

DATE: September 13, 2021**FILE:** 6130-01**TO:** Chair and Directors
Electoral Area Services CommitteeSupported by James Warren
Deputy Chief Administrative
Officer**FROM:** James Warren
Deputy Chief Administrative Officer*J. Warren***RE: Arden Road – Boundary Discrepancy**

Purpose

To provide information regarding a boundary discrepancy that was identified along Arden Road between the Comox Valley Regional District (CVRD) and the City of Courtenay.

Recommendation from the Chief Administrative Officer:

This report is presented for information only.

Executive Summary

Historically, the City of Courtenay has maintained a trail within the unopened portion of the Arden Road dedication adjacent to Masters Greenway. This trail connects to the city's Rotary Riverside Trail infrastructure which runs along the Puntledge River to 1st Street. In 2019, the City of Courtenay identified a possible boundary discrepancy that would place the trail within the CVRD.

- CVRD mapping showed the westerly boundary of the Arden Road dedication as the city boundary while the City of Courtenay mapping showed it to be the easterly boundary of Arden Road. The Province was engaged to review and clarify the legal boundaries.
- The Province produced a memorandum that identified historical mapping inconsistencies and recommends an adjustment to the boundary between Courtenay and Puntledge – Black Creek (Electoral Area C) adjacent to Masters Greenway.
- The Province recommends that the easterly boundary of the unopened Arden Road dedication be the boundary thereby placing this 260 metres of trail in the CVRD. The City supports this decision and has no objections to the CVRD taking over maintenance of the trail.
- The CVRD will work with the Ministry of Transportation and Infrastructure to obtain a permit to manage and maintain the trail located within the Arden Road dedication in conjunction with the Masters Greenway trail network.

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Stakeholder Distribution (Upon Agenda Publication)

Ministry of Municipal Affairs (MUNI)	✓
City of Courtenay	✓

Attachments: Appendix A – Memorandum - CVRD Boundary Redefinition - Arden Road
Appendix B – Location Map of Arden Road Dedication

July 28, 2021

Russell Dyson, CAO
Brian Allaert, Parks Technician

Comox Valley Regional District

Re: CVRD Boundary Redefinition – Arden Road

Comox Valley Regional District (CVRD) reached out to the Ministry of Municipal Affairs (MUNI) in November 2020, to identify whether a parcel of land belonged to the CVRD or the City of Courtenay (City), as both the CVRD and the City had conflicting mapping. CVRD maps showed that the land belonged to the City, while City mapping showed that the land belonged to the CVRD. This memo will provide a background summary of the issue, and a recommendation for next steps.

1. Background

The portion of land in question is an extension of Arden Road northwest of 1st Street nearing the Puntledge River. This undeveloped road right of way (ROW), located between VIP60328 (City) and VIP64357 (CVRD) (see **Figure 1**), forms part of the Ruth Masters Greenway Park located in the CVRD, Electoral Area C (EA-C). There is a trail that runs through the ROW that connects to other trails throughout Ruth Masters Greenway Park. This trail has historically been maintained by the City, with the remainder of trails throughout the Park maintained by the CVRD.

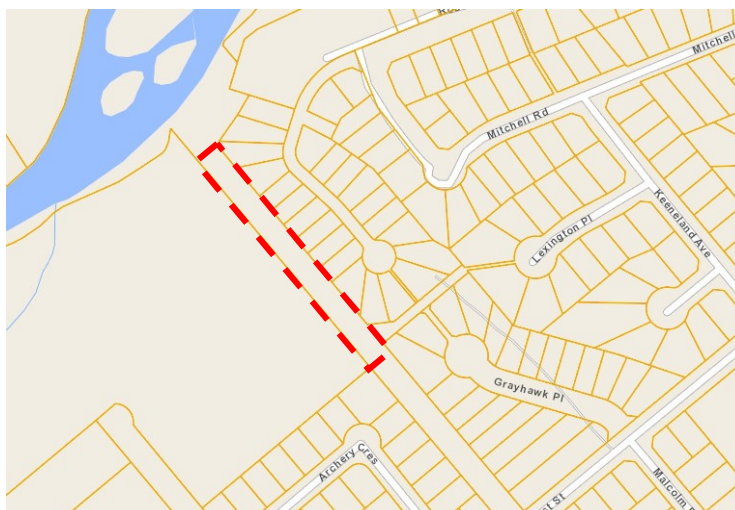


Figure 1: ROW Location

Historically, the boundaries of both the CVRD and the City ran down the centreline of the Arden Road ROW, meaning half of the land belonged to the CVRD and half to the City. Order in Council (OIC) Number 1405/1995 shows that 0.5 Chains (10m) of the Arden Road ROW was included as part of Lot

118 (City land to the east of Arden Road). The remaining 0.5 Chains was included as part of Lot 155 (CVRD land to the west of Arden Road) as shown in **Figure 2**.

OIC 1405/1995 described the metes and bounds for this area as follows:

*NOW KNOW YE THAT by these presents We do order and proclaim that the area of The Corporation of the City of Courtenay be extended by the inclusion therein of the land hereinbefore described and that on, from and after the date of these Supplementary Letters Patent, the boundary of The Corporation of the City of Courtenay be defined as follows:
Commencing at the most westerly corner of Lot 118, Comox Land District, being a point on the right bank of Puntledge River; thence southeasterly along the southwesterly boundary of said Lot 118.*

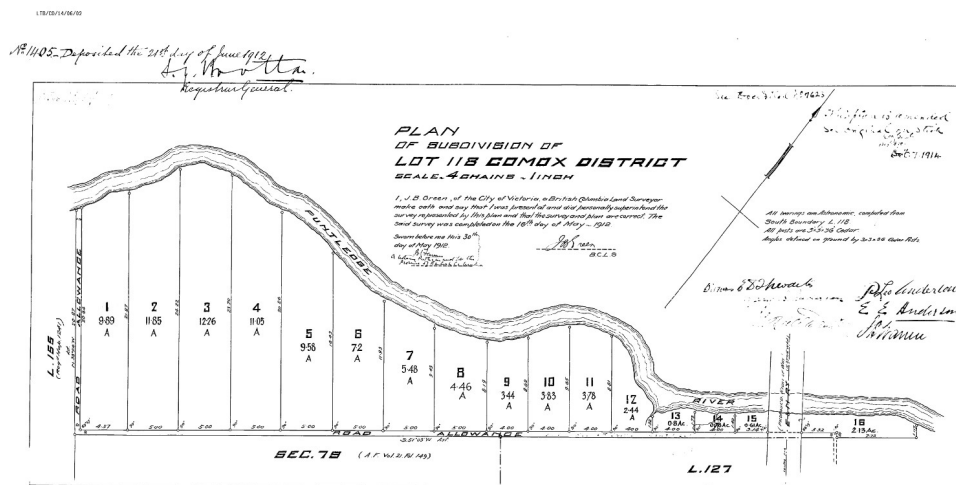


Figure 2: OIC 1405/1995 showing Arden Road ROW along western boundary

2. Mapping Inconsistency

Despite this, current CVRD and City maps do not reflect this historical understanding of where the boundary lies. The point of commencement on the most recent City boundary map (OIC 114/2019) is misaligned, where the boundary line along Arden Road is shown as running along the eastern side of Arden Road (see Error! Reference source not found.) and not down the centreline.

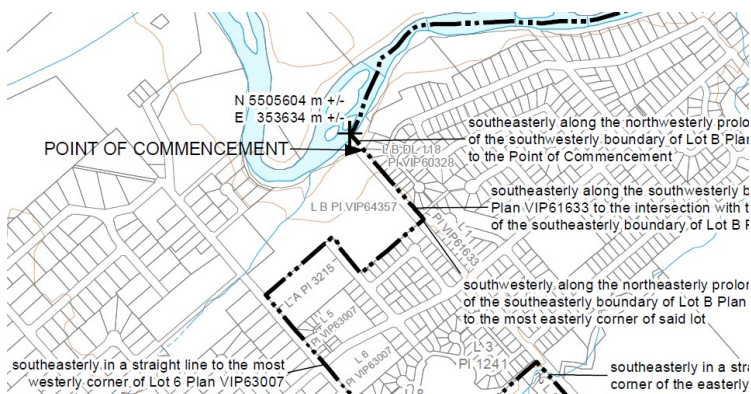


Figure 3: OIC 0114/2019

As such, previous OIC's related to municipal boundary changes need to be examined to identify where the discrepancy came from.

Legal boundaries have historically been described through metes and bounds. In 2011, it became common practice to create maps as part of the municipal boundary extension process and letters patent would refer to these maps as the legal boundary, rather than through a full written description of the boundary. In each new letters patent, the OIC would repeal all previous boundaries when establishing the current map as the legal boundary. For example, in the body of the most recent OIC (0114/2019), it stated that,

All previous boundaries of The Corporation of the City of Courtenay set out in Letters Patent are repealed.

Since roughly 2015, whenever there is a municipal boundary extension, letters patent have also been issued for a regional district concurrently, including a new map that restates the affected electoral area boundary. Previously, reduction of the boundaries of an electoral area were implied by the extension of a municipality to include the area specified in the municipal letters patent.

The last statement of the EA-C boundary is found in the 2008 CVRD incorporating letters patent issued under OIC 59/2008. The City boundary has only been amended on four occasions (67/2012, 141/2013, 593/2013, and 114/2019) since the adoption of maps was introduced to legally define the boundaries of municipalities, and only one of these resulted in a reduction of EA-C. One parcel from EA-C was added to the City's boundary by OIC 141/2013, along with several properties located in EA-B, however this was before maps were also issued to regional districts. This map however seems to follow the historical boundary between the CVRD and the City along Arden Road (see **Figure 4**).

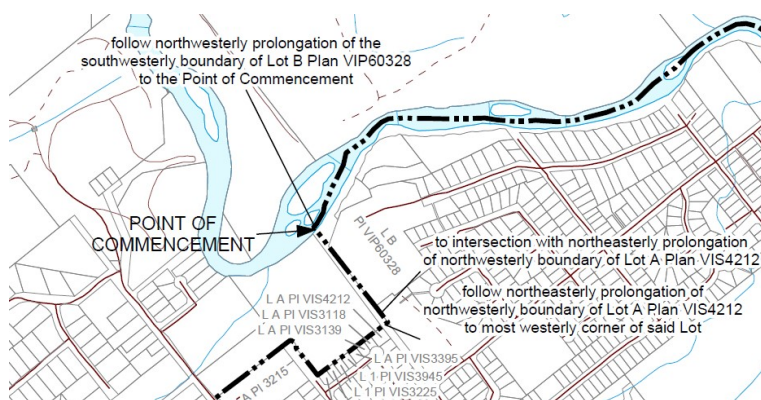


Figure 4: OIC 141/2013

As for the other maps, OIC 67/2012 and OIC 593/2013 reduced the boundaries of EA-B and OIC 114/2019 was a boundary redefinition that did not reduce any of the CVRD's EAs, and as such, no map was issued for EA-C in 2019 as this affected an unrelated element of the City boundary.

When reviewing these previous maps to identify when the boundary changed along Arden Road, the first instance is seen in OIC 593/2013. Although this OIC was intended to reduce the size of EA-B, this mapping error inadvertently reduced the size of the City of Courtenay along Arden Road. This mapping error remained when the most recent map (OIC 114/2019) was issued.

Given that all previous mapping and legal descriptions are repealed with each successive OIC, Arden Road is no longer located within the boundaries of the City of Courtenay.

3. Implications

When the mapping error was made as part of OIC 593/2013, the Arden Road ROW switched from being within the City, to being within the CVRD, despite the fact that the Arden Road ROW is not shown as being within the boundaries of the City, or the boundaries of EA-C of the CVRD based on the available mapping. The land however, is still technically located within the boundaries of the CVRD; it is just not shown as being within the boundaries of or assigned to any of the CVRD's Electoral Areas. This creates an issue in relation to maintaining the trail running through this ROW (see **Figure 5**).



Figure 5: CVRD map showing trails located outside CVRD EA-C boundary

Previously, the City was responsible for maintaining the trail. Municipalities have jurisdiction over road ROW's and as such were able to maintain any City assets located on that land. When the Arden Road ROW switched to being outside the City, the ROW became the jurisdiction of the Ministry of Transport and Infrastructure (MOTI), as all roadways within a Regional District fall under the jurisdiction of MOTI. This includes the Arden Road ROW. As such, the CVRD is not in a position to maintain the trails within this area, unless it obtains a Landscaping Trails Permit from MOTI. This can be applied for at any time even under the current circumstances, as the land is technically located in the CVRD.

4. Recommended Solution

Based on discussions with City staff, the City would be reluctant to move the boundary as currently shown in OIC 0114/2019, citing maintenance responsibility issues as the primary reason. Given this, and the fact that the land is currently located within the CVRD, MUNI recommends a boundary redefinition for EA-C of the CVRD. While Section 42 of the *Local Government Act* (Act) speaks to changing the boundaries of a regional district, the Arden Road ROW is technically already included within the CVRD. As such, MUNI will use the authority granted in Section 41 of the Act to amend the boundaries of EA-C.

Section 41 of the Act states what must be included in a regional district's Letters Patent. Specifically, section 41 (2) of the Act says that a regional district letters patent must include the boundaries of each electoral area. Section 41 (4) (d) of the Act says,

On the recommendation of the minister, the Lieutenant Governor in Council may, by letters patent, do one or more of the following: ... (d) redefine the boundaries of an electoral area, establish a further electoral area or eliminate an existing electoral area.

Please note that this will not require a Board decision as the authority to amend the boundaries lies with Cabinet.

This solution is recommended for the following reasons:



- The new boundary line does not run down the centreline of a ROW, something the Province no longer encourages.
- The Ruth Masters Greenway Park is predominantly operated and maintained by the CVRD. Extending the boundary of EA-C to include the remainder of the park is logical.
- The CVRD will be able to maintain all of the trails within the Ruth Masters Greenway Park, once it has obtained a Landscaping Trails Permit from MOTI, which will allow the CVRD to maintain the trail within the ROW.
- While the Ruth Masters Greenway Park is identified as being within a settlement expansion area in the CVRD Growth Strategy, meaning there is a possibility that the City may extend its boundaries to include this area, this is unlikely to happen any time in the near future, especially given that the City does not want to maintain the trails in the Arden Road ROW.

Should you require any further clarification regarding this matter, feel free to reach out to Gareth Mogg, program analyst, by calling (236) 478-3553 or emailing LGGovernance@gov.bc.ca. If you agree with the process outlined above and the recommended solution, then MUNI will proceed with moving forward with the OIC process and the creation of a new map for EA-C.

Marijke Edmondson
Director Governance Structure



Legend

-  Arden Road Dedication
-  Administrative Boundary

