

Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 1996 c.250, and that you have applied your electronic signature in accordance with Section 168.3, and a true copy, or a copy of that true copy, is in your possession.



1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)

STEWART McDANNOLD STUART
BARRISTERS & SOLICITORS
2nd FLOOR - 837 BURDETT AVENUE
VICTORIA BC V8W 1B3

Tel.: 250 380-7744 Fax.: 250 380-3008

File No.: 111 1529A CS-slw

Deduct LTSA Fees? Yes ☒

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:
[PID] [LEGAL DESCRIPTION]

SEE SCHEDULE

STC? YES ☐

3. NATURE OF INTEREST CHARGE NO. ADDITIONAL INFORMATION
SEE SCHEDULE

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

(a) ☐ Filed Standard Charge Terms D.F. No.

(b) ☒ Express Charge Terms Annexed as Part 2

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument.

5. TRANSFEROR(S):

CAPITAL REGIONAL DISTRICT

6. TRANSFEREE(S): (including postal address(es) and postal code(s))

THE CORPORATION OF THE TOWNSHIP OF ESQUIMALT

1229 ESQUIMALT ROAD

VICTORIA

BRITISH COLUMBIA

V9A 3P1

CANADA

7. ADDITIONAL OR MODIFIED TERMS:
N/A

8. EXECUTION(S): This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)

S. Henderson

Stephen Henderson
Capital Regional District
625 Flegard St., Victoria, BC V8W 1R7
A Commissioner for taking Affidavits
in the Province of British Columbia

Execution Date

Y	M	D
2014	02	21

Transferor(s) Signature(s)

CAPITAL REGIONAL DISTRICT, by
its authorized signatory(ies):

Alastair Bryson

Name: *Alastair Bryson*
CRD Board Chair

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.

Officer Signature(s)

Execution Date

Y

M

D

Transferor / Borrower / Party Signature(s)

THE CORPORATION OF THE
TOWNSHIP OF ESQUIMALT, by its
authorized signatory(ies):

Name:

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.

LAND TITLE ACT
FORM E

SCHEDULE

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND

STC for each PID listed below? YES ☐

[PID]	[LEGAL DESCRIPTION – must fit in a single text line]
000-336-491	LOT A, SECTION 11, ESQUIMALT DISTRICT, PLAN 35322
000-336-505	LOT B, SECTION 11, ESQUIMALT DISTRICT, PLAN 35322
000-336-513	LOT C, SECTION 11, ESQUIMALT DISTRICT, PLAN 35322
000-336-521	LOT D, SECTION 11, ESQUIMALT DISTRICT, PLAN 35322
000-336-530	LOT E, SECTION 11, ESQUIMALT DISTRICT, PLAN 35322
029-168-970	LOT 1 OF THE BED OF THE VICTORIA HARBOUR, ESQUIMALT DISTRICT, PLAN VIP87823
029-168-988	LOT 2 OF THE BED OF THE VICTORIA HARBOUR, ESQUIMALT DISTRICT, PLAN VIP87823

LAND TITLE ACT
FORM E

SCHEDULE

PAGE 4 OF 12 PAGES

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Covenant

Entire document

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

TERMS OF INSTRUMENT – PART 2

RECITALS

- A. The Transferor is the registered owner in fee-simple of those lands described in Item #2 of Form C, in the Township of Esquimalt in Province of British Columbia, namely (the "**Lands**").
- B. The Transferee is the Township of Esquimalt ("**Transferee**" or "**Township**").
- C. The Transferor has submitted an application to the Township to rezone the Lands to permit a wastewater treatment plant to service the Capital Regional District and for other uses, further to Zoning Bylaw, 1992, No. 2050, Amendment Bylaw [No. 208], 2013 No. 2805 (the "**Rezoning Bylaw**") and has made certain representations regarding anticipated setbacks from the high water mark despite requesting less stringent provisions be included in the Rezoning Bylaw to accommodate the designs of three (3) competing proponents.
- D. Acknowledging that it is in the public interest that the location of the development of the Lands be limited, the Transferor has volunteered and wishes to grant this covenant to the Transferee, and the Transferee has accepted this covenant and required its registration as a condition of rezoning (the "**Agreement**").
- E. Section 219 of the *Land Title Act* gives authority for a covenant and indemnity, whether of a negative or positive nature, to be registered against the Lands and granted in favour of the Transferee with provisions:
 - in respect of the use of land or the use of a building on or to be erected on land;
 - that land is to be built on in accordance with the covenant;
 - that land is not to be built on or subdivided except in accordance with the covenant;
 - that land is not to be used, built on or subdivided;
 - that parcels of land designated in the covenant and registered under one or more indefeasible titles are not to be sold or otherwise transferred separately; and
 - that land or a specified amenity in relation to it be protected, preserved, conserved, maintained, enhanced, restored or kept in its natural or existing state in accordance with the covenant and to the extent provided in the covenant..

NOW THEREFORE in consideration of the payment of the sum of \$10.00 by the Transferee to the Transferor (receipt and sufficiency acknowledged), the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the parties covenant and agree as to the following, including under Section 219 of the *Land Title Act*:

Restrictions and Requirements

1. Notwithstanding broader or greater uses, density or other regulations in the Transferee's Zoning Bylaw, and in particular less stringent setbacks and height regulations, the Transferor covenants and agrees that a Building must not be built upon the Lands in a manner that encroaches within a 7.5 metre setback from the High Water Mark for the entirety of the Lands, except:

- (a) only to the extent that a Building related to a wastewater treatment plant encroaches into the covenant areas as shown on one, and only one, of Plan EPP38150, Plan EPP38151, or Plan EPP38152, as follows:
- (i) The areas shown in thick black outline and labelled:
 - 1. Covenant Part Lot A (Area 0.4 m²), and
 - 2. Covenant Part Lot E (Area 4.3 m²),
 both as shown on reference Plan EPP38150 (Control Number 139-119-4903) prepared by Rory O'Connell and dated January 31, 2014, a reduced copy of which is attached as Schedule "A"; or
 - (ii) The areas shown in thick black outline and labelled:
 - 1. Covenant Area A Part Lot C (Area 58.6 m²),
 - 2. Covenant Area B Part Lot E (Area 5.0 m²),
 - 3. Covenant Area C Part Lot E (Area 29.0 m²), and
 - 4. Covenant Area D Part Lot E (Area 27.7 m²),
 all as shown on reference Plan EPP38151 (Control Number 139-119-5049) prepared by Rory O'Connell and dated January 31, 2014, a reduced copy of which is attached as Schedule "B"; or
 - (iii) The areas shown in thick black outline and labelled:
 - 1. Covenant Part Lot A (Area 0.2 m²),
 - 2. Covenant Part Lot B (Area 45.7 m²),
 - 3. Covenant Part Lot D (Area 21.2 m²), and
 - 4. Covenant Part Lot E (Area 42.5 m²),
 all as shown on reference Plan EPP38152 (Control Number 139-119-5193) prepared by Rory O'Connell and dated January 31, 2014, a reduced copy of which is attached as Schedule "C";
- (b) for seawalls and for public walkways, including a public observation point and similar structures and appurtenances;
- (c) for temporary boat moorage purposes related to construction of a Wastewater Treatment Plant on the Lands including the removal of excavated material and the provision of concrete and aggregate during the excavation and major concrete phase of the Wastewater Treatment Plant by barge or other marine transport,

- (d) for a dock or other similar watercraft landing structure, including related structures and appurtenances,
- (e) for public open space, and landscaping, and
- (f) for hard exterior surface areas such as parking or similar structures, as permitted by the Transferee's bylaws.

provided that paragraphs (b) to (f) of this Section shall be interpreted as limiting the Transferor to construction or placement of only structures but not buildings within 7.5 metres of the High Water Mark.

2. The Transferor and Transferee agree that this Agreement shall be interpreted in accordance with the definitions in the Transferee's Zoning Bylaw, as of the date of execution of this section 219 covenant.

Indemnity and Release

3. The Transferor covenants and agrees to indemnify and save harmless the Transferee from any and all claims, causes of action, suits, demands, fines, penalties, costs or expenses or legal fees (on a solicitor-client basis) whatsoever, in law or equity, which anyone has or may have against the Transferee or which the Transferee incurs as a result of any loss, damage, deprivation, enrichment or injury, including economic loss, arising out of or connected with the restrictions or requirements of this Agreement or the breach of any covenant in this Agreement, or as a result of the use of the Lands as a wastewater treatment plant within an area identified as being subject to risk of tsunami.
4. The Transferor releases and forever discharges the Transferee of and from any claims, causes of action, suits, demands, fines, penalties, costs or expenses or legal fees (on a solicitor-client basis) whatsoever, in law or equity, which the Transferor can or may have against the Transferee for any loss, damage, deprivation, enrichment or injury, including economic loss, arising out of or connected with the restrictions or requirements of this Agreement or the breach of any covenant in this Agreement, or as a result of the use of the Lands as a wastewater treatment plant within an area identified as being subject to risk of tsunami.

Registration

5. The restrictions and requirements in this Agreement are covenants running with the Lands in favour of the Transferee and intended to be perpetual, and shall continue to bind all of the Lands when subdivided.
6. At the Transferor's sole cost, the Transferor will register this Agreement and must do everything necessary to secure priority of registration and interest for this Agreement over all encumbrances of a financial nature.
7. The Transferor agrees to execute all other documents and provide all other assurances necessary to give effect to the covenants contained in this Agreement. However, the

Transferee acknowledges that if the Rezoning Bylaw is not adopted, in its sole discretion, then this Agreement shall be discharged from the Lands.

General

8. The Transferor covenants and agrees for itself, its heirs, executors, successors and assigns, that it will at all times perform and observe the requirements and restrictions set out in this Agreement.
9. It is mutually understood, acknowledged and agreed by the parties that the Transferee has made no representations, covenants, warranties, guarantees, promises or agreements (oral or otherwise) with the Transferor other than those contained in this Agreement.
10. Nothing contained or implied in this Agreement:
 - (a) prejudices or affects the rights, powers or discretion of the Transferee in the exercise of its functions under any public or private statutes, bylaws, orders and regulations, all of which may be fully and effectively exercised in relation to the Lands as if the Agreement had not been executed and delivered by the Transferor;
 - (b) imposes any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement or the breach of any provision in this Agreement; or
 - (c) imposes any public law duty, whether arising from the principles of procedural fairness or the rules of natural justice, on the Transferee with respect to its exercise of any right or remedy expressly provided in this Agreement or at law or in equity.
11. The Transferor covenants and agrees that the Transferee may withhold development permits, building permits and other approvals related to the development of the Lands or construction of a Building on the Lands as necessary to ensure compliance with the covenants in this Agreement, and that the issuance of a permit or approval does not act as a representation or warranty by the Transferee that the covenants of this Agreement have been satisfied.
12. 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.
13. The waiver by a party of any breach of this Agreement or 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 future or continuing failure, whether similar or dissimilar, and no waiver is effective unless it is written and signed by both parties.
14. If any part of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by

that holding or by the severance of that part.

15. This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

The Transferor and Transferee acknowledge that this Agreement has been duly executed and delivered by the parties executing Forms C and D (pages 1 and 2) attached.

SCHEDULE "A"

REFERENCE PLAN OF PART OF LOTS A AND E, SECTION 11,
ESQUIMALT DISTRICT, PLAN 35322 FOR COVENANT PURPOSES
Pursuant to Section 99(1)(e) of the Land Title Act

PLAN EPP38150

0CGS 92B.044

The intended plot size of this pen is 422mm in width by 580mm in height (16" x 23") when printed at a scale of 1:750.

LEGEND

Integrated Survey Area No. 17, City of Vienna,
NOVA (2006)

DIC bearings are derived from observations against geodetic control monuments B61144 and B61142.

This plot shows horizontal ground-level distances unless otherwise specified. To compute grid distances multiple ground-level distances by the average random factor of 0.2222/15 which has been derived from geographic control measurements plotted (GCM #152/67) and BATHMET (GCM #207).

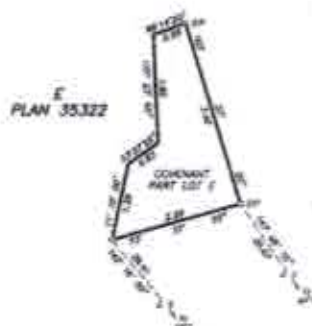
- Ⓐ denotes central manmark found
- Ⓛ denotes standard mark post placed
- Ⓛ denotes standard iron post placed
- Ⓛ denotes short W drilled in rock

BOOK OF REFERENCE	
PART OF	AREA
Lot A, Plan 35323	0.4 ac ²
Lot E, Plan 35322	4.2 ac ²



DETAIL A

Scale of enlargement is 1:26 of
stretched grid size of print



DETAIL B

Scale of judgement is 1-50 of
intended and size of sign

FOCUS

010040204-2007001-000

The Association of BC Land Surveyors has granted partial relief from full compliance with BSL Rule 10-3(1) for certain corners of the covenant area shown on this plan.

My plan lies within the Capital Regional District

The first survey represented by this post was completed on the 27th day of January, 2018
 Day 1: 0/Janet, 2018 #674

ITEM INQUIRY

SCHEDULE "B"

REFERENCE PLAN OF PART OF LOT C AND PARTS OF LOT E,
SECTION 11, ESQUIMALT DISTRICT, PLAN 35322 FOR
COVENANT PURPOSES

PLAN EPP38151

Pursuant to Section 89(1)(e) of the Land Title Act

BCGS 228.044

All distances are in metres and decimal thereof.
The intended plot size of this plan is 432mm in
width by 560mm in height (C size) when plotted
at a scale of 1:750.

LEGEND

Integrated Survey Area No. 17, City of Victoria,
HUCS (CSRS).

Grid bearings are derived from observations between
geodetic control monuments 8401144 and 8401183.

This plan shows horizontal ground-level distances
unless otherwise specified. To compute grid distances,
multiply ground-level distances by the average
cosine factor of 0.9998178 which has been
derived from geodetic control monuments 8401144
(NOM #153797) and 8401183 (NOM #8977).

- denotes control monument found
- denotes standard rock post placed
- denotes standard iron post placed
- CP denotes short CP set in rock

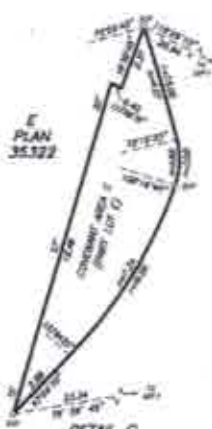
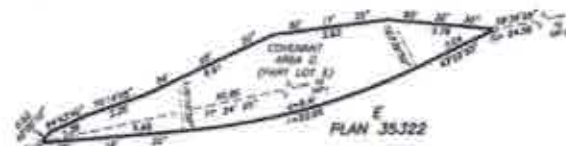
BOOK OF REFERENCE

PART OF	AREA
Lot C, Plan 35322 (AREA A)	58.6 m ²
Lot E, Plan 35322 (AREA B)	5.5 m ²
Lot E, Plan 35322 (AREA C)	29.0 m ²
Lot E, Plan 35322 (AREA D)	27.7 m ²

Scale of enlargement is 1:500
of intended plot size of planScale of enlargement is 1:75
of intended plot size of plan

FOCUS

Task Force 201 (June 2014)
Task Force 201 (June 2014)
Task Force 201 (June 2014)

Scale of enlargement is 1:100
of intended plot size of planScale of enlargement is 1:100
of intended plot size of plan

SECTION
VICTORIA
VIEW
ROAD

PLAN 41853

PLAN 11

PLAN 11

PLAN 11

PLAN 11

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PLAN 11

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PLAN 11

PLAN 11

The Association of BC Land Surveyors has
granted partial relief from full compliance
with RS Rule 10-4(1) for certain corners
of the covenant areas shown on this plan.

This plan lies within the Capital Regional District

The field survey represented by this plan was
completed on the 27th day of January, 2014.
Rep. C. O'Donnell, BCLS #616

EPP381515005

SCHEDULE "C"

