.

**Enurement**

21. This Covenant binds the Owner and his successors, heirs, executors and administrators.

**Further Acts**

22. The Owner must do everything reasonably necessary to give effect to the intent of this Covenant, including execution of further instruments.

**Deed and Contract**

23. By executing and delivering this Covenant the Owner intends to create both a Contract and 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 Act Form C which is attached hereto and forms part of this Agreement.

### CONSENT AND PRIORITY AGREEMENT

WHEREAS **THE TORONTO DOMINION BANK**, (the "Chargeholder") is the holder of a Mortgage (called the "Charge") encumbering the lands (the "Lands") described in item 2 of the *Land Title Act* Form C attached hereto, which was registered in the Victoria Land Title Office under number **CA1145157**.

THEREFORE THIS CONSENT AND PRIORITY AGREEMENT IS EVIDENCE THAT IN CONSIDERATION OF \$1.00 AND OTHER GOOD AND VALUABLE CONSIDERATION PAID BY THE TRANSFEREE TO THE CHARGEHOLDER:

1. The Chargeholder hereby consents to the granting and registration of the Section 219 Covenant attached hereto (the "Covenant") and the Chargeholder hereby agrees that the Covenant shall be binding upon its interest in and to the Lands.
2. The Chargeholder hereby grants to the transferee described in item 6 of the *Land Title Act* Form C attached hereto priority for the Covenant over the Chargeholder's right, title and interest in and to the Lands, and the Chargeholder does hereby postpone the Charge and all of its right, title and interest thereunder to the Covenant as if the Covenant had been executed, delivered and registered prior to the execution, delivery and registration of the Charge.

IN WITNESS WHEREOF, the Chargeholder has executed and delivered this Consent and Priority Agreement by executing the *Land Title Act* Form D above which is attached hereto and forms part of this Agreement.

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

PAGE 1 OF 32 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)

Pearlman Lindholm, Vincent P. Reilly

Barristers & Solicitors

#201 - 19 Dallas Road

Victoria

BC V8V 5A6

Telephone: (250) 388-4433

File Number: 08-09-105

Deduct LTSA Fees? Yes ☒

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

**NO PID NMBR LOT 12 SECTION 20 RANGE 2 WEST AND DISTRICT LOT 30 NORTH SALT  
 SPRING ISLAND COWICHAN DISTRICT PLAN EPP2134**

STC? YES

Related Plan Number: **EPP2134**

3. NATURE OF INTEREST CHARGE NO. ADDITIONAL INFORMATION

**SEE SCHEDULE**

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))

**SEE SCHEDULE**

BRITISH COLUMBIA  
 CANADA

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)



**TIMOTHY F. LOTT**  
 201 - 118 FUL ORD-GANGES ROAD  
 SALT SPRING ISLAND, B.C. V8K 2S6  
 BARRISTER & SOLICITOR

Execution Date

Y	M	D
09	09	25

Transferor(s) Signature(s)

Far Rockaway Land Ltd., by its  
 authorized signatory



Arthur Peter Dorazio

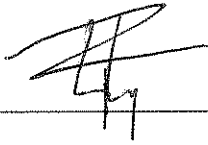
**OFFICER CERTIFICATION:**

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 32 PAGES

Officer Signature(s)



TIMOTHY F. LOTT  
301 118 FUL ORD-GANGES ROAD  
SALT SPRING ISLAND, B.C. V8K 2S6  
BARRISTER & SOLICITOR

Execution Date

Y	M	D
9	9	25

Transferor / Borrower / Party Signature(s)

  
Arthur Peter Dorazio

**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 32 PAGES

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

Y M D

Salt Spring Island Local Trust  
Committee by its authorized signatory  
(ies):

Print Name:

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 E****SCHEDULE**

PAGE 4 OF 32 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.

**3. NATURE OF INTEREST**

Covenant (Section 219)

Rent Charge

Statutory Right of Way

**5. TRANSFEROR(S)**

ARTHUR PETER DORAZIO, and

FAR ROCKAWAY LAND LTD., (Inc. No. BC0131130)

both of 427 Collins Road, Salt Spring Island, BC V8K 2N1

**6. TRANSFEREE(S):**

SALT SPRING ISLAND LOCAL TRUST COMMITTEE

#1 - 500 Lower Ganges Road, Salt Spring Island, BC V8K 2N8

TERMS OF INSTRUMENT - PART 2  
COVENANT

BETWEEN:

Arthur Peter Dorazio, and  
Far Rockaway Land Ltd. (Incorporation # BC 0131130),  
both of 427 Collins Road,  
Salt Spring Island, B.C. V8K 2N1  
(hereinafter called collectively the "Owner")  
OF THE FIRST PART

AND:

Salt Spring Island Local Trust Committee,  
#1 - 500 Lower Ganges Road,  
Salt Spring Island, B.C. V8K 2N8  
(hereinafter called the ("Covenant Holder"))  
OF THE SECOND PART

WHEREAS:

- A. The Owner is the Registered Owner of:  
No PID Number, Lot 12, Section 20, Range 2 West and District Lot 30, North Salt Spring  
Island, Cowichan District, Plan EPP2134  
(herein called the "Lands");
- B. Section 219 of the *Land Title Act* provides that a covenant in respect of the use of land or  
of a building that land is, or is not to be built on in favour of a local trust committee under  
the *Islands Trust Act* may be registered as a charge against the title to that land;
- C. A statutory right of way in favour of the Covenant Holder is necessary for the operation  
and maintenance of the undertakings of the Covenant Holder;
- D. The parties agree that the Covenant Area (as shown on the reference Plan EPP2135  
attached hereto as Schedule "A") contains significant flowing water, Amenities, and  
natural features of importance to the Owner and the Covenant Holder.

NOW THEREFORE in consideration of the payment of \$2.00 by the Covenant Holder to the  
Owner (the receipt and sufficiency of which is acknowledged by the Owner) and in consideration  
of the promises exchanged below, the parties agree as follows:

1. **Interpretation**

1.1 In this Agreement:

- (a) "Amenities" include those natural, environmental, wildlife, vegetation and plants,  
and streams and wetland values relating to the Covenant Area as identified in  
the Report;

- (b) "Covenant Area" means that portion of the Lands contained within the heavy black outline on reference Plan EPP2135 and deposited in the Victoria Land Title Office concurrently herewith the subdivision Plan EPP2134,
  - (c) "Consumer Price Index" means the All-Items Consumer Price Index published by Statistics Canada, or its successor in function, for Vancouver, British Columbia, where the year 2002 equals 100;
  - (d) "Notice of Enforcement" means written notice given under section 11.7;
  - (e) "Rent Charge" means the rent charge granted by the Owner under section 11;
  - (f) "Rent Charge Amount" means the amount set out in section 11.2 and adjusted annually as set out in section 11.3, the payment of which is secured by the Rent Charge;
  - (g) "Report" means the baseline documentation report prepared by a Registered Professional Biologist that: describes the Covenant Area and the Amenities in the form of text, maps, photographs, and other records of the Covenant Area and the Amenities as of April 2009, a copy of which is on file with each of the parties at the addresses set out in section 13; for which an overview copy is attached to and forming part of this Agreement as Schedule "B"; and
  - (h) "Successor" means any person who, at any time after registration of this Agreement, becomes the registered owner of the Lands or any part thereof by any means, including a beneficial owner.
- 1.2 This Agreement must be interpreted in accordance with the laws of British Columbia and the laws of Canada applicable in British Columbia, and the parties agree to attorn exclusively to the jurisdiction of the courts of British Columbia (the "courts").
- 1.3 This Agreement is comprised of the recitation of the Parties, the recitals to the Agreement, the Schedules to the Agreement and Part 1 of the Land Title Act Form C to which this Agreement is attached.
- 1.4 In this Agreement:
- (a) reference to the singular includes a reference to the plural, and vice versa, unless the context otherwise requires;
  - (b) where a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;



- (c) reference to a particular numbered section or article or to a particular lettered Schedule is a reference to the correspondingly numbered or lettered article, section or Schedule of this Agreement;
- (d) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
- (e) the word "enactment" has the meaning given to it in the *Interpretation Act* (BC) on the reference date of this Agreement;
- (f) reference to any enactment is a reference to that enactment as consolidated, revised, amended or re-enacted or replaced, unless otherwise expressly provided;
- (g) reference to a "party" or the "parties" is a reference to a party or the parties to this Agreement and their respective Successors, permitted assigns, trustees, administrators and receivers; and
- (h) reference to a "day", "month", or "year" is a reference to a calendar day, calendar month, or calendar year, as the case may be, unless otherwise expressly provided.

## **2. Representations and Warranties**

- 2.1 The Owner warrants that the facts set out in Recital A are true as of the date of this Agreement.
- 2.2 The Covenant Holder warrants that the facts set out in Recital C are true as of the date of this Agreement.
- 2.3 The Parties warrant that the facts set out in Recitals B, and D are true as of the date of this Agreement.

## **3. Intent of Agreement**

- 3.1 The parties agree that: whereas they have determined that Maxwell Creek, which flows through the Lands, provides natural fish and wildlife habitat and also supplies drinking water to individual water license holders, which if not carefully managed development in this area could result in degradation of water quality which would be detrimental to fish and wildlife populations and could lead to increased costs for remedial drinking water treatment, and that this area contains riparian habitat that is important to many different species and is particularly susceptible to disturbance, so development in this area could lead to the disturbance or loss of a disproportionately large number of native plant and animal species; the general intent of this Agreement is:
  - (a) to protect, preserve, conserve, and maintain the Covenant Area, and its Amenities, in a natural state;

- (b) to prevent development, occupation, or use of the Covenant Area that will impair or interfere with intent (a) above;
- (c) to prevent subdivision of the Covenant Area and the parties agree that this Agreement is to be interpreted, performed and applied accordingly.

**4. Restrictions on use of the Covenant Area**

4.1 The Owner covenants and agrees that it will not do any of the following without the express written consent of the Covenant Holder, except as may be elsewhere permitted in this Agreement:

- (a) subdivide the Covenant Area in any manner;
- (b) lease or license the Covenant Area or any part thereof unless the lease or license is expressly made subject to the provisions of this Agreement and expressly entitles the Owner to terminate the lease and license if the lessee or licensee breaches any of the provisions of this Agreement;
- (c) use or allow the use of the Covenant Area for hunting, fishing, or the gathering or grazing of domestic animals;
- (d) cause or facilitate the erosion or loss of soil on the Covenant Area;
- (e) construct, build, affix or place within the Covenant Area any work, installation or structure;
- (f) cause or allow any indigenous flora to be cut down, removed, defoliated or tampered with in any way within the Covenant Area, except that the Owner may cut down or remove non-indigenous flora, (e.g. broom);
- (g) alter or interfere with the hydrology of Maxwell Creek within the Covenant Area;
- (h) alter or interfere with a natural state of the soil, gravel and rock in or on the Covenant Area;
- (i) remove other vegetation from within the Covenant Area that results in an exposure of a total area of bare soil more than 9 square meters in area;
- (j) develop or install an impervious surface within the Covenant Area;
- (k) cause silts, leachates, fills or other deleterious substances to be released into the Covenant Area;

- (l) cause or allow fill, rubbish, ashes, garbage, waste or other material foreign to the Covenant Area to be deposited in or on the Covenant Area; and
- (m) cause or allow pesticides, including but not limited to herbicides, insecticides or fungicides, to be applied to or introduced onto the Covenant Area.

## **5. Baseline Documentation Report**

- 5.1 The parties acknowledge and agree that the Report will serve as an objective information baseline to enable the parties to monitor compliance with the terms of this Agreement.
- 5.2 The parties acknowledge and agree that the flora and fauna on the Covenant Area will evolve through natural succession over time and, unless otherwise expressly stated, references to the Report are intended to take into account the natural flow of Maxwell Creek and the succession of the flora and fauna over time, without human intervention on the Covenant Area other than as expressly permitted by this Agreement.

## **6. Owner's Obligations**

- 6.1 The rights given to the Covenant Holder by this Agreement are permissive only and nothing imposes any obligation on the Covenant Holder to anyone, or obliges the Covenant Holder to perform any act or incur any expense for any purpose in respect of this Agreement.
- 6.2 The Owner releases the Covenant Holder, its directors, officers, employees, agents and contractors, from and against all liability, causes of action, actions, claims, damages, expenses, costs, debts, demands or losses suffered or incurred by the Owner or any other person, arising from the granting of this Agreement, or by the act or omission of the Owner in relation to the operation and maintenance of the Covenant Area.
- 6.3 The Owner shall indemnify and save harmless the Covenant Holder and its elected and appointed officials, officers, employees and agents, from and against any and all liabilities, losses, suits, actions, damages, claims, demands, costs and other harm arising out of or in any way connected with this Agreement or its subject-matter.
- 6.4 The Owner, as the registered owner of the Lands, must pay all taxes, assessments, fees and charges of whatever description which may be levied on or assessed against the Covenant Area and the Lands.
- 6.5 The Owner is only liable for the obligations of this Agreement which occur while the Owner is the registered owner of any interest in the Lands or any part thereof, and is not liable for:
  - (a) injury or alteration to the Covenant Area or the Amenities resulting from natural causes, or causes beyond the Owner's reasonable control, including fire, flood, storm, vandalism, trespass and earth movement, but excluding injury or alteration resulting from actions of the Owner or any other person acting with the actual or constructive knowledge of the Owner;

- (b) any prudent action taken by the Owner or others on behalf of the Owner under emergency conditions to prevent, abate, or mitigate injury to the Covenant Area or the Amenities resulting from natural causes, including fire, flood, storm and earth movement; or
- (c) injury or alteration to the Covenant Area or the Amenities or injury to others resulting from actions of the Covenant Holder or any other person acting with the actual or constructive knowledge of the Covenant Holder.

## **7. Owner's Reserved Rights**

- 7.1 Subject to section 4., the Owner reserves all of its rights as owner of the Covenant Area, including the right to use, occupy and maintain the Covenant Area in any way that is not expressly restricted by this Agreement.
- 7.2 Without limiting the generality of section 7.1, the following rights are expressly reserved to the Owner:
  - (a) to remove naturally fallen trees on a deer path in the Covenant Area;
  - (b) to permit a utility, service, or access that provides power or similar utility, water, sewage disposal, drainage, access or other such utility to the Lands, which may include, if necessary, an easement, right of way, permit or licence to be registered against the Lands or a portion thereof, including the Covenant Area. In such case, the Owner shall avoid or lessen the impact to the Covenant Area as much as may be reasonably possible. For clarity, a water licence may, with permission of the Owner, be granted for a parcel subdivided from the Lands or a parcel adjacent to the Lands, being a parcel of Section 20, Range 2 West, North Salt Spring Island, Cowichan District. Plan EPP2134;
  - (c) to prevent erosion, flooding, or other protection of the Lands, acting reasonably; and
  - (d) to use, occupy, and maintain the Lands in any way that is not restricted in this Agreement.
- 7.3 Nothing in this Agreement restricts or affects the right of the Owner or any other party to undertake such actions on the Covenant Area as are necessary to:
  - (a) prevent potential injury or death to any person; or
  - (b) prevent or mitigate any damage or loss to any real or personal property.

## 8. Statutory Right of Way

8.1 The Owner grants, conveys and transfers to the Covenant Holder, its successors and permitted assigns, together with its employees, agents, servants, workers and invitees, in perpetuity, the full free and uninterrupted right, license, liberty, privilege, easement and statutory right of way over the Covenant Area to do the following:

- (a) to inspect the Covenant Area:
  - (i) at least once each calendar year, with the date for each inspection to be agreed upon by the parties, but if the parties cannot agree on a date the Covenant Holder is entitled to enter upon and inspect the Covenant Area in accordance with section 8.1(a)(ii); and
  - (ii) at all other reasonable times upon prior notice by the Covenant Holder to the Owner of at least seventy-two (72) hours, unless there is an emergency or potential threat to the Covenant Area which does not make giving such notice practicable;
- (b) as part of inspection of the Covenant Area, to take samples, photographs and video recordings as may be necessary to monitor compliance and enforce the terms of this Agreement;
- (c) to protect, preserve, conserve, maintain, enhance, restore or rehabilitate, at the Covenant Holder's expense and in accordance with the provisions of this Agreement, the natural state of the Covenant Area or the Amenities to as near the condition described in the Report as is practicable if an act of nature or human agency, beyond the Owner's reasonable control, destroys, impairs, diminishes or negatively affects or alters the Covenant Area or the Amenities from the condition described in the Report;
- (d) to protect, preserve, conserve, maintain, enhance, restore or rehabilitate, at the Owner's expense and in accordance with the provisions of this Agreement, the Covenant Area or the Amenities to as near the condition described in the Report as is practicable if an act of the Owner or any other person acting with the actual or constructive knowledge of the Owner:
  - (i) destroys, impairs, diminishes, or negatively affects or alters the Covenant Area or the Amenities from the condition described in the Report; other than as expressly allowed in this Agreement; or
  - (ii) contravenes any term of this Agreement;
- (e) to carry out or evaluate, or both, any program agreed upon among the parties for the protection, preservation, conservation, maintenance, enhancement, restoration or rehabilitation of all or any portion of the Covenant Area or the Amenities;

- (f) to place pegs or other similar markings on the ground of the Covenant Area; and
  - (g) for any purpose necessary to monitor, implement or enforce this Agreement.
- 8.2 The Covenant Holder may bring workers, vehicles, equipment and materials on the Covenant Area when exercising their rights under this Agreement. In such a case, the Covenant Holder shall be responsible, as soon thereafter as reasonable and practical, to restore or rehabilitate the Covenant Area or the Amenities to as near the condition as detailed in the Report or as outlined elsewhere in this Agreement.
- 8.3 No right of access by the general public to any portion of the Lands is conveyed by this Agreement.
- 9. Enforcement Remedies of the Covenant Holder**
- 9.1 If the Covenant Holder believes that the Owner has neglected or refused to perform any of the obligations set out in this Agreement or is in breach of any term of this Agreement, the Covenant Holder may serve on the Owner a notice setting out particulars of the breach and of the Covenant Holder's estimated maximum costs of remedying the breach.
- 9.2 The Owner shall, within 60 business days from receipt of a notice under section 9.1, or from the conclusion of the dispute resolution provision under section 10. if it is invoked, remedy the breach or make arrangements satisfactory to the Covenant Holder to remedy the breach or apply to the courts to dispute said breach.
- 9.3 If the Owner does not remedy the breach or make arrangements satisfactory to the Covenant Holder to remedy the breach in accordance with section 9.2, or by the dispute resolution process under section 10 then: the Covenant Holder may enter upon the Covenant Area to carry out what they believe are the Owner's obligations as set out in this Agreement at their expense, and the parties shall apply to the courts for the settlement of any expense incurred by the Covenant Holder, up to the estimated maximum costs of remedying the breach set out in the notice.
- 9.4 This section 9 does not affect the right of the Covenant Holder to pursue any other legal or equitable remedy in relation to a breach or threatened breach of this Agreement.
- 9.5 The Covenant Holder has sole discretion to restore or rehabilitate, or to decline to restore or rehabilitate, any injury or alteration to the Covenant Area or the Amenities that is not restored or rehabilitated by the Owner.
- 10. Dispute Resolution**
- 10.1 If a breach of this Agreement occurs or is threatened, or if there is disagreement as to the meaning of this Agreement, the Covenant Holder or the Owner may give notice to the other party requiring a meeting of the parties within 10 business days of receipt of the notice.

- 10.2 All activities on the Covenant Area giving rise to a breach or a threatened breach of this Agreement shall immediately cease upon receipt of said notice.
- 10.3 The parties must attempt to resolve the matter, acting reasonably and in good faith, within 20 business days of meeting under section 10.1.
- 10.4 If the parties are not able to resolve the matter within said time, the parties may agree to appoint a mutually acceptable person to mediate the matter and the parties must equally share the cost of the mediator and act reasonably and in good faith and cooperate with the mediator and with each other in an attempt to resolve the matter within 30 business days after the mediator is appointed.
- 10.5 This section 10. does not affect the right of either party to pursue any other legal or equitable remedy in relation to a breach or a threatened breach, or to a disagreement as to the meaning of this Agreement or part thereof.

## **11. Rent Charge**

- 11.1 As security for the performance of the Owner's obligations under this Agreement, the Owner grants to the Covenant Holder a perpetual rent charge against the Lands. The Rent Charge is granted to the Covenant Holder under Section 219 of the *Land Title Act* (British Columbia) as an integral part of the statutory covenant created by this Agreement.
- 11.2 The Rent Charge secures payment to the Covenant Holder by the Owner of the sum of \$2000.00 per year, subject to adjustment under sections 11.3 and 11.4. For clarity, only one Rent Charge Amount is payable by the Owner for each violation. The Rent Charge Amount shall be increased by the sum equal to 110% of the market value, at the date of any breach of this Agreement, of any flora, soil, rock, gravel or minerals, which have been altered, damaged, destroyed, moved, harvested or removed.
- 11.3 The Rent Charge Amount is to be adjusted on January 1 of each year by increasing or decreasing, as the case may be, the Rent Charge Amount by the amount determined by multiplying the Rent Charge Amount on December 31 immediately preceding by the percentage increase or decrease, as the case may be, in the Consumer Price Index between the previous January 1 and that December 31, and adding or subtracting the amount so determined to the Rent Charge Amount as it stands on that December 31.
- 11.4 The Covenant Holder shall be entitled to recover from the Owner all reasonable expenses incurred as a result of enforcement of the Rent Charge.
- 11.5 The Rent Charge is suspended unless and until the Owner is in breach of any provision of this Agreement and has not cured the breach, or is not diligently proceeding to cure the breach, or has not otherwise made arrangements satisfactory to the Covenant Holder or has applied to the courts to dispute the breach. In the later situation the Owner shall pay the Rent Charge to the courts pending a decision.

- 11.6 A Covenant Holder may enforce the Rent Charge by an action against the Owner for the Rent Charge Amount.
- 11.7 If the Covenant Holder wishes to enforce the Rent Charge, it shall provide at least 10 business days notice to that effect to the Owner. This Notice of Enforcement may be given at any time after notice is given under section 9.1 and the time period of section 9.3 has elapsed.
- 11.8 Within 10 business days of receipt of a Notice of Enforcement, the Owner shall pay the full Rent Charge Amount to the Covenant Holder, or restore, or rehabilitate the Covenant Area or the Amenities to as near the condition described in the Report as is practicable, or make other arrangements satisfactory to the Covenant Holder, or apply to the courts.

**12. Successor in Title of the Owner**

- 12.1 This Agreement binds the parties to it and their respective Successors, heirs, executors, permitted assigns, and administrators.
- 12.2 The obligations and covenants contained in this Agreement shall be covenants running with the Lands and are perpetual, and will bind successors in title to the Lands and all parcels created by subdivision of the Lands that include any portion of the Covenant Area, and will be registered in the Land Title Office in Victoria pursuant to Sections 218 and 219 of the *Land Title Act*.
- 12.3 The Covenant Holder may at any time and without the consent of the Owner or anyone elect to be released from this Agreement and the Covenant contained herein for registration as a charge upon title, and upon such release this Agreement shall be discharged and be of no further force and effect.

**13. Notice**

- 13.1 Any notice, request for approval or grant of approval (a "notice") under this Agreement may be served to the Owner or Covenant Holder by any of the following means:

- (a) delivered in person;
- (b) sent by pre-paid registered mail; or
- (c) sent by courier

to their respective addresses, as set out in section 13.4.

- 13.2 A notice sent by pre-paid registered mail for which receipt thereof is signed by the Owner or office of the Covenant Holder is deemed to have been received. A notice delivered or sent by courier is deemed to have been given upon a delivery signed by the Owner or office of the Covenant Holder. It is agreed by the parties that notice, wherever the term is used in



this Agreement, will be extended for up to 60 days, excepting emergency, if one party advises the other in advance of the date of said notice of being away on vacation or business, requiring medical treatment, or other reason for not being able to attend to said notice if given, acting reasonably.

- 13.3 The Owner or office of the Covenant Holder shall not refuse the delivery of a notice from the other.
- 13.4 The addresses of the parties for notice are as follows;

**Covenant Holder:**

Salt Spring Island Local Trust Committee,  
#1 - 500 Lower Ganges Road,  
Salt Spring Island, B.C. V8K 2N8

**Owner:**

Arthur Peter Dorazio,  
427 Collins Road  
Salt Spring Island, B.C. V8K 2N1

and

Far Rockaway Land Ltd.,  
427 Collins Road  
Salt Spring Island, B.C. V8K 2N1

provided that if the ownership of the Lands has changed, to the registered owner as indicated on title to the Lands at the time of notice.

- 13.5 The Owner and the Covenant Holder agree to immediately give to the other written notice of any change in its address from those set out above.
- 13.6 If there is any interruption in the postal service, notice may be given to the Owner or at the office of the Covenant Holder only by personal delivery or courier.

**14. Notice of Covenant**

- 14.1 The Owner and Covenant Holder agree that each may publicize the existence of this Agreement in a tasteful manner, excepting a sign on the Covenant Area.

**15. Obligation**

- 15.1 The rights given to the Covenant Holder by this Agreement are permissive only and nothing imposes any obligation on the Covenant Holder to anyone, or obliges the Covenant Holder to perform any act or incur any expense for any purposes in respect of this Agreement.
- 15.2 Nothing in this Agreement renders the Covenant Holder an owner or occupier of the Lands.

**16. No Tort Liability**

- 16.1 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 are created or exist between the parties in connection with this Agreement, it being the intent of this clause to exclude tort liability of any kind and to limit the parties to their rights and remedies under the law of contract and the law pertaining to covenants under seal.

**17. Waiver**

- 17.1 An alleged waiver of any breach of this Agreement is effective only if it is an express written waiver signed by the Covenant Holder and is only effective to the extent of that express waiver and does not operate as a waiver of any other breach.
- 17.2 The failure of the Covenant Holder to require performance by the Owner at any time of any obligation under this Agreement does not affect the Covenant Holder's right to subsequently enforce that obligation.

**18. Registration**

- 18.1 The Owner agrees to do everything necessary at the Owner's expense to register this Agreement against title to the Lands with priority over all financial charges.

**19. Severance**

- 19.1 If any part of this Agreement is held to be invalid, illegal or unenforceable by the courts, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement is to remain in force unaffected by the severance.

**20. No Other Agreements**

- 20.1 This Agreement is the entire agreement between the parties and it terminates and supersedes all other such agreements regarding its subject.

**21. Independent Advice**

- 21.1 The Owner and Covenant Holder acknowledge and agree that each of them is satisfied with the legal and tax implications as to the meaning and effect of this Agreement.
- 21.2 The Owner acknowledges and agrees that no legal or tax advisor of the Covenant Holder has advised the Owner on the meaning or effect of this Agreement or in connection with this Agreement and that the Owner has not relied on any information from the Covenant Holder regarding legal or tax implications of such covenant.

**22. Amendments**

- 22.1 This Agreement may only be changed by a written instrument signed by all the parties.

**23. Joint and Several**

- 23.1 Where the Owner of a parcel of land is comprised of more than one person, the obligations of the Owner under this Agreement shall be both joint and several.

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

PLAN EPP2135

**REFERENCE PLAN OF COVENANT OVER PART OF LOT 12 OF SECTION 20, RANGE 2 WEST AND DISTRICT LOT 30, NORTH SALT SPRING ISLAND, COWICHAN DISTRICT, PLAN EPP2134.**

Pursuant to Section 99(1)(e) of the Land Title Act.

BCGS 92B.083



The intended plot size of this plan is 432 mm in width by 280 mm in height (B size) when plotted at a scale of 1:500

**LEGEND**

Bearings are grid, derived from Plan EPP2134.

All distances are in metres.

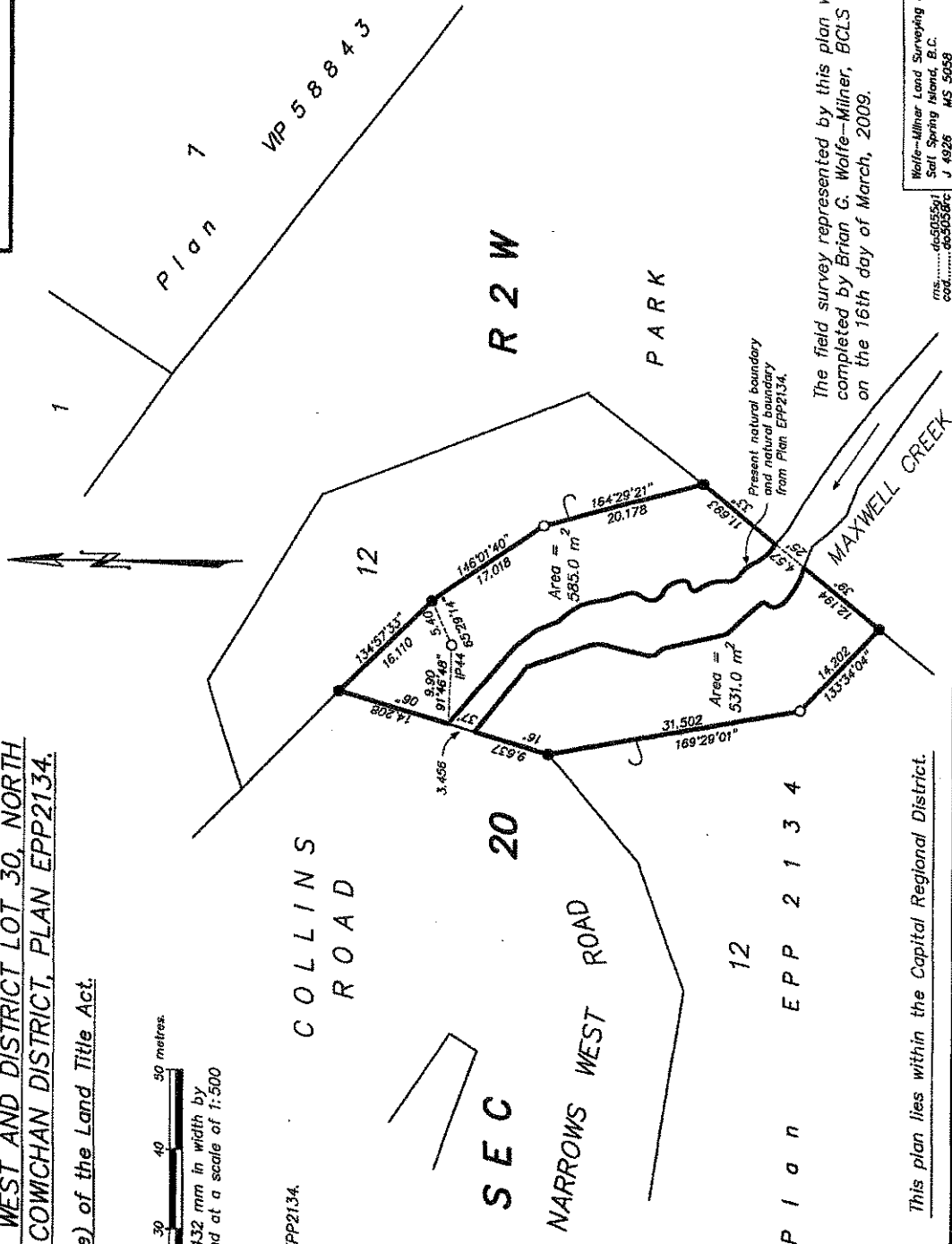
● Standard Iron Post Found.

○ Standard Iron Post Placed.

**TIES TO PRESENT NATURAL BOUNDARY**

BRC.	DIST.	BRC.	DIST.
LEFT BANK	RIGHT BANK	FROM IP 44	FROM IP 44
180°26'	8.0	195°47'	9.8
169°45'	10.8	182°03'	15.5
168°57'	13.6	179°35'	19.2
162°20'	18.0	181°27'	22.0
163°13'	20.7	182°44'	24.6
163°05'	22.9	180°09'	26.7
166°47'	26.0	178°33'	30.3
163°52'	28.3	177°08'	34.0
163°44'	28.8	174°01'	36.4
166°47'	31.0	171°42'	38.6
165°52'	32.7	172°39'	40.4
166°02'	36.4	169°21'	43.5
164°52'	37.4		
163°25'	40.5		

BOOK OF REFERENCE	AREA
LEGAL DESCRIPTION	
Lot 12-NE of creek	585.0 m <sup>2</sup>
Lot 12-SW of creek	531.0 m <sup>2</sup>
Total covenant area	1116 m <sup>2</sup>



The field survey represented by this plan was completed by Brian G. Wolfe-Milner, B.C.L.S. on the 16th day of March, 2009.

Wolfe-Milner Land Surveying Inc.,  
Salt Spring Island, B.C.  
ms.....ds5055a1  
cod.....ds5055a1c  
J 4926 MS 5058

This plan lies within the Capital Regional District.

Islands Trust Covenant Baseline Report

**BASELINE DOCUMENTATION**

**FOR**

**MAXWELL CREEK**

**COVENANT**

**427 COLLINS ROAD, SALT SPRING ISLAND**

**Prepared By**

***Kathleen Reimer, MSc. RPBio.***

**April 23, 2009**

## **BASELINE DOCUMENTATION REPORT**

Collins Road, Salt Spring Island, B.C. Creek Covenant Area

### **TABLE OF CONTENTS**

- 1.0 Acknowledgement of condition
- 2.0 Location and Description
- 3.0 Site History
- 4.0 List of Buildings, structures and other improvements
- 5.0 Significance of the land and amenities
- 6.0 Inventory of Biological features

6.1. Vegetation description

- 7.0 Vegetation polygons
- 8.0 List of figures and attachments
- 9.0 List of References

APPENDIX "A" Map showing general area

APPENDIX "B" Reference Plan and Photographic documentation

APPENDIX "C" Aerial photograph

Islands Trust Covenant Baseline Report

**BASELINE DOCUMENTATION REPORT**

Collins Road, Salt Spring Island, B.C. Covenant Area

Initialed by Property Owner: APD

**SCHEDULE B**

Attached to and forming part of the Covenant Agreement between the Salt Spring Island Local Trust Committee, Covenant Holder, and the Owner, Arthur Peter Dorazio dated as of the 26th day of April, 2009.

**1.0 Acknowledgment of condition**

- 1.1. The Owner, Arthur Peter Dorazio, and Environmental Consultant, Kathleen Reimer, MSc. RPBio. of Box 289, Salt Spring Island B.C. V8K 2V9 hereby acknowledges and agrees that the following is an accurate description of the Covenant Area as of the reference date of this Agreement.

Parcel Identifier	Legal Description
	Lot 12, Section 20, Range 2 West and District Lot 30, North Salt Spring Island, Cowichan District, Plan EPP2134

which is shown on the Reference Plan attached (the "Property").

The Donor and Donee agree that the state of the Property as at the date of completion of the field observations for this report, being April 23, 2009, was as detailed in this report.

**Donor:**

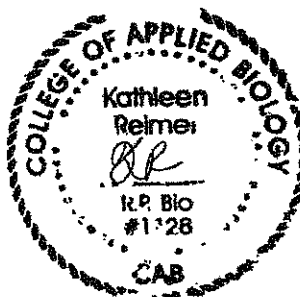
Arthur Peter Dorazio	
Per: <u>Arthur Peter Dorazio</u>	Date: <u>April 23, 2009</u>
Authorized Signatory	

**Donee:**

Salt Spring Island Local Trust Committee	
Per:	Date:

The undersigned acknowledge having prepared this report and hereby confirm that the attached information provides an accurate representation of the Property on April 23, 2009.

By: Kathleen Reimer Dated: Apr 23, 2009



## Islands Trust Covenant Baseline Report

### 2.0 Location and Description

- 2.1. The Covenant Area is located on the North end of Salt Spring Island. The general location of the subject Property is shown on the orthophoto (Map 1) located in Appendix A.
- 2.2. "Covenant Area" means that part of the parcel of land legally described as: certified correct by Brian Wolfe-Milner, B.C.L.S.<sup>1</sup> and dated March 16, 2009, and deposited in the Victoria Land Title Office under Plan EPP2135<sup>2</sup> a reduced copy of which forms part of Appendix B<sup>3</sup> to this Agreement.
- 2.3. The Covenant Area is 0.12 ha.
- 2.4. The soils in the Covenant Area are mainly Rumsley-Mexicana (Van Vliet, 1985).

### 3.0 Site History

This area has been logged several times in the past and the fir trees are all small second growth.

### 4.0 List of buildings, structures and other improvements

There are no improvements except for the new culvert under Collins Road.

### 5.0 Significance of the Land and Amenities

This section of Maxwell Creek is a pristine riparian area.

Species of Flora and Fauna and Natural Plant Communities found in the Covenant Area and designated as red or blue listed by the Ministry of Sustainable Resource Management's Conservation Data Centre (CDC) are:

**Red Listed**

Douglas Fir-Grand Fir-Oregon Grape

Arbutus

**Blue Listed**

Douglas-fir (*Pseudotsuga menziesii*)

### 6.0 Inventory of Biological Features

A survey was conducted by the author of this report on and special features were mapped and photographed (Appendix B).

---

<sup>1</sup> B.C.L.S. = British Columbia Land Surveyor

<sup>2</sup> This is left blank to be filled in by the Land Titles Office.

<sup>3</sup> Refers to the section of the covenant document that contains the B.C.L.S. Reference Plan.



## Islands Trust Covenant Baseline Report

## 6.1 Vegetation description

Vegetation is generally that found in the Coastal Douglas-fir moist maritime zone Biogeoclimatic Zone (CDF mm).

## 7.0 Vegetation Polygons

There is only one distinct polygon, and that is the second growth forest in the riparian areas along two sides of Maxwell Creek.

## Polygon A. Vegetation type 1: Riparian area

## FLORA

Main Canopy Species & percent cover	Douglas Fir 30%
Secondary Canopy	Red alder ( <i>Alnus rubra</i> ) 5% Douglas-fir ( <i>Pseudotsuga menziesii</i> ), 5% Western redcedar ( <i>Thuja plicata</i> ), 10% Western hemlock ( <i>Tsuga heterophylla</i> ), 2% Grand Fir ( <i>Abies grandis</i> ) 1% Uneven aged, 10-30 yrs 10-30 cm diameter
Total Canopy Cover	15%
Understorey (species & percent cover) Shrubs, including trees <10 m Herbs, ferns, mosses, etc.	Salal ( <i>Glauxtheria shallon</i> ) Licorice ferns ( <i>Polystichum glycyrrhiza</i> ) Sword Fern ( <i>Polystichum munitum</i> ), 20% Dull Oregon-grape ( <i>Mahonia nervosa</i> ), 1% Salmonberry ( <i>Rubus spectabilis</i> )
Observed rare/threatened species & locally uncommon species	Trillium ( <i>Trillium ovatum</i> )
Special Features	Some snake habitat available
Disturbance History	Second growth forest, long logging history in the area

## FAUNA

Wildlife Habitat / Features	
Observed Species (note invasives)	<b>BIRDS</b> American robin ( <i>Turdus migratorius</i> ) Common raven ( <i>Corvus corax</i> ) Bald Eagle nest nearby <b>REPTILES</b> unidentified snakes <b>MAMMALS</b> Black-tailed deer ( <i>Odocoileus hemionus</i> )
Rare/threatened species & locally uncommon species	Barred Owl ( <i>Strix varia</i> ) (evidence) Perch trees available

## Islands Trust Covenant Baseline Report

### 7.1. Existing use of the area

There is an existing water licence on Maxwell Creek, and the Owner or licence holder will need access to maintain the works at some time in the future.

### 7.2. Potential Risks to the Covenant Area

#### Polygon A

There has been a history of people using the Property for hiking so a proper trail should be constructed away from the creek bed.

## 8.0 List of Figures and Attachments

### Appendix A.

Map 1. General Location of Property and contours 1: 30,000 CRD Map, Salt Spring Island.

### Appendix B.

Map 2. Survey Reference Plan showing Covenant Area Property lines, photograph locations of significant features and vegetation types in the Covenant Area. Photographs are filed with both parties (Salt Spring Island Local Trust Committee and Arthur Peter Dorazio).

### Appendix C.

Map 3. Aerial photograph showing location of Covenant Area.

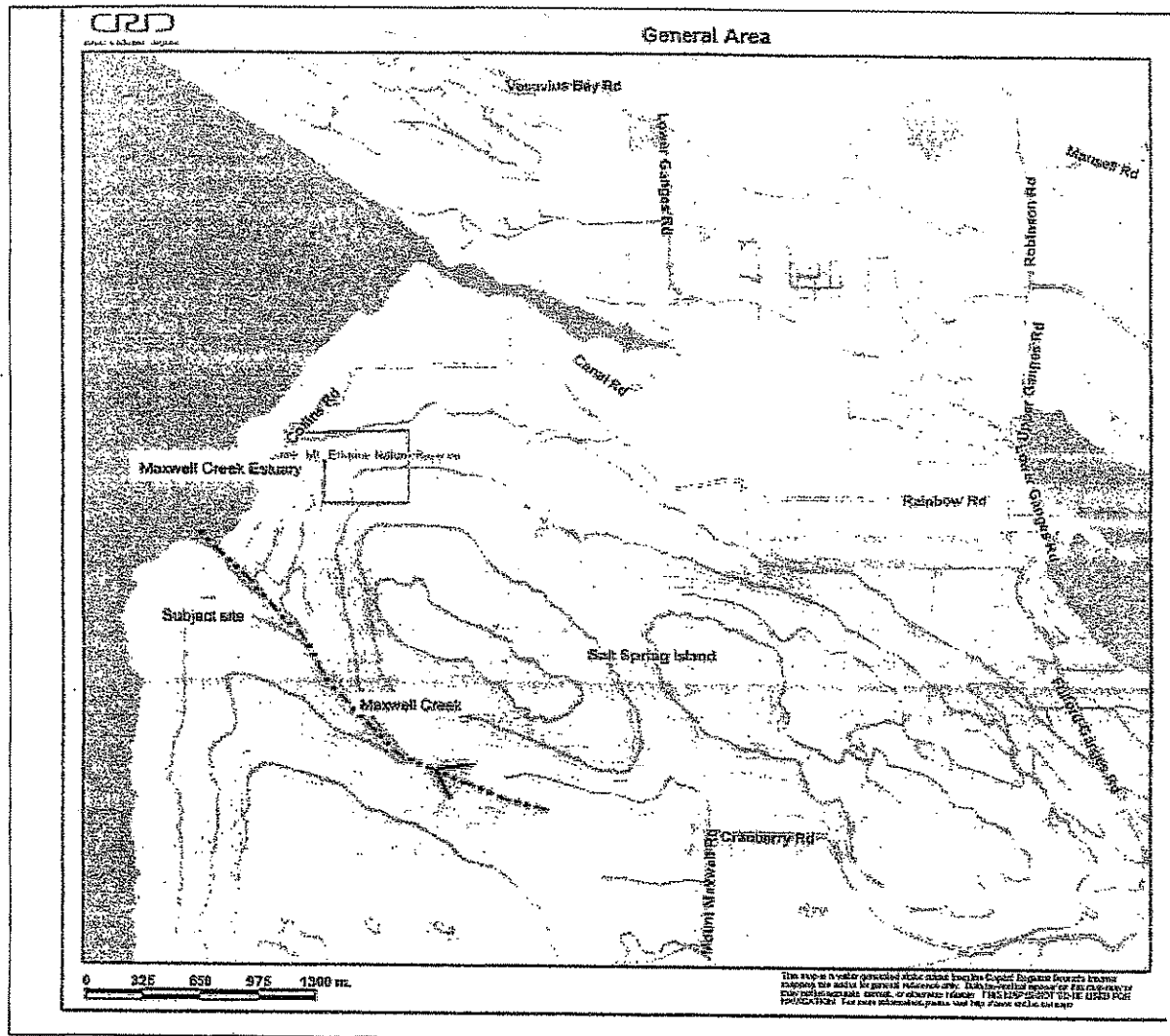
## 9.0 REFERENCES

Pojar, Jim and McKinnon, A., 1994. Plants of Coastal British Columbia. Lone Tree Publishing Vancouver B.C.

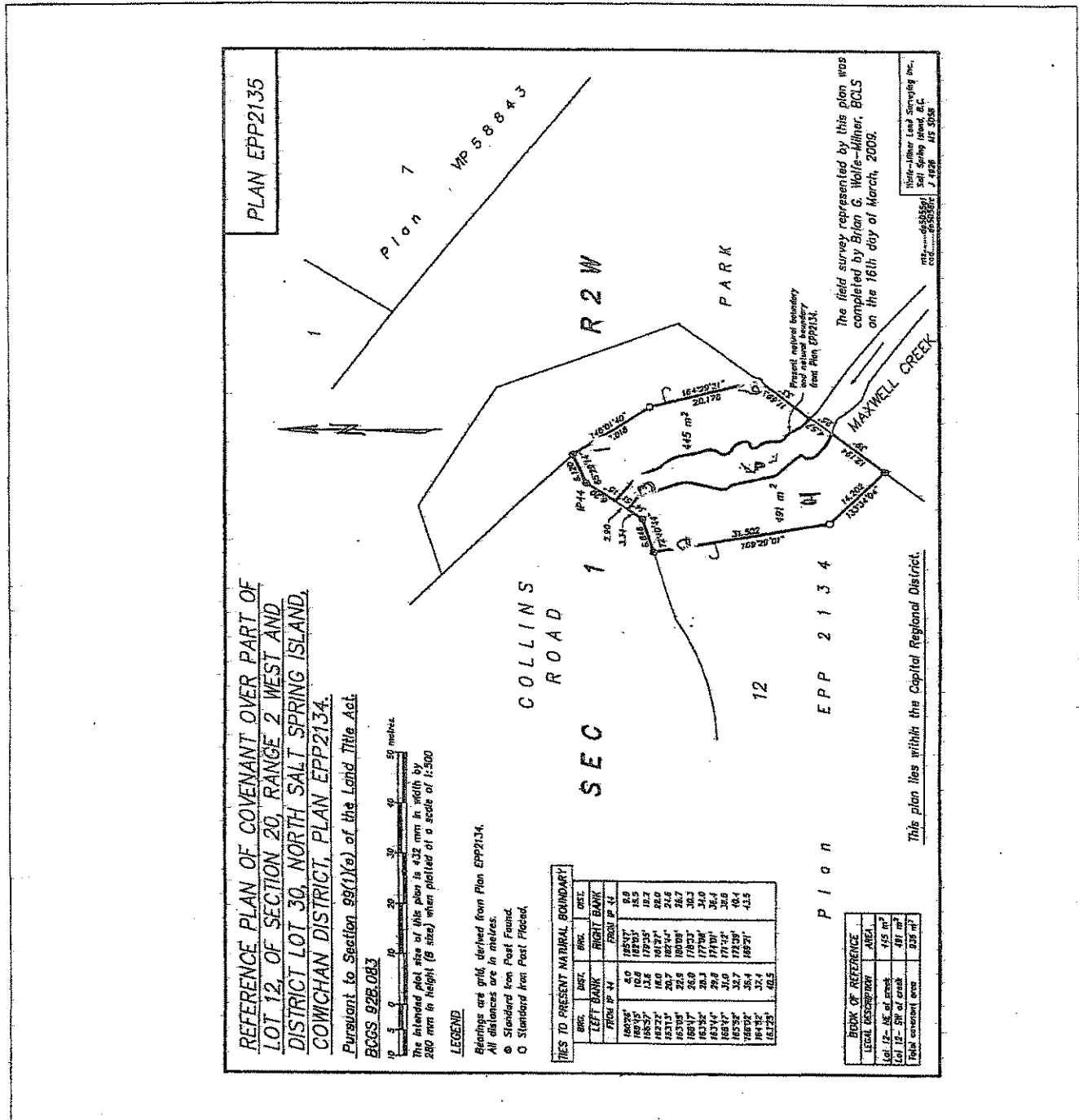
Van Vliet, L. et al, 1985. Soils of the Gulf Islands and Salt Spring Island. Soil Survey report #43. Agriculture Canada publication

## APPENDIX A

General location of subject Property



# APPENDIX B. Map of the Covenant Area: Showing Reference Plan and Photograph Locations



## Islands Trust Covenant Baseline Report

## APPENDIX B cont'd

## Photograph Details

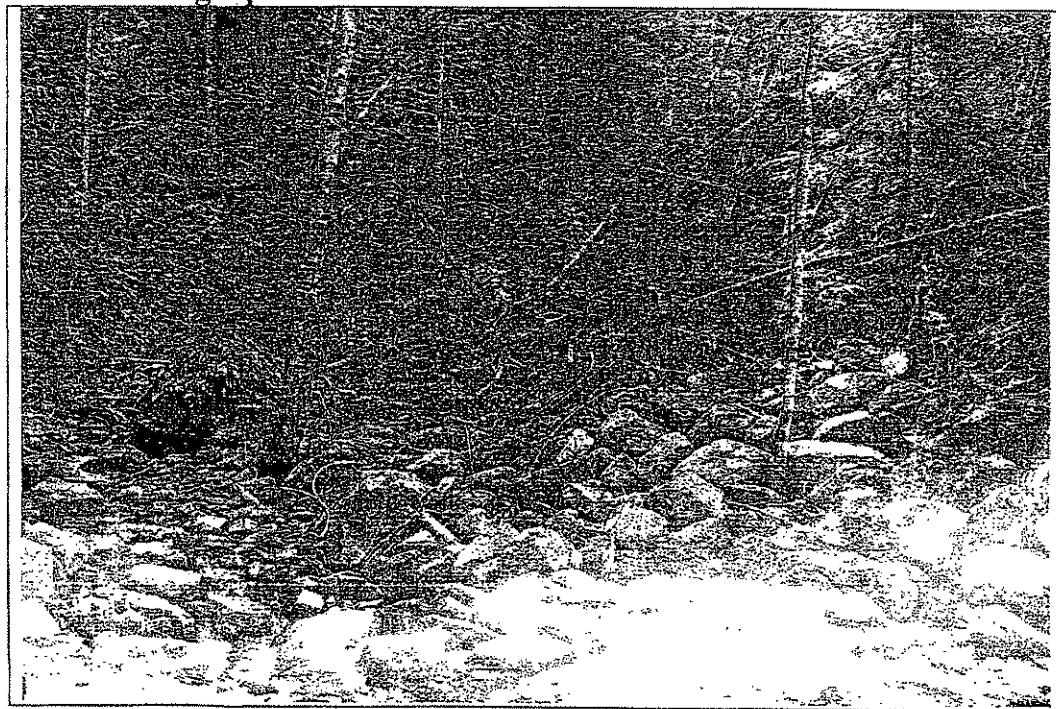
Photo #	Location	Species
1	North corner of Covenant Area near Collins Road	DFir, sword fern
2	South side of creek at Collins Road	Alder, salmonberry
3	The streambed upstream of the road	Licorice ferns on boulder
4	The ravine on both sides of the stream At the top of the Covenant Area	Pristine second growth forest DFir, cedar, hemlock
5	The streambed in the Covenant Area	Sword ferns, salal
6	Top of Covenant Area near the park	Small DFir, sword fern

Islands Trust Covenant Baseline Report

Photograph 1.



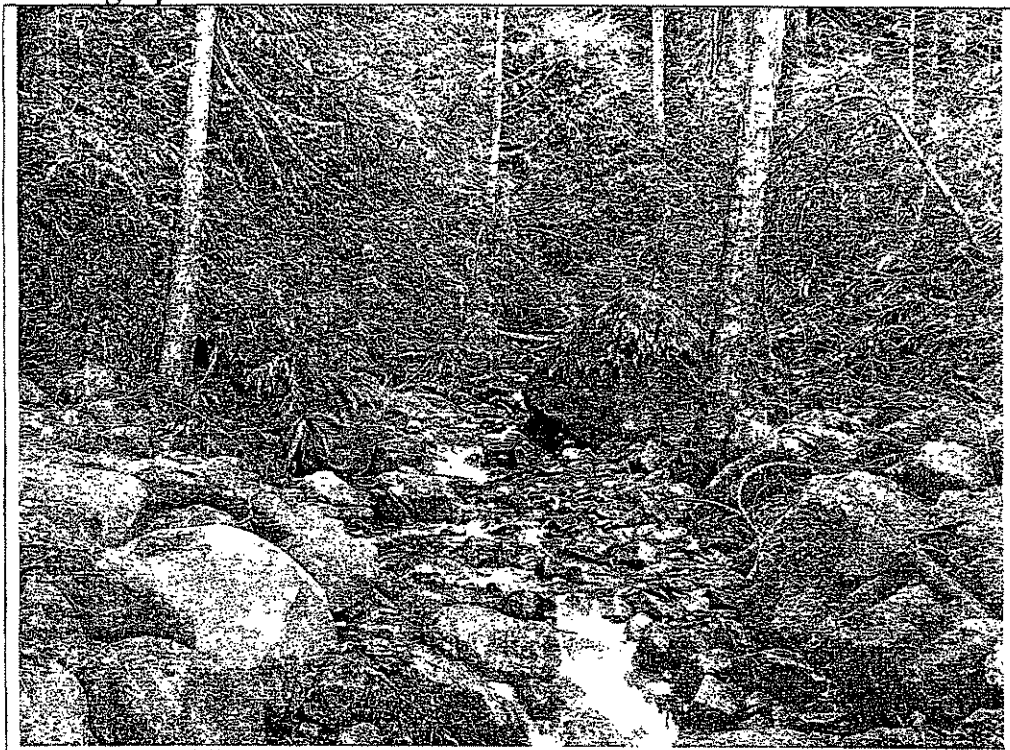
Photograph 2.



Baseline Collins Rd., Maxwell Creek  
05/08/2009

Page 10 of 14

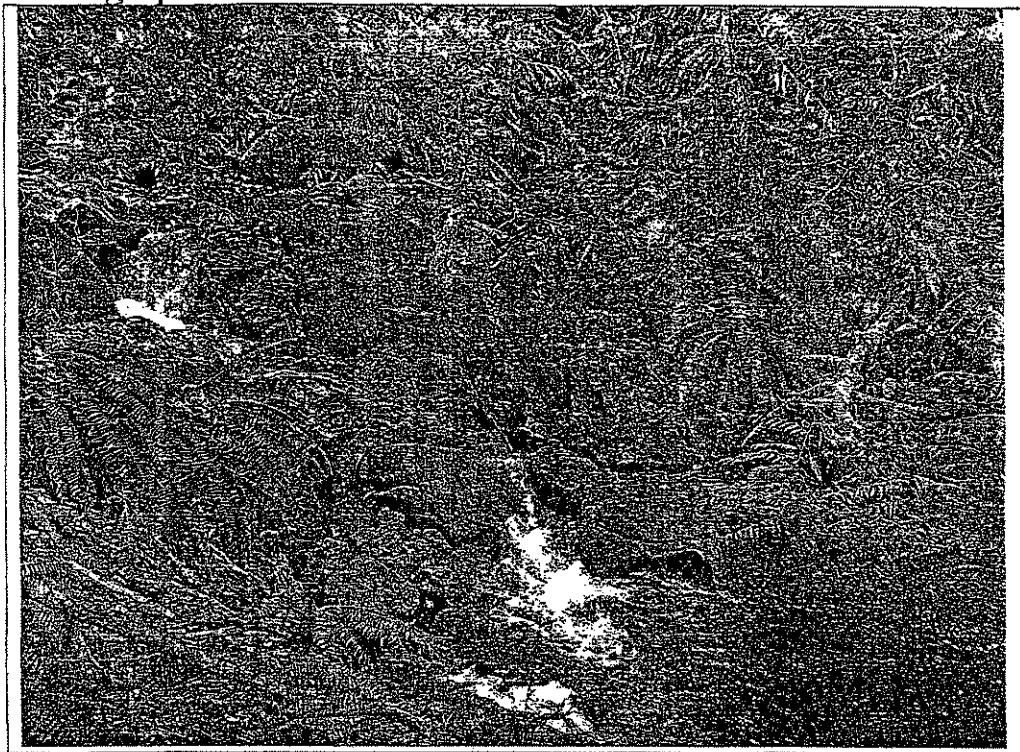
Photograph 3.



Photograph 4.



Photograph 5.





Photograph 6.

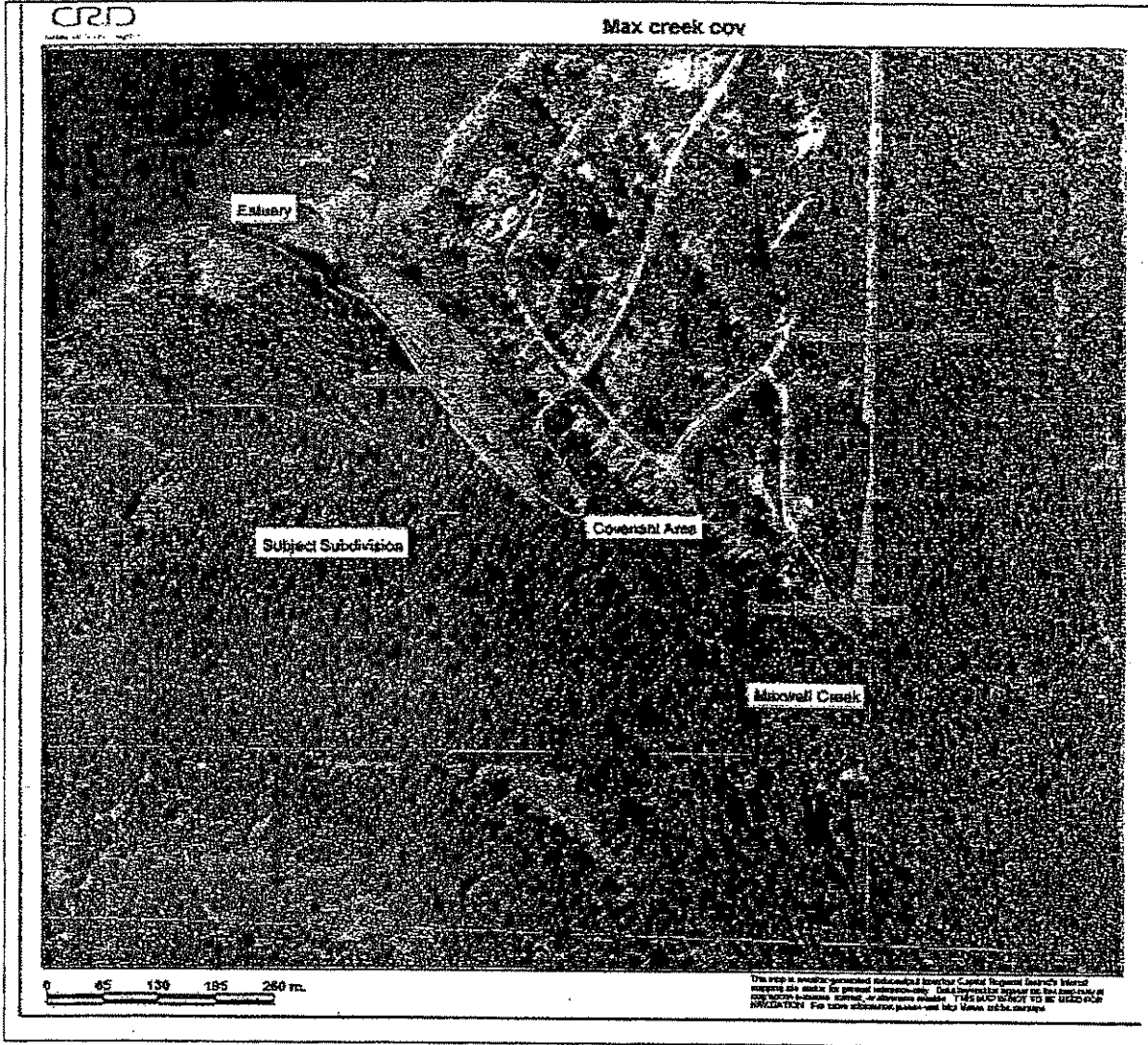


Baseline Collins Rd., Maxwell Creek  
05/08/2009

Page 13 of 14

APPENDIX C

CRD Natural Areas Map showing Covenant Area location



DP3  
orig

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

PAGE 1 OF 34 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)

Pearlman Lindholm, Vincent P. Reilly

Barristers & Solicitors

#201 - 19 Dallas Road

Victoria

BC V8V 5A6

Telephone: (250) 388-4433

File Number: 08-09-105

Deduct LTSA Fees? Yes ☒

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

**SEE SCHEDULE**

STC? YES

3. NATURE OF INTEREST CHARGE NO. ADDITIONAL INFORMATION

**SEE SCHEDULE**

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))

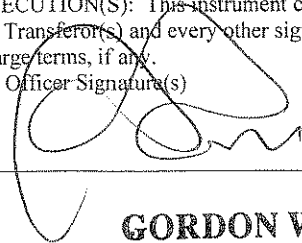
**SEE SCHEDULE**

BRITISH COLUMBIA  
 CANADA

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)



**GORDON W. BENN**  
 Barrister & Solicitor  
 201 - 19 Dallas Road  
 Victoria BC V8V 5A6

Execution Date

Y	M	D
09	09	08

Transferor(s) Signature(s)

Far Rockaway Land Ltd., by its  
 authorized signatory:



Arthur Peter Dorazio

**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 34 PAGES

Officer Signature(s)

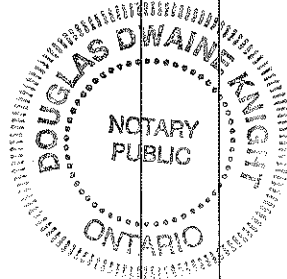
Execution Date

Transferor / Borrower / Party Signature(s)

Y	M	D
09	09	15

Douglas Dwaine Knight, Notary Public, City of  
Toronto, limited to the attestation of instruments and  
the taking of affidavits, for Canadian Imperial Bank  
of Commerce, CIBC Mortgages Inc. and CIBC  
Mortgage Corporation. Expires June 6, 2010.

Douglas Dwaine Knight  
100 University Avenue  
Toronto, Ontario  
M5J 2X4

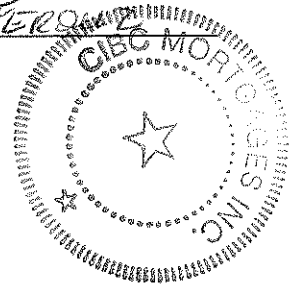


CIBC Mortgages Inc. by its authorized  
signatory(ies):

*[Signature]*  
Print Name:

JANET HANIF PERSAD  
Print Name:

627 3141.1



## 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 34 PAGES

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

Y M D

Salt Spring Island Local Trust  
Committee, by its authorized signatory  
(ies):

Print Name:

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 E

## SCHEDULE

PAGE 4 OF 34 PAGES

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

**NO PID NMBR LOT 1 OF SECTION 1 AND SECTION 20 RANGE 2 WEST NORTH SALT  
SPRING ISLAND COWICHAN DISTRICT PLAN EPP2134**

STC? YES

[Related Plan Number]

EPP2134

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

**NO PID NMBR LOT 2 OF SECTION 1 AND SECTION 20 RANGE 2 WEST NORTH SALT  
SPRING ISLAND COWICHAN DISTRICT PLAN EPP2134**

STC? YES

[Related Plan Number]

EPP2134

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

STC? YES ☐

**LAND TITLE ACT  
FORM E****SCHEDULE**

PAGE 5 OF 34 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.

**3. NATURE OF INTEREST**

Covenant (Section 219)  
Rent Charge  
Statutory Right of Way  
Priority Agreement over Mortgage FA44161

**5. TRANSFEROR(S)**

FAR ROCKAWAY LAND LTD., (Inc. No. BC0131130) of 427 Collins Road, Salt Spring Island, BC V8K 2N1 and CIBC Mortgages Inc. (as to Priority Agreement Only)

**6. TRANSFEREE(S)**

SALT SPRING ISLAND LOCAL TRUST COMMITTEE, #1 - 500 Lower Ganges Road, Salt Spring Island, BC V8K 2N8

TERMS OF INSTRUMENT - PART 2

**COVENANT**

BETWEEN:

Far Rockaway Land Ltd. (Incorporation # BC 0131130),  
427 Collins Road,  
Salt Spring Island, B.C. V8K 2N1  
  
(hereinafter called the "Owner")

OF THE FIRST PART

AND:

Salt Spring Island Local Trust Committee,  
#1 - 500 Lower Ganges Road,  
Salt Spring Island, B.C. V8K 2N8,  
  
(hereinafter called the "Covenant Holder")

OF THE SECOND PART

WHEREAS:

A. The Transferor is the Registered Owner of:

Lot 1, of Section 1 and Section 20, Range 2 West, North Salt Spring Island,  
Cowichan District, Plan EPP2134, and

Lot 2, of Section 1 and Section 20, Range 2 West, North Salt Spring Island, Cowichan  
District, Plan EPP2134

(herein called the "Lands");

- B. Section 219 of the *Land Title Act* provides that a covenant in respect of the use of land or of a building that land is, or is not to be built on in favour of a local trust committee under the *Islands Trust Act* may be registered as a charge against the title to that land;
- C. A statutory right of way in favour of the Covenant Holder is necessary for the operation and maintenance of the undertakings of the Covenant Holder; and
- D. The parties agree that the Covenant Area (as shown on the plan attached hereto as Schedule "A") contains significant Amenities and natural features of importance to the Owner and the Covenant Holder. It is agreed between the parties that this Covenant is granted to protect the quality of the tidal waters adjacent to the Covenant Area, to protect fish and wildlife habitat, to prevent erosion and hazardous conditions that could result in interrupting the geo-hydraulic process along the shoreline, protect development from hazardous conditions and protect the beauty of the shoreline area so that development is unobtrusive and contributes to the natural, public character of the Crown foreshore.



NOW THEREFORE in consideration of the payment of \$2.00 by the Covenant Holder to the Owner (the receipt and sufficiency of which is acknowledged by the Owner) and in consideration of the promises exchanged below, the parties agree as follows:

**1. Interpretation**

**1.1 In this Agreement:**

- (a) "Amenities" include those natural, environmental, wildlife, vegetation and plants, and streams and wetland values relating to the Covenant Area as identified in the Report;
- (b) "Covenant Area" means that portion of the Lands contained within the heavy black outline on reference Plan EPP2067 and deposited in the Victoria Land Title Office concurrently herewith subdivision Plan EPP2134 (a reduced copy of which is attached as part of Schedule "A");
- (c) "Consumer Price Index" means the All-Items Consumer Price Index published by Statistics Canada, or its successor in function, for Vancouver, British Columbia, where the year 2002 equals 100;
- (d) "Notice of Enforcement" means written notice given under section 11.7;
- (e) "Rent Charge" means the rent charge granted by the Owner under section 11;
- (f) "Rent Charge Amount" means the amount set out in section 11.2 and adjusted annually as set out in section 11.3, the payment of which is secured by the Rent Charge;
- (g) "Report" means the baseline documentation report prepared by a Registered Professional Biologist that: describes the Covenant Area and the Amenities in the form of text, maps, photographs, and other records of the Covenant Area and the Amenities as of April 2009, a copy for which is on file with each of the parties at the addresses set out in section 13; of which an overview is attached as Schedule "B"; and
- (h) "Successor" means any person who, at any time after registration of this Agreement, becomes the registered owner of the Lands or any part thereof by any means, including a beneficial owner.

1.2 This Agreement must be interpreted in accordance with the laws of British Columbia and the laws of Canada applicable in British Columbia, and the parties agree to attorn exclusively to the jurisdiction of the courts of British Columbia, (the "courts").

1.3 This Agreement is comprised of the recitation of the Parties, the recitals to the Agreement, the Schedules to the Agreement and Part 1 of the Land Title Act Form C to which this Agreement is attached.

1.4 In this Agreement:

- (a) reference to the singular includes a reference to the plural, and vice versa, unless the context otherwise requires;
- (b) where a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
- (c) reference to a particular numbered section or article or to a particular lettered Schedule is a reference to the correspondingly numbered or lettered article, section or Schedule of this Agreement;
- (d) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
- (e) the word "enactment" has the meaning given to it in the *Interpretation Act* (BC) on the reference date of this Agreement;
- (f) reference to any enactment is a reference to that enactment as consolidated, revised, amended or re-enacted or replaced, unless otherwise expressly provided;
- (g) reference to a "party" or the "parties" is a reference to a party or the parties to this Agreement and their respective Successors, permitted assigns, trustees, administrators and receivers; and
- (h) reference to a "day", "month", or "year" is a reference to a calendar day, calendar month, or calendar year, as the case may be, unless otherwise expressly provided.

**2. Representations and Warranties**

- 2.1 The Owner warrants that the facts set out in Recital A are true as of the date of this Agreement.
- 2.2 The Covenant Holder warrants that the facts set out in Recital C are true as of the date of this Agreement.
- 2.3 The Parties warrant that the facts set out in Recitals B, and D are true as of the date of this Agreement.

**3. Intent of Agreement**

- 3.1 The parties agree that: whereas they have determined the tidal shoreline, that borders the Covenant Area is particularly sensitive; the general intent of this Agreement is:
  - (a) to protect, preserve, conserve and maintain the Covenant Area and its Amenities in a natural state;

- (b) to prevent development, occupation or use of the Covenant Area that will impair or interfere with intent (a) above;
- (c) to prevent subdivision of the Covenant Area;
- (d) to permit the registration of a boundary adjustment in accordance with Salt Spring Island Land Use Bylaw 355, as amended with respect to the Lands; and

the parties agree that this Agreement is to be interpreted, performed and applied accordingly.

#### **4. Restrictions on use of the Covenant Area**

4.1 The Owner covenants and agrees that it will not do any of the following without the express written consent of the Covenant Holder except as may be elsewhere permitted in this Agreement:

- (a) subdivide the Covenant Area in any manner, except as described in section 3.1(d) above;
- (b) lease or license the Covenant Area or any part thereof unless the lease or license is expressly made subject to the provisions of this Agreement and expressly entitles the Owner to terminate the lease and license if the lessee or licensee breaches any of the provisions of this Agreement;
- (c) use or allow the use of the Covenant Area for hunting, fishing, or the gathering or grazing of domestic animals;
- (d) cause or facilitate the erosion or loss of soil on the Covenant Area;
- (e) construct, build, affix or place within the Covenant Area any work, installation or structure;
- (f) cause or allow any indigenous flora to be cut down, removed, defoliated or tampered with in any way within the Covenant Area, except that the Owner may cut down or remove non-indigenous flora, (e.g. broom) and remove trees with a trunk diameter less than 20 cm (measured 1.5 meters above the ground);
- (g) alter or interfere with a natural state of the soil, gravel and rock in or on the Covenant Area;
- (h) remove other vegetation from within the Covenant Area that results in an exposure of a total area of bare soil more than 9 square meters in area;
- (i) develop or install an impervious surface within the Covenant Area;
- (j) cause silts, leachates, fills or other deleterious substances to be released into the

Covenant Area;

- (k) cause or allow fill, rubbish, ashes, garbage, waste or other material foreign to the Covenant Area to be deposited in or on the Covenant Area; and
- (l) cause or allow pesticides, including but not limited to herbicides, insecticides or fungicides, to be applied to or introduced onto the Covenant Area.

## **5. Baseline Documentation Report**

- 5.1 The parties acknowledge and agree that the Report will serve as an objective information baseline to enable the parties to monitor compliance with the terms of this Agreement.
- 5.2 The parties acknowledge and agree that the flora and fauna on the Covenant Area will evolve through natural succession over time and, unless otherwise expressly stated, references to the Report are intended to take into account the natural flow of the sea and the succession of the flora and fauna over time, without human intervention on the Covenant Area other than as expressly permitted by this Agreement.

## **6. Owner's Obligations**

- 6.1 The rights given to the Covenant Holder by this Agreement are permissive only and nothing imposes any obligation on the Covenant Holder to anyone, or obliges the Covenant Holder to perform any act or incur any expense for any purpose in respect of this Agreement.
- 6.2 The Owner releases the Covenant Holder, its directors, officers, employees, agents and contractors, from and against all liability, causes of action, actions, claims, damages, expenses, costs, debts, demands or losses suffered or incurred by the Owner or any other person, arising from the granting of this Agreement, or by the act or omission of the Owner in relation to the operation and maintenance of the Covenant Area.
- 6.3 The Owner shall indemnify and save harmless the Covenant Holder and its elected and appointed officials, officers, employees and agents, from and against any and all liabilities, losses, suits, actions, damages, claims, demands, costs and other harm arising out of or in any way connected with this Agreement or its subject-matter.
- 6.4 The Owner, as registered owner of the Lands, must pay all taxes, assessments, fees and charges of whatever description which may be levied on or assessed against the Covenant Area and the Lands.
- 6.5 The Owner is only liable for the obligations of this Agreement which occur while the Owner is the registered owner of any interest in the Lands or any part thereof, and is not liable for:
  - (a) injury or alteration to the Covenant Area or the Amenities resulting from natural causes, or causes beyond the Owner's reasonable control, including fire, flood, storm, vandalism, trespass and earth movement, but excluding injury or alteration resulting from actions of the Owner or any other person acting with the actual or

constructive knowledge of the Owner;

- (b) any prudent action taken by the Owner or others on behalf of the Owner under emergency conditions to prevent, abate, or mitigate injury to the Covenant Area or the Amenities resulting from natural causes, including fire, flood storm and earth movement; or
- (c) injury or alteration to the Covenant Area or the Amenities or injury to others resulting from actions of the Covenant Holder or any other person acting with the actual or constructive knowledge of the Covenant Holder.

## **7. Owner's Reserved Rights**

7.1 Subject to section 4, the Owner reserves all of its rights as owner of the Covenant Area, including the right to use, occupy and maintain the Covenant Area in any way that is not expressly restricted or prohibited by this Agreement.

7.2 Without limiting the generality of section 7.1, the following rights are expressly reserved to the Owner:

- (a) to remove naturally fallen trees on a deer path in the Covenant Area;
- (b) to permit a utility, service, or access that provides power or similar utility, water, sewage disposal, drainage, access or other such utility to the Lands, which may include, if necessary, an easement, right of way, permit or licence to be registered against the Lands or a portion thereof, including the Covenant Area. In such case, the Owner shall avoid or lessen the impact to the Covenant Area as much as may be reasonably possible;
- (c) to prevent erosion, flooding, or other protection of the Lands, acting reasonably; and
- (d) to use, occupy, and maintain the Lands in any way that is not restricted in this Agreement.

7.3 Nothing in this Agreement restricts or affects the right of the Owner or any other party to undertake such actions on the Covenant Area as are necessary to:

- (a) prevent potential injury or death to any person; or
- (b) prevent or mitigate any damage or loss to any real or personal property.

## **8. Statutory Right of Way**

8.1 The Owner grants, conveys and transfers to the Covenant Holder, its successors and permitted assigns, together with its employees, agents, servants, workers and invitees, in perpetuity, the full free and uninterrupted right, license, liberty, privilege, easement and statutory right of way over the Covenant Area to do the following:

- (a) to inspect the Covenant Area:
    - (i) at least once each calendar year, with the date for each inspection to be agreed upon by the parties, but if the parties cannot agree on a date the Covenant Holder is entitled to enter upon and inspect the Covenant Area in accordance with section 8.1(a)(ii); and
    - (ii) at all other reasonable times upon prior notice by the Covenant Holder to the Owner of at least seventy-two (72) hours, unless there is an emergency or potential threat to the Covenant Area which does not make giving such notice practicable;
  - (b) as part of inspection of the Covenant Area, to take samples, photographs and video recordings as may be necessary to monitor compliance and enforce the terms of this Agreement;
  - (c) to protect, preserve, conserve, maintain, enhance, restore or rehabilitate at the Covenant Holder's expense and in accordance with the provisions of this Agreement, the natural state of the Covenant Area or the Amenities to as near the condition described in the Report as is practicable if an act of nature or human agency, beyond the Owner's reasonable control, destroys, impairs, diminishes or negatively affects or alters the Covenant Area or the Amenities from the condition described in the Report;
  - (d) to protect, preserve, conserve, maintain, enhance, restore or rehabilitate, at the Owner's expense and in accordance with the provisions of this Agreement, the Covenant Area or the Amenities to as near the condition described in the Report as is practicable if an action of the Owner or any other person acting with the actual or constructive knowledge of the Owner:
    - (i) destroys, impairs, diminishes, or negatively affects or alters the Covenant Area or the Amenities from the condition described in the Report; other than as expressly allowed in this Agreement; or
    - (ii) contravenes any term of this Agreement;
  - (e) to carry out or evaluate, or both, any program agreed upon among the parties for the protection, preservation, conservation, maintenance, enhancement, restoration or rehabilitation of all or any portion of the Covenant Area or the Amenities;
  - (f) to place pegs or other similar markings on the ground of the Covenant Area; and
  - (g) for any purpose necessary to monitor, implement or enforce this Agreement.
- 8.2 The Covenant Holder may bring workers, vehicles, equipment and materials on the Covenant Area when exercising their rights under this Agreement. In such a case, the

Covenant Holder shall be responsible, as soon thereafter as reasonable and practical, to restore or rehabilitate the Covenant Area or the Amenities to as near the condition as detailed in the Report, or as is outlined elsewhere in this Agreement.

- 8.3 No right of access by the general public to any portion of the Lands is conveyed by this Agreement.

**9. Enforcement Remedies of the Covenant Holder**

- 9.1 If the Covenant Holder believes that the Owner has neglected or refused to perform any of the obligations set out in this Agreement or is in breach of any term of this Agreement, the Covenant Holder may serve on the Owner a notice setting out particulars of the breach and of the Covenant Holder's estimated maximum costs of remedying the breach.
- 9.2 The Owner shall, within 60 business days from receipt of a notice under section 9.1, or from the conclusion of the dispute resolution provision under section 10 if it is invoked, remedy the breach or make arrangements satisfactory to the Covenant Holder to remedy the breach or apply to the courts to dispute said breach.
- 9.3 If the Owner does not remedy the breach or make arrangements satisfactory to the Covenant Holder to remedy the breach in accordance with section 9.2, or by the dispute resolution process under section 10 then; the Covenant Holder may enter upon the Covenant Area to carry out what they believe are the Owner's obligations as set out in this Agreement at their expense, and the parties shall apply to the courts for the settlement of any expense incurred by the Covenant Holder, up to the estimated maximum costs of remedying the breach set out in the notice.
- 9.4 This section 9 does not affect the right of the Covenant Holder to pursue any other legal or equitable remedy in relation to a breach or threatened breach of this Agreement.
- 9.5 The Covenant Holder has sole discretion to restore or rehabilitate, or to decline to restore or rehabilitate, any injury or alteration to the Covenant Area or the Amenities that is not restored or rehabilitated by the Owner.

**10. Dispute Resolution**

- 10.1 If a breach of this Agreement occurs or is threatened, or if there is disagreement as to the meaning of this Agreement, the Covenant Holder or the Owner may give notice to the other party requiring a meeting of the parties within 10 business days of receipt of the notice.
- 10.2 All activities on the Covenant Area giving rise to a breach or a threatened breach shall immediately cease or be dealt with by the parties, upon receipt of notice.
- 10.3 The parties must attempt to resolve the matter, acting reasonably and in good faith, within 20 business days of meeting under section 10.1.

- 10.4 If the parties are not able to resolve the matter within said time, the parties may agree to appoint a mutually acceptable person to mediate the matter and the parties must equally share the cost of the mediator and act reasonably and in good faith and cooperate with the mediator and with each other in an attempt to resolve the matter within 30 business days after the mediator is appointed.
- 10.5 This section 10 does not affect the right of either party to pursue any other legal or equitable remedy in relation to a breach or a threatened breach or a disagreement as to the meaning of this Agreement or part thereof.

## **11. Rent Charge**

- 11.1 As security for the performance of the Owner's obligations under this Agreement, the Owner grants to the Covenant Holder a perpetual rent charge against the Lands. The Rent Charge is granted to the Covenant Holder under Section 219 of the *Land Title Act* (British Columbia) as an integral part of the statutory covenant created by this Agreement.
- 11.2 The Rent Charge secures payment to the Covenant Holder by the Owner of the sum of \$2000.00 per year, subject to adjustment under sections 11.3 and 11.4. For clarity, only one Rent Charge Amount is payable by the Owner for each violation. The Rent Charge Amount shall be increased by the sum equal to 110% of the market value, at the date of any breach of this Agreement, of any flora, soil, rock, gravel or minerals, which have been altered, damaged, destroyed, moved, harvested or removed.
- 11.3 The Rent Charge Amount is to be adjusted on January 1 of each year by increasing or decreasing, as the case may be, the Rent Charge Amount by the amount determined by multiplying the Rent Charge Amount on December 31 immediately preceding by the percentage increase or decrease, as the case may be, in the Consumer Price Index between the previous January 1 and that December 31, and adding or subtracting the amount so determined to the Rent Charge Amount as it stands on that December 31.
- 11.4 The Covenant Holder shall be entitled to recover from the Owner all reasonable expenses incurred as a result of enforcement of the Rent Charge.
- 11.5 The Rent Charge is suspended unless and until the Owner is in breach of any provision of this Agreement and has not cured the breach, or is not diligently proceeding to cure the breach, or has not otherwise made arrangements satisfactory to the Covenant Holder or has applied to the courts to dispute the breach. In the later situation the Owner shall pay the Rent Charge to the courts pending a decision.
- 11.6 A Covenant Holder may enforce the Rent Charge by an action against the Owner for the Rent Charge Amount.
- 11.7 If the Covenant Holder wishes to enforce the Rent Charge, it shall provide at least 10 business days notice to that effect to the Owner. This Notice of Enforcement may be given at any time after notice is given under section 9.1 and the time period of section 9.3 has elapsed.



- 11.8 Within 10 business days of receipt of a Notice of Enforcement, the Owner shall pay the full Rent Charge Amount to the Covenant Holder, or repair, restore, or rehabilitate the Covenant Area or the Amenities to as near the condition described in the Report as is practicable, or make other arrangements satisfactory to the Covenant Holder, or apply to the courts.

**12. Successor in Title of the Owner**

- 12.1 This Agreement binds the parties to it and their respective Successors, heirs, executors, permitted assigns, and administrators.
- 12.2 The obligations and covenants contained in this Agreement shall be covenants running with the Lands and are perpetual, and will bind successors in title to the Lands and all parcels created by subdivision of the Lands that include any portion of the Covenant Area, and will be registered in the Land Title Office in Victoria pursuant to Sections 218 and 219 of the *Land Title Act*.
- 12.3 The Covenant Holder may at any time and without the consent of the Owner or anyone elect to be released from this Agreement and the Covenant contained herein for registration as a charge upon title, and upon such release this Agreement shall be discharged and be of no further force and effect.

**13. Notice**

- 13.1 Any notice, request for approval or grant of approval (a "notice") under this Agreement may be served to the Owner or Covenant Holder by any of the following means:
- (a) delivered in person;
  - (b) sent by pre-paid registered mail; or
  - (c) sent by courier,
- to their respective addresses, as set out in section 13.4.
- 13.2 A notice sent by pre-paid registered mail for which receipt thereof is signed by the Owner or office of the Covenant Holder is deemed to have been received. A notice delivered or sent by courier is deemed to have been given upon a delivery signed by the Owner or office of the Covenant Holder. It is agreed by the parties that notice, wherever the term is used in this Agreement, will be extended for up to 60 days, excepting emergency, if one party advises the other in advance of the date of said notice of being away on vacation or business, requiring medical treatment, or other reason for not being able to attend to said notice if given, acting reasonably.
- 13.3 The Owner or office of the Covenant Holder shall not refuse the delivery of a notice from the other.
- 13.4 The addresses of the parties for notice are as follows;

**Owner:**

Far Rockaway Land Ltd.,  
427 Collins Road  
Salt Spring Island, B.C. V8K 2N1

provided that if the ownership of the Lands has changed, to the registered owner as indicated on title to the Lands at the time of notice.

**Covenant Holder:**

Salt Spring Island Local Trust Committee,  
#1 - 500 Lower Ganges Road,  
Salt Spring Island, B.C. V8K 2N8

13.5 The Owner and the Covenant Holder agree to immediately give to the other written notice of any change in its address from those set out above.

13.6 If there is any interruption in the postal service, notice may be given to the Owner or the office of the Covenant Holder only by personal delivery or courier.

**14. Notice of Covenant**

14.1 The Owner and Covenant Holder agree that each may publicize the existence of this Agreement in a tasteful manner, excepting a sign on the Covenant Area.

**15. Obligation**

15.1 The rights given to the Covenant Holder by this Agreement are permissive only and nothing imposes any obligation on the Covenant Holder to anyone, or obliges the Covenant Holder to perform any act or incur any expense for any purposes in respect of this Agreement.

15.2 Nothing in this Agreement renders the Covenant Holder an owner or occupier of the Lands.

**16. No Tort Liability**

16.1 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 are created or exist between the parties in connection with this Agreement, it being the intent of this clause to exclude tort liability of any kind and to limit the parties to their rights and remedies under the law of contract and the law pertaining to covenants under seal.

**17. Waiver**

17.1 An alleged waiver of any breach of this Agreement is effective only if it is an express

written waiver signed by the Covenant Holder and is only effective to the extent of that express waiver and does not operate as a waiver of any other breach.

- 17.2 The failure of the Covenant Holder to require performance by the Owner at any time of any obligation under this Agreement does not affect the Covenant Holder's right to subsequently enforce that obligation.

**18. Registration**

- 18.1 The Owner agrees to do everything necessary at the Owner's expense to register this Agreement against title to the Lands with priority over all financial charges.

**19. Severance**

- 19.1 If any part of this Agreement is held to be invalid, illegal or unenforceable by the courts, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement is to remain in force unaffected by the severance.

**20. No Other Agreements**

- 20.1 This Agreement is the entire agreement between the parties and it terminates and supersedes all other such agreements regarding its subject.

**21. Independent Advice**

- 21.1 The Owner and Covenant Holder acknowledge and agree that each of them is satisfied with the legal and tax implications as to the meaning and effect of this Agreement.
- 21.2 The Owner acknowledges and agrees that no legal or tax advisor of the Covenant Holder has advised the Owner on the meaning or effect of this Agreement or in connection with this Agreement and that the Owner has not relied on any information from the Covenant Holder regarding legal or tax implications of such covenant.

**22. Amendments**

- 22.1 This Agreement is intended to be perpetual and this Agreement may only be changed by a written instrument signed by all the parties.

**23. Joint and Several**

- 23.1 Where the Owner of a parcel of land is comprised of more than one person, the obligations of the Owner under this Agreement shall be both joint and several.

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

### CONSENT AND PRIORITY AGREEMENT

WHEREAS **CIBC MORTGAGES INC.** (the "Chargeholder") is the holder of a Mortgage (called the "Charge") encumbering the lands (the "Lands") described in item 2 of the *Land Title Act* Form C attached hereto, which was registered in the Victoria Land Title Office under number **FA44161**.

THEREFORE THIS CONSENT AND PRIORITY AGREEMENT IS EVIDENCE THAT IN CONSIDERATION OF \$1.00 AND OTHER GOOD AND VALUABLE CONSIDERATION PAID BY THE TRANSFEREE TO THE CHARGEHOLDER:

1. The Chargeholder hereby consents to the granting and registration of the Section 219 Covenant attached hereto (the "Covenant") and the Chargeholder hereby agrees that the Covenant shall be binding upon its interest in and to the Lands.
2. The Chargeholder hereby grants to the transferee described in item 6 of the *Land Title Act* Form C attached hereto priority for the Covenant over the Chargeholder's right, title and interest in and to the Lands, and the Chargeholder does hereby postpone the Charge and all of its right, title and interest thereunder to the Covenant as if the Covenant had been executed, delivered and registered prior to the execution, delivery and registration of the Charge.

IN WITNESS WHEREOF, the Chargeholder has executed and delivered this Consent and Priority Agreement by executing the *Land Title Act* Form D above which is attached hereto and forms part of this Agreement.

SCHEDULE "A"

PLAN EPP2067

REFERENCE PLAN OF COVENANT OVER PARTS OF  
LOTS 1 AND 2, OF SECTION 1, RANGE 2 WEST, AND  
SECTION 20, RANGE 2 WEST, NORTH SALT SPRING  
ISLAND, COWICHAN DISTRICT, PLAN EPP2134.

Pursuant to Section 99(1)(e) of the Land Title Act.

BCGS 92B.083



The intended plot size of this plan is 432 mm in width by 280 mm in height (B size) when plotted at a scale of 1:500

LEGEND

Bearings are grid, derived from Plan Epp2134.

All distances are in metres.

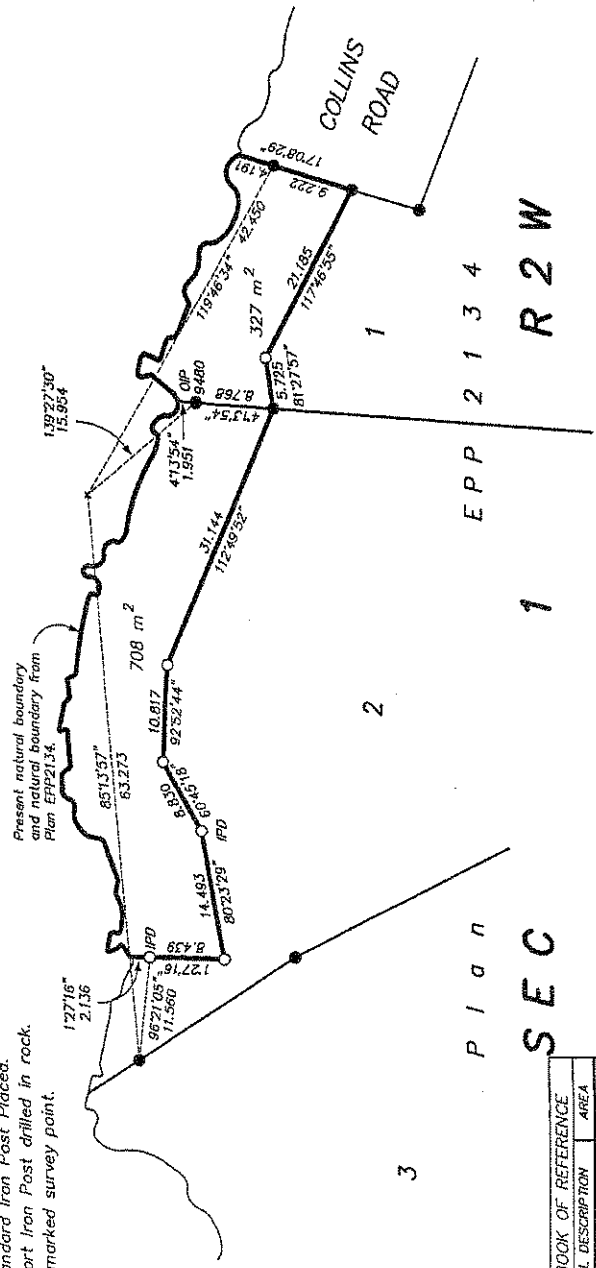
● Standard Iron Post Found.

○ Standard Iron Post Placed.

IPD ○ Short Iron Post drilled in rock.

x Unmarked survey point.

STUART CHANNEL



PLAN  
SEC  
R 2 W  
EPP 2 1 3 4

The field survey represented by this plan was completed by Brian G. Wolfe-Milner, BCLS on the 16th day of March, 2009.

BOOK OF REFERENCE	LEGAL DESCRIPTION	AREA
Lot 1, Plan EPP2134		327 m <sup>2</sup>
Lot 2, Plan EPP2134		708 m <sup>2</sup>

This plan lies within the Capital Regional District.

ms. .... 405055g1  
cad. .... 405055g1  
Wolfe-Milner Land Surveying Inc.,  
Salt Spring Island, B.C.  
J 4926 MS 3059

SCHEDULE "B"

Islands Trust Covenant Baseline Report

BASELINE DOCUMENTATION

FOR

FORESHORE COVENANT

455 COLLINS ROAD, SALT SPRING ISLAND

Prepared By

*Kathleen Reimer, MSc. RPBio.*

April 23, 2009

## Islands Trust Covenant Baseline Report

### **BASELINE DOCUMENTATION REPORT**

455 Collins Road, Salt Spring Island, B.C.  
Foreshore Covenant Area

#### TABLE OF CONTENTS

- 1.0 Acknowledgement of condition
- 2.0 Location and Description
- 3.0 Site History
- 4.0 List of Buildings, structures and other improvements
- 5.0 Significance of the land and amenities
- 6.0 Inventory of Biological features
  - 6.1. Vegetation description
  - 6.2. Potential Risks to the Covenant Area
- 7.0 List of Figures and Attachments
- 8.0 List of References

APPENDIX "A" CRD Map of general area


APPENDIX "B" Reference Plan and Photographic documentation

APPENDIX "C" CRD Aerial photograph showing covenant location

# Islands Trust Covenant Baseline Report

## BASELINE DOCUMENTATION REPORT

Collins Road, Salt Spring Island, B.C. Covenant Area

Initialed by Property Owner: 

### SCHEDULE B

Attached to and forming part of the Covenant Agreement between the Salt Spring Island Local Trust Committee, Covenant Holder, and the Owner, Far Rockaway Land Ltd., dated as of the 26 day of April, 2009.

#### 1.0 Acknowledgment of condition

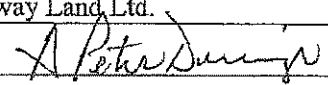
- 1.1. The Owner, Far Rockaway Land Ltd., and Environmental Consultant, Kathleen Reimer, MSc. RPBio. of Box 289, Salt Spring Island B.C. V8K 2V9 hereby acknowledge and agree that the following is an accurate description of the Covenant Area as of the reference date of this Agreement.

Parcel Identifier	Legal Description
	Lot 1 and Lot 2, of Section 1 and Section 20, Range 2 West, North Salt Spring Island, Cowichan District, Plan EPP2134

which is shown on the Reference Plan attached (the "Property").

The Donor and Donee agree that the state of the Property as at the date of completion of the field observations for this report, being April 23, 2009, was as detailed in this report.

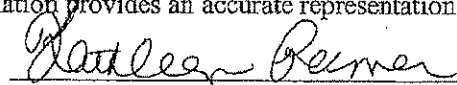
#### Donor:

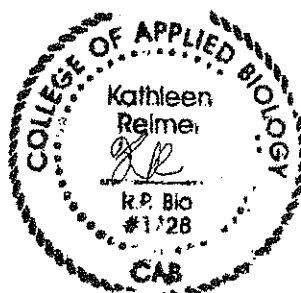
Far Rockaway Land Ltd.			
Per:		Date:	April 23, 2009
	Authorized Signatory		

#### Donee:

Salt Spring Island Local Trust Committee,			
Per:		Date:	

The undersigned acknowledge having prepared this report and hereby confirm that the attached information provides an accurate representation of the Property on April 23, 2009.

By:  Dated: Apr 23, 2009





## Islands Trust Covenant Baseline Report

### 2.0 Location and Description

- 2.1. The Covenant Area is located on the North end of Salt Spring Island. The general location of the subject Property is shown on the CRD Map (Map 1) located in Appendix A.
- 2.2. "Covenant Area" means that part of the parcel of land legally described as: certified correct by Brian Wolfe-Milner, B.C.L.S.<sup>1</sup> and dated March 16, 2009, and deposited in the Victoria Land Title Office under Plan EPP2067<sup>2</sup> a reduced copy of which forms part of Appendix B<sup>3</sup> to this Agreement.
- 2.3. The Covenant Area is 0.11 ha.
- 2.4. The soils in the Covenant Area are mainly Trincomali (South portion) and Rumsley (North end of Covenant Area), which is mainly rock (Van Vliet, 1985).

### 3.0 Site History

There is a long history of logging in this area of Salt Spring Island, so all the trees are small second growth. Also this lot was cleared in the past to maintain a view of the ocean from the nearby residence.

### 4.0 List of buildings, structures and other improvements

There are no buildings in the Covenant Area. There are existing trails that could be maintained without damage to the native vegetation.

### 5.0 Significance of the Land and Amenities

#### 5.1 Purpose of the covenant

The purpose of the covenant is to protect the sensitive shoreline which borders on the estuary of Maxwell Creek.

#### 5.2 Species of Importance

Flora and Fauna and Natural Plant Communities found in the Covenant Area and designated as red or blue listed by the Ministry of Sustainable Resource Management's Conservation Data Centre (CDC) are:

##### Red Listed

Douglas Fir-Grand Fir-Oregon Grape  
Arbutus

##### Blue Listed

Douglas-fir (*Pseudotsuga menziesii*)

<sup>1</sup> B.C.L.S. = British Columbia Land Surveyor

<sup>2</sup> This is left blank to be filled in by the Land Titles Office.

<sup>3</sup> Refers to the section of the covenant document that contains the B.C.L.S. Reference Plan.

## Islands Trust Covenant Baseline Report

## 6.0 Inventory of Biological Features

A survey was conducted by the author of this report on March 20, 2009 and special features were mapped and photographed (Appendix B).

## 6.1. Vegetation description

Vegetation is generally that found in the Coastal Douglas-fir moist maritime zone Biogeoclimatic Zone (CDF mm).

There is one distinct vegetation area within the Covenant Area. The dry rocky bench area along the shoreline of Lots 1 and 2.

Polygon A. Vegetation type 1: Rocky bench above Bader's Beach with sunny open areas.

## FLORA

Main Canopy Species & percent cover	Douglas Fir ( <i>Pseudotsuga menziesii</i> ) > 1%
Secondary Canopy	Arbutus ( <i>Arbutus Menziesii</i> )
Total Canopy Cover	0-1 %
Understorey (species & percent cover) – note invasives Shrubs, including trees <10 m Herbs, ferns, mosses, etc.	Scotch broom ( <i>Cytisus scoparius</i> ), 1%, (INVASIVE) Salal ( <i>Glauxtheria shallon</i> ), Ocean spray ( <i>Holodiscus discolor</i> ), Saskatoon ( <i>Amelanchier alnifolia</i> ) Nootka Rose ( <i>Rosa nutkana</i> ) Scoulers willow ( <i>Salix scouleriana</i> ). Oregon grape ( <i>Mahonia species</i> )
Observed rare/threatened species & locally uncommon species	Easter lilies ( <i>Erythronium orgonum</i> ) Licorice ferns ( <i>Polystichum glycyrrhiza</i> )
Special Features	
Disturbance History	

## FAUNA

Wildlife Habitat / Features	
Observed Species (note invasives)	<b>BIRDS</b> Common raven ( <i>Corvus corax</i> ) Sea Gulls <b>REPTILES</b> unidentified snakes <b>MAMMALS</b> Black-tailed deer ( <i>Odocoileus hemionus</i> )
Rare/threatened species & locally uncommon species	Bald eagles nest about 500 m away in the adjacent upland area

## Islands Trust Covenant Baseline Report

### 6.2. Potential Risks to the Covenant Area

Polygon A contains small patches of Scotch Broom (*Cytisus scoparius*) in the Covenant Area and along the trails. The constant removal of Scotch Broom in this area will be required.

There has been a history of clearing the area to create view scapes. Property Owner should consult with local conservation groups and plant heat tolerant lower growing native species, such as tall Oregon grape, ocean spray and snowberry shrubs so that there is native vegetation in the Covenant Area. Otherwise the broom plants will take advantage of the disturbance and expand into the protected area.

### 7.0 List of Figures and Attachments

#### Appendix A.

Map 1. General Location 1; 30,000 CRD Atlas Map

#### Appendix B.

Map 2. Survey Reference Plan showing Covenant Area, photograph locations of significant features and vegetation types in the Covenant Area. (Photographs are filed with both parties (Salt Spring Island Local Trust Committee and Far Rockaway Land Ltd.).

#### Appendix C.

Map 3. Aerial photograph showing Covenant Area, foreshore, location of estuary and eel grass beds.

### 8.0 REFERENCES

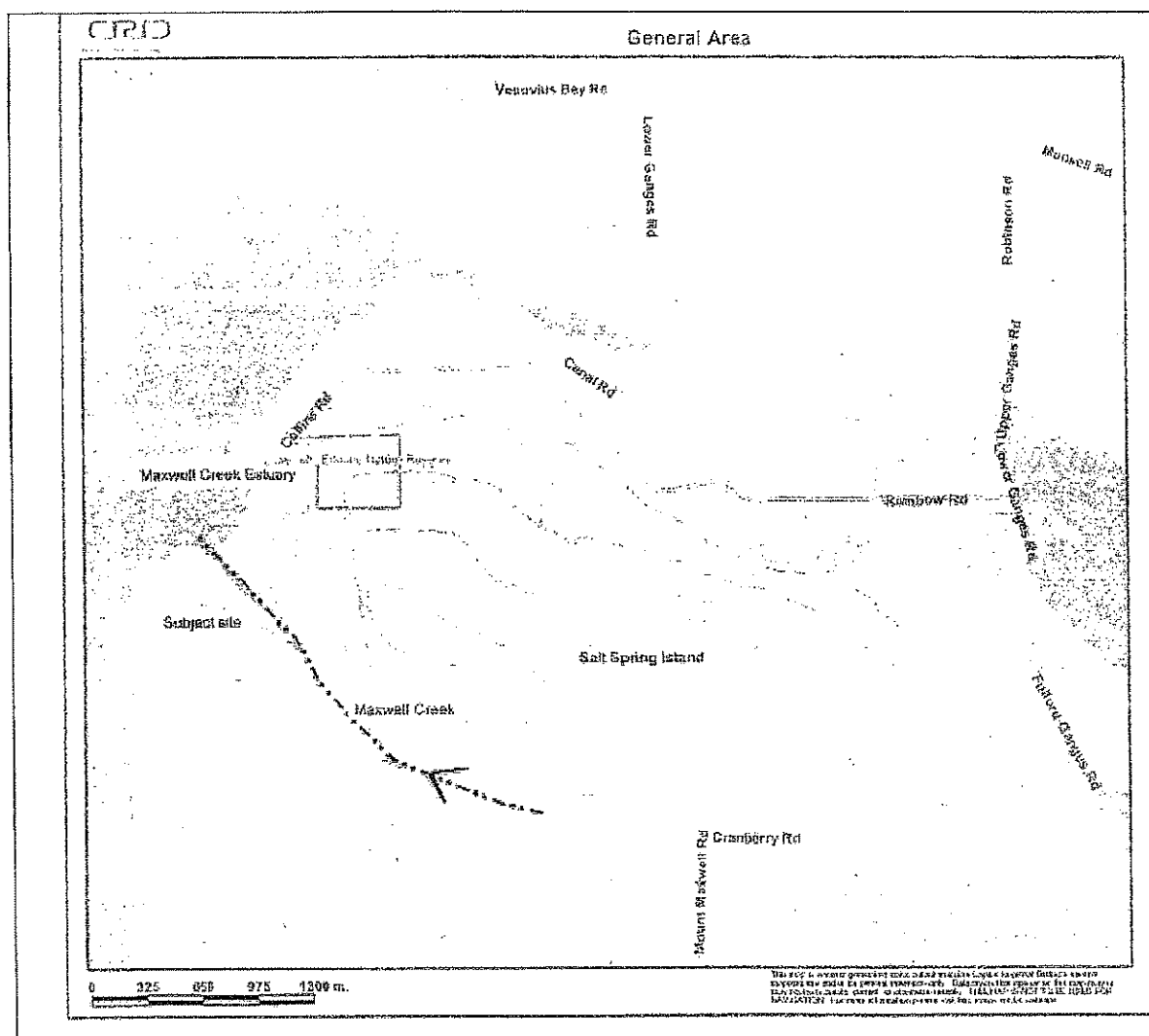
Pojar, Jim and McKinnon, A., 1994. Plants of Coastal British Columbia. Lone Tree Publishing Vancouver B.C.

Van Vliet, L. et al, 1985. Soils of the Gulf Islands and Salt Spring Island. Soil Survey report #43. Agriculture Canada publication

# Islands Trust Covenant Baseline Report

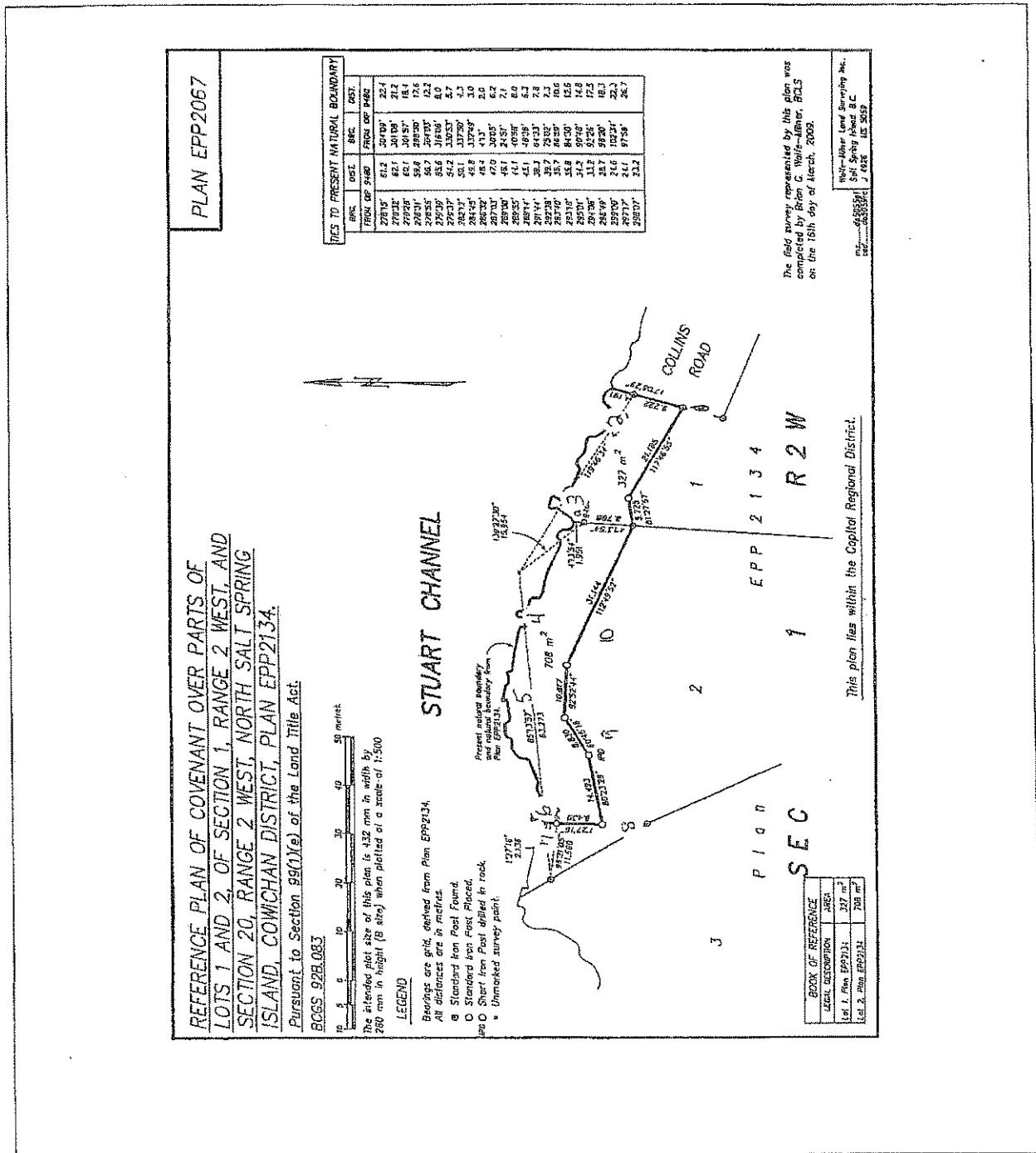
## APPENDIX A.

General Area map showing subject subdivision and Maxwell Creek



# Islands Trust Covenant Baseline Report

## APPENDIX B Map of the Covenant Area: Showing Reference Plan and Photograph Locations



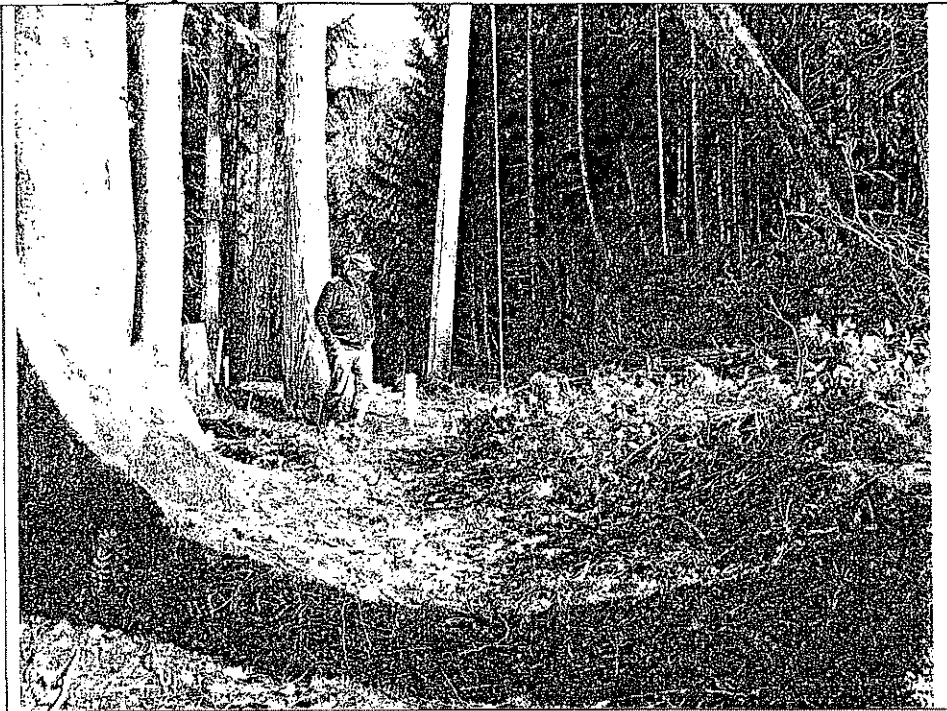
## Islands Trust Covenant Baseline Report

## APPENDIX B. Cont'd. Photographic Information

Photo #	Location	Vegetation
1	Covenant Area corner near Collins Rd	DFir, salal, Nootka Rose
2	Covenant boundary along the shoreline	Arbutus, DFir.
3	Near boundary of Lot 1 and 2	Scoulers willow, DFir
4	Along shoreline covenant boundary	Arbutus, ocean spray
5	Upper covenant boundary	Broom patch
6	South corner of Covenant Area Location 6 & 11	Easter lilies. Saskatoons, licorice ferns
7	Looking north from 6 above	Lots of lilies
8	The top corner of Covenant Area near adjacent lot 3	New growth of salal and saskatoon
9	Looking north from above 8 toward the estuary of Maxwell Creek	Small Scoulers willow, Ocean spray along the shoreline
10	Cleared area along covenant boundary	New growth of salal, saskatoon

Islands Trust Covenant Baseline Report

Photograph 1.

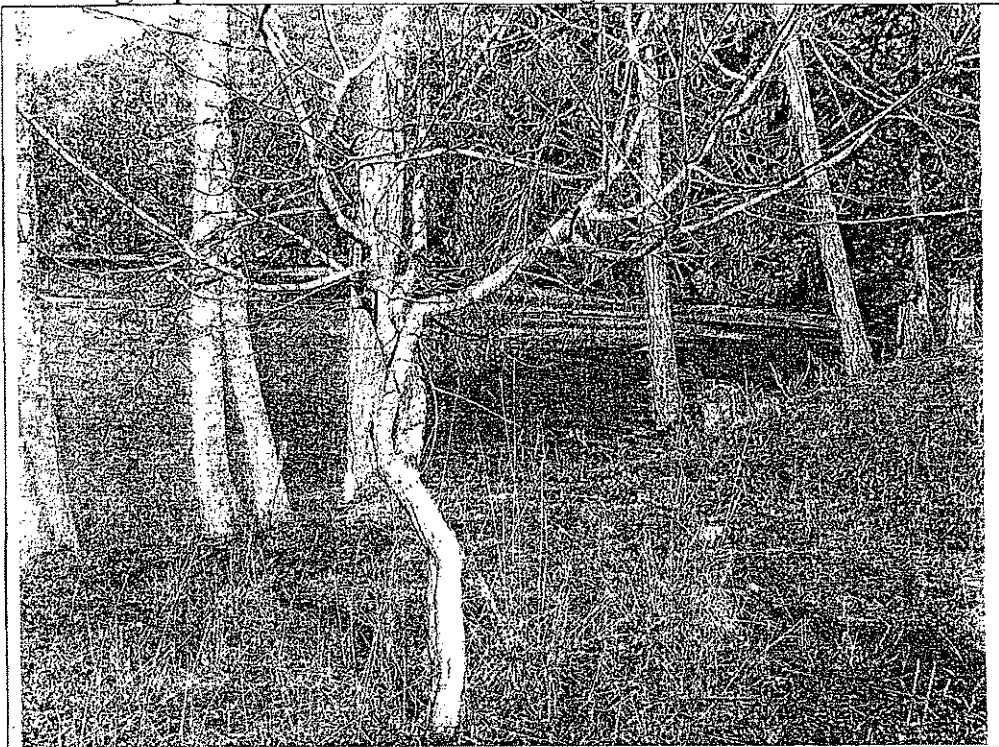


Photograph 2.

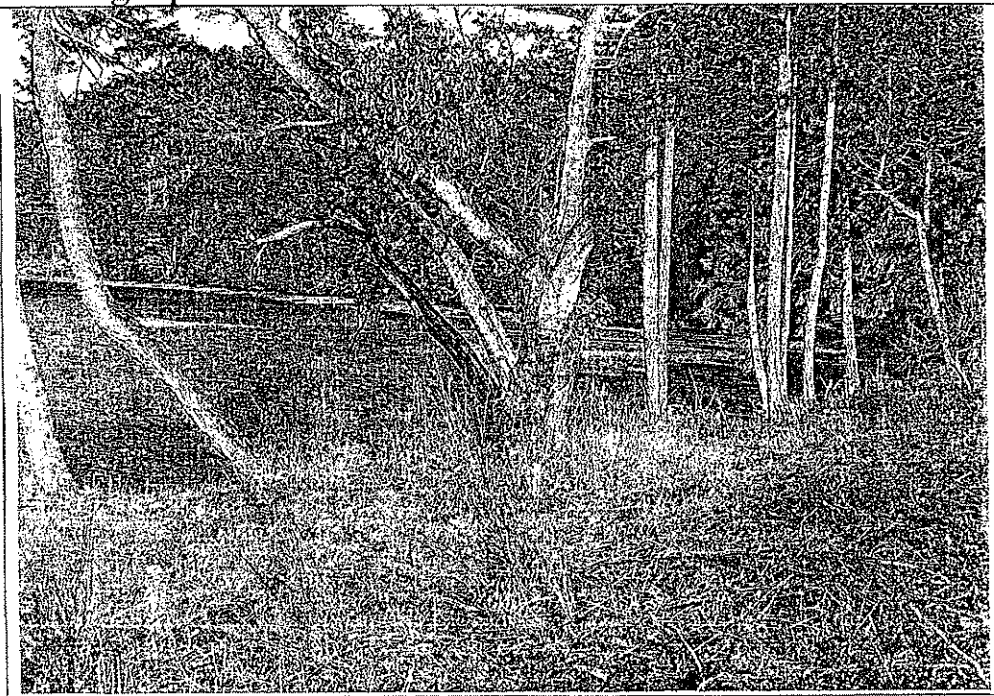


Islands Trust Covenant Baseline Report

**Photograph 3. Willow tree in foreground**



**Photograph 4. Arbutus and small fir trees**



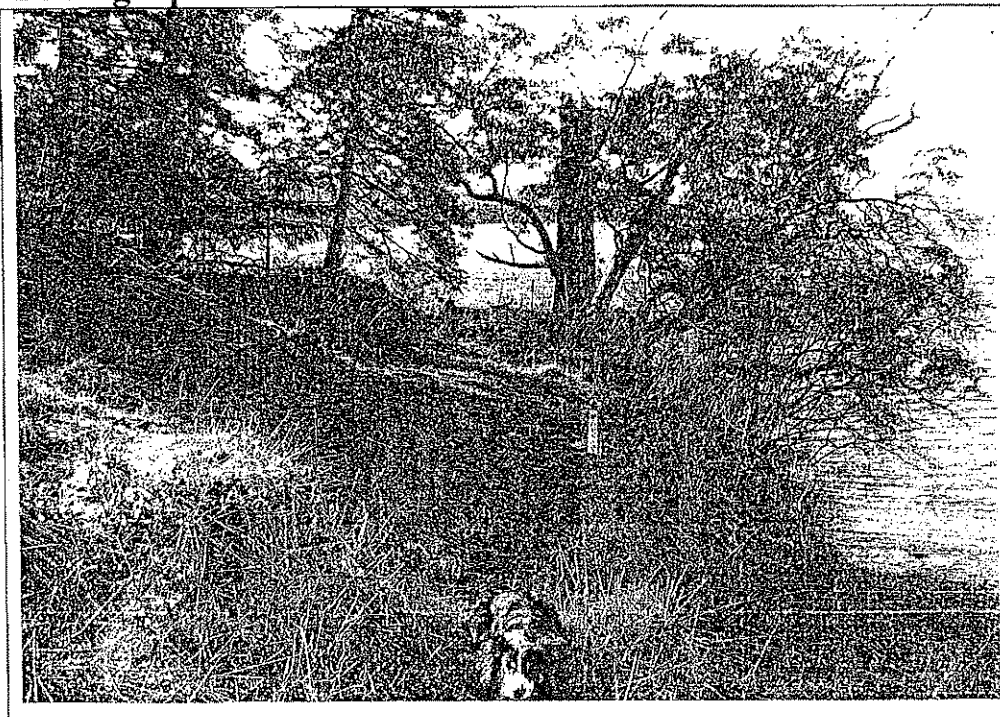


Islands Trust Covenant Baseline Report

Photograph 5. Broom

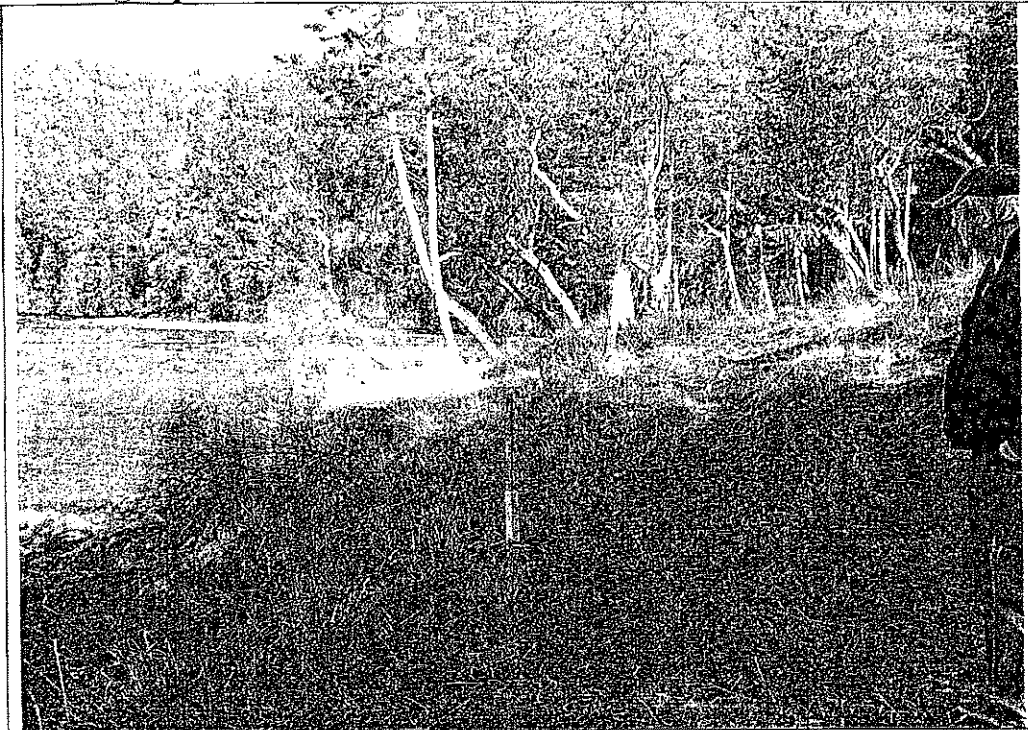


Photograph 6.



Islands Trust Covenant Baseline Report

Photograph 7.

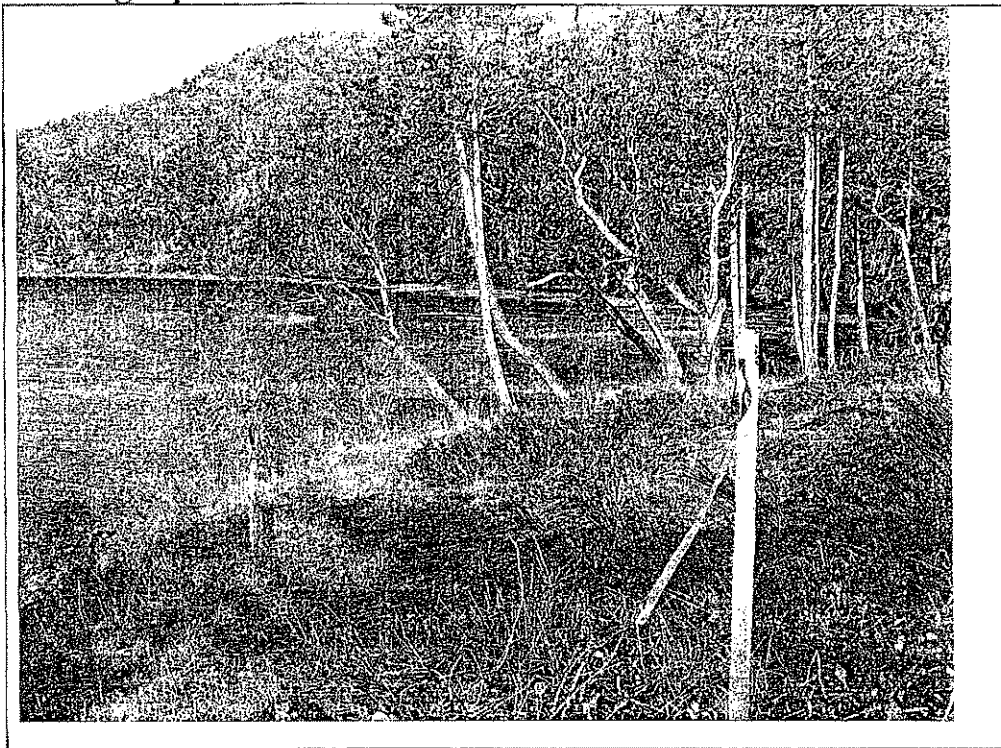


Photograph 8.

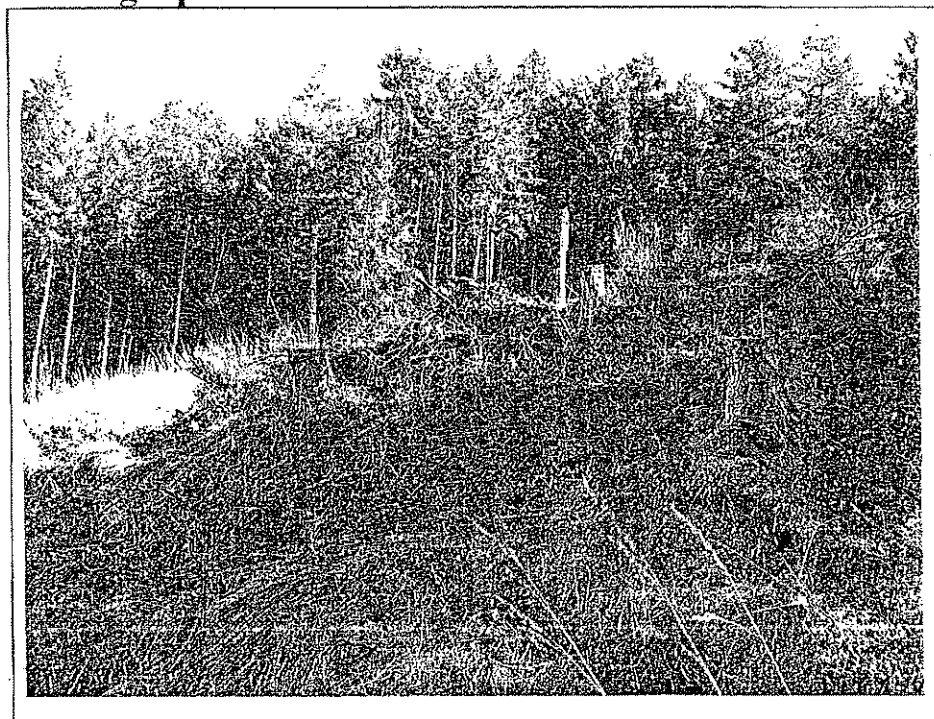


Islands Trust Covenant Baseline Report

Photograph 9.



Photograph 10.



# Islands Trust Covenant Baseline Report

## APPENDIX C.

