

CORPORATION OF THE TOWNSHIP OF ESQUIMALT

BYLAW NO. 2248

A Bylaw to close a portion of Fleming Park to public use.

WHEREAS the Corporation of the Township of Esquimalt (the "Township") owns land described as Lot 7, Section 11, Esquimalt District, Plan 6644, which is held and reserved for public park and recreation purposes and is known as Fleming Park;

AND WHEREAS the Corporation of the Township holds a licence for municipal park, recreational and historic interest purposes over land owned by Her Majesty the Queen in Right of Canada and held by the Township under Licence No. 7821-M10-E0001 (the "Licence Area");

AND WHEREAS the Municipal Council of the Township believes that portions of Fleming Park and the Licence Area are unsuitable for unrestricted public use due to the presence of a steep rock face on those portions;

NOW THEREFORE THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF ESQUIMALT, in open meeting assembled, enacts as follows:

1. That portion of Fleming Park and the Licence Area shown outlined in black and cross-hatched on the plan attached as Schedule "A" to this bylaw (the "Closed Area") is closed to public use and no person shall enter the Closed Area at any time.
2. Notwithstanding Section 1 of this bylaw, the Closed Area is open to public use for the purposes of rock climbing only, provided each user executes and delivers to the Township a release, indemnity and waiver of liability in one of the forms attached as Schedule "B", "C" or "D" to this bylaw, before entering the Closed Area.
3. Notwithstanding Section 1 of this bylaw, peace officers and the employees, contractors or agents of the Township may enter the Closed Area for the purpose of inspecting, maintaining or improving the land within the Closed Area, or enforcing this bylaw.

4. Fees for admission to the Closed Area shall be established as set out on Schedule "E" to this bylaw and shall be paid to the Township before entering the Closed Area.
5. Any person who contravenes this bylaw commits an offence and is subject to a fine not less than \$100.00 and not exceeding \$2,000.00.
6. This Bylaw shall come into force and have effect on and from the first day of January, 1997.
7. This bylaw may be cited as "FLEMING PARK ROCK FACE BYLAW, 1996, NO. 2248."

Read a first time by the Municipal Council on June 10, 1996.

Read a second time by the Municipal Council on October 21, 1996.

Second reading reconsidered and amended on October 21, 1996.

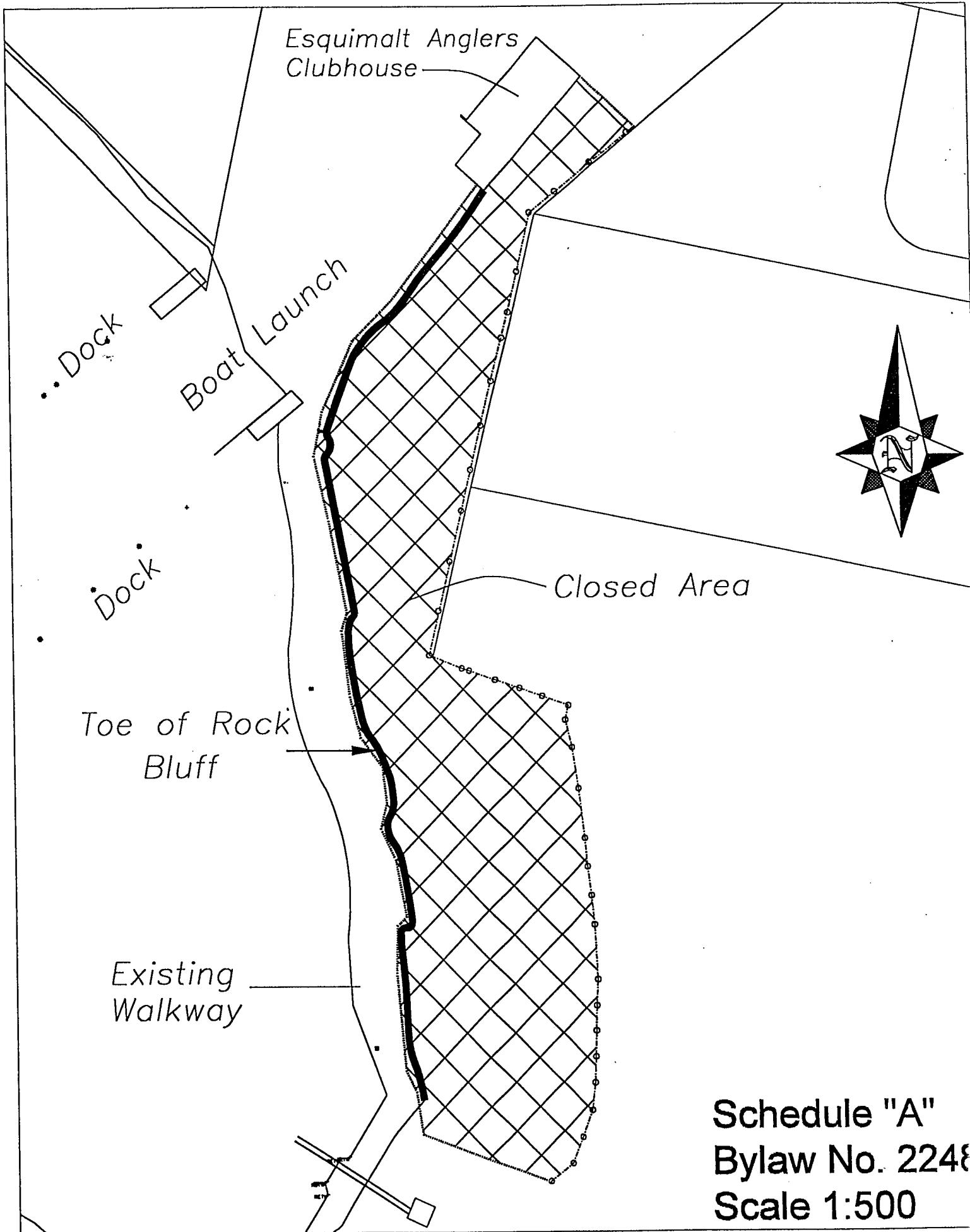
Read a third time by the Municipal Council on October 21, 1996.

ADOPTED by the Municipal Council on October 28, 1996.



C. J. E. CLEMENT
MAYOR

R. SERIGHT
MUNICIPAL CLERK



Schedule "A"
Bylaw No. 2248
Scale 1:500

RELEASE, INDEMNITY AND WAIVER OF LIABILITY

IMPORTANT NOTICE. THIS IS A LEGALLY BINDING AGREEMENT. IT
AFFECTS YOUR LEGAL RIGHTS. READ IT VERY CAREFULLY BEFORE
SIGNING IT. BY SIGNING IT, YOU GIVE UP CERTAIN LEGAL RIGHTS.
CONSULT A LAWYER IF YOU HAVE ANY QUESTIONS.

This document refers to the person named below as a Participant and the Corporation of the Township of Esquimalt and Her Majesty the Queen in the Right of Canada, represented by the Minister of National Defence (hereinafter collectively referred to as the "Land Owners").

NAME OF PARTICIPANT:

In consideration of the Participant being permitted to participate in the activity of Rock Climbing on the Fleming Beach Rock Face, located in the Municipality, ON AND AFTER THE DATE OF EXECUTION OF THIS AGREEMENT (the "Activity")

1. The Participant fully understands that
 - (a) rock climbing is a very dangerous sport and participation in the Activity involves risks and other dangers of serious bodily injury, including permanent disability, paralysis or death ("Risks");
 - (b) the Risks may be caused by the Participants' own actions, or inactions, the actions or inactions of others participating in the Activity, the rules of the Activity, the condition and layout of the premises and equipment, or the negligence of the Land Owners;
 - (c) there may be other risks not known to the Participant or that are not foreseeable at this time;
 - (d) the physical and economic losses or damages that could result from the Risks and other risks could be severe and could permanently change the Participants' future.
2. The Participant accepts and assumes the Risks and other risks, known and unknown, and assumes all responsibility for the losses, costs and damages from personal injury or death, even if caused, in whole or in part, directly or indirectly by the negligence of the Land Owners or others.
3.
 - a) The Participant jointly and severally irrevocably releases the Land Owners from any legal liability or other legal obligation the Land Owners may have to any or all of them in connection with participation by the Participant in any rock climbing on the Fleming Beach Rock Face. The Participant agrees that any right he/she might have to sue the Land Owners, to be paid damages by the Land Owners or to be compensated or protected by the Land Owners is given up forever. This applies to:
 - i) any personal injury or death suffered by the Participant,
 - ii) any property damage or loss suffered by the Participant, and
 - iii) any other damage, loss or expense of any kind suffered or incurred by the Participant.
 - b) Specifically, the Participant irrevocably waives (and agrees not to claim or start or participate in any court action regarding) any action, cause of action, right, claim, liability, loss, expense or damage he/she might have against the Land Owners in connection with any personal injury, death, property damage or loss or any other kind of damage, loss or expense of any kind suffered or incurred by the Participant.
4. Either now or in the future, the Participant jointly and severally indemnifies and holds harmless the Land Owners, their elected officials and employees from and against everything described in paragraph 3 a). If, despite this release, the Participant or anyone on the Participant's behalf makes a claim against the Land Owners, the Participants agree to indemnify and save and hold harmless the Land Owners from any litigation expenses, legal fees, loss, liability, damage, or cost they may incur due to the claim made against the Land Owners, whether the claim is based on the negligence of the Land Owners or otherwise.

INITIAL

**SCHEDULE "B"
BYLAW 2248**

5. The Participant acknowledges that the Land Owners are not a sponsor, organizer, operator or supervisor of any rock climbing event or activity and that the Land Owners have no obligation or liability in connection with any rock climbing-related program, event or activity. This includes transportation to and from any rock climbing or rock climbing-related program, event or activity.
6. The Participant understands that he or she assumes all of the Risks if he or she is injured during the Activity and states the following:
 - (a) I believe, and represent to the Land Owners that I am qualified to participate in the Activity. I will inspect the premises and equipment and if, at any time, I feel anything to be unsafe, I will immediately leave and refuse to participate further in the Activity.
 - (b) I understand that the activities are very dangerous and involve Risks and dangers, including my being seriously injured or hurt, my being paralysed or killed.
 - (c) I know that these Risks and dangers may be caused by my own actions or inactions, the actions or inactions of others participating in the Activity, the rules of the Activity, the condition and layout of the premises and equipment, or the negligence of others and including those persons responsible for conducting the Activity.
 - (d) I accept and assume all such Risks of being hurt or killed, or causing injury or death to others, and want to be allowed to participate in the Activity.
7. This agreement is binding upon the Participant and the Participant's heirs, successors, assigns and personal representatives.
8. The release, waiver and indemnity provisions of this agreement extend to the officers, employees, agents and council members of the Land Owners.

Each person who signs this document agrees to be bound by it as a contract between that person and the Land Owners and as a deed executed and delivered under seal by that person to the Land Owners. This document is effective against anyone signing below as soon as they sign it.

The above terms are agreed to as a contract and as a deed executed and delivered under seal by the following person:

Signed by Participant:

(Legal seal)

Print name here: _____ Phone: _____

Witness: _____

Print Name: _____

Date signed: _____

INITIAL

**SCHEDULE "C"
BYLAW 2248**

RELEASE FROM LIABILITY AND WAIVER OF ALL CLAIMS

WARNING: by signing this document you give up the right to sue

TO: (the "Guiding Agency")

AND: Her Majesty the Queen in the Right of Canada, represented by the Minister of National Defence

AND: Corporation of the Township of Esquimalt (the "Land Owners")

In consideration of the participant being granted permission to enter the lands for the purpose of rock climbing and the "Guiding Agency" accepting my application to participate in the activity of rock climbing (a "Rock Climbing Program") on lands owned by the Land Owners who have agreed to provide permission to enter the land for the purpose of rock climbing. I agree to this release of claims, waiver of liability and assumption of risks.

I waive any and all claims I may have against and release from all liability and agree not to sue the Guiding Agency and his/her/its employees, mountain guides, agents and representatives and the Land Owners and their employees, officers, council members and agents for any personal injury, death, property damage or loss sustained by me as a result of my participation in a Rock Climbing Program with the Guiding Agency or otherwise related to rock climbing on the property of the Land Owners due to any cause whatsoever including, without limitation, negligence on the part of the Guiding Agency or Guiding staff or the Land Owners.

I am aware that rock climbing and participation in a Rock Climbing Program have extreme dangers and risks, some of which include:

1. Terrain - steep slopes in their natural state have many obstacles and extreme hazards, and may not have been regularly examined. Communication may be difficult and rescue and medical treatment may not be immediately available.
2. Avalanches - may occur in terrain used for rock climbing and may be caused by natural forces including steepness of the slopes, by changing weather conditions or by climbers, or failure for any reason of the Guiding Agency or the Guiding Staff to predict when or where avalanches may or may not occur.
3. Weather - weather or weather conditions may be inclement and extreme and can change rapidly without warning.
4. Conduct of the Guiding Agency - the conduct, including negligence, of the Guiding Agency and/or Guiding Staff and the conduct of other wilderness area users, climbers, or skiers.

In entering into this agreement I am not relying on any oral or written representations or statements made by the Guiding Agency or the Guiding Staff or by the Land Owners including those in any brochures to induce me to go on a Rock Climbing Program.

I agree that this Release is to be interpreted pursuant to the laws of the Province of British Columbia, Canada.

I confirm that I am of the full age of nineteen years and that I have read and understood this Agreement prior to signing it and agree that this agreement will be binding upon my heirs, next of kin, executors, administrators and successors.

Dated this _____ day of _____ 19 _____
(Day) (Month) (Year) Address of Participant:

Participant Signature

Signature of Witness

Participant Name

Witness Name

PARENT OR GUARDIAN RELEASE ON BEHALF OF UNDERAGE PARTICIPANT

WARNING: by signing this document you give up the right to sue

TO: (the "Guiding Agency")

AND: Her Majesty the Queen in the Right of Canada, represented by the Minister of National Defence

AND: Corporation of the Township of Esquimalt (the "Land Owners")

In consideration of Slipstream Adventures Ltd. Accepting my son, daughter, or any ward in my care (the "Participant") and my own application on the Participant's behalf and the Participant being permitted to go on a Rock Climbing Program on land owned by the Land Owners who have agreed to provide the Participant permission to enter the land for the purpose of rock climbing, the Participant and I agree to this release of claims, waiver of liability and assumption of risks.

The Participant and I waive any and all claims I may have against and release from all liability and agree not to sue the Guiding Agency and his/her/its employees, mountain guides, agents and representatives (collectively the "Guiding Staff") and the Land Owner and their employees, officers, council members and agents for any personal injury, death, property damage or loss sustained by me as a result of my participation in a Rock Climbing Program or otherwise related to rock climbing on the property of the Land Owners with the Guiding Agency due to any cause whatsoever including, without limitation, negligence on the part of the Guiding Agency or the Guiding Staff or the Land Owners.

I AGREE:

1. TO WAIVE ANY AND ALL CLAIMS that I or the Participant might have against Slipstream Adventures Ltd., its directors, officers, employees, agents, representatives, contractors, and instructors and against any area at which programs may be conducted and the directors, officers, employees, agents and representatives of these areas.
2. TO RELEASE THE RELEASEES from any and all liability for any loss, damage, injury, death or expense that I or the Participant may suffer or that my next of kin may suffer as a result of my participation in the Slipstream Adventures Ltd. Course, due to any cause whatsoever, INCLUDING NEGLIGENCE ON THE PART OF THE RELEASEES;
3. TO HOLD HARMLESS AND INDEMNIFY THE RELEASEES from any and all liability for any loss, damage, injury, death or expense sustained by me, the Participant, or any other third party which in any way arises out of or relates to my participation in the Slipstream Adventures Ltd. Course, due to any cause whatsoever, INCLUDING NEGLIGENCE ON THE PART OF THE RELEASEES.

The Participant and I willingly accept all the risks of rock climbing including without limitation the risks described above and the possibility of personal injury, death, property damage or loss resulting therefrom. The Participant and I acknowledge that the enjoyment and excitement of rock climbing is derived in part from climbing on steep slopes and that the inherent risks of rock climbing contribute to such enjoyment and excitement.

In entering into this agreement the Participant and I are not relying on any oral or written representations or statements made by the Guiding Agency or the Guiding Staff or by the Land Owners including those in any brochures to induce me to allow the Participant to go on a Rock Climbing Program.

The Participant and I agree that this Release is to be interpreted pursuant to the laws of the Province of British Columbia, Canada.

As the Participant, I confirm that I have read and understood this Agreement prior to signing it and agree that this agreement will be binding upon my heirs, next of kin, executors, administrators and successors.

As the Parent or Guardian of the Participant, I confirm that I am the full age of nineteen years, or that I am the legal parent or guardian of the participant, have read and understood this Release prior to signing it and agree that this Release shall be effective and binding upon my heirs, next of kin, executors, administrators and assigns.

Dated this _____ day of _____ 19 _____
(Day) (Month) (Year)

Participant Signature

Signature Parent or Guardian

Signature of Witness

Participant Name

Parent or Guardian Name

Address of Participant

PARENT OR GUARDIAN RELEASE ON BEHALF OF UNDERAGE PARTICIPANT

WARNING: by signing this document you give up the right to sue

TO:

(the "Guiding Agency")

AND: Her Majesty the Queen in the Right of Canada, represented by the Minister of National Defence

AND: Corporation of the Township of Esquimalt

(the "Land Owners")

In consideration of Accepting my son, daughter, or any ward in my care (the "Participant") and my own application on the Participant's behalf and the Participant being permitted to go on a Rock Climbing Program on land owned by the Land Owners who have agreed to provide the Participant permission to enter the land for the purpose of rock climbing, the Participant and I agree to this release of claims, waiver of liability and assumption of risks.

The Participant and I waive any and all claims I may have against and release from all liability and agree not to sue the Guiding Agency and his/her/its employees, mountain guides, agents and representatives (collectively the "Guiding Staff") and the Land Owner and their employees, officers, council members and agents for any personal injury, death, property damage or loss sustained by me as a result of my participation in a Rock Climbing Program or otherwise related to rock climbing on the property of the Land Owners with the Guiding Agency due to any cause whatsoever including, without limitation, negligence on the part of the Guiding Agency or the Guiding Staff or the Land Owners.

I AGREE:

1. TO WAIVE ANY AND ALL CLAIMS that I or the Participant might have against , its directors, officers, employees, agents, representatives, contractors, and instructors and against any area at which programs may be conducted and the directors, officers, employees, agents and representatives of these areas.
2. TO RELEASE THE RELEASEEES from any and all liability for any loss, damage, injury, death or expense that I or the Participant may suffer or that my next of kin may suffer as a result of my participation in the Course, due to any cause whatsoever, INCLUDING NEGLIGENCE ON THE PART OF THE RELEASEEES;
3. TO HOLD HARMLESS AND INDEMNIFY THE RELEASEEES from any and all liability for any loss, damage, injury, death or expense sustained by me, the Participant, or any other third party which in any way arises out of or relates to my participation in the Course, due to any cause whatsoever, INCLUDING NEGLIGENCE ON THE PART OF THE RELEASEEES.

The Participant and I willingly accept all the risks of rock climbing including without limitation the risks described above and the possibility of personal injury, death, property damage or loss resulting therefrom. The Participant and I acknowledge that the enjoyment and excitement of rock climbing is derived in part from climbing on steep slopes and that the inherent risks of rock climbing contribute to such enjoyment and excitement.

In entering into this agreement the Participant and I are not relying on any oral or written representations or statements made by the Guiding Agency or the Guiding Staff or by the Land Owners including those in any brochures to induce me to allow the Participant to go on a Rock Climbing Program.

The Participant and I agree that this Release is to be interpreted pursuant to the laws of the Province of British Columbia, Canada.

As the Participant, I confirm that I have read and understood this Agreement prior to signing it and agree that this agreement will be binding upon my heirs, next of kin, executors, administrators and successors.

As the Parent or Guardian of the Participant, I confirm that I am the full age of nineteen years, or that I am the legal parent or guardian of the participant, have read and understood this Release prior to signing it and agree that this Release shall be effective and binding upon my heirs, next of kin, executors, administrators and assigns.

Dated this _____ day of _____ 19 _____
(Day) (Month) (Year)

Participant Signature

Signature Parent or Guardian

Signature of Witness

Participant Name

Parent or Guardian Name

Address of Participant

“SCHEDULE “E”

BYLAW NO. 2248

FEES FOR ADMISSION TO THE FLEMING BEACH CLOSED AREA

\$20.00 per calendar year (January 1 - December 31) for members of the Greater Victoria Climbers' Association. If fee paid after July 1 the fee will be reduced to **\$10.00** for the remainder of the year.

\$50.00 per calendar year (January 1 - December 31) for non-members of the Greater Victoria Climbers' Association. If fee paid after July 1 the fee will be reduced to **\$25.00** for the remainder of the year.

\$10.00 for casual users for admission for one week.

\$10.00 per program for Youth Group under the direction of a qualified Rock Climbing Instructor.

Note:

1. Casual users would be those individuals under the supervision of a Rock Climbing Instruction School while participating in a Rock Climbing Program.
2. Casual users would cover out-of-town users or tourists.
3. Youth groups will be required to make arrangements with the Parks and Recreation Services Department prior to entering the Closed Area.
4. All fees are subject to applicable taxes.

File: By law # 2248

June 11, 1997

To: Deputy Director, Parks and Recreation Services
From: Municipal Clerk
Subject: Fleming Beach - Rock Climbing

Tom Benson the owner of Slipstream Adventures Ltd. came by my office to discuss climbing at Fleming Beach. He voice some concern as we have been using a Waiver for Underage Participants that has his company name throughout. At his request I have removed his company name from the Underage Participant Waiver Form.

Please note the places where "Slipstrem Adventures" has been removed from the form. If we have occasion to use this form the name of a Guiding Agency will have to be inserted at these locations as well as at the top of the form.

Please pass this information along to yves at the Recreation Centre.

Thanks



Bob Seright

PARENT OR GUARDIAN RELEASE ON BEHALF OF UNDERAGE PARTICIPANT

WARNING: by signing this document you give up the right to sue

TO:

(the "Guiding Agency")

AND: Her Majesty the Queen in the Right of Canada, represented by the Minister of National Defence

AND: Corporation of the Township of Esquimalt

(the "Land Owners")

In consideration of [REDACTED] Accepting my son, daughter, or any ward in my care (the "Participant") and my own application on the Participant's behalf and the Participant being permitted to go on a Rock Climbing Program on land owned by the Land Owners who have agreed to provide the Participant permission to enter the land for the purpose of rock climbing, the Participant and I agree to this release of claims, waiver of liability and assumption of risks.

The Participant and I waive any and all claims I may have against and release from all liability and agree not to sue the Guiding Agency and his/her/its employees, mountain guides, agents and representatives (collectively the "Guiding Staff") and the Land Owner and their employees, officers, council members and agents for any personal injury, death, property damage or loss sustained by me as a result of my participation in a Rock Climbing Program or otherwise related to rock climbing on the property of the Land Owners with the Guiding Agency due to any cause whatsoever including, without limitation, negligence on the part of the Guiding Agency or the Guiding Staff or the Land Owners.

I AGREE:

1. TO WAIVE ANY AND ALL CLAIMS that I or the Participant might have against [REDACTED], its directors, officers, employees, agents, representatives, contractors, and instructors and against any area at which programs may be conducted and the directors, officers, employees, agents and representatives of these areas.
2. TO RELEASE THE RELEASEES from any and all liability for any loss, damage, injury, death or expense that I or the Participant may suffer or that my next of kin may suffer as a result of my participation in the [REDACTED] Course, due to any cause whatsoever, INCLUDING NEGLIGENCE ON THE PART OF THE RELEASEES;
3. TO HOLD HARMLESS AND INDEMNIFY THE RELEASEES from any and all liability for any loss, damage, injury, death or expense sustained by me, the Participant, or any other third party which in any way arises out of or relates to my participation in the [REDACTED] Course, due to any cause whatsoever, INCLUDING NEGLIGENCE ON THE PART OF THE RELEASEES.

The Participant and I willingly accept all the risks of rock climbing including without limitation the risks described above and the possibility of personal injury, death, property damage or loss resulting therefrom. The Participant and I acknowledge that the enjoyment and excitement of rock climbing is derived in part from climbing on steep slopes and that the inherent risks of rock climbing contribute to such enjoyment and excitement.

In entering into this agreement the Participant and I are not relying on any oral or written representations or statements made by the Guiding Agency or the Guiding Staff or by the Land Owners including those in any brochures to induce me to allow the Participant to go on a Rock Climbing Program.

The Participant and I agree that this Release is to be interpreted pursuant to the laws of the Province of British Columbia, Canada.

As the Participant, I confirm that I have read and understood this Agreement prior to signing it and agree that this agreement will be binding upon my heirs, next of kin, executors, administrators and successors.

As the Parent or Guardian of the Participant, I confirm that I am the full age of nineteen years, or that I am the legal parent or guardian of the participant, have read and understood this Release prior to signing it and agree that this Release shall be effective and binding upon my heirs, next of kin, executors, administrators and assigns.

Dated this _____ day of _____ 19 _____
(Day) (Month) (Year)

Participant Signature

Signature Parent or Guardian

Signature of Witness

Participant Name

Parent or Guardian Name

Address of Participant