

DATE: December 8, 2017

FILE: 3220-20 / KIP

TO: Chair and Directors
Comox Valley Regional District Board

FROM: Russell Dyson
Chief Administrative Officer

Supported by Russell Dyson
Chief Administrative Officer

R. DYSON

RE: Proposed Revisions to the Kensington Island Properties Master Development Agreement

Purpose

To approve revisions to the Kensington Island Properties (KIP) Master Development Agreement (MDA).

Recommendation from the Chief Administrative Officer:

THAT the revised Kensington Island Properties Master Development Agreement, attached as Appendix A to staff report dated December 8, 2017 be approved;

Executive Summary

In August 2017 Comox Valley Regional District (CVRD) staff and the developer agreed to revise the KIP MDA based on several key principles. These revisions were negotiated at a staff level and were intended to address the needs of the developer, to enable progress on this project, the interest of Union Bay Improvement District (UBID), which is a party in its role to deliver water and to meet the provincial requirements for water treatment, and in light of the interests of the community of Union Bay. The key principles that led the discussions were as follows:

1. Revisions to permit phases of development, where a water agreement has been negotiated between UBID and KIP for each phase versus the current requirement for a water agreement to service the entire development.
2. Remove requirement for CVRD approval for the UBID KIP water agreement.
3. Revise requirement for KIP to donate up to 30 single family serviced lots for affordable housing so that the first six are due as a condition of the first phase of development, with remainder of 24 due by 2027 versus current requirement where lots were due starting in 2014 at two per year. The developer retains the two for one density bonus in association with single family affordable housing.
4. Include an upfront cash contribution of \$250,000 by December 31, 2017 to be provided by the developer as a housing amenity to be added to the CVRD Homelessness Supports Service.
5. Remove density bonusing provisions that provided for triple the density provided in the zoning, and relieving the developer of the obligation to provide up to two multi family services lots for affordable housing.
6. Total parks and trails dedication identified on attached Schedule C to the MDA and required in two phases; (Phase 1: 36.7 ha; Phase 2: 14.6 ha for a total of 51.3 hectares) instead of previous MDA where parks and trails were not defined and were to be provided at the developer's discretion.

Other changes include:

- A revised Schedule A, Area Plan has been added that shows the removal of the 11.90 hectare parcel that includes the coals hills (5.3 ha) and the coal storage lands. Those parcels are now shown as crown land and not included in the MDA. The CVRD intends to work with the province to bring forward new zoning for those lands early in 2018;
- The names of the transferors have been amended (page 5) to include new investors and a restructuring of ownership;
- New “Whereas clause G” revised to note Coal Hills lands are now owned by the Province of BC (page 7);
- Interpretation section redefines “Affordable Housing” (page 7);
- Definition for “Coal Hills” added and shown as 5.30 hectare parcel (page 7);
- “Fire Hall” site added as one hectare site and plan to be donated to CVRD as shown in Appendix A (page 8);
- “Golf Course” defined in this MDA as two 18 hole golf courses (page 8);
- Parcel Identifiers (PIDs) revised to reflect current land property identification numbers (page 8-9);
- Affordable Housing density bonus definition removed with revision to zoning to be changed to correspond (page 9);
- Parks and Trails area defined as not less than 51.3 hectares (16 per cent) of total areas;
- Donation of a 1.62 hectare parcel to UBID for the purposes of a new water treatment facility;
- Revision to Developer’s Covenants to provide for subdivision and removal of parcel for UBID Fire Hall and UBID Water Treatment Facility notwithstanding requirement in Section 2.1, 2.2 and 2.3 of the 2010 MDA for provision of other amenities before subdivision allowed.

Prepared by:

A. MACDONALD

Ann MacDonald, MCIP, RPP
 General Manager of Planning and
 Development Services Branch

Concurrence:

M. RUTTEN

Marc Rutten
 General Manager of Engineering
 Services Branch

Stakeholder Distribution (Upon Agenda Publication)

Kensington Island Properties	✓
Union Bay Improvement District	✓
Electoral Area A Advisory Planning Commission	✓

Background/Current Situation

In September 2016 the CVRD extended the offer to KIP to consider negotiating some amendments to the MDA. There were several reasons why:

1. The context had changed considerably since 2005 when this agreement was first established.¹
 The 2005 agreement reflected a different context: a regional water system seemed likely; the

¹ While a 2007 court order quashed CVRD Bylaw No. 2812 – “a bylaw to amend the 'Rural Comox Valley Official Community Plan Bylaw, 1998” and Bylaw No. 2813 – “a bylaw to amend the 'Comox Valley Zoning Bylaw, 2005” that established the basis initially for the KIP development, a very similar agreement was later approved in 2010.

- CVRD Regional Growth Strategy (RGS) had not been approved to manage growth, and the 2008 significant market adjustment had not yet occurred.
2. The April 2011 Water Infrastructure Agreement between KIP and UBID expired on December 31, 2014. The parties had negotiated a new agreement by April 2016 but it did not comply with the 2010 MDA. Compliance was deemed to be challenging given that the MDA required a water agreement to the entire development, and this exceeded the licensing authority of UBID and known water capacity of Langley Lake. The lack of a new agreement restricted progress on the KIP project as having an agreement approved by the CVRD was a first requirement for the developer to proceed in the 2010 agreement.
 3. A number of provisions in the 2010 MDA had not been met by KIP (i.e. affordable housing contributions, serviced land for a Fire Hall) and progress seemed unlikely given a lack of servicing to the lands and limited progress on a new water agreement between KIP and UBID.

In August of 2017 the parties agreed to discuss revision and four over-arching principles were established to lead the changes:

1. Formally enable the removal of the 5.30 hectare site of the Coal Hill from the KIP lands, per the April 2017 Section 99 subdivision that had been initiated by KIP and approved by the province to enable transfer of those lands from KIP ownership to the Province.
2. Require that the 16 per cent parks and trails land dedication be provided to the CVRD upfront as a condition of subdivision.
3. Clarify language that references a regional water system in the 2010 MDA to enable such a system in future but recognize that conditions to support a regional water system have changed.
4. Enable the development to proceed in phases, thus ensuring that the developer and UBID could negotiate a water agreement for each phase, versus the entire development.

On October 12, 2017 KIP and UBID signed a new water agreement, *Potable Water Servicing and Infrastructure Agreement*. UBID has been facing a shrinking timeline to design, construct and bring on stream a new water treatment facility that will meet Island Health's 2007 Surface Water Quality Treatment Objectives that require a 4-3-2-1 Treatment. That agreement was received by the board in November 2017.

UBID's permit to operate a water supply system was amended on October 31, 2014, by Island Health to require, among other things, that on or before August 31, 2018 UBID construct and commission a water filtration plant and all works necessary to meet VIHA Surface Water Quality Treatment Objectives.

The KIP project was deemed to be a key component for UBID to reach its operating requirements in that KIP lots, once developed, would provide financial assistance to the financial strategy of UBID to construct this nearly \$3M three phased expenditure. As well, KIP had made a number of commitments to the community over the years including constructing the water filtration system for the community, providing for 100 per cent of the costs of the new facility, and more recently, providing a serviced lot for the plant.

The CVRD, under the existing MDA, would be required to approve the UBID KIP water agreement; however, given the language in the current MDA, CVRD would not be able to do so without breaching the terms in the MDA that require a water agreement for the entire development, as this was a key motivation for the parties to revise the MDA.

The board previously, at its regular meeting in November 2017, approved a motion to support a Section 99 subdivision of the lands proposed by KIP to be donated to UBID for the purpose of UBID’s construction of a new water treatment facility.

In addition, two proposed revisions in the attached MDA will provide for UBID to meet its provincial obligations:

- a. The revised CVRD KIP MDA does not require that the water agreement be for the entire development, i.e. it allows for phases of development;
- b. CVRD is not required to approve the water agreement, based on the rationale that UBID has the authority on its own to enter into water agreements with citizens within its service area for each phase of this development, and that the CVRD is not actively planning for a regional water service at this time.

As an overview, the attached revised MDA includes the following revisions:

2010 CVRD KIP MDA Requirements (not exact wording)	Proposed 2017 Revised CVRD KIP Requirements
Subdivision of <i>the lands</i> prohibited until conditions in the MDA are met; page 5, Definitions.	Revised to clarify that the lands to be developed in phases.
Subdivision of <i>the lands</i> until a water agreement approved by CVRD was in place; Page 15, s. 3. r i & iii.	Requirement for CVRD approval removed.
Restriction from building or subdividing until detailed drawings are provided for lands being developed; page 9, s. 2.2.	No change.
Developer restricted from applying for building permit or application for subdivision until UBID boundaries expanded to include the KIP lands; page 17, s.r.1.	This section deleted as it no longer applies. UBID boundaries have been expanded.
Restriction from building or subdividing until sewer system is completed in the phase being developed and each phase is substantially completed prior to occupancy of first residential unit; page 17, s.3 1 r s.	No change.
Development to be consistent with Schedule A area plan, i.e. amenities to be provided, on-site works to be constructed, improvements to be constructed.	No change to this principle though Schedule A area plan is replaced to remove coal hill lands and storage lands from MDA and show as Crown Land.
Donate commencing in 2014 and upon request two single family lots per year to a maximum of 30, and in return obtain the equivalent of two additional single family lots in the CDA-1, CDA-4 or CDA-5 area for each of the 30 single family lots provided. The 2010 MDA also	Removed and replaced with cash contribution to CVRD Homelessness Supports Service by December 31, 2017 of \$250,000 and provide six serviced single family lots or cash equivalent required as part of the development of Phase 1. The provision for the developer to obtain two additional single family lots in exchange for the

<p>required the developer to have provided all 20 of the single family lots by 2025.</p>	<p>30 lots to be provided to the CVRD has been retained by developer (i.e. 60 lots). The remainder of the 30 lots required in 2010 are now required to be provided at a rate of one for every 30 lots and in total by 2027.</p>
<p>Donate by 2015, upon request, up to two multi-family lots to permit between 120-135 multi-family units in the CDA-4 or CDA-5 area, and in return obtain the equivalent of three times the density in the CDA-2 and CDA-3 area, at the sole discretion of the developer.</p>	<p>Removed both the density bonusing provision and the developer’s requirement to provide the one or two multi-family serviced lots.</p>
<p>Construct and transfer title to 16 per cent of total area for parks and trails (excluding that portion of <i>the lands</i> for the golf course) and provide annual security for 15 years to cover trail maintenance.</p>	<p>MDA revised to require developer to construct and transfer by fee simple the entire 16 per cent parks and trails in two phases, as shown on Schedule C of the MDA in two phases (Phase 1: 36.7 ha; Phase 2: 14.6 ha for a total of 51.3 hectares)</p>
<p>Construct, improve landscape and maintain all parks and trails for 15 years, ending one year after developer transfers title on the last residential unit in the development.</p>	<p>No change.</p>
<p>Construct the public assembly place within five years of construction of the first residential unit in CDA-3.</p>	<p>No change.</p>
<p>Donate, within one year of being requested to do, one serviced lot for construction of a Fire Hall within the CDA-1 area, (approximately one hectare).</p>	<p>Revised MDA provides for donation of a one hectare parcel to the CVRD for the purposes of a Fire Hall</p>
<p>Pay school site acquisition charge per costs defined in <i>Local Government Act</i> (RSBC, 2015, c. 1), upon first subdivision approval</p>	<p>No change.</p>
<p>Complete Ministry of Transportation and Infrastructure (MoTI) infrastructure improvements upon MoTI request.</p>	<p>No change.</p>
<p>Contribute up to \$25,000 to CVRD transit commencing three years after first occupancy.</p>	<p>No change.</p>
<p>Not make application for subdivision or building permit until the developer has constructed all infrastructure and</p>	<p>No change.</p>

<p>improvements needed to service the lands being applied for development or posted letter of credit for 130 per cent of the estimated costs to complete.</p>	
<p>Design, construct and maintain the sewer system, retaining responsibility for all costs for design and construction to service the lands.</p>	<p>No change.</p>
<p>All costs including oversized lines to accommodate sewage flow from outside the lands and infrastructure for wastewater treatment facility and provision of land for sewer system.</p>	<p>No change.</p>
<p>Costs for wastewater treatment facility designed to accommodate additional cells to handle flow from Royston and Union Bay.</p>	<p>No change.</p>
<p>Sewer system to be completed in phases and each of the five phases to be substantially completed prior to occupancy of first residential unit.</p>	<p>No change.</p>
<p>Transfer the sewer system to CVRD to own and operate as publicly owned infrastructure, once regional service established.</p>	<p>No change.</p>
<p>Bear all costs of operating sewer system for two years after construction and before handing over to CVRD.</p>	<p>No change.</p>
<p>Construct, maintain and use underpass under Highway 19A for pedestrian access at a time determined by MoTI; page 14, s. 3 1 (l).</p>	<p>No change</p>
<p>Acknowledgement of Documents section that references Coal Hills as contaminated site and restricts developer from developing the lands until the developer has acquired fee simple ownership of those lands or authorization from province that authorizes KIP to act as its agent in rezoning some of the lands, known as the coal hills. Page 19 s. 4.</p>	<p>This section has been removed. Coal Hill lands are crown lands with a portion leased to West Fraser Mills until 2018.</p> <p>The board previously, at its regular meeting in November 2017, approved a motion to request representatives from the Ministry provide an update to the Board at its March 2018 meeting on the plans, timing and process it intends for remediation of the coal hills.</p>

Policy Analysis

Section 479 of the *Local Government Act* (RSBC, 2015, c. 1) provides for the CVRD to divide the whole or part of the CVRD into zones, name each zone and establish the boundaries of the zones.

In 2010 the CVRD entered into a MDA with KIP. Section 3.1.r of the agreement requires KIP to enter into a water agreement with the UBID and that the CVRD approve that agreement, prior to KIP applying for a building permit or subdivision.

Options

1. To approve the revised MDA as proposed by the CVRD (recommended).

This includes requiring the parks and trails dedication in two phases, as shown on Appendix C of the MDA, and requiring an upfront cash donation of \$250,000 by December 31, 2017 to the Homelessness Supports Services, and the developer providing six single family serviced lots in the CDA-2 area in the first phase of development, and removing the requirement for CVRD to approve a water agreement to the entire development.

2. To not approve the revised MDA or to direct other revisions.

This option would impose additional delays for KIP to proceed with its development. As staff have negotiated these terms in good faith, any further delays would require clear rationale and could impact the terms that CVRD has negotiated in favour of the community to date in terms of affordable housing and park dedication.

Financial Factors

Pending progress on the construction of the KIP lands, the CVRD will obtain financial benefits by way of economic benefits association with the first phase of development, proposed to include between 80-100 residential lots with a sewage treatment plant to service each phase of development. CVRD will also accrue as additional revenue by way of park development cost charges, and regional benefits in terms of the \$250,000 cash contribution to the Homelessness Supports Service.

Legal Factors

The revised MDA has been developed with legal support.

Regional Growth Strategy Implications

The RGS identified Union Bay as one of three settlement nodes in the core area of the RGS, and supporting a number of goals and objectives in the RGS, including key among them growth management and publicly owned servicing. The RGS contains eight policy areas, all of which are positively addressed by the proposal as follows:

1. Goal 1: Housing: the KIP project includes a range of housing types including ranchers and duplexes and assists the CVRD in reaching its housing targets per Goal 1: Housing; to ensure a diversity of affordable housing options to meet evolving regional demographics and needs.
2. Goal 2: Ecosystems, Natural Areas and Parks: the MDA provides for a network of parks and greenways to provide for community connectivity, per Goal 2 to protect, steward and enhance the natural environment and ecological connections and systems.
3. Goal 3: Local Economic Development: a revised MDA will enable construction of up to 2,889 units and a sewage treatment plant, construction of housing units and infrastructure to assist the CVRD in achieving a sustainable, resilient and dynamic local economy that supports businesses and

the region's entrepreneurial spirit. The project also includes the dedication of land to UBID for the purpose of their installation of a new water treatment plant and a one hectare site for location and construction of a new fire hall.

4. Goal 4: Transportation: this goal seeks to encourage growth that can lead to an accessible, efficient and affordable multi-modal transportation network that connects Core Settlement Areas and designated Town Centres, and links the Comox Valley to neighbouring communities and regions. Development of this large number of residential lots within a designated settlement node will create a new threshold that can support better transit in the area. The MDA also includes a requirement for KIP to contribute up to \$25,000 to CVRD transit commencing three years after the first occupancy permit is issued. The current and proposed MDA includes a requirement that the developer construct, maintain and use underpass under Highway 19A for pedestrian access.

5. Goal 5: Infrastructure: this goal seeks to provide affordable, effective and efficient services and infrastructure that conserves land, water and energy resources. The RGS also promotes publicly owned and operated sewage systems and the MDA provides for the developer to transfer the sewer system to CVRD to own and operate as publicly owned infrastructure, once a regional service has been established, and to bear the costs of operating the newly constructed sewer system for two years after construction and before handing over to CVRD.

6. Goal 6: Food Systems: to support and enhance the agricultural and aquaculture sector and increase local food security. As the project is located within a settlement node this initiative ensures protection of farmland, with limited to no negative effects on farmland in the area.

7. Goal 7: Public Health and Safety: to support a high quality of life through the protection and enhancement of community health, safety and well-being. The proposed revisions to the KIP MDA provides for a contribution to the parks and greenway network in Union Bay that is connected and effective, and that once constructed and transferred to CVRD will enhance the walkability, active transportation network and quality of life for residents by encouraging travel that is not auto dependent within the community.

8. Goal 8: Climate Change: minimize regional greenhouse gas (GHG) emissions and plan for adaptation. The pedestrian and Union Bay will assist in the reduction of GHG emissions by way of an effective active transportation network that encourages walking, cycling and transit use. This development will contribute to the greenway network, and by being located in a settlement node, additional residents will contribute to a transit system and ridership which can be improved over time due to efficiencies achieved by increased numbers and potential ridership.

Intergovernmental Factors

In order to move forward, the Ministry of Environment, Ministry of Transportation and Infrastructure and Ministry of Forests, Lands, Natural Resource Operations and Rural Development have been contacted to obtain information and discuss aspects of the proposed remediation, and to keep the local community apprised of this when staff commence a local area plan in 2018.

Interdepartmental Involvement

Development of the proposed revisions to the KIP MDA has been a collaborative effort involving engineering services, community services, and planning and development services branches.

Citizen/Public Relations

Some revisions to the zoning bylaw are required as a result of the revised PIDs and lands now excluded from this revised MDA. That process will commence immediately, and the CVRD will be

required to host a statutory public hearing to proceed with those zoning amendments. At the same time, as the MDA itself is between the CVRD and the owners of KIP, it can be revised without public consultation, a statutory hearing or any public assent.

As this matter has been of significant interest to the community staff will highlight the approved revisions to the MDA at an upcoming open house in Union Bay shortly after the board has approved the revisions. Staff also intend to commence a local area planning process for the Union Bay settlement node and this MDA will be a key area of interest.

The certainty that a revised agreement brings will be welcomed by the community as there will be updates to provide on the Coal Hills, the servicing plan and changes to the relationship between UBID and the CVRD, given that the CVRD is now not being required to approve a water agreement. This staff report includes a request to the Province to provide the board with an update on the remediation plans and agreement and the public and Union Bay community will also have an interest in that information. Staff will make every effort to communicate this information once received.

The community will also welcome the certainty of having the parks and trails constructed and transferred as an immediate amenity, and the clarity on the plan for the affordable housing amenities, now in the form of a cash contribution to the Homelessness Supports Service.

Attachments: Appendix A – “Revised CVRD KIP MDA”

LAND TITLE ACT
FORM C

(Section 233)
Province of
British Columbia

GENERAL INSTRUMENT – PART 1 (This area for Land Title Office use) PAGE 1 of Error! Bookmark not defined. page(s)

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)
MARK V. LEWIS, Bennett Jones LLP, Lawyers 2200-1055 West Hastings Street, Vancouver,
British Columbia, V6E 2E9, 604-891-7500

Client No.

Agent No.

Signature of Solicitor – Mark V. Lewis

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND: *
(PID) (LEGAL DESCRIPTION)

SEE SCHEDULE

3. NATURE OF INTEREST: * DESCRIPTION	DOCUMENT REFERENCE (page and paragraph)	PERSON ENTITLED TO INTEREST
Section 219 Covenant Priority over Mortgage EK143884 and Assignment of Rents EK143885 to Covenant _____	Entire Instrument Page 24	Transferee Transferee

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

- (a) Filed Standard Charge Terms D.F. Number:
- (b) Express Charge Terms Annexed as Part 2
- (c) Release There is no Part 2 of this instrument

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharged as a charge on the land described in Item 2.

5. TRANSFEROR(S): *

SEE SCHEDULE6. TRANSFEREE(S): (including postal address(es) and postal code(s))*

COMOX VALLEY REGIONAL DISTRICT, a regional district incorporated pursuant to the Local Government Act (British Columbia) and having its offices at 600 Comox Road, Courtenay, B.C., V9N 3P6

7. ADDITIONAL OR MODIFIED TERMS: *

NIL

(as to both signatures)

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495587 B.C. Ltd., by its authorized signatory:

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.

* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.

** If space insufficient, continue executions on additional page(s) in Form D.

SCHEDULE

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

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:*

(PID)

(LEGAL DESCRIPTION)

028-731-492	Lot 1 District Lot 154 Nanaimo District, Sections 31 and 32 Township 1 and District Lot 28 Nelson District Plan EPP15507 Except Part in Plan EPP56910
028-731-565	Lot 2 District Lot 28 Nelson District Plan EPP15507
028-731-531	Lot 3 District 154 Nanaimo District, Section 32 Township 1 and District Lot 28 Nelson District Plan EPP15507
028-731-549	Lot 4 Sections 31 and 32 Township 1 and District Lot 28 Nelson District Plan EPP15507
028-330-633	Lot A District Lot 28 Nelson District Plan EPP9011

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

5. Transferor(s)

34083 Yukon Inc., Inc. No. A-56440

Barbieri Developments Ltd. (Inc. No -----) as to an undivided 4250000/5000000 Interest as to priority agreement

Clarion Property Corporation (Inc. No -----) as to an undivided 500000/5000000 as to priority agreement

495587 B.C. Ltd. (Inc. No -----) as to an undivided 250000/5000000 as to priority agreement

PART 2 – TERMS OF INSTRUMENT

MASTER DEVELOPMENT AGREEMENT

THIS AGREEMENT, dated for reference the 30th day of April, 2010,

BETWEEN:

34083 YUKON INC., having an address at P.O. Box 160, Union Bay, B.C., V0R 3B0

(the "**Developer**")

AND:

COMOX VALLEY REGIONAL DISTRICT, a regional district incorporated pursuant to the Local Government Act (British Columbia) and having its offices at 600 Comox Road, Courtenay, B.C., V9N 3P6

(the "**Regional District**")

WITNESSES THAT WHEREAS:

- A. The Developer is the registered owner of the Lands;
- B. On December 10, 2009, the Board of Directors of the Regional District gave third reading to Bylaw No. 56 being "Rural Comox Valley Official Community Plan Bylaw, 1998, Amendment No. 35" and Bylaw No. 57 being "Comox Valley Zoning Bylaw, 2005, Amendment No. 41" in respect of the Development subject to certain requirements that were to be completed prior to final adoption or be addressed in a development agreement entered into between the Regional District and the Developer (the "**Condition**");
- C. The Developer has voluntarily agreed to satisfy the Condition and to provide the amenities, transfer to the Regional District certain portion of the Lands referred to herein, including the Parks and Trails, enter in the agreements referred to herein and install the Works defined herein which are necessary to serve the proposed development of the Lands;
- D Pursuant to section 219 of the LTA an owner of land may grant a covenant in favour of, *inter alia*, a regional district to control the use of the charged land;
- E. The Developer desires to grant and the Regional District agrees to accept this Covenant on the terms and conditions contained herein;
- F. The Condition was met upon the registration of the development agreement in the Land Title Office on May 28, 2010 under No B349802; and

- G. No development has taken place on the Lands as of December 1, 2017;
- H. The Coal Hills, have been removed from the definition of the Lands and are owned by the Province;
- I. The development of the Regional Water System will not occur, in the foreseeable future; and
- J. The Parties now wish to amend and modify this Agreement on the following terms.

NOW THEREFORE in consideration of the sum of Ten Dollars (\$10.00) now paid by the Regional District to the Developer and for other good and valuable consideration (the receipt and sufficiency of which the Developer hereby acknowledges), the Developer and the Regional District covenant each with the other as follows:

1. INTERPRETATION

1.1 Definitions – In this Agreement, the following terms will have the following respective meanings:

- (a) "**Affordable Housing**" means housing that is affordable to low and moderate income households;
 - (a.1) "**Affordable Housing Contribution**" means the payment of \$250,000 by the Developer to the Regional District as set out in Section 2.5 (a);
- (b) "**Approving Officer**" means the person acting as an approving officer under the LTA;
- (c) "**Area Plan**" means the plan attached hereto as Schedule A that identifies the Development CDAs and generally sets out the development areas of the Development;
- (d) "**CDA-[#]**" means, in respect of the specific numbered CDA referenced herein, that portion of the Development and the Lands as set out in the Zoning Bylaw and as labelled on the Area Plan;
 - (d.1) "**Coal Hills**" means those lands comprising 5.30 hectares formerly part of Lot 1 District Lot 154 Nanaimo District, Sections 31 and 32 Township 1 and District Lot 28 Nelson District Plan EPP15507 and shown outlined in heavy line on Plan EPP56910 as Lot A;
- (e) "**Detailed Building Plan**" means the detailed design drawings for all multi residential and commercial buildings to be built on the Lands submitted by the Developer in conjunction with its application for a building permit for a portion of the Development;

(f) "**Development**" means the development of the Lands permitted by the Zoning Bylaw as shown on the Area Plan, including the Golf Course, residential and commercial development and public amenities to be developed on the Lands;

(f.1) "**Excluded Subdivision**" means any one of the following:

- (i) the First Subdivision;
- (ii) a subdivision that creates the Fire Hall Site as a separate legal parcel;
- (iii) a subdivision that creates the WTF Site as a separate legal parcel;
- (iv) a subdivision that creates a Park or Trail as a separate legal parcel to be transferred to the Regional District,

and "**Excluded Subdivisions**" means, collectively, more than one of any of the foregoing subdivision described in this paragraph 1.1(f.1);

(f.2) "**Fire Hall Site**" means that portion of the Lands comprising approximately one hectare and in the approximate location as shown on the plan attached hereto as Schedule D;

(g) "**First Subdivision**" means the first subdivision effected by the Developer after the registration of this Agreement in the Land Title Office by which the Developer consolidates and subdivides the Lands into one legal parcel for each of the five (5) CDAs, which subdivision was fully registered on December 14, 2011;

(h) "**Golf Course**" means, collectively, the two (2) eighteen-hole golf courses to be constructed as part of the Development in the CDA or CDAs in which golf course use is permitted under the Zoning Bylaw, including a golf clubhouse, and practice, storage and maintenance facilities;

(i) Intentionally Deleted

(j) "**Lands**" means

- (i) ; PID: 028-731-492; Lot 1 District Lot 154 Nanaimo District, Sections 31 and 32 Township 1 and District Lot 28 Nelson District Plan EPP15507 Except Part in Plan EPP56910;
- (ii) PID: 028-731-565; Lot 2 District Lot 28 Nelson District Plan EPP15507;

- (iii) PID: 028-731-531; Lot 3 District 154 Nanaimo District, Section 32 Township 1 and District Lot 28 Nelson District Plan EPP15507;
- (iv) PID: 028-731-549; Lot 4 Sections 31 and 32 Township 1 and District Lot 28 Nelson District Plan EPP15507 [**Except part in Plan EPP78068**]; and
- (v) PID: 028-330-633; Lot A District Lot 28 Nelson District Plan EPP9011;

(k) "**LGA**" means the British Columbia Local Government Act, R.S.B.C. 1996, c. 323;

(l) "**LTA**" means the British Columbia Land Title Act, R.S.B.C. 1996, c.250;

(m) "**Maintenance Obligation Commencement Date**" means the date on which any particular amenity, including the Parks or Trails (Initial) and the Parks and Trails (Remainder), in the Development is substantially completed as determined by a qualified landscape architect;

(n) "**MOTI**" means the British Columbia Ministry of Transportation and Infrastructure, or such other Provincial ministry having responsibility for the administration of provincial public highways and transportation infrastructure in British Columbia;

(o) Intentionally deleted

(p) Intentionally deleted

(q) "**OCP**" means Bylaw No. 337, 2014 of the Regional District, being "Rural Comox Valley Official Community Plan Bylaw, 33, 2014 ", as amended from time to time;

(r) "**Off-Site Works**" means those civil and servicing infrastructure works to be constructed on lands other than the Lands in connection with the Development;

(s) "**On-Site Works**" means those civil and servicing infrastructure works to be constructed on the Lands in connection with the Development;

(t) Intentionally Deleted

(u) "**Park**" or "**Trail**" means any one or more of the Parks and Trails shown on Schedule "A";

- (u.1) "**Parks and Trails**" means, the 51.3 hectare portion of the Lands shown on Schedule "A" as Park and Trail and representing 16% of the total area of the Coal Hills and the Lands that the Developer will either dedicate or transfer to the Regional District as park in accordance with in accordance with paragraphs 2.5(b) and 3.1(e);
- (u.1) "**Parks and Trails (Initial)**" means that portion of the Lands comprising not less than 36.7 hectares, shown in green on Schedule "C" to be dedicated or transferred to the Regional District as park in accordance with Section 2.5(b);
- (u.2) "**Parks and Trails (Remainder)**" mean that portion, or those portions, of the Lands comprising not less than 14.6 hectares, shown in orange on Schedule "C" to be transferred to or dedicated as park to the Regional District in accordance with Section 3.1(e) as park;
- (v) "**Public Assembly Place**" means an outdoor area suitable for use as a place for public assembly to be constructed in that portion of CDA-1 lying west of Highway 19A or in CDA-3, which may include related improvements;
- (w) "**Regional Water System**" means the regional water system that the Regional District had intended but no longer intends to design and construct for the purpose of supplying potable water to all the areas within the Regional District's defined water supply area, which area shall, when constructed, include, without limitation, the Lands;
- (x) "**School District**" means School District No. 71 (Comox Valley School District);
- (y) "**School Site Lot**" means a lot serviced to the lot line having a total area of not more than seven (7) acres but not less than four (4) acres and located within CDA-1 west of Highway 19A and east of the railway tracks at a location acceptable to the Regional District and the school board having responsibility for the School District, for the purpose of a public school and playfield;
- y.1 "Serviced to the lot line" means all the provision of all utility services, including road, water, sewer and storm, power, and phone to the lot line of the lot in question;
- (z) "**Sewer System**" means the sewer system wholly situate within the Lands that will service the Lands, which system shall comprise the collection system within the Lands, the necessary pump stations, lift stations and force mains within the Lands and the infrastructure and equipment for the wastewater treatment facility located on the Lands;

- (aa) "**Single Family Lot**" means a lot subdivided from the Lands zoned or designated by the Zoning Bylaw for development as single family housing, which includes bare land strata lots pursuant to the Strata Property Act (British Columbia) ;
 - (bb) "**Single Family Density Bonus**" means a density bonus pursuant to which for every Single Family Lot donated by the Developer in accordance with the terms of this Agreement and the Zoning Bylaw, the Developer is entitled to excess density to be used in CDA-2 or CDA-3 (as allocated by the Developer in its sole discretion) calculated by multiplying the permitted density on the donated Single Family Lot by two (2), up to a maximum of sixty (60) additional Single Family Lots;
 - (cc) "**Transit Exchange**" means an outdoor platform area with covered seating, lighting, and a related parking area, designed to accommodate passengers boarding or alighting from trains or buses;
 - (dd) "**UBID**" means the Union Bay Improvement District, an improvement district incorporated pursuant to the LGA and having an address at P.O. Box 70, Union Bay, B.C. V0R 3B0;
 - (ee) "**Village Core**" means that portion of CDA-3 on the Area Plan lying east of Highway 19A;
 - (ee.1) "**WTF Site**" means that portion of the Lands comprising approximately 1.62 hectares as shown on the plan attached hereto as Schedule E to be used as a water treatment facility;
 - (ff) "**Works**" means, collectively, the Off-Site Works and the On-Site Works; and
 - (gg) "**Zoning Bylaw**" means Bylaw No. 2781 of the Regional District, being "Comox Valley Zoning Bylaw, 2005", as amended from time to time, including, without limitation, Amendment No. 41.
- 1.2 **References** - Wherever the singular or masculine is used in this Agreement, the same will be deemed to include references to the plural, feminine or body corporate or politic, as the context may require.
- 1.3 **Construction** – The division of this Agreement into articles, sections and paragraphs and the insertion of headings are for convenience of reference only and are not to affect the construction or interpretation of this Agreement.
- 1.4 **Currency** – All dollar amounts referred to in this Agreement are Canadian dollars.
- 1.5 **Schedules** – The Schedules attached hereto are hereby incorporated into this Agreement and form a part hereof. All terms defined in this Agreement will have the same meaning in such Schedules. The Schedules to this Agreement are as follows:

Schedule A	Area Plan
Schedule B	Current Dark Sky Policy
Schedule C	Parks and Trails Plan
Schedule D	Fire Hall Site
Schedule E	WTF Site

2. COVENANTS

- 2.1 The Developer hereby covenants and agrees with the Regional District that the Lands will not be subdivided (other than by way of an Excluded Subdivision) or built on except in accordance with this Covenant and it will not use or develop the Lands except in accordance with the terms and conditions contained in this Covenant.
- 2.2 The Developer further covenants and agrees with the Regional District that it will not subdivide (other than by way of an Excluded Subdivision) or build on any portion of the Lands until the Developer has for that portion of the Lands being subdivided or developed, delivered to and approved by the Regional District detailed drawings, generally consistent with the Area Plan of:
- (a) the amenities to be provided;
 - (b) the On-Site Works to be constructed; and
 - (c) the improvements to be constructed on that portion of the Lands.
- 2.3 The Developer will not build any multiple family residential or commercial development on the Lands or any portion thereof until such time as a Detailed Building Plan for that portion of the Development that is the subject of the building permit application is approved by the Chief Administrative Officer of the Regional District or as he/she may delegate.
- 2.4 The Developer warrants that it has not entered into any off-title agreement with a third party that would bind the Regional District in any way and will not enter into any such agreement without the prior approval of the Regional District.
- 2.5 The Developer further covenants and agrees with the Regional District that it will:
- a) provide the Affordable Housing Contribution to the Regional District on or before December 31, 2017. Should the Developer not provide the Affordable Housing Contribution in accordance with this section, the Regional District shall be under no obligation to take any action or issue any permit or permits in connection with the Development or the Lands;

- b) not subdivide (other than by way of an Excluded Subdivision) or build on any portion of the Lands unless and until the Developer has dedicated or transferred title to the Parks and Trails (Initial) to the Regional District which Parks and Trails (Initial) shall have full right of public access thereon, subject to temporary or interim restrictions and limitations, acceptable to the Regional District, acting reasonably and for safety and statutory compliance purposes to allow the Developer to proceed with the Development; and
- c) not apply for an occupancy permit or permit occupancy of any dwelling unit on, or to be constructed in Phase 1, or elsewhere on the Lands (other than a dwelling unit on the Single Family Lots transferred in accordance with paragraph 3.1(b)(i)) unless the Developer has constructed the Parks and Trails (Initial) in accordance with paragraph 3.1(h) and donated the six fee simple Single Family Lots in accordance with Section 3.1(b)(i).

2.6 The Developer further covenants and agrees with the District that the first phase of development of the CDA-2 portion of the Lands shall initially be comprised of approximately 80 to 120 lots in the CDA-2 portion of the Lands (“**Phase 1**”). Provided that the Developer has first complied with paragraph 3.1(b)(i), by donating the six fee simple Single Family Lots, the Developer may (i) develop Phase 1 in stages or phases and (ii) does not need to complete Phase 1 before it commences development of other portions of the Lands.

3. DEVELOPER'S COVENANTS

3.1 Without limiting the generality of Section 2, the Developer hereby covenants and agrees with the Regional District that in constructing and developing the Development, the Developer will:

(a) develop the Lands in general compliance with the Area Plan, including the location of Parks and Trails. Provided that all other provisions of this covenant and the Area Plan are complied with, the Regional District agrees that the Lands may be developed in phases and that the Developer will, subject to Section 2.6 have flexibility to change its order of phasing;

(b) donate, to the Regional District, for Affordable Housing:

(i) six (6) fee simple Single Family Lots, Serviced to the Lot Lines, from the CDA-2 Lands as part of the development of Phase 1;

(ii) as development of the Lands proceeds, twenty four (24) additional fee simple Single Family Lots, Serviced to the Lot Lines, (for a total of thirty (30) Single Family Lots). The donated fee simple Single Family Lots under this subsection must be dispersed through all of the CDAs, on a ratio of one donated fee simple Single Family Lot per each thirty (30) Single Family Lot being developed.

In return for donating each fee simple Single Family Lot as described in this Section 3.1(b), the Regional District will provide the Developer with a Single Family Density Bonus.

The donated Single Family Lot or Lots donated in accordance with Section 3.1(b)(i) and (ii) will be used for the purposes of constructing Affordable Housing and will be subject to the Developer's building design restrictions including a statutory building scheme, provided that such is in general accordance with the design characteristics of the remainder of the Development. Upon transfer of title of each donated Single Family Lot, the Developer will not have any remaining obligation in respect of:

- i. the use thereof;
- ii. the price at which they may be sold;
- iii. whether the Regional District enters into a housing agreement with Habitat for Humanity or another non-profit agency;
- iv. whether the Regional District, another non-profit agency elects to or does build thereon; or
- v. whether any improvements constructed thereon comply with any provisions of the bylaws of the Regional District or any other applicable legislation or this Agreement.

The Regional District will, upon receipt of a registrable discharge of this Covenant from the Developer for a Single Family Lot or Lots donated and transferred in accordance with paragraph 3.1 (b), execute said discharge concurrently with the Developer transferring title thereto.

If a total of thirty (30) fee simple Single Family Lots have not been donated and transferred to the Regional District for any reason whatsoever prior to December 1, 2027, the Developer will transfer to the Regional District the balance of the thirty (30) Single Family Lots Serviced to the Lot Lines.

- (b.2) Notwithstanding the foregoing in this paragraph, in lieu of donating any one or more of the Single Family Lots, the Developer may elect to pay the Regional District the cash equivalent of the value of such to be donated fee simple Single Family Lot or Lots, Serviced to the Lot Line, having regard to the value of the other fee simple Single Family Lots being developed in the vicinity of the to be donated Single Family Lot or Lots) For greater certainty, the Developer may make the payment in lieu, described in this paragraph ,for any number of the fee simple Single Family

Lots that the Developer is otherwise obligated to donate to the Regional District pursuant to this Section 3.1(b).

(c) Intentionally Deleted

(d) develop the Lands in an environmentally sensitive manner in accordance with the principles, guidelines and objectives set out in:

- (i) *Land Development Guidelines for the Protection of Aquatic Habitat* (Fisheries and Oceans Canada and British Columbia Ministry of Environment, Land & Parks, 1992);
- (ii) *Environmental Best Management Practices for Urban and Rural Land Development in British Columbia* (British Columbia Ministry of Water, Land and Air Protection, 2004); and
- (iii) *Fish Protection Act, Riparian Areas Regulation*, B.C. Reg. 376/2004.

The Developer will pay particular attention to all Blue and Red List ecological communities, indigenous species and subspecies in British Columbia identified by the British Columbia Ministry of Environment;

(e) dedicate or transfer title to the Parks and Trails (Remainder) in accordance with the following requirements:

- i. The Developer shall not subdivide (other than by way of an Excluded Subdivision) or build on any portion of the CDA-1 portion of the Lands unless and until the Developer has dedicated or transferred title to for the Parks and Trails (Remainder) to the Regional District; and
- ii. The Developer shall not apply for an occupancy permit or permit occupancy of any dwelling unit on, or to be constructed on the CDA-1 portion of the Lands (other than any Single Family Lots transferred in accordance with paragraph 3.1(e)(i) unless it has constructed the Parks and Trails (Remainder) in accordance with paragraph 3.1(h);

which Parks and Trails (Remainder) shall have full right of public access thereon, subject to temporary or interim restrictions and limitations, acceptable to the Regional District, acting reasonably and for safety and statutory compliance purposes to allow the Developer to proceed with the Development.

(f) Intentionally Deleted

(g)commencing on the Maintenance Obligation Commencement Date, provide annual security in a form and in an amount acceptable to the Regional District and assume responsibility for the maintenance of the Parks or Trails (Initial) and the Parks and Trails (Remainder), as the case may be for a period ending on the earlier of (i) the fifteenth (15th) anniversary of the Maintenance Obligation Commencement Date and (ii) one (1) clear calendar month after the date on which the Developer transfers title to a third party of the last residential unit in the Development, after which period the Regional District will assume such responsibility. The Regional District may draw down on the annual security and perform the obligations of the Developer, should the Developer fail to meet its maintenance obligations. For certainty the Parties agree that the Maintenance Obligation Commencement Date may be different for the Parks or Trails (Initial) and the Parks and Trails (Remainder);

(h)construct, improve, landscape and thereafter maintain all Parks and Trails in substantial compliance with the Area Plan and to the satisfaction of the Regional District, having regard to the design of such Parks and Trail, which shall be prepared by the Developer and submitted to the Regional District for its review and approval for a period commencing on the Maintenance Obligation Commencement Date and ending on the earlier of (i) the fifteenth (15th) anniversary of the Maintenance Obligation Commencement Date and (ii) one (1) clear calendar month after the date on which the Developer transfers title to a third party of the last residential unit in the Development. For greater certainty, the Regional District agrees that the Developer's maintenance obligations pursuant to paragraph 3.1(g) and paragraph 3.1(h) shall include the removal of fallen trees which are obstructing Parks and Trails or are in open green space but shall not include the removal of fallen trees within areas that are to be left in their natural state unless the Regional District determines that the fallen trees create a fire or safety hazard and must either be removed or other measures taken to reduce or eliminate the hazard. The Developer's performance of the maintenance of any Park or Trail, or the Parks and Trails, will be the exclusive responsibility of the Developer during the maintenance obligation period set out in this paragraph 3.1(h), after which period the Regional District will assume the responsibility for maintenance of the Parks and Trails. Despite the previous sentence, the Regional District acknowledges and agrees that portions of the Trails contemplated in paragraphs 3.1(e) may be situated on the common property of one or more strata corporations and acknowledges and agrees that, upon creation of the common property and the strata corporations, the Developer will have no further obligation to maintain such Parks and Trails (Remainder) (except where the Developer may be a member of such strata corporations).

(h.1) The Developer and the Regional District agree that motorized and mechanized vehicles, including, but not limited to, motorbikes, all-terrain vehicles and scooters (other than battery-powered scooters for those with limited mobility), will be excluded from access to the Parks and Trails except motorized and

mechanized vehicles required by the Developer (and the Regional District after the completion of the Developer's maintenance obligations set out in paragraph 3.1(h)), its contractors, subcontractors, employees, agents, servants, workmen and permittees in connection with improving, landscaping and performing maintenance for the period of the Developer's obligation to perform maintenance pursuant to this section, and golf carts and golf maintenance vehicles used for the Golf Course;

- (i) construct the Public Assembly Place no later than five (5) years after the completion of the construction of the first residential unit in CDA-3. The Developer will improve, landscape and maintain the Public Assembly Place for a period of fifteen (15) years commencing after the completion of the Public Assembly Place;
- (j) donate the Fire Hall Site to the UBID (or other governing body responsible for providing fire protection services to the Development) on the later of:
 - (i) the date that is one (1) year of being requested to do so by the UBID (or other governing body responsible for providing fire protection services to the Development); and
 - (ii) the issuance of the first occupancy permit in that portion of CDA-1 located west of Highway 19A,

The Developer will service the Fire Hall Site to the lot line. The Developer will enter into a covenant under section 219 of the LTA in favour of the Regional District restricting the use of the donated fire hall lot to emergency services uses only, as that term is defined in the Zoning Bylaw. Upon the transfer of title of the Fire Hall Site to the UBID (or other governing body responsible for providing fire protection services to the Development), the Developer will have no further obligations in respect thereof.

Notwithstanding sections 2.1, and 2.2 hereof, the Regional District consents to the subdivision of the Fire Hall Site from the Lands to facilitate the transfer of the Fire Hall Site to the UBID. The Regional District will discharge this Agreement from the Fire Hall Site upon the Developer (1) transferring title to the Fire Hall Site to the UBID and (2) registering the aforementioned section 219 covenant on title to the Fire Hall Site;

- (k) at the option of the School District, either pay the school site acquisition charge, as defined in the LGA, upon obtaining the first subdivision approval (other than by way of an Excluded Subdivision) or, in lieu of payment, transfer the School Site Lot to the Regional District or the board of education of the School District. For greater certainty, the Developer will have no obligation to construct any buildings or improvements in connection with the School Site Lot for or on behalf of either the Regional District or the school board having responsibility for the School District. When the Developer pays the amount of the school site acquisition charge applicable or transfers the School Site Lot, then upon such payment or transfer the Regional

District agrees that the Developer will have satisfied its obligation as set out in this paragraph and the requirements of the LGA;

- (l) at the option of MOTI and at a time determined by MOTI, either design and construct public highways necessary for the Development as and when required by MOTI, or provide security in a form acceptable to MOTI. The Developer acknowledges that the MOTI improvements may include:
 - (i) an improved intersection where Highway 19A intersects with the main road access entrance to the Development; and
 - (ii) at least three (3) upgraded intersections at the following locations:
 - A. Highway 19A and Argyle Road;
 - B. the vicinity of Russell and Jones Streets and Highway 19A; and
 - C. 'Road #6' and Highway 19A,or at such other specific locations determined by MOTI.

Should the Developer fail to comply with the terms of this paragraph, the Regional District shall be under no obligation to issue any further approvals or permits in connection with the Development until such time as the Developer so complies;

- (m) in constructing the Development, comply with the Regional District's dark sky policy, effective date December 13, 2007, a copy of which is attached hereto as Schedule B or in place from time to time;
- (n) comply with the applicable standards for the construction of public roads approved from time to time by MOTI and the Regional District;
- (o) as a condition of the Regional District issuing to the Developer the first building permit to construct residential housing on the Lands, deliver to the Regional District \$10,000.00 to be used only for the construction of bus shelters;
- (p) make annual contributions to the Regional District's transit program in the amount of \$5,000.00 each year, commencing three (3) years after occupancy of the first residential unit in the Development for a total period of five (5) years, for the total cumulative amount of \$25,000.00;
- (q) not use any part of the Lands for the crushing or processing of sand, gravel or other aggregate material except as needed for the Development. Such sand, gravel or other aggregate may not be removed from the Lands, except as necessary for the Developer to carry out the Development (provided that the Developer shall not engage in the commercial processing of sand, gravel or other aggregate material on the Lands or sell gravel from the Lands, without the prior written consent of the

Regional District, which consent will be given where removal of the sand, gravel or other aggregate materials cannot be stockpiled on the Lands));

- (r) not apply for any building permit, including residential buildings, for the Development or portion thereof, or make an application for the subdivision of the Lands (other than in respect of an Excluded Subdivision) unless and until:
- (i) the Developer has entered into an agreement with UBID for the distribution of potable water from UBID to the Development;
 - (ii) Intentionally Deleted
 - (iii) the Developer has demonstrated to the Regional District's satisfaction, acting reasonably, that there is a sufficient source of potable water to service that portion of the Lands that is the subject of the building permit or subdivision application, as the case may be; and
 - (iv) the Developer has constructed, at its cost and expense, all infrastructure and improvements needed to service that portion of the Lands that is the subject of the building permit or subdivision application, as the case may be, with potable water, to the satisfaction of the Regional District, acting reasonably, or, in the alternative, post security in the form of an irrevocable letter of credit in lieu in an amount equal to 130% of the estimated cost to complete the construction of such infrastructure and improvements with the Regional District to secure the Developer's obligations in this paragraph 3.1(r)(iv), provided that the Regional District will not permit the occupancy of the buildings to be constructed pursuant to the building permit until actual construction of such infrastructure and improvements has been completed.

The Developer covenants and agrees to save harmless and effectually indemnify the Regional District from and against all actions and proceedings, costs, damages, expenses, claims and demands whatsoever and by whosoever brought by reason of or in any way arising out of or related to the insufficient capacity to provide additional water service to the Development from the Union Bay Improvement District.

The Developer agrees that in order to minimize water use the water system for the Development will, where appropriate, utilize recognized water conservation techniques, including low water use and flush appliances, cisterns for storm drain collection, water meters and other similar techniques, to the satisfaction of the Regional District acting reasonably;

Notwithstanding sections 2.1 and 2.2 hereof, the Regional District consents to the subdivision of the WTF Site from the Lands and the transfer of the WTF Site to the UBID. . Upon written request by either the Developer or the UBID after the Developer has completed the transfer of the WTF Site to the UBID, the Regional

District will execute and deliver in registrable form a discharge of this Agreement from title to the WTF Site.

(r.1) Intentionally Deleted

(s) design, construct and maintain the Sewer System as follows:

- (i) except as set out in subparagraphs 3.1(s)(ii) and (iv) below, the Developer is responsible for all costs for the design and construction of the Sewer System;
- (ii) without limiting the generality of the foregoing of paragraph 3.1(s)(i), the Developer is responsible for all costs in connection with the provision of the land within the Development for the Sewer System, the cost of over-sizing the force main within the Lands to accommodate sewage flow from outside of the Lands and the Sewer System infrastructure for a wastewater treatment facility. The Regional District shall be responsible for the incremental increase in infrastructure and carrying capacity within the Sewer System for sewage flow from outside of the Lands to the Developer's wastewater treatment facility. The Regional District shall be responsible for all costs associated with the collection and transfer of sewage flow from outside of the Lands to the Sewer System, including, without limitation, the incremental increase in infrastructure and carrying capacity within the Sewer System for sewage flow from outside of the Lands to the Developer's wastewater treatment facility. The Regional District is responsible for bearing all costs, charges and expenses in connection with any and all sewer system infrastructure and provision of any land outside the boundaries of the Lands;
- (iii) the Sewer System infrastructure located within the Lands, including force mains, shall be compatible with the Regional District's existing sewer system infrastructure, to the satisfaction of the Regional District, and shall permit the Royston and Union Bay sanitary sewer systems to be tied into the Sewer System without obligating the Developer to build, install, construct or replace any (A) sewer lines between the Developer's Sewer System lines located within the Lands and the existing sewer lines servicing Royston and Union Bay or (B) pump stations to accommodate such additional sewer lines;
- (iv) the Developer's wastewater treatment facility will be designed to accommodate additional cells installed therein to handle the sanitary sewer flow from Royston and Union Bay if those sewer systems are subsequently tied into the Sewer System. The installation of additional cells (but not the initial design of the Developer's wastewater treatment facility) and the tying in of the Royston and Union Bay sewer systems to the Developer's

- wastewater treatment facility shall be completed at no expense to the Developer;
- (v) the Sewer System shall be constructed in phases consistent with the Developer's construction of the Development as approved by the Regional District, with each phase of the Sewer System to be substantially completed prior to occupancy of the first residential unit located on that part of the Lands thereon and in that phase of the Development;
 - (vi) provided a Regional District sewer service area has been established for the Lands, the Sewer System, or portion thereof, including the Developer's wastewater treatment facility, shall be transferred to the Regional District following substantial completion of the Sewer System or portion thereof and a two (2) year maintenance period, the entirety of which the Regional District will own, operate and maintain thereafter as publicly-owned infrastructure; and
 - (vii) the costs and obligations associated with the two (2) year maintenance period shall be borne exclusively by the Developer and notwithstanding section 2.4 hereof the Developer may enter into an agreement with a third party to carry out the Developer's obligations associated with the two (2) year maintenance period for the Sewer System, without the consent of the Regional District;
- (t) carry out and develop the Development on the Lands in accordance with all applicable laws, including the OCP and Zoning Bylaw, and obtain development permits as required by a bylaw of the Regional District;
- (u) except as required by the Regional District or any Federal or Provincial enactment, rule or regulation, maintain all Parks and Trails and other public open space areas within the Development (which areas shall specifically exclude the Golf Course), including the Public Assembly Place, using non-organic pesticides and pest control methods in accordance with recognized best management practices for establishing chemical-based pesticide-free zones, during and until the expiry of such time that the Developer is responsible for the maintenance thereof;
- (v) adhere to a stringent program utilizing recognized environmental best management practices in connection with the construction and maintenance of the Golf Course including, without limitation, *Greening Your BC Golf Course: A Guide to Environmental Management* (Fisheries and Oceans Canada and Environment Canada; 1996). The Developer agrees to minimize the use of pesticides, herbicides, fertilizer and water usage in connection with the operation of the Golf Course and that this obligation will be made a condition of the development permit for the construction of the Golf Course;
- (w) construct the Transit Exchange in close proximity to the existing railway line near the interchange of Highway 19A and Washer Road, within five (5) years after the

occupancy of the first residential unit in the Development, provided that the Regional District acknowledges and agrees that the location of the Transit Exchange will depend in part on decisions made by the MOTI and consultations with the railway company having control over the railway line. The Regional District will work with the Developer to determine an appropriate site for the Transit Exchange taking into consideration any such decisions of the MOTI and consultations with the railway company. Notwithstanding the foregoing, the Developer will not be obligated to construct the Transit Exchange unless the land on which the Transit Exchange is to be constructed has been subdivided as a separate legal parcel. The Developer will use its best commercial efforts to effect the subdivision of the legal parcel on which it is to construct the Transit Exchange. Upon completion of construction of the Transit Exchange the Developer shall transfer to the Regional District fee simple ownership of the legal parcel on which the Developer has constructed the Transit Exchange;

- (x) require the use in CDA-3 of geothermal technology or other green technologies that minimize the consumption of fossil fuels and electricity for heating and cooling purposes in all buildings in the Village Core. For all residential units outside of the Village Core, the Developer will encourage the use on a precinct basis of geothermal technology or other green technologies that minimize the consumption of fossil fuel and electricity for heating and cooling purposes;
- (y) consult with the Comox Valley Accessibility Committee and the Comox Valley Cycling Coalition in order to maximize accessibility in designing the Parks and Trails and other public open space areas and buildings that have the right of public access within the Development; and
- (z) in obtaining from MOTI a right of way permitting the Developer to construct, maintain and use an underpass under Highway 19A within the boundaries of the Lands, use its best commercial efforts to secure the right of access for the general public to use such underpass, for pedestrian purposes only, in conjunction with the Developer's own purposes which may include, without limitation, access for Golf Course users and personnel with or without golf carts or maintenance equipment. For greater certainty, the Developer will not seek to exclude public access to the underpass.

4. ACKNOWLEDGMENT OF DOCUMENTS

4.1 Intentionally Deleted

5. N/A

5.1 Intentionally Deleted .

6. GENERAL

6.1 Nothing contained or implied herein shall prejudice or affect the rights and powers of the Regional District or the Approving Officer in the exercise of its, his or her functions under any legislation, bylaws, orders and regulations, all of which may be fully and effectively exercised in relation to the Lands as if this Agreement had not been executed

and delivered by the Developer and the obligations of the Developer under this Agreement shall be subject to such legislation, bylaws, orders and regulations in force from time to time.

- 6.2 The Developer covenants and agrees that in addition to any remedies which are available under this Agreement or at law, the Regional District is entitled to all equitable remedies, including specific performance, injunctive and declaratory relief, or any combination thereof, to enforce its rights under this Agreement. The Developer acknowledges that specific performance, injunctive relief (mandatory or otherwise) or other equitable relief may be the only adequate remedy for a default by the Developer under this Agreement.
- 6.3 The Developer shall give notice of this Agreement to any person, firm or corporation, to whom the Developer proposes to sell, assign, convey or otherwise dispose of the Lands or any subdivided portion thereof.
- 6.4 The covenants contained in this Agreement shall enure to the benefit of and be binding upon the Regional District and its successors and assigns and shall enure to the benefit of and be binding upon the Developer and its successors and assigns and shall run with the land and enure to the benefit of and be binding upon the Developer's successors in title and their respective heirs, executors, administrators, trustees and successors. Every reference to the Regional District and the Developer is deemed to include their successors and assigns, as the case may be.
- 6.5 The Developer covenants and agrees to save harmless and effectually indemnify the Regional District from and against:
 - (a) any and all actions and proceedings, costs, damages, expenses, claims and demands whatsoever and by whosoever brought by reason of or in any way arising out of or related to the construction, installation, maintenance or repair of any works related to or construction of the Development, including, without limitation, any and all claims for injurious affection, whether such claims arise at law or under any statute, including, without limitation, the British Columbia Expropriation Act, R.S.B.C. 1996, c.125, and any amendments, rules or regulations thereto, or otherwise whatsoever;
 - (b) any and all expenses and costs which may be incurred by reason of, or in any way connected with the Development, including any construction, installation, maintenance or repair of anything related to the Development that results in damage to any property or injury to any person or persons;
 - (c) any and all expenses and costs which may be incurred by reason of liens for non-payment of labour materials, workers' compensation, unemployment insurance, Federal or Provincial tax, check-off or encroachments owing to mistakes in survey; and
 - (d) any and all breaches of this Covenant. The Developer is not liable for a breach of this Covenant occurring after the Developer ceases to be the owner of the Lands or such portion thereof in respect of any such breach of this Covenant.

- 6.6 If any paragraph, section, subsection, paragraph, sentence, clause or phrase in this Agreement is for any reason held to be invalid by the decision of a Court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of this Agreement.
- 6.7 The Developer and Regional District shall do and cause to be done all things and execute and cause to be executed all documents which may be necessary to give proper effect to the intention of this Agreement.
- 6.8 The Developer covenants and agrees to reimburse the Regional District upon being requested to do so for its legal costs incurred in the drafting and negotiating this Modification Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement in Item 8 of Part 1 of this Instrument as of the date first above written.

CONSENT AND PRIORITY AGREEMENT

In consideration of the sum of TEN (\$10.00) DOLLARS and other good and valuable consideration, **BARBIERI DEVELOPMENTS LTD., CLARION PROPERTY CORPORATION, 495587 B.C. Ltd.** (jointly the “**Prior Charge Holder**”), the holder of the following financial charge(s) registered in the New Westminster Land Title Office against title to the Lands charged by this instrument:

Mortgage No. CA5693120
Assignment of Rents: CA5693121

(the “**Security**”)

for itself and its successors and assigns, hereby consents to the granting and registration of the within Section 219 Covenant (the “**Charge**”) and grants priority to the Charge over the Security and to the Prior Charge Holder’s right, title and interest in and to the Lands charged by this instrument, in the same manner and to the same effect as if the Charge had been executed, delivered and registered prior to the execution, delivery and registration of the Security and prior to the advance of any money under the Security.

As evidence of its agreement to be bound by the terms of this instrument, the Prior Charge Holder has executed the *Land Title Act* Form C or D which is attached hereto and forms part of this Agreement.

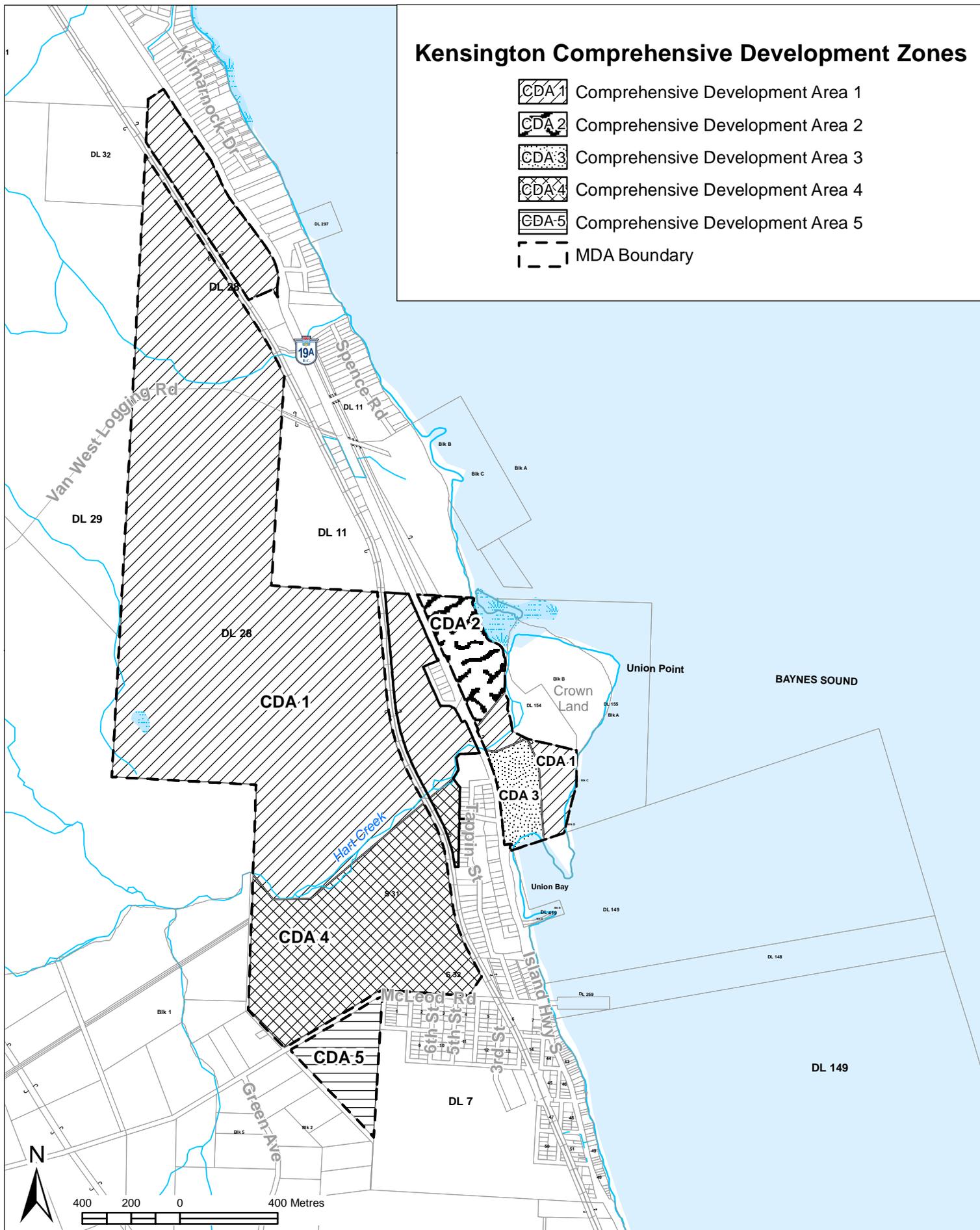
SCHEDULE A

AREA PLAN

Schedule A is deleted and replaced with the Area Plan

Kensington Comprehensive Development Zones

-  Comprehensive Development Area 1
-  Comprehensive Development Area 2
-  Comprehensive Development Area 3
-  Comprehensive Development Area 4
-  Comprehensive Development Area 5
-  MDA Boundary



SCHEDULE B
DARK SKY POLICY

Subject: DarkSky	
Category: Community Planning Services	Policy Reference: 3010-00

Purpose

1. To include a set of guidelines to be considered regarding exterior lighting for commercial, industrial, and multi-family residential unit development. These regulations include an interpretation section to define the various terms, standardize how light systems are designed, constructed and installed, and to reduce glare, light trespass and obtrusive light while conserving energy and resources. Safety, security and productivity shall be maintained and encouraged while reducing the degradation of the nighttime visual environment.

Scope

2. The scope of this policy includes the various electoral area official community plans that have a form and character development permit area for commercial, industrial or multi-unit family residential development.

Guiding Principle

3. To guide commercial, industrial and multi-family residential development to have exterior lighting that does not negatively impact the quality of life for adjacent neighbours nor create any light pollution.

Interpretation

4. The following are definitions relating to this DarkSky policy:
 - a) **Abandonment:** The relinquishment of a property, or the cessation of a use or activity by the owner or tenant for a period of six months, excluding temporary or short term interruptions for the purpose of remodeling, maintaining, or otherwise improving or rearranging a facility. A use shall be deemed abandoned when such use is suspended as evidenced by the cessation of activities or conditions that constitute the principle use of the property.
 - b) **Development project:** Any multi-family residential, commercial, industrial or mixed use subdivision plan or development plan which is submitted to the regional district for approval.
 - c) **Direct illumination:** Illumination resulting from light emitted directly from a lamp or luminaire, not light diffused through translucent signs or reflected/bounced from other surfaces such as the ground or building faces.
 - d) **Filtered light:** Light from a light source that is covered by a glass, acrylic or other cover that restricts the amount of non-visible radiation (infrared, ultraviolet) emitted by the light fixture.
 - e) **Fully shielded fixture:** An outdoor light fixture shielded in such a manner that all light emitted by the fixture, either directly from the lamp or indirectly from the fixture, is projected below the horizontal as certified by the manufacturer.

- f) Glare: Harsh, uncomfortable bright light emitting from a luminaire causing reduced vision or momentary blindness when shining into one's cone of vision.
- g) Installed lighting: Attached, or fixed in place, whether or not connected to a power source.
- h) Light trespass: Exterior light fixtures shining light beyond one's property line.
- i) Multi-unit family residential: properties zoned and utilized for multi-unit family residential use.
- j) Outdoor light fixture: Outdoor electricity powered illuminating devices, outdoor lighting or reflective surfaces, lamps and similar devices, either permanently installed or portable, which are used for illumination or advertisement. Such devices shall include, but are not limited to, search, spot and flood lights for: buildings and structures; recreational areas; parking lot lighting; landscaping and architectural lighting; billboards and other signs (advertising or other); street lighting; product display area lighting.
- k) Outdoor recreation facility: A facility used and equipped for the conduct of sports, leisure and/or entertainment.
- l) Partially shielded light fixture: An outdoor light fixture shielded in such a manner that more than zero but less than ten percent of the light emitted directly from the lamp or indirectly from the fixture is projected at angles above the horizontal, as certified by the manufacturer.
- m) Sign: Any object, device, display, structure, or part thereof, which is used to advertise, identify, display, direct or attract attention to any object, service, event or location by any means including words, letters, figures, design, symbols, fixtures, colours, illumination or projected image.
- n) Sign, indirectly lit: Any sign facing that reflects light from a source intentionally directed upon it.
- o) Sign, internally lit: Any sign that has the source of light entirely enclosed within the sign and not directly visible to the eye.
- p) Temporary lighting: Lighting which does not conform to the provisions of the DarkSky policy and will not be used for more than one thirty day period within a calendar year may be permitted, subject to approval from the regional district, with a possible one, thirty day extension. Temporary lighting is intended for uses that by their nature are limited in duration; example: holiday decorations, civic events or construction projects.
- q) Up light: Any light from a luminaire that shines above the horizontal plane causing illumination of the sky.

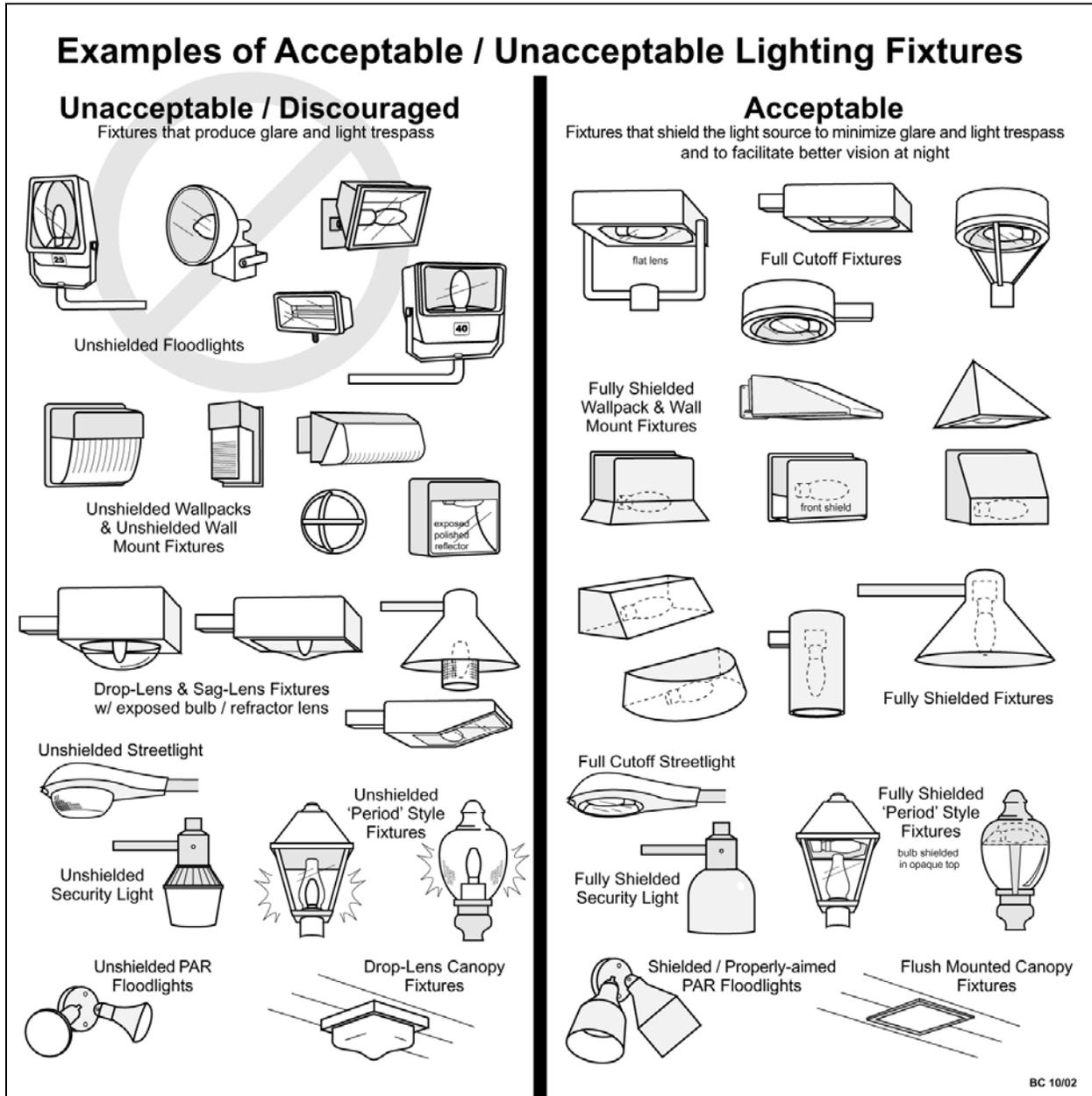


Figure One: Sample of light fixtures that are discouraged and recommended as part of the DarkSky policy.

Policy Statements

5. Shielding of outdoor light fixtures
 - a) All outdoor lighting fixtures shall be shielded to minimize up-light. Mounted incandescent type fixtures shall be shielded. Lighting is encouraged to be activated by motion sensors versus being on all the time.
 - b) Outdoor floodlighting shall be shielded in such a manner that the lighting system will not produce light trespass.

6. Limiting trespassing of light beyond property lines
 - a) All light fixtures shall be located, aimed and or shielded so as no direct light trespasses beyond the property line on which the light is mounted.

7. Non-conforming light fixtures
 - a) In addition to other exemptions provided in the regional district DarkSky policy, an outdoor lighting fixture not meeting these provisions shall be allowed if the fixture is extinguished by an automatic shutoff device between sundown and sunrise.
 - b) No outdoor recreational facility, whether public or private, shall be illuminated after sundown except when the facility is in use. Outdoor lighting is encouraged to be on only when the field is in use, such as by a user pass activation system.
 - c) The use of searchlight, laser light, or any similar high intensity light for outdoor advertising or entertainment, except in emergencies by police and fire personnel is prohibited. Temporary exemption to this may be granted if approved by the General Manager of Community Planning Services.

8. Effective Date
 - a) The development permit must conform to the DarkSky policy that exists at the time of application. When existing lighting fixtures are considered inoperable, all replacements are subject to all the provisions of the DarkSky policy. The light will be considered inoperable when the housing of the fixture requires replacement or when the lens, lamp, and ballast need to be replaced.

9. New Construction
 - a) All exterior lighting installed shall be approved by the International DarkSky Association (IDA) and must be installed correctly.

10. Exemptions
 - a) The following are exempt from the requirements of the DarkSky policy:
 - i. Single-family development (less than or equal to three dwelling units on one property and zoned residential). Note: the regional district does encourage single-family development to seriously consider the installation of IDA approved lighting.
 - ii. Outdoor lighting fixtures existing and legally installed prior to the implementation of the DarkSky policy.
 - iii. Outdoor advertising signs of the type constructed of translucent materials and wholly illuminated from within do not require shielding. Dark backgrounds with lighter coloured lettering or symbols are preferred to minimize detrimental effects.
 - iv. Navigational and general life safety lighting systems required at airports and other transportation installations.

Approval History

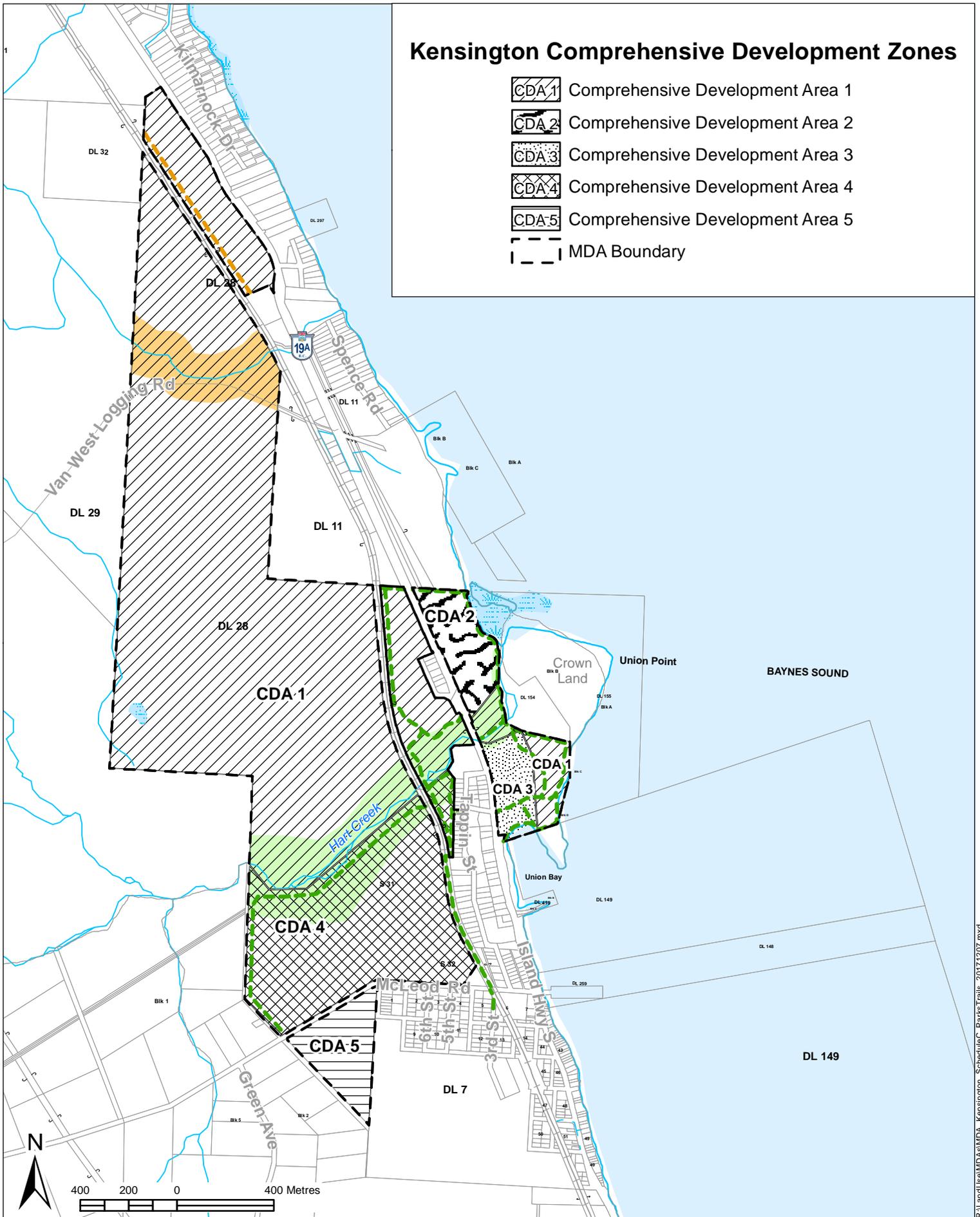
Policy adopted:	December 13, 2007
Policy amended:	

SCEHDULE C

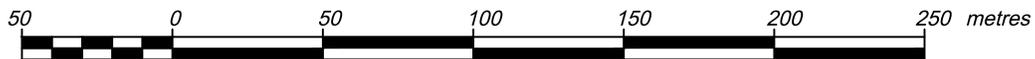
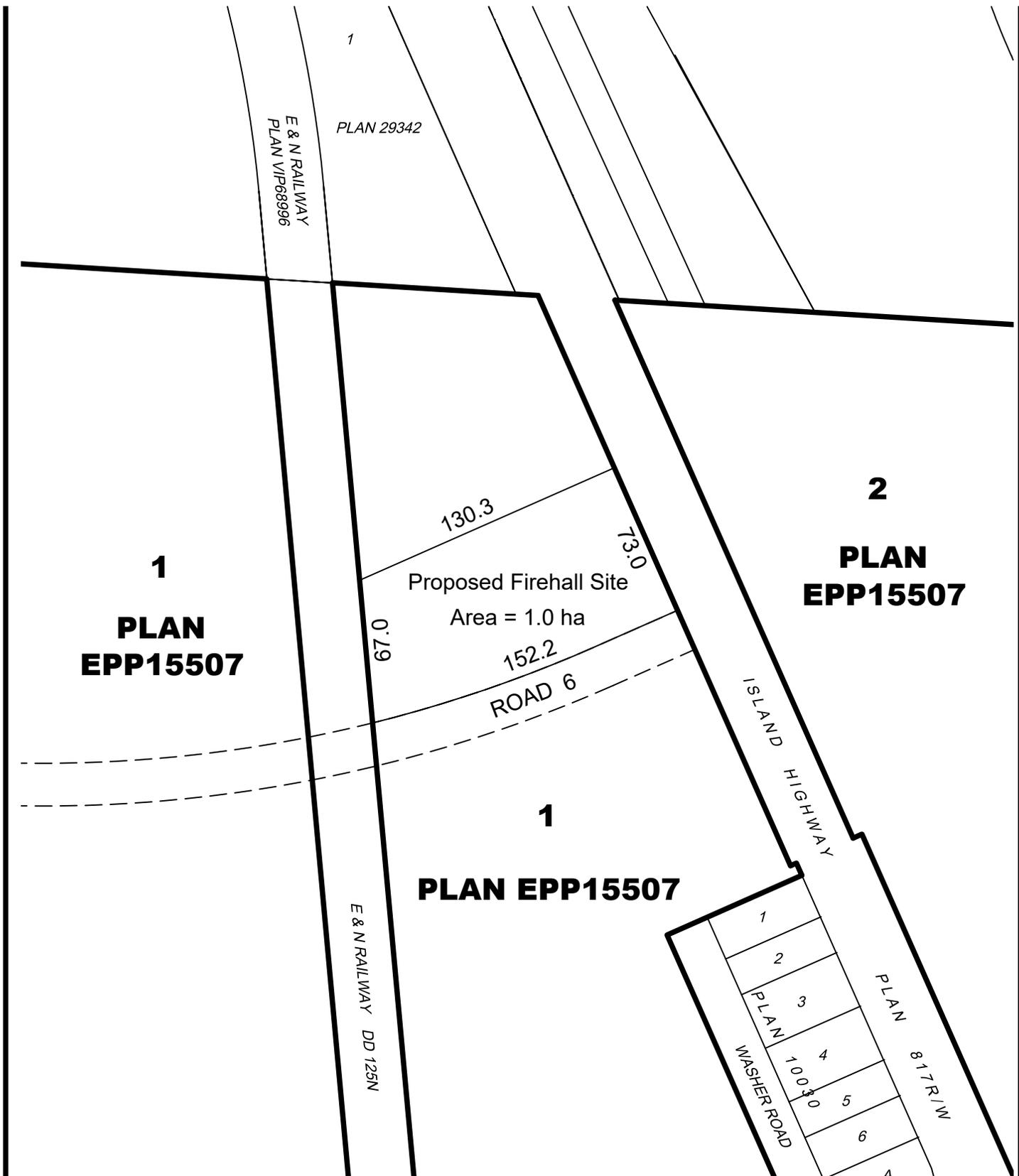
PARKS AND TRAILS (INITIAL) and PARKS AND TRAILS (REMAINDER) PLAN

Kensington Comprehensive Development Zones

-  Comprehensive Development Area 1
-  Comprehensive Development Area 2
-  Comprehensive Development Area 3
-  Comprehensive Development Area 4
-  Comprehensive Development Area 5
-  MDA Boundary



SCHEDULE D
FIRE HALL SITE



SCALE 1:2500



BAZETT
LAND SURVEYING INC.
COURTENAY & PORT HARDY, B.C.
WWW.BAZETT.COM

SCHEDULE E

WTF SITE



RECORD OF REVISIONS

REV	DATE	BY	ENG	DESCRIPTION

ISS	DATE	BY	ENG	DESCRIPTION

RECORD OF ISSUE

SEAL
PRELIMINARY
DATE: OCTOBER 03, 2017

PROJECT NO.	1595
DRAWN	LD
DESIGNED	KD
CHECKED	
APPROVED	
DATE	OCT 2017
SCALE	1:500

CLIENT
UNION BAY IMPROVEMENT DISTRICT

PROJECT
LANGLEY LAKE WATER TREATMENT PLANT

TITLE
PROPOSED PROPERTY ACQUISITION

DRAWING No.	REV.	SHEET
1595-SK3	-	1/1

