

DATE: May 9, 2019**FILE:** 5340-09**TO:** Chair and Members
Comox Valley Sewage Commission**FROM:** Russell Dyson
Chief Administrative OfficerSupported by Russell Dyson
Chief Administrative Officer*R. Dyson***RE: Hudson Sewer Trunk Main Connection Agreement**

Purpose

To seek approval to complete an agreement between the Town of Comox and the Comox Valley Regional District (CVRD) in regards to future connections to the recently constructed Hudson Trunk sewer main.

Recommendation from the Chief Administrative Officer:

THAT the Hudson Sewer Trunk Connection Agreement, attached as Appendix A to the staff report dated April 25, 2019, be entered into with the Town of Comox;

AND FINALLY THAT the Chair and Corporate Legislative Officer be authorized to execute the agreement.

Executive Summary

- In 2018, the CVRD completed construction of the regional sanitary sewer main known as the Hudson Trunk.
- The Hudson Trunk is regional infrastructure owned and operated by the CVRD.
- During the course of construction of the sewer main a number of specific concerns in regards to municipal sewer connections to the Hudson Trunk were identified by the Town of Comox and the CVRD.
- A staff report was brought forward in August 2018 which outlined and provided recommendations for the sewer flow metering strategy for both the Hudson and the Greenwood Trunks.
- Following recommendations made within the August 2018 report, the CVRD and Town of Comox have worked closely to develop a procedure to permit municipal sewer connections to the Hudson Trunk.
- The agreement attached as Appendix A to this report is intended to establish the terms under which connections from individual properties may be made to the Hudson Trunk. The agreement outlines and discusses:
 - Connections to the Hudson Trunk;
 - Maintenance and repair responsibilities;
 - Inflow and infiltration/ apportionment of costs considerations; and
 - Responsibilities in regards to emergency responses to blockages.

Prepared by:

Concurrence:

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General Manager of
Engineering Services

Policy Analysis

At their August 14, 2018 meeting, the Comox Valley Sewage Commission approved the following recommendation:

THAT the installation of Palmer-Bowlus Flumes at the proposed metering locations as recommended in the Hudson Trunk Sanitary Flow Monitoring Report, attached as Appendix A to the staff report dated August 8, 2018, be implemented as part of the Hudson and Greenwood Sanitary Trunk Sewer Projects.

Attachments: Appendix A – “Hudson Sewer Trunk Main Connection Agreement”

Appendix A

HUDSON SEWER TRUNK CONNECTION AGREEMENT

THIS AGREEMENT made this day of , 2019.

BETWEEN:

Town of Comox
1809 Beaufort Avenue
Comox, BC V9M 1R9

(the "**Town**")

OF THE FIRST PART

AND:

Comox Valley Regional District
600 Comox Road
Courtenay, BC V9N 3P6

(the "**CVRD**")

OF THE SECOND PART

WHEREAS:

- A. The Comox Valley Regional District has constructed a regional sewer main known as the Hudson Trunk, which is routed as generally shown on the map attached as Appendix "A" to this Agreement.
- B. The Hudson Trunk is part of the infrastructure operated by the CVRD through the service established under the *Comox Valley Sewerage Service Establishment Bylaw No. 2541, 2003*.
- C. During the course of construction of the Hudson Trunk, a number of specific concerns in regards to municipal sewer connections to the Hudson Trunk were identified by the Town and the CVRD.
- D. The CVRD commissioned a report from McElhanney dated July 13, 2018 (the "McElhanney Report") which sets out recommendations for flow monitoring, metering locations and the potential for inflow and infiltration respecting the Hudson Trunk, which recommendations the parties have considered in entering into this Agreement.
- E. The CVRD has worked closely with the Town to develop a procedure to permit municipal sewer connections to the Hudson Trunk, and the Town and the CVRD now wish to set out their mutual agreement as to the terms under which connections from individual properties to the Hudson Trunk may be established.

NOW THIS AGREEMENT WITNESSES that in consideration of the premises, the terms and conditions hereinafter contained, the sufficiency and receipt of which is hereby acknowledged, the parties covenant and agree each with the other as follows:

Part I - Interpretation

In this Agreement:

- a. **"Building Sewer"** has the same meaning as under the British Columbia Building Code;
- b. **"Connection"** means the establishment of a physical connection between a building sewer and a sanitary sewer connection to facilitate the conveyance of sanitary waste from a parcel to the Hudson Trunk;
- c. **"Eligible Parcel"** means those parcels within the boundaries of the Town that are permitted to apply for a connection to the Hudson Trunk as set out in section 1 of this Agreement, and includes the parcel legally described as *THE WEST 1/2 OF SECTION 71, COMOX DISTRICT EXCEPT THAT PART IN PLAN 429 RW* once that parcel has been brought within the Town's boundaries through a future boundary expansion;
- d. **"Parcel"** means a lot, block or other area in which land is held or into which land is subdivided; but does not include a highway
- e. **"Sanitary Sewer Connection"** means the pipes and their fittings (within road dedication) that connect, or are intended to connect, a building sewer on a parcel to the Hudson Trunk;

Part II - Connections to the Hudson Trunk

1. Each parcel presently within the boundaries of the Town of Comox that adjoins a highway within which the Hudson Trunk is located, as shown on Appendix "A" to this Agreement, is permitted to apply for a connection to the Hudson Trunk.
2. Parcels that enter the Town of Comox through future boundary expansions after August 7, 2018 shall not be entitled to a connection to the Hudson Trunk, with the exception of the parcel legally described as *THE WEST 1/2 OF SECTION 71, COMOX DISTRICT EXCEPT THAT PART IN PLAN 429 RW*.
3. The CVRD has installed sanitary sewer connections for certain parcels within the boundaries of the Town as shown in Appendix "B", the location and number of stubs provided to each such parcel being denoted in Appendix "B" by an asterisk or circled asterisk. The CVRD has sized those sanitary sewer connections appropriately to meet the expected demand of each individual parcel as follows, based on information provided by the Town:

- (a) 100mm to each parcel with a single family residence;
 - (b) 150mm/200mm sanitary sewer connections to properties where additional development is anticipated.
4. While sanitary sewer connections were placed at the low corner of each parcel as per good engineering practice, the CVRD makes no representation or warranty as to the sufficiency of the size of any sanitary sewer connection provided or as to the suitability of the location of any sanitary sewer connection.
 5. The Town of Comox shall be solely responsible for administering any applications to connect made by the owner of an eligible parcel. The owner of any eligible parcel desiring a connection must make application to the Town for a connection in accordance with the Town's usual procedures for establishment of a sanitary sewer connection.
 6. Where no individual sanitary sewer connection has been provided by the CVRD, the Town may apply to the CVRD on behalf of the owner of an eligible parcel for permission to install a sanitary sewer connection. All work required for the installation of a sanitary sewer connection will be the responsibility of the Town, with advance written notice to, and the written approval of the CVRD. The Town is responsible for all costs associated with the construction of each sanitary sewer connection and is responsible to seek reimbursement for the cost of the work from the parcel owner in accordance with the rates and conditions of the Town of Comox sanitary sewer and fees and charges bylaws, as amended or replaced from time to time.
 7. For certainty, any requests for a sanitary sewer connection made by the owner of a parcel outside of the Town of Comox must be directed to the CVRD.

Part III - Maintenance and Repair

8. The Town shall be solely responsible for the cost of maintaining, repairing and, where necessary from time to time, replacing each sanitary sewer connection within the Town's boundaries, and shall be responsible for undertaking all maintenance, repairs and replacements in accordance with good engineering practices.

Part IV - Inflow and Infiltration/Apportionment of Costs

9. The CVRD and the Town both agree and accept that the volume of inflow and infiltration originating from the Hudson Trunk itself will prove insignificant as compared to the volume of wastewater and inflow and infiltration generated from the many individual connections to the Hudson Trunk that the Town of Comox may eventually permit. The CVRD and the Town both accept that any effort to differentiate between these two values may prove inconclusive and expensive. Accordingly, the Town accepts the modest inflow and infiltration volume that may originate from the Hudson Trunk itself as part of the cost of obtaining this service for Town of Comox residents.

10. In furtherance of the agreement of the parties under section 9, and for the purpose of apportioning to the Town its share of the costs attributable to the Hudson Trunk, the flows of wastewater within the Hudson Trunk attributable to the Town of Comox will consist of the difference between the flow measured at the Parry Place meter (Courtenay) and at the Knight Road meter, both as referred to in the McElhanney Report. Once the CVRD Greenwood Trunk line comes online, this calculation will change to the flow measured at the Knight Road meter minus flow measured at the Parry Place meter (Courtenay) and minus the flow measured at Town of Comox Meter No.1 (Greenwood, inclusive of Department of National Defence married quarters), also as referred to in the McElhanney Report.
11. The method of calculating flows of wastewater attributable to the Town, and for estimating inflow and infiltration, will be reviewed by the parties and amended as necessary:
 - (a) if additional service connections or mains outside the Town of Comox are connected to the Hudson Trunk or another CVRD trunk sanitary sewer that itself connects to the Hudson Trunk;
 - (b) if the calculated flows for Town of Comox service connections on Knight Road are not in the range of expected flows;
 - (c) in any event, at ten years from the signing of this Agreement.

Part V - Development Cost Charges (DCC) and Capital Improvement Cost Charges (CICC)

12. The Town of Comox will remain responsible to collect and submit to the CVRD, all applicable Comox Valley Sewerage System DCCs and CICC.

Part VI - Emergency Response to Blockages

13. The Town will remain the initial point of contact for property owners that have a sewer service connection to the Hudson Trunk and that are experiencing sewer back-ups within their private system.
14. The Town shall investigate and remedy any blockage within a sanitary sewer connection to the Hudson Trunk. Any costs or liability arising from such a blockage will remain the responsibility of the Town, as will the need to pursue reimbursement for any costs the Town considers the responsibility of the parcel owner.
15. Should an investigation indicate that the blockage or failure is present in the Hudson Trunk itself and not a sewer service connection, Town of Comox personnel will immediately inform the CVRD via the CVRD's 24 hour emergency contact number. The Town shall make its personnel, including all appropriate equipment, available to the CVRD to address any blockage or failure within the Hudson Trunk in a timely manner, recognizing availability

of the Town's own forces, and the CVRD shall reimburse the Town for any costs the Town incurs, acting reasonably, in performing any work to address a blockage that is the responsibility of the CVRD.

Part VII- Dispute

16. If there is a dispute in respect of this Agreement between the CVRD and the Town of Comox the dispute will be resolved as set forth in this Part VII,

17. The parties will make all reasonable efforts to resolve any dispute that arises under this Agreement by amicable discussions and negotiations before resorting to the dispute resolution processes referred to in sections 19 to 22, and shall provide a timely disclosure of all relevant and facts, information and documents to facilitate those discussions and negotiations.

18. If the parties disagree as to the interpretation of this Agreement, or as to their respective rights or obligations under this Agreement, and if they are unable to resolve the disagreement within a reasonable time by the informal discussions and negotiations contemplated under section 17, they will resolve the dispute by following the steps outlined in sections 19 to 22.

19. Negotiation:

(a) A party that wishes a dispute to be resolved will give a written notice (the "Dispute Notice") to the other party whereupon each party will promptly designate a senior officer or senior representative, and such designated officers and representatives will attempt in good faith to resolve the dispute by negotiation. The senior officers or representatives may seek input and direction from the appointing party during such negotiations. All reasonable requests for relevant information relating to the dispute made by a party will be honoured.

20. Mediation:

(a) If the parties are unable to resolve the dispute through negotiation within ninety (90) day of the date that the Dispute Notice was delivered as provided in section 19, either party may give notice to the other party requesting mediation of the dispute. Following such notice being given, the parties will jointly appoint a qualified and impartial individual with experience in local government and service agreements (the "Mediator") to serve as a mediator in connection with the dispute. In the event the parties are unable to agree on the appointment of a Mediator, the Mediator will be appointed by the British Columbia International Arbitration Centre. The costs of mediation shall be borne equally by the Parties.

(b) For certainty, the final report or recommendation of the Mediator shall not be binding on either party.

21. Arbitration:

- (a) If a dispute is not resolved within one hundred and twenty (120) days after the appointment of the Mediator then either Party may deliver to the other Party a notice (an "Arbitration Notice") that the dispute is to be resolved by a single arbitrator (the "Arbitrator") pursuant to the *Arbitration Act (British Columbia)* under the Shorter Rules of Procedure of the British Columbia International Commercial Arbitration Centre.
- (b) The costs of the Arbitrator shall be borne equally by the Parties unless the Arbitrator determines otherwise.
- (c) The decision of the Arbitrator may be appealed to the Supreme Court of British Columbia on any question of law and both Parties confirm that they have consented to an appeal on a question of law, in accordance with section 31(1)(a) of the *Arbitration Act*.

22. Litigation: If the parties do not mutually agree to refer a dispute to binding arbitration, either party may initiate court proceedings to settle the dispute.

Part VIII - Indemnification

- 23. The Town shall indemnify and save harmless the CVRD from and against any claims, actions, causes of action, claims, demands, costs and liabilities whatsoever that result or arise from a blockage, breakdown or malfunction of a sewer service connection within the Town's boundaries, unless caused by a blockage in the Hudson Trunk itself.
- 24. The CVRD shall indemnify and save harmless the Town from and against any claims, actions, causes of action, claims, demands, costs and liabilities whatsoever that result or arise from a blockage in the Hudson Trunk itself.
- 25. In no event shall either party be obliged to indemnify the other for any claim, loss or damage for which the party has immunity from liability under section 744 of the *Local Government Act*.

Part IX– General Provisions

- 26. It is hereby mutually agreed that any notice required to be given under this Agreement will be deemed to be sufficiently given:
 - (a) if delivered to the address of a party as set out below, at the time of delivery;
 - (b) if sent by fax or email, upon confirmation of receipt by the receiving party;

- (c) if mailed from any government post office in the Province of British Columbia by registered mail addressed as follows, at the time of delivery:

if to the Town:

Town of Comox
1809 Beaufort Avenue
Comox, BC V9M 1R9

Email: rkanigan@comox.ca
Attention: Richard Kanigan, CAO/ Corporate Officer

if to the CVRD:

Comox Valley Regional District
600 Comox Road
Courtenay, BC V9N 3P6
Fax: 250-334-4358
Email: mrutten@comoxvalleyrd.ca
Attention: Marc Rutten, General Manager of Engineering Services

27. Time is to be of the essence of this Agreement.
28. This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, successors, and permitted assignees.
29. The waiver by a party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement is not to be construed as a waiver of any failure or continuing failure, whether similar or dissimilar.
30. Wherever the singular, masculine and neuter are used throughout this Agreement, the same is to be construed as meaning the plural or feminine or the body corporate or politic as the context so requires.
31. No remedy under this Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies at law or in equity.
32. This Agreement is to be construed in accordance with and governed by the laws applicable to the Province of British Columbia.
33. No provision of this Agreement shall be construed to create a partnership or joint venture relationship, an employer-employee relationship, a landlord-tenant, or a principal-agent relationship.
34. This Agreement may not be modified or amended except by the written agreement of the parties.

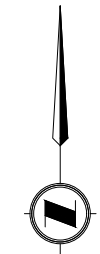
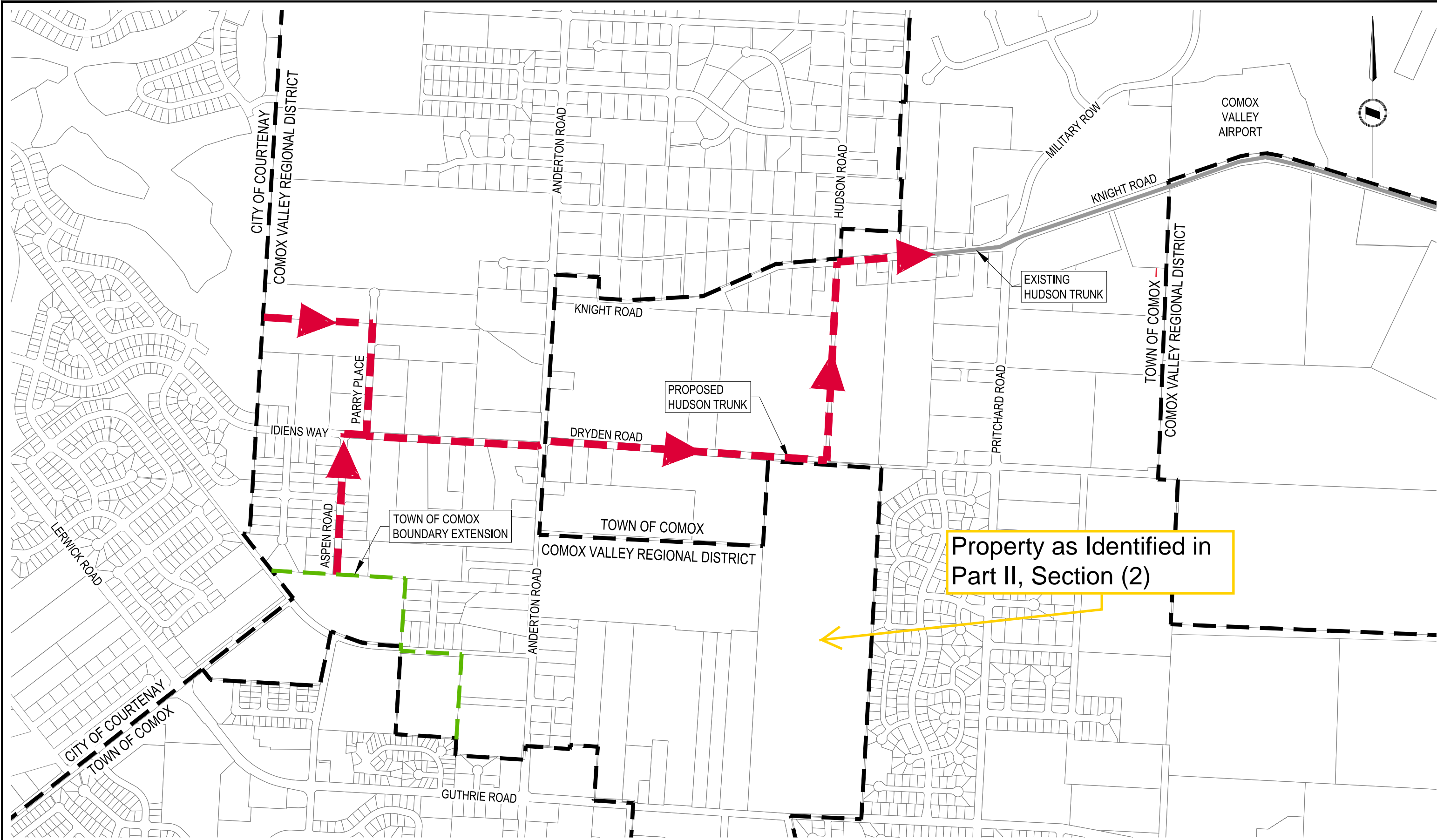
- 35. This Agreement contains the entire agreement and understanding of the parties with respect to the matters contemplated by this Agreement and supersedes all prior and contemporaneous agreements between them with respect to such matters.
- 36. This Agreement may be executed in counterpart with the same effect as if both parties had signed the same document. Each counterpart shall be deemed to be an original. All counterparts shall be construed together and shall constitute one and the same Agreement.

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

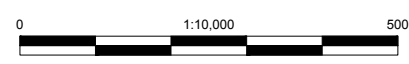
TOWN OF COMOX by its authorized)
signatories)
)
_____)
Mayor Russ Arnott)
)
)
_____)
R. Kanigan, Corporate Officer)

COMOX VALLEY REGIONAL DISTRICT by)
its authorized signatories)
)
_____)
Board Chair)
)
)
_____)
Corporate Officer)

Appendix A



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ORIGINAL DWG SIZE: ANSI B (11" x 17")

McElhanney
 McElhanney Consulting Services Ltd.
 495 Sixth Street
 Courtenay BC
 Canada V9N 6V4
 Tel 250 338 5495

COMOX VALLEY REGIONAL DISTRICT
 HUDSON TRUNK
 PROPOSED TRUNK ROUTE
 COMOX VALLEY, BC

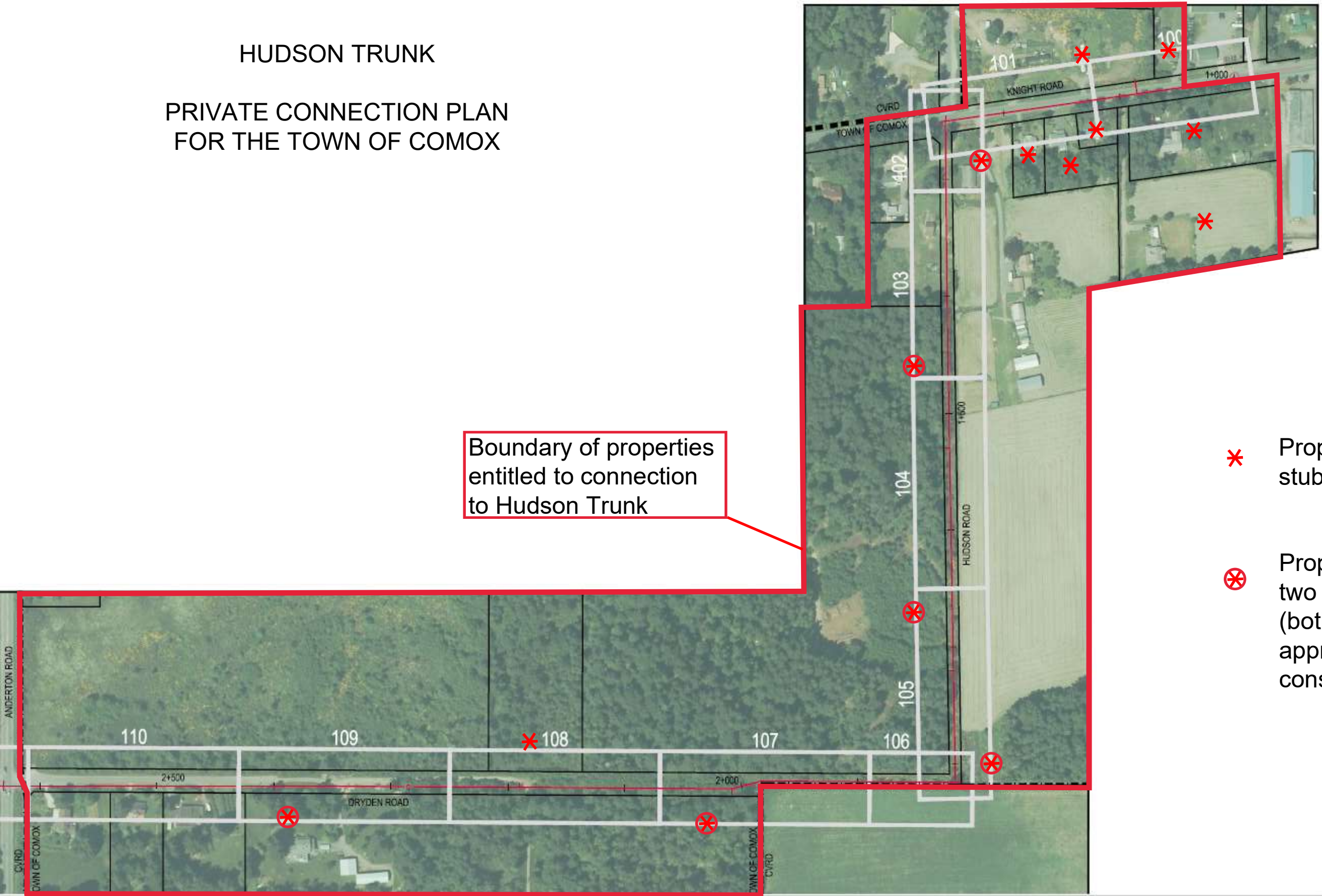
Drawing No. **SK-03**
 Project Number 2211-47376-01
 Rev. PB

DESTROY ALL PRINTS BEARING PREVIOUS REVISION

Appendix B

HUDSON TRUNK

PRIVATE CONNECTION PLAN FOR THE TOWN OF COMOX



Boundary of properties entitled to connection to Hudson Trunk

- * Properties with stub provided
- ⊗ Properties with two stubs provided (both shown in approx. location constructed)