

DATE: June 10, 2021

FILE: 5600-01/CVRWS

TO: Chair and Directors
Comox Valley Water Committee

FROM: Russell Dyson
Chief Administrative Officer

Supported by Russell Dyson
Chief Administrative Officer

R. Dyson

RE: Lower Perseverance Creek Memorandum of Understanding

Purpose

To discuss the proposal of the Cumberland Community Forest Society (CCFS) for the Comox Valley Regional District (CVRD) to enter into a Memorandum of Understanding (MOU) with the Village of Cumberland, the Comox Valley Land Trust (CVLT) and the CCFS with the purpose of supporting negotiations with the owner of the lands adjacent to the lower reaches of Perseverance Creek.

Recommendation from the Chief Administrative Officer:

THAT the Comox Valley Regional District enter into a Memorandum of Understanding with the Village of Cumberland, Comox Valley Land Trust and the Cumberland Community Forest Society to support negotiations with the owner of the lands adjacent to the lower Perseverance Creek to determine timelines, financial conditions and opportunities, and ownership and management scenarios that will help to ensure the protection of the lands and drinking water quality in perpetuity.

Executive Summary

- A parcel of land (Portion of DL 24) (the Land) was identified by the parties as part of an imminent harvesting plan by Hancock Timber Resource Group (on behalf of Comox Timber) in March of 2021. (see Schedule A of Appendix A)
- The Land is adjacent to lands of importance and interest to the CVRD (Coal Beach, Perseverance Creek, Cumberland Community Forest), Cumberland (Coal Creek Historic Park, Cumberland Community Forest Park), CVLT (Cumberland Community Forest Park), and CCFS (Cumberland Community Forest Park).
- The Land protects water quality objectives of importance to the CVRD.
- The Land contains archeological values identified by the CVRD.
- The Land contains recreation and connectivity values identified by Cumberland and the CCFS, and is adjacent to lands currently part of a land use planning process under the leadership of the CVRD (Coal Beach Planning Process).
- The CCFS has entered a process with the owner to suspend current harvesting plans and operations and negotiate a purchase agreement, including determination of parcel boundaries, valuation and timelines.
- Time is of the essence with respect to current negotiations to secure a valuation and to ensure the continued deferral of harvest.
- The purpose of the MOU is to enter into an agreement to support negotiations with the owner and to determine an approach to timelines, financial conditions and opportunities,

and ownership and management scenarios that will ensure the protection of the Land in perpetuity.

- The MOU does not commit the CVRD to a financial contribution to purchase the property. Time will be available for the CVRD to assess a future role.
- The CVRD has many projects and priorities at present. Supporting negotiations now and the consideration of a commitment or not at a later date is advantageous to the CVRD.
- The MOU is intended only to provide a common starting point in delineating the issues to be addressed by the parties in connection with the Land. This MOU is not intended to create any binding legal obligations between the parties.

Prepared by:

Concurrence:

Concurrence:

Z. Norcross-Nu'u

K. La Rose

M. Rutten

Zoe Norcross-Nu'u
Engineering Analyst

Kris La Rose, P.Eng.
Senior Manager of
Water/Wastewater Services

Marc Rutten, P.Eng.
General Manager of
Engineering Services

Attachments: Appendix A – DRAFT Lower Perseverance Creek MOU, May 19, 2021

LOWER PERSEVERANCE PROJECT

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MoU”) is effective as of _____, 2021.

AMONG:

The Corporation of Village of Cumberland (“Cumberland”) - municipal government, 2673 DUNSMUIR AVE., BOX 340, CUMBERLAND, B.C., V0R 1S0

AND:

Comox Valley Regional District (“CVRD”) - regional government, 770 HARMSTON AVENUE, COURTENAY, B.C., V9N 0G8

AND:

Cumberland Community Forest Society (“CCFS”) - a society registered in British Columbia (Registration No. S-42346), 2715 DUNSMUIR AVE., BOX 1239, CUMBERLAND, B.C., V0R-1S0

AND:

Comox Valley Land Trust (“CVLT”) - a society registered in British Columbia (Registration No. S-39579), 2356 ROSEWALL CRES., BOX 3462 COURTENAY, B.C., V9N 5N5

COLLECTIVELY:

“The Parties”

WHEREAS:

- A. A parcel of land (portion of DL 24) was identified by the parties as part of an imminent harvesting plan by Hancock Timber Resource Group (on behalf of Comox Timber) in March of 2021.
- B. The parcel identified by the parties as part of imminent harvesting plans is directly adjacent to other privately owned parcels previously identified as of interest to the parties.
- C. Additional municipal and regional-owned lands have direct adjacency to the private lands of interest described in A and B, including lands of importance to and legal interest of the CVRD (Coal Beach, Perseverance Creek, Cumberland Community Forest), Cumberland (Coal Creek Historic Park, Cumberland Community Forest Park), CVLT (Cumberland Community Forest Park), CCFS (Cumberland Community Forest Park).

COLLECTIVELY:

The lands described in A, B and C form the “Lands” (approximately set out in Schedule A.)

LOWER PERSEVERANCE PROJECT

- D. The Lands have been identified as a priority for protection by both the CCFS and CVLT (Land Protection Prioritization Project).
- E. Portions of the Lands have been identified in Village of Cumberland's Parks and Greenways Master Plan (Village of Cumberland, 2014).
- F. The Lands contains significant ecological values, including flora, fauna, and natural features, of great importance to the CCFS, CVLT, Cumberland, and CVRD.
- G. The Lands contains fish habitat importance to the CCFS and CVLT (Ballin et al 2017, Ballin et al 2019), including opportunities for future fish habitat restoration works.
- H. The Lands protects water quality objectives of importance to the CVRD (CVRD, WPP 2016).
- I. The Lands contains significant cultural and heritage values of importance to Cumberland and CCFS (Village of Cumberland 2014, 2016).
- J. The Lands contain archeological values identified by the CVRD (Morin et al, 2020).
- K. The Lands contain recreation values identified by Cumberland (Village of Cumberland, 2014) and the CCFS and is adjacent to lands currently part of a land use planning process under the leadership of CVRD (Coal Beach Planning Process).
- L. The CCFS has entered a process with the owner of the section of DL 24 subject to imminent harvesting to suspend current harvesting plans and operations and negotiate a purchase agreement, including determination of parcel boundaries, valuation, and timelines: and
- M. Time is of the essence with respect to current negotiations to secure a valuation and to ensure the continued deferral of harvest.

NOW THEREFORE, the Parties agree as follows:

1. **Scope of Activities:** The Parties will collaboratively work together to:
 - a. Participate in planning meetings lead by the CCFS to support project activities.
 - b. Confirm interests related to property boundaries.
 - c. Confirm financial or in-kind contributions toward the purchase project.
 - d. Identify funding opportunities toward the purchase and associated costs and provide support for funding applications as applicable.
 - e. Identify options for ownership and management scenarios that will ensure the protection of the Lands in perpetuity.
2. **Confidentiality:** Each party shall:
 - (a) keep all information relating to this MOU and the purchase of the Land (the "Confidential Information") confidential; and

LOWER PERSEVERANCE PROJECT

(b) subject to section 6 (Press Releases), not disclose the Confidential Information.

except, in each case with the written consent of the other Parties or as may be required by law.

3. **Media:** None of the parties shall communicate with any news media or issue any press release or other non-confidential communication with respect to this MOU, without receiving prior written permission from the other parties to do so. Neither party shall include any references to the other party or its affiliates, including without limitation any names, trademarks, logos or other visual identity indicators of the other parties or its affiliates, or to this MOU, in any non-confidential communication, including without limitation any advertisement or promotion of any kind whatsoever without the prior written consent of the other party that is being so referenced.
4. **Fund Raising:** The Cumberland Community Forest Society is currently leading the public and grant fund development for the Lower Perseverance Creek project with the support of the parties. To avoid overlap, none of the other parties shall raise capital / acquisition funds for the Lower Perseverance Creek project without informing the CCFS or until a purchase agreement has been formally assigned to a party other than the CCFS.
5. **Contacts:**
 Village of Cumberland – Kevin McPhedran, Manager of Parks and Recreation
 Cumberland Community Forest Society – Meaghan Cursons, Executive Director
 Comox Valley Land Trust – Tim Ennis, Executive Director
 Comox Valley Regional District - TBD
6. **Confidentiality and Press Releases Only Legally Binding Provisions:** This MoU is intended only to provide a common starting point in delineating the issues to be addressed by the Parties in connection with the Lands. Other than the Confidentiality and Press Releases sections, this MoU is not intended to create any binding legal obligations between the Parties.

REFERENCES

Ballin, Wright, Ashcroft, and Lacroix, 2017 Riparian and Wetland Prioritization in the Puntledge Watershed FWCP COA-F17-W-1253,

Ballin et al, 2019, CCFS Perseverance Creek Fish Habitat and PFC Assessment

Comox Lake Watershed Protection Plan (WPP), CVRD, 2016

Morin et al 2020, Comox Lake East AOA

Village of Cumberland Parks and Greenways Master Plan Bylaw 998, 2014

Village of Cumberland, Heritage Management Plan 2016

LOWER PERSEVERANCE PROJECT

The Village of Cumberland, by its authorized signatories:

The Comox Valley Regional District, by its authorized signatories:

Cumberland Community Forest Society, by its authorized signatories:

Comox Valley Land Trust, by its authorized signatories:

LOWER PERSEVERANCE PROJECT

SCHEDULE A - THE LAND (maps are for discussion and do not represent agreement with the owner)

- This map is currently being updated to include the portions of the land east of Coal Beach and adjacent the ROW

